



## Software As A Service Agreement

Last updated May 2020:

**ATTENTION:** Please read this Software As A Service Agreement (the “**Agreement**”) carefully which sets forth the legally binding terms of use of the Online RMS Services by Colossus, Incorporated (hereinafter referred to as “**Caliber Public Safety**” or “**Caliber**”) including limitations on representations, warranties, remedies and liabilities.

**IMPORTANT NOTICE:** THIS IS A LEGAL AGREEMENT BETWEEN YOU, THE END USER, OR ON BEHALF OF THE ENTITY YOU REPRESENT AND ALL END USERS IN YOUR ORGANIZATION (COLLECTIVELY THE “CUSTOMER”, “YOU” OR “YOUR”) AND CALIBER. YOUR ACCEPTANCE IS ON BEHALF OF ANY CORPORATE ENTITY THAT EMPLOYS YOU OR WHICH YOU REPRESENT. IF YOU ARE AN EMPLOYEE, CONTRACTOR, OR OTHERWISE USING THE SOFTWARE AND/OR ONLINE RMS SERVICES ON BEHALF OF AN ORGANIZATION OR ANY OTHER THIRD PARTY, YOU REPRESENT AND WARRANT TO CALIBER THAT:

- A. YOU ARE THE AGE OF MAJORITY IN YOUR JURISDICTION;
- B. YOU HAVE ALL REQUISITE CAPACITY, RIGHT, POWER AND AUTHORITY TO ACCEPT THIS AGREEMENT ON BEHALF OF SUCH ENTITY; AND
- C. SUCH ENTITY SHALL BE IRREVOCABLY BOUND BY AND SHALL COMPLY WITH ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT, PLEASE DO NOT IN ANY WAY USE THE SOFTWARE AND/OR ONLINE RMS SERVICES. IF YOU OR ANY USERS ON YOUR BEHALF, USE THE SOFTWARE AND/OR ONLINE RMS SERVICES IN ANY WAY IT WILL BE DEEMED BY CALIBER THAT YOU HAVE ACCEPTED AND AGREED TO, ARE BOUND BY AND WILL COMPLY WITH, ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

### 1. Definitions

The following terms shall have the meaning set out below, all other capitalized terms not otherwise defined in this Section shall have the meaning set forth in the Agreement:

- (a) “**Annual Subscription Fees**” means the annual subscription fees set out in an Order Form issued by Caliber and signed by Customer.
- (b) “**Change Order**” means any written documentation between the Customer and Caliber evidencing their agreement to change particular aspects of this Agreement.
- (c) “**Completion of Services**” means the Professional Services are complete and shall be deemed to have occurred on the date which the Customer commences using the Services.
- (d) “**Confidential Information**” means, with respect to a party hereto, all information or material which: is (A) marked “Confidential,” “Restricted,” or “Proprietary Information” or other similar marking, (B) known by the parties to be considered confidential, proprietary, or is confidential under federal or state law or (C) which should be known or understood to be confidential or proprietary by an individual exercising reasonable commercial judgment in the circumstances. Confidential Information of Caliber shall include, without limitation, the Software, the Documentation, and any information with respect to the Services that Caliber may provide to Customer from time to time, including without limitation, all information disclosed by Caliber relating to the security of its facilities, computer systems and products. Confidential Information does not include information to the extent that such information: (i) is or becomes generally known to the public by any means other than a breach of the obligations of a receiving party hereunder; (ii) was previously known to the receiving party as evidenced by its written records; (iii) is rightly received by the receiving

party from a third party who is not under an obligation of confidentiality; or (iv) is independently developed by the receiving party without reference to or use of the other party's Confidential Information and which such independent development can be established using evidence that would be acceptable to a court of competent jurisdiction. Confidential Information of Caliber shall include, without limitation, the Services, the Software, Documentation, and any information with respect to the Services that Caliber may provide to Customer from time to time, including without limitation, the terms and conditions of this Agreement and all information disclosed by Caliber relating to the security of its facilities, computer systems and products.

- (e) **“Conversion Costs”** shall have the meaning set forth in Section 9 of this Agreement.
- (f) **“Data”** means all incident related data that is provided by Customer to Caliber and all other content transmitted, posted, received or created through Customer's use of the Services or the Software.
- (g) **“Documentation”** means user guides, operating manuals, education materials, product descriptions and specifications, technical manuals, supporting materials, and other information relating to the Software or used in conjunction with the Software, whether distributed in print, magnetic, electronic, or video format, in effect as of the date the Software are provided to the Customer.
- (h) **“Fees”** means the Annual Subscription Fees, Professional Services Fees, Billable Services, and Conversion Costs.
- (i) **“Order Forms”** means the proposal or purchase order executed by You and delivered to the Company for the purpose of gaining access to the Services. Order Forms are incorporated herein by reference.
- (j) **“Professional Service(s)”** means those professional service(s) listed in an Order Form issued by Caliber and signed by Customer.
- (k) **“Professional Services Fees”** means the professional service(s) fees set out in an Order Form issued by Caliber and signed by Customer and Section 12 of this Agreement.
- (l) **“Services”** means the web-based services commonly referred to as “software as a service” to be provided by or on behalf of Caliber under this Agreement that includes hosting, monitoring, operating and maintaining the Software at a site owned or controlled by Caliber and the delivery of non-exclusive access via the Internet to the Customer to use the Software granted to the Customer pursuant to Section 2 hereof. The Services shall also include storing all data entered and maintained by Users through use of the Software.
- (m) **“Software”** means the software product(s) that are listed in an Order Form issued by Caliber and signed by Customer.
- (n) **“Support Services”** means those billable support services to be provided by Caliber as further described in Schedule “A” to this Agreement.
- (o) **“Third Party Components”** means any third party telecommunications, managed facilities and/or software applications and services that Caliber or its service providers has licensed or purchased and provided access to or otherwise made available to Customer as part of the Services, including but not limited to the list set forth in Schedule “C” of this Agreement.
- (p) **“User(s)”** means employees, consultants, contractors or agents of Customer that have been authorized by the Customer in writing to access and use the Software.

## 2. Authorization

Subject to the terms and conditions of this Agreement, including without limitation, execution by Caliber and Customer of an Order Form and payment by Customer of the Annual Subscription Fees, Caliber hereby grants to Customer a personal, non-exclusive, non-transferable limited right during the Term (a) to allow Users to access and use the Software on an annual subscription basis and in accordance with the Documentation solely for Customer's internal business purposes, and (b) to use, copy and modify the Documentation solely for the purpose of creating and using training materials relating to the Software. Services are as presently available, and as may be modified from time to time, and that Customer acknowledges

and agrees that its subscription is neither contingent on the delivery of any future functionality nor dependent on any oral or written representations by Caliber regarding future functionality.

### 3. Fees

In consideration of receiving the Services, Professional Services, and Billable Services, Customer agrees to pay to Caliber the Fees and all applicable travel and lodging expenses as described in an Order Form in accordance with the payment terms set out in an Order Form issued by Caliber and signed by Customer. The Annual Subscription Fee is payable in full prior to the start of each term, and is non-refundable. Fees on any Renewal Term are subject to annual price increases.

The Fees and any other fees set out in this Agreement are exclusive of taxes. Customer agrees to pay all foreign, federal, state, provincial, county or local income taxes, value added taxes, use, personal, property sales and any other taxes, tariff, duty or similar charges that may be levied by a taxing authority (excluding taxes on Caliber' net income).

If any Fees are not paid when due, then at Caliber' discretion, (a) such Fees may accrue late interest at the rate of 1.5% (18% per annum) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such fee was due until the date paid, and/or (b) Caliber may suspend the Service, including all Customer access to the Service, pursuant to Section 13(c).

Caliber reserves the right to perform an annual audit on Customer's use of the Services to determine the actual number of concurrent Users accessing the Services per Agency during the term of the previous year. Should the audit reveal a number of Users accessing the Services are in excess of the number of Users for which a subscription was purchased, Caliber reserves the right to adjust its annual Subscription Services invoice for accordingly.

### 4. Term

Unless terminated earlier in accordance with the terms hereof, this Agreement shall commence on the date the Order Form is executed and shall continue for a period of one year (the "**Initial Term**"). After the Initial Term, the Agreement shall be automatically renewed for successive one (1) year periods (each a "**Renewal Term**") unless either party provides written notice to the other party of its intention not to renew within one hundred and twenty (120) days of the end of the then current term. The Initial Term and Renewal Term(s) shall collectively be referred to as the "**Term**".

### 5. Restrictions on Use

In addition to its termination rights under Section 13, Caliber may restrict or limit Customer's access to the Services if Caliber reasonably determines that Customer has engaged in or is likely to engage in (whether knowingly or unknowingly) any prohibited conduct described herein and such conduct, in Caliber's reasonable opinion poses any risk of any kind or nature to Caliber or its service providers' network, business or other customers. As promptly as practicable after becoming aware of Customer's engagement in any such prohibited conduct, Caliber will use reasonable efforts to notify Customer of the restriction or limitation to Customer's access to the Services and will promptly restore Customer's access after Caliber has had reasonable assurance that such conduct has been permanently discontinued.

- (a) Except as expressly provided herein, the Customer may not give away, rent, lease or otherwise sell, re-sell, sublicense, distribute or transfer the rights granted under this Agreement or otherwise use the Services or the Software except as expressly permitted by this Agreement without the prior written consent of Caliber.
- (b) The Customer agrees that it will not reverse engineer, decompile, translate or otherwise attempt to derive, or permit or help others to derive the source code relating to all or any part of the Services or attempt to otherwise convert or alter the Software into human readable code, except to the extent applicable law expressly prohibits the foregoing restriction.
- (c) The Customer may duplicate Documentation, at no additional charge, for the Customer's use so long as all required proprietary markings are retained on all duplicated copies.
- (d) No third party, other than duly authorized Users shall have access to or use of the Software.

- (e)** The Customer shall not copy, frame or mirror any part or content of the Services, other than copying or framing on Customer's own intranets or otherwise for Customer's own internal business purposes.
- (f)** The Customer shall not access the Services in order to (i) build a competitive product or service; (ii) copy any features, functionality or graphics of the Software; or (iii) knowingly allow access to any competitor of Caliber.
- (g)** The Customer shall not transmit, upload, post, distribute, store or otherwise publish, through use of the Services, any data, material or information that: (i) contains a software virus, Trojan horse, worm or other harmful or deleterious computer code, files or programs that may adversely affect any hardware or software, or that intercepts or misappropriates any data or information; (ii) is threatening, defamatory, libelous, harassing, profane, is an invasion of privacy, offensive, obscene or harmful; (iii) infringes or otherwise violates any patent, copyright, trademark, trade secret or other intellectual property or proprietary right of any third party; (iv) violates any law, statute, ordinance or regulation; or (v) includes unsolicited bulk e-mails, advertisements or solicitations.
- (h)** The Customer shall not interfere with or disrupt services or networks connected to the system used to provide the Services and shall not attempt to gain unauthorized access to the Services or such services or networks connected to the system used to provide the Services.
- (i)** The Customer shall not provide the results of using the Services for the purposes of monitoring its availability, performance, functionality, benchmarking or competitive analysis to any third party.

## **6. SaaS Services**

- (a)** Caliber shall provide all facilities, equipment, software and services required to deliver the Services.
- (b)** Caliber shall provide access to the Software to Users. Such access shall be provided twenty four (24) hours per day, seven (7) days per week, except for planned downtime as announced via the Services or unplanned downtime caused by circumstances beyond its reasonable control.
- (c)** Caliber reserves the right to have additional User acceptance criteria that may be applied to Users prior to their ability to have access to the Software. Caliber shall inform Customer of such criteria but Caliber shall be free to implement such criteria at any time without prior written warning to the Customer and/or to Users. Where Users do not accept such and/or agree to such criteria, Caliber reserves its rights to not grant to such Users access to the Software. Caliber reserves its rights to restrict access to the Software to Users for any violation of any additional terms and conditions to which such Users accept/agree to access the Software.
- (d)** Caliber shall provide installation, configuration, system administration and maintenance of the facilities and equipment and software required to operate and ensure access to the Software.
- (e)** Caliber shall comply with the terms and conditions regarding access and use of Data as set out in Section 14 of this Agreement.
- (f)** The Caliber's Privacy Statement is attached hereto and made a part hereof as Schedule "B". Caliber reserves the right to modify its privacy and security policies from time to time. Providing security for the information entered into Caliber's Internet Application(s) is of paramount importance to Caliber. Caliber takes appropriate security measures to protect against unauthorized access to, or unauthorized alteration, disclosure, or destruction, of Customer's personally identifying information. Caliber uses Secure Socket Layer (SSL) FIPS140-2 compliant encryption to encrypt the transmission of data with Caliber hosted systems. Caliber operates in compliance with the FBI CJIS Security Policy.
- (g)** Customer acknowledges that in order to provide the Services Caliber may be required to purchase access to Third Party Components. Customer further acknowledges that the availability of such Third Party Components is based solely on the best information available to Caliber and its service providers as of the Effective Date including third party representations and government regulations, and is subject to change during the Term with little or no advance notice. If any necessary Third Party Components are determined by Caliber to be unavailable as a result of changes to any third party availability, governmental regulations or other condition or circumstance outside of Caliber' control, then (a) Caliber shall not be in breach hereof or otherwise liable for any failure or inability to provide the Services as a result of such unavailability of any Third Party Components; and (b) Caliber may in its sole discretion modify, change or replace the applicable Third Party Components and otherwise attempt to mitigate the impact of the such unavailability of Third Party

Components, subject to the right to terminate set out in Section 13(f).

## 7. Customer Responsibilities

- (a) Co-operation by Customer** -- The Customer acknowledges that the success and timeliness of the implementation process shall require the active participation and collaboration of the Customer's and its staff and agrees to act reasonably and co-operate fully with the Caliber to achieve the Completion of Services related to any Professional Services supplied by Caliber. To enable Caliber to provide effective Support Services, the Customer will establish auto remote access based on remote access procedures compatible with Caliber' practices.
- (b) Project Manager** -- The Customer shall appoint a project manager who shall work closely with Caliber to facilitate the successful completion of the implementation process and who shall be responsible for supervising the staff of the Customer and their co-operation with and participation in such process during any Professional Services.
- (c) Customer Equipment.** Customer agrees that it shall be responsible, at its sole expense, for providing all Internet access, including but not limited to obtaining, installing and maintaining all equipment, hardware, network, Internet or direct telecommunications connections and software applications (e.g. web browser) at its facilities required for Users to access and use the Software. Caliber shall not be responsible for the operation of any Internet, network or other communication services. The Customer further acknowledges that the operation of the Software requires the Customer's and Users' hardware to be of sufficient quality, condition and repair, and the Customer agrees to and/or to ensure that Users' maintain their applicable hardware in the appropriate quality, condition and repair at its sole cost and expense. These requirements may also be necessary in order to facilitate the achievement of Completion of Services related to any Professional Services supplied by Caliber.
- (d) Passwords.** Customer agrees to comply with all Caliber security policies and procedures as provided to it and amended from time to time. Customer and its Users shall be responsible for keeping any and passwords and user ID's assigned to it its Users secret and confidential. Customer agrees that it is and shall remain solely and completely liable for any communications or other uses that are made using Customer's or its Users' passwords and user ID's, as well as any obligation that may result from such use. Customer agrees to notify Caliber in writing to change Customer or User's password(s) for any reason, including without limitation if it believes that a password has been stolen or might otherwise be misused. Customer agrees to notify Caliber immediately of any unauthorized use of any password or user ID or any other breach of security suspected by Customer.
- (e) Users.** The Customer is responsible for: (i) the actions of Users using the Services in accordance with this Agreement; (ii) ensuring that Users agree to any further terms and conditions as may be provided by Caliber from time to time for Users; and (iii) informing Caliber of any information about Users' actions that may affected either the Software or third party data contained in the Software, or Caliber's ability to provide Services as contemplated by this Agreement.
- (f) Compliance with Laws.** Customer represents and warrants to Caliber that it and its Users will at all times be in compliance with all applicable local, state, provincial, federal and international laws including but not limited to those laws regarding restrictions on exports, defamation, libel, harm to reputation, invasion of privacy, misuse or failure to protect personal information, violation of secrecy, confidentiality, unfair competition and other situations which could generate liability.
- (g) Data Security.** Customer acknowledges and agrees that use of or connection to the Internet is inherently insecure and provides opportunity for unauthorized access by a third party to Customer's and its Users' (as well as Caliber's) computer systems, networks and any and all information stored therein. Customer is solely responsible for ensuring that (i) Customer's computer systems are secure and protected from unwanted interference (such as "hackers" and viruses), (ii) all transmissions are screened for viruses or other harmful code prior to transmission to Caliber' servers; and (iii) Data is encrypted.

CALIBER DOES NOT GUARANTEE THE PRIVACY, SECURITY, AUTHENTICITY, AND NON-CORRUPTION OF ANY INFORMATION TRANSMITTED OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. WE SHALL NOT BE RESPONSIBLE FOR ANY ADVERSE CONSEQUENCES WHATSOEVER OF CUSTOMER'S OR ITS' USERS' CONNECTION TO OR USE OF THE INTERNET, AND CALIBER SHALL NOT BE RESPONSIBLE FOR ANY USE BY CUSTOMER OR ANY USER OF CUSTOMER'S INTERNET CONNECTION IN VIOLATION OF ANY LAW, RULE OR REGULATION.

- (h) Third Party Software.** Customer agrees to comply with the terms and conditions regarding third party software set out

in Schedule C to this Agreement.

## 8. Data Conversion

Caliber offers data conversion as part of its Professional Services. The success of a data conversion is based on the format and quality of the input data. Unless otherwise indicated, conversion is strictly limited to non-dollar amounts. A typical conversion includes information such as names, addresses, and phone numbers. Only information explicitly listed in this document will be converted. Initial cost estimates for conversion are included in the Services pricing proposals but these are only estimates. If not already included in this Agreement as part of an Order Form issued by Caliber and signed by Customer, Caliber will notify Customer of final conversion costs after inspections or sample data can be examined to verify data formats and data integrity. In such event, and upon receipt by Caliber of notice in writing from Customer that such conversion costs are acceptable, such costs shall form of this Agreement (the “**Conversion Costs**”). Any costs associated with obtaining the data from the existing vendor are the responsibility of the Customer. Sample data shall be provided in standard fixed length format with ASCII display characters only. Data must be on a media formats readable by Caliber.

Wherever possible, the data extraction shall be done twice. The first extraction is to test and create the conversion tools. The second extraction is done when the implementation is ready to go live.

In the event a data re-conversion is required, for whatever reason, Customer will be billed at the Professional Services Fee rate set out in an Order Form issued by Caliber and signed by Customer.

## 9. Support Services

- (a) **Support Services.** The Support Services listed in Schedule “A” are Subject to the terms and conditions of this Agreement. Caliber shall provide the Support Services in accordance with Schedule “A”.
- (b) **Manner of Performance.** Caliber shall perform the Support Services in an efficient, competent and timely manner and exercise reasonable care, skill and diligence in the performance thereof. Caliber shall determine in its sole discretion the manner and means by which the Support Services shall be performed, with due consideration of adequate knowledge transfer to the Customer personnel. Caliber will communicate openly with the Customer in its methodology, manner and means.

## 10. Warranty and Warranty Disclaimer

- (a) **Limited Warranty.** Caliber warrants to Customer that the Services shall be performed at a level and shall substantially conform to the specifications, as stated in Caliber’ online documentation, provided that all use of the Services is for the purposes and in the environment for which they were designed and in accordance with such specifications. Customer’s sole remedy in the event the Services do not conform to the foregoing limited warranty is for Caliber to use commercially reasonable efforts to correct such non-conformance and the right to terminate this Agreement in accordance with Section 13(b).
- (b) **Authority.** Each party represents and warrants to the other party that is has the legal power and authority to enter into this Agreement. Customer further represents and warrants to Caliber that it has not provided any false information to gain access to the Services.
- (c) **Warranty Disclaimer.** TO THE GREATEST EXTENT PERMITTED BY LAW, EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET OUT IN SECTION 10(A), THE SERVICES, THE SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED TO CUSTOMER “AS IS” AND THERE ARE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESSED OR IMPLIED, WRITTEN OR ORAL, ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, REGARDING THEM OR ANY OTHER PRODUCT, SERVICE OR MATERIAL PROVIDED HEREUNDER OR IN CONNECTION HERewith.

CALIBER, ITS LICENSORS AND SUPPLIERS DISCLAIM ANY IMPLIED WARRANTIES OR CONDITIONS REGARDING THE SOFTWARE, THE SERVICES, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, SERVICES AND MATERIALS PROVIDED HEREUNDER OR IN CONNECTION HERewith, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT.

CALIBER DOES NOT REPRESENT OR WARRANT THAT THE SERVICES OR THE SOFTWARE SHALL OPERATE ERROR FREE OR UNINTERRUPTED, SHALL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT ALL ERRORS OR DEFECTS IN THE SERVICES OR SOFTWARE CAN BE FOUND OR CORRECTED.

WITHOUT LIMITING THE FOREGOING, CALIBER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH REGARD TO PRODUCTS OR SERVICES FROM THIRD PARTIES (INCLUDING WITHOUT LIMITATION THE THIRD PARTY COMPONENTS, THE HARDWARE, THE OPERATION OF THE INTERNET, NETWORK OR OTHER COMMUNICATION SERVICES) AND ASSUME NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO THE FOREGOING OR THE APPROPRIATENESS OF YOUR DATA MANAGEMENT SYSTEM OR THE ACCURACY OF DATA CONTAINED IN SUCH SYSTEM.

NO AGREEMENTS VARYING OR EXTENDING ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT SHALL BE BINDING ON EITHER PARTY UNLESS IN WRITING AND SIGNED BY AN AUTHORIZED SIGNING OFFICER OF CALIBER.

## **11. Limitations on Liability**

**TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER AGREES THAT THE ENTIRE LIABILITY OF CALIBER AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO THE SERVICES, THE SOFTWARE, THE PROFESSIONAL SERVICES AND ANY OTHER PRODUCTS, MATERIALS OR SERVICES SUPPLIED BY CALIBER IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES FOR ANY CAUSE AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, SHALL BE LIMITED TO ACTUAL DIRECT DAMAGES AND SHALL NOT EXCEED IN THE AGGREGATE THE ANNUAL SUBSCRIPTION FEES PAID BY CUSTOMER TO CALIBER UNDER THIS AGREEMENT.**

**CUSTOMER FURTHER AGREES THAT IN NO EVENT SHALL CALIBER BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE, FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES WHATSOEVER, INCLUDING WITHOUT LIMITATION FOR LOST PROFITS, LOSS OF REVENUE, FAILURE TO REALIZE ANTICIPATED SAVINGS, LOST OR DAMAGED DATA, LOSS OF GOODWILL, BUSINESS OPPORTUNITIES OR REPUTATION, OR ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGES, OR SUCH LOSSES OR DAMAGES ARE FORESEEABLE.**

## **12. Change Order Process**

With respect to any proposed changes to the Professional Services defined by this Agreement, the parties will cooperate in good faith to execute Change Orders in respect thereof, and will not unreasonably withhold approval of such proposed changes. If either party causes or requests a change in the allocation of the resources of Caliber applied to a task, changes in completion schedules for individual tasks or for overall implementation, and changes in staffing that require Caliber to provide additional work hours, Caliber may propose a change to cover the additional work effort required of it. Approval of any such proposed changes will not be unreasonably withheld (it being acknowledged that any such material changes may require modifications to the consideration paid, and timelines governing the Professional Services), and any disputes regarding changes shall be handled initially by discussions between the parties which will be convened in good faith by the parties to resolve any such matters in dispute.

## **13. Cancellations and Termination**

This Agreement may be terminated as follows:

- (a)** Either party may terminate this Agreement by notifying the other party in writing one hundred twenty (120) days in advance, which termination shall only become effective upon the expiration of the then current Term, whether that be the Initial Term or a Renewal Term.
- (b)** If either party is in material breach of any of its obligations or any provision under this Agreement, the other party must notify the breaching party in writing of such default (a "Default Notice"). Upon receipt of a Default Notice, the breaching party must correct the default at no additional cost to the other party within ninety (90) days, or issue a written notice of

its own disputing the alleged default within thirty (30) days, of the date of receipt of a Default Notice. If the breaching party fails to correct the default within such ninety (90) day period, and did not issue a notice disputing the alleged default within such thirty (30) day period, the other party may terminate this Agreement upon written notice to the other party to that effect.

- (c) If Customer has failed to pay any amounts when due under this Agreement, Caliber shall have the right to (i) suspend performance of the Services (including Customer access to the Services) until all amounts are paid in full; and/or (ii) terminate this Agreement effective immediately upon written notice to Customer to that effect.
- (d) Caliber may terminate this Agreement effective immediately upon written notice to Customer if Customer has breached its obligations of confidentiality or any intellectual property right or proprietary right of Caliber.
- (e) Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favorably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.
- (f) If any such modification, change or replacement of the original Third Party Components pursuant to Section 7(h) includes a material price increase with respect to the Services enabled by such Third Party Components or impairs Customer's ability to utilize such Services in substantially the same manner as they were utilized prior to the modification, change or replacement, Customer may cancel the Services and terminate this Agreement by providing written notice to Caliber within twenty (20) days after Customer's receipt of notification of such material price increase or discovery of such impairment.

#### **14. Effects of Termination**

In the event of termination or expiration of this Agreement:

- (a) All rights granted to Customer in this Agreement shall immediately terminate and Caliber will immediately cease to perform the Services.
- (b) Customer will pay all amounts due under this Agreement up to and through the date of termination and all costs reasonably incurred in collecting the amounts due to Caliber (including court costs, attorney fees, and repossession charges to the extent not prohibited by law).
- (c) Customer shall return to Caliber, or at Caliber's option, purge or destroy all copies of any Confidential Information of Caliber in its possession or under its control (except as required under any statute or legislation related to retention requirements), and provide a duly authorized certificate of an officer of Customer confirming same within thirty (30) days.
- (d) Except as otherwise provided in this Agreement, termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect.
- (e) Any cancellation and/or termination of this Agreement prior to the end of the Initial Term shall result in the following: an acceleration of all Annual Subscription Fees due for each year of the Initial Term not already invoiced and/or paid, which amount will be due immediately. This section will not affect Caliber's right to collect any further invoiced amounts for other Professional Service Fees.
- (f) Conditional upon Customer's payment of all Fees that are due to Caliber, Caliber will furnish the Customer with a copy of the Data in a format to be mutually agreed upon between the parties in writing (typically a comma separated value format (.csv file)). The anticipated services to provide a copy of the Data are five (5) business days and will be billed at Caliber's then current daily rate. Upon receipt of notice from Customer confirming receipt of the Data, Caliber shall destroy all copies of the Data and delete all Data on the database and an Officer of Caliber shall certify the destruction and deletion to the Customer. Subject to any legal requirement that Caliber must retain a copy of the Data, Caliber shall not delete the Data for thirty (30) days from the date of termination except: (i) where Caliber has provided the Data to Customer pursuant to this Subsection; or (ii) where it has received written instructions from Customer to delete the Data. Following thirty (30) days from the date of termination if Customer has not communicated with Caliber regarding the Data, Caliber shall have the right to delete all Data at any time as either required by law or as determined by Caliber in its sole



discretion. Notwithstanding the foregoing, Caliber shall be permitted to delete all Data without providing notification to Customer and Caliber shall not be required to adhere to the time frames detailed above where Caliber is required by law to delete such Data.

## 15. Ownership

**(a) By Caliber.** Caliber, its service providers and licensors are and shall at all times remain the owner of all copyright, trademarks, trade secrets, patents and any other intellectual property rights in and to the Services and Software and related documentation, materials, logos, names and other support materials provided pursuant to the terms of this Agreement. Customer shall acquire no right whatsoever to all or any part of the Software except the limited right to access and use the Software in accordance with the terms of this Agreement and Caliber and its licensors reserve all rights not expressly granted to Customer. Customer must fully reproduce any copyright or other notice marked on any part of the documentation or other materials on all authorized copies and must not alter or remove any such copyright or other notice. Customer hereby grants to Caliber a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate in to the Services any suggestions, ideas, enhancement requests, recommendations or other feedback provided by Customer relating to the operation of the Services or the Software.

**(b) Customer Data.** As between Caliber and Customer, all Data will remain the sole and exclusive property of Customer. Customer and other customers share access to all data in master indices, such as people, location, or vehicle records. Customer is solely responsible for ensuring the accuracy, quality, integrity, reliability, appropriateness and right to view and use the Data. Subject to the terms and conditions of the Agreement, Customer grants to Caliber a world-wide, non-exclusive, royalty-free license to access the Data for the purpose of performing the Services. Access to the Data shall only be by Caliber's employees and/or subcontractors whose job function requires access. Except as specified in this Agreement, Caliber may not access the Data for any other purpose without the express written consent of Customer. Access to Data by any outside party shall only be in accordance with the terms of this Agreement or where required by law.

Customer grants to Caliber a world-wide, non-exclusive, royalty-free license to aggregate or compile Data with the customer data of other customers using the Services so long as such aggregation or compilation omits any data that would enable the identification of Customer, its clients or any individual, company or organization ("Aggregated Data"). Caliber shall have a worldwide, perpetual, royalty-free license to use, modify, distribute and create derivative works based on such Aggregated Data, including all reports, statistics or analyses created or derived therefrom. Additionally, Customer grants Caliber the right to access Data to provide feedback to Customer concerning its use of the Services.

Customer authorizes Caliber to disclose the fact that Customer is a customer of Caliber and uses the Services.

## **(c) Data and Privacy Policy of Customer**

The Customer represents and warrants to Caliber that:

- i. Data that is either provided to or acquired by Caliber is owned exclusively by Customer and that the Customer has full right and title to provide the Data to Caliber;
- ii. Data that is either provided to or acquired by Caliber is subject to a privacy policy in effect as of the Effective Date and Customer's customers have provided to Customer their written consent for its collection, use and storage by Caliber and its third-party service providers in accordance with this Agreement and in any jurisdiction in North America;
- iii. Customer complies with all applicable privacy legislation as of the Effective Date in the performance of its obligations hereunder in respect of any Data collected, used, transferred, created or disclosed pursuant to this Agreement; and
- iv. Customer will not provide Caliber with data of any kind for which Caliber either has no need or does not have the right to collect, use and store under the terms of this Agreement.

## 16. Confidential Information

The parties agree to keep confidential any and all Confidential Information with respect to the other party which it has received or may in the future receive in connection with this Agreement and shall only disclose such Confidential

Information of the other party (i) to its agents, employees or representatives who have a need to know such information, for the purpose of performance under this Agreement and exercising the rights granted under this Agreement, and who have entered into a non-disclosure agreement at least as protective of the other party's Confidential Information as this Agreement, or (ii) to the extent required by applicable law or during the course of or in connection with any litigation, arbitration or other proceeding based upon or in connection with the subject matter of this Agreement, provided that the receiving party shall give the disclosing party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. The parties each agree to hold the other party's Confidential Information in confidence and to take all reasonable steps, which shall be no less than those steps it takes to protect its own confidential and proprietary information, to protect the Confidential Information of the other party.

In addition to any other restrictions on Caliber' use of the Data, the confidentiality obligations above apply except to the extent that both parties agree that the Data may be subject to privacy laws providing for the owners of the Data to review such Data or to challenge the collection and storage of the Data. Customer shall indemnify and reimburse Caliber in relation to all reasonable fees and other disbursements paid by Caliber to comply with such requests, whether by an individual or a government body, or to challenge such requests at either Caliber' or Customer's request. Customer represents and warrants to Caliber that as of the Effective Date no individual, government body or third party has requested a review of the Data or challenged the collection and storage of the Data to be stored in the Software.

## 17. Indemnity

Customer is solely responsible for its Data, its use, and its Users' use, of the Services in any way, and all legal liability arising out of or relating thereto. Customer shall defend, indemnify and hold Caliber and its third party service providers, if applicable, and each of their respective officers, directors, employees and agents (the "**Indemnities**") harmless from and against any and all losses, costs, damages and expenses (including reasonable attorney's fees) that the Indemnities may suffer in connection with any demands, claims, actions, suits or proceedings arising out of or in connection with the use of the Services by Customer and/or its Users including without limitation; (i) the use of Third Party Components by the Customer and/or its Users; (ii) any breach by Customer and/or its Users of this Agreement; and (iii) Customer's Data, including but not limited to any third party claims that the inclusion, use, reference, incorporation of or linking to any third party materials or the Customer's Data violates such third party's copyright and/or other intellectual property, privacy or other rights, or that such use is illegal.

## 18. General

- (a) Governing Law; Venue:** This Agreement shall be governed by and construed in accordance with the laws of the state of North Carolina and the federal laws of the United States applicable therein, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Services shall be subject to the exclusive jurisdiction of the state and federal courts that serve Forsyth County, North Carolina. This Agreement expressly excludes that body of law applicable to choice of law, the Uniform Commercial Code and the United Nations Convention on Contracts for the International Sale of Goods and any legislation implementing such Convention, if otherwise applicable. Customer and Caliber hereby waive, to the fullest extent permitted by applicable law, the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating directly or indirectly to this Agreement or any acts or omissions of Caliber in connection therewith or contemplated thereby.
- (b) Mediation:** Except where this Agreement explicitly states that this Section does not apply, the parties agree to submit any claim, controversy or dispute arising out of or relating to this Agreement or the relationship created by this Agreement to non-binding mediation before bringing a claim, controversy or dispute in a court or before any other tribunal. The mediation is to be conducted by either an individual mediator or a mediator appointed by mediation services mutually agreeable to the parties. Such mediator shall be knowledgeable in software system agreements. The mediation shall take place at a time and location which is also mutually agreeable; provided; however, in no event shall the mediation occur later than ninety (90) days after either party notified the other of its desire to have a dispute be placed before a mediator. The costs and expenses of mediation, including compensation and expenses of the mediator (and except for the attorneys' fees incurred by either party), is to be shared by the parties equally. If the parties are unable to resolve the claim, controversy or dispute within ninety (90) days after the date either party provides the other notice of mediation, then either party may bring and initiate a legal proceeding to resolve the claim, controversy or dispute unless the time period is extended by a written agreement of the parties. Nothing in this Section shall inhibit a party's right to seek injunctive relief at any time.

- (c) **Notice:** Caliber may give notices related to this Agreement by means of a general notice on the Services, an electronic mail to the Customer's e-mail address on record in the Company's account information, or by written communication sent via first class mail to Customer's billing address on record in the Company's account information. Customer may give notices to Caliber related to this Agreement shall be in writing and sent by confirmed facsimile or by courier or first class mail to the fax number or address, respectively, to 102 W. 3rd Street, Suite 750, Winston-Salem, NC 27101, or as otherwise listed on the Company's website. Such notice, between the parties, shall be deemed to have been given upon the expiration of 72 hours after being sent. Each party may change its particulars respecting notice, by issuing notice to the other party in the manner described in this Section 18(c).
- (d) **Currency:** Unless otherwise indicated, all dollar amounts referred in this Agreement are in lawful money of United States.
- (e) **Entire Agreement:** This Agreement together with the Schedules attached to this Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, negotiations, understandings, arrangements, and communications between the parties, both written and oral, relating to the subject matter hereof. No terms and conditions in any Customer orders, or in any other documentation employed by or on behalf of Customer in connection with this Agreement, regardless of the date of such documentation, will affect the terms of this Agreement, even if such document is accepted by the receiving party, with such provisions being deemed deleted. This Agreement may only be modified by a written amendment signed by an authorized representative of each of the parties.
- (f) **Waiver:** No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- (g) **Assignment:** Customer may not assign any of its rights or duties under this Agreement without the prior written consent of Caliber, such consent not to be unreasonably withheld. This Agreement shall inure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns.
- (h) **Severability:** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable under any applicable law, then such provision shall be deemed modified to the extent necessary in order to render such provision valid and enforceable. If such provision may not be so saved, it shall be severed and the remainder of this Agreement shall remain in full force and effect.
- (i) **Allocation of Risk:** Customer acknowledges and agrees that the warranty disclaimer and limitation of liability contained in this Agreement are fundamental elements of the basis of the bargain between Caliber and Customer and set forth an allocation of risk reflected in the fees and payments due hereunder.
- (j) **Relationship:** The parties are and shall at all times remain independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party will have the power to bind the other party or to contract in the name of or create any liability against the other party in any way for any purpose. Neither party will be responsible for the acts or defaults of the other party or of those for whom the other party is law responsible.
- (k) **Equitable Relief:** Customer acknowledges and agrees that it would be difficult to compute the monetary loss to Caliber arising from a breach or threatened breach of this Agreement by Customer and that, accordingly, Caliber will be entitled to specific performance, injunctive or other equitable relief in addition to or instead of monetary damages in the event of a breach or threatened breach of this Agreement by Customer.
- (l) **Force Majeure:** No default, delay or failure to perform on the part of Caliber shall be considered a breach of this Agreement where such default, delay or failure is due to a force majeure or to circumstances beyond its control. Such circumstances will include, without limitation, strikes, riots, civil disturbances, actions or inactions concerning government authorities, epidemics, war, terrorist acts, embargoes, severe weather, fire, earthquakes, acts of God or the public enemy or default of a common carrier, unavailability of Third Party Components or other disasters or events. Performance times shall be considered to be extended for a period of time equivalent to the time lost because of such delay.

(m) **Survival:** Sections 1 (Definitions), 3 (Fees), 5 (Restrictions on Use), 7(f) (Compliance with Laws), 7(g) (Data Security),

10(b) (Warranty Disclaimer), 11 (Limitation of Liability), 14 (Effects of Termination), 15 (Ownership), 16 (Confidential Information), 17 (Indemnity), 18 (General) and any other provision of this Agreement which is required to ensure that the parties fully exercise their rights and their obligations hereunder shall survive any termination or expiration of this Agreement unless and until waived expressly in writing by the party to whom they are the benefit.

**(n) Counterparts:** This Agreement may be executed in counterparts (whether by facsimile signature, PDF via email, or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

## **Schedule “A”**

<b>SEVERITY</b>	<b>SEVERITY DESCRIPTION</b>	<b>PREMIUM SUPPORT</b>
Priority 1 - Critical	<ul style="list-style-type: none"><li>▪ The problem critically impacts the Client's ability to do business (mission critical usability problems)</li><li>▪ The system is down/inaccessible</li><li>▪ Results in corruption or loss of data</li><li>▪ No known workaround or solution to the problem at the time the call is logged</li></ul>	<b>30 minute response</b> via Phone Submission
Priority 2 - Major	<ul style="list-style-type: none"><li>▪ Prevents the use of an explicitly documented major function of the software</li><li>▪ A significant number of users are unable to use the system.</li><li>▪ EXISTING User logon issues</li><li>▪ No known workaround or solution to the problem at the time the call is logged</li></ul>	<b>2 hour response</b> via Phone Submission
Priority 3 – Medium	<ul style="list-style-type: none"><li>▪ It does not meet the criteria of a priority 1 or priority 2</li><li>▪ Product does not work as explicitly documented</li><li>▪ Non-mission critical usability issues (e.g. printing)</li></ul>	8 business hour response
Priority 4 – Minor	<ul style="list-style-type: none"><li>▪ It does not meet the criteria of previous priorities</li><li>▪ The problem is minor and negligibly impacts the Customer's ability to do business. Routine priorities also include questions and/or general consultation.</li><li>▪ Documentation errors</li><li>▪ New user set-up</li><li>▪ New instance/schema set-up</li><li>▪ Data load (example: Citation codes)</li><li>▪ Installation Issues/Access set-up (new user, new machine, new method)</li></ul>	5 business day response

### **Support Services**

#### **Billable Services:**

Including but not limited to the services listed below are services that are out of scope for included Support Services and are, therefore, considered billable services.

- Conversion Costs
- Extended telephone training
- Forms redesign or creation
- Setup & changes to hand-held interface or creation of new interface
- Setup of new services or changes to services
- Agencies, bulk user set-up
- File imports/exports
- Interfaces to other applications
- Custom modifications (reports, forms, reversal of customizations)
- Data conversions / global modification to setup table data
- Extended Hardware & Operating System support
- Upgrades & support of third party software

#### **Connection Methods**

For certain applications, Caliber may require that a communication link be established and maintained between Caliber and the Customer site. It is the customer's responsibility to ensure the connection is valid at their location so that Caliber Support staff is able to connect to the site and resolve any issues. Caliber's supported methods of connection are: Direct internet, Direct Connection (modem), Caliber's BOMGAR support tool and Terminal Services (a backup connection may be required for file transfers).

**Schedule “B”**  
**Colossus, Incorporated**  
**Privacy Statement**

Date of last revision: March 4, 2012

## INTRODUCTION

Protecting personally identifying information and our Customer's Data stored in Caliber's Internet application(s) is a core Caliber value. This Privacy Statement describes how Caliber collects and uses the personally identifying information you provide to us in order to access our Caliber Internet applications. It also describes the choices available to you regarding Caliber's use of your personally identifying information, and the steps you can take to access this information, and to request that we correct or delete it.

If you have questions about this Privacy Statement or want to contact us regarding how we handle your data, please send an email to [info@caliberpublicsafety.com](mailto:info@caliberpublicsafety.com) or write to us at:

Colossus, Incorporated  
102 W. 3<sup>rd</sup> Street  
Suite 750  
Winston-Salem, NC 27101

## HOW WE COLLECT INFORMATION

### Caliber Programs and Services

Caliber collects a wide variety of information in the course of providing the Caliber hosted services. This information applies to both Caliber application users as well as the information they collect and process in the performance of their duties. All information entered by an Caliber Agency is the property of the Agency.

## HOW WE SHARE YOUR PERSONALLY IDENTIFYING INFORMATION

We will only disclose your personally identifying information in the following situations

- as required by law such as to comply with a subpoena, or similar legal process
- when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud or respond to a written government request
- If Caliber becomes involved in a merger, acquisition, or any form of sale of some or all of its assets, we will provide notice before personally identifying information becomes subject to a different privacy statement
- to any other third party with your prior consent to do so

We will share your personally identifying information with third parties only in the ways that are described in this Privacy Statement. We do not otherwise sell your personally identifying information to third parties.

## HOW WE SHARE RECORDS YOU ENTER INTO THE APPLICATIONS

Caliber Customers electronically submit data or information to the Services for hosting and processing purposes ("Customer Data"). Caliber will not review, share, distribute, or reference any such Customer Data except as provided in the Caliber Agreement executed by an End User Agency, or as may be required by law. In accordance with the Caliber Agreement, Caliber may access Customer Data only for the purpose of providing the Services, preventing or addressing service or technical problems, at a Customer's request in connection with customer support matters, or as may be required by law. Caliber will only share data that has been authorized for sharing by the Agency that originally entered the record.

## ACCESSING AND UPDATING YOUR PERSONALLY IDENTIFYING INFORMATION

To review and update your personally identifying information to ensure it is accurate, contact us; or, if you are an Caliber customer, use our online tools.

Caliber will make commercially reasonable efforts to provide you reasonable access to any of your personally identifying information we maintain within 30 days of your access request. We provide this access so you can review it, make corrections or request deletion of your data. If we cannot honor your request within the 30-day period, we will tell you when we will provide access. In the unlikely event that we cannot provide you access to this information, we will explain why we cannot do so.

## **SECURITY**

Providing security for the information entered into Caliber's Internet Application(s) is of paramount importance to Caliber. We take appropriate security measures to protect against unauthorized access to, or unauthorized alteration, disclosure, or destruction, of your personally identifying information. We use Secure Socket Layer (SSL) FIPS140-2 compliant encryption to encrypt the transmission of data with Caliber hosted systems. We operate in compliance with the FBI CJIS Security Policy.

## **LINKS TO OTHER WEB SITES**

This Privacy Statement applies to Caliber Web services only. Our Site includes links to other Web sites. If you submit personally identifying information to any of those sites, your information is subject to their privacy statements, which includes but is not limited to Google Privacy Policy located at: <http://www.google.com/policies/privacy/>. We encourage you to carefully read the privacy statement of any Web site you visit.

## **CHANGES TO THIS PRIVACY STATEMENT**

Please note that this Privacy Statement may change from time to time. If we change this privacy statement in ways that affect how we use your personally identifying information, we will advise you of choices you may have as a result of those changes. We will also post a notice on our home page that this Privacy Statement has changed.

## **CONTACTING US**

Questions regarding this Privacy Statement or the information practices of the Company's Web sites should be directed to Colossus Privacy, 102 W. 3<sup>rd</sup> Street, Suite 750, Winston-Salem, NC 27101

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## **Schedule “C”**

### **Third Party Component Software License Terms**

1. **Google Maps:** <https://developers.google.com/maps/terms> - Google Maps API Terms of Services with End User Terms and Privacy Policy set forth in Section 9.3. Google's Terms of Services are subject to change at Google's discretion without notice.

2. **Jaspersoft:** <https://www.jaspersoft.com/saas-terms-and-conditions-v110113>

3. **LexisNexis:** LexisNexis' terms of services are subject to change at LexisNexis' discretion without notice.

1. **RESTRICTED LICENSE.** CALIBER hereby grants to Customer a restricted license to use the CALIBER Services and any data contained therein, subject to the restrictions and limitations set forth below:

(i) **Generally.** CALIBER hereby grants to Customer a restricted license to use the CALIBER Services solely for Customer's own internal government purposes. Customer represents and warrants that all of Customer's use of the CALIBER Services shall be for only legitimate government purposes, including those specified by Customer in connection with a specific information request, relating to fraud prevention in connection with applications for homestead exemptions and as otherwise governed by the Agreement. Customer shall not use the CALIBER Services for marketing purposes or resell or broker the CALIBER Services to any third party and shall not use the CALIBER Services for personal (non- government) purposes. Customer shall not use the CALIBER Services to provide data processing services to third-parties or evaluate the data of or for third-parties. Customer agrees that if CALIBER determines or reasonably suspects that continued provision of CALIBER Services to Customer entails a potential security risk, or that Customer is engaging in marketing activities, reselling, brokering or processing or evaluating the data of or for third-parties, or using the CALIBER Services for personal (non- government) purposes or using the CALIBER Services' information, programs, computer applications, or data, or is otherwise violating any provision of this Agreement, or any of the laws, regulations, or rules described herein, CALIBER may take immediate action, including, without limitation, terminating the delivery of, and the license to use, the CALIBER Services. Customer shall not access the CALIBER Services from Internet Protocol addresses located outside of the United States and its territories without CALIBER's prior written approval. Customer shall comply with all laws, regulations and rules which govern the use of the CALIBER Services and information provided therein. CALIBER may at any time mask or cease to provide Customer access to any CALIBER Services or portions thereof which CALIBER may deem, in CALIBER's sole discretion, to be sensitive or restricted information.

(ii) **GLBA Data.** Some of the information contained in the CALIBER Services is “nonpublic personal information,” as defined in the Gramm-Leach-Bliley Act (15 U.S.C. § 6801, et seq.) and related state laws, (collectively, the “GLBA”), and is regulated by the GLBA (“GLBA Data”). Customer shall not obtain and/or use GLBA Data through the CALIBER Services, in any manner that would violate the GLBA, or any similar state or local laws, regulations and rules. Customer acknowledges and agrees that it may be required to certify its permissible use of GLBA Data falling within an exception set forth in the GLBA at the time it requests information in connection with certain CALIBER Services and will recertify upon request by CALIBER. Customer certifies with respect to GLBA Data received through the CALIBER Services that it complies with the Interagency Standards for Safeguarding Customer Information issued pursuant to the GLBA.

(iii) **DPPA Data.** Some of the information contained in the CALIBER Services is “personal information,” as defined in the Drivers Privacy Protection Act (18 U.S.C. § 2721, et seq.) and related state laws, (collectively, the “DPPA”), and is regulated by the DPPA (“DPPA Data”). Customer shall not obtain and/or use DPPA Data through the CALIBER Services in any manner that would violate the DPPA. Customer acknowledges and agrees that it may be required to certify its permissible use of DPPA Data at the time it requests information in connection with certain CALIBER Services and will recertify upon request by CALIBER.

(iv) **Social Security and Driver's License Numbers.** CALIBER may in its sole discretion permit Customer to access QA Data (full social security numbers (nine (9) digits) and driver's license numbers (collectively, “QA Data”). If Customer is authorized by CALIBER to receive QA Data, and Customer obtains QA Data through the CALIBER Services, Customer certifies it will not use the QA Data for any purpose other than as expressly authorized by CALIBER policies, the terms and conditions herein, and applicable laws and regulations. In addition to the restrictions on distribution otherwise set forth in Paragraph 2 below, Customer agrees that it will not permit QA Data obtained through the CALIBER Services to be used by an employee or contractor that is not an Authorized User with an Authorized Use. Customer agrees it will certify, in writing, its uses for QA Data and recertify upon request by CALIBER. Customer may not, to the extent permitted by the terms of this Agreement, transfer QA Data via email or ftp without



CALIBER's prior written consent. However, Customer shall be permitted to transfer such information so long as: 1) a secured method (for example, sftp) is used, 2) transfer is not to any third-party, and 3) such transfer is limited to such use as permitted under this Agreement. CALIBER may at any time and for any or no reason cease to provide or limit the provision of QA Data to Customer.

(v) **Copyrighted and Trademarked Materials.** Customer shall not remove or obscure any trademarks, copyright notices or other notices contained on materials accessed through the CALIBER Services. .

(vi) **National Change of Address Database.** CALIBER is a licensee of the United States Postal Service's NCOALINK database ("NCOA Database"). The information contained in the NCOA Database is regulated by the Privacy Act of 1974 and may be used only to provide a mailing list correction service for lists that will be used for preparation of mailings. If Customer receives all or a portion of the NCOA Database through the CALIBER Services, Customer hereby certifies to CALIBER that it will not use such information for any other purpose. Prior to obtaining or using information from the NCOA Database, Customer agrees to complete, execute and submit to CALIBER the NCOA Processing Acknowledgement Form.

(vii) **Additional Terms.** Certain materials contained within the CALIBER Services are subject to additional obligations and restrictions. Without limitation, these services include news, business information (e.g., Dun & Bradstreet reports), and federal legislative and regulatory materials. To the extent that Customer receives such materials through the CALIBER Services, Customer agrees to comply with the Supplemental Terms and Conditions for Use of CALIBER Services contained at the following website: [www.lexisnexis.com/terms/supplemental.aspx](http://www.lexisnexis.com/terms/supplemental.aspx) (the "Supplemental Terms"). The General Terms are hereby incorporated into this Agreement by reference.

(viii) **Fair Credit Reporting Act.** The CALIBER Services provided pursuant to this Agreement are not provided by "consumer reporting agencies," as that term is defined in the Fair Credit Reporting Act, (15 U.S.C. §1681, et seq.), (the "FCRA"), and do not constitute "consumer reports" as that term is defined in the FCRA. Accordingly, the CALIBER Services may not be used in whole or in part as a factor in determining eligibility for credit, insurance, employment or another purpose in connection with which a consumer report may be used under the FCRA. Further, (A) Customer certifies that it will not use any of the information it receives through the CALIBER Services to determine, in whole or in part an individual's eligibility for any of the following products, services or transactions: (1) credit or insurance to be used primarily for personal, family or household purposes; (2) employment purposes; (3) a license or other benefit granted by a government agency; or (4) any other product, service or transaction in connection with which a consumer report may be used under the FCRA or any similar state statute, including without limitation apartment rental, check-cashing, or the opening of a deposit or transaction account; (B) by way of clarification, without limiting the foregoing, Customer may use, except as otherwise prohibited or limited by this Agreement, information received through the CALIBER Services for the following purposes: (1) to verify or authenticate an individual's identity; (2) to prevent or detect fraud or other unlawful activity; (3) to locate an individual; (4) to review the status of a legal proceeding; (5) to collect a debt, provided that such debt collection does not constitute in whole or in part, a determination of an individual consumer's eligibility for credit or insurance to be used primarily for personal, family or household purposes; or (6) to determine whether to buy or sell consumer debt or a portfolio of consumer debt in a commercial secondary market transaction, provided that such determination does not constitute in whole or in part, a determination of an individual consumer's eligibility for credit or insurance to be used primarily for personal, family or household purposes; (C) specifically, if Customer is using the CALIBER Services in connection with collection of a consumer debt on its own behalf, or on behalf of a third-party, Customer shall not use the CALIBER Services: (1) to revoke consumer credit; (2) to accelerate, set or change repayment terms; or (3) for the purpose of determining a consumer's eligibility for any repayment plan; provided, however, that Customer may, consistent with the certification and limitations set forth in this section (viii), use the CALIBER Services for identifying, locating, or contacting a consumer in connection with the collection of a consumer's debt or for prioritizing collection activities; and (D) Customer shall not use any of the information it receives through the CALIBER Services to take any "adverse action," as that term is defined in the FCRA.

(ix) **MVR Data.** If Customer is permitted to access Motor Vehicle Records ("MVR Data") from CALIBER, without in any way limiting Customer's obligations to comply with all state and federal laws governing use of MVR Data, the following specific restrictions apply and are subject to change:

- (a) Customer shall not use any MVR Data provided by CALIBER, or portions of information contained therein, to create or update a file that Customer uses to develop its own source of driving history information.
- (b) As requested by CALIBER, Customer shall complete any state forms that CALIBER is legally or contractually bound to obtain from Customer before providing Customer with MVR Data.
- (c) CALIBER (and certain Third-Party vendors) may conduct reasonable and periodic audits of Customer's use of MVR Data. Further, in response to any audit, Customer must be able to substantiate the reason for each MVR Data order.

(x) **American Board of Medical Specialties ("ABMS") Data.** If Customer is permitted to access ABMS Data from CALIBER, Customer shall not use , nor permit others to use, ABMS Data for purposes of determining, monitoring, tracking, profiling or evaluating in

any manner the patterns or frequency of physicians' prescriptions or medications, pharmaceuticals, controlled substances, or medical devices for use by their patients.

(xi) HIPAA. Customer represents and warrants that Customer will not provide CALIBER with any Protected Health Information (as that term is defined in 45 C.F.R. Sec. 160.103) or with Electronic Health Records or Patient Health Records (as those terms are defined in 42 U.S.C. Sec. 17921(5), and 42 U.S.C. Sec. 17921(11), respectively) or with information from such records without the execution of a separate agreement between the parties.

(xii) Retention of Records. For uses of GLB Data, DPPA Data and MVR Data, as described in Sections 1(ii), 1(iii) and 1(ix), Customer shall maintain for a period of five (5) years a complete and accurate record (including consumer identity, purpose and, if applicable, consumer authorization) pertaining to every access to such data.

(xiii) Economic Sanctions Laws. Customer acknowledges that CALIBER is subject to economic sanctions laws, including but not limited to those enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the European Union, and the United Kingdom. Accordingly, Customer shall comply with all economic sanctions laws of the United States, the European Union, and the United Kingdom. Customer shall not provide access to CALIBER Services to any individuals identified on OFAC's list of Specially Designated Nationals ("SDN List"), the UK's HM Treasury's Consolidated List of Sanctions Targets, or the EU's Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions. Customer shall not take any action which would place CALIBER in a position of non-compliance with any such economic sanctions laws.

**2. SECURITY.** Customer acknowledges that the information available through the CALIBER Services may include personally identifiable information and it is Customer's obligation to keep all such accessed information confidential and secure. Accordingly, Customer shall (a) restrict access to CALIBER Services to those employees who have a need to know as part of their official duties; (b) ensure that none of its employees shall (i) obtain and/or use any information from the CALIBER Services for personal reasons, or (ii) transfer any information received through the CALIBER Services to any party except as permitted hereunder; (c) keep all user identification numbers, and related passwords, or other security measures (collectively, "User IDs") confidential and prohibit the sharing of User IDs; (d) immediately deactivate the User ID of any employee who no longer has a need to know, or for terminated employees on or prior to the date of termination; (e) in addition to any obligations under Paragraph 1, take all commercially reasonable measures to prevent unauthorized access to, or use of, the CALIBER Services or data received therefrom, whether the same is in electronic form or hard copy, by any person or entity; (f) maintain and enforce data destruction procedures to protect the security and confidentiality of all information obtained through CALIBER Services as it is being disposed; (g) unless otherwise required by law, purge all information received through the CALIBER Services and stored electronically or on hard copy by Customer within ninety (90) days of initial receipt; (h) be capable of receiving the CALIBER Services where the same are provided utilizing "secure socket layer," or such other means of secure transmission as is deemed reasonable by CALIBER; (i) not access and/or use the CALIBER Services via mechanical, programmatic, robotic, scripted or other automated search means, other than through batch or machine-to-machine applications approved by CALIBER; and (j) take all steps to protect their networks and computer environments, or those used to access the CALIBER Services, from compromise. Customer agrees that on at least a quarterly basis it will review searches performed by its User IDs to ensure that such searches were performed for a legitimate business purpose and in compliance with all terms and conditions herein. Customer will implement policies and procedures to prevent unauthorized use of User IDs and the CALIBER Services and will immediately notify CALIBER, in writing to the CALIBER if Customer suspects, has reason to believe or confirms that a User ID or the CALIBER Services (or data derived directly or indirectly therefrom) is or has been lost, stolen, compromised, misused or used, accessed or acquired in an unauthorized manner or by any unauthorized person, or for any purpose other than legitimate business reasons. Customer shall remain solely liable for all costs associated therewith and shall further reimburse CALIBER for any expenses it incurs due to Customer's failure to prevent such impermissible use or access of User IDs and/or the CALIBER Services, or any actions required as a result thereof. Furthermore, in the event that the CALIBER Services provided to the Customer include personally identifiable information (including, but not limited to, social security numbers, driver's license numbers or dates of birth), the following shall apply: Customer acknowledges that, upon unauthorized acquisition or access of or to such personally identifiable information, including but not limited to that which is due to use by an unauthorized person or due to unauthorized use (a "Security Event"), Customer shall, in compliance with law, notify the individuals whose information was potentially accessed or acquired that a Security Event has occurred, and shall also notify any other parties (including but not limited to regulatory entities and credit reporting agencies) as may be required in CALIBER's reasonable discretion. Customer agrees that such notification shall not reference CALIBER or the product through which the data was provided, nor shall CALIBER be otherwise identified or referenced in connection with the Security Event, without CALIBER's express written consent. Customer shall be solely responsible for any other legal or regulatory obligations which may arise under applicable law in connection with such a Security Event and shall bear all costs associated with complying with legal and regulatory obligations in connection therewith. Customer shall remain solely liable for claims that may arise from a Security Event, including, but not limited to, costs for litigation (including attorneys' fees), and reimbursement sought by individuals, including but not limited to, costs for credit monitoring or allegations of loss in connection with the Security Event, and to the extent that any claims are brought against CALIBER, shall indemnify CALIBER from such claims. Customer shall provide samples

of all proposed materials to notify consumers and any third-parties, including regulatory entities, to CALIBER for review and approval prior to distribution. In the event of a Security Event, CALIBER may, in its sole discretion, take immediate action, including suspension or termination of Customer's account, without further obligation or liability of any kind.

3. **PERFORMANCE.** CALIBER will use commercially reasonable efforts to deliver the CALIBER Services requested by Customer and to compile information gathered from selected public records and other sources used in the provision of the CALIBER Services; provided, however, that Customer accepts all information "**AS IS.**" Customer acknowledges and agrees that CALIBER obtains its data from third-party sources, which may or may not be completely thorough and accurate, and that Customer shall not rely on CALIBER for the accuracy or completeness of information supplied through the CALIBER Services. Without limiting the foregoing, the criminal record data that may be provided as part of the CALIBER Services may include records that have been expunged, sealed, or otherwise have become inaccessible to the public since the date on which the data was last updated or collected. Customer understands that Customer may be restricted from accessing certain CALIBER Services which may be otherwise available. CALIBER reserves the right to add materials and features to, and to discontinue offering any of the materials and features that are currently a part of, the CALIBER Services. In the event that CALIBER discontinues a material portion of the materials and features that Customer regularly uses in the ordinary course of its business, and such materials and features are part of a flat fee subscription plan to which Customer has subscribed, CALIBER will, at Customer's option, issue a prorated credit to Customer's account.

4. **INTELLECTUAL PROPERTY; CONFIDENTIALITY.** Customer agrees that Customer shall not reproduce, retransmit, republish, or otherwise transfer for any commercial purposes the CALIBER Services' information, programs or computer applications. Customer acknowledges that CALIBER (and/or its third party data providers) shall retain all right, title, and interest under applicable contractual, copyright, patent, trademark, Trade Secret and related laws in and to the CALIBER Services and the data and information that they provide. Customer shall use such materials in a manner consistent with CALIBER's interests and the terms and conditions herein, and shall notify CALIBER of any threatened or actual infringement of CALIBER's rights. Notwithstanding anything in this Agreement to the contrary, CALIBER or CALIBER's data provider shall own Customer's search inquiry data used to access the CALIBER Services (in the past or future) and may use such data for any purpose consistent with applicable federal, state and local laws, rules and regulations. Customer and CALIBER acknowledge that they each may have access to confidential information of the disclosing party ("Disclosing Party") relating to the Disclosing Party's business including, without limitation, technical, financial, strategies and related information, computer programs, algorithms, know-how, processes, ideas, inventions (whether patentable or not), schematics, Trade Secrets (as defined below) and other information (whether written or oral), and in the case of CALIBER's information, product information, pricing information, product development plans, forecasts, data contained in CALIBER Services, and other business information ("Confidential Information"). Confidential Information shall not include information that: (i) is or becomes (through no improper action or inaction by the Receiving Party (as defined below)) generally known to the public; (ii) was in the Receiving Party's possession or known by it prior to receipt from the Disclosing Party; (iii) was lawfully disclosed to Receiving Party by a third-party and received in good faith and without any duty of confidentiality by the Receiving Party or the third-party; or (iv) was independently developed without use of any Confidential Information of the Disclosing Party by employees of the Receiving Party who have had no access to such Confidential Information. "Trade Secret" shall be deemed to include any information which gives the Disclosing Party an advantage over competitors who do not have access to such information as well as all information that fits the definition of "trade secret" set forth in the Official Code of Georgia Annotated § 10-1-761(4). Each receiving party ("Receiving Party") agrees not to divulge any Confidential Information or information derived therefrom to any third-party and shall protect the confidentiality of the Confidential Information with the same degree of care it uses to protect the confidentiality of its own confidential information and trade secrets, but in no event less than a reasonable degree of care. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information solely to the extent required by subpoena, court order or other governmental authority, provided that the Receiving Party shall give the Disclosing party prompt written notice of such subpoena, court order or other governmental authority so as to allow the Disclosing party to have an opportunity to obtain a protective order to prohibit or restrict such disclosure at its sole cost and expense. Confidential Information disclosed pursuant to subpoena, court order or other governmental authority shall otherwise remain subject to the terms applicable to Confidential Information. Each party's obligations with respect to Confidential Information shall continue for the term of this Agreement and for a period of five (5) years thereafter, provided however, that with respect Trade Secrets, each party's obligations shall continue for so long as such Confidential Information continues to constitute a Trade Secret.

5. **WARRANTIES/LIMITATION OF LIABILITY.** Neither CALIBER, nor its subsidiaries and affiliates, nor any third-party data provider (for purposes of indemnification, warranties, and limitations on liability, CALIBER, its subsidiaries and affiliates, and its data providers are hereby collectively referred to as "CALIBER") shall be liable to Customer (or to any person claiming through Customer to whom Customer may have provided data from the CALIBER Services) for any loss or injury arising out of or caused in whole or in part by CALIBER's acts or omissions in procuring, compiling, collecting, interpreting, reporting, communicating, or delivering the CALIBER Services. If, notwithstanding the foregoing, liability can be imposed on CALIBER, then Customer agrees

that CALIBER's aggregate liability for any and all losses or injuries arising out of any act or omission of CALIBER in connection with anything to be done or furnished under this Agreement, regardless of the cause of the loss or injury, and regardless of the nature of the legal or equitable right claimed to have been violated, shall never exceed One Hundred Dollars (\$100.00); and Customer covenants and promises that it will not sue CALIBER for an amount greater than such sum even if Customer and/or third parties were advised of the possibility of such damages and that it will not seek punitive damages in any suit against CALIBER. CALIBER does not make and hereby disclaims any warranty, express or implied with respect to the CALIBER Services. CALIBER does not guarantee or warrant the correctness, completeness, merchantability, or fitness for a particular purpose of the CALIBER Services or information provided therein. In no event shall CALIBER be liable for any indirect, incidental, or consequential damages, however arising, incurred by Customer from receipt or use of information delivered hereunder or the unavailability thereof. Due to the nature of public record information, the public records and commercially available data sources used in CALIBER Services may contain errors. Source data is sometimes reported or entered inaccurately, processed poorly or incorrectly, and is generally not free from defect. CALIBER Services are not the source of data, nor are they a comprehensive compilation of the data. Before relying on any data, it should be independently verified.

**6. INDEMNIFICATION.** To the extent permitted by applicable law, Customer hereby agrees to protect, indemnify, defend, and hold harmless CALIBER from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) arising from or in any way related to (a) use of information received by Customer (or any third party receiving such information from or through Customer) furnished by or through CALIBER; (b) breach of any terms, conditions, representations or certifications in this Agreement; and (c) any Security Event. CALIBER hereby agrees to protect, indemnify, defend, and hold harmless Customer from and against any and all costs, claims, demands, damages, losses, and liabilities (including attorneys' fees and costs) arising from or in connection with any third-party claim that the CALIBER Services or data contained therein, when used in accordance with this Agreement, infringe a United States patent or United States registered copyright, subject to the following: (i) Customer must promptly give written notice of any claim to CALIBER; (ii) Customer must provide any assistance which CALIBER may reasonably request for the defense of the claim (with reasonable out of pocket expenses paid by CALIBER); and (iii) CALIBER has the right to control the defense or settlement of the claim; provided, however, that the Customer shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense. Notwithstanding the foregoing, CALIBER will not have any duty to indemnify, defend or hold harmless Customer with respect to any claim of infringement resulting from (1) Customer's misuse of the CALIBER Services; (2) Customer's failure to use any corrections made available by CALIBER; (3) Customer's use of the CALIBER Services in combination with any product or information not provided or authorized in writing by CALIBER; or (4) any information, direction, specification or materials provided by Customer or any third-party. If an injunction or order is issued restricting the use or distribution of any part of the CALIBER Services, or if CALIBER determines that any part of the CALIBER Services is likely to become the subject of a claim of infringement or violation of any proprietary right of any third-party, CALIBER may in its sole discretion and at its option (A) procure for Customer the right to continue using the CALIBER Services; (B) replace or modify the CALIBER Services so that they become non-infringing, provided such modification or replacement does not materially alter or affect the use or operation of the CALIBER Services; or (C) terminate this Agreement and refund any fees relating to the future use of the CALIBER Services. The foregoing remedies constitute Customer's sole and exclusive remedies and CALIBER's entire liability with respect to infringement claims or actions.

**7. AUDIT.** Customer understands and agrees that, in order to ensure compliance with the FCRA, GLBA, DPPA, other applicable state or federal laws, regulations or rules, regulatory agency requirements, this Agreement, and CALIBER's obligations under its contracts with its data providers and CALIBER's policies, CALIBER may conduct periodic reviews of Customer's use of the CALIBER Services and may, upon reasonable notice, audit Customer's records, processes and procedures related to Customer's use, storage and disposal of CALIBER Services and information received therefrom. Customer agrees to cooperate fully with any and all audits and to respond to any such audit inquiry within ten (10) business days, unless an expedited response is required. Violations discovered in any review and/or audit by CALIBER will be subject to immediate action including, but not limited to, suspension or termination of the license to use the CALIBER Services, reactivation fees, legal action, and/or referral to federal or state regulatory agencies.

**8. SURVIVAL OF AGREEMENT.** Provisions hereof related to release of claims; indemnification; use and protection of information, data and CALIBER Services; payment for the CALIBER Services; audit; CALIBER's use and ownership of Customer's search inquiry data; disclaimer of warranties; security; customer data and governing law shall survive any termination of the license to use the CALIBER Services.

**9. EMPLOYEE TRAINING.** Customer shall train new employees prior to allowing access to CALIBER Services on Customer's obligations under this Agreement, including, but not limited to, the licensing requirements and restrictions under [Paragraph 1](#) and the security requirements of [Paragraph 2](#). Customer shall conduct a similar review of its obligations under this Agreement with existing employees who have access to CALIBER Services no less than annually. Customer shall keep records of such training.

10. **TAXES.** The charges for all CALIBER Services are exclusive of any state, local, or otherwise applicable sales, use, or similar taxes. If any such taxes are applicable, they shall be charged to Customer's account.

11. **CUSTOMER CHANGES.** Customer shall notify CALIBER immediately of any changes to the information on Customer's account for the CALIBER Services.

12. **RELATIONSHIP OF PARTIES.** None of the parties shall, at any time, represent that it is the authorized agent or representative of the other.

13. **CHANGE IN AGREEMENT.** By receipt of the CALIBER Services, Customer agrees to, and shall comply with, changes to the Restricted License granted Customer in Paragraph 1 herein, changes in pricing, and changes to other provisions of this Agreement as CALIBER shall make from time to time by written notice to Customer. CALIBER may, at any time, impose restrictions and/or prohibitions on the Customer's use of the CALIBER Services or certain data. Customer understands that such restrictions or changes in access may be the result of a modification in CALIBER policy, a modification of third-party agreements, a modification in industry standards, a Security Event or a change in law or regulation, or the interpretation thereof. Upon written notification by CALIBER of such restrictions, Customer agrees to comply with such restrictions.

14. **PUBLICITY.** Customer will not name CALIBER or refer to its use of the CALIBER Services in any press releases, advertisements, promotional or marketing materials, or make any other third-party disclosures regarding CALIBER or Customer's use of the CALIBER Services.

15. **FORCE MAJEURE.** The parties will not incur any liability to each other or to any other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement (except for payment obligations) to the extent such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control, and without the negligence of, the parties. Such events, occurrences, or causes include, without limitation, acts of God, telecommunications outages, Internet outages, power outages, any irregularity in the announcing or posting of updated data files by the applicable agency, strikes, lockouts, riots, acts of war, floods, earthquakes, fires, and explosions.

16. **PRIVACY PRINCIPLES.** With respect to personally identifiable information regarding consumers, the parties further agree as follows: CALIBER has adopted the "CALIBER Data Privacy Principles" ("Principles"), which may be modified from time to time, recognizing the importance of appropriate privacy protections for consumer data, and Customer agrees that Customer (including its directors, officers, employees or agents) will comply with the Principles or Customer's own comparable privacy principles, policies, or practices. The Principles are available at: [http: \[RESELLER WEB PAGE or LN's page at <http://www.lexisnexis.com/privacy/data-privacy-principles.aspx>\]](http://www.lexisnexis.com/privacy/data-privacy-principles.aspx).

17. **ENTIRE AGREEMENT.** Except as otherwise provided herein, this Agreement constitutes the final written agreement and understanding of the parties and is intended as a complete and exclusive statement of the terms of the agreement, which shall supersede all other representations, agreements, and understandings, whether oral or written, which relate to the use of the CALIBER Services and all matters within the scope of this Agreement. Without limiting the foregoing, the provisions related to confidentiality and exchange of information contained in this Agreement shall, with respect to the CALIBER Services and all matters within the scope of this Agreement, supersede any separate non-disclosure agreement that is or may in the future be entered into by the parties hereto. Any new, other, or different terms supplied by the Customer beyond the terms contained herein, including those contained in purchase orders or confirmations issued by the Customer, are specifically and expressly rejected by CALIBER unless CALIBER agrees to them in a signed writing specifically including those new, other, or different terms. The terms contained herein shall supersede and govern in the event of a conflict between these terms and any new, other, or different terms in any other writing. This Agreement can be executed in counterparts and faxed or electronic signatures will be deemed originals.

18. **MISCELLANEOUS.** If any provision of this Agreement or any exhibit shall be held by a court of competent jurisdiction to be contrary to law, invalid or otherwise unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and in any event the remaining provisions of this Agreement shall remain in full force and effect. The headings in this Agreement are inserted for reference and convenience only and shall not enter into the interpretation hereof.