

AMANO HOSTED TIME GUARDIAN™ TIME & ATTENDANCE SYSTEM

Software Hosting and End User License Agreement

PLEASE NOTE: BY CLICKING ON OUR WEBSITE, YOU ON BEHALF OF YOUR ORGANIZATION (IF APPLICABLE), ARE BEING OFFERED “SOFTWARE AS A SERVICE” LICENSED ACCESS TO AMANO’S HOSTED TIME GUARDIAN™ TIME AND ATTENDANCE SYSTEM. THE SYSTEM’S PLATFORM PROVIDES SOFTWARE APPLICATION AND DATA HOSTING SERVICES PURSUANT TO THIS LICENSE AGREEMENT (“AGREEMENT”). YOU ARE ADVISED TO READ IT CAREFULLY BEFORE CONTINUING WITH REGISTERING TO PURCHASE A LICENSE TO USE A HOSTED VERSION OF THE SOFTWARE. THE LICENSE CONTAINS WARRANTY INFORMATION AND LIABILITY DISCLAIMERS. BY CLICKING THE “I ACCEPT” BUTTON YOU ARE LEGALLY CONFIRMING YOUR UNQUALIFIED ACCEPTANCE OF THE SOFTWARE/HOSTING SERVICE TERMS AND CONDITIONS AND AGREEING TO BE LEGALLY BOUND. IF YOU DO NOT AGREE, YOU MUST SELECT THE “I DECLINE” BUTTON AND YOU WILL NOT BE PERMITTED ACCESS TO OR USE OF THE PLATFORM.

PLEASE NOTE THAT THIS AGREEMENT FURTHER REQUIRES THAT YOU AFFIRMATIVELY ACCEPT BINDING ARBITRATION TO RESOLVE ANY DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND THAT YOU ACCEPT THE LEGAL DUTY OF OBTAINING YOUR USERS’ AND EMPLOYEES’ CONSENTS TO THE USE OF BIOMETRIC DATA.

1. Definitions.

1.1 “Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

1.2 “Amano” means AMANO CINCINNATI, INC., and its affiliates.

1.3 "Authorized Users" means Organization’s employees, consultants, contractors, and agents (a) who are authorized by Organization to access and use the Subscription Services under the rights granted to Organization pursuant to this Agreement; and (b) for whom access to the Subscription Services has been purchased hereunder.

1.4 “Biometric Information” refers to any information, regardless of how it is captured, converted, stored, or shared, based on an individual’s Biometric Identifier.

1.5 “Biometric Identifiers” means a retina or iris scan, fingerprint, voiceprint, scan of hand, face geometry, or other information as defined under applicable Biometric Data Laws.

1.6 “Biometric Data Laws” means the laws regulating the use of Biometric Identifiers and Biometric Information, together with any associated regulations, rules or guidance promulgated by appropriate governmental agencies and case law. Biometric Data Laws includes, but is not limited to, the Illinois Biometric Information Privacy Act, 740 ILCS § 14/1 et seq. (“BIPA”), the Texas Capture or Use of Biometric Identifier Act, Tex. Bus. & Com. Code § 503.001 et seq. (“CUBI”), Washington State law governing the use of biometric data, Wash. Rev. Code § 19.375.010 et seq. (“WA Act”), and any equivalent terms under any similar federal, state, or local statutes or regulations under the laws of the United States or of any other jurisdiction that apply to the Organization’s operations where the Software is being applied to perform time and attendance functions.

1.7 "Documentation" means any manuals, instructions, or other documents or materials that the Amano provides or makes available to Organization in any form or medium and which describe the

functionality, components, features, or requirements of the Subscription Service, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

1.8 “Hosting” means the services provided by Amano to install and host the Software on a shared by and through an Amano designated hosting service provider whose services are accessible by the Organization over the Internet.

1.9 “License Administrator” means Organization’s primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement.

1.10 “Losses” means all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

1.11 “Open Source Components” means any software component that is subject to any open source license agreement, including any software available under the GNU Affero General Public License (AGPL), GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), Apache License, BSD licenses, or any other license that is approved by the Open Source Initiative.

1.12 “Organization” means the legal entity purchasing the Subscription Services. In the case of local, state, territory or federal governments, the term “Organization” will be limited to the specific department or statutory agency of government purchasing the license.

1.13 “Software” means the Time Guardian™ Time & Attendance System and associated software offered through a service platform hosted by Amano as well as any other related media form, media channel, mobile website, or mobile application, in each case, supplied by Amano herewith, and corresponding documentation and printed materials.

1.14 “Software Edition” means the specific version of the Software that Organization has purchased including the specified number of concurrent user licenses.

1.15 “Subscription Services” means the combination of Software and Hosting services provided by Amano to Users during the Subscription Period.

1.16 “Subscription Period” means the period(s) of time during which a specified number of Users are licensed to use the Subscription Services.

1.17 “Third-Party Materials” means materials and information, in any form or medium, that are not proprietary to Licensor, including any third-party: (a) documents, data, content or specifications; (b) Open Source Components or other software, hardware or other products, facilities, equipment or devices; and (c) accessories, components, parts or features of any of the foregoing.

1.18 “User(s)” means employees, representatives, consultants, contractors, agents or customers of Organization who are authorized to access and use the Subscription Services and have been supplied user identifications and passwords.

1.19 “User Data” means all text, pictures, sound, graphics, video and other data required for the keeping of time and attendance records of a User or employee. User Data may include but is not limited to time cards, hours worked, rates of pay, names of users, departments, other relevant data that is inputted, scanned or imported into the Software for performing time and attendance functions, and Biometric Information and Biometric Identifiers, the use of which has been affirmatively authorized by individual Users or employees in accordance with applicable laws.

2. Hosting Services

2.1 Hosting Services. Amano will provide the following Software Hosting services via a third-party cloud hosting provider of its choosing (the "Hosting Service") as part of the Subscription Services. All such Hosting services will be provided such that the Software is accessible as reasonably required by the Organization in accordance with the hosting specifications set forth on **Exhibit A**.

2.2 Data Backup. Amano will, or will cause the Hosting Service to, maintain copy of the User Data stored in the Software as part of the Subscription Services, which shall be updated at least daily.

2.4 Standards/Service Level Guarantees. Amano's hosting standards will conform to the standards, service level guarantees and specifications set forth in **Exhibit A**.

2.5 Security. Security is provided by the Hosting Service. Amano shall only use a Hosting Service that provides industry standard measures to prevent unauthorized access to the backup server sites, restricted areas of the Software and any databases or other sensitive material generated from or used in conjunction with the Software; and Amano will notify Organization of security breaches known to Amano.

2.6 Support. Amano shall maintain an organization and be prepared with suitably qualified and competent personnel during its normal business hours to provide knowledgeable and timely support service in accordance with this Agreement. Under the terms of this Agreement, Amano will provide to Organization the following support services:

- (a) Telephone Support. Amano will provide telephone support to Organization during Normal Business Hours. Normal Business Hours are 8:15 A.M. through 5:00 P.M. EST Monday through Friday. Telephone support is provided by Technical Support Engineers (TSE). It is the responsibility of the TSE to coordinate the resolution of problems, including the verification of any reported error, communicating with Organization for additional information, telephone or email resolution or workaround, as applicable, and for supplying the error correction and/or update as necessary.
- (b) Email Support. Organization may log requests for support via email by directing its query to an email account or website provided by Amano.
- (c) Turnaround Time. Amano will make reasonable efforts for a TSE to respond to emails and phone messages within one (1) Business Day.

2.11 Force Majeure. Neither party is liable for any default or delay in the performance of any of its Subscription Services obligations set forth in Section 2 of this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

2.12 Disclaimer of Warranty. Amano's provision of the Subscription Services relies on a complex network of hardware, software, network services and providers of information. Due to the need for such an aggregation of providers and services, not all services may be available to Users at all times. **AMANO MAKES NO EXPRESS OR IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE) WITH RESPECT TO THE SUBSCRIPTION SERVICES THAT IT PROVIDES.** Neither Amano nor any other entity involved in the provision of Hosting services shall be liable to the Organization or to any other third-party for direct or indirect damages resulting from the use, non-use of services provided herein, whether or not such damages resulted from the negligence of Amano, even if it has been advised to the possibility of such damages.

2.13 Hosting Service Limitation of Liability. IN NO EVENT SHALL AMANO BE LIABLE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR OTHER CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND DAMAGES RELATED TO CORRUPTION OR DELETION OF WEBSITE CONTENTS, EMAIL DATA AND OR DATABASE CONTENTS) ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR ORGANIZATION'S USE OR INABILITY TO USE SUBSCRIPTION SERVICES (INCLUDING, BUT NOT LIMITED TO, INOPERABILITY OF AMANO'S SERVERS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF AMANO HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AMANO'S MAXIMUM LIABILITY EXCEED THE TOTAL AMOUNT PAID BY THE ORGANIZATION TO AMANO FOR THE SUBSCRIPTION SERVICES DURING THE PRIOR TWELVE (12) MONTHS, TO THE EXTENT APPLICABLE LOCAL LAW DOES NOT ALLOW THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, AMANO'S LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

2.14 Subscription Service Indemnification. The Organization agrees to indemnify, defend and hold Amano and its affiliates, directors, officers, employees and agents harmless from and against any liabilities, losses, damages or costs, including reasonable attorneys' fees, resulting from any third-party claim, action, dispute or demand related to the Organization's use of the Subscription Services, its violation of any of the provisions of this Agreement or from its placement or transmission of any materials or content onto Amano's servers. Such liabilities may include, but are not limited to, those arising from the following: (a) with respect to the Organization's business, (i) infringement or misappropriation of any intellectual property rights; (ii) defamation, libel, slander, obscenity, pornography, or violation of the rights of privacy or publicity; or (iii) spamming, or any other offensive, harassing or illegal conduct or violation of the acceptable uses described herein or anti-spam policy; (b) any damage or destruction to Amano's equipment or to any other account holder, which damage is caused by or otherwise results from acts or omissions by the Organization, its representative(s) or its designees; (c) any personal injury or property damage arising out of the Organization's activities related to the Subscription Services, unless such injury or property damage is caused solely by Amano's gross negligence or willful misconduct; and (d) any other damage arising from the Organization's equipment or its business.

3. Subscription & Restrictions

3.1 Subject to and conditioned upon Organization's compliance with the terms and conditions of this Agreement, Amano hereby grants Organization a limited, non-exclusive, non-transferable right to access and use the Subscription Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Organization's internal use only. The Organization acknowledges and agrees that it shall comply with all material terms of this Agreement. All rights not expressly granted to the Organization are reserved by Amano and its licensors.

3.2 During the period that Amano provides the Subscription Services pursuant to Section 2, the Organization hereby grants to Amano a non-exclusive, non-sublicensable, royalty-free, worldwide license to store, reproduce, distribute and display the User Data but only on or in conjunction with the time and attendance record-keeping functions performed under the Subscription Services. The Organization grants no rights other than those explicitly granted herein, and Amano will not exceed the scope of its license.

3.3 Documentation License. Amano hereby grants to Organization a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.8) license to use the Documentation during the Term solely for Organization's internal business purposes in connection with its use of the Subscription Services.

3.4 Business Purpose Use. The Organization may use the Subscription Services only for its business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including those that are materially harmful to children or violative of third-party privacy

rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Subscription Services or the data contained therein; (v) attempt to gain unauthorized access to the Hosting service or its related systems or networks; (vi) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Subscription Services, in whole or in part; or (vii) otherwise access or use the Subscription Services beyond the scope of the authorization granted under this Section 3.

4. Organization Responsibilities

4.1 The Organization shall be responsible for all Subscription Service activities occurring on Amano's servers complying with all applicable laws, treaties and regulations in connection with such use, including those related to data privacy, international communications and the transmission of technical or personal data. In providing the Subscription Services, Amano shall abide by all applicable laws, treaties and regulations in connection with the Subscription Services provided pursuant to this Agreement, including those related to data privacy, international communications and the transmission of technical or personal data.

Each party shall: (i) notify the other immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (ii) report to the other party immediately and use reasonable efforts to stop immediately any unauthorized copying or distribution of User Data that is known or suspected by either party.

4.2 The Organization shall not impersonate another Amano customer, or provide false identity information to gain access to or use the Subscription Services.

4.3 **Without limiting the foregoing, the Organization acknowledges and agrees that it is solely responsible for compliance with all Biometric Data Laws applicable in the jurisdictions in which the Organization operates and has Users or employees, and it shall be solely responsible for adopting and implementing its own Biometric Data privacy policies with its Users' or employees' knowledge and consent.**

4.4 **As required by law, including without limitation any Biometric Data Laws, the Organization and its vendors that collect, capture, or otherwise obtain Biometric Information relating to a User or employee must first:**

i. Inform each affected User or employee in writing that the Organization, or its vendors, including Amano and its cloud service vendors, are collecting, capturing, or otherwise obtaining the User's or employee's Biometric Information, and that the Organization is providing such Biometric Information to Amano and its vendors solely to perform time and attendance Software and Hosting Service functions;

ii. Inform the User or employee in writing of the time period which the User's or employee's Biometric Information will be collected, stored and used; and

iii. Receive a signed written consent from each User or employee (or his or her legally authorized representative), to collect, store and use his/her Biometric Information for performing time and attendance functions through use of the Subscription Services, which explicitly obtains consent sufficient to permit Amano and/or its vendors/designees to receive, maintain and re-disclose the Biometric Information for purposes of this Agreement and the Subscription Services in accordance with Biometric Data Laws.

The Organization agrees that it will engage its own independent legal counsel to advise it regarding compliance with the laws applicable to Organization's use of the Subscription Services and accepts all legal responsibility for the use of the Subscription Services.

5. Account Information and Data. It is stipulated and agreed that Amano will not own or license any data, information or other material supplied to Amano by Organization or Authorized Users except for the limited license set forth in Section 3.2, necessary for Amano to provide the Subscription Services. The Organization, not Amano, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, ownership and right to User Data, and Amano shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any User Data, except as specifically required by this Agreement. In the event this Agreement is terminated (other than by reason of Organization's breach), Amano will make available to Organization a User Data file within 30 days of termination if the Organization so requests in writing at the time of termination.

6. Amano Software Intellectual Property Ownership. This Agreement grants the Organization a limited, non-sublicensable, terminable right to use the Subscription Services to create time and attendance records through the use of the Subscription Services **for internal business purposes only** and not for the benefit of any third party. Except as expressly provided in this Agreement, Amano and its licensors retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software (as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications Organization may develop). All rights not specifically granted in this Agreement, including U.S. and International Copyrights, are reserved by Amano and its licensors.

7. Charges and Payment of Fees. The Organization shall promptly pay all fees or charges in accordance with the schedule of fees, charges and billing terms contained in any Subscription Order Form executed by Amano. Payments may be made annually, quarterly, monthly, or as otherwise mutually agreed in writing. The Organization is responsible for paying for all the user licenses in the Software Edition for the entire Subscription Period. Amano reserves the right to modify its fees and charges and to introduce new charges at any time, upon not less than 30 days' prior notice to the Organization, which notice may be provided by e-mail. All pricing terms are confidential, and the Organization agrees not to disclose them to any third party unless Amano has made them publicly available beforehand.

8. Billing and Renewal.

8.1 Amano charges and collects in advance for use of the Subscription Services. Amano will automatically renew and issue an invoice to Organization monthly or as otherwise set forth in any Order Form Organization has executed or otherwise accepted. Fees for other services will be charged on an as-quoted basis. Amano's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and the Organization shall be solely responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) or foreign taxes based solely on Amano's or its personnel's income.

8.2 The Organization agrees to provide Amano with complete and accurate billing and contact information. This information includes Organization's legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. The License Manager shall be responsible for providing all day-to-day consents and approvals on behalf of Organization under this Agreement. Organization agrees to update this information within 30 days of any change. If the contact information Organization has provided is false or fraudulent, Amano reserves the right to terminate Organization's access to the Subscription in addition to any other legal remedies.

8.3 If the Organization believes any Amano invoice is incorrect, it must provide notice to Amano in writing within 60 days of the invoice date setting forth the amount in question and request for adjustment or credit. Failure to provide timely notice and objection shall be deemed to be an acceptance and waiver.

9. Non-Payment and Suspension.

9.1 In addition to any other rights granted herein, Amano reserves the right to suspend or terminate the Subscription Services provided under this Agreement. The Organization's access to the Subscription Services shall be suspended if the Organization fails to make payment within thirty (30) days of written notice of default. Delinquent invoices (accounts in arrears) are subject to interest accruing at the interest rate of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection (including reasonable attorneys' fees). The Organization will continue to be charged for Subscription Services during any period of suspension. If the Organization or Amano initiates termination of this Agreement, the Organization will be obligated to pay all balances coming due through the date of termination.

9.2 The Organization agrees and hereby acknowledges that Amano shall have no obligation to retain User Data more than one hundred and twenty (120) days after the termination of this Agreement for any reason unless the parties expressly agree otherwise in writing prior to the expiration of the 120-day period, provided that Amano may, in its sole discretion, retain User Data for any amount of time beyond such 120-day period.

10. Term and Termination.

10.1 Monthly Subscriptions. For monthly subscriptions, this Agreement commences on the date Users first access the Subscription Services (the "Effective Date"). The Initial Term will be from the Effective Date for the period of one (1) calendar month. Unless either party provides written notice of non-renewal to the other party ten (10) days prior to expiration of the Initial Term, upon the expiration of the Initial Term any Order Form in effect under this Agreement will automatically renew for successive renewal terms of one calendar month (the Initial Term and any renewable terms, the "Term").

10.3 Subscription Rates. The rate specified in each Order Form shall continue to be the rate during any renewal term unless Amano provides written notice to Organization of any price increase at least ten (10) days prior to the end of the current term.

10.4 Termination. Either party may terminate this Agreement due to a material breach of this Agreement by the other party, provided the party seeking termination first provides the breaching party written notice of the breach and not less than thirty (30) days to cure the breach. After the Initial Term, either party also may terminate this Agreement for convenience, by notifying the other party in writing not less than sixty (60) days prior to the end of the current term. Termination (other than by reason of breach) does not affect any prepaid fees or charges provided by the Organization to Amano in accordance with Section 7. Specifically, Amano is not required to refund the fees paid by Organization for the current subscription period.

10.5 Data Retention. Organization will have access to Organization's User Data at all times during the Term. Organization is responsible for downloading any User Data during the Term. Organization agrees and acknowledges that Amano has no obligation to retain the User Data, and may delete such User Data, for more than one hundred and twenty (120) days after any termination or expiration of this Agreement, provided that Amano may, in its sole discretion, retain User Data for any amount of time beyond such 120-day period or, with respect to User Data that is Biometric Information or Biometric Identifiers, in accordance with its then-current retention policy or schedule.

11. Termination for Cause. Any breach of the Organization's payment obligations or unauthorized use of the Subscription Services will be deemed a material breach of this Agreement. Amano, in its sole discretion, may terminate Organization's passwords, accounts and/or access to the Subscription after providing the notice and right to cure provided in Section 10, if the Organization breaches or otherwise fails to comply with this Agreement.

12. Representations & Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Amano represents and warrants that it will provide the Subscription Services (a) through the Hosting Provider in accordance with the Hosting Specifications set forth on **Exhibit A**, and (b) with respect to any provisions not covered in **Exhibit A**, in a manner consistent with commercially

reasonable industry standards that may apply to the provision thereof. The Organization represents and warrants that it has not falsely identified itself nor provided any false information to gain access to the Subscription Services and that the Organization's billing information is correct.

13. WARRANTY AND DISCLAIMER.

13.1 AMANO AND ITS SUPPLIERS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SUBSCRIPTION SERVICES OR ANY USER DATA.

13.2 AMANO AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE USE OF THE SUBSCRIPTION SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA.

13.3 AMANO PROVIDES NO REMEDIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, FOR SUBSCRIPTION SERVICES. SUBSCRIPTIONS ARE EXPLICITLY PROVIDED "AS IS" EXCEPT AS EXPLICITLY SET FORTH HEREIN.

13.4 AMANO AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALSO, THERE IS NO WARRANTY OF NON-INFRINGEMENT AND TITLE OR QUIET ENJOYMENT. AMANO DOES NOT WARRANT THAT THE SUBSCRIPTION WILL PERFORM ERROR-FREE OR WILL OPERATE WITHOUT INTERRUPTION. NO RIGHTS OR REMEDIES REFERRED TO IN ARTICLE 2A OF THE UCC WILL BE CONFERRED UNLESS OTHERWISE EXPLICITLY AND EXPRESSLY GRANTED HEREIN. THE SUBSCRIPTION SERVICES ARE NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. AMANO SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

13.5 AMANO AND ITS SUPPLIERS DO NOT REPRESENT OR WARRANT THAT THE SUBSCRIPTION SERVICES OR THE SERVER(S) THAT MAKE THE SUBSCRIPTION SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

13.6 NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY AMANO, ITS DEALERS, DISTRIBUTORS, AFFILIATES, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF ANY WARRANTY PROVIDED HEREIN.

13.7 SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO ORGANIZATION. THIS WARRANTY GIVES ORGANIZATION SPECIFIC LEGAL RIGHTS AND ORGANIZATION MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

14. Dispute Resolution Procedure and Binding Arbitration.

14.1 THE REMEDIES PROVIDED HEREUNDER ARE THE SOLE AND EXCLUSIVE REMEDIES AVAILABLE FOR CLAIMS OF BREACH OF EXPRESS OR IMPLIED WARRANTIES.

14.2 THE ORGANIZATION AND AMANO MUTUALLY AGREE TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. ANY CLAIM, DISPUTE OR

CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN THE PARTIES ARISING FROM OR RELATING IN ANY WAY TO THE PURCHASE OF SUBSCRIPTION SERVICES WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

14.3 **ARBITRATION AGREEMENT.** Any controversy or claim arising out of or relating to this Agreement or relating to the Subscription Services provided by Amano, the parties' relationship, the enforcement or interpretation of this Agreement, or because of an alleged breach, default or misrepresentation in connection with this Agreement, shall be determined by final, binding and confidential arbitration. The arbitration proceedings shall be held and conducted by a single arbitrator in accordance with the Comprehensive Arbitration Rules and Procedures of JAMS (the "JAMS Rules"), as modified by this Agreement. Such arbitration shall take place in the State of New Jersey at a location mutually acceptable to the parties and may be initiated by any party in accordance with the JAMS Rules. The demand for arbitration shall be made by any party hereto within a reasonable time after the claim, dispute, or other matter in question has arisen, and in any event shall not be made after the date when institution of legal proceeding based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations. Discovery issues shall be decided by the arbitrator. Post-hearing briefs shall be permitted. The arbitrator shall render a decision within twenty (20) days after the conclusion of the hearing(s). In reaching a decision, the arbitrator shall have no authority to change, extend, modify, or suspend any of the terms of this Agreement, or to grant an award or remedy any greater than that which would be available from a court under the statutory or common law theory asserted. The arbitrator shall issue a written opinion that includes the factual and legal basis for any decision and award. The arbitrator shall apply the substantive law (and the law of remedies, if applicable) of New Jersey or federal law, or any of them, as applicable to the claim(s) asserted. Judgement on the award may be entered in any court of competent jurisdiction. In addition, either party may seek from a court of competent jurisdiction in New Jersey, provisional remedies or injunctive relief in support of their respective rights and remedies hereunder without waiving any right to arbitration. Judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. During arbitration, each party shall bear all of its own expenses, provided that the arbitrator shall allocate all costs and expenses of the arbitration (including legal and accounting fees and expenses of the respective parties) to the parties in the proportions that reflect their relative success on the merits (including the assertion of any defenses).

15. Indemnification.

15.1 Amano Indemnification. Amano shall indemnify, defend, and hold harmless the Organization from and against any and all Losses resulting from any court action by a third party that claims that the Subscription, or any use of the Subscription in accordance with this Agreement, infringes or misappropriates such third party's US Intellectual Property Rights/US patents, copyrights, or trade secrets. This Section 15 does not apply to the extent that the alleged infringement arises from:

- (a) Open Source Components or other Third-Party Materials included in the Software;
- (b) the Combination, operation, or use of the Subscription Services in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by Amano or specified for the Organization's use;
- (c) modification of the Software other than: (i) by Amano or its contractors in connection with this Agreement; or (ii) with Amano's express written authorization and in strict accordance with Amano's written directions and specifications;
- (d) use of any version of the Software other than the most current version or failure to timely implement any maintenance release, modification, update, or replacement of the Software made available to Organization by Amano;

(e) use of the Subscription Services after Amano's notice to Organization of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights;

(f) negligence, abuse, misapplication, or misuse of the Subscription Services by or on behalf of Organization, Organization's Representatives, or a third party;

(g) use of the Subscription Services by or on behalf of Organization that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Amano's instructions;

(h) events or circumstances outside of Amano's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or

(i) third-party claims or Losses for which Organization is obligated to indemnify Amano pursuant to Section 0.

15.2 Organization Indemnification. Organization shall indemnify, defend, and hold harmless Amano and its affiliates, and each of its and their respective officers, directors, employees, agents, subcontractors, successors and permitted assigns (each, an "Amano Indemnitee") from and against any and all Losses incurred by the Amano Indemnitee resulting from any Action by a third party:

(a) that any intellectual property rights or other right of any person, or any law, is or will be infringed, misappropriated, or otherwise violated by any: (i) use or combination of the Subscription Services by or on behalf of the Organization or any of its representatives with any hardware, software, system, network, service, or other matter whatsoever that is neither provided by Amano nor authorized by Amano in this Agreement or otherwise in writing; and (ii) information, materials, or technology directly or indirectly provided by Organization or directed by Organization to be installed, combined, integrated, or used with, as part of, or in connection with the Subscription Services;

(b) relating to facts that, if true, would constitute a breach by Organization of any representation, warranty, covenant, or obligation under this Agreement, including, without limitation, Organization's obligation to abide by all Biometric Data Laws applicable to Organization;

(c) relating to negligence/gross negligence, abuse, misapplication, misuse or more culpable act or omission (including recklessness or willful misconduct) by or on behalf of Organization or any of its representatives with respect to the Subscription Services or otherwise in connection with this Agreement; or

(d) relating to use of the Subscription Services by or on behalf of Organization or any of its representatives that is outside the purpose, scope or manner of use authorized by this Agreement, or in any manner contrary to Amano's instructions.

15.3 Indemnification Procedure. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 15. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 0 will not relieve the Indemnitor of its obligations under this

Section 15, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

16. Internet Delays.

AMANO'S SUBSCRIPTION SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. AMANO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, EXCEPT TO THE EXTENT CAUSED BY AMANO'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

17. LIMITATION OF LIABILITY

17.1 NEITHER AMANO NOR ITS SUPPLIERS SHALL BE LIABLE TO ORGANIZATION OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF AMANO OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

17.2 AMANO'S TOTAL LIABILITY TO ORGANIZATION FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE GREATER OF \$500 OR FOR THREE (3) MONTHS' FEES FOR THE SUBSCRIPTION SERVICES.

17.3 SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO ORGANIZATION AND ORGANIZATION MAY ALSO HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE.

17.4 THE FOREGOING LIMITATIONS ON LIABILITY ARE INTENDED TO APPLY TO THE WARRANTIES AND DISCLAIMERS ABOVE AND ALL OTHER ASPECTS OF THIS AGREEMENT.

18. Basis of Bargain. The Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability set forth above are fundamental elements of the basis of the agreement between Amano and Organization. Amano would not be able to provide the Subscription Services on an economic basis without such limitations. Such Limited Warranty and Disclaimer, Exclusive Remedies and Limitation of Liability inure to the benefit of Amano's licensors.

19. (USA Only) U.S. Government Restricted Rights Legend. This Subscription and the documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable.

20. (Outside of the USA) Consumer End Users Only. The limitations or exclusions of warranties and liability contained in this Agreement do not affect or prejudice the statutory rights of a consumer, i.e., a person acquiring goods otherwise than in the course of a business. The limitations or exclusions of warranties, remedies or liability contained in this Agreement shall apply to Organization only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where Organization is located.

21. Notice. Amano may give notice by means of a general notice on the Subscription Services, electronic mail to Organization's e-mail address on record in Amano's account information, or by written communication sent by first class mail or pre-paid post to Organization's address on record in Amano's account information. Notice shall be deemed to have been given upon the expiration of two business days after mailing or posting (if sent by first class mail or pre-paid post), one business day after mailing via an overnight delivery service, upon receipt of facsimile confirmation by sender, or 12 hours after sending by email.

22. Confidential Information. Amano may have access to and special knowledge of Organization's business affairs and related information and User Data disclosed to it or known to it as a consequence of providing the Subscription Services to Organization, which is considered to be trade secret, proprietary, confidential and/or sensitive ("Confidential Information"). Amano agrees not to use Confidential Information except for Organization's benefit in the course of performing services for Organization, and not to disclose Confidential Information to any third party without Organization's prior written consent, except as required by law. Upon expiration or termination of this Agreement Amano will return or destroy (at Organization's request) any of Organization's Confidential Information.

23. Geographic Restrictions.

Organization represents and warrants that Organization shall not capture, store, or process any User Data of a person residing outside of the United States, or any EU citizen's data during the provision of the Subscription Services.

24. General.

25.1 This Agreement shall be governed by the internal laws of the State New Jersey, without giving effect to the choice of law or conflict of law provisions of New Jersey or of any other jurisdiction. The parties hereby consent to the exclusive jurisdiction and venue of the state courts New Jersey or the federal courts in the Federal Judicial District of New Jersey to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

25.2 This Agreement contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. Organization agree that any varying or additional terms contained in any purchase order or other written notification or document issued by Organization in relation to the Subscription licensed hereunder shall be of no effect. The failure or delay of Amano to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach.

25.3 No Amano dealer, agent, affiliate or employee is authorized to make any amendment to this Agreement.

25.4 If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

25.5 All questions concerning this Agreement shall be directed to:

Amano Cincinnati, Inc.
140 Harrison Avenue.
Roseland, NJ 07068
Attn: Time Sales

25.6 Amano, Time Guardian™ and other trademarks contained in the Software and/or Hosting services are trademarks or registered trademarks of Amano in the United States and/or other countries.

Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners. Organization may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. This Agreement does not authorize Organization to use Amano's or its licensors' names or any of their respective trademarks.

EXHIBIT A
HOSTING SPECIFICATIONS

Subscription Availability. If the availability of Subscription Services within a given month is less than 95%, Amano will issue a credit to the Organization in accordance with the following schedule, with the credit being calculated on the basis of the monthly service charge for the affected services:

- (e) 95% - 100% availability = 0%
- (f) 90% - 94.9% availability = 20%
- (g) 80% - 89.9% availability = 50%
- (h) 79.9% or below availability = 100%

The Organization will not receive any credits under this Agreement in connection with any failure or deficiency of Subscription Service availability caused by or associated with:

(i) circumstances beyond Amano's reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, armed conflict, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of or interruption or delay in telecommunications or third party services, virus attacks or hackers, failure of third party software (including, without limitation, ecommerce software, payment gateways, chat, supplies, or free scripts) or inability to obtain raw materials, supplies, or power used in or equipment needed for provision of this Agreement;

(j) Failure of access circuits to the Amano's Network, unless such failure is caused solely by Amano;

(k) Scheduled maintenance and emergency maintenance and upgrades;

(l) Domain Name Server ("DNS") issues outside the direct control of Amano;

(m) Issues with FTP, POP, or SMTP Amano access;

(n) False Agreement breaches reported as a result of outages or errors of any Amano measurement system;

(o) The Organization's acts or omissions (or acts or omissions of others engaged or authorized by Organization, negligence, willful misconduct, or use of the Subscription in breach of Amano this Agreement or any other agreement between Amano and Organization.

(p) E-mail or webmail delivery and transmission;

(q) DNS propagation;

(r) Outages elsewhere on the Internet that hinder access to Organization's account. Amano is not responsible for browser or DNS caching that may make Organization's site appear inaccessible when others can still access it. Amano will guarantee only those areas considered under the control of Amano.

