

**By clicking on the ‘accept’ button below, you will create a legally binding contract between your company and Online Data Exchange, LLC regarding access to and use of the e-OSCAR System, and you represent and warrant that you have the authority to agree to these Terms of Use on behalf of your company.**

## **e-OSCAR-web™ SYSTEM TERMS OF USE**

**These Terms of Use are effective July 26, 2019 for all Registrants (as defined herein) accessing and using the e-OSCAR System.**

The On-Line Data Exchange, LLC (“OLDE”) makes its On-line Solution for Complete and Accurate Reporting (the “e-OSCAR System”) available to Consumer Reporting Agencies, Mortgage Reporting Companies, and Data Furnishers to facilitate the resolution of disputes about the accuracy and completeness of Consumer Information (as such terms are defined in Section 2 hereof). Each Consumer Reporting Agency, Mortgage Reporting Company or Data Furnisher registering to access and use the e-OSCAR System pursuant to Section 3.2 hereof may be referred to herein as a “Registrant”, and such entities collectively may be referred to herein as “Registrants”. Each Registrant submitting a registration application and subsequently accessing the e-OSCAR System agrees to the following Terms of Use governing the relationship between such Registrant and OLDE, and such Registrant’s use of the e-OSCAR System. Certain capitalized terms used in these Terms of Use are defined in Section 2 hereof. Other capitalized terms used in these Terms of Use are defined where they are used. Any reference in these Terms of Use to any statute, law, rule or regulation of any government or Government Agency is deemed to refer to such statute, law, rule or regulation as it may be modified, amended or supplemented from time to time.

### **1. Services provided by OLDE**

1.1 (a) Limited grant of rights. Subject to these Terms of Use, OLDE agrees to make the e-OSCAR System, a computer-based electronic communications network, available to Registrants to facilitate the resolution of disputes between Consumers and Registrants about the accuracy of Consumer Information, and OLDE hereby grants the Registrant a temporary, revocable, non-exclusive, non-transferable license to use the e-OSCAR System, and all other documentation and related materials made available to Registrant pursuant to these Terms of Use, solely to (1) facilitate the resolution of disputes about the accuracy and completeness of Consumer Information, as required by Section 611(a)(5)(D) of the Fair Credit Reporting Act (“FCRA”), (2) facilitate the receipt of notifications as to the modification or deletion of information within a Consumer file as required by Section 611(a)(5)(A) of the FCRA; (3) facilitate the delivery and receipt of notifications of requests by Consumers under Section 605B(a) of the FCRA to block information from a Consumer file as required by Section 605B(b) of the FCRA; and (4) otherwise comply with the FCRA. To the extent Registrant elects to receive the Insights by e-OSCAR strategic reporting service (the "Insights Service", as more fully described in Section 1.9 below) in connection with its access and use of the e-OSCAR System, the foregoing license shall include the right of Registrant (through its authorized Users) to access and use such Insights Service for the purposes described in Section 3.11 and in accordance with these Terms of Use. Additional information about accessing and using the e-OSCAR System and Insights Service is found on the e-OSCAR Website. Such information is not part of these Terms of Use and may be modified by OLDE, in its sole discretion, from time to time. In the case of any conflict between these Terms of Use and the information on the e-OSCAR Website, these Terms of Use will control.

(b) Ownership. As between OLDE and Registrant, and without prejudice to the rights of any third party, Registrant acknowledges that all right, title and interest to the e-OSCAR System, including, without limitation, all documentation and other related materials made available to Registrant pursuant to these Terms of Use is owned exclusively by OLDE. OLDE reserves all rights not expressly granted to Registrant in these Terms of Use. Registrant agrees not to attempt (and will ensure that the Users accessing the e-OSCAR System on its behalf will not attempt) to directly or indirectly reverse engineer, decompile, or disassemble the e-OSCAR System or to use the e-OSCAR System except as expressly described in these Terms of Use.

(c) e-OSCAR System. For purposes of these Terms of Use, the e-OSCAR System includes, without limitation, all hardware and software, and all elements of the e-OSCAR Website, including the operation, architecture, implementation, and “look and feel” of the e-OSCAR Website, and documentation and related materials, used in the operation of the Web-based electronic communications network known as “e-OSCAR,” and through which authorized Consumer Reporting Agencies, Mortgage Reporting Companies, and Registrants may facilitate the resolution of disputes about the accuracy and completeness of Consumer Information. The e-OSCAR System also includes all hardware, software, databases and elements of the Insights Service, and associated documentation and related materials.

1.2 User interface. Registrants are responsible for obtaining, installing, and maintaining the hardware and software, and employing the personnel required, to access and use the e-OSCAR System and to carry out their responsibilities under the FCRA and applicable laws and regulations and under these Terms of Use, including without limitation their responsibilities and obligations with respect to ACDVs, AUDs and Notifications (as such terms are defined in Section 2 below) as set forth in Section 3.1(b) below.

1.3 (a) e-OSCAR System changes. OLDE reserves the right, upon reasonable prior notice to Registrants, to supplement or change (a) the hardware or software required to access and use the e-OSCAR System; (b) the access or security procedures, and rules of operation of the e-OSCAR System, including without limitation, the means and manner in which Registrant accesses or interacts with the e-OSCAR System; or (c) the nature and scope of the e-OSCAR System. No such change will be a violation of these Terms of Use. Notice will be deemed reasonable if it is posted on the e-OSCAR System website, and given electronically to the Registrant’s Registration Administrator of Record, both (except in the case of items (b) and (c) in the preceding sentence which will be effective upon notice) not less than ninety (90) days before the effective date of the change, or within such other time frames as may be expressly provided herein. The notice will direct Registrant’s attention to the particular changes in any of the items described in paragraphs (a), (b), or (c). Registrant’s use of the e-OSCAR System on or after the effective date of any change described in this Section 1.3(a) will constitute its acceptance of the change. For clarity, the provisions of this Section 1.3(a) shall not apply to changes to the Insights Service. OLDE reserves the right to change or discontinue such service at any time in its discretion.

(b) Changes to the Terms of Use. OLDE reserves the right, upon reasonable prior notice to Registrants, to supplement or change these Terms of Use. No such change will be a violation of these Terms of Use. Notice will be deemed reasonable if it is posted on the e-OSCAR System website, and given electronically to the Registrant’s Registration Administrator of Record, both not less than sixty (60) days before the effective date of any change, or within such other time frames as may be expressly provided herein. The notice will direct Registrant’s attention to the particular changes in the Terms of Use. Registrant’s use of the e-OSCAR System on or after the effective date of any change described in this Section 1.3(b) will constitute its acceptance of the change.

1.4 e-OSCAR System Design and Operation. OLDE represents that the e-OSCAR System is designed, and is expected to operate, in a commercially reasonable manner to transmit communications about Consumer Information contained in Consumer Reports.

1.5 Disaster Recovery. OLDE has established, and maintains and tests, a comprehensive disaster recovery plan (the “DR Plan”) that is commercially reasonable within the industry. OLDE will continue to adhere to its DR Plan and will modify such DR Plan from time to time to meet the objectives and requirements of the e-OSCAR System. OLDE will send additional information about these capabilities to a Registrant’s Registration Administrator of Record (or other designee) upon request and upon receipt of a signed copy of OLDE’s Nondisclosure Agreement and such additional information as may reasonably be required in order to authenticate the Registrant’s Registration Administrator of Record (or other designee).

1.6 Communication or Modification of Consumer Information. OLDE represents that neither OLDE nor any officer, director, employee, contractor, or agent of OLDE (except when acting as or for a Registrant) can originate messages containing Consumer Information on the e-OSCAR System or change Consumer Information communicated through the e-OSCAR System by Registrant.

1.7 User Support and Training. OLDE provides User support and training as provided on the e-OSCAR Website. OLDE reserves the right to modify such support and training in its discretion.

1.8 Insurance. OLDE maintains insurance with such coverages and in such amounts as it deems reasonable for its business and the services provided hereunder. OLDE further requires each Subcontractor to maintain insurance with such coverages and in such amounts as OLDE has determined reasonable in light of the scope of the services provided by such Subcontractor.

1.9 Insights Service. As a part of the e-OSCAR System and related services provided hereunder, OLDE will make available its Insights Service to any Registrant who elects to receive such service pursuant to Section 3.11 below. The Insights Service is designed to provide Registrant access to reporting, dashboards, visualizations and analytics with respect to Registrant's usage of the e-OSCAR System and Transactions hereunder. The Insights Service is made available without charge as a courtesy to Registrants; provided, however, that OLDE may in the future offer custom reporting for which an additional charge would likely apply. OLDE reserves the right to discontinue such Insights Service at any time.

## **2. Definitions.**

In these Terms of Use, the following definitions will apply:

2.01 “Automated Consumer Dispute Verification”, or “ACDV”, means an automated request to reinvestigate tradeline data on a Consumer’s credit report. An ACDV is designed to be used by Consumer Reporting Agencies if a Consumer disputes the completeness or accuracy of information reported on his/her credit report directly with the Consumer Reporting Agency, and the Data Furnisher that reported the information is registered to use the e-OSCAR System and has a reporting relationship with one or more Consumer Reporting Agencies. Images included with an ACDV shall be considered a part of such ACDV.

2.02 “Automated Universal Data”, or “AUD”, means an automated, online form that Data Furnishers use to transmit interim maintenance requests to update or delete previously reported accounts. An AUD is designed to be used by Data Furnishers if: a Consumer files a dispute with the Registrant (as specified in Section 623(a)(8) of the FCRA) and the Data Furnisher must investigate and respond prior to its normal reporting cycle; the Data Furnisher determines that the data reported is not complete or accurate and determines it is necessary to report the information in the interim period (as specified in Section 623(a)(2)(B) of the FCRA); and the Data Furnisher needs to report a change that has occurred in an account prior to its next normal reporting cycle.

2.03 “Consumer” means any individual that is the subject of a Consumer Report or Consumer Information, as such terms are defined herein.

2.04 “Consumer Information” means any information included in a Consumer Report (as defined in Section 603(d) of the FCRA), and any “nonpublic personal information,” as defined in 15 U.S.C. §6809(4). Images (and the content thereof) included with ACDVs and/or Notifications shall be considered Consumer Information.

2.05 “Consumer Reporting Agency” means any person which regularly engages in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, as further defined in Section 603(f) of the FCRA.

2.06 “Data Furnisher” means any creditor or other person that directly or indirectly transmits Consumer Information to a Consumer Reporting Agency and is subject to Section 623 of the FCRA.

2.07 “e-OSCAR Website” means the content located at <http://www.e-oscar.org> (or any successor URL where, upon notice to Registrants, OLDE maintains comparable information), and all pages related to the e-OSCAR System, controlled by OLDE, and accessible from that URL (“child pages”); but excluding content on any other person’s website that may be accessible through a link from that URL.

2.08 “Fair Credit Reporting Act” (or “FCRA”) means the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq., including, without limitation, all amendments thereto, and as in effect on any date relevant under the relevant provisions of these Terms of Use in which the term is used.

2.09 Fair Credit Reporting Act Definitions. Any capitalized term that is defined in §603 of the Fair Credit Reporting Act will have the meaning given to it by that section, unless a different meaning is given to it in these Terms of Use.

2.10 “Federal Government Agency” means any Government Agency that is part of the United States Government.

2.11 “Government Agency” means any federal, state or local government department, bureau, agency, authority, institution of higher learning, or other similar entity that is generally subject to statutory contracting rules enacted by Congress or the state legislature in its state

2.12 “Image” means the image (and content) of Consumer correspondence associated with, and included with, an ACDV or Notification, as the case may be.

2.13 “Insights Service” means the Insights by e-OSCAR strategic reporting service as more fully described in Section 1.9 hereof.

2.14 “Notification” means a notice sent to Data Furnishers regarding actions taken by a Consumer Reporting Agency on tradelines, ACDVs, AUDs or other items that have been reported to it. A Notification can refer to a Block Notification, an AUD Notification or a Dispute Response Notification. A “Block Notification” is a notice that an item has been blocked from reporting as a result of identity theft (as specified in Section 605B(b) of the FCRA). An “AUD Notification” is a notice that an account has been modified or deleted or that the Consumer Reporting Agency took no action subsequent to the submission of an AUD. A “Dispute Response Notification”, or “DR Notification”, is a notice that an account has been modified or deleted due to a dispute response, a non-response to a dispute (by the response due date) or as a result of a Consumer Reporting Agency’s internal reinvestigation (as specified in Section 611(a)(5)(A)(ii) of the FCRA). Images included with a Notification shall be considered a part of such Notification.

2.15 “Referral” means a procedure that allows each Consumer Reporting Agency (as described in Section 603(p) of the FCRA) to send the referrals outlined in Section 621(f) of the FCRA to each other such agency.

2.16 “Registration Effective Date” means the date the Registrant first “clicked through” these Terms of Use on the e-OSCAR Website to signify its agreement with these Terms of Use.

2.17 “Registration Number” means the 7-digit identification code assigned to the Registrant by the e-OSCAR System.

2.18 “Registration Administrator of Record” means the individual designated by the Registrant on the records of the e-OSCAR System as its Registration Administrator of Record.

2.19 “Registrant” refers to the party to this Agreement referenced above — whether a Data Furnisher (as in most cases), a Consumer Reporting Agency or a Mortgage Reporting Company -- and each of its Affiliates assigned a Registration Number pursuant to these Terms of Use.

2.20 “State or Local Government Agency” means any Government Agency that is part of a state or local government.

2.21 “Subcontractor” means the service provider (or, if applicable, service providers) with whom OLDE has contracted to obtain hardware, software or services in connection with the development and/or operation of the e-OSCAR System.

2.22 “Transaction” refers to (a) each submission of an AUD form by a Data Furnisher (or any User using a User ID associated with a Data Furnisher) to one or more Consumer Reporting Agencies (“CRA”); (b) only in the case of a CRA, the sending by a CRA of an ACDV to a Data Furnisher; and (c) the receipt by a Data Furnisher of an ACDV (other than an ACDV that is (1) incorrectly routed to the Data Furnisher and as to which the Data Furnisher responds accordingly, or (2) forwarded to another person acting as an employee or agent of the same Data Furnisher.

2.23 “User” means each employee or representative of Registrant assigned a User ID and password and authorized by Registrant to access and use the e-OSCAR System or Insights Service on Registrant’s behalf.

2.24 “User ID” means the unique alphanumeric code used by each authorized User who has access to the e-OSCAR System on Registrant’s behalf.

### **3. Access to and use of the e-OSCAR System.**

#### **3.1 Access to and Use of the e-OSCAR System.**

(a) Each Registrant agrees that it will, and will cause its authorized employees and agents accessing and using the e-OSCAR System on its behalf (each, a “User”), to: (i) access and use the e-OSCAR System only in accordance with (A) applicable federal, state and local law, including but not limited to, the Fair Credit Reporting Act and applicable privacy laws, (B) these Terms of Use, and (C) any protocols, security procedures and/or rules of operation posted on the e-OSCAR Website or otherwise provided to Registrant by OLDE; (ii) submit, transmit, provision or enter information to or into the e-OSCAR System and utilize information obtained from the e-OSCAR System only in accordance with applicable federal, state and local law, including but not limited to, the Fair Credit Reporting Act and applicable privacy laws; (iii) not permit unauthorized persons to access or use the e-OSCAR System; (iv) not use the e-OSCAR System to re-sell access to, or otherwise permit use of the e-OSCAR System, by third parties (other than authorized agent acting on Registrant’s behalf); and (v) not use the e-OSCAR System to export (including “deemed exports”) or re-export technical data in violation of any U.S. export control law or regulation.

(b) By accepting these Terms of Use, Registrant agrees that the e-OSCAR System is the method by which Registrant will receive all Automated Consumer Dispute Verifications, Automated Universal Data transmissions and Notifications required under the FCRA, specifically by accessing and reviewing such

ACDVs, AUDs and Notifications posted on the e-OSCAR System. Registrant agrees to timely review and act upon all such ACDVs, AUDs and Notifications as required under the FCRA. For the avoidance of doubt, Registrant acknowledges and agrees that as a part of its review and action upon ACDVs and Notifications in accordance with applicable FCRA and associated current and future “Published Guidance” of the Consumer Financial Protection Bureau, Registrant shall review and consider associated Images included with such ACDVs and Notifications in connection with its reinvestigation of Consumer disputes and consideration of all relevant information regarding such disputes. Additionally, the Registrant, when submitting ACDVs [or AUDs, as applicable] in the e-OSCAR System, will certify that it has reviewed and considered all associated Images and verified the accuracy of the data in compliance with all legal requirements, and that its computer and/or manual records will be adjusted to reflect any changes noted as a result of such review. During registration pursuant to Section 3.2 below, Registrant will provide a working email address to which reminders of such ACDVs, AUDs and Notifications may be sent to Registrant, although OLDE’s failure to send such reminders will not in any way diminish the effectiveness of the delivery of the ACDVs, AUDs or Notifications, as the case may be, or Registrant’s obligation to access and review and act upon the ACDVs, AUDs and Notifications as posted on the e-OSCAR System.

(c) Registrant agrees that if it utilizes any automation tools, intelligent agents or other software or tools when accessing and using the e-OSCAR System (collectively, “Registrant Automation Tools”) that Registrant is responsible for ensuring that the Registrant Automation Tools work as intended and satisfy Registrant's requirements and otherwise comply with these Terms of Use. Registrant acknowledges and agrees that OLDE may make changes to the e-OSCAR System which may or may not require notice to Registrant pursuant to Section 1.3(a). Registrant agrees that OLDE is not responsible for the impact of such changes on the Registrant Automation Tools and Registrant is responsible for monitoring the performance of the Registration Automation Tools and ensuring that they are working properly and as intended. Before utilizing such a Registrant Automation Tool, Registrant shall notify OLDE of the User ID through which it intends for such Registrant Automation Tool to access or use the System.

3.2 Registration. In order to access or use the e-OSCAR System, each Registrant must submit a completed registration form as directed on the e-OSCAR Website and remit an initial payment to OLDE in an amount equal to ninety dollars (\$90.00). Upon receipt and acceptance of Registrant’s registration and initial payment, OLDE will assign a Registration Number to Registrant. Thereafter, Registrant’s authorized Users must provide User IDs and passwords to enable such Users of Registrant to access and use the e-OSCAR System on Registrant’s behalf. Registrant agrees, and will cause its authorized Users to agree, to access and use the e-OSCAR System solely in accordance with these Terms of Use and applicable law. OLDE may refuse to accept a registration from any Registrant owing any amount on account of its prior use of the e-OSCAR System. Registrant shall be responsible for the actions and omissions of its Users in their access and use of the e-OSCAR System.

3.3 Confidentiality. Registrant agrees that it will, and will cause its authorized Users to, hold and maintain the Registration Number assigned to Registrant, the User IDs and passwords used by such Users and any Consumer Information or other information obtained by Registrant or such Users from the e-OSCAR System, in confidence, and will use reasonable procedures to safeguard such information, and otherwise prevent unauthorized use of the e-OSCAR System. Such reasonable procedures will take into account Registrant’s obligations under these Terms of Use and the nature of the information to be protected and will include, but are not limited to, prohibiting the storage of User IDs and passwords on a workstation or in a web-browser’s cache function. Registrant will notify OLDE immediately after learning of any breach or loss of confidentiality of such information or use of the e-OSCAR System by unauthorized persons, and will cooperate with OLDE to minimize the likelihood that unauthorized persons may obtain access to the e-OSCAR System. Except as required by applicable law, Registrant agrees that it will not inform any third party of any such breach or loss of

confidentiality without OLDE's prior written consent. If such disclosure is required by law, Registrant will work with OLDE regarding the content of the disclosure to minimize any potential adverse impact upon OLDE and other Registrants of the e-OSCAR System and will otherwise comply with the provisions of Section 10.6 in connection with such disclosure. Except to the extent that a Government Agency is prohibited or restricted by applicable law from indemnifying the OLDE Indemnitees (as defined in Section 6.1) under these Terms of Use, Registrant will indemnify the OLDE Indemnitees for any Losses (as defined in Section 6.1) incurred by the OLDE Indemnitees or any third party as a result of any such breach or loss of confidentiality. If a Government Agency is prohibited or restricted by applicable law from indemnifying the OLDE Indemnitees under these Terms of Use, such Government Agency will be responsible to the OLDE Indemnitees or any third party for all Losses caused by its actions, to the extent permitted by applicable law.

3.4 Disablement. Registrant agrees to disable access to the e-OSCAR System by any present or former User or other employee or agent within twenty-four (24) hours after such person is no longer performing services for Registrant that require him or her to have access to the e-OSCAR System. Registrant will not reuse or permit reuse of any access or access credentials required to be disabled pursuant to this Section.

3.5 Confidentiality of Registrant Information. OLDE and its Subcontractor will maintain in confidence all information about the number of transactions billable to each Registrant and corporate contact information for each Registrant, and will not disclose such information to any other person, except as required by law.

3.6 Confidentiality of Consumer Information. OLDE represents (i) that it has access to limited Consumer Information transmitted on the e-OSCAR System, and will maintain the confidentiality of such Consumer Information in accordance with Section 10.2), and (ii) that its Subcontractor has access to Consumer Information only to the extent reasonably required in order to ensure that the e-OSCAR System is operating in the manner designed, or to investigate and, if necessary, correct alleged failures in e-OSCAR System operations. OLDE's Subcontractor is contractually prohibited from disclosing any information contained in a Consumer Report.

3.7 Archiving of Records. OLDE represents that under normal operating circumstances, the e-OSCAR System archives transaction records for not less than one-hundred twenty (120) days after, in the case of an ACDV, the earlier of the date Registrant responded to the ACDV or the "DNR" date and, in the case of an AUD, the date the AUD was received by the CRA. In the case of a Notification provided to Registrant under Section 605B or Section 611(a)(5)(A) of the FCRA, the e-OSCAR System archives such Notification records for not less than one-hundred twenty (120) days after the date such Notification was posted on the e-OSCAR System. Registrant acknowledges and agrees that if it wishes to assure that transactions or records older than one-hundred twenty (120) days are archived, it must daily download its archive to its own computer network using the procedures documented in the e-OSCAR System.

3.8 AUD Work in Process. An AUD that remains in the e-OSCAR System's Work in Process queue is purged thirty (30) days after the date it is created.

3.9 User Acceptance Testing. Registrant may, from time to time, participate in User Acceptance Testing ("UAT") exercises that OLDE will conduct with respect to the e-OSCAR System. During the UAT exercises, Registrant will respond to ACDVs and mimic the activities that occur on a daily basis during live production. Registrant agrees to participate in said UAT exercises with no compensation from OLDE. Registrant agrees that it will comply with the User Acceptance Test Plan (the "Test Plan") provided by OLDE with respect to the UAT exercise understanding that (a) the results from any ACDV responses are intended for test purposes only and shall not be used for production or reporting purposes, and (b) Registrant will remain responsible for any costs associated with processing of items in any fashion outside of testing purposes.

3.10 Disaster Recovery Testing. Registrant may, from time to time, participate in Disaster Recovery Testing (“DR”) exercises that OLDE will conduct with respect to the e-OSCAR System. During DR exercises, Registrant will respond to ACDVs and mimic the activities that occur on a daily basis during live production. Registrant agrees to participate in said DR exercises with no compensation from OLDE. Registrant agrees that it will comply with the DR Test Plan (the “Test Plan”) provided by OLDE with respect to the DR exercise understanding that (a) actual production data will be utilized during DR exercises, and such data will be treated as such with respect to security and confidentiality purposes, and (b) Registrant will remain responsible for any costs associated with processing of items in any fashion outside of testing purposes.

3.11 Access to and Use of the Insights Service. Registrant may elect to receive the Insights Service by providing notice to OLDE. Registrant shall be responsible for determining and notifying OLDE as to which of its authorized Users shall have access to the Insights Service and Registrant agrees, and will cause its authorized Users to agree, to access and use the Insights Service solely in accordance with these Terms of Use. Registrant acknowledges and agrees that its continued access and use of the Insights Service is conditioned upon a minimum frequency of usage, and Registrant's access is subject to deactivation if its usage falls below the prescribed minimum level.

## 4. Fees.

4.1 Transaction Fees. Registrant agrees to pay the following fees to OLDE for Registrant’s access to and use of the e-OSCAR System: Thirty Cents (\$0.30) per Transaction, but not less than Thirty Dollars (\$30.00) per calendar quarter or part thereof. Each Registrant will be billed only for Transactions in which it is the sender or recipient, as the case may be. Registrants will not be responsible for any fees or expenses not expressly provided for in these Terms of Use, except to the extent that Registrant agrees to pay separately for services not included in these Terms of Use.

4.2 Taxes. In addition to the stated fees, Registrant will pay OLDE all federal, state, municipal, and other governmental excise, sales, use, utility, or similar taxes, charges, fees, or other amounts that OLDE is required to collect and remit to any governmental authority. In order for Registrant to claim an exemption to paying such taxes, Registrant will provide OLDE with a tax-exemption certificate acceptable to the taxing authority. OLDE will not charge, and Registrant is not required to pay to OLDE, any tax that is based on OLDE’s net income, gross receipts, capital, franchise, net worth, business, occupation, or modified income.

4.3 (a) Due date. Except as stated in Section 4.3(b), fees will be invoiced quarterly. Any amounts pre-paid by Registrant upon registration pursuant to Section 3.2 will be credited against Registrant’s quarterly invoices until such amounts have been exhausted. If Registrant terminates its access pursuant to Section 5.2 prior to such amounts being exhausted, Registrant may request a refund of pre-paid fees for periods after the effective date of termination. The refund will be pro-rated for the number of full calendar quarters remaining in the calendar year after the effective date of Registrant’s termination. Registrant agrees to pay the undisputed fees and other amounts due under Section 3.2 and Section 4 without offset or reduction, in United States Dollars on or before the due date as stated on the invoice, which will be thirty (30) days from the invoice date as stated on the invoice. Amounts not timely paid will accrue interest (a) at the rate of one and one-half percent (1.5%) of the outstanding principal balance or in an amount equal to five dollars (\$5.00) whichever is greater, to be assessed monthly or (b) at the maximum lawful interest rate, as determined under applicable state law. If the invoice remains unpaid after ninety (90) days, OLDE may (reserving all other legal rights and remedies) terminate Registrant’s access to and use of the e-OSCAR System.

(b) Monthly billing or other arrangements. OLDE may elect to invoice fees monthly to any Registrant whose accrued fees for any preceding calendar quarter are three hundred dollars (\$300.00) or more. OLDE may waive monthly billing when a Registrant’s accrued quarterly fees are less than \$300 for two



consecutive calendar quarters. In addition, certain Registrants pre-pay transaction fees annually as of the effective date at an annualized rate of ninety dollars (\$90.00), and OLDE will, in its discretion, continue to allow such Registrants to pre-pay annually until further notice pursuant to this Section 4.3(b). OLDE will provide reasonable notice to Registrant prior to initiating or suspending monthly or annual billing pursuant to this Section 4.3(b). Notice will be deemed reasonable if it is given electronically to the Registrant's Registration Administrator of Record at least thirty (30) days in advance of the effective date of the billing change. If Registrant terminates its access pursuant to Section 5.2 after having pre-paid the annual fee, Registrant may request a refund of pre-paid fees for periods after the effective date of termination. The refund will be pro-rated for the number of full calendar quarters remaining in the calendar year after the effective date of Registrant's termination.

(c) Prompt payment laws. In the case of any Government Agency, the provisions of Section 4.3(a) will be subject to the provisions of any applicable "prompt payment act" or other similar law, ordinance, regulation, or rule.

(d) Fees for Government Agencies. To the extent that any Registrant that is a Government Agency is required by federal, state or local law to limit its exposure to fees under these Terms of Use to a specified amount for any fiscal year or other period, Registrant will provide written notice to OLDE pursuant to Section 12.8 of (i) the applicable period (the "Budget Period") and (ii) the amount of the fees authorized for the period (the "Fee Cap"). If any Government Agency Registrant incurs fees in an amount equal to or greater than its Fee Cap during any Budget Period, OLDE will have the right to suspend such Registrant's access to and use of the e-OSCAR System until such time that the Registrant authorizes additional fees under these Terms of Use.

4.4 Fee Changes. OLDE reserves the right to unilaterally change the stated fees upon not less than thirty (30) days' notice in writing to Registrant. Fees will not be increased more than once in any twelve (12) month period.

4.5 Invoice Management. OLDE will in its sole discretion issue invoices for fees specified within Section 4 via US Mail, electronic mail, or facsimile. OLDE may agree to submit invoices for fees specified within Section 4 via an online supplier portal(s) requested by Registrant, so long as any use of such portal(s) in no way (a) reduces the amount payable, (b) assess any fees or charges to OLDE, or (c) extend the payment due date specified in Section 4.3(a).

## **5. Termination of access.**

5.1 Termination of Access by OLDE. OLDE may suspend or terminate access to the e-OSCAR System by Registrant:

- (a) in accordance with Section 4.3; or
- (b) immediately and without advance notice to Registrant if OLDE has a substantive and supportable reason to believe that Registrant (or any User or person using a User ID associated with Registrant) is using the e-OSCAR System in violation of these Terms of Use, or in violation of applicable federal, state, or local law, including, but not limited to, the FCRA or the Gramm-Leach-Bliley Act. When access is suspended or terminated pursuant to this Section 5.1(b), OLDE will promptly attempt to notify Registrant's Registration Administrator of Record of the reason for the suspension. Upon request by User, OLDE will work with Registrant to investigate any problems. Registrant agrees to cooperate fully with OLDE in any such investigation. Restoration of service will be subject to OLDE's determination, in its sole discretion, that Registrant's access to and use of the e-OSCAR System (or the access and use of any User or person using a User ID assigned to Registrant) will be consistent with these Terms of Use and will not jeopardize the proper

and secure operation and use of the e-OSCAR System, and any additional assurances that OLDE may reasonably require as a condition of restoring access; or

(c) in accordance with Section 8.3; or Section 10.3;

(d) upon written notice to Registrant if Registrant becomes insolvent or is unable to pay its debts or enters into or files (or has filed or commenced against it) a petition, arrangement, application, action or other proceeding seeking relief or protection under the bankruptcy laws of the United States or any similar laws of the United States or any state of the United States or any other jurisdiction or transfers all or substantially all of its assets to another person or entity; or

(e) immediately and without advance notice to Registrant if OLDE reasonably believes that access by or the activities of Registrant (or any User, person or agent using a User ID associated with Registrant) are impacting, or could impact, the stability, availability or performance of the e-OSCAR System generally or for other Registrants. For the avoidance of doubt, the foregoing suspension and/or termination right shall include (without limitation) the right of OLDE to suspend or terminate access to the e-OSCAR System by any Registrant Automation Tool. When access is suspended or terminated pursuant to this Section 5.1(e), OLDE will promptly attempt to notify Registrant's Registration Administrator of Record of the reason for the suspension. Upon request by User, OLDE will work with Registrant to investigate any problems. Registrant agrees to cooperate fully with OLDE in any such investigation. Restoration of service will be subject to OLDE's determination, in its sole discretion, that Registrant's access to and use of the e-OSCAR System (or the access and use of any User, person or agent using a User ID assigned to Registrant) will not jeopardize the stability, availability or performance of the e-OSCAR System generally or for other Registrants, and any additional assurances that OLDE may reasonably require as a condition of restoring access.

## 5.2 Termination of Access by Registrant.

(a) Registrant may terminate its use of the e-OSCAR System upon thirty (30) days' notice in writing to OLDE.

(b) Registrant may terminate its use of the e-OSCAR System pursuant to Section 8.2.

(c) If Registrant is a Government Agency, Registrant represents that (i) it has adequate funds to meet its payment obligations under these Terms of Use; (ii) it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder; and (iii) it will use its best efforts to obtain the appropriation of any necessary funds during the term of these Terms of Use. If a Government Agency Registrant loses funding from any other Government Agency funding source, Registrant will provide OLDE written notice of the loss of funding, and these Terms of Use will be terminated as of the date Registrant's funding expires.

5.3 Payment Obligations Following Termination. Termination of Registrant's access to or use of the e-OSCAR System under this Section 5 or any other provision of these Terms of Use will not relieve Registrant of any obligation to pay fees incurred before the effective date of termination.

## **6. Indemnification.**

6.1 Indemnification by Registrant. Registrant agrees to indemnify and hold OLDE and its officers, directors, members, employees, contractors, and agents (the "OLDE Indemnitees") (but not in their capacity as Registrants) harmless from any liability, costs, expenses, fees, damages, or other amounts, including reasonable attorney's fees (collectively, "Losses") that the OLDE Indemnitees may incur arising out of any claim or suit by any third party in connection with Registrant's access to or use of the e-OSCAR System, excluding Losses to the extent such Losses arise from OLDE's breach of these Terms of Use. In particular, but without limitation,

the foregoing indemnification will apply to claims by Consumers or any other person about whom information is transmitted through the e-OSCAR System by Registrant that such information is untrue or was transmitted without authority.

6.2 Indemnification by OLDE. OLDE agrees to indemnify and hold Registrant harmless from any Losses (as defined in Section 6.1) that Registrant may incur arising out of any claim or suit alleging that (1) Registrant's access to or use of the e-OSCAR System infringes any United States patent or copyright owned by a third party; or (2) OLDE or any officer, director, employee, contractor, or agent of OLDE engaged in willful misconduct (except when acting as or for a Registrant) that resulted in damage to Registrant.

6.3 Indemnification Procedure. The indemnifying party may, at its option, conduct the defense in any such third party action arising as described herein with counsel reasonably acceptable to the indemnified party, and the parties will reasonably cooperate with each other in such defense. The parties' rights and obligations under this section will be continuing and will survive the expiration or termination of these Terms of Use by either party for any reason. The parties will promptly notify the other in writing of any claim, action, or proceeding for which these Terms of Use provide a right of indemnification. However, the failure to give such notice will not relieve the indemnifying party of its obligations under this Agreement unless, and only to the extent that, the failure to give such notice actually prejudices the indemnifying party's rights or ability to defend the claim, action, or proceeding. The parties will reasonably cooperate with one another, at the expense of the indemnifying party, in the defense of any such claim, action or proceeding. If the indemnifying party elects to conduct the defense of any such third party action, it will not have the right to compromise or settle any such claim without the consent of the indemnified party, which consent will not be unreasonably withheld or delayed, unless such compromise or settlement includes a full release of the indemnified party from liability for the claim and involves only the payment of money. After notice by the indemnifying party to the indemnified party of the indemnifying party's election to assume full control of the defense of a claim, the indemnifying party will not be liable to the indemnified party for any legal expenses incurred thereafter by such indemnified party in connection with the defense or settlement of the claim or for any settlement of the claim by the indemnified party which is entered into without the consent of the indemnifying party. If the indemnifying party does not assume control over the defense of a claim subject to indemnification pursuant to this Section 6 or Section 3.3 in a timely manner or refuses to defend such claim, the party seeking indemnification will have the right to defend such claim in such manner as it deems appropriate, at the cost and expense of the indemnifying party.

6.4 Limitation of Liability for Indemnification Claims. The limitation of liability provisions of Section 9 will not apply to any indemnification claimed under Section 3.3, Section 6.1 or Section 6.2.

6.5 Government Agencies. Sections 6.1, 6.2, 6.3, and 6.4 will not apply to any claim by or against any Government Agency that is prohibited by applicable law from indemnifying OLDE. If a Government Agency is permitted to indemnify OLDE, but the extent of the indemnification is limited, then Sections 6.1, 6.2, 6.3, and 6.4 will apply, but the amount payable by OLDE pursuant to Section 6.2 will not exceed the amount that would be payable by the Government Agency pursuant to Section 6.1.

## **7. Intellectual property.**

7.1 Intellectual Property Rights. The software and screen designs used in the e-OSCAR System are protected by copyright and/or other intellectual property laws, and any unauthorized use of such software or screen designs may violate such laws. Except as expressly provided in these Terms of Use, OLDE and its Subcontractor do not grant any right to Registrants under any copyright, trademark, or other applicable law with respect to such software or screen designs, including the right to reproduce any software or screen design in any form or by any means, without the prior written permission of OLDE.

7.2 Screen designs. Registrant may view, download, and print screen designs and any accompanying Consumer Information to which it has access in the e-OSCAR System, provided that such screen designs and Consumer Information are used solely for purposes permissible under the Fair Credit Reporting Act, and any other applicable federal, state, or local law. When downloading or using any screen design or Consumer Information, Registrant may not remove any copyright notice or other notices of proprietary rights contained in the information. The license granted in Section 1.1(a) does not transfer ownership of any copyright or other intellectual property to Registrant. In addition, Registrant may not sublicense the rights granted under these Terms of Use to any other person.

7.3 Trademarks. Registrant acknowledges and agrees that all trademarks, trade names, service marks, slogans, logos, designs, Internet uniform resource locators ("URLs"), and other similar means of distinction, which are owned or controlled by OLDE (collectively, "the Trademarks") used on the e-OSCAR Website are registered and unregistered marks that are owned (as between Registrant and OLDE) by OLDE, or by their other respective owners. Registrant agrees that it will not use any Trademark of OLDE in any corporate, partnership, business name or URL. Each owner has exclusive rights to use and display its Trademarks, and any unauthorized use of the Trademarks is strictly prohibited.

## **8. Warranties.**

8.1 Performance of e-OSCAR System. OLDE warrants that the e-OSCAR System, if used properly by Registrant, will perform substantially in accordance with the then-current published user documentation for the e-OSCAR System. This warranty will only apply to failures to meet the applicable warranty that are reported to OLDE in writing within thirty (30) days after the date of the failure. Notwithstanding the foregoing, the performance warranty set forth above does not apply to the Insights Service, which is provided "AS IS".

8.2 Exclusive Remedy. OLDE's sole obligation for failure to meet the warranty in Section 8.1 will be to refund any charges paid by Registrant for individual services which did not perform as warranted and OLDE will attempt to correct any failure to meet warranted performance which materially impairs the operation of the e-OSCAR System. If OLDE fails to restore warranted performance within a reasonable time, Registrant may terminate its use of the e-OSCAR System immediately, subject to payment of any amounts incurred under Section 4.

8.3 (a) Rights to e-OSCAR System. OLDE warrants that it has sufficient right, title, and interest in and to the e-OSCAR System to enable Registrants to lawfully access and use the e-OSCAR System. If any claim of infringement of an intellectual property right occurs, or in OLDE's opinion is likely to occur, then OLDE may, at OLDE's sole option and expense: (1) procure for Registrant the right to continue using the affected infringing portion thereof; or (2) replace or modify the affected infringing portion thereof, with a non-infringing substitute substantially complying with the infringing portion's specifications; or (3) replace or modify the affected infringing portion thereof, so that it becomes non-infringing and performs in a substantially similar manner to the original portion; or (4) if none of the foregoing options is, in OLDE's reasonable determination, practicable, terminate Registrant's access to and use of the e-OSCAR System and refund to Registrant any amounts prepaid by Registrant for the remaining term during which Registrant would otherwise have had access to the e-OSCAR System. In exchange for any action by OLDE under clause (2) or clause (3), Registrant hereby relinquishes all further right to use any and all such infringing portion. The defense against any such proceedings or claims, and all matters pertaining to settlement of any such claims, will be conducted and controlled (as between Registrant and OLDE) by OLDE, at its own expense. Registrant, at OLDE's expense, will provide OLDE with all necessary assistance, information, and authority to perform the above. Moreover, Registrant will not agree to settle any such proceeding or claim without the written consent of OLDE.

(b) Limitation of Liability for Infringement. NOTWITHSTANDING ANY PROVISION OF SECTIONS 6.2 OR 8.3(a), WITH RESPECT TO EACH INDIVIDUAL PROCEEDING OR CLAIM DESCRIBED THEREIN, OLDE WILL NOT HAVE ANY LIABILITY UNDER THESE TERMS OF USE TO THE EXTENT SUCH PROCEEDING OR CLAIM ARISES FROM: (1) MODIFICATIONS OR ALTERATIONS MADE BY REGISTRANT OR ANY USER OR OTHER PERSON (OTHER THAN OLDE OR A PARTY AUTHORIZED BY OLDE TO MAKE SUCH MODIFICATIONS AND/OR ALTERATIONS); (2) THE COMBINATION, OPERATION, OR USE OF ANY E-OSCAR MATERIAL WITH OTHER PRODUCTS OR SERVICES NOT PROVIDED BY OLDE; (3) REGISTRANT-SUPPLIED MATERIALS OR ITEMS INCLUDING, BUT NOT LIMITED TO REGISTRANT-OWNED PRE-EXISTING WORKS; OR (4) ANY UNAUTHORIZED USE OF THE E-OSCAR SYSTEM BUT FOR WHICH SUCH INFRINGEMENT CLAIM WOULD NOT HAVE OCCURRED. THE FOREGOING PROVISIONS AND SECTION 6.2 STATE THE ENTIRE LIABILITY OF OLDE AND THE SOLE AND EXCLUSIVE REMEDY OF REGISTRANT WITH RESPECT TO ANY PROCEEDINGS, CLAIMS, DEMANDS, LOSSES, DAMAGES, OR EXPENSES INCURRED BY REGISTRANT RELATING TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS RESULTING FROM ANY USE OF THE E-OSCAR SYSTEM OR OTHERWISE ARISING UNDER THESE TERMS OF USE.

8.4 Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 8.1, 8.2, AND 8.3, OLDE MAKES NO WARRANTIES OF ANY KIND, AND DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY WITH RESPECT TO THE DESIGN AND OPERATION OF THE E-OSCAR SYSTEM (INCLUDING WITHOUT LIMITATION THE INSIGHTS SERVICE):

- (a) OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR
- (b) THAT THE SERVICES AND ASSOCIATED DOCUMENTATION WILL BE ACCURATE OR COMPLETE, OR WILL MEET REGISTRANT'S REQUIREMENTS; OR
- (c) THAT THE OPERATION OF THE E-OSCAR SYSTEM WILL BE UNINTERRUPTED, ERROR-FREE, OR VIRUS-FREE; OR
- (d) THAT REGISTRANT'S DATA, HARDWARE, OR SOFTWARE WILL NOT BE LOST OR CORRUPTED; OR
- (e) REGARDING E-OSCAR SYSTEM RESPONSE TIMES, ACCESS DELAYS OR INTERRUPTIONS, OR OTHER PERFORMANCE ISSUES.

Registrant assumes the responsibility to take adequate precautions against damages to its operations that could be caused by defects, interruptions, or malfunctions in the e-OSCAR System.

## **9. Limitation of Liability.**

As a material condition of accessing and using the e-OSCAR System (including without limitation the Insights Service) at the prices specified in these Terms of Use, and with respect to any and all causes of action arising out of or relating to these Terms of Use or the operation of the e-OSCAR System, including, but not limited to, claims in tort, breach of contract or warranty, failure of a remedy to accomplish its essential purpose, or otherwise, each Registrant agrees:

9.1 Damages Cap. Except with respect to claims set forth in Section 6.2, the liability of OLDE will not exceed, in the aggregate, the lesser of (a) the total amount paid by the Registrant to OLDE for services in the three (3) months preceding the event which is the cause of liability or (b) five hundred dollars (\$500).

9.2 Limitation on Consequential Damages. Neither party will be liable to the other for special, incidental, punitive, or consequential damages (even if the party alleged to be liable has been notified of the possibility of such damages), including, but not limited to, lost profits or savings, loss of use of services, cost of capital, cost of substitute services or facilities, downtime costs, or damages and expenses arising out of third party claims.

9.3 Exclusive Remedy. The remedies specified in these Terms of Use are exclusive.

## **10. Information Security.**

10.1 Background. OLDE understands that one or more Registrants are required to comply with the information security standards required by the Gramm-Leach-Bliley Act (“the Act”) (15 U.S.C. §6801 et seq.) and the regulations under the Act (12 C.F.R. Part 30). Registrants may also be subject to other legally binding requirements, and have their own information security programs.

10.2 Information security program. OLDE agrees to maintain, and agrees to require its Subcontractor to maintain, an information security program (“the ISP”) with respect to the e-OSCAR System reasonably sufficient to enable Registrants to comply with applicable statutory and regulatory requirements, including, without limitation the Act and 12 C.F.R. Part 30 and 16 C.F.R. Part 682. The ISP will be designed to (a) ensure the security and confidentiality of Consumer Information; (b) protect against any anticipated threats or hazards to the security or integrity of such information; (c) protect against unauthorized access to or use of such Consumer Information that could result in substantial harm to any customer of the Registrant and (d) provide for the proper disposal of such information.

OLDE will send additional information about the ISP for the e-OSCAR System to a Registrant’s Registration Administrator of Record upon request and upon receipt of a signed copy of OLDE’s Nondisclosure Agreement and such additional information as may reasonably be required in order to authenticate the Registrant’s Registration Administrator of Record.

OLDE agrees that it will maintain the confidentiality of all Consumer Information, by exercising the same degree of care to avoid disclosure or unauthorized use of Consumer Information as OLDE exercises with respect to its own confidential and proprietary information, but in no event less than a standard of reasonable care. OLDE agrees not to use or disclose Consumer Information except as reasonably necessary to operate the e-OSCAR System in accordance with the Terms of Use (including, without limitation, (i) transmitting Images with ACDVs and Notifications that may include unredacted information pertaining to Registrant or other Registrants, (ii) ascertaining and correcting the cause or effect of any real or apparent failure of the e-OSCAR System to operate properly, and (iii) investigating questions or complaints made by Registrants about the operation of the e-OSCAR System).

Registrant acknowledges that Images included with ACDVs or Notifications transmitted by OLDE to other Registrants may include unredacted information pertaining to a Consumer’s accounts with Registrant, and likewise that Images included with ACDVs or Notifications transmitted by OLDE to Registrant may include unredacted information pertaining to a Consumer’s accounts with other Registrants. Registrant hereby consents to OLDE’s disclosure of Consumer Information pertaining to Registrant’s clients or accounts to other Registrants to the extent such Consumer Information is included in Images associated with ACDVs or Notifications transmitted through the e-OSCAR System. Registrant further agrees, with respect to Consumer Information included in Images pertaining to the accounts or clients of other Registrants, to keep such Consumer Information confidential in accordance with its obligations under the FCRA and applicable privacy laws and under these Terms of Use.

10.3 Suspension or termination for security reasons. Notwithstanding any other provision of these Terms of Use, OLDE retains the right, unilaterally and without advance notice to Registrant, to suspend or terminate operation of the e-OSCAR System or any part or function of it if OLDE reasonably believes that continued operation of the e-OSCAR System (or such part or function) at that time presents an unreasonable risk of (a) breach of the security or confidentiality of Consumer Information, (b) threat or hazard to the security or integrity of such information or of the e-OSCAR System (or any part or function of it), or (c) unauthorized access to or use of Consumer Information that could result in substantial harm to any Consumer. Upon such suspension or termination, OLDE will notify Registrant within a reasonable time, and may undertake commercially reasonable efforts to assess, mitigate, and/or eliminate the risk(s) in question and any other risks subsequently identified.

10.4 e-OSCAR Security Audits and Certification. OLDE and/or its Subcontractor will conduct, or cause to be conducted, on an annual basis: (a) an examination in accordance with SOC-1 Type 2, as established by the American Institute of Certified Public Accountants (“AICPA”), of OLDE’s (or its Subcontractor’s) controls and systems relating to the e-OSCAR System and services; and (b) an examination in accordance with SOC-2 Type 2 specifically related to the Security Trust Service Principle, as established by the AICPA and defined in TSP section 100, Trust Services Principles, Criteria, and Illustrations for Security, Availability, Processing Integrity, Confidentiality, and Privacy (AICPA, Technical Practice Aids), of OLDE’s (or its Subcontractor’s) controls and systems relating to the e-OSCAR System and services.

10.5 Registrant Audits. Upon reasonable notice, subject to approval by OLDE of the scope of the audit, and subject to the execution of OLDE’s Nondisclosure Agreement by Registrant and Registrant’s compliance with OLDE’s and its Subcontractor’s reasonable security requirements, Registrant may arrange with OLDE or its Subcontractor to audit financial or transaction records of Registrant’s own use of the e-OSCAR System, or to undertake a security audit of the e-OSCAR System. Any such audit will be conducted during normal daytime business hours, and at the sole expense of the Registrant, which expense will include any reasonable expense or fee incurred or charged by OLDE or its Subcontractor in connection with the requested audit. As a condition of performing any such audit, Registrant agrees to provide a copy of the audit report to OLDE, and to keep the audit report (or the portions of it that discuss the e-OSCAR System) confidential except (subject to Section 10.6) to the extent disclosure may be required by applicable law (including disclosure by a bank or other similar financial institution to a Government Agency that has regulatory authority over the bank or financial institution), and except for disclosures to the Registrant’s auditor or lawyer, provided that any such person is required to keep the report confidential.

10.5 Third-Party Audits. Upon reasonable notice, subject to approval by OLDE of the scope of the audit, and subject to the execution of OLDE’s Nondisclosure Agreement by Registrant and the third party and Registrant’s and the third party’s compliance with OLDE’s and its Subcontractor’s reasonable security requirements, Registrant may arrange with OLDE or its Subcontractor for a third party, e.g., a government regulatory agency or financial auditor, to audit financial or transaction records of Registrant’s own use of the e-OSCAR System, or to undertake a security audit of the e-OSCAR System. In the case of a non-governmental auditor (i.e., an auditor that is not a Government Agency), OLDE will have the right to approve the auditor, which approval will not be unreasonably withheld. Any such audit will be conducted during normal daytime business hours, and at the sole expense of the Registrant, which expense will include any reasonable expense or fee incurred or charged by OLDE or its Subcontractor in connection with the requested audit. As a condition of performing any such audit, Registrant agrees to provide a copy of the audit report to OLDE, and to keep the audit report (or the portions of it that discuss the e-OSCAR System) confidential except (subject to Section 10.6) to the extent disclosure may be required by applicable law (including disclosure by a bank or other similar financial institution to a Government Agency that has regulatory authority over the bank or financial

institution), and except for disclosures to the Registrant's auditor or lawyer, provided that any such person is required to keep the report confidential.

10.6 Public disclosure laws. Any Registrant that is subject to the Freedom of Information Act, 5 U.S.C. §552, or any similar federal, state, or local "freedom of information act" or public record disclosure law or ordinance agrees to:

(a) Notify OLDE promptly upon receipt of any request for information or documents (made pursuant to a law or ordinance described in this Section 10.6 or otherwise by any person who does not need to know the information in order to properly perform services for the Registrant) relating to the e-OSCAR System, including but not limited to, these Terms of Use, and information or documents relating to the System's design, architecture, configuration, Registration Numbers, User IDs, passwords, other security elements, or disaster recovery plans;

(b) Timely and properly claim and pursue any reasonably applicable exemption from disclosure, including but not limited to, as a trade secret, confidential information, computer security information, copyrighted material, or information protected from disclosure by applicable law;

(c) At its own expense, provide OLDE with reasonable assistance, including without limitation, copies of research, memoranda, or briefs, to enable OLDE (to the extent permitted by law) to effectively intervene to oppose disclosure;

(d) To the extent that disclosure of such documents or information is required and to the extent permitted by law, limit such disclosure by redacting information that would reasonably be likely to compromise the security or operation of the e-OSCAR System, or the security of any information transmitted or stored on the e-OSCAR System; or whose disclosure would violate any applicable Federal or state law or court order; and

(e) Undertake reasonable actions requested by OLDE, including but not limited to, assigning new User IDs, passwords, or other security-related elements, to mitigate any potential harm that may result from disclosure of information or documents pursuant to a request described in Section 10.6(a).

## **11. Force Majeure.**

Notwithstanding any other provision of these Terms of Use, except for the failure by Registrant to make payments when due, neither OLDE nor Registrant will be liable to the other by reason of any failure in performance under these Terms of Use if the failure arises out of any cause beyond the reasonable control of the party failing to perform, including, without limitation, the unavailability of third party communication facilities or energy sources, acts of God, acts of the other party or any third party, acts of governmental authority, fires, floods, natural disasters, strikes, delays in transportation, riots, war, or terrorism.

## **12. General Provisions.**

12.1 Third Party Beneficiaries. The provisions of these Terms of Use are for the sole benefit of the parties, and not for the benefit of any other person or legal entity; provided, however, that the third parties described in Section 3.3 and Section 6 will have the rights and benefits described in those Sections. The limited warranties and limitation of liability provisions set forth in this Agreement will also apply for the benefit of the OLDE Indemnitees.

12.2 No Agency. Neither OLDE nor any Registrant will be the agent of the other, or have the power to otherwise act on behalf of or bind the other.



12.3 Assignment. These Terms of Use will be binding upon OLDE and the Registrant, and their successors and assigns. However, neither party may assign these Terms of Use without the prior written consent of the other party, which consent will not be unreasonably withheld. Notwithstanding the preceding sentence, either party may assign these Terms of Use, without consent, to a successor in interest to substantially all of the business of the assigning party to which the subject matter of these Terms of Use relates.

12.4 Severability. If any of these Terms of Use are determined to be invalid by a court of competent jurisdiction, the remaining Terms of Use will continue to be valid and enforceable.

Notwithstanding the preceding sentence, if the provisions of Section 9 are determined to be unenforceable by OLDE against any Registrant for any reason, these Terms of Use will be null and void as to that Registrant, OLDE will be entitled to recover from that Registrant on the basis of quantum meruit, and OLDE will be entitled to terminate service to that Registrant immediately and without further notice to that Registrant.

12.5 (a) Governing Law and Settlement of Disputes Generally. Except when otherwise required with respect to a Government Agency:

(1) The interpretation of these Terms of Use will be governed by the law of the State of New York, excluding its conflict of laws rules; and

(2) Any controversy or claim arising out of or relating to these Terms of Use, or any breach thereof, will be settled by arbitration before a single arbitrator conducted in New York, NY administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) Governing Law and Settlement of Disputes for Federal Government Agencies. When required by law with respect to a Registrant that is a Federal Government Agency, the interpretation of these Terms of Use will be governed by federal law, jury trial is not waived, and, subject to any procedures required before filing suit, any suit will be filed in an appropriate federal court.

(c) Governing Law and Settlement of Disputes for State and Local Government Agencies. When required by law with respect to a Registrant that is a State or Local Government Agency, the interpretation of these Terms of Use will be governed by the law of the state in question, jury trial is not waived, and, subject to any procedures required before filing suit, any suit will be filed in an appropriate court in the state in question.

12.6 Headings. The headings in these Terms of Use are for reference purposes only; they will not affect the meaning or construction of the provisions of these Terms of Use.

12.7 Claim Period. Except as otherwise required by law with respect to a Registrant that is a Government Agency, any action of any kind by either party arising out of these Terms of Use must be commenced within two (2) years from the date the right, claim, demand, or cause of action accrued. Any such action not commenced by either party within the permitted two (2) year period, will be deemed forever waived.

12.8 Notices. Any notice under these Terms of Use will be given in writing by personal delivery, facsimile transmission, e-mail, or U.S. Mail, directed to OLDE at the address or fax number provided on the e-OSCAR Website, or directed to the Registrant at the address or fax number submitted by the Registrant with its registration. All notices will be effective upon receipt. In the case of transmission by facsimile or e-mail, receipt will be deemed to occur when the transmission is received by the recipient's facsimile machine or Internet service provider.

12.9 Entire Agreement, Amendment and Waiver. These Terms of Use contain the complete and exclusive agreement between each Registrant and OLDE with respect to the access to and use of the e-OSCAR System. No waiver, alteration, or modification of any of these Terms of Use will be binding unless (1) it is in writing and signed by a duly authorized representative of the party to be bound, or (2) it is posted on the e-OSCAR Website, notice is given to the Registrant's Registration Administrator of Record in the manner required by Section 1.3, and Registrant accesses the e-OSCAR System after the effective date of the waiver, alteration, or modification. Neither the course of conduct between the parties nor trade usage will act to modify or alter these Terms of Use. No failure or delay by either party in exercising any right hereunder will operate as a waiver of such right. No waiver by either party of any default hereunder by the other party hereto will operate as a waiver of any other default or of a similar default on a future occasion. No such waiver by either party will be effective unless the same will be in writing and signed by the waiving party. If Registrant issues a purchase order or other similar document, unless otherwise expressly agreed to in writing by OLDE, it will be for the Registrant's internal purposes only, and it will have no effect on these Terms of Use, or on any aspect of the relationship between the Registrant and OLDE.

12.10 Subcontractors. Each subcontract between OLDE and any Subcontractor shall (i) prohibit Subcontractor in writing from using Confidential Information in a manner inconsistent with these Terms of Use, and (ii) contain confidentiality requirements no less stringent than those contained in the Term of Use.

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A \$90 payment is required upon submission of an e-OSCAR registration request. The payment will be applied to your e-OSCAR invoice, as applicable, once your registration is approved to use e-OSCAR. Additional payment information will be provided once your registration has been successfully submitted.

\*I have read and acknowledged that payment is required upon submission of an e-OSCAR® registration request.

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An access code is required to complete the e-OSCAR registration process. If you do not have an access code, please contact your Consumer Reporting Agency for assistance. A list of contact numbers is available on the e-OSCAR website at <http://www.e-oscar.org/e-oscar-contacts>.

Access Code: \*

Accept

Decline