

Software License Agreement

This Software License Agreement is made by and between Marco's Technology Services, LLC, a Delaware limited liability company ("**Licensor**"), and the entity identified on the Order Form ("**Licensee**") (the Software License Agreement, together with the Order Form and any addenda, exhibits, or schedules attached thereto, are collectively referred to as the "**Agreement**"). In consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. License and Restrictions.

1.1 License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicensable, non-transferable license, to access and use the Marco's Order Management System and related services ("**Licensor Solution**") and use the Transaction Data (as defined below) (together with Licensor Solution, the "**Services**") stored therein via the Internet, solely for use by Licensee at the Location for Licensee's operation of such Location. This license is restricted to use by Licensee and its Authorized Users and does not include the right to use the Services on behalf of any third party. Licensee is responsible for procuring and maintaining the network connections that connect Licensee to the Services. The Licensor Services are specified at <https://www.ciaonet.com/Uploads/Public/Documents/MOMS%20Operational%20Feature%20Set.pdf>, which is expressly incorporated herein by reference and which may be updated from time to time by Licensor. Licensee agrees that its purchase hereunder is neither contingent on the delivery of any future functionality or features of the Licensor, nor dependent on any oral or written comments made by Licensor regarding future functionality or features. There are no other licenses granted to Licensee, whether express, implied, or by way of estoppel. All rights not granted in this Agreement are reserved by Licensor.

1.2 License Restrictions. Licensee shall not directly or indirectly do any of the following or permit any third party to do so: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code, or underlying ideas or algorithms of the Licensor Solution; (ii) modify, translate or create derivative works based on any element of the Licensor Solution or any related documentation; (iii) rent, lease, sell, resell, assign or otherwise transfer its rights to use the Licensor Solution; (iv) distribute the Licensor Solution; (v) use the Licensor Solution with third-party applications except as provided in Section 1.3, or otherwise for the benefit of Licensee or any third party; (vi) remove any proprietary notices from Licensor materials furnished or made available to Licensee including with limitation the Licensor Solution; (vii) publish or disclose to third parties and evaluation of the Licensor Solution for an purposes other than its intended purpose and in connection with sales at the Location.

1.3 Third-Party Applications. Upon Licensor's prior written approval in its sole discretion, the Licensor Solution may interact with, and access, third-party applications and related information used by Licensee in connection with the Licensor Solutions, including access to Transaction Data and related sources. Licensee shall make any such third-party applications, data sources, and other information available to Licensor as reasonably necessary to use the Licensor Solution as contemplated in this Agreement, including, without limitation, obtaining all required access and credentials. Licensee shall be solely responsible for ensuring compliance with third-party terms of use, privacy policies and contractual obligations in making such third-party applications, data sources, and other information available to Licensor.

1.4 Subsequent Modifications. From time to time, Licensor may make modifications to (i) the Licensor Solution or any particular components thereof from time to time, provided that such modifications do not materially degrade any functionality of the Licensor Solution, or (ii) the provisions of this Agreement.

2. Access, Activation Date. Subject to the terms and conditions of this Agreement, Licensor shall use commercially reasonable efforts to provide Licensee with access to the Licensor Solution via the Internet commencing on the Activation Date. "**Activation Date**" means the date set forth on the Order Form.

3. Passwords; Security.

3.1 Passwords. Licensor will issue to Licensee access to create and to issue to Authorized Users a user identification number and/or password for access to, and use of, the Licensor Solution. "Authorized User" means individuals who are employees of Licensee and authorized by Licensee to use the Services. Licensee is responsible for maintaining the confidentiality of all user identification numbers and/or passwords, and for ensuring that each user identification number and/or password is used only by the Authorized User to which it was issued. Licensee is solely responsible for any, and all, activities that occur under Licensee's account and all charges incurred from use of the Licensor Solution accessed with such user identification number and/or passwords. Licensee will restrict Authorized Users from sharing passwords.

Licensee agrees to immediately notify Licensor of any unauthorized use of Licensee's account, any user identification number and/or password or any other breach of security known to Licensee. Licensor shall have no liability for any loss or damage arising from Licensee's failure to comply with the terms set forth in this Section.

3.2 Transaction Data Defined. For purposes of this Agreement, the term "Transaction Data" means any and all sales, transactions, discounts, promotional, customer and pricing information input into, or generated by, the Licensor Solution in connection with sales and other transactions at the Location. Licensee agrees that all right, title, and interest in (i) the Transaction Data, (ii) other information input into the Licensor Solution by Licensee ("Other Information") and (iii) all intellectual property rights in each of the foregoing, belong to, and are retained solely by the Licensor. As such, Licensee further agrees that Licensor shall have the unrestricted right to collect, process, store and otherwise use the Transaction Data in connection with providing access to the Licensor Solution and other services under this Agreement and for any other purposes in Licensor's sole discretion.

3.3 Security. Licensor will deploy reasonable security precautions intended to protect against unauthorized access to any Transaction Data stored by Licensor in connection with the Licensor Solution.

3.4 No Circumvention of Security. Licensee shall not circumvent, or otherwise interfere in any way with, Licensor's maintenance of the security of the Licensor Solution. Licensee must immediately notify Licensor in writing of any breach, or attempted breach, of security of the Licensor Solution which Licensee knows or should be aware of.

3.5 No Guarantee of Security. Licensee acknowledges that, notwithstanding the security precautions deployed by Licensor, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Licensor Solution and Transaction Data. Licensor cannot, and does not, guarantee the privacy, security, integrity, or authenticity of any information transmitted over, or stored in, any system connected to, or accessible via, the Internet or otherwise, or that any such security precautions will be adequate or sufficient.

4. Ownership and Use of Data. As between Licensor and Licensee, all right, title and interest, in the Licensor Solution, the Transaction Data, Other Information, and any other Licensor materials furnished or made available hereunder, and all modifications, configurations, and enhancements thereof, and all suggestions, ideas and feedback proposed by Licensee, regarding the Licensor Solution, including all intellectual property rights and other applicable legal rights in each of the foregoing, are the sole and exclusive property of Licensor. Licensee hereby irrevocably assigns to Licensor any right, title, and interest it may have in all ideas, feedback and suggestions made by Licensee to Licensor regarding the Licensor Solution (collectively, "**Feedback**") and Licensee agrees to take any actions as Licensor deems reasonably necessary to evidence Licensor's ownership of the Feedback. To the extent any of the rights, title and interest in, and to, Feedback cannot be assigned by Licensee to Licensor, Licensee hereby grants to Licensor an exclusive, royalty-free, transferable, sublicensable, irrevocable, worldwide, perpetual, and fully paid-up license to use, copy, reproduce, distribute, create derivative works of, publicly perform and display, practice, and otherwise exploit the Feedback in any medium or format, whether now known or later developed. The parties shall comply with the provisions of the Data Processing Addendum attached hereto as Exhibit A.

5. Uptime. Licensor will use commercially reasonable efforts to make the Licensor Solution available to Licensee 98% of each calendar month, excluding (i) downtime for scheduled maintenance, (ii) force majeure events; or (iii) occurrences in which Licensee acts with negligence, willful misconduct, or otherwise uses the Services in breach of the Agreement. If the Licensor Solution is unavailable to Licensee, Licensee must promptly notify Licensor, and Licensor will use commercially reasonable efforts to solve problems or issues with the Licensor Solution to restore Licensee's access to the Licensor Solution. The foregoing shall be Licensor's sole and exclusive obligation, and Licensee's sole and exclusive remedy, if the Licensor Solution is not available to Licensee, and such unavailability shall not constitute a breach of this Agreement by Licensor. Licensor has no obligation to Licensee under this Section in the event the Licensee's inability to access the Licensor Solution is the result of a failure or problem with hardware, software, equipment, or services owned and operated or provided by Licensee or by any third party.

6. Support. Provided Licensee has paid all amounts due under this Agreement, Licensor will provide to Licensee the following technical support services for the Licensor Solution ("**Support**"). Licensor will provide to Licensee any regular updates to the Licensor Solution that correct errors, or fixes bugs in or provides minor feature enhancements thereto, that Licensor makes generally available to other Licensees ("**Updates**"), at such time as the Updates are made commercially available by Licensor. In the event of any technical difficulty with the Licensor Solution, Licensee must either submit an online support ticket to Licensor's designated online support ticket system, or call Licensor's toll-free telephone number, to report problems or issues with the Licensor Solution. Licensor will grant access to one or more of Licensee's designated personnel for this purpose. Licensor will use commercially reasonable efforts during normal business hours to timely respond to and address problems and issues submitted by Licensee. Emergency service tickets may also be submitted 24/7 to the online support ticket system for critical issues such as a total site failure.

7. Licensee Obligations.

7.1 Hardware/Software. Licensee is solely responsible for (i) obtaining, deploying, supporting and maintaining all computer hardware, third party software and communications equipment needed to access and use the Licensor Solution, including, without limitation, installation and use of Licensor-approved SDWAN infrastructure at the Location, to connect to the Licensor Solution; (ii) removing at its own expense any existing POS Systems components, hardware and wiring that are not compatible and/or not approved by Licensor for use with the Licensor Solution; (iii) contracting with third parties, approved by Licensor, that provide services related to Licensee being able to access and use the Licensor Solution (e.g., ISP, telecommunications, etc.); (iv) paying all third party fees and access charges incurred while accessing and using the Licensor Solution; (v) leaving all router and POS hardware components turned on and operational 24 hours per day each day of the week; and (vi) requiring all vendors to comply with Licensor's then-current requirements for sending and sharing information generated by the Licensor Solution to Licensor.

7.2 Licensee Responsibility for Transactions. Licensee shall be solely responsible for all transactions and activities conducted at the Location using the Licensor Solution and the resulting effect or consequence thereof, including but not limited to the following:

7.2.1 Merchant Account Numbers and Daily Batch Processing - checking, ensuring, and maintaining the accuracy of any and all merchant account numbers and all daily batch processing of debit and credit cards.

7.2.1.2 Licensee must check bank accounts for daily batch processing, at a minimum of daily for the first week following installation of the Licensor Solution and a minimum of weekly for the duration of the term of this Agreement. Licensee is solely responsible for ensuring correct processing to Licensee's bank account.

7.2.2 Customer and Credit Card Chargebacks - all chargebacks to the business from all customer transactions, disputes or complaints, and/or any and all transaction processes.

7.2.3 Credit Card Processing Errors and Disruptions - all duplicative or erroneous charges to the Location resulting from credit card processing errors and disruptions.

7.2.4 Employee Payroll - checking, ensuring, and maintaining the accuracy of any Transaction Data used for employee payroll calculations or reporting. The Licensor Solution is not intended to be used as a sole measure or record of employee hours.

Licensor WILL NOT, under any circumstance or for any reason, reimburse or pay Licensee for any amounts as a result of Licensee's failure to meet its obligations under this Section or that arise during the ordinary course of Licensee's business at the Location.

7.3 Compliance with Laws. Each party represents and warrants that, during the term of this Agreement, it shall comply with all applicable federal, state, and local laws and regulations applicable to its business and its performance of its obligations under this Agreement and use of the Licensor Solution, including without limitation all privacy and data protection laws and regulations with respect to any Transaction Data uploaded or submitted to the Licensor Solution.

7.4 Conduct. Licensee shall be solely responsible for all activities and transactions conducted via the Licensor Solution (whether by an Authorized User or otherwise), and all acts and omissions of itself and any Authorized Users while using the Licensor Solution. Licensee acknowledges and agrees that (i) Licensee is responsible for appropriately resolving any issues found on Licensee's network, hardware, third-party software, or third-party services relied on by Licensee to access and use the Licensor Solution (collectively "Licensee Items") and (ii) that Licensor is not liable for, or responsible to, correct any issues found regarding Licensee Items. Licensee further agrees (a) not to send or store data on or to the Licensor Solution which violates the rights of any individual or legal entity established in any jurisdiction; (b) not to upload in any way any information or content that contains viruses, worms, trojan horses, malware, spyware, corrupted files, or any other similar software or programs, harmful code or data that may damage the operation of the Licensor Solution or another's computer or mobile device; (c) not use the Licensor Solution for illegal, fraudulent, unethical or inappropriate purposes, including but not limited to the transmission, distribution, or posting of pornographic or other objectionable material, or any other material encouraging conduct that could constitute a criminal offense or give rise to civil liability; (d) not to interfere or disrupt networks connected to the Licensor Solution or interfere with another party's ability to access or use the Licensor Solution; (e) not to interfere with another licensee's use and enjoyment of the Licensor Solution or Services; (f) not to use the Licensor Solution in any manner that impairs the Licensor Solution, including without limitation the servers and networks on which the Licensor Solution is provided, and (g) to comply with all regulations, policies, procedures, manuals, guidelines, and recommendations of Licensor, the networks connected to the Licensor Solution, and Licensor's service providers. Licensor reserves the right to amend, alter, or modify Licensee's conduct requirements as set forth in this Agreement at any time. Licensor may deliver notice of such updated requirements to Licensee via email or through other electronic means. Licensee's continued access to, and use

of, the Licensor Solution following issuance of such updated conduct requirements shall constitute Licensee's acceptance thereof.

7.5 Accuracy of Content. Licensor reserves the right to remove any violating content posted or stored using Licensor Solution or transmitted through the Licensor Solution, at its sole discretion and without notice to Licensee. Notwithstanding the foregoing, Licensor does not, and is not obligated to, verify, authenticate, monitor, or edit the Transaction Data, Other Information or any information or data input into or stored in the Licensor Solution by Licensee for completeness, integrity, quality, accuracy or otherwise and makes no promises or guarantees of any kind whatsoever regarding the accuracy, or completeness of the Transaction data, or Other Information, or any such other data or information inputted by Licensee. Licensee shall be solely responsible and liable to Licensor for the completeness, integrity, quality, and accuracy of Transaction Data and Other Information that Licensee inputs into the Licensor Solution.

7.6 Effect of Licensee Failure or Delay. Licensor is not responsible or liable for any delay or failure of performance caused in whole or in part by Licensee's delay in performing, or failure to perform, any of its obligations under this Agreement, including but without limitation, Licensee's delay in notifying, or failure to notify Licensor of any performance or service disruptions relating to the Licensor Solution.

8. Custom Programming. Licensor shall have no obligation to provide custom programming, specifications, or functionality of the Licensor Solution based on the request of Licensee, unless Licensor, in its sole discretion, agrees to honor such request.

9. Fees and Taxes.

9.1 Fees. Licensee agrees to pay all fees and charges set forth in this Agreement and on the Order Form (collectively, "Fees") in accordance with the payment terms stated on the Order Form. Unless otherwise stated in the Order Form, all Fees will start on the Activation Date. All Fees are payable in United States currency. Except as otherwise expressly provided in this Agreement, Fees are non-refundable.

9.2 ACH Payment. Licensee hereby consents and authorizes Licensor, to collect all Fees that are owed to Licensor under this Agreement, from Licensee's bank account via the Automated Clearing House (ACH) banking process. Licensee shall provide all such information and sign any documentation reasonably required by Licensor to effectuate this provision. All ACH payments processed under this section shall be scheduled to coincide with an Accounting Period. For purposes of this Agreement, "**Accounting Period**" means a period of time established from time to time by Marco's Franchising, LLC (and subject to change at any time) for use in the Marco's Pizza® franchise system, and typically starts on a Monday and runs for 28 consecutive days.

9.3 Taxes. Fees are exclusive of all sales, use, value-added, and other taxes or duties. Licensee shall be solely responsible for the payment of all such taxes arising from or related to the Services and the Licensor Solution, excluding taxes based on Licensor's net income and any taxes or obligations imposed upon Licensor under applicable federal, state, and local wage laws.

9.4 Late Payments. Any payment not received from Licensee by the due date (except charges that are reasonably and in good faith disputed by Licensee and Licensee has provided written notice of such dispute prior to the due date), shall accrue a late charge equal to one and a half percent (1.5%) of the outstanding balance per month or the maximum rate permitted by law, whichever is less, from the date such payment is due until the date paid in full. Licensee shall also reimburse Licensor for all costs and expenses (including reasonable attorneys' fees) incurred by Licensor in collecting unpaid amounts due by Licensee.

9.5 Fee Increases. Licensor may increase the Fees during the Term upon 60 days' prior notice to Licensee; provided, however, that any such increases shall not, on a cumulative annual basis, exceed the greater of (i) 6%; or (ii) the percentage rate of increase for the immediately preceding 12-month period in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics of the United States Department of Labor, or if such index is not available, such other index as Licensor reasonably determines most closely resembles such index.

10. Term and Termination.

10.1 Term; Renewal. This Agreement commences on the Effective Date listed on the Order Form and shall continue for the initial term set forth on the Order Form. Thereafter, this Agreement shall automatically renew for additional one (1) year terms unless terminated by Licensor providing Licensee with at least three (3) months prior written notice.

10.2 Termination for Breach. Notwithstanding the foregoing, either party may terminate this Agreement or any Order Form (i) immediately upon written notice if the other party has breached a material term of this Agreement and has not cured such breach within thirty (30) days of receipt of written notice specifying the breach; (ii) immediately upon written notice if a receiver is appointed over any of the property or assets of the other party, if the other party makes any voluntary arrangement with its creditors, becomes subject to an administration order, goes into liquidation, is dissolved, or if anything analogous to any of the foregoing under the laws of any jurisdiction occurs in relation to the other party, or if the other party ceases (or threatens to cease) to carry on its ordinary course of business as a going concern; or (iii) immediately upon notice to Licensee if the franchise agreement for Licensee's operation of the Location as a Marco's Pizza® is terminated for any reason. In addition to the foregoing, Licensor may, at its sole option, terminate this Agreement or any Order Form immediately upon written notice to Licensor if Licensee breaches Section 1.2 (License Restrictions), Section 3.1 (Passwords), Section 7.3 (Compliance with Laws), Section 7.4 (Conduct), or Section 11 (Confidentiality).

10.3 Suspension of Services. Licensor may, in lieu of termination, suspend the Services and Licensee's access to the Licensor Solution, at Licensor's sole option, without prior notice to Licensee if Licensee breaches Section 1.2 (License Restrictions), Section 3.1 (Passwords), Section 7.3 (Compliance with Laws), Section 7.4 (Conduct), or Section 11 (Confidentiality), and such suspension shall continue until the applicable issue is resolved or Licensor terminates the Agreement, whichever occurs first.

10.4 Effect of Suspension and/or Termination. Licensor shall not be liable to Licensee, or any third party, for Licensor's suspension or termination of the Services and Licensee's access to, or right to use, the Licensor Solution, in accordance with the provisions of this Agreement. Upon termination or expiration of this Agreement, Licensee shall remain obligated to pay all amounts owed hereunder and shall not be entitled to a refund of any amounts paid in advance.

11. Confidentiality.

11.1 Obligations. During the term of this Agreement and for a period of two years thereafter, all Confidential Information disclosed or otherwise provided or obtained in connection with this Agreement shall be kept strictly confidential, used only for purposes consistent with this Agreement, and shall not be disclosed to any third party. Notwithstanding the foregoing, Recipient may disclose the Confidential Information to such of its officers, directors, agents, and employees who both have a need to know the Confidential Information consistent with this Agreement and agree to abide by the terms of these confidentiality provisions. The Recipient will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures and the same degree of care it takes to protect its own confidential or proprietary information of a similar nature. "Confidential Information" means all nonpublic information (i) disclosed by a party ("Disclosing Party") to the other party ("Recipient"), or (ii) acquired through observation or other perception by Recipient, including but not limited to pricing, trade secrets, knowhow, designs, data, computer programs, customer lists, business plans, methods, activities and operations, reports, studies, technology, products, services, processes, promotional marketing strategies and activities, finances and other technical and business information and affairs, as well as the existence, terms, or progress of this Agreement. The parties hereby agree that Licensor's Confidential Information includes the Licensor Solution, Transactional Data, as well as the terms and conditions of this Agreement and any discussions related thereto.

11.2 Exclusions. "Confidential Information" does not include information: (a) was already known by the Recipient at the time of disclosure, through authorized disclosure; (b) is or becomes available in the public domain through (i) no breach of this Agreement by Recipient, or (ii) through an authorized disclosure into the public domain by a third party (provided that upon notice from Disclosing Party of an unauthorized disclosure by a third party, Recipient shall continue to treat such information as Confidential Information); (c) Recipient independently developed without the use of any Confidential Information; or (d) Recipient rightfully obtains from a third party who has the right to transfer or disclose it.

11.3 Required Disclosures. Notwithstanding any of the other terms and provisions in this Agreement, Recipient may disclose the Confidential Information as required by applicable law or legal, judicial, or regulatory process as long as prior to disclosing any such Confidential Information, Recipient promptly notifies the Disclosing Party, to the extent permitted by law, and reasonably cooperates with the Disclosing Party in seeking an appropriate protective order, or otherwise prevent or restrict such disclosure. In any event, Recipient may only disclose the Confidential Information which it is legally compelled to disclose.

11.4 Destruction or Return of Confidential Information. Recipient agrees that all information delivered by the Disclosing Party under this Agreement shall remain the sole and exclusive property of the Disclosing Party and shall be returned, destroyed, or purged promptly upon written request. Recipient shall then provide written certification, executed by an appropriate officer, that it has retained no copies of the Confidential Information, nor any memoranda,

notes or other tangible embodiments of the information contained in the Confidential Information, in any form whatsoever. Notwithstanding the foregoing, Recipient shall be permitted to retain such copies in accordance with its electronic back-up and archival procedures in accordance with the restrictions of this Agreement. Any Confidential Information retained pursuant to this section shall be kept in compliance with the obligations set forth herein regarding confidentiality and use of Confidential Information for a period of five (5) years from the date of termination or expiration of this Agreement.

11.5 **Injunctive Relief.** Recipient acknowledges that a breach of this Agreement may result in immediate and irreparable harm to the Disclosing Party, for which there may be no adequate remedy at law and that the Disclosing Party will be entitled to seek equitable relief, without bond, to compel Recipient to cease and desist all unauthorized use and disclosure of the Confidential Information.

12. WARRANTIES.

12.1 **WARRANTY DISCLAIMER.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES OR CONDITIONS (WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE) INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE LICENSOR SOLUTION WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSOR SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE.

12.2 **Hardware.** For all such hardware and components purchased through Licensor pursuant to the Order Form, Licensor shall transfer to Licensee any manufacturer's warranty. LICENSOR EXPRESSLY DISCLAIMS ALL REPRESENTATIONS OR WARRANTY OF ANY KIND, WHETHER EXPRESS, STATUTORY, IMPLIED OR OTHERWISE ARISING IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, WITH RESPECT TO THE HARDWARE AND COMPONENTS PURCHASED FROM LICENSOR, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

13. Indemnification.

13.1 **Licensor.** Subject to Section 13.3, Licensor shall indemnify, defend, and hold harmless Licensee against any loss, claim, lien, demand, action, suit or proceeding made or brought against Licensee by a third-party based on a claim that the Licensor Solution infringes or misappropriates such third party's intellectual property rights. If such a claim is brought or in Licensor's sole opinion is likely to be brought, Licensor may at its sole option either (i) obtain the right for Licensee to continue using the Licensor Solution; (ii) replace or modify the affected portion of the Licensor Solution so that it becomes non-infringing; or (iii) terminate this Agreement upon notice to Licensee. Licensor shall have no liability under this section or otherwise to the extent a claim or suit is based upon (a) the modification of the Licensor Solution by any person or entity other than Licensor, (b) any products, services, technology, materials or data not created, provided, or authorized by Licensor, (c) use of the Licensor Solution in combination with software, hardware, products, processes, or materials not provided or authorized by Licensor (where the alleged damages, costs or expenses arise from or relate to such combination), (d) Licensee continues the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (e) Licensee's use of the Services which is not in strict accordance with this Agreement or any other documentation provided by Licensor regarding the Licensor Solution.

13.2 **Licensee.** Subject to Section 13.3, Licensee shall indemnify, defend, and hold harmless Licensor, its directors, officers, shareholders, members, employees, agents, successors and assigns (collectively, "**Licensor Indemnitees**") against any loss, claim, lien, demand, action, suit or proceeding made or brought against Licensee by a third party based on a claim (i) that the Transaction Data or any transactions by Licensee using the Licensor Solution infringe or misappropriate such third party's intellectual property rights; (ii) arising out of or attributable to Licensee's use of the Services (a) in a manner not authorized by this Agreement, (b) in combination with software, hardware, products, processes, or materials not provided or authorized by Licensor, or (c) through modifications to the Licensor Solution not made by Licensor; (iii) arising out of or attributable to Licensee's failure to comply with applicable laws and regulations; and (iv) arising out of or attributable to Licensee's negligence or willful misconduct, or Licensee's breach of any provision of this Agreement.

13.3 **Indemnification Procedures.** Each party's obligation to indemnify the other party is conditioned on the party seeking indemnification: (a) promptly notifying the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby; (b) allowing the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement, provided that the indemnifying party shall not settle any claim that

requires the indemnified party to admit fault or subjects the indemnified party to ongoing obligations without the indemnified party's prior written consent (which shall not be unreasonably withheld or delayed); and (c) giving the indemnifying party reasonable assistance in the defense and settlement of any claim, suit or proceeding for which indemnity is claimed.

13.4. **Sole Remedy.** This Section 13 states Licensor's sole liability to Licensee, and Licensee's exclusive remedy against Licensor, for any type of claim described in this section.

14. Limitation of Liability.

14.1 **General Limitation.** IN NO EVENT SHALL LICENSOR'S LIABILITY, IF ANY, ARISING OUT OF OR IN, ANY WAY RELATED TO THIS AGREEMENT, EXCEED THE FEES PAID BY LICENSEE FOR THE LICENSOR SOLUTION (AS SPECIFIED IN THE ORDER FORM) IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM, REGARDLESS OF WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY WHATSOEVER.

14.2 **Waiver of Consequential Damages.** IN NO EVENT SHALL LICENSOR BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF DATA OR BUSINESS INFORMATION, LOSS OF PROFITS, LOSS OF GOODWILL, OR BUSINESS INTERRUPTION), REGARDLESS OF WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY WHATSOEVER, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. Licensee acknowledges that the terms in this Agreement reflect this allocation of risk, and that such limitation of liability for Licensor is an essential component of the pricing and other agreements made between the parties hereunder.

15. **Force Majeure.** Neither party shall be in breach of this Agreement if its failure to perform any obligation under this Agreement (excluding Licensee's obligation to pay all amounts due hereunder) is caused by events or conditions beyond that party's reasonable control, including, without limitation, acts of God, pandemic, fire, flood, civil commotion, war, strikes, labor disputes, embargoes, blockades, third-party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, acts of terrorism or governmental demands or requirements (a "**Force Majeure Event**"); provided, however, that the affected party must use all reasonable efforts to resume performance once such Force Majeure Event no longer persists. If a Force Majeure Event persists for 30 days or more, then either party may terminate this Agreement upon written notice to the other party.

16. **Dispute Resolution.** In the event of a dispute between the parties relating to or arising out of this Agreement (except for Licensee's breach of Section 11 (Confidentiality) or Section 9 (Fees) , if the parties have not been successful in resolving such dispute through negotiation within 30 days, then the parties shall attempt to resolve the dispute through mediation by submitting the dispute to a sole mediator selected by the mutual agreement of the parties or, at any time at the option of a party, to mediation by the American Arbitration Association ("**AAA**"). Any such mediation will be held in Toledo, Ohio, USA. Licensee shall be responsible for the expenses and fees of the mediator and the AAA, but each party shall bear its own expenses related thereto. All defenses based on passage of time shall be suspended pending the termination of the mediation. Nothing in this clause shall be construed to preclude any party from seeking injunctive relief in order to protect its rights pending mediation. In the event mediation is unsuccessful, either party may submit such matter to any court of competent jurisdiction pursuant to this Agreement.

17. **General.** This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous agreements and understandings between the parties relating to the subject matter hereof, whether written or oral. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties. No rules of strict construction will be applied against any party. If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall remain in effect to the greatest extent permitted by law. Any provisions which by their nature are intended to survive any termination or expiration of this Agreement shall survive regardless of the reason for such termination or expiration, including but not limited to Section 4 (Ownership), 9 (Fees and Taxes), 10 (Term and Termination), 11 (Confidentiality), 12 (Warranty Disclaimer), 13 (Indemnification), 14 (Limitation of Liability), 16 (Dispute Resolution, and 17 (General). This Agreement may be executed in counterparts in hard copy or by electronic means, each of which shall be deemed an original and when taken together, shall constitute a single, fully integrated document. Electronic signatures will have the same legal effect as original signatures. Except as otherwise provided herein, any

additions or modifications to this Agreement must be made in writing and signed by authorized representatives of both parties. The failure of Licensor to exercise any right provided under this Agreement shall not constitute a waiver of such right, nor shall it constitute a waiver of any of Licensor's prior or subsequent rights. This Agreement shall be governed by the laws of the State of Ohio, without regard to its conflict or choice of laws rules. The state and federal courts sitting in Lucas County, Ohio shall have exclusive jurisdiction over any dispute between the parties related to this Agreement, and each party hereby consents to the exclusive jurisdiction and venue of such courts. This Agreement shall benefit and be binding upon the parties to this Agreement and their respective successors and permitted assigns. All notices to a party shall be in writing and shall be deemed to have been duly given upon receipt if either (i) hand-delivered, or (ii) sent to the address specified herein (or at such address a party hereafter provided via notice to the other party), by (a) overnight delivery using a nationally recognized courier, (b) registered mail with return receipt requested, or (c) email or other electronic method, provided that a copy of such notice is also sent via the method described in (a) or (b). This Agreement may not be assigned or transferred by Licensee, including without limitation, by merger, or operation of law, or otherwise, without Licensor's prior written consent; however, Licensor may freely assign or transfer this Agreement, or subcontract some of all of Licensor's obligations hereunder, without prior notice or Licensee's consent.

[End of Software License Agreement]

Exhibit A

Data Processing Addendum

Effective January 1, 2020, the California Consumer Privacy Act of 2018 ("CCPA") requires that contracts between a business and its service providers "prohibit" the service provider from "retaining, using, or disclosing the personal information" that it receives from the business "for any purpose other than for the specific purposes of performing the services specified in [its] contract."

Licensor is governed by the CCPA and is firmly committed to protecting personal information and complying with all applicable federal and state laws and regulations. As such, Licensor represents and warrants that it is a "service provider" as the term is defined under the CCPA, Cal. Civil Code § 1798.140(v), and that it contractually agrees to all conditions and prohibitions imposed by that statute upon service providers, including but not limited to:

1. **Data Use.** Licensor is prohibited from using personal information that it receives from Licensee, or that Licensor collects on behalf of Licensee, except as is necessary to perform the services contracted for by Licensee.
2. **Data Retention.** Licensor is prohibited from retaining personal information that it receives from Licensee, or that Licensor collects on behalf of Licensee, except as is necessary to perform the services contracted for by Licensee.
3. **Data Disclosure.** Licensor is prohibited from disclosing personal information that it receives from Licensee, or that Licensor collects on behalf of Licensee, except as is necessary to perform the services contracted by Licensee.
4. **Cooperation for Data Subject Requests.** Licensor is required to follow any instruction that it receives from Licensee to (i) produce all personal information regarding a specific individual that Licensor previously received from Licensee, or that Licensor collected on behalf of Licensee, if such information is requested, or (ii) irrevocably delete the personal information that Licensor received from Licensee, or that Licensor collected on behalf of Licensee, about that individual.