

Shenandoah Community School District Board of Directors  
Shenandoah Administration Board Room  
November 26, 2024 – 5:30 p.m.  
Special Meeting

1. Call to Order
2. Roll Call and Determination of Quorum
3. Closed Session -  
As authorized by Iowa code 21.5 (1)(e) To discuss whether to conduct a hearing or to conduct a hearing to suspend or expel a student, unless an open session is requested by the student or a parent or guardian of the student if the student is a minor.  
  
Return to Open Session
4. Action Item:  
Vote on recommendation from closed session
5. Action Item:
  - a. Approve Software License and Service Agreement with American Time
6. Adjournment

This Software License and Services Agreement, consisting of the Software Service Agreement, Warranty, Conditions and Signature Page, (the "Agreement") is by and between American Time ("provider") and the Customer ("customer")

WHEREAS, Customer wishes to procure from Provider the right and license to access the EverAlert visual display, inCloud portal software and services described herein, and Provider wishes to provide a license to access and use such system, software and services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

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 Provider Materials and Services.

"Authorized Devices" means the number of EverAlert devices and integrators that are licensed for use with inCloud software.

"Authorized User" means each of the individuals authorized to use the Provider Materials and Services by Customer and are provided Access Credentials by Customer.

"Customer" means the party identified as Customer on the signature page of this Agreement.

"Effective Date" means the last date this Agreement is signed in the signature page of this Agreement.

"Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

"Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Permitted Use" means any use of the Services or Provider Materials by Customer for the benefit of Customer solely in or for Customer's internal business or organization's operations.

"Person" means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

"Provider Disabling Device" means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Provider or its designee to disable Customer's or any

Customer's access to or use of the Provider Materials or Services automatically with the passage of time or under the positive control of Provider or its designee.

"Provider Materials" means the Authorized Devices, Service Software, Provider Systems 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 Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems.

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

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

"Representatives" means, with respect to a party, that party's employees, officers, directors, agents, and legal advisors.

"Service Software" means the inCloud software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements, and modifications of the foregoing, that Provider provides remote access to and use of as part of the Services.

"Third Party Materials" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Provider.

2. Services

2.1 Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, during the Term, Provider shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Service Software and related services described in this Agreement (collectively, the "Services").

2.2 Customer Site Administrator. Customer shall, throughout the Term, maintain within its organization a site administrator to serve as the primary point of contact for day-to-day communications and consultation regarding the Services. This site administrator shall be responsible for facilitating the proper consents and approvals from Customer's governing board on behalf of Customer under this Agreement. If Customer otherwise wishes to replace its site administrator; Customer shall promptly name a new site administrator by written notice to Provider.

2.3 Changes. Provider reserves the right, in its sole discretion, to make any changes to the Services and Provider Materials that it deems necessary upon written notice to Customer.

2.4 Suspension or Termination of Services. Provider may, directly or indirectly, and by use of a Provider Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Provider Materials, without

## Software License and Services Agreement

incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its good faith and reasonable discretion, that: (i) Customer has failed to comply with any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of Provider (ii) Customer is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section does not limit any of Provider's other rights or remedies, whether at law, in equity or under this Agreement.

### 3. License, Authorization and Customer Restrictions.

3.1 Authorization. Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, Provider hereby authorizes and grants a license to Customer to access and use, during the term of this agreement, the Services, Service Software, and such Provider Materials as Provider may supply or make available to Customer solely for the Permitted Use by and through Authorized Devices and Authorized Users in accordance with the conditions and limitations set forth in this Agreement. This authorization and license to access and use the Provider Materials is non-exclusive and 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 Services, Provider Materials or Third-Party Materials, whether expressly, by implication, estoppel or otherwise. All rights, title and interest in and to the Services, the Provider Materials and the Third-Party Materials are and will remain with Provider and the respective rights holders in the Third-Party Materials.

3.3 Authorization Limitations and Restrictions. Customer shall not knowingly permit any other Person to access or use the Services or Provider Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Services or Provider Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Provider 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 Services or Provider Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Provider Materials or access or use the Services or Provider 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 Services or Provider Systems, 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 Services, Provider Systems or Provider's provision of services to any third party, in whole or in part;

(g) remove, delete, alter or obscure any trademarks, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Provider Materials, including any copy thereof;

(h) access or use the Services or Provider 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 Provider customer), or that violates any applicable Law;

(i) access or use the Services or Provider Materials for purposes of competitive analysis of the Services or Provider Materials, the development, provision or use of a competing software service or product or any other purpose that is to the Provider's detriment or commercial disadvantage; or

(j) access or use the Services or Provider 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 Services could lead to personal injury or severe physical or property damage.

3.4 Responsibility for Customer Content. Provider disclaims all liability in connection with Customer Content. Customer is solely responsible for Customer Content and the consequences of providing Customer Content via the Services. By providing Customer Content via the Services, Customer affirms, represents, and warrants to Provider that Customer is the creator and owner of the Customer Content, or has the necessary licenses, rights, consents, and permissions to authorize Provider and users of the Services to use and distribute Customer Content.

**To Customer's knowledge,** Customer Content, and the use of Customer Content as contemplated by this Agreement, does not and will not: (i) infringe, violate, or misappropriate any third-party right, including intellectual property rights; (ii) slander, defame, libel, or invade the right of privacy, publicity, or other property rights of any other person; or (iii) cause Provider to violate any law or regulation. Customer will not use content that could be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate.

### 4. Customer Obligations.

4.1 Customer Cooperation. Customer shall at all times during the Term: (a) provide Provider Personnel with such access to Customer's premises and Authorized Devices as is necessary for Provider to perform the Services; and (b) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Customer Failure or Delay. Provider is

not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "Customer Failure").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by Section 3.3 Customer 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 (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Provider Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Provider of any such actual or threatened activity.

5. Support.

5.1 Service Support. The Services include Provider's standard customer support services. Provider may amend the support services from time to time in its sole discretion, upon written notice to the Customer.

6. Intellectual Property Rights.

6.1 Services and Provider Materials. All right, title, and interest in and to the Services and Provider Materials, including all Intellectual Property Rights therein, are and will remain with Provider and the respective rights holders in the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Services or Provider Materials (including Third-Party Materials) except for the right to access and use as provided herein. All other rights in and to the Services and Provider Materials (including Third-Party Materials) are expressly reserved by Provider and the respective third-party licensors. Provider warrants it has good title to Services, Provider Materials, and all Intellectual Property Rights and necessary rights, licenses, or authorization to Third Party Materials and will indemnify Customer against any claim by a third party that Customer does not have a right to access and use as provided herein.

7. Confidentiality.

7.1 Confidential Information. In connection with this Agreement each party (as the "Disclosing Party") may disclose or make available Confidential Information to the other party (as the "Receiving Party"). Subject to Section 7.2, "Confidential Information" means subject to applicable law, information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential".

7.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving

Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party 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 Section 7.4, 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 Receiving Party'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 Receiving Party's obligations under Section 7.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in Section 7.3;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive 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 Section 7.

7.4 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.4; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 7.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

8. Term and Termination.

8.1 Term. The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in full force and effect until such termination or expiration. The license for continued use of the Service Software will be as set forth in the purchase order.

Additional terms for license and use of the Service Software may be purchased from Provider.

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

(a) Provider may terminate this Agreement, effective on written notice to Customer, if Customer: fails to pay any amount when due hereunder, and such failure continues more than thirty days after Provider's delivery of written notice thereof.;

(b) either party may terminate this Agreement, 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 thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach; and

(c) either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.3 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;

(b) Customer shall immediately cease all use of any Services or Provider Materials and (i) promptly return to Provider, or at Provider's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Provider Materials or Provider's Confidential Information; (ii) permanently erase all Provider Materials and Provider's Confidential Information from all systems Customer directly or indirectly controls; and (iii) certify to Provider in a signed written instrument that it has complied with the requirements of this Section 8.3(b);

(c) Provider may disable all Customer access to the Services and Provider Materials; and

(d) notwithstanding the foregoing, upon termination of the Services, Customer may continue to use the clock only function of the Authorized Devices but no other functions and features of the inCloud portal software will be available for use by Customer.

8.4 Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.3, Section 7, this Section 8.4, Section 9, Section 10, and Section 12.

9. Representations and Warranties.

9.1 Mutual Representations and Warranties. Each party represents and warrants subject to the approval of its governing board that:

(a) it is duly organized, validly existing and in good

standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

9.2 DISCLAIMER OF WARRANTIES, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND PROVIDER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER 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, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'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. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

9.3 PROVIDER CANNOT GUARANTEE FUNCTIONALITY. THE SOFTWARE PLATFORM AND PORTAL RELIES ON THE INTEGRATION WITH CUSTOMER'S NETWORK INFRASTRUCTURE; THEREFORE, PROVIDER CANNOT GUARANTEE THE SERVICE AVAILABILITY OR UPTIME OF THIS CONNECTION.

10. Limitations of Liability.

10.1 EXCLUSION OF DAMAGES. IN NO EVENT EITHER PARTY 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 SERVICES; (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.

10.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY 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 AMOUNTS PAID BY CUSTOMER FOR THE SERVICES. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

11. Force Majeure.

11.1 No Breach or Default. 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 the affected party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority.

11.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

12. Miscellaneous.

12.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

12.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

12.3 Entire Agreement. This Agreement, together with the purchase order and any other documents incorporated herein by reference, 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.

12.4 Assignment. Neither Party shall not assign or otherwise transfer any of its rights, or delegate or

otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without other party's prior written consent.

12.5 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of 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 the exercise of any other right, remedy, power or privilege.

12.6 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.

12.7 Governing Law; Submission to Jurisdiction.

This Agreement is governed by and construed in accordance with the internal laws of the State of Iowa 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 Iowa. 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 federal courts of the United States or the courts of the State of Iowa and each party irrevocably submits to the exclusive jurisdiction of 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.

12.8 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.

12.9 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.

Signature Page

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

BY: American Time

CUSTOMER ID NUMBER: \_\_\_\_\_ ORDER NUMBER: \_\_\_\_\_ ORDER DATE: \_\_\_\_\_

NAME (printed): \_\_\_\_\_

NAME (signature): \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

BY: Customer

COMPANY NAME: \_\_\_\_\_

NAME (printed): \_\_\_\_\_

NAME (signature): \_\_\_\_\_

TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_