

GUARDIAN TRACKING, LLC
HOSTED APPLICATION SERVICES AGREEMENT

THIS HOSTED APPLICATION SERVICES AGREEMENT (the "Agreement") is by and between **GUARDIAN TRACKING, LLC**, an Indiana limited liability company ("Guardian") and the undersigned customer (the "Customer");

WITNESSETH:

WHEREAS, Guardian has developed and owns certain, proprietary software systems (each, an "Application" or the "Application Services"); and

WHEREAS, Customer desires to subscribe to and access one or more Applications via the Internet, and Guardian desires to provide access to the Application(s), together with related maintenance and support services, all pursuant to the terms and subject to the conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises, of the mutual promises, agreements and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, Guardian and Customer agree as follows:

SECTION 1

License

1.1 Grant of License. Subject to the terms of this Agreement, Guardian hereby grants to Customer a non-exclusive, non-transferable right and license (the "License") to (a) access and use the Application(s) identified on Schedule A, via the Internet, and (b) use any related user documentation or materials provided or disclosed to Customer by Guardian in the course of providing such access to the Application(s) (the "Documentation"). **BY THIS LICENSE, CUSTOMER IS GRANTED NO RIGHTS TO THE OBJECT OR SOURCE CODE OF THE APPLICATIONS OR ANY TRANSLATIONS OR DERIVATIVE WORKS THEREOF. CUSTOMER SHALL NOT CREATE DERIVATIVE WORKS OF, MODIFY, ASSIGN, SUBLICENSE, SELL, RENT, REVERSE ENGINEER, DISASSEMBLE OR DECOMPILE THE APPLICATIONS.**

1.2 Scope of License. The License shall permit the number of users set forth on Schedule A as amended by the parties hereto from time to time, to access the Application(s) from the personal computers or networks owned or leased by Customer, for Customer's internal business purposes only and otherwise in accordance with this Agreement. Customer shall be provided with an administrative username and password; such administrative user shall have the ability to add, modify or delete user accounts for access to the Application(s) by its employees and/or agents. Customer will ensure that such passwords are used only by the user assigned to the password and not by any other person. The total number of passwords issued will not exceed the number of users set forth on Schedule A. Customer shall be responsible for protecting the security of usernames and passwords, and shall promptly notify Guardian, upon suspicion that a username has been lost, stolen, compromised, or misused.

SECTION 2

Equipment

Customer shall be solely responsible for obtaining and maintaining all hardware, software and ancillary services which are necessary for it to access the Application(s) via the Internet, including, without limitation, all computers, supported web browsers, and internet services, as further set forth on Schedule B. Guardian may update the information on Schedule B at any time, and shall provide a copy of such updated schedule to Customer.

SECTION 3

Services

3.1 Support, Maintenance, and Training Services. Guardian shall provide to Customer, during the Term, support, maintenance and training services according to the parameters and specifications described in Schedule C attached hereto (the "Support Services"). Guardian shall use commercially reasonable efforts during the Term to correct any reproducible material error, malfunction or defect in the Application(s) that prevents the Application(s) from substantially and materially performing in accordance with the then-current Documentation, and shall commence such efforts within ten (10) business days after its receipt of a written request by Customer for such maintenance, which request shall include a detailed description of the error, malfunction or defect. **GUARDIAN WILL HAVE NO OBLIGATION WITH RESPECT TO ANY PURPORTED ERROR, MALFUNCTION OR DEFECT WHICH ARISES FROM CAUSES EXTERNAL TO THE APPLICATION(S) OR THE APPLICATION(S) REMOTE HOSTING ENVIRONMENT OR BY IMPROPER USE BY CUSTOMER OR ITS AGENTS.**

3.2 Data Entry. The entry of Customer information and data required for Customer to utilize the Application(s) ("Customer Data") will be performed by Customer at Customer's sole expense. In the event that Customer Data is shared with the Application via any Customer or third-party database or software application, Customer shall be solely responsible for the transfer and sharing of such Customer Data, and Customer represents and warrants that it possesses all necessary rights to use and access such database or software application.

SECTION 4

Fees

4.1 Fees. In consideration of the License and the Support Services, Customer shall pay the fees described in and/or computed in accordance with the rates set forth in Schedule A attached hereto (the "Fees"). Guardian shall have the right to modify the Fees as set forth in Schedule A.

4.2 Fee Invoices. All fees shall be payable in accordance with the invoicing procedures set forth in Schedule A. Applicable taxes covering the License or Support Services, including sales, use, personal property, value-added, withholding, excise or other taxes and duties, if any, but specifically excluding any income or corporate franchise taxes, will be added to the invoice as prescribed by applicable law. In the event Customer is a tax exempt organization, Customer shall provide all documentation requested by Guardian to evidence its tax exempt status.

SECTION 5

Term and Termination

5.1 Term. The term of this Agreement shall commence on the date hereof and, unless terminated earlier as provided herein, shall continue for a period of twelve (12) months or twenty-four (24) months (the "Initial Term") in accordance with the option indicated in Schedule A attached hereto. Prior to expiration of the Initial Term (and each following renewal term), Customer will be invoiced for a 12 month renewal term. If Customer pays such invoice, the term of this Agreement shall be extended 12 months. (The Initial Term as it may be renewed or terminated pursuant to the provisions of this Agreement being sometimes referred to as the "Term").

5.2 Termination.

(a) Upon termination of this Agreement, Customer shall Immediately and permanently discontinue using, in any manner whatsoever, the Application(s);

(b) Upon termination of this Agreement, Guardian shall:

(i) Return all Customer Data in electronic format.

(ii) Within thirty (30) days of the effective date of such termination and upon request by Customer, certify in writing to Customer that all actions required by this Section 5.2(b) have been complied with by Guardian;

SECTION 6

Default and Remedies

6.1 Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

(a) Customer fails to pay any amount due hereunder within ten (10) days after receipt of written notice from Guardian that said payment is past due; and

(b) Either party fails to perform or observe any obligation, covenant, term, condition or provision of this Agreement, and such failure is not remedied or cured by the defaulting party within thirty (30) days after receipt of written notice thereof by the other party hereto.

6.2 Remedies. If an Event of Default occurs, the non-defaulting party may, at its option, pursue any remedy available to it at law or equity, suspend performance of its obligations under this Agreement for so long as the Event of Default continues unremedied, and/or terminate this Agreement or any portion hereof

SECTION 7

Representations and Warranties

Each party represents and warrants that it has the power and authority to enter into this Agreement. Guardian represents and warrants that (a) it will provide the Support Services in a manner consistent with generally accepted industry standards, and (b) the Application(s) shall perform substantially in accordance with the Documentation under normal use. Customer represents and warrants that it has the full right and license to use the Customer Data in connection with the Application(s) and that such use shall not infringe on any third party intellectual property rights. Customer is responsible for all activity occurring under Customer's user accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with Customer's use of the Application(s), including those related to data privacy, international communications and the transmission of technical or personal data. By this Agreement, Guardian does not attain ownership in any Customer Data. Customer, not Guardian, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data, and Guardian shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Client Data. Guardian shall use reasonable efforts to protect Client Data behind a secure firewall system, and to conduct data backups, as more fully set forth on Schedule C.

SECTION 8

Disclaimer of Warranties; Limitation of Liability

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 7, THERE ARE NO OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, OR OTHER TERMS CONCERNING THE APPLICATION(S) OR THE SUPPORT SERVICES, AND GUARDIAN AND ITS LICENSORS EXPRESSLY DISCLAIM ANY OTHER WARRANTIES WITH REGARD TO THE APPLICATION(S) OR THE SUPPORT SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN NO EVENT SHALL GUARDIAN OR ITS LICENSORS BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, OR TORTIOUS CONDUCT RELATING TO, CAUSED BY, OR ARISING OUT OF ANY BREACH OF ITS OBLIGATIONS OR CUSTOMER'S USE OR INABILITY TO USE THE APPLICATION(S), EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF GUARDIAN AND ITS LICENSORS ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY CLAIM BY CUSTOMER AGAINST GUARDIAN.

SECTION 9

Proprietary Rights and Confidentiality

9.1 Proprietary Rights. All trademarks, service marks, patents, copyrights, trade secrets and other intellectual property rights in the Application(s) (collectively, "Materials") are and will remain the exclusive property of Guardian or its licensors, whether or not specifically recognized or perfected under

applicable local law. Customer will not create derivative works of, modify, assign, sublicense, sell, rent, reverse engineer, disassemble or decompile the Materials. Any rights not expressly granted herein are reserved to Guardian or its licensors. Customer will not take any action that jeopardizes Guardian' or its licensors' proprietary rights in the Materials or acquire any right in the Materials. The obligations of Customer under this Section 9.1 shall survive the expiration or earlier termination of this Agreement.

9.2 Confidential Information of Customer.

(a) Guardian may receive from Customer, or otherwise acquire, certain confidential, proprietary, and/or valuable information of Customer, its affiliates, predecessors, successors or permitted assigns and/or business collaborators, including without limitation the Customer Data (any such information shall hereinafter be referred to as the “**Confidential Information**”). All Confidential Information shall remain the sole and exclusive property of Customer, its affiliates, predecessors, successors or permitted assigns and/or business collaborators as the case may be. Guardian hereby covenants, represents and warrants that Guardian shall treat confidentially and maintain in strict confidence all of the Confidential Information and shall not disclose, in whole or in part, directly or indirectly, any Confidential Information to any person or entity other than to its employees who have a need to know such information for the benefit of Customer to further this Agreement and/or the Support Services; provided, however, that Guardian nor any of its employees shall directly access the Confidential Information without the prior written consent of the Customer.

(b) Upon termination or expiration of this Agreement, Guardian shall return to Customer any and all of the Confidential Information (in accordance with Section 5.2(b)(i)).

(c) Guardian shall cause its employees to comply with the obligations in this Section 9 and shall advise its employees of the obligations hereunder. The obligations set forth in this Section 9 shall survive the expiration or earlier termination of this Agreement.

(d) Customer understands and acknowledges that the technical processing and transmission of the Applications, including Customer Data, may involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks, devices or services.

(e) In the event that Guardian is requested, pursuant to subpoena or other legal process, to disclose any of the Confidential Information, Guardian shall provide the Customer with immediate notice so that Customer may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained or that Guardian waives compliance with the provisions of this Agreement, Guardian (or such other person) shall furnish only that portion of the Confidential Information which is legally required.

SECTION 10

Miscellaneous

10.1 Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or sent via electronic mail on the party to whom notice is to be given, or on the third (3rd) day after mailing if mailed to the party to whom notice is to be given, by certified mail, return receipt requested, first class postage prepaid, or other nationally-recognized express courier service and properly addressed to the postal address or electronic mail address set forth in the signature blocks of this agreement.

10.2 Benefit of Agreement. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10.3 Entire Agreement; Modification. This Agreement, including the Schedules attached hereto, contains the entire agreement between the parties with respect to the subject matter hereof; all representations, promises, proposals and prior or contemporaneous understandings between the parties with respect to this subject matter hereof are merged into and expressed in this Agreement; and any and all prior or contemporaneous agreements between the parties with respect to the subject matter hereof are hereby canceled. Except as otherwise provided herein, this Agreement may not be changed or modified, except by agreement in writing, signed by all of the parties hereto.

10.4 Headings. Section headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any provision hereof.

10.5 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed but one and the same instrument.

10.6 Incorporation by Reference. All Schedules and Recitals hereto are incorporated herein by this reference.

10.7 Assignment. This Agreement may not be assigned, sublicensed or transferred in any way by Customer without Guardian's prior written consent.

10.8 No Joint Venture. Nothing in this Agreement shall be construed to constitute a joint venture, partnership, agency, representative or employment relationship between the parties.

10.9 Force Majeure. If the performance of this Agreement, or any obligation hereunder (except the making of payments) is prevented, restricted, or interfered with by fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes, inability to procure or obtain delivery of parts, supplies, power, telecommunication services, or other services from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder as quickly as reasonably possible when such causes are removed.

10.10 Non-Waiver. Neither the waiver of any breach nor the failure to enforce any term or condition of this Agreement shall operate as a waiver or release of any such term or condition, nor constitute nor be deemed a waiver or release of any other rights, in law or at equity, or claims which either party may have against the other party for any matter arising out of, or connected with, or based upon this Agreement. No waiver shall be enforceable against any party hereto unless set forth in a written instrument or agreement signed by such party.

10.11 Costs and Expenses. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party to such litigation, as determined by the court in a final judgment or decree, shall pay the successful party all costs, expenses and reasonable attorneys' fees incurred by the successful party (including, without limitation, costs, expenses and fees on any appeals), and if the successful party recovers judgment in any such action or proceeding, such costs, expenses or attorneys' fees shall be included as part of the judgment.

10.12 Severability. In the event any term, provision or restriction of this Agreement shall be held to be illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall in no way affect the legality, validity or enforceability of the remaining provisions of this Agreement, all of which shall continue unaffected and unimpaired thereby. The parties agree that any such unenforceable term, provision or restriction shall be deemed modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law.



IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the later of the dates set forth below.

"GUARDIAN"

"CUSTOMER"

GUARDIAN TRACKING, LLC

HARRISONBURG POLICE DEPARTMENT,

a(n) Virginia Agency

By: Leon Wasilewski

By: _____

Leon Wasilewski
Printed Name

Printed Name

Its: Partner

Its: _____

July 3, 2015
Date

Date

Postal Address: P.O. Box 2291
Anderson, IN 46018

Postal Address: 101 North Main Street
Harrisonburg, VA 22802

Electronic Mail: leon@guardiantracking.com

Electronic Mail:

Schedule A

License Information

1. **Applications:**

Guardian Tracking Employee Performance Documentation / Early Intervention & Recognition Software

2. **Users.** Up to 147 named users may be enabled in the system with a unique password assigned to each user for use only by that user.

3. **Fees.**

_____ **Option 1 – One (1) Year Subscription - \$3,208**

Fee Schedule - Billed annually and due on the anniversary date of this agreement.

_____ **Option 2 – Two (2) Year Subscription - \$6,416**

Fee Schedule - Customer will be offered a one year renewal prior to the end of the first term.

4. **Modification of Fees.** At anytime beginning three (3) years following the date of this Agreement via written notice to the Customer. Any increase in the Fees (a) shall be effective on the date stipulated in such notice, provided that the effective date shall be no earlier than thirty (30) days from the date of such notice, (b) shall be equal to no greater than a 20% increase over the then current fee and (c) shall subsequently be increased no more frequently than once every three (3) years.

Schedule B

Supported Browsers for Accessing the Application

1. The current version, and the immediately prior released version, of any browser listed below.

Browsers:

- Google Chrome
- FireFox
- Internet Explorer
- Safari
- Opera

Schedule C

Support, Maintenance, and Training Services

The following is a description of services to be performed:

- Install on third party hosting environment servers, and provide remote access to, the Application.
- Access to the Application(s), and transmittal of all data, login and password information between the client and the server will be encrypted using Secure Sockets Layer (SSL).
- All Customer Data will be stored in a separate, logical database within a shared physical server. All Customer Data is handled by the Application(s) in isolation from the data of other customers.
- The hardware, software and network will be monitored and maintained and will normally be accessible, in accordance with industry standards, except for scheduled maintenance and required repairs.
- Customer will be notified in advance, usually no less than one week, by email and/or an announcement within the Application, of any scheduled maintenance and/or expected downtime.
- If a system outage occurs, Guardian will promptly commence remedial activities and use reasonable efforts to resolve any such outage within a reasonable amount of time.
- Customer data will be backed up on a daily and weekly basis.
- Provide up to 2 hours of administrator training and 2 hours of user training (without regard to the number of users) every 12 months during the term of this Agreement. Training services are available only upon request and must be scheduled at mutually agreed upon times by both parties. Additional training may be provided upon request and for a fee to be agreed on in writing by the parties.
- The customer is expected to make a reasonable effort to reduce the file size of attachments before uploading them to Guardian (For example, converting .tiff file to .jpeg). In the unlikely event that the average size of attachments, across all incidents, exceeds 1MB Guardian may contact the agency to assist in implementing a strategy to reduce file sizes.
- Any single attachment will be limited to 4MB in size.