

DAMAGES. THE FOREGOING LIMITATION OF LIABILITY REPRESENTS THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING HEREUNDER AND IS AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES. Without limiting the foregoing limitation of liability, in the event information to be transmitted through the Services is not transmitted by ACES or is not accurately transmitted as a result of ACES' failure to perform the Services in accordance with the term of this Agreement and such failure results in damage to Client or Client's customer, then ACES' sole obligation and liability to Client and Client's customer for such event (subject to reasonable mitigation by Client and Client's customer) shall be limited to furnishing credits on subsequent invoices from ACES to Client or Client's customer in an aggregate amount equal to the actual damages incurred for reconstructing or retransmitting the data, including reasonable out-of-pocket expenses which Client or Client's customer can demonstrate it has sustained and which are directly attributable to such failure. Any claim against ACES by Client must be asserted in writing within sixty (60) days after ACES should have transmitted information received from a Client's customer or the transmission of inaccurate information on which the claim is based, whichever is applicable. As a condition of the foregoing, Client shall promptly supply to ACES documentation reasonably requested by ACES to support any claim of Client. THE FOREGOING STATES THE ENTIRE LIABILITY OF ACES WITH RESPECT TO CLAIMS THAT INFORMATION WAS NOT TRANSMITTED OR WAS TRANSMITTED INACCURATELY BY ACES AND SUCH LIABILITY IS FURTHER LIMITED BY THE LIMITATIONS OF LIABILITY APPEARING IN THIS SECTION ABOVE.

9. Indemnification. Each Party ("Indemnifying Party") shall indemnify and hold the other Party ("Indemnified Party") harmless from and against any losses incurred by the Indemnified Party with respect to any claim by a third Person that arises out of the: (a) the intentional act or omission or gross negligence of the Indemnifying Party; or (b) a material breach of this Agreement by the Indemnifying Party; provided, however, that the Indemnified Party provide prompt notice to the Indemnifying Party, the Indemnified Party does not settle any such claim with the prior written consent of the Indemnifying Party, and the Indemnifying Party retains the right to appoint its own counsel and control the defense of any such claim.
10. Limitation on Assignment. This Agreement is personal to Client and Client shall not assign or transfer this Agreement, or any right or obligation hereunder, without the prior written consent of ACES (not to be unreasonably withheld), and any assignment or transfer in violation of such restriction shall be void.
11. Agreement For Software as a Service Only. Client acknowledges that this Agreement is a contract for software as a service only. The Parties intend that the relationship between them created under this Agreement is solely that of a software as a service provider on the part of ACES and Client as an end user. No Party shall be considered an agent, partner, joint venturer, or employee of the other Party for any purpose and each Party is interested only in the results obtained under this Agreement; the manner and means of performing the services are subject to such Party's sole control.
12. Survival. Section 2 of the 1st page of this Agreement and Sections 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of this Exhibit shall survive termination of this Agreement.
13. Amendment/Non-Waiver. This Agreement shall not be amended or modified except by written document signed by both Parties. Waiver by a Party of any provision of this Agreement shall not be a waiver of, or prejudice to, a Party's right to require strict performance of the same or any other provision in the future.
14. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada. Both Parties consent to personal jurisdiction, as well as the exclusive venue for any claim regarding or arising out of this Agreement in the state or federal court located in Clark County, Nevada.
15. Counterparts/Entire Agreement. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one instrument. The Parties acknowledge that delivery of executed counterparts of this Agreement may be affected by a facsimile transmission or other comparable means, with an original document to be delivered promptly thereafter via overnight courier. This Agreement, including its schedules and exhibits, constitutes the entire Agreement of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous representations, inducements, promises, or agreements, oral or otherwise, between the Parties with respect to the subject matter hereof.