

## ONLINE USER AGREEMENT

### 1.0 Definitions.

"ACCESS" shall mean the use of SAAS by logging on over the Internet or otherwise remotely.

"DEX" shall mean Data Exchange Corporation, including its subsidiary, DEX Systems, Inc.

"DEX SERVICES" shall mean the supply chain, logistics, repair, and distribution services performed by DEX for Customer under separate agreements.

"DEX SYSTEMS" shall mean all services performed or products delivered by DEX under or as incident to this User Agreement, including, but not limited to any SAAS, Program and DEX IP, and development, consulting and information technology services.

"DEX IP" shall mean all tangible and intangible manifestations of a Program, whether or not protected by patent, copyright or trademark law, and whether or not previously created by DEX or created especially for Customer, including, without limiting the generality of the foregoing, the software running a Program, including object and source code, the trademark OrderVision, all other trade names and styles used by DEX in connection with the DEX Services, the look and functionality of a Program, the process by which a Program collects and provides access to data, the user interfaces, screen and tables and the methods of connectivity or electronic interface to Customer.

"PROGRAMS" shall mean all SAAS and Software and any other software products owned or distributed by DEX which you have ordered, program documentation, and any program updates acquired through technical support.

"PROGRAM DOCUMENTATION" shall mean the program user manual and program installation manuals.

"PURPOSE" shall mean the control and monitoring of the DEX Services through one or more Programs.

"SAAS" is an abbreviation for Software as a Service and shall mean a software program or routine running on a server or servers controlled or contracted by DEX, which may or may not be accessed by Customer through an internet portal or otherwise remotely, including, but not limited to DEX's OrderVision® portal and any custom portal created by DEX for Customer in connection with the DEX Services.

"SERVICES AGREEMENT" shall mean the agreement or agreements between Customer and DEX which govern the provision of DEX Services by DEX for Customer. Services Agreements may be entered into prior to, concurrently with or subsequent to this User Agreement.

"USER" shall mean an individual authorized by you to use the Programs regardless of whether the individual is actively using the programs at any given time. A non human operated device will be counted as a User plus in addition to all individuals authorized to use the Programs, if such devices can access the Programs. If multiplexing hardware or software (e.g., a TP monitor or a web server product) is used, this number must be measured at the multiplexing front end.

"YOU" and "YOUR" shall mean the individual or entity that has executed this.

2.0 Licenses Granted. Subject to the terms and conditions of this User Agreement and in consideration of the fees set forth in agreements relating to the DEX Services, DEX hereby grants Customer: a nonexclusive, nontransferable license in the Territory to Access the SAAS in order to process transactions and receive information relating to the Purpose during the Term and to have DEX use the SAAS on your behalf in performing the Purpose. You have the limited right to Access the SAAS according to your license and receive any support services you ordered solely for your internal business operations and subject to the terms of this User Agreement, including the definitions and rules set forth herein and the program Documentation. You may allow your agents and contractors to Access the SAAS for this purpose and you are responsible for their compliance with this User Agreement with respect to such Access or use.

3.0 Title. Customer acknowledges and agrees that the DEX IP contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer shall not modify, rent, lease, loan, sell, distribute or create derivative works based on the DEX IP in whole or in part. DEX shall retain all title, copyright, and other proprietary rights in the DEX IP, and any modifications or translations thereof. Customer shall not acquire any rights in the DEX IP other than the limited licenses specified in this User Agreement.

4.0 Trademark Information. OrderVision®, Data Exchange Corporation® and DEX® (the "Marks") are registered United States trade/service mark of DEX. Without DEX's prior permission, no User may display or use the Marks in any manner.

### 5.0 Limitations On Use.

a. Customer shall not use or duplicate the DEX IP for any purpose other than the Purpose, or make the DEX IP available to unauthorized third parties. Customer shall not use or permit the reverse engineering, disassembly, or decompilation of the DEX IP.

b. Customer shall not reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the DEX Systems, use of the DEX IP, or access to any of the DEX IP.

c. No USER shall gain Access to DEX IP, server or computer by any means other than through the interface that is provided by DEX for use in gaining Access.

d. Customer shall not, make any representations with respect to the content and/or ownership of the DEX IP.

6.0 **System Management Regulations.** DEX may adopt regulations from time to time for the better management of the DEX Systems which may include (but are not limited to):

- i. Defining minimum specifications for equipment used by a User to interface with the DEX Systems (including, but not limited to, routers, firewalls and PC's);
- ii. Usage restrictions to prevent unreasonable loads being imposed on the network;
- iii. Regulations to ensure that security and integrity of DEX Systems and network is maintained, including regulations which arise from the need to comply with regulations of any data center facility engaged by DEX in connection with the DEX Systems; and
- iv. Regulations to ensure that any database or other applications which form part of the DEX Systems are used to the best effect and within their capacities.

7.0 **Password And Security.** Users will be assigned passwords to gain Access. Each User is responsible for maintaining the confidentiality of the password, and is fully responsible for all activities that occur under its password or account. User will immediately notify DEX of any unauthorized use of its password or account or any other breach of security. DEX cannot and will not be liable for any loss or damage arising from a User's failure to comply with this section.

#### 8.0 **Fees And Payments.**

a. Operating Fee. Customer shall pay DEX the Operating Fees set forth in the Services Agreement.

b. Implementation/Installation/Training. Implementation, installation and training, are not included in the fees above. Implementation, installation and training services are provided by DEX Systems professionals pursuant to and at the fees specified in the portion of the Services Agreement entitled "DEX Professional Services" when those services are selected by Customer.

9.0 **Term And Termination.** The Term of the license(s) granted hereby shall coincide with the term of the Services Agreement, subject to earlier termination as

provided herein. If either of us breaches a material term of this User Agreement and fails to correct the breach within 30 days of written specification of the breach, the other party may terminate this User Agreement. If DEX terminates this User Agreement as specified in the preceding sentence or terminates the license for the Program under the Indemnification section, you must pay within 30 days all amounts which have accrued prior to such termination, as well as all sums remaining unpaid for Programs ordered and/or services received under this User Agreement plus related taxes and expenses. Except for nonpayment of fees, we each agree to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this User Agreement, you may not use those programs and/or services ordered. Provisions that survive termination or expiration include those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

#### 10.0 **Effect Of Termination.**

a. Termination of License. Upon termination of this User Agreement for any reason, all licenses granted herein shall terminate. Customer shall cease using the DEX IP, and shall either destroy or return to DEX, at DEX's option, any copies of the DEX IP.

b. Survival of Remedies and Obligations. The termination of this User Agreement or any license shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve Customer of its obligation to pay all charges that have accrued or that Customer has agreed to pay under this User Agreement.

11.0 **Links.** DEX or third parties may provide links in a Program to other World Wide Web sites or resources. Because DEX has no control over such sites and resources, Customer acknowledges and agrees that DEX is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, or other materials on or available from such sites or resources. DEX shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such site or resource.

#### 12.0 **Disclaimers of Warranties.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT:

EXCEPT AS EXPRESSLY SET FORTH IN THIS USER AGREEMENT. DEX DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

DEX MAKES NO WARRANTY THAT (i) THE DEX SYSTEMS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (ii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE DEX SYSTEMS WILL BE ACCURATE OR RELIABLE, AND (V) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE DEX SYSTEMS IS DONE AT USERS OWN DISCRETION AND RISK AND USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

13.0 **Limitation Of Liability.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT DEX SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF DEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE DEX SYSTEMS; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER'S OR TPM'S TRANSMISSIONS OR DATA; OR (v) ANY OTHER MATTER RELATING TO THE DEX SYSTEMS.

14.0 **Exclusive Remedies.** For any breach of this User Agreement or any warranty made hereunder, or the failure of DEX to perform any service, Customer's sole and exclusive remedy (the "Exclusive Remedy"), and DEX's entire liability, shall be, at DEX's option, either the re-performance of the applicable services or a refund of the portion of the fees paid to DEX applicable to such services.

15.0 **Indemnification.** Customer will defend and indemnify DEX against: (a) all claims and damages to DEX caused by Customer's breach of this User Agreement; and (c) any claim by any party against DEX seeking any remedy other than the Exclusive Remedy.

16.0 **Technical Support.** Technical support consists of annual technical support services you may have ordered for the Programs. Annual technical support (including first year and all subsequent years) is provided under DEX's technical support policies in effect at the time the services are provided. The technical support policies are found at [http://www.dex.com/ov\\_terms.html](http://www.dex.com/ov_terms.html), are incorporated in

this User Agreement, and are subject to change at DEX's discretion; however, DEX will not materially reduce the level of services provided for supported programs during the period for which fees for technical support have been paid. Technical support for SAAS is at the Basic Level unless otherwise specified and is provided throughout the term of this Agreement. You should review the policies prior to entering into the ordering document for the applicable services. Technical support is effective upon the effective date of the ordering document unless otherwise stated in your order.

17.0 **Technical Reference Manuals.** ("TRMs") are DEX's confidential information. You shall use the TRMs solely for your internal data processing operations for purposes of: (a) implementing applications programs, (b) interfacing other software and hardware systems to the applications programs and (c) building extensions to applications programs. You shall not disclose, use or permit the disclosure or use by others of the TRMs for any other purpose. You shall not use the TRMs to create software that performs the same or similar functions as any of DEX products. You agree: (a) to exercise either at least the same degree of care to safeguard the confidentiality of the TRMs as you exercise to safeguard the confidentiality of your own most important confidential information or a reasonable degree of care, whichever is greater; (b) to maintain agreements with your employees and agents that protect the confidentiality and proprietary rights of the confidential information of third parties such as DEX and instruct your employees and agents of these requirements for the TRMs; (c) restrict disclosure of the TRMs to those of your employees and agents who have a "need to know" consistent with the purposes for which such TRMs were disclosed; (d) maintain the TRMs at all times on your premises; and (e) not to remove or destroy any proprietary or confidential legends or markings placed upon the TRMs. DEX shall retain all title, copyright and other proprietary rights in the TRMs. TRMs are provided to you "as-is" without any warranty of any kind. Upon termination, you shall cease using, and shall return or destroy, all copies of the applicable TRMs.

18.0 **Taxes.** You agree to pay any sales, value-added or other similar taxes imposed by applicable law that DEX must pay based on the programs and/or services you ordered, except for taxes based on DEX's income. Fees for services listed are exclusive of taxes.

19.0 **Export.** Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Programs. You agree that such export control laws govern your use of the Programs (including technical data) and any services deliverables provided under this User Agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program

and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

20.0 **Use Verification.** Upon 45 days written notice, DEX may audit your use of the programs. You agree to cooperate with DEX's audit and provide reasonable assistance and access to information. Cooperation includes allowing DEX to install monitoring scripts for a limited time on your network or computers for the sole purpose of determining license usage. You agree to pay within 30 days of written notification any fees applicable to your use of the programs in excess of your license rights. If you do not pay, in addition to any other rights or remedies available to DEX, DEX may terminate your technical support, licenses and/or this User Agreement. You agree that DEX shall not be responsible for any of your costs incurred in cooperating with the audit. The Uniform Computer Information Transactions Act does not apply to this User Agreement.

21.0 **Force Majeure.** Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for services provided.

## 22.0 **General Terms**

a. Nondisclosure. By virtue of this User Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall include, but not be limited to the DEX IP, the terms and pricing under this User Agreement, and all other information clearly identified as confidential. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. In the event a party is required by law to disclose the other party's Confidential Information, the receiving party shall provide the

disclosing party with reasonable notice to allow the disclosing party to obtain a protective order. The parties agree to hold each other's Confidential Information in confidence during the term of this User Agreement and for a period of three years after termination of this User Agreement. The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this User Agreement.

b. Copyrights. The DEX IP is copyrighted by DEX or its licensor(s). Customer shall retain all DEX copyright notices on the DEX IP. Customer shall include a reproduction of DEX's copyright notice on any copies of the DEX IP deployed by Customer in whatever form.

c. Relationship Between Parties. In all matters relating hereto, Customer and DEX will act as independent contractors to each other. The relationship between DEX and Customer is that of licensor/licensee. Neither party will represent that it has any authority to assume or create any obligation, express or implied, on behalf of the other, nor to represent the other as agent, employee, franchisee, or in any other capacity.

d. Assignment. Customer may not assign or otherwise transfer, any rights under this User Agreement without DEX's prior written consent which DEX may grant or withhold in its discretion. Subject to the preceding sentence, this User Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, successors and assigns.