



**EXHIBIT B**  
**Managed Threat Intelligence**  
**Terms and Conditions**

1. Definitions.

"**Access Credentials**" means any username, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

"**Agreement**" has the meaning set forth in the preamble.

"**Appliance**" means, as applicable, the hardware and peripheral devices installed on Client's premises used to provide one or more Services and/or the Vertek and/or third-party provided services on which one or more Services may be dependent.

"**Authorized User**" means the individuals authorized to use the Services by Client and who have been supplied with Access Credentials by the Client (or by Vertek at Client's request).

"**Client**" has the meaning set forth in the preamble.

"**Client Data**" means all information, data and other content, in any form or medium, that is provided by Client or an Authorized User to Vertek or is input into the Vertek Platform by or on behalf of Client or an Authorized User. Client Data does not include any information or data (including, without limitation, meta-data) generated as a result of derived by or through the use of the Services.

"**Client Systems**" means the Client's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Client or through the use of third-party services.

"**Client Portal**" means the Vertek or third-party websites or computer systems through which Authorized Users may obtain certain of the Services.

"**Confidential Information**" has the meaning set forth in §9.1 (Confidential Information).

"**Discloser**" has the meaning set forth in §9.1 (Confidential Information).

"**Documentation**" means any user manuals that Vertek makes available to Client in any form or medium as part of the Services and which describe the functionality, components, features or requirements of the Services.

"**Effective Date**" has the meaning set forth in the preamble.

"**Fees**" has the meaning set forth in §7.1 (Fees).

"**Materials**" means the Service Software, Documentation and Vertek Platform and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Vertek or any Vertek Personnel in connection with the Services or otherwise comprise or relate to the Services or Vertek Platform. For the avoidance of doubt, Materials include any information or data (including, without limitation, meta-data) generated or derived from Client's use of the Services, but do not include Client Data.

"**Pre-Processed Data**" means all raw log data transmitted from the Client Systems to the Appliance.

"**Processed Data**" means all Client Data other than Pre-Processed Data.

"**Prohibited Data**" has the meaning set forth in §6 (Prohibited Data).

"**Recipient**" has the meaning set forth in §9.1 (Confidential Information).

"**Representatives**" means, with respect to a party, that party's and its affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sub-licensees, subcontractors and legal advisors.

"**Service Order**" means a service order in the form attached hereto in Exhibit A.

"**Vertek**" means Vertek Corporation, its successors and assigns.



"**Vertek Platform**" means the information technology infrastructure used by or on behalf of Vertek in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Vertek or through the use of third-party services.

"**Vertek Personnel**" means all individuals involved in the performance of Services as employees, agents or independent contractors of Vertek or any subcontractor.

"**Service Software**" means the Vertek software and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, to which Vertek or such third-party provides access and use of as part of the Services.

"**Services**" means the hosting, management, operation and maintenance of the Service Software for remote electronic access and use by Client and its Authorized Users and other services more particularly described on the Service Description.

"**Term**" has the meaning set forth in **§10.1** (Term).

## 2. Services.

2.1 Services. Subject to the terms of this Agreement, during the Term, Vertek shall use commercially reasonable efforts to provide Services.

2.2 Appliance. Use of certain Services may require Client to install hardware and peripheral devices on Client's premises and to integrate the Appliance with Client's Systems (which may require installation of software agents on Client's Systems), to the extent necessary, to satisfy requirements referenced in the Service Description. Client shall comply with the physical environmental requirements with respect to such Appliance referenced in the Service Description. The Appliance and all of its contents and related data (other than the Client Data) shall be the property of Vertek or its licensors. Client shall obtain no right, title or interest therein. Upon any expiration or termination of this Agreement or upon the replacement of any Vertek provided hardware and peripheral devices on Client's premises at any time during the Term, Client agrees to return it to Vertek within 14 days.

2.3 Changes. Vertek may, in its sole discretion, at any time and from time to time, without notice to or consent of Client, make changes to the Vertek Platform, Service and Materials. Client shall provide Vertek with such information regarding the Client System as Vertek may reasonably request. Any changes to the Client System may result in the Service's failure to operate in accordance with the Documentation and this Agreement. In such event, upon Client's approval, Vertek may perform additional services, at Vertek's then current hourly rates, in order to either modify the Service and/or identify modifications to the Client Systems to better accommodate such changes to the Client's baseline environment.

2.4 Suspension/Termination. Vertek may, directly or indirectly, by any means, suspend, terminate or otherwise deny Client's, any Authorized User's or any other Person's access to or use of all or any part of the Service or Materials, without incurring any resulting obligation or liability, if: (a) Vertek receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Vertek to do so; or (b) Vertek believes, in its discretion, that Client or any Authorized User: (i) has violated **§3.3** (Restrictions), **§6** (Prohibited Data) or **§9** (Confidentiality); or (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities; or (c) this Agreement expires or is terminated.

## 3. Authorization and Client Restrictions.

3.1 Authorization. Subject to and conditioned on Client's payment of the Fees and compliance with all other terms and conditions of this Agreement, Vertek hereby authorizes Client to access and use, solely during the Term, the Service and such Materials as Vertek may supply or make available to Client, solely for use by Authorized Users for the benefit of Client and solely in or for Client's internal business operations. This authorization is non-exclusive and, other than as may be expressly permitted in **§14.5** (Assignment), non-transferable.

3.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any intellectual property rights in or relating to the Service or Materials, whether expressly, by implication, estoppel or

otherwise. All right, title and interest in and to the Service and the Materials are and will remain with Vertek and/or the respective rights holders therein.

3.3 **Restrictions.** Client shall not, and shall not permit any other person or entity to, access or use the Service or Materials except as expressly permitted by this Agreement. Notwithstanding anything to the contrary, to the extent the Service (as contemplated in the Exhibit A Managed Threat Intelligence Service Description and the relevant Service Order) contemplates that the Client will have access to the AlienVault software via the Appliance or the AlienVault USM-Anywhere service, then, solely with respect to such use thereof, this Agreement shall include, by this reference, as if fully set forth herein, the same restrictions as are contained in AlienVault's then current standard End User Software License and Service Agreement currently located at <https://www.alienvault.com/docs/terms/EULAcurrent.pdf> or Master Services Agreement currently located at <https://www.alienvault.com/docs/terms/MSA01Jan2018.pdf> and/or <https://www.alienvault.com/docs/terms/MSAcurrent.pdf>, respectively. Such URLs may be changed at any time by Vertek or Alien Vault from time to time without notice. For purposes of clarity and without limiting the generality of the foregoing, Client shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Service or Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Service or Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Service or Materials, in whole or in part or otherwise carry out any action to the detriment of Vertek's or its licensors' intellectual property rights;
- (d) bypass or breach any security device or protection used by the Service, Service Software or Materials or access or use the Service or Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the Service or Vertek Platform, any information or materials that are unlawful or injurious, or contain, transmit or activate any harmful code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Service, Vertek Platform or Vertek's provision of services to any third party, in whole or in part or reject, avoid, elude, remove, deactivate or evade, in any way, any protection mechanism of the Service of any Service Software;
- (g) remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Service or Materials, including any copy thereof;
- (h) access or use the Service or Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Vertek customer), or that violates any applicable law;
- (i) access or use the Service or Materials for purposes of competitive analysis of the Service or Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Vertek's detriment or commercial disadvantage;
- (j) access or use the Service or Materials in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Service could lead to personal injury or severe physical or property damage;
- (k) otherwise access or use the Service or Materials beyond the scope of the authorization granted under **§3.1** (Authorization); or



(1) disclose to any third party any benchmarking or comparative study involving the Service, Service Software or Documentation.

3.4 Export. Client shall not ship, transmit or otherwise export or re-export to any country, directly or indirectly (including, without limitation, any deemed export), separately or as part of a system, any Service or Materials without the prior written consent of Vertek and without Client, at its own cost, first complying with all applicable laws and regulations, including, without limitation, obtaining all licenses from, the appropriate agency of the United States and/or other applicable government. Client certifies that (a) it is not described or designated in the Specially Designated Nationals and Blocked Persons List of OFAC; (b) does not engage in any prohibited dealings or transactions with any such person or entity; and (c) does not engage in any dealings or transactions which would cause Vertek to be in violation of any economic sanctions, regulations and guidelines of OFAC.

3.5 Additional Third-Party Terms. Certain Services (“Dependent Services”) provided by Vertek may be dependent on third-party hardware, software or services (“Third Party Products”). Such Third-Party Products and Dependent Services are provided subject to any additional terms and conditions posted from time to time on the Client Portal used to access such Third-Party Products or Dependent Services which are hereby incorporated herein by reference as if full set forth herein. Client shall not engage in any conduct which, if performed by Vertek, would not comply therewith. Client shall indemnify and hold Vertek harmless from any failure by Client to comply with such additional terms and conditions. In the event of any conflict between the terms of this Agreement and the terms of such additional terms and conditions, such additional terms and conditions shall supersede and control, solely as to the Third-Party Product and Dependent Services to which such additional terms and conditions relate. Vertek shall have no liability to Client in the event that Vertek’s provision of Dependent Services is diminished, delayed or impracticable due to the diminishment, delay or unavailability of such Third-Party Product to Vertek for any reason.

#### 4. Client Obligations.

4.1 Client Systems and Cooperation. Client shall at all times during the Term: (a) set up, maintain and operate in good repair all Client Systems necessary or desirable for the Service or which are required to provide information to or otherwise interact with the Vertek Platform in connection with the provision of the Service; (b) provide Vertek Personnel with Internet remote access to the Appliance; (c) provide all cooperation and assistance as Vertek may reasonably request to enable Vertek to exercise its rights and perform its obligations under and in connection with this Agreement; and (d) ensure that the Client Systems conform to Vertek’s reasonable requirements. Such requirements may be modified at any time from time to time upon reasonable advance notice to Client. Client has and will retain sole responsibility for the security and use of Client’s and its Authorized Users’ Access Credentials and any use of the Service thereunder.

4.2 Effect of Client Failure or Delay. Vertek is not responsible or liable for any delay or failure of performance caused in whole or in part by Client’s delay in performing, or failure to perform, any of its obligations under this Agreement.

4.3 Corrective Action and Notice. If Client becomes aware of any actual or threatened activity prohibited by **§3.3** (Restrictions), Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects and (b) notify Vertek of any such actual or threatened activity.

5. Data Backup. At Client’s request, certain Appliances may be configured by Vertek to transmit copies of all Client Data contained thereon to Client’s System for backup purposes as more particularly described on the Service Description. VERTEK HAS NO OTHER OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CLIENT DATA.

6. Prohibited Data. Client shall not, and shall not permit any Authorized User or other person or entity to, input any of the following categories of information into the Client Portal (collectively “**Prohibited Data**”): (a) Access Credentials (other than solely for the purpose of logging into the Client Portal); (b) financial information, or (c) personally identifiable data, including without limitation, Protected Health Information, as such term is defined by 45 CFR §160.103, under the Health Insurance Portability and Accountability Act, and Non-public Personal Information, as defined by 12 CFR §1016.3(p)(1), under the Gramm-Leach-Bliley Act. Client acknowledges that Vertek does not need or require access to or use of Prohibited Data in

order to perform its obligations under this Agreement and further acknowledges that any exposure by Vertek to any Prohibited Data, if any, is merely incidental to the fulfillment of its obligations under agreements between the parties, is limited in nature, and occurs as a by-product of Vertek's duties and cannot be reasonably prevented. Client agrees that it shall not provide Prohibited Data to Vertek and that it shall configure its systems to ensure that Prohibited Data is not provided to the Appliance.

## 7. Fees; Payment Terms.

7.1 Fees. Client shall pay Vertek the fees contemplated in a Service Order to be signed by both parties ("**Fees**"). Vertek may increase Fees in respect of any Service by notice to Client given no less than 60 days prior to the expiration of the then current term of such Service.

7.2 Taxes. All Fees and other amounts payable by Client under this Agreement are exclusive of sales taxes. Client is responsible for all sales taxes imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Client hereunder.

7.3 Payment. Client shall pay all Fees within 30 days after the date of the invoice therefor. Client shall make all payments hereunder in US dollars and in accordance with the terms set forth in the Service Order. Client shall make payments to the address or account specified in the Service Order or such other address or account as Vertek may specify in writing from time to time. If Client disputes all or any portion of any invoice, Client shall give Vertek notice thereof within 30 days of receipt of such invoice. Any such dispute not raised by Client within such thirty (30) days, shall be barred absent manifest error. Such notice shall identify the portions of the charges which the Client disputes and shall contain a detailed description of the reasons why the Client disputes such charges. Client shall timely pay all undisputed portions of any such disputed invoice. If more than one invoice is disputed by Client, Vertek may suspend all or any portion of performance under this or any other agreement until the dispute in respect of such invoices is resolved.

7.4 Late Payment. If Client fails to make any payment when due then, in addition to all other remedies that may be available: (a) Vertek may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (b) Client shall reimburse Vertek for all costs incurred by Vertek in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees; and (c) if such failure continues for 45 days following written notice thereof, Vertek may suspend performance of the Service until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Client or any other person or entity by reason of such suspension.

7.5 No Deductions or Setoffs. All amounts payable to Vertek under this Agreement shall be paid by Client to Vertek in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law).

## 8. Intellectual Property Rights.

8.1 Service and Materials. All right, title and interest in and to the Service and Materials, including all intellectual property rights therein, are and will remain with Vertek and its licensors. Client has no right, license or authorization with respect to any of the Service or Materials except as expressly set forth in this Agreement. All other rights in and to the Service and Materials are expressly reserved by Vertek and its licensors.

8.2 Client Data. As between Client and Vertek, Client is and will remain the sole and exclusive owner of all right, title and interest in and to all Client Data, including all intellectual property rights relating thereto, subject to the rights and permissions granted in **§8.3** (Consent to Use Client Data).

8.3 Consent to Use Client Data. Client hereby grants all such rights and permissions in or relating to Client Data: (a) to Vertek and Vertek Personnel as are necessary or useful to perform the Service; and (b) to Vertek as are necessary or useful to enforce this Agreement and exercise its rights and perform its hereunder. Such rights and permissions with respect to Processed Data shall be irrevocable for so long as Vertek may retain such data as permitted under this Agreement. Client represents, warrants and covenants to Vertek that Client owns or otherwise has and will have the necessary rights and consents in and relating to the Client Data so that, as received by Vertek and processed in accordance with this Agreement,

they do not and will not infringe, misappropriate or otherwise violate any intellectual property rights, or any privacy or other rights of any third party or violate any applicable law.

## 9. Confidentiality.

9.1 Confidential Information. In connection with this Agreement each party (as the "**Discloser**") may disclose or make available Confidential Information to the other party (as the "**Recipient**"). "**Confidential Information**" means information or material which is designated as confidential, trade secret or carries a similar designation by Discloser or which the Recipient knows or reasonably should know, is confidential to the Discloser. Notwithstanding the foregoing, "Confidential Information" shall not include information which is now or hereafter becomes generally available to the public other than as a result of a disclosure by Recipient or a disclosure known to Recipient to have been by any individual or entity to which Recipient has delivered such information.

9.2 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Recipient shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with **§9.3**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Recipient's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Recipient's obligations under this **§9.2**; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **§9.2**;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **§9**.

Notwithstanding anything to the contrary, Vertek may freely disclose information about this Agreement to third party referral sources and sales agents including, without limitation, the identity of the Client, the date and duration of this Agreement, and the amounts paid hereunder.

9.3 Compelled Disclosures. If the Recipient or any of its Representatives is compelled by applicable law to disclose any Confidential Information, then, to the extent permitted by applicable law, the Recipient shall: (a) promptly, and prior to such disclosure, notify the Discloser in writing of such requirement so that the Discloser can seek a protective order or other remedy or waive its rights under **§9.2**; and (b) provide reasonable assistance to the Discloser in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Discloser waives compliance or, after providing the notice and assistance required under this **§9.3**, the Recipient remains required by law to disclose any Confidential Information, the Recipient shall disclose only that portion of the Confidential Information that, on the advice of the Recipient's legal counsel, the Recipient is legally required to disclose.

## 10. Term and Termination.

10.1 Term. This Agreement shall commence as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect until the expiration of the term for a Service set forth in the applicable Service Order. This Agreement will automatically renew for additional successive one year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least 45 days prior to the expiration of the then-current term (collectively, the "**Term**").

10.2 Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

(a) Vertek may terminate this Agreement, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than 10 days after Vertek's delivery of written notice thereof; or (ii) breaches any of its obligations under **§3.3** (Restrictions), **§6** (Prohibited Data) or **§9** (Confidentiality); and

(b) either party may terminate this Agreement or any Service, effective on written notice to the other party, if the other party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach.

10.3 Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will immediately terminate, provided, however that Vertek may retain any Processed Data provided, further that such Processed Data shall remain subject to all confidentiality obligations with respect thereto contained in this Agreement and that such data shall be used solely to evidence the parties' performance, non-performance, compliance with or breach of this Agreement; (b) Vertek may disable all Client and Authorized User access to and Client shall immediately cease all use of the Service and Materials; and (c) all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable.

10.4 Surviving Terms. Notwithstanding anything to the contrary contained in this Agreement, in addition to any claims arising prior to the termination or expiration of this Agreement, the following sections shall survive termination and/or expiration of this Agreement: 1 (Definitions), 3.3 (Restrictions), 5 (Data Backup), 7.4 (Taxes), 8 (Intellectual Property Rights), 9 (Confidentiality), 10.3 (Effect of Expiration or Termination), 10.4 (Surviving Terms), 12 (Indemnification), 13 (Limitation of Liability) and 14 (Miscellaneous).

11. DISCLAIMER. ALL SERVICES AND MATERIALS ARE PROVIDED "AS IS" AND VERTEK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND VERTEK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, VERTEK MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE OR MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE OR SUCCESSFULLY IDENTIFY ALL SECURITY EVENTS OR RISKS. THE SERVICE IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE CONNECTION WITH NUCLEAR FACILITIES, AIRCRAFT SYSTEMS, AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF THE SERVICE COULD LEAD TO THE DEATH, PERSONAL INJURY OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE. VERTEK EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO SUCH ACTIVITIES. WHILE VERTEK DOES NOT PROHIBIT ACCESS TO THE SERVICE BASED SOLELY ON THE LOCATION OF THE AUTHORIZED USER, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT OR ANY OTHER AGREEMENT BETWEEN THE PARTIES, VERTEK DOES NOT WARRANT THAT IT HAS OBTAINED ALL RIGHTS AND LICENSES TO ALLOW AUTHORIZED USERS TO ACCESS THE SERVICE OUTSIDE OF THE U.S. OR THAT AUTHORIZED USERS WILL BE ABLE OR PERMITTED TO ACCESS FROM ANYWHERE OUTSIDE THE U.S.. THE SERVICE CANNOT ENSURE THAT ALL UNAUTHORIZED ACCESS WILL BE PREVENTED OR DETECTED.

12. Indemnification. To the greatest extent permitted by law, Client shall indemnify, defend and hold harmless Vertek and its subcontractors and affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Vertek Indemnitee") from and against any and all loss, cost or expense (including attorneys' fees) incurred by such Vertek Indemnitee related to or in connection with this Agreement, except to the extent such loss, cost or expense was caused by Vertek's gross negligence or willful misconduct in the performance of this Agreement and except for damages for bodily injury or damage to property arising out of Vertek's sole negligence.

13. Limitation of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL VERTEK OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING

NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICE, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF VERTEK UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE FEES PAID BY CLIENT TO VERTEK DURING THE 12 MONTH PERIOD PRIOR TO THE DATE ON WHICH SUCH LIABILITY ACCRUED. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

#### 14. Miscellaneous.

14.1 Force Majeure. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control.

14.2 Notices. Except as otherwise expressly provided in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party at the address first set forth above (or to such other address or such other person that such party may designate from time to time in accordance with this §14.2). Notices sent in accordance with this §14.2 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

14.3 Interpretation. The parties acknowledge that they have reviewed this Agreement with their legal counsel and other advisors and that the terms of this Agreement have been freely and equally negotiated by the parties. Accordingly, the parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

14.4 Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

14.5 Assignment. Client shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement. Any merger, consolidation or reorganization involving Client will be deemed to be a transfer of rights, obligations or performance under this Agreement. No delegation or other transfer will relieve Client of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this §14.5 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns. Notwithstanding anything to the contrary contained in this Agreement, Vertek may from time to time in its discretion engage third parties to perform Service.

14.6 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.



14.7 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or of any other right, remedy, power or privilege.

14.8 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

14.9 Governing Law; Jurisdiction; Limitation of Actions. This Agreement is governed by and construed in accordance with the internal laws of the State of Vermont without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Vermont. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the State of Vermont, and Client unconditionally and irrevocably submits to the exclusive jurisdiction of, and waives all objections to the laying of venue (including any objection of *forum non conveniens*) in, such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court. Client must file any action arising directly or indirectly in connection with this Agreement no later than 3 years after the claim has accrued. Client waives the right to file any such action under any longer statute of limitations.

14.10 WAIVER OF JURY TRIAL. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.11 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

14.12 Mediation Any dispute between the parties relating to this Agreement or the Service ( except for a claim challenging the validity or enforceability of this Mandatory Mediation provision shall first be submitted to non-binding mediation (provided that neither party shall be required to submit to mediation before seeking injunctive or other equitable relief in court). The mediation process will be conducted under the American Arbitration Association's (the "AAA") Commercial Arbitration Rules and mediation Procedures in Vermont. If the parties cannot agree on a mediator, a mediator will be designated by the AAA at the request of a party. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the parties.

14.13 Order of Precedence. Subject to §3.5 (Additional Third-Party Terms), in the event of any conflict between the terms of this Agreement and any provision contained in any Service Order, the terms of this Agreement shall control.