Solutions ITW

TERMS OF SERVICE

These Terms of Service ("Terms") constitute a legal agreement between the organization executing an Order incorporating these terms ("Customer") and Solutions ITW, a business unit of Cordance Operations LLC, Delaware limited liability company ("Company). By signing an Order that incorporates these Terms, or using the Services, you represent that you have the authority to bind the Customer to the Order, these Terms, and any applicable schedules, exhibits, or appendices incorporated or referenced herein.

The parties agree as follows:

1. DEFINITIONS

1.1. "Affiliate" of a party means an entity which, directly or indirectly is controlled by, controls or is under common control with that party where "control" of the party or other entity is the possession of the power to direct or cause the direction of the management and policies of the party or other entity, whether by voting, contract or otherwise.

1.2. "Agreement" means these terms and conditions including all referenced schedules, exhibits or appendices hereto, and any mutually executed agreements incorporated herein by reference.

1.3. "Customer Content" means content, data, and information, including text, graphics, videos, or other material, submitted, uploaded, imported, or otherwise provided to or through the SaaS Software by Customer or by a third party on behalf of or for the benefit of Customer, including Customer's customers, prospective customers and Users of the SaaS Software.

1.4. "Documentation" means Company's then-current generally available documentation, specifications, and user manuals for the Software, as well as any documentation included in or attached to any Order or Software related documents provided by Company to Customer.

1.5. "On-Premises Software" means the Company's Donated Goods Retail ("DGR") management application Software that is provided to Customer in object code form and installed on the local desktop computers of Stores selected by Customer and listed in the Order.

1.6. "Order" means a written description of Software and or Professional Services, and the applicable pricing as mutually agreed to by the parties in an order form, quote, schedule, statement of work or similar document.

1.7. "Professional Services" means services provided by Company's staff (or subcontractors) pursuant to an

Order.

1.8. "SaaS Software" means the modules of the Company's DGR software-as-a-service system as listed on one or more Orders.

1.9. "Software" means collectively Company's On-Premises Software and/or the SaaS Software identified in an Order.

1.10. "Store" means a retail facility operated by Customer for the purpose of selling previously used or sold items to consumers and identified by location on an Order.

1.11. "User" means an individual employee, consultant, or contractor, of Customer who has been authorized by Customer to use the Software on behalf of Customer and/or its Affiliates and includes the Website Administrator.

1.12. "Website Administrator" means an individual employee of Customer who has been authorized by Customer to manage the website in some capacity including but not limited to managing the site configuration settings, website content, website users, etc. on behalf of Customer.

2. ACCESS AND USE OF THE SOFTWARE.

2.1. Company's Provision of the Software. Company will make its Software available to Customer pursuant to the terms of the Agreement and the Documentation.

2.1.1. For Orders that include On-Premises Software, Company grants Customer a limited term, non-exclusive, non-sublicensable and non-transferable (except as otherwise provided herein) license to install the On-Premises Software on desktop computers used by its Users, and to use it only for Customer's internal business use at Stores up to the maximum number of Stores stated on Customer's Order(s).

2.1.2. Customer may use the Software only during the Term as defined in Section 4.1 of this Agreement. Customer's Affiliates, contractors or service providers may use the Software as Users under Customer's account, provided that Customer takes full responsibility for such third parties' compliance with this Agreement.

2.1.3. Customer acknowledges that its use of the On-Premises Software requires third-party hardware, software, internet and/or telecommunications access (which may involve extra charges from those third parties), and that its ability to access and use the On-Premises Software may be affected by Customer's choices and the performance of these products and services.

2.1.4. If Customer's Order includes SaaS Software, Company will make its proprietary SaaS Software available to Customer pursuant to the terms of the Order, this Agreement and the Documentation.

2.1.5. Company grants Customer a limited right to access and use the Software and Documentation

only for Customer's internal business purposes and only up to the maximum number of Stores stated on Customer's Order. Customer's Affiliates, contractors or service providers may use the Software or Documentation as Users under Customer's account, provided that Customer takes full responsibility for such third parties' compliance with this Agreement.

2.1.6. Customer agrees to use commercially reasonable efforts to upgrade to Company's most current version/release of the Software promptly after the latest release is made available.

2.2. Changes to Software. Company reserves the right to enhance, upgrade, improve, modify or discontinue features of the Software as it deems appropriate and in its discretion. Company will not materially reduce the core functionality or discontinue any Software unless Company provides Customer with prior written notice. Company may offer additional optional functionality, or premium feature improvements, for both Company's standard On-Premises and SaaS Software for an additional cost.

2.3. Login Information. Customer is entirely responsible for maintaining the security of its Users' login information.

2.4. Limitations on Customer's Use. By using the Software, Customer agrees on behalf of itself, Customer's Affiliates and Users, not to (i) use the Software in a way that abuses or disrupts Company's networks, user accounts, or the Software; (ii) transmit through the Software any harassing, indecent, obscene, or unlawful material; (iii) use the Software in violation of applicable laws, or regulations; (iv) use the Software to send unauthorized advertising, or spam; (v) decompile, modify, prepare derivative works of, or reverse engineer the Software (vi)) market, sublicense or resell the use of the Software to any third party; (vii) harvest, collect, or gather User data without their consent; (viii) transmit through the Software any material that may infringe the intellectual property, privacy, or other rights of third parties; or (ix) use the Software to commit fraud or impersonate any person or entity.

2.5. Responsibility for Users. Customer is responsible for the activities of all Users who access or use the Software through Customer's account, and Customer agrees to ensure that any such Users will comply with the terms of this Agreement. If Customer becomes aware of any violation of this Agreement in connection with use of the Software by any person, please contact Company.

2.6. Support and Maintenance. Company will provide support and maintenance for the Software as detailed in Exhibit A hereto.

3. ORDERS, FEES AND PAYMENT.

3.1. Orders. Customer's order for Software or Professional Services is detailed in an executed Order. Customer may order additional Software using Company's then-current ordering processes. All Orders are effective and the Term of the Order begins on the date that the Order is signed by both parties ("Order Effective Date"). Each Order will be treated as separate and independent Orders; form part of the Agreement; and may be subject to Company's verification and credit approval process

3.2. <u>Payments</u>. Unless otherwise specified in the Order, Customer will pay all undisputed fees set forth in an invoice within 30 days of the date thereof. Company may update the prices of the fees for the Software annually. Except as set forth in Sections 4.3 and 9.1 below, any payments Customer makes to Company are final and non-refundable.

3.3. <u>Purchase Orders.</u> If Customer's payment process requires that it issue a purchase order, the following process will apply: (i) not less than 60 days prior to the end of each year of the Term, Company will send an Order to document pricing for the upcoming 12 month period; and (ii) Customer will return the countersigned Order and its purchase order not more than 30 days after receipt of the Order from Company, except in the event of a non-renewal.

3.4. <u>Payment Information</u>. Customer is responsible for providing accurate and current billing, contact and payment information to Company. Customer agrees that Company may charge Customer's payment card or bill Customer for all amounts due from Customer, and Company may take steps to update Customer's payment information to ensure payment can be processed. Customer agrees that Customer's payment information may be provided to third parties for payment processing and fraud prevention purposes. Company may suspend or terminate Customer's use of the Software if at any time Company determines that Customer's payment information is inaccurate or not current, and Customer is responsible for fees and overdraft charges that Company may incur when Company charges Customer's card for payment. All references to currency will be in US dollars ($USD) unless otherwise stated on the Order.

3.5. <u>Taxes and Withholdings.</u> Customer is responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs, or any other similar taxes or fees (collectively, "Taxes and Fees") imposed by any government entity or collecting agency based on the Software, except those taxes and fees based on Company's net income, or Taxes and Fees for which Customer has provided an exemption certificate. In all cases, Customer will pay the amounts due under this Agreement to Company in full without any right of set-off or deduction.

3.6. <u>Disputes; Delinquent Accounts.</u> Customer must notify Company of any fee dispute within 15 days of the invoice date, and once resolved, Customer agrees to pay those fees within 15 days. Company may, on 10 days' notice to Customer, suspend Customer's right to use the Software if Customer does not pay undisputed fees by their due date, and Customer agrees to reimburse Company for all reasonable costs and expenses, including collection costs and attorneys' fees, incurred in collecting delinquent amounts. Customer further agrees that Company may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due.

3.7. <u>Sales, Promotional Offers, Coupons and Pricing.</u> Sales, promotions, and other special discounted pricing offers are temporary, and upon the renewal of Customer's subscription, any such discounted pricing offers may expire. Company reserves the right to discontinue or modify any coupons, credits, sales, and special promotional offers in Company's sole discretion.

4. TERM AND TERMINATION.

    4.1. Term. The initial term commitment for Customer's purchase of a subscription for Software will be as specified in the Order ("Initial Term") and begins on the Order Effective Date. If the Order is silent, the Initial Term of the Order will be 36 months. After the Initial Term, the Order will automatically renew for additional periods of the same length as the Initial Term (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party provides notice of non-renewal at least 30 days before the current term expires. Terminating a specific Order does not affect the term of any other Orders still in effect. Company may agree to align the invoicing under multiple Orders, but this will not reduce the term of any Order. Terminating specific Orders does not affect the term of any Order still in effect.

    4.2. Termination for Cause. Either party may terminate the Agreement or an Order (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice, or (ii) where permitted by applicable law, if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business.

    4.3. Effect of Termination. If the Agreement or any Order is terminated, Customer will immediately discontinue all use of the terminated Software, and delete, deinstall and destroy all copies of the On-Premises Software and Documentation in Customer's procession and certify in writing to Company that such On-Premises Software and Documentation has been deinstalled or destroyed. For SaaS Software, prior to the expiration or termination of this Agreement or Order, if Customer requests, Company will transmit Customer Content in the SaaS Software in a mutually agreeable format to Customer via a Statement of Work, and upon termination or expiration, Company will securely destroy Customer Content remaining in Company's possession. For Termination will not affect any claim arising prior to the termination date. If Company discontinues the SaaS Software or materially reduce the core functionality in accordance with Section 2.2 above, and Customer elects to terminate the applicable Order, Company will provide Customer with a pro rata refund of any prepaid fees attributable to the period after the termination.

    4.4. Survival. The terms of this Agreement will survive the termination or expiration of this Agreement to the extent reasonably necessary to carry out the intent of the parties as indicated therein.

5. PROPRIETARY RIGHTS.

    5.1. Company's Proprietary Rights and Marks. Customer acknowledges that Company or its licensors retain all proprietary right, title and interest in the Software, all Documentation, Company's name, logo or other marks (together, the "Marks"), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. Except for the express limited rights set forth in this Agreement, no right, title or interest in Company's Software, Documentation, or Marks is granted to Customer. Customer agrees that it will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part Company's Marks or is similar to any of these.

5.2. <u>Customer Content.</u> Customer retains all rights to its Customer Content and is solely responsible for the Customer Content sent or transmitted by Customer or displayed or uploaded by Customer in using the Software and for compliance with all laws pertaining to the Customer Content, including, but not limited to, laws requiring Customer to obtain the consent of a third party to use the Customer Content and to provide appropriate notices of third-party rights. Customer hereby grants Company a worldwide, royalty-free, non-exclusive license to use, modify, reproduce, and distribute the Customer Content in order to provide and operate the SaaS Software. Company will not view, access or process any of the Customer Content, except: (x) as authorized or instructed by Customer or Customer's Users in this Agreement (including as necessary to provide ongoing support for the Software) or in any other agreement between the parties, or (y) as required to comply with Company's policies, applicable law, or governmental request.

5.3. <u>Feedback.</u> Customer agrees that Company will have a fully paid-up, royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to implement, use, modify, commercially exploit, incorporate into the Software or otherwise use any suggestions, enhancement requests, recommendations or other feedback Company receives from Customer, its Affiliates and Users ("Feedback"). Company also reserves the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by Customer's Feedback.

5.4. <u>Aggregated Statistics.</u> Notwithstanding anything to the contrary in this Agreement, Customer acknowledges and agrees that Company may collect and compile data and information related to Customer's use of the SaaS Software to be used by Company in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the SaaS Software ("Aggregated Statistics"). As between Company and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Company. Customer agrees that Company may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law, provided that such Aggregated Statistics do not identify Customer or its Customer Content.

5.5. <u>Publicity.</u> Customer agrees that Company may use Customer's name and logo, and refer to Customer, in its promotional and marketing materials including on its website, lists and business presentations.

6. <u>PRIVACY AND SECURITY</u>.

6.1. <u>Security Safeguards.</u> Each party will maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of the Customer Content and any associated personal data that is collected and/or processed through the Software. On Company's part, those safeguards will include measures designed to prevent unauthorized access, use, modification, deletion and disclosure of Customer Content when using the SaaS Software. Customer (not

Company) bears sole responsibility for adequate security, protection and backup of Customer Content when in Customer's or its representatives' or agents' possession or control.

6.2. <u>Sub-processors.</u> Customer acknowledges and agrees that Company may use sub-processors to help provide the SaaS Services, who may access the Customer Content and any associated personal data, to provide, secure and improve the SaaS Software. Before sharing Customer Content with any of Company's sub-processors, Company will require that the sub-processor maintains, at a minimum, reasonable data practices for maintaining the confidentiality and security of the Customer Content and preventing unauthorized access. Company will be responsible for the acts and omissions of such sub-processors to the same extent that Company would be responsible if Company were performing the SaaS Services.

6.3. <u>State Privacy Laws.</u> To the extent that Customer Content contains "personal information" that is subject to the California Consumer Privacy Act of 2018, its implementing regulations, and any amendments thereto (collectively, the "CCPA"), or any other substantially similar state privacy laws, Company agrees that it will comply with all such laws and process such personal information as a service provider (as defined under the CCPA) and will not (a) retain, use or disclose personal information for any purpose other than the purposes set out in this Agreement and/or as permitted by the CCPA; or (b) "sell" (as defined and understood within the requirements of the CCPA) personal information.

7. <u>CONFIDENTIALITY.</u>

7.1. "Confidential Information" means all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. All Customer Content will be deemed Confidential Information of Customer without any marking or further designation. All Company technology and the terms and conditions of this Agreement will be deemed Confidential Information of Company without any marking or further designation. Confidential Information does not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

7.2. Each party (as "Receiving Party") will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party (the "Disclosing Party") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors and its Affiliates' employees and contractors who need that access for purposes consistent

with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party will, to the extent legally permitted, provide Disclosing Party with advance written notification, and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8. <u>WARRANTIES.</u>

8.1. Company provides its Services using a commercially reasonable level of care and warrants that the Services will materially conform to the Documentation under normal use. Company's entire liability and Customer's exclusive remedy under this warranty will be, at Company's sole option and subject to applicable law, to provide conforming services, or to terminate the non-conforming services and provide a pro-rated refund of any prepaid fees from the date Customer notifies Company of the non-conformance through the end of the remaining term. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COMPANY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. COMPANY DOES NOT REPRESENT OR WARRANT THAT (i) THE USE OF COMPANY'S SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (ii) COMPANY'S SERVICES WILL MEET CUSTOMER'S SPECIFIC REQUIREMENTS.

8.2. Use of the Services may be available through a compatible mobile device, internet access, and may require third party software. Customer agrees that Customer is solely responsible for these requirements, including any applicable changes, updates and fees, as well as the terms of Customer's agreement with Customer's mobile device and telecommunications provider. COMPANY MAKES NO WARRANTIES OR REPRESENTATION OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO (I) THE AVAILABILITY OF INTERNET OR TELECOMMUNICATION SERVICES FROM CUSTOMER'S PROVIDER AND ACCESS TO THE SERVICES AT ANY TIME OR FROM ANY LOCATION, (II) ANY LOSS, DAMAGE OR OTHER SECURITY INTRUSION OF THE INTERNET OR TELECOMMUNICATION SERVICES, AND (III) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTING CONNECTED WITH THE SERVICES. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

9. <u>INDEMNIFICATION.</u>

9.1. <u>Company's Indemnity</u>. Company will indemnify and defend Customer against any third-party claim alleging that any of the Software infringes upon any patent or copyright, or violates a trade secret of any such third-party ("IP Claim"), and Company agrees to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. Customer will promptly notify Company of any claim and cooperate with Company in defending the claim. Company will reimburse Customer for reasonable expenses incurred in providing any cooperation or assistance. Company will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring Customer to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) Customer may join in the defense with its own counsel at Customer's own expense.

9.1.1. If (i) Company becomes aware of an actual or potential IP Claim, or (ii) Customer provides Company with notice of an actual or potential IP Claim, Company may (or in the case of an injunction against Customer, will), at Company's sole option and determination: (a) procure for Customer the right to continue to use the Software; or (b) replace or modify the Software with equivalent or better functionality so that Customer's use is no longer infringing; or (c) if (a) or (b) are not commercially reasonable, terminate provision of the Software and refund to Customer any pre-paid Service fees for any periods after the termination of the Software, less any outstanding moneys owed by Customer to Company.

9.1.2. The obligations in Sections 9.1 do not extend to (i) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Software with other products, software or services not provided by Company; (ii) any IP Claim related to any Customer Content, or (iii) any IP Claim related to any use or exercise of any other right in respect to the Software outside the scope of the rights granted in this Agreement.

9.2. <u>Customer's Indemnity</u>. Customer will indemnify and defend Company against any third-party claim resulting from a breach of Sections 2.4 or 5.2 or alleging that any of its Customer Content infringes upon any patent or copyright, or violates a trade secret of any party, and Customer agrees to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. Company will promptly notify Customer of any claim and cooperate with Customer in defending the claim. Customer will reimburse Company for reasonable expenses incurred in providing any cooperation or assistance. Customer will have full control and authority over the defense and settlement of any claim, except that: (i) any settlement requiring Company to admit liability requires prior written consent, not to be unreasonably withheld or delayed, and (ii) Company may join in the defense with its own counsel at Company's own expense.

10. <u>LIMITATION ON LIABILITY.</u>

10.1. <u>LIMITATION ON LIABILITY.</u> NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY DAMAGES OR DAMAGES ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, OR (iv) CUSTOMER'S LOST PROFITS, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

10.2. <u>LIMITATION ON AMOUNT OF LIABILITY.</u> EXCEPT FOR A PARTY'S INDEMNIFICATION OBLIGATION UNDER SECTION 9, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SOFTWARE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DOES NOT LIMIT CUSTOMER'S OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER ANY ORDER.

11. <u>COMPLIANCE WITH LAWS.</u> In connection with the performance, access and use of the Software under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, data protection and anti-bribery laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Further, Customer will not permit its Users to access or use any Service in a U.S. embargoed country or in violation of any U.S. export law or regulation. If necessary and in accordance with applicable law, Company will cooperate with local, state, federal and international government authorities with respect to the Software. Notwithstanding any other provision in this Agreement, Company may immediately terminate the Agreement for noncompliance with applicable laws.

12. <u>SUSPENSION OF ACCESS TO SOFTWARE.</u> Company reserves the right to suspend Customer's access to the Software or restrict functionalities if (a) Company reasonably believes that Customer, Customer's Affiliates or Users have materially violated this Agreement, or (b) Company reasonably determines that the security of Company's SaaS Software or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities. Unless legally prohibited, Company will use commercially reasonable efforts to notify Customer when taking any of the foregoing actions. Company will not be liable to Customer, Customer's Affiliates or Users or any other third party for any such suspension of access to the Software or reduced functionality. Any suspected fraudulent, abusive, or illegal activity by Customer, Customer's Affiliates or Users may be referred to law enforcement authorities at Company's sole

discretion.

13. ADDITIONAL TERMS.

    13.1. Dispute Resolution. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth below) it will provide written notice to the other party of the specific issue(s) in dispute (and reference the relevant provisions of the contract between the parties which are allegedly being breached). Within 30 days after such notice, knowledgeable executives of the parties will hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section will not apply to claims subject to indemnification under Section 9 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

    13.2. Arbitration. If the parties do not reach an agreed upon solution within a period of 30 days from the time of the commencement of the informal dispute resolution process described above, then either party may initiate binding arbitration by a single arbitrator before the American Arbitration Association using its Commercial Arbitration Rules as the sole means to resolve claims subject to the terms set forth below. CUSTOMER AGREES THAT ANY DISPUTE OR CLAIM RELATING TO THIS AGREEMENT WILL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT AND THAT CUSTOMER WILL ARBITRATE WITH COMPANY ONLY IN CUSTOMER'S INDIVIDUAL OR CORPORATE CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS. Any arbitration claim must be brought within one year of the claim arising. The arbitrator will have exclusive authority to resolve all disputes arising out of or relating to the interpretation, applicability, enforceability or formation of this Agreement, including but not limited to any claim that all or any part of this Agreement is void or voidable, or whether a claim is subject to arbitration. The arbitrator will be empowered to grant whatever relief would be available in a court under law or in equity. The arbitrator's award will be written, and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. Customer understands and agrees that unless Customer can demonstrate that arbitration in Delaware would create an undue burden for Customer, any arbitration hearing will be held in Delaware. Customer understands and agrees that by entering into this Agreement, each party is waiving the right to a jury trial or a trial before a judge in a public court. Other rights that Customer would have if Customer went to court, such as the right to appeal and to certain types of discovery, may be more limited or may also be waived. Notwithstanding the parties' decision to resolve all disputes through arbitration, either party may bring an action in state or federal court to protect its intellectual property rights (meaning patents, copyrights, moral rights, trademarks, and trade secrets, but not privacy or publicity rights) or Confidential Information. Furthermore, Customer has the right to opt out and not be bound by these arbitration provisions by sending written notice of Customer's decision to opt out to the following address Legal@Cordance.co within 30 days of the Effective Date of this Agreement.

    13.3. Governing Law and Jurisdiction. These Agreement will be governed by the laws of the State of

Delaware. For any dispute not subject to arbitration, each party agrees to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Delaware.

13.4. <u>Assignment.</u> Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which will not be unreasonably withheld, except that either party may assign the Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, acquisition, or sale of all or substantially all of its business or assets to which this relates. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.

13.5. <u>Notices.</u> Notices must be sent by personal delivery, overnight courier, or registered or certified mail. Company may also provide notice to the email last designated on Customer's account, electronically via postings on Company's website, in-product notices, or via Company's self-service portal or administrative center. Unless specified elsewhere in this Agreement, notices should be sent to Company at 16 W. Martin Street, Raleigh, NC 27601, attention Contract Admin; e-mail mweaver@solutionsitw.com; and for notice related to legal matters, e-mail to legal@cordance.co. Company will send notices to the address last designated on Customer's account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.

13.6. <u>Entire Agreement; Order of Precedence.</u> This Agreement, including the Order(s) and any applicable schedules, exhibits, and appendices, and any mutually signed SOW set forth the entire agreement between Customer and Company relating to the Software and Professional Services and supersedes all prior and contemporaneous oral and written agreements, except as otherwise permitted. If there is a conflict between an executed Order, this Agreement, and the Documentation, in each case, as applicable, the conflict will be resolved in that order, but only for the specific Software described in the applicable Order. No modification of or amendment to this Agreement will be effective unless mutually agreed in writing.

13.7. <u>General Terms.</u> If any term of this Agreement is not enforceable, this will not affect any other terms. Both parties are independent contractors and nothing in this Agreement creates a partnership, agency, fiduciary or employment relationship between the parties. No person or entity not a party to the Agreement will be a third-party beneficiary or have the right to modify the Agreement or to make commitments binding on Company. Failure to enforce any right under the Agreement will not waive that right. The Agreement may be agreed to online or executed by electronic signature and in one or more counterparts. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g. natural disasters; terrorist activities, activities of third-party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.

EXHIBIT A

Service Level Agreement

1. Introduction

1.1 <u>Purpose</u>

This document provides a definition as to what constitutes acceptable service in quantifiable and measurable terms. The intent of this Service Level Agreement (SLA) is to define expectations as to how issues will be prioritized and when they will be resolved based on their severity and impact to Customer.

1.2 <u>Scope</u>

The areas to be serviced are detailed in the Statement of Work (SOW) which governed your implementation.

Service will not include:

· Request by personnel not belonging to the authorized list of employees from Customer.

· Networks, devices, servers, workstations, operating systems, and applications not listed in the SOW.

· Access Management or other security-related processes, whose implementation will be retained by Customer as requested.

· Incidents or requests from facilities not listed in this document or the Order

1.3 <u>Service Objectives</u>

1.3.1 <u>Support Service Hours</u>

Support service is available during regular business hours (8:30 AM – 5:30 PM ET), except when the Company offices are closed due to holidays, administrative closings, or inclement weather. Support service can be requested, or an Incident reported according to the methods and days/times listed in the table below (Support Service Hours).

Current Solutions Holidays Observed: Memorial Day, 4th of July, Labor Day, Thanksgiving and the Day after, Christmas, New Years. Company will also be closed the week between Christmas and New Years.

Incidents reported or services requested outside the working hours will be served on the next scheduled working day unless a special procedure for Major Issue is invoked.

Support Service Hours		
<u>Interface</u>	<u>When</u>	<u>Hours</u>
Web Portal	Every Day	At All Times
E-Mail	Every Day	At All Times
Telephone (Urgent Issues)	Every Day	Client Working Hours
Telephone (Non-Urgent Issues)	Weekdays Non-Holidays	8:30 AM-5:30 PM ET

1.3.2 <u>Service Availability</u>

For the provision of the Service covered by this SLA, availability is determined by the percentage of the time components of the Service are available to users.

Company will seek 100% availability during working hours for all the interfaces combined (telephone, e-mail or Web) to report or request service. That means Customer will always have at least one option available to report an incident or request service during working times.

Availability of each interface alone is provided below:

Availability of Service		
Interface	Availability	Hours to Measure
Web Portal	99.9%	At All Times
E-Mail	99.9%	At All Times

Telephone	95%	At All Times

1.3.3 Service Reliability

The commitment in this SLA is as follows:

· No more than 2 (two) Critical Failures in each 12 month rolling period.

For the provision of the Support service covered by this SLA, a Failure will be considered as any Incident where Impact = Critical.

1.3.4 Disaster Recovery & Backup

Recovery Time Objective (RTO): 4 hours (maximum acceptable downtime). Recovery Point Objective (RPO): 1 hour (maximum acceptable data loss).

1.3.5 Support Service Performance

The target resolution time for each Incident or Service Request depends on its Priority. The agreed targets are as follows:

Priority	Severity	Characteristics	Target
Critical	Critical issue occurring on Solutions DGR system preventing business operations. A large number of users are prevented from working with no procedural workaround.	· Critical system-wide functionality not available · Data loss or data corruption · Solutions DGR system unavailable storewide · Must be reported via phone	1-5 Hours
High	Major issue occurring on Solutions DGR system severely impacting business. A large number of users are impacted by issue, but they are still able to work in a limited capacity.	Important functionality not available Storewide registers impacted for customer-facing functionality Reporting services unavailable	1-3 Days

Normal	Issue causing a partial or non-critical loss of functionality on Solutions DGR system. A small number of users are affected.	Non-Critical system functions not available Minor performance degradation Single register impacted	3-15 Days
Low	Issue occurring on single machine, question, enhancement quote request, or other issue that does not impact customer experience.	Incorrect system behavior without direct impact to customer experience General Questions Cosmetic Issues	16-45 Days

1.4 Definitions

"Available" shall mean the Services are up, running and responsive to ping requests and is substantially providing Customer the functionality described in the Documentation for the Services.

"Availability" shall be 99.5% Available and shall mean Scheduled Uptime minus Unplanned Downtime, divided by Scheduled Uptime multiplied by One Hundred (100) to determine a percentage (%). For purposes of determining whether Company's performance meets any Service Level, Company's performance will be measured based on a monthly average for the Services. The following is 'Availability' expressed as a mathematical formula:

A = Availability

SU = Scheduled Uptime

UD = Unplanned Downtime

ED = Excusable Downtime

A = (SU - (UD - ED)/SU) x 100

The following is an example, determined on a monthly basis, using the above formula:

A = Availability

SU = 720

UD = 9.5 hours

ED = 3

A = (720 - (9.5 - 3))/720 x 100 = 99.09%.

"Scheduled Uptime" shall mean the days of the week and hours per day that the Services and/or network is scheduled to be Available for use by The Client subject to Scheduled Downtime.

"Scheduled Downtime" shall mean, of the Scheduled Uptime, the aggregate number of hours in any calendar month during which the system or network is scheduled to be unavailable for use by The Client due to such things as preventive maintenance, system upgrades, etc.

"Unplanned Downtime" shall mean, of the Scheduled Uptime, the aggregate number of hours in any calendar month during which the system or network is unavailable attributable to Company.

"Excusable Downtime" shall mean, of the Scheduled Uptime, the aggregate amount of time in any calendar month during which the Services or network is unavailable for use by The Client due to action or inaction by The Client, its Suppliers or agents, or due to a force majeure event, which is excusable under this Agreement. Emergency system maintenance shall be considered Excusable Downtime.

It may be necessary to temporarily restrict access to The Client's application(s) and/or database(s) without prior notice to protect the integrity of the application and database; such restricted access shall be considered Excusable Downtime for the purpose of calculating Service Levels.

1.5 Remedies

For each month that the system Availability is less than 99.5% or the average Response Time is greater than the Response Time detailed for the applicable Priority Level above, Company will credit Customer's next month's invoice with a 10% credit for the total monthly fees. This is Customer's sole remedy for any failure of Company to achieve the Availability SLA.

1.6 Excusable Downtime - Exclusions

This SLA (and the definition of Availability) excludes the following:

· Issues that are related to external apps or third-party integrations

· Any products or features identified as pilot, alpha, beta or similar

· External network or equipment problems outside of our reasonable control, such as bad routing tables between your internet service provider (ISP) and our server, defective or incorrectly configured CC terminals, AWS, Microsoft, or other third-party services outside our control, etc.

· Customer-created reports or reporting systems outside of our normal reporting environment

Exhibit last updated: 2025-04-01