

# TrustedAgent

## Software License Agreement (“SLA”)

This agreement is made on this \_\_\_ day of \_\_\_, by and between Trusted Integration, Inc. (hereinafter referred to as “LICENSOR”), located at 525 Wythe Street, Alexandria, Virginia 22314 and \_\_\_\_\_, with offices located at \_\_\_\_\_ (hereinafter referred to as the “LICENSEE”) (collectively, the “Parties”).

LICENSEE SHOULD NOT USE TRUSTEDAGENT (“SOFTWARE”) UNTIL LICENSEE HAS CAREFULLY READ AND CONSENTED TO THE FOLLOWING SOFTWARE LICENSE AGREEMENT (“SLA”). INSTALLING OR USING THE SOFTWARE (OR AUTHORIZING ANY OTHER PERSON TO DO SO) INDICATES LICENSEE’S ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS SLA. THIS SLA REPLACES ANY “SHRINK WRAP” LICENSE AGREEMENT CUSTOMARILY OR IN FACT PROVIDED WITH THE SOFTWARE.

### 1. Grant of License

Subject to the terms and conditions of this SLA, including without limitation, the payment of all fees due and payable hereunder, LICENSOR agrees to grant LICENSEE a limited, perpetual (except as otherwise indicated in this SLA), worldwide, non-exclusive, non-transferable, license to RUN (as defined below) solely the object code version of, and solely for LICENSEE’s internal business operations, the SOFTWARE that LICENSEE acquires or that is acquired on LICENSEE’s behalf by its duly authorized agent. The SOFTWARE is comprised of, but not limited to, object code, source code, embedded regulatory content (requirements, best practices, and templates), images, animations, database structures, data loading utilities, user guides, training materials, and system design and administration documents for LICENSEE’S internal business use. LICENSOR does not grant any right, title, or interest in, nor any license to, any source code to LICENSEE under this SLA. In addition, LICENSEE may use the embedded regulatory content (requirements, best practices, and templates), images, animations, database structures, data loading utilities, user guides, training materials, and system design and administration documents of the SOFTWARE solely in connection with its use of the SOFTWARE and not for any other purpose.

### 2. Terms of License

- 2.1. **Use of Software.** Subject to the terms and conditions of this Agreement, LICENSEE may install, use, access, display, run, or otherwise interact with (“RUN”) up to \_\_\_ copies of the SOFTWARE, in object code only, for use to manage data for up to \_\_\_\_\_ Software License Units. LICENSEE shall be responsible for any use of the Software by, for or on behalf of LICENSEE under this SLA.
- 2.2. **Software License Unit.** A “Software License Unit” is defined as a system, site, program, or vendor record managed within the SOFTWARE.

### 3. Confidentiality.

The Parties acknowledge the SOFTWARE to be the trade secret or confidential commercial information of LICENSOR subject to exemption from disclosure by the Government under the Freedom of Information Act pursuant to 5 U.S.C. § 552(b)(4), and not susceptible to public disclosure through reproduction without violation of LICENSOR’s copyright. The Parties agree to protect the SOFTWARE and related documentation by: (a) preserving its confidentiality; (b) disclosing such information only to employees and independent contractors on a “need-to-know” basis, and only to such employees and independent contractors who have agreed to the terms of this paragraph or to other confidentiality obligations consistent with those set forth in this paragraph; and (c) using such information only for the purposes set forth in this SLA. Requests for documentation related to the SOFTWARE under the Freedom of Information Act, if any, will be treated in accordance with 6 C.F.R. § 5.8. These obligations shall survive the termination of this SLA. The SOFTWARE is protected under U.S. and international patent, copyright and other intellectual property laws and treaties. LICENSEE further acknowledges and agrees that all right, title, and interest in and to the Software and related documentation, including associated intellectual property rights, are and shall remain with LICENSOR or its suppliers. This SLA does not convey to LICENSEE any ownership interest in or to the Software, but only a limited right of use revocable in accordance with the terms of this SLA. LICENSEE acknowledges and agrees

that this SLA and LICENSEE's use of the SOFTWARE in accordance with this SLA does not constitute a "sale" of any right, title, or interest in the SOFTWARE or related documentation.

#### **4. Reservation of Rights; Ownership.**

All rights not expressly granted are reserved by LICENSOR. Except for the license granted to LICENSEE under this SLA, LICENSOR owns and shall retain full ownership of all rights, title, and interest in and to the SOFTWARE licensed under this SLA, including all modifications, enhancements, updates, revisions and derivative works of the SOFTWARE, and all intellectual property rights inherent in all of the foregoing. LICENSEE acknowledges and agrees that this SLA does constitute a sale or other transfer of any title or ownership right of any kind in the SOFTWARE, and that the only right conveyed under this SLA is the license described in Section 2.

#### **5. Restrictions.**

- 5.1. LICENSEE may not modify, adapt, translate, decompile, disassemble, reverse engineer, re-engineer, analyze, or otherwise attempt to determine the source code of the SOFTWARE or any portions of the SOFTWARE (including any attempt to circumvent or bypass any keys for use) in any form whatsoever.
- 5.2. LICENSEE may not copy, reproduce, modify or create any derivative work of the SOFTWARE.
- 5.3. LICENSEE may not remove or modify any program markings or any notice of LICENSOR's or its licensors' proprietary rights;
- 5.4. Under no circumstances may Licensee use or have any third party use the SOFTWARE or any of LICENSOR's Confidential Information to develop a competing or comparable product or technology.
- 5.5. LICENSEE may not provide any copies or disclose any details of the Software to third parties without the prior written approval of Licensor.
- 5.6. LICENSEE shall notify LICENSOR of any unauthorized use or disclosure of the SOFTWARE as soon as LICENSEE becomes aware of such unauthorized use or disclosure.

#### **6. Description of Other Rights and Limitations**

- 6.1. **Not for Resale, Rental or Distribution.** LICENSEE may not resell, sublicense, assign or otherwise transfer for value, the SOFTWARE. LICENSEE may not rent, lease, lend or donate the SOFTWARE. LICENSEE may not distribute the SOFTWARE outside LICENSEE's organization without the express written consent of LICENSOR.
- 6.2. **Software Transfer.** LICENSEE may not transfer to any third party the SOFTWARE or its documentation, or any copy thereof, in whole or in part, except as expressly provided in this SLA or with written approval by LICENSOR.
- 6.3. **Term.** The term of this SLA begins on \_\_\_\_\_ ("LICENSE START DATE") and terminates on \_\_\_\_\_ ("LICENSE END DATE"). The SLA may be terminated prior to the LICENSE END DATE by LICENSEE or by LICENSOR with written agreement from the other Party. LICENSOR may, upon notice to LICENSEE, terminate this SLA at any time if LICENSEE fails to comply with the terms and conditions of this SLA. Upon termination of this SLA for any reason, LICENSEE shall promptly return all copies of the Software and any Confidential Information to LICENSOR.
- 6.4. **Trademarks.** This SLA does not grant LICENSEE any rights in connection with any trademarks or service marks of LICENSOR.
- 6.5. **Copyright.** All title and copyrights in and to the SOFTWARE and accompanying printed and electronic documentation are owned by LICENSOR.

#### **7. Indemnity.**

- 7.1. **Intellectual Property Infringement.** LICENSOR shall defend or settle the LICENSEE and its officers, employees, and agents against third party claims against LICENSEE alleging that LICENSEE's use of the SOFTWARE in accordance with this SLA and the related documentation directly infringes such third party's United States patent, trademark or copyright; provided that LICENSEE (a) promptly notifies

LICENSOR of such claims, (b) allows LICENSOR sole control of the defense or settlement of such claims, and (c) provides LICENSOR all assistance and cooperation reasonably required for such defense or settlement of such claims. LICENSOR shall pay all amounts, including costs, finally awarded to such third party claimants or agreed upon in settlement with such third party.

- 7.2. **Replacement or Removal In Cases of Alleged Infringement.** In the event that an injunction or order is obtained against LICENSEE's use of the SOFTWARE by reason of an infringement allegation or if, in LICENSOR's reasonable opinion, the SOFTWARE is likely to become the subject of a claim of infringement of intellectual property rights, LICENSOR will use commercially reasonable efforts to: (a) procure for LICENSEE the right to continue using the SOFTWARE; (b) replace or modify the SOFTWARE so that it becomes non-infringing but only to the extent that the modification or replacement does not materially and adversely affect the functional performance of the SOFTWARE or its use by LICENSEE; or if neither (a) nor (b) is commercially practical, assist LICENSEE in removing the SOFTWARE, and refund to LICENSEE any licensing fees that it or a third party acting on its behalf paid to LICENSOR less a pro rata portion for period of use before such removal.
- 7.3. **Exceptions to LICENSOR's Indemnification Obligation.** LICENSOR will not indemnify LICENSEE if an infringement claim arises from: (a) modifications to SOFTWARE made by any party other than LICENSOR; (b) use of the SOFTWARE other than in accordance with the documentation or this SLA; (c) LICENSEE's use of a version of the SOFTWARE other than the most current version of the SOFTWARE that Licensor has provided to LICENSEE; (d) LICENSOR's use of or reliance upon any information, design, specification, instruction, software, data, or material provided by LICENSEE; (e) the combination of the SOFTWARE with any products or services not provided by LICENSOR; or (f) any third party programs or services. This paragraph and the preceding two paragraphs provides LICENSEE's sole and exclusive remedy, and LICENSOR's sole and exclusive liability, for any infringement claims or damages.
- 7.4. **Indemnification by LICENSEE.** LICENSEE shall indemnify and hold harmless LICENSOR, its directors, officers, agents, shareholders, representatives, and affiliates, and hold them harmless, from and against any and all losses, liabilities, damages, claims, expenses, cost or similar matters (including, without limitation, reasonable attorney's fees) arising out of or resulting from the negligence or misconduct of the LICENSEE or its agents in connection with this SLA or for any other claims arising from LICENSEE's use of the SOFTWARE, except to the extent such claims are subject to indemnification by LICENSOR under Section 7.1 of this SLA.

## 8. Governing Law; Dispute Resolution.

- 8.1. **Governing Law.** This SLA is governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, excluding any conflicts of laws provisions.
- 8.2. **Dispute Resolution.** Any controversy or claim arising out of or relating to this contract, or a breach thereof, shall be resolved by final and binding arbitration administered by the American Arbitration Association ("AAA") in accordance with this section and the AAA's then-current Commercial Arbitration Rules. If LICENSEE is located outside the United States, the arbitration shall be administered by International Centre for Dispute Resolution in accordance with its then-current International Arbitration Rules. In either case, there shall be one neutral arbitrator knowledgeable in the subject matter covered by this Agreement, the arbitration shall take place in Washington, District of Columbia, and the language of the arbitration shall be English. The successful party in the arbitration shall be awarded by the arbitrator that party's costs and expenses, including attorneys' fees and administrative fees of the AAA. An award may be confirmed and judgment entered in any court having competent jurisdiction. This section shall not be construed to prevent a party from instituting formal judicial proceedings to: (A) avoid the expiration of any applicable limitations period, (B) preserve a superior creditor position, or (C) seek injunctive relief to prevent an irreparable harm, including without limitation, harm caused by a breach of confidentiality or violation of intellectual property rights. Any litigation initiated under this Agreement shall be conducted in a court of competent jurisdiction located in Fairfax County, Virginia. The parties consent to the exclusive exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine. The remedies hereunder shall

be cumulative and not alternative; the election of one remedy for a breach shall not preclude pursuit of other remedies.

## 9. Limited Warranty

- 9.1. **Limited Warranty; Exclusive Remedies.** LICENSOR warrants that, for a period of ninety (90) days from LICENSOR's initial delivery of the SOFTWARE to LICENSEE (including making the SOFTWARE available for electronic download by LICENSEE) ("Warranty Period"), the SOFTWARE will operate in all material respects in accordance with the related documentation published by LICENSOR. LICENSEE must report to LICENSOR any breach of the warranty set forth in the preceding sentence during the Warranty Period. If LICENSEE reports such a breach during the Warranty Period, LICENSEE's sole and exclusive remedy, and LICENSOR's sole and exclusive liability shall be to use commercially reasonable efforts to correct or provide a workaround for reproducible errors in the SOFTWARE that cause a breach of this warranty, or if LICENSOR cannot substantially correct such breach in a commercially reasonable manner, LICENSOR will assist LICENSEE in removing the SOFTWARE, and refund to LICENSEE any license fees that it or a third party acting on its behalf paid to LICENSOR, less a pro rata portion for the period of use before such breach of warranty claim, plus any prepaid unused fees for Maintenance. LICENSEE acknowledges and agrees that the warranty set forth in this paragraph shall apply only to the initial delivery of each SOFTWARE product to LICENSEE and shall not apply to any additional licenses LICENSEE purchases after the initial delivery.
- 9.2. **Exclusions.** LICENSOR shall have no obligations with respect to a breach of warranty claim that arises from (a) modifications to the SOFTWARE made by any party other than LICENSOR; (b) use of the SOFTWARE other than in accordance with the documentation or this SLA; (c) LICENSEE's use of a version of the SOFTWARE other than the most current version of the SOFTWARE that Licensor has provided to LICENSEE; (d) any third party programs, hardware or services; or (e) any other cause or event within LICENSEE's control that occurs and results in the SOFTWARE not operating in accordance with its documentation.
- 9.3. **DISCLAIMERS OF WARRANTY.** EXCEPT AS EXPLICITLY OTHERWISE SET FORTH ABOVE, LICENSOR DOES NOT GUARANTEE THAT THE SOFTWARE WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT LICENSOR WILL CORRECT ALL ERRORS IN THE SOFTWARE. LICENSOR MAKES NO REPRESENTATION OR WARRANTY CONCERNING THE QUALITY, PERFORMANCE OR OTHER CHARACTERISTICS OF THE SOFTWARE. THE SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS, AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, AND ACCURACY IS WITH THE LICNESEE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND QUIET ENJOYMENT, OR ANY WARRANTIES ARISING OUT OF USAGE OF TRADE OR COURSE OF DEALING.

## 10. Limitation of Liability.

IN NO EVENT SHALL THE LICENSOR BE LIABLE FOR: (1) ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THIS SLA OR THE USE OR THE INABILITY TO USE THE SOFTWARE; OR (2) AGGREGATE LIABILITY THAT EXCEEDS THE TOTAL AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSOR UNDER THIS SLA.

## 11. Software Maintenance

- 11.1. **Definition and Scope of Maintenance Services.** SOFTWARE maintenance means:
- Tier 3 (operational issues and SOFTWARE error diagnostics) as required and is available during normal business hours, 9:00AM to 5:00PM EST, Monday through Friday, except holidays
  - Support via telephone and e-mail
  - SOFTWARE patches/updates and maintenance releases delivered on CD/DVD media

- d. On-line product documentation

**11.2. Policy.** The SOFTWARE maintenance policy of LICENSOR provides:

- a. Maintenance support:
  - i. SOFTWARE maintenance must be purchased to qualify for maintenance support.
  - ii. SOFTWARE maintenance must be purchased for the first year at the time of the initial order, and must be renewed for subsequent years.
  - iii. SOFTWARE maintenance shall last for a period of one year from the execution of the SOFTWARE maintenance agreement or contract.
  - iv. SOFTWARE maintenance renewal will be invoiced either in full at the beginning of the maintenance period or quarterly during the support year.
  - v. All prior missed or skipped SOFTWARE maintenance renewals must be re-purchased before the renewal of SOFTWARE maintenance for the current period.
- b. Obtain SOFTWARE patches/updates and maintenance releases as available.
- c. Assist in troubleshooting operational issues (via telephone and email). Onsite support is available with the additional purchase of professional services.
- d. Assist in SOFTWARE error diagnostics (via telephone and email). Onsite support is available with the additional purchase of professional services.
- e. Provide workarounds for identified and verified SOFTWARE errors or malfunctions that LICENSOR can reproduce at its facilities. Workarounds, when possible, are provided when SOFTWARE patches are not immediately available. Workarounds are provided through telephone and email.
- f. SOFTWARE patches are provided for verified, reproducible SOFTWARE errors or malfunctions on CD/DVD media.

**11.3. Exclusion.** SOFTWARE maintenance does not include support for Tier 1 and 2, which includes but is not limited to data entry, end-user account management, password resets/updates, software upgrade/installation, product functionality assistance, subject matter expert and software training, content updates, data migration, data loading, patch installation, ad hoc and custom reports, configuration or re-configuration management, etc. In addition, LICENSOR shall have no obligation to provide SOFTWARE maintenance and support for errors caused by:

- a. Use or operation of the SOFTWARE except in accordance with the applicable and current documentation license rights;
- b. Errors, omissions, damages or wrongful acts, by an operator, user or third party personnel;
- c. Repairs, maintenance, alterations, relocation, copying, tampering or other conduct not duly authorized in writing by LICENSOR;
- d. Operation on or in association with hardware or software not recommended LICENSOR for the SOFTWARE;
- e. External causes such as electrostatic or environmental conditions, and accidents including fire, water and lightning; or
- f. Problems with the Software caused by a security breach at the operating environment within which Licensee uses the Licensed Software.

Any request for assistance excluded from SOFTWARE maintenance as described above shall be considered as requests for professional services, which services LICENSOR will provide at its then-current rates for such services.

## **12. Invoicing; Payment**

Invoices submitted by LICENSOR shall contain complete and accurate information including: purchase order or contract number, delivery location, period of performance, and a complete and accurate description of products and services provided during the performance period. Unless otherwise specified, payment terms are net thirty (30) days from the date of invoice. LICENSEE shall, upon reasonable advance notice by LICENSOR and during regular business hours, provide LICENSOR access to the facilities, computers, products, personnel and books and records of LICENSEE for the purpose of performing an audit to verify LICENSEE's compliance with the terms and conditions of this SLA (including, without limitation, proper payment of amounts due and payable to LICENSOR). LICENSEE shall be solely responsible for all taxes related to its purchase of SOFTWARE license and related services under this SLA including, by way of example and not limitation, sales, use, property, excise, value added, and gross receipts taxes. If LICENSEE is exempt from taxes of any kind, including but not limited to sales tax, use tax and excise tax, LICENSEE will provide appropriate exemption documentation for all such taxes applicable to the transactions contemplated by this SLA.

## **13. Restricted Rights of Government Users.**

The SOFTWARE licensed under this Agreement (and any modifications, enhancements, applications or other works developed by LICENSOR under this Agreement) is a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212, 48 C.F.R. 27.405-3 and 48 C.F.R. 227.7202-3, all U.S. Government end users acquire the Software with only those rights set forth in this Agreement.

## **14. Entire Agreement; Modifications; Waiver**

This SLA contains the entire agreement of the Parties with respect to the subject matter hereof. Any warranty, representation, promise or condition not incorporated herein will not be binding upon either Party. This SLA is effective upon LICENSEE's first installation of the SOFTWARE. LICENSEE acknowledges and agrees that neither party need sign this SLA in order for it to take effect. This SLA may be amended only by an agreement in writing signed by both parties. No party to this SLA shall be deemed to have waived any rights under, or as the result of any default under or breach of, this SLA unless the waiver is set forth in writing and signed by both parties. Any waiver of any default or breach of this SLA shall not be construed to constitute a waiver of any other default or breach whether similar or not. LICENSEE may not assign this SLA, in whole or in part, whether by operation of law or otherwise, without the prior written consent of LICENSOR, which consent LICENSOR may withhold in its sole discretion. This SLA will be binding upon and will inure to the benefit of the parties and their respective successors and permitted assigns.