

APPLICATION HOSTING AGREEMENT CONCORD XITRACS SYSTEM

IMPORTANT - READ CAREFULLY: This Application Hosting Agreement ("Agreement") is a legal Agreement between you, the organization or entity, ("Customer") and Concord USA Inc ("Concord") which covers the hosting by Concord of the Concord Xitracs Accreditation and Compliance Management System including any templates of compliance standards which have been licensed to Customer by Concord under an End User License Agreement ("Service").

Concord agrees to provide Service to Customer and Customer agrees to pay Concord for Service subject to the following terms and conditions:

1. Term, Renewal and Termination:

- a. This effective date of this Agreement shall be the earlier of either: (i) the date on which Customer is first notified by a Concord invoice of Service availability or (ii) the date on which Customer first logs on to Service.
- b. This Agreement shall be for an initial term of twelve (12) months.
- c. This Agreement shall be automatically renewed for twelve (12) months, unless terminated by either party by giving forty-five (45) days written notice to the other party prior to expiration of the initial term or any successive term.
- d. No later than thirty (30) days prior to termination of Service, Customer shall advise Concord as to the disposition of any Customer data that is stored as part of Service. Subject to payment of a service charge not to exceed twenty-five percent (25%) of the annual fee for Service Concord shall arrange for transfer in electronic format of such data to Customer no later than ten (10) days after termination of service after which Customer data shall be deleted by Concord. In the event no disposition instructions are provided or payment of the service charge is not made, any Customer data shall be deleted by Concord on termination.
- e. In the event of early termination by Customer, Customer agrees to pay Concord for any months remaining in the term.

2. Fees and Payments

- a. Fees for the Service term and any associated services shall be invoiced in advance and shall be payable on receipt or in accordance with any payment terms that are included on the invoice.
- b. If payment is not made within thirty (30) days of the invoice date, a one and one half percent (1.5%) per month interest charge shall be assessed until date of payment. If payment is not made within sixty (60) days of the invoice date, Concord reserves the right to terminate service and delete all stored Customer data.

3. Services Provided:

- a. Concord shall host a Customer licensed copy of the Xitracs Accreditation and Compliance Management System including any templates of compliance standards ("Software").
- b. Concord shall provide Customer with application level access to Software via an internet Uniform Resource Locator (URL) together with a User ID and password. No direct access to server hardware, operating system, database management system or other system resources shall be provided.
- c. Concord shall store all Customer data created and managed by Software, including files, text and parameters; data shall be backed-up on a separate storage system at regular intervals.
- d. The amount of storage and monthly network data transfer available to Customer shall not exceed two gigabytes (2GB) and one gigabyte (1GB) respectively, unless otherwise agreed in writing by Concord.
- e. Services are provided subject to the terms of the following Concord documents:
 - i. Application Hosting Service Level Policy
 - ii. Application Hosting Service Usage Policy
 - iii. End User Hosted License Agreement

4. Authorized Usage:

- a. Customer agrees that access to Service shall be restricted to Customer employees or authorized agents.
- b. Customer shall use commercially reasonable efforts to protect User IDs and passwords.
- c. Customer agrees that authorized Concord support personnel may access system as required to diagnose and resolve technical issues.

5. **Limited Warranty:** Concord warrants that the Service will conform substantially in accordance with the Application Hosting Service Level Policy for the term of the Service. Customer acknowledges that Concord does not warrant that the Service shall be uninterrupted or error-free.

6. **Customer Remedies:** Concord's entire liability and Customer's exclusive remedy shall be as defined in this Agreement. No other remedies are provided to Customer under this Agreement.

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7. **NO OTHER WARRANTIES:** EXCEPT FOR THE EXPRESS WARRANTIES STATED ABOVE, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, CONCORD DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED. BY WAY OF EXAMPLE BUT NOT LIMITATION, WITH RESPECT TO THE SOFTWARE AND ANY ACCOMPANYING USER DOCUMENTATION AND MEDIA, CONCORD MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS.
8. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES:** IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL CONCORD OR ITS LICENSORS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT LOSSES) ARISING FROM YOUR USE, OR INABILITY TO USE, THE SERVICE, REGARDLESS OF WHETHER CONCORD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CONCORD'S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICE.
9. **Prior Agreements:** This Agreement overrides all prior written and oral communications regarding the Service and sets out the entire agreement between Concord and you, the Customer. You irrevocably waive any right you may have to claim damages or to rescind (in the case of misrepresentation) the Agreement for any misrepresentation or warranty not set out in this Agreement unless such misrepresentation or warranty was made fraudulently.
10. **No Waiver:** Any failure by either party to exercise an option or right conferred by this Agreement shall not of itself constitute or be deemed a waiver of such option or right.
11. **Severability:** If any provision in this Agreement is declared void or unenforceable by any judicial or administrative authority this shall not nullify the remaining provisions of this Agreement which shall remain in full force and effect.
12. **U.S. Government Restricted Rights:** All Concord products and documentation are commercial in nature. The Software and Documentation are "Commercial Items", as that term is defined in 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation", as such terms are defined in 48 C.F.R. §252.227-7014(a)(5) and 48 C.F.R. §252.227-7014(a)(1), and used in 48 C.F.R. §12.212 and 48 C.F.R. 227.7202, as applicable. Consistent with 48 C.F.R. §12.212, 48 C.F.R. §252.227-7015, 48 C.F.R. §227.7202 through 227.7202-4, 48 C.F.R. §52.227-14, and other relevant sections of the Code of Federal Regulations, as applicable, Concord's computer software and computer software documentation are licensed to United States Government end users with only those rights as granted to all other end users, according to the terms and conditions contained in this license agreement. Manufacturer/Distributor is Concord USA, Inc. P.O. Box 81428, Atlanta, GA 30366, USA.
13. **Law:** This Agreement shall be governed by the laws of the State of Georgia and the parties agree to submit to the exclusive jurisdiction and venue of the Superior or State Courts of Gwinnett County, Georgia in connection with any legal actions hereunder.
14. **General:** Should you have any questions concerning this Agreement, or if you desire to contact Concord for any reason, please write: Concord USA, Inc. Customer Service, P.O. Box 81428, Atlanta, GA 30366, USA.