Deal Jacket Archive Terms and Conditions

These Deal Jacket Archive Terms and Conditions (the "Terms," or together with any applicable Order Form(s), the AppOne For Dealers Agreement, and the Credit Card Authorization Form, the "Agreement") are incorporated by reference into any Order Form executed by AppOne, Inc. ("AppOne") and Customer (as identified in the Order Form) which states that it is subject to these Terms. The Agreement will govern all access to and use of the Services as identified in the Order Form and the AppOne Solution. AppOne and Customer are referred to herein individually as "Party" and collectively as "Parties."

1. Services

(a) During the Term, and in exchange for the fees set forth in the applicable Order Form, AppOne shall provide Customer with access to the Services subject to these Terms, the AppOne For Dealers Agreement (as amended from time to time, which can be found at https://home.appone.net/terms-of-service and as amended from time-to-time), and the Credit Card Authorization Form signed by Customer. Customer will access the Services through use of the AppOne Solution (as defined in the AppOne For Dealers Agreement).

(b) The Services may only be accessed by employees of Customer who (a) have been issued valid login credentials to access the AppOne Solution, and (b) have agreed to the AppOne for Dealers Agreement (the "Authorized Users").

(c) By entering into this Agreement, Customer agrees to, and agrees to ensure its Authorized Users agree to, the AppOne for Dealers Agreement. Customer is responsible for ensuring that its Authorized Users comply with the AppOne for Dealers Agreement and is liable for any breach of AppOne for Dealers Agreement by any user, whether or not authorized by Customer, that accesses the AppOne Solution or the Services via the Customer's or its Authorized Users' login credentials.

2. Grant of License

(a) Grant of License. For the Term of this Agreement and subject to Customer's compliance with the Agreement, AppOne grants Customer a nonexclusive, non-transferrable, limited license to use the Services at the location associated with the Lot Number listed on the Order Form for Customer's internal use only. The Services are licensed, not sold.

(b) License Restrictions. Customer has no right to transfer, sublicense, or otherwise distribute the Services to any third party. Customer will not allow a third party to copy any reports, screenshots, or source code related to the Services. Customer will not lease, lend, or rent the Services to third parties, or otherwise provide or make the functionality of the Services available to third parties. Customer shall not copy, modify, decompile, reverse engineer, adopt, translate, loan, rent, lease, sublease, distribute, sell, assign, or in any way transfer any or all of the Services or rights permitted to Customer under this Agreement to any person, firm, organization or other entity. Customer will not delete or in any manner alter the copyright, trademark, or other proprietary rights notices appearing on the Services.

3. **Intellectual Property**

(a) Rights. AppOne and/or its third party providers, shall retain all right, title, and interest in and to all of its intellectual property, including, but not limited to, its technology, software, and services which may be provided under this Agreement, all derivative works thereof (by whomever produced) and all related documentation and materials, and all patent, copyright, trademark, trade secrets and other intellectual property rights inherent in or appurtenant to any of the foregoing.

(b) No Intellectual Property Rights Transferred. Customer acknowledges and agrees that by virtue of using the Services, it shall not obtain any rights in any intellectual property, including, but not limited to, any intellectual property rights related to any of the software, templates, screen and file formats, interface protocols, formats and development tools and instructions, hardware, processes, trade secrets, instruction manuals, enrollment authorization, authentication and other business processes, proprietary information or distribution and communication networks used to provide the Services owned by AppOne or its Third-Party Providers.

(c) Breach. Customer agrees that AppOne would not have an adequate remedy at law in the event of Customer's breach or threatened breach of its obligations under this section of this Agreement and that AppOne would suffer irreparable injury and damage as a result of any such breach. Accordingly, in the event Customer breaches or threatens to breach the obligations set forth in this section, in addition to and not in lieu of any legal or other remedies that AppOne may pursue hereunder or under applicable law, Customer hereby consents to the granting of equitable relief (including the issuance of a temporary restraining order, preliminary injunction, or permanent injunction) against it by a court, without the necessity of proving actual damages or posting any bond or other security therefore, prohibiting any such breach or threatened breach. In any proceeding upon a motion for such equitable relief, Customer's ability to answer in damages shall not be interposed as a defense to the granting of such equitable relief. The provisions of this Section relating to equitable relief shall survive termination of this Agreement.

4. **Third Party Service Providers**

(a) Third Party Services. Customer acknowledges and agrees that certain portions of the Services provided under this Agreement are furnished, supported, or otherwise enabled by one or more third-party service providers ("Third-Party Providers"). Customer further acknowledges that use of such portions of the Services may be subject to additional terms, conditions, policies, or service levels imposed by the applicable Third-Party Providers ("Third-Party Terms").

(b) Compliance with Third Party Terms. Customer agrees to comply with all applicable Third-Party Terms, as they may be updated from time to time by the relevant Third-Party Provider.

(c) Access. Customer acknowledges that removal, suspension, or modification of any Third-Party Services by a Third-Party Provider may affect the functionality or availability of the Services, and AppOne shall have no liability resulting from such actions.

5. **Term and Termination**

(a) Effective Date. This Agreement shall become effective on the date AppOne signs the Order Form (the "Effective Date").

(b) Term. The Services listed on the Order Form shall be provided to Customer for thirty (30) days beginning on the date the Services become available to the Customer, such date to be conclusively determined by AppOne (the "Go Live Date"). The thirty (30) day period following the Go Live Date shall be referred to herein as the "Initial Service Term." Upon expiration of the Initial Service Term, this Agreement shall renew for like periods (each a "Renewal Term" or together with the Initial Service Term, the "Term") unless either Party gives the other written notice of its intent not to renew at least thirty (30) days prior to the expiration of the then-current Term. Such termination shall become effective on the first day of the month following the month in which the thirty (30) day notice period concludes.

(c) Termination. AppOne may terminate the Services listed on the Order Form at any time with or without cause upon ten (10) days' prior written notice to Customer.

6. **Billing and Payment**

(a) Commencement of Billing. Billing will commence on the first day of the month following the month of the Go Live Date.

(b) Payment. Payment of all the fees listed in the Order Form shall be made via automatic recurring charge to the credit card provided by Customer on the Credit Card Authorization Form.

(c) Taxes. Customer agrees to pay all taxes in connection with transactions under this Agreement that AppOne is at any time obligated to pay or collect according to the laws of the state where Customer is domiciled. Such taxes may include, but are not limited to, state and local sales and use taxes, or other such taxes, including taxes which may be billed retroactively as a result of an audit imposed by any government entity on the provision, sale, or use of any product or service provided under this Agreement, but excluding any taxes based on the net income of AppOne. If AppOne is obligated by state law to pay or collect such taxes, then Customer shall either pay such taxes through AppOne, or Customer shall provide to AppOne written proof of direct payment of such taxes to the taxing authority.

(d) No Accord in Satisfaction. No statement accompanying any payment will be deemed an accord and satisfaction, and AppOne may accept such payment without prejudice to AppOne's right to recover the balance of amounts due under this Agreement or pursue any other remedy available in this Agreement, at law or in equity.

(e) Increases. AppOne shall have the right to revise or increase the fees listed in the Order Form at any time without further notice to Customer. Such increase will be by an amount based on the percentage rate of price increases for all goods and services as determined by the Bureau of Labor Statistics of the U.S. Department of Labor (Consumer Price Index) plus two percent (2%)

or to AppOne's then-prevailing price. Notwithstanding the above, all third party fees, costs and pricing incurred by AppOne in its performance of the Services under the terms of this Agreement may be passed through to Customer and will not be included in the calculation referenced above.

7. Default

In the event that Customer defaults in any of the following ways: (1) by breaching any curable obligation under this Agreement, including, but not limited to, any payment obligation; (2) by breaching any non-curable obligation under this Agreement; (3) by becoming bankrupt or insolvent, or if a petition is filed by or against Customer as bankrupt, insolvent, or a debtor under any federal or state bankruptcy, insolvency, or reorganization law; (4) by ceasing or threatening to cease to carry on Customer's business; (5) by making or proposing to make any sale of Customer's assets in bulk or out of the ordinary course of Customer's business; or (6) if AppOne, in good faith, deems Customer's continued performance hereunder to be insecure, AppOne may pursue any one or more of the following remedies: (a) suspend all Services; (b) suspend access to the AppOne Solution; (c) declare all amounts due and to become due under the Agreement, immediately due and payable; (d) terminate any or all licenses granted pursuant to this Agreement and demand that Customer immediately cease use of all Services, the AppOne Solution, and/or products created or provided by AppOne hereunder, and, in the event that Customer does not voluntarily comply with such demand, AppOne may take measures to disable the Services, access to the AppOne Solution, or products remotely; (e) terminate an Order Form or this Agreement; (f) retain all or such portion of payments made by Customer hereunder as may be necessary to compensate AppOne for any damage, loss, liability, cost, or expense (including, without limitation, payments to third parties) caused by such breach, default, or failure, and receive any additional payments from Customer as may be necessary to compensate AppOne as described herein; and/or (g) pursue any additional or alternative remedies available at law or in equity including an action for breach of contract or a declaratory action to resolve any dispute over the rights and obligations of either Party under the Agreement. Customer agrees to reimburse AppOne for any and all expenses, including reasonable attorneys' fees, that AppOne may incur in collection of amounts due under this Agreement, in undertaking the remedies provided for by this Agreement, and in the enforcement of this Agreement.

8. Disclaimers

CUSTOMER ACKNOWLEDGES THAT THE PERFORMANCE OF THE SERVICES ENTAILS THE POSSIBILITY OF SOME HUMAN AND MACHINE ERRORS, INCLUDING OMISSIONS, DELAYS, AND LOSSES. CUSTOMER AGREES THAT APPONE SHALL NOT BE LIABLE ON ACCOUNT OF ANY SUCH ERRORS, OMISSIONS, DELAYS OR LOSSES. FURTHER, THE SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND APPONE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, OR OTHER TRANSACTIONS CONTEMPLATED HEREIN. FURTHER, THERE ARE NO WARRANTIES THAT THE SERVICES WILL BE ERROR-FREE OR RESULT IN UNINTERRUPTED OPERATION OR USE WITHOUT ERROR.

9. Miscellaneous

(a) Force Majeure. AppOne shall not be liable for any delay or failure to perform its obligations due to circumstances beyond AppOne's control, such circumstances to include without limitation natural disasters, terrorism, labor disputes, war, declaration of governments, transportation delays, computer and/or network failures, acts of civil or military authorities, epidemics, pandemics, interruptions in third-party telecommunications or internet equipment or service, misuse of the Services by Customer, or any other causes, contingencies, or circumstances not subject to AppOne's reasonable control.

(b) Entire Agreement. This Agreement represents the entire agreement of the Parties on its subject and it supersedes and replaces any prior oral or written agreement between the Parties on its subject. Customer agrees to abide by the terms and conditions of this Agreement, which may be updated by AppOne from time to time. Such updates shall become effective when posted online.

(c) Limitations. No action, regardless of form, arising out of this Agreement may be brought by Customer more than one (1) year after the cause of action has occurred.

(d) Waiver. The failure of either Party to enforce at any time the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the ability of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.

(e) Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation of this Agreement.

(f) Binding Nature. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns as permitted hereunder. Customer represents and warrants that Customer shall comply with all applicable federal, state, and local laws, rules, and regulations.

(g) Construction. The Parties waive any common law or statutory rule of construction that ambiguity should be construed against the drafter of this Agreement and agree that the language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning.

(h) Survival. Any terms of this Agreement, which by their nature extend beyond its termination, cancellation, or expiration remain in effect until fulfilled and apply to respective successors and permitted assignees.

(i) Assignment. AppOne may assign any of its rights and responsibilities under this agreement in whole or in part without the consent of, or notice to, Customer. Customer may not assign this Agreement or any rights appurtenant thereto without AppOne's prior written consent, and any attempt to do so shall be void and of no effect. This Agreement shall be binding on all permitted assignees.

(j) Relationship of the Parties. The Parties to this Agreement are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between the Parties. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

(k) Amendment. Customer may not change, terminate, or attempt to waive any of the provisions hereof except in a writing signed by an authorized representative of both Parties.

(l) Notice. All notices required or provided for in this Agreement, shall be in writing and shall be addressed to Customer at the address set forth on the Order Form and to AppOne at *AppOne, Atten: Customer Account Services, 1 Reynolds Way, Kettering, OH 45430*, as the case may be, or such other address as either such Party may from time to time designate in writing to the other Party in accordance with the terms of this paragraph. Such notice shall be delivered by hand, overnight courier, or certified mail, return receipt requested with postage prepaid and deemed delivered upon receipt or refusal to receive. No other means of delivery of notices shall be permitted.