



***Austco Software
Subscription, License and Maintenance Agreement;***

(Number)

This Agreement ('Agreement') is made and entered into and effective on:

Date of Agreement renewal and purchase order received

_____ (The effective date)

By and Between

AUSTCO MARKETING & SERVICE (USA) LTD.,

A Delaware corporation, with principal place of business at
9155 Sterling St. Suite 100 Irving, TX 75063
("Vendor")

Customer Name: _____ ("Customer")

Customer Address: _____

AUSTCO SOFTWARE SUBSCRIPTION & LICENSE AGREEMENT

This Agreement includes *Exhibits A, B* and *C* hereto, as well as the AUP, Privacy Policy, SLA, and any current or future Order.

Vendor provides an Austco Nurse Call System (the "System") which consists of technology hosted on Vendor's computers and accessed remotely, via the cloud, as well as software hosted on customers' computers.

Vendor also provides professional services related to implementation, installation, and customization of the System. The parties have agreed that Vendor will provide the System to Customer, as well as such professional services as the parties may agree, now and pursuant to future statements of work. Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

1. DEFINITIONS. The following capitalized terms shall have the following meanings whenever used in this Agreement.

- 1.1. "AUP" means Vendor's acceptable use policy currently posted at www.austco.com.
- 1.2. "Cloud Components" means such elements of the System as Vendor hosts on its computers offsite pursuant to the applicable Order.
- 1.3. "On Premise Components" means such elements of the System as Vendor hosts on its computers on site pursuant to the applicable Order.
- 1.4. "End-Purchaser" means any of Customer's clients or customers or other third parties Customer gives access to the System, including without limitation such companies' agents and employees.
- 1.5. "Customer Data" means data in electronic form managed or stored by the System, including without limitation data related to Customer's Clients, other Users, and Customer's Clients' own customers.
- 1.6. "Deliverables" means any software or other deliverable created pursuant to Professional Services.
- 1.7. "Documentation" means Vendor's standard manual related to use of the System, as well as online documentation.
- 1.8. "Licensed Software" means such elements of the System as Customer is to run on its computers, as set forth in the applicable Order.
- 1.9. "Maintenance Plan" means the maintenance services described in Section 5.
- 1.10. "Order" means an order for access to the System, executed as follows: Austco Sales Order.
- 1.11. "Privacy Policy" means Vendor's privacy policy, currently posted at www.austco.com.
- 1.12. "Professional Services" means such Vendor services as are set forth in the SoW.
- 1.13. "SoW" means a statement of work executed by each party.

1.14. “SLA” means Vendor’s standard service and maintenance level agreement, currently posted at www.austco.com.

1.15. “Term” is defined in Section 15.1 below.

1.16. “User” means any company or individual who uses the System on Customer’s behalf or through Customer’s account or passwords, whether authorized or not, including without limitation End Purchaser and their employees and agents.

2. USE OF THE SYSTEM IN GENERAL.

2.1. Use of the System. During the Term, Customer may access and use the On Premise and Cloud Components pursuant to: (a) the terms of any outstanding Order, including such features and functions as the Order requires; and (b) Vendor’s policies posted on its Website at www.austco.com, as such policies may be updated from time to time.

2.2. Service Levels. Vendor shall provide the remedies listed in the SLA for any failure of the System listed in the SLA. Such remedies are Customer’s sole remedy for any failure of the System, and Customer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy. Credits issued pursuant to the SLA apply to outstanding or future invoices only and are forfeit upon termination of this Agreement. Vendor is not required to issue refunds or to make payments against such credits under any circumstances, including without limitation after termination of this Agreement.

2.3. Documentation: Customer may reproduce and use the Documentation solely as necessary to support Users’ use of the System.

2.4. System Revisions. Vendor may revise the SLA or the features and functions of the Cloud Components at any time, provided no such revision materially reduces features or functionality provided pursuant to an Order.

2.5. End Purchaser. Subject to the provisions below of this Section 2.5, Customer may authorize End Purchasers to access and use the System in such numbers and according to such restrictions as are set forth in the applicable Order, solely for the following purposes: Data collection and distribution, storage, and usage services regarding the transmission of Data in the System during the normal course of business. Customer shall provide complete name and contact information for each proposed End Purchaser upon or before providing such access, and update such information as soon as it become aware of a change. Customer shall make no representations or warranties regarding the System or any other matter, to End Purchaser or Users or any other third party, from or on behalf of Vendor, and Customer shall not create or purport to create any obligations or liabilities for Vendor. Customer shall be jointly and severally liable to Vendor for End Purchasers’ acts and omissions related to the System. Vendor shall have no obligation to provide support or other services, SLA remedies, or other remedies to End Purchaser.

3. LICENSED SOFTWARE.

3.1. License. Vendor hereby grants Customer a nonexclusive license to reproduce and use the Licensed Software, in such quantities as are set forth on the applicable Order, as necessary for Customer’s internal business purposes and solely as a component of the System, provided Customer complies with the restrictions set forth below in Section 3.2 (*Restrictions on Software Rights*). Such internal business purposes do not include use by any parent, subsidiary, or affiliate of Customer, or any other third party other than End Purchaser as specifically authorized in this

Agreement, and Customer shall not permit any such use.

- 3.2. Restrictions on Software Rights. Copies of the Licensed Software created or transferred pursuant to this Agreement are licensed, not sold, and Customer receives no title to or ownership of any copy or of the Licensed Software itself. Furthermore, Customer receives no rights to the Licensed Software other than those specifically granted in Section 3.1 above. Without limiting the generality of the foregoing, Customer shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Licensed Software; (b) use the Licensed Software in any way forbidden by Section 9.1 below; or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Licensed Software's source code.
- 3.3. Delivery. Vendor shall provide the Licensed Software to Customer, through a reasonable system of electronic download, within 90 days of the Effective Date.
- 3.4. Hosting & Management. Customer shall host and manage the Licensed Software as required. Vendor shall have no responsibility or liability for any failure of the System, including without limitation pursuant to the SLA, resulting from Customer's failure to comply with the hosting requirements.

4. ACCEPTANCE

4.1. Deliverables

- (a) *Acceptance & Rejection*. Deliverables will be considered accepted ("Acceptance") (a) when Customer provides Vendor written notice of acceptance or (b) 10 days after delivery, if Customer has not first provided Vendor with written notice of rejection. Customer may reject a Deliverable only in the event that it materially deviates from its specifications and requirements listed in the applicable defects and liability period and only via written notice setting forth the nature of such deviation. In the event of such rejection, Vendor shall correct the deviation and redeliver the Deliverable. After redelivery pursuant to the previous sentence, the parties shall again follow the acceptance procedures set forth in this Subsection 4.1(a). This Subsection 4.1(a), in conjunction with Customer's right to terminate for material breach where applicable, sets forth Customer's only remedy and Vendor's only liability for failure of Deliverables.
- (b) *Incorporation of Deliverables*. Upon Acceptance, each Deliverable will constitute an element of the Cloud Components or Licensed Software, as specified in the applicable defects and liability period, and will thereafter be subject to this Agreement's terms regarding Cloud Components or Licensed Software, including without limitation license and indemnity terms. Vendor retains ownership of all Deliverables, and Customer receives no right, title, or interest in or to Deliverables except as specifically set forth in this Agreement.

5. SOFTWARE MAINTENANCE

- 5.1. Vendor shall provide technical resources appropriate to maintaining the System in good working order. Unless specifically listed in 'Exhibit A', the System does not include: hardware, vendor operating systems and other system software, or Customer's developed software and third-party software, except any third party software embedded in the System.
- 5.2. Vendor shall provide the services described herein so as to maintain the System in good working order, keeping it free from material defects so that the System shall function properly and in

accordance with the accepted level of performance as set forth in the agreement.

5.3. Customer/Technical Support Contacts

Technical Support Call Centre: Vendor will make available to Customer the Regional telephone number for the Vendor Call Center to submit problems/issues related to the system. The following Vendor Technical Support Call Centers

Region	Phone	Email
Australia	+61 3 9209 9677	support@ austco.com
Asia and Middle East	+65 6481 8400	tech@ austco.comm.sg
Canada	+1 905 731 1830	support@ austco.ca
France	+33 1 4788 5000	sav@zenitel.com
New Zealand	+64 (9) 280 4277	support@ austco.co.nz
Latin America	+1 407 574 7234	support@ austco.us
Portugal	+351 229 406 284/5	geral@ safesis.pt
UK	+44 (0) 1527 877 778	support.uk@ austco.com
USA	+1 905 731 1830	support@ austco.us

5.3.1 Support Contact Methods

5.3.1.1 Contact Technical Support Call Center by Phone:

i. Support Hours:

a. Hours of Operation

1. Standard Hours of Operation:

- Monday to Friday, excluding legal holidays. 0900-1700 (9 a.m. to 5 p.m.)¹
- Extended Hours (7x24): On-call coverage is available 24 hours a day, 7 days a week including legal holidays.
- Extended Coverage (7x24) is available for an additional fee.

ii. Response times

- a. Initial Telephone Support: Calls received during Standard Hours, are answered live or receive a call-back within one (1) hour of the Initial Customer call.
- b. During Extended Support Hours (Available to Customers with extended coverage contracts²)
- c. Initial Telephone Support: For calls received outside of the Standard Hours of Operation, Customers will receive a call-back within (2) hours of the initial Customer call.

5.3.1.2 Remote Access Support: If the System problem is unable to be resolved via

telephone support, the Vendor technician will continue troubleshooting via remote access (e.g. "VPN"). If required, troubleshooting via remote access to the Customer site will commence within four (4) hours of the initial Customer call.

5.3.1.3 Contact via Requests to Online customer support platform

i. Support hours

1. Standard Hours of Operation:

- Monday to Friday, excluding legal holidays.
900-1700 a.m. to 5 p.m.)¹
- Extended Hours (7x24): On-call coverage is available 24 hours a day, 7 days a week including legal holidays.
- Extended Coverage (7x24) is available for an additional fee.

ii. Response Times

- Customer shall receive and acknowledgement of their e-mail request within twenty-four (12) hours, within Standard Support Hours.

5.3.1.4 Contact Support via by Email

Email: Problems may be submitted via e-mail to the regional support center

i. Support hours

1. Standard Hours of Operation:

- Monday to Friday, excluding legal holidays.
900-1700 a.m. to 5 p.m.)¹
- Extended Hours (7x24): On-call coverage is available 24 hours a day, 7 days a week including legal holidays.
- Extended Coverage (7x24) is available for an additional fee.

ii. Response Times

- Customer shall receive and acknowledgement of their e-mail request within twenty-four (24) hours, within Standard Support Hours.

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5.3.2 Severity Levels:

5.4.3.1 Urgent/Critical Issues: Although both e-mail and phone may be useful to notify Vendor of problems associated with the System and related documentation, response times outlined in section TBD apply only to those issues submitted to the Call Centre by telephone.

5.3.3 Service Levels/Time to Resolve: Upon notification from Customer, via the Support Telephone Call Center, of an error, defect, malfunction or nonconformity in the System, Vendor shall respond as provided below:

a. Severity 1:

Definition: A Severity 1 error produces an emergency situation in which the System is inoperable, produces incorrect results, or fails catastrophically.

Service Response: Vendor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 1 problem as soon a

reasonably possible, but in any event, a response via telephone will be provided within one (1) to two (2) hours³ of receipt of Customer's call⁴. Vendor will continue to provide best efforts to resolve Severity 1 problems in less than forty-eight (48) hours. The resolution will be delivered to Customer as a work-around or as an emergency software fix. If Vendor delivers and acceptable work-around, the Severity 1 classification will drop to a Severity 2.

b. Severity 2:

Definition: Produces a detrimental situation in which performance (throughput or response) of the System degrades substantially under reasonable loads, such that there is a severe impact

Service Response: Vendor will provide a response by a qualified member of its staff to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible, but in any event a response via telephone will be provided within one (1) to two (2) hours⁵ of receipt of Customer's call⁶. Vendor will exercise best effort to resolve Severity 2 problems within five (5) business days. The resolution will be delivered to Customer in the same format as Severity 1 problems. If Vendor delivers an acceptable work-around for a Severity 2 problem, the Severity 2 classification will drop to a Severity 3.

c. Severity 3:

Definition: Produces an inconvenient situation in which the System is usable but does not provide a function in the most convenient or expeditious manner, and the user suffers little or no significant impact

Service Response: Vendor will exercise best effort to resolve Severity 3 problems in the next maintenance release.

d. Severity 4:

Definition: Produces a noticeable situation in which the use is affected in some way which is reasonably correctable by a documentation change or by future, regular release from Vendor

Service Response: Vendor will endeavor on a best effort basis to provide a fix or fixes for Severity 4 problems in a future, regular release.

5.4.1 Software Updates and Enhancement. During the term of this Agreement, Vendor will maintain the System by providing software updates and enhancements to Customer. All software updates and enhancements provided to Customer by Vendor pursuant to the terms of this Agreement shall be subject to the terms and conditions of the License Agreement between the parties.

5.4.3.1 Updates will be provided on an as-available basis and include the items listed below:

- a. Bug Fixes;
- b. Enhancements to remain current with major revisions to vendors' hardware

and software provided that the vendors' hardware and/or software revisions do not limit the ability to integrate with the System. Standards for host hardware and software and Guidelines for compatibility and interoperability will be updated on a regular basis and available to customers by request or via our corporate website

c. Performance enhancement to the System

5.4.3.2 Updates to software and related documentation will be provided in machine-readable format and available for download from the Vendor website. Duplication, distribution and installation of Updates is the responsibility of Customer. If requested, Vendor will provide on-site assistance in the installation of Updates on a time and material basis, plus expenses.

5.4.3.3 Vendor will provide technical maintenance support services for the current available major release plus one previous release. After this time, Vendor shall have no further responsibility for supporting and maintaining the prior releases.

5.4.3.4 Vendor assumes no responsibility for the correctness of, performance of, or any resulting incompatibilities with, current or future releases of the System if Customer has made changes to the system hardware/software configuration or modifications to the ancillary hardware and software that affect the performance of the System. In addition, Vendor assumes no responsibility for the operation or performance of a Customer written or third party application.

5.4.2 Services Not Included. The Vendor Software Maintenance does not include any of the following:

- a. Custom programming services;
- b. On-site support, including installation of hardware or software
- c. Support of any software outside of the System
- d. Hardware support of host system or any ancillary systems
- e. Training or instruction
- f. Out-of-pocket and reasonable expenses, including hardware and related supplies

¹ Regional Normal Business Hours, contact the appropriate Regional support representative for clarification

² Emergency After-hours Maintenance Services for Customers with a Standard Hours Maintenance contract: Customers without extended coverage, may purchase emergency technical support on holiday, evenings or weekend on a per incident basis.

³ One hour call-back response is provided during Standard Call Centre Hours only

⁴ Although Customer will receive an initial callback, pre-incident charges may apply if initial call is received outside of the contracted support hours

⁵ One hour call-back response is provided during Standard Call Centre Hours only (see Hours of Operation in section 5.3.1)

⁶ Although Customer will receive an initial callback, per-incident charges may apply if initial call is received outside of the

contracted support hours.

6. PROBLEM REPORT AND TRACKING

6.1. Maintenance Agreement Number

When reporting incidents or submitting request to Austco, it is necessary for Customer to provide the Austco Maintenance Agreement Number

All such reports and request can only be submitted by authorized individuals (up to two (2) per site), designated by Austco in 'Exhibit B'. Authorized individuals may be changed by Customer from time to time by written notice to Austco via the following e-mail address: sitecontacts@Austco.com

6.2. Incident Tracking Number

For incident submitted to the Call Centre, Customer will be provided with, by e-mail or phone, an Austco incident Tracking Number.

For calls received during the Hours of Operation: at the time of their call or within two hours of the subsequent call-back.

If Customer submits request by email or through the Customer Portal the tracking number will be provided by return e-mail automatically within 30 minutes.

Customer may use their Incident Tracking Number on the Phone or the Austco Customer Portal (<https://austcosupport.zendesk.com>) to check the status of their request. Further identification verification may be requested by Call Centre prior to discussing the details of the incident. Requests for status may be submitted by e-mail to support@ austco.com or by phone to the Call Centre.

7. FEES & REIMBURSEMENT

7.1. Customer shall: (a) pay Vendor the fee set forth in each Order (the "Subscription Fee") for each Term, as well as such fees as are set forth in each SoW ("Professional Service Fees"); and (b) reimburse such expenses as Vendor reasonably incurs in provision of Professional Services. Amounts listed in SoW's are estimates of Professional Services fees and shall not be binding, except to the extent that the SoW specifically provides to the contrary. Vendor will not be required to refund Subscription Fees or Professional Service Fees under any circumstances.

8. CUSTOMER DATA & PRIVACY.

8.1. Use of Customer Data. Unless it receives Customer's prior written consent, Vendor: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the System; and (b) shall not intentionally grant any third party access to Customer Data, including without limitation Vendor's other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Vendor may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Vendor shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.

- 8.2. Privacy Policy. The Privacy Policy applies only to the System and does not apply to any third party website or service linked to the System or recommended or referred to through the System or by Vendor's staff.
- 8.3. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the System, Customer assumes such risks. Vendor offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 8.4. Data Accuracy. Vendor shall have no responsibility or liability for the accuracy of data uploaded to the System by Customer, including without limitation Customer Data and any other data uploaded by Users.
- 8.5. Data Deletion. Vendor may permanently erase Customer Data if Customer's account is delinquent, suspended, or terminated for 30 days or more.
- 8.6. Excluded Data. Customer represents and warrants that Customer Data does not and will not include, and Customer has not and shall not upload or transmit to Vendor's computers or other media, any data ("Excluded Data") regulated pursuant to any law, rule, order or regulation of any governmental entity having jurisdiction over such data (the "Excluded Data Laws").
CUSTOMER RECOGNIZES AND AGREES THAT: (a) VENDOR HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) VENDOR'S SYSTEMS ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 8.7. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Article 11 Vendor may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: personally identifiable information and the names and addresses of Customer and any of its Users.)

9. CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.

- 9.1. Acceptable Use. Customer shall comply with the AUP. Customer shall not: (a) use the System for service bureau or time-sharing purposes or in any other way allow third parties to exploit the System, except End Purchaser as specifically authorized by this Agreement; (b) provide System passwords or other log-in information to any third party, except End Purchaser as specifically authorized by this Agreement; (c) share non-public System features or content with any third party; or (d) access the System in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the System, or to copy any ideas, features, functions or graphics of the System. In the event that it suspects any breach of the requirements of this Section 9.1, including without limitation by Users, Vendor may suspend Customer's access to the System without advanced notice, in addition to such other remedies as Vendor may have. Neither this Agreement nor the AUP requires that Vendor take any action against Customer or any User or other third party for violating the AUP, this Section 9.1, or this Agreement, but Vendor is free to take any such action it sees fit.
- 9.2. Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the System, including without limitation by protecting its passwords and other

log-in information. Customer shall notify Vendor immediately of any known or suspected unauthorized use of the System or breach of its security and shall use best efforts to stop said breach.

- 9.3. Compliance with Laws. In its use of the System, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.
- 9.4. Customer's Clients & Other Users; System Access. Customer is responsible and liable for: (a) End Purchaser and other Users' use of the System, including without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the System through Customer's account, whether authorized or unauthorized.

10. IP & FEEDBACK

- 10.1. IP Rights in the System. Vendor retains all right, title, and interest in and to the System, including without limitation all software used to provide the System and all graphics, user interfaces, logos, and trademarks reproduced through the System. This Agreement does not grant Customer any intellectual property license or rights in or to the System or any of its components, except to the limited extent that this Agreement specifically sets forth Customer license rights to Licensed Software. Customer recognizes that the System and its components are protected by copyright and other laws.
- 10.2. Feedback. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer, End Purchaser, or other Users provide to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the End Purchaser or other User in question. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Vendor's products or services.)

11. CONFIDENTIAL INFORMATION

- 11.1. "Confidential Information" refers to the following items Vendor discloses to Customer: (a) any document Vendor marks "Confidential"; (b) any information Vendor orally designates as "Confidential" at the time of disclosure, provided Vendor confirms such designation in writing within 30 business days; (c) the Licensed, Software, Documentation, and Technical information, whether or not marked or designated confidential; and (d) any other nonpublic, sensitive information disclosed by Vendor, whether or not marked or designated "Confidential." Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Customer's possession at the time of disclosure; (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer's improper action or inaction; or (iv) is approved for release in writing by Vendor.
- 11.2. Nondisclosure. Customer shall not use Confidential Information for any purpose other than utilizing connection with the provision by Austco of data collection and distribution,

storage, and usage services regarding the transmission of Data in System during the normal course of business. (the "Purpose"). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Article 11; and (b) shall not disclose Confidential Information to any other third party without Vendor's prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer shall promptly notify Vendor of any misuse or misappropriation of Confidential Information that comes to Customer's attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Customer shall give Vendor prompt notice of any such legal or governmental demand and reasonably cooperate with Vendor in any effort to seek a protective order or otherwise to contest such required disclosure, at Vendor's expense.

11.3. Injunction. Customer agrees that breach of this Article 11 would cause Vendor irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Vendor will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

11.4. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 11.2 above (Nondisclosure) will terminate 10 years after the date of disclosure. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to Vendor or certify, in writing, the destruction thereof.

11.5. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Vendor will retain all right, title, and interest in and to all Confidential Information.

12. REPRESENTATION & WARRANTIES

12.1. From Vendor.

Re IP Rights in the System. Subject to the next sentence, Vendor represents and warrants that it is the owner of the System and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. Vendor's representations and warranties in the preceding sentence do not apply to the extent that the infringement arises out of any of the conditions listed in Subsections 13.1(a) through 13.1(f) below. In the event of a breach of the warranty in this Section 12.1, Vendor, at its own expense, will promptly take the following actions: (i) secure for Customer the right to continue using the System; (ii) replace or modify the System to make it non-infringing; or (iii) terminate the infringing features of the Service and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Vendor's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in

this Section 12.1 and for potential or actual intellectual property infringement by the System.

Re Professional Services. Vendor represents and warrants that the Deliverables will conform to their specifications set forth in the applicable SoW for a period of 90 days following Acceptance (as defined in Subsection 4.1(a) above).

12.2.From Customer.

Re Customer Itself. Customer represents and warrants that: (i) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (ii) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the System; and (iii) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

12.3.*Re End Purchaser.* Customer represents and warrants that, to the best of its knowledge: (i) Customer will accurately identify each End Purchaser and will not provide any inaccurate information about a End Purchaser or other User to or through the System; and (ii) each End Purchaser will be a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

12.4.Warranty Disclaimers. Except to the extent set forth in the SLA and in Section 12.1 above, CUSTOMER ACCEPTS THE SYSTEM "AS IS" AND AS AVAILABLE. And except as set forth above in this Article 11, VENDOR PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE SYSTEM IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

13.INDEMNIFICATION

13.1.From Vendor. Vendor shall defend and indemnify Customer and Customer's Associates (as defined below in Section 13.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging infringement of any patent, copyright, trade secret, or other intellectual property right by the System. Vendor's obligations set forth in this Section 13.1 do not apply to the extent that an Indemnified Claim arises out of: (a) Customer's breach of this Agreement; (b) revisions to the Licensed Software or other System components made without Vendor's written consent; (c) Customer's failure to incorporate Licensed Software updates or upgrades that would have avoided the alleged infringement, provided Vendor offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (d) Vendor's modification of Licensed Software in compliance with specifications provided by Customer, including without limitation Deliverables to the extent created based on such specifications; (e) any Deliverable, if the SoW or a disclosure provided at or before delivery

states that such Deliverable incorporates third party software or other assets; or (f) use of the System in combination with hardware or software not provided by Vendor.

- 13.2.From Customer. Customer shall indemnify and defend Vendor and Vendor's Associates (as defined below in Section 13.3) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the System, including without limitation: (a) claims by End Purchaser or other Users or by Customer's or End Purchasers' employees; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the System through Customer's account, including without limitation by Customer Data; (d) claims that use of the System through Customer's account, including by Customer's Clients or other Users, harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims pursuant to the preceding sentence also include (f) claims related to the injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of Customer or of any of its agents, subcontractors, or employees. Indemnified Claims listed above in this Section 13.2 include, without limitation, claims arising out of or related to Vendor's negligence, but they exclude any claim that would constitute an Indemnified Claims pursuant to Section 13.1 above.
- 13.3.Litigation & Additional Terms. The obligations of the indemnifying party ("Indemnitor") pursuant to Section 13.1 or 13.2 above: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Indemnitor's expense and payment of judgments; and (b) will be excused to the extent that the other contracting party's ("Indemnified Party's") or any of such Indemnified Party's Associates' failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (A party's "Associates" are its officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

14.LIMITATIONS OF LIABILITY

- 14.1.Dollar Cap. VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED \$50,000 USD.
- 14.2.Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 14.3.Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 11 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S

REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 11 Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Article 11 apply likewise to Vendor's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

15. TERMS & TERMINATION

- 15.1. Term. The term of this Agreement (the "Term") shall commence on the Effective Date and continue for the period set forth in the Order or, if none, for 1 year. Thereafter, the Term will renew for successive 30 day periods, unless either party refuses such renewal by written notice 30 or more days before the renewal date.
- 15.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice, effective in 30 days unless the other party first cures such breach. Without limiting Vendor's other rights and remedies, Vendor may suspend or terminate a Customer's Client's or other User's access to the System at any time, without advanced notice, if Vendor reasonably concludes such Customer's Client or other User has conducted itself in a way that is not consistent with the requirements of the AUP or the other requirements of this Agreement or in a way that subjects Vendor to potential liability.
- 15.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the System and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 3.2 (*Restrictions on Software Rights*) 10 (*IP & Feedback*), 11.1 (*Confidential Information*), 12.2 (*Warranty Disclaimers*), 13.1 (*Indemnification*) 14 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

16. MISCELLANEOUS

- 16.1. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, nor may neither make commitments on the other's behalf. The parties agree that no Vendor employee or contractor is or will be considered an employee of Customer.
- 16.2. Notices. Vendor may send notices pursuant to this Agreement to Customer's email address provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to Vendor and such notices will be deemed received 72 hours after they are sent.
- 16.3. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.
- 16.4. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations hereunder without Vendor's express written consent. Except to the extent forbidden in this Section 16.4 this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

- 16.5. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 16.6. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 16.7. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Delaware, United States of America without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Dallas, Texas USA.
- 16.8. Conflicts. In the event of any conflict among the attachments to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; (2) any SoW, with more recent Statements of Work taking precedence over later ones; and (3) any Vendor policy posted online, including without limitation the AUP or Privacy Policy. No SoW or other attachment incorporated into this Agreement after execution of this main body will be construed to amend this main body or any earlier attachment unless it specifically states its intent to do so and cites the section or sections amended.
- 16.9. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 16.10. Technology Export. Customer shall not: (a) permit any third party to access or use the System in violation of any U.S. law or regulation; or (b) export any software provided by Vendor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the System in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 16.11. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 16.12. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 16.13. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 16.13 Vendor may revise the Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

VENDOR

By: _____

(signature)

By: _____

(signature)

Name: _____

(print)

Name: _____

(print)

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit 'A' Covered Sites, Software and Configuration

A1. Covered Sites. This Agreement covers the following Customer Sites

Site Details						
Site #	Site Name	Address	City	State/Prov	Country	Phone Number

A2. Covered Software

This Agreement Covers the following Software components at each site listed in Exhibit 'A', Section A1.

Site #	Qty.	Description	Date of PO Received (DD-MM-YYYY)	Other Ref # (e.g. PO#)

A3. Covered Configuration

Unless denoted otherwise below, this Agreement covers the software listed in Section A2 of Exhibit 'A'**A4. Updates and Enhancement to Covered Software:**

Updates to software and document ion shall be available for download from the Austco Website. License keys may be required for updated software and can be obtained from Monday to Friday 9 to 5 GMT-5 Eastern Standard Time or by sending a request to support@ustco.com Application of updates and enhancements and determination of suitability is the sole responsibility of Customer.

Customer's Obligations for Hosting and Management of Licensed Software

Exhibit 'B' Authorized Customer Contacts

B1. For purposes of this Agreement, the following site individuals are designated as authorized Customer support contacts.

Site #	Contact Name	Title	Department	Office Number Ext.	Mobile Number