

## **Data Center Application Terms of Use**

The Agreement, as defined below, between Target Resource Group, LLC (“TRG Arts”) and the Client (defined below) governs your receipt of all Application Services, including use of the Data Center Application.

**BY SELECTING THE “ACCEPT” BUTTON BELOW, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND INTEND TO BE BOUND, INDIVIDUALLY AND ON BEHALF OF YOUR ORGANIZATION, BY ALL OF THE TERMS, CONDITIONS, AND NOTICES CONTAINED HEREIN JUST AS IF YOU HAD SIGNED THIS AGREEMENT BY HAND. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, INDIVIDUALLY AND ON BEHALF OF YOUR ORGANIZATION, YOU ACKNOWLEDGE AND UNDERSTAND THAT SECTION 5 OF THESE TERMS OF USE CONTAINS TERMS LIMITING THE LIABILITY OF TRG ARTS IN CERTAIN CASES.**

**IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS CONTAINED HEREIN, PLEASE SELECT THE “DECLINE” BUTTON BELOW. UNLESS ACCEPTED YOU SHALL HAVE NO RIGHT TO USE OR RECEIVE THE APPLICATION SERVICES (INCLUDING THE Data Center APPLICATION).**

**DATA EXPORTED FROM DATA CENTER MAY BE USED ONLY FOR YOUR DIRECT MARKETING PURPOSES AND ARE FOR ONE-TIME USE. THE DATA MUST BE DELETED FROM YOUR SYSTEMS, INCLUDING ANY THIRD PARTY SYSTEMS ON WHICH THE DATA IS INSTALLED AFTER USE, AND MAY NOT BE RETAINED AND RE-PURPOSED FOR OTHER MARKETING, RESEARCH, OR ANALYTICS REPORTING PURPOSES.**

### **1. DEFINITIONS.**

A. “Agreement” means the Service Agreement, by and between Client and TRG Arts, pursuant to which you are authorized to receive Application Services and access the Data Center Application.

B. “Aggregate Data” means data, including Client Data, which has been processed by TRG Arts so that it does not identify any individual person or organization.

C. “Application Services” means the services that TRG Arts will provide to Client and, in connection with community data base projects, End Users as identified in any applicable Community Database Management Program Application Services Agreement, including but not limited to the provision of access to the Data Center Application through the Internet.

D. “Client” means the entity identified as the “Client” on the Agreement.

E. “Client Data” means data supplied to TRG Arts in connection with its performance of the Application Services for Client or, in connection with data base projects, End Users.

F. “Confidential Information” means all financial, technical, and other information regarding TRG Arts, the Client and, for community database projects an End User (the “Owner”) or such parties’ products or services which are marked as confidential, or if disclosed orally is promptly confirmed in writing as being confidential, and, includes but is not limited to (i) Client Data; (ii) the Application Services (which shall be Confidential Information even if not marked as confidential); (iii) Intellectual Property as defined in Section 4 below, (iv) oral and written information regarding any TRG Arts inventions, software, discoveries, developments, formulas, processes, methods, trade secrets, know-how, databases, or innovations developed by or for the Owner, and (v) Aggregate Data; and (vi) oral and written information which is used in the Owner’s business and is proprietary to, about, or created by the Owner, including but not limited to financial information, market information, sales information, personnel information, and marketing strategies designated as confidential by the Owner, and not generally known by those not employed by the Owner.

G. “Effective Date” shall have the meaning assigned to it in the Agreement.

H. “Data Center Application” or “Data Center” means the Data Center application made available to Client and, for community database projects, End Users via the Application Services.

I. “End User” means, in connection with a community database project, an associated community member organization of Client that: (i) Client designates as eligible to receive Application Services under the Agreement; (ii) TRG Arts accepts as eligible to receive Application Services under the Agreement; and (iii) receives Applications Services.

J. “Initial Term” shall have the meaning assigned to it in the Agreement, or if no Initial Term is identified in the Agreement a period of one (1) year beginning on the Effective Date.

K. “Renewal Term” shall have the meaning assigned to it in the Agreement, if any.

L. “Service Fees” means the fees charged by TRG Arts for the Application Services.

M. “Setup Fee” means the fee charged by TRG Arts for site set-up services, implementation services, and advisory services to enable access to the Application Services.

N. “Technical Support” means (i) provision to Client of the documentation related to the Application Services that TRG Arts makes generally available to its

Application Services clients; and (ii) at Client's, or in connection with community database projects, End Users' request, provision to Client or End User, as applicable, of reasonable assistance and consultation via email or telephone Monday through Friday, 9:00 a.m. to 5:30 p.m., Mountain Standard Time (excluding holidays observed by TRG Arts) and in accordance with TRG Arts' then-current Technical Support policies, to assist Client in resolving problems encountered with the Application Services.

**2. TECHNICAL SUPPORT.**

A. TRG Arts will provide Client with Technical Support during the Initial Term and any Renewal Term.

**3. CONFIDENTIAL INFORMATION.**

A. During the Term of this Agreement and at all times thereafter, neither party shall disclose to any third party or use for any purpose other than for the performance of or receipt of Application Services under the Agreement any Confidential Information of the other party without the express written consent of the other party. The party receiving Confidential Information (the "Recipient") shall make the Owner's Confidential Information available to the Recipient's employees, agents, representatives, or sub-contractors only on a need-to-know basis.

B. The obligations with respect to Confidential Information set forth in this Section 3 shall not apply to Confidential Information that: (a) is in the public domain, or that was publicly known or available on the Effective Date; or (b) after the Effective Date becomes available to the public in a manner not involving a breach of any duty under this Agreement.

C. Upon termination or expiration of this Agreement or upon request of the Owner, the Recipient shall return to the Owner all of the Owner's Confidential Information within its possession or control, or confirm in writing that the party in possession of the Confidential Information has taken commercially reasonable steps to securely delete or dispose of such Confidential Information, including all copies thereof.

D. Neither party shall, without first obtaining the written consent of the other party, disclose the terms and conditions of this Agreement, except as may be required to implement and enforce the terms of this Agreement, or as may be required by legal process or by law.

E. Subject to the limitations of Section 5, each party acknowledges that any breach of its obligations with respect to Confidential Information may cause the other party immediate and irreparable injury for which there are inadequate remedies at law and that the other party shall be entitled to injunctive or other equitable relief, to recovery of its attorney's fees, and to any other costs associated with any such proceeding, and to all other remedies available to it.

Client shall indemnify TRG Arts for breaches by its End Users of the provisions contained in this Section 3.

#### **4. INTELLECTUAL PROPERTY, OWNERSHIP, AND LICENSE.**

A. The Application Services, which include Data Center, incorporate and include certain intellectual property rights of TRG Arts, and its licensors, embodied in hardware, software, documentation, support and employee expertise, ("Intellectual Property"). For the purposes of this Agreement and during the Term, Client shall have a limited, non-exclusive, non-transferable, terminable license to this Intellectual Property for Client's and, as applicable, End Users' use of the Application Services. The Intellectual Property or any derivative or by-product thereof may not be used, sub-licensed, re-sold, rented, or distributed by Client or any End User to any other party. Client, on behalf of itself and, as applicable, all End Users, hereby agrees that it will not: (i) decompile, reverse engineer, disassemble, or otherwise reduce the Intellectual Property to a human-perceivable form; (ii) modify, destroy, rent, lease, loan, sell, or distribute all or any part of the Intellectual Property, including any manuals or documentation; (iii) create derivative works based in whole or in part upon the Intellectual Property; (iv) use the Intellectual Property in any system excepting only the hardware contemplated by the Application Services; (v) disclose to any third party any unique ideas or elements developed by TRG Arts which are reflected in the Application Services, the manner by which the Application Services, or the content of the Application Services including manuals or documentation; (vi) assist the development of competing Application Services, or (vii) knowingly permit any other firm or individual to take or perform any action that Client, in this Section, has agreed not to take. Client agrees to indemnify and hold TRG Arts harmless from and against any loss, damage, cost, or expense incurred by TRG Arts resulting from any modification or misuse of Intellectual Property by Client or, as applicable, End Users.

#### **5. WARRANTIES, LIMITATION OF LIABILITY AND INDEMNIFICATION.**

A. **TRG Arts represents and warrants to Client that the Application Services shall be provided in a workmanlike, professional manner. Unless otherwise set forth herein, all Application Services are provided on an "As-is" basis. TRG Arts disclaims all other warranties, express or implied, including but not limited to those regarding performance, merchantability, infringement, title, or fitness for a particular purpose. TRG Arts does not warrant that the Data Center Application or Application Services will meet Client's, or as applicable End User's requirements or will operate in the combinations which may be selected for use by Client, or as applicable End Users, or that operation of the Data Center Application or Application Services will be uninterrupted or error-free, or that data stored by the Data Center Application or Application Services will not be lost.**

**TRG ARTS SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY, INCLUDING END USERS, FOR: (i) ANY DAMAGE THAT CLIENT OR ANY END USER MAY SUFFER ARISING OUT OF THE USE OF OR THE INABILITY TO USE ANY APPLICATION SERVICE UNLESS SUCH DAMAGE IS CAUSED BY AN INTENTIONAL OR A GROSSLY NEGLIGENT ACT OF TRG ARTS; (ii) ANY LOSS OF DATA OR THE INACCURACY OF DATA; (iii) THE CONTENT OF INFORMATION OR DATA PROVIDED OR TRANSMITTED BY CLIENT OR ANY END USER; (iv) SERVICE IMPAIRMENTS CAUSED BY ACTS WITHIN THE CONTROL OF CLIENT, END USERS OR THEIR EMPLOYEES OR AUTHORIZED AGENTS; (v) INTEROPERABILITY OF SPECIFIC APPLICATIONS; (vi) CLIENT OR AN END USERS INABILITY TO ACCESS OR INTERACT WITH THE APPLICATION SERVICES THROUGH THE INTERNET; (vii) PERFORMANCE IMPAIRMENTS CAUSED ON THE INTERNET; OR (viii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES, OR TECHNOLOGY.**

**B. TRG Arts' cumulative liability for damages arising out of or in connection with the Agreement, including the Data Center Application, regardless of the legal theory of any claim, shall not exceed the Service Fees paid directly by Client to TRG Arts in the calendar year immediately prior to the date the claim accrues, and such a claim for a return of amounts paid shall be Client's exclusive remedy. In no event shall TRG Arts be liable for any claim against Client or TRG Arts by any third party, including as applicable End Users, even if it has been advised of the possibility of such a claim.**

**C. Client hereby warrants and represents that Client's, or End User's as applicable, use of the Data Center Application and provision of Client Data to TRG Arts is consistent with and not prohibited by any privacy policy, terms of use, or similar representation made by the Client or End User to the individual(s) to whom the Client Data relates ("Privacy Policy"). Client agrees that it shall not use the Data Center Application for a purpose prohibited by any such Privacy Policy and shall not request that TRG Arts take any action pursuant to this Agreement which is inconsistent with or prohibited by any such Privacy Policy. Client agrees to defend, indemnify, and hold harmless TRG Arts from and against any and all claims, demands, judgments, liability, damages, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from Client or End User's actual or alleged use, misuse, unauthorized use or use of Client Data in a manner contrary to any applicable Privacy Policy or applicable law. Client's duty of indemnification shall extend to any regulatory investigation or enforcement action threatened or pursued by a federal or state government or regulatory agency, whether or not such investigation or enforcement action results in a complaint in state or federal court.**

**D. TRG Arts shall not be liable for any indirect, incidental, special, consequential, punitive, or exemplary damages, including without**

**limitation damages for loss of goodwill, work stoppage, data loss, or computer failure, incurred by either party or any third party, whether in an action in contract or tort, even if the damages were foreseeable or if the party or any other person has been advised of the possibility of such damages.**

## **6. GENERAL.**

A. The Agreement, including all attached schedules and Terms of Use provided herein, constitute the entire understanding between the Client, and as applicable an End User, and TRG Arts with respect to the subject matter hereof.

B. The waiver or failure of any party to exercise in any respect any right provided for under this Agreement shall not be deemed a waiver of any future right hereunder. No provision of this Agreement which may be found to be illegal, unenforceable, or invalid shall in any way effect the legality, enforceability, or validity of any other provision or provisions of this Agreement, all of which shall remain in full force and effect.

C. Any ambiguities in this Agreement shall not be strictly construed against the drafter of the language concerned but shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the parties at the time of contracting.

D. Client may not assign, transfer, or delegate any of its rights, duties or obligations hereunder, in whole or in part, without the prior written consent of TRG Arts, provided, however, that Client may assign this Agreement in conjunction with the transfer of substantially all of the Client's business (or assets pertaining thereto) to which this Agreement relates. End User has no rights to assign pursuant to the Agreement or these Terms of Use.

E. In all matters relating to this Agreement, Client and TRG Arts shall act as independent contractors. Except as specified herein, neither party shall represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other party, nor to represent the other party as agent, employee, franchisee, or in any other capacity. This Agreement is made and entered into for the sole benefit of Client and TRG Arts, and no other entity, including End Users, shall be a direct or indirect beneficiary of, or shall be entitled to bring any direct or indirect cause of action or claim in connection with, this Agreement.

F. **AGGREGATE DATA:** Aggregate Data shall belong to TRG Arts, and TRG Arts shall have the right to retain and use Aggregate Data for any purpose. Client hereby warrants and represents that Client Data has not been collected pursuant to a Privacy Policy which prohibits the use or sharing of deidentified or aggregate data. During the Term, Client, and as applicable End Users shall have access to certain Aggregate Data through their receipt of the Application Services. Notwithstanding the receipt of such Application Services, all rights to

the research and analysis of the Aggregated Data shall be deemed as reserved exclusively for TRG Arts. Any intellectual capital and/or subsequent products derived from TRG Arts' use of Aggregate Data remain the sole property of TRG Arts. Aggregate Data provided to Client or an End User in connection with the Application Services shall not be released to any third party without the express written consent of TRG Arts.

G. This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado, to the exclusion of any conflict of law or choice of law rule or principle that might otherwise refer construction or interpretation of this Agreement to the substantive law of another jurisdiction. All proceedings relating to the subject matter of this Agreement shall be maintained exclusively in the state and federal courts of Colorado and the parties hereby consent to personal jurisdiction and venue therein and hereby waive any right to object to jurisdiction or venue.

H. Each user is provided a User name to access Data Center. These User names are generated for individuals, not organizations. Logging in as an individual other than yourself is a violation of TRG's Data Security Policy and may result in the removal of your organization from Data Center.