

ATA's Self-Regulatory Organization (SRO) Audit Tool – Subscriber Agreement

By signature below, Subscriber agrees to the following terms and conditions for the licensing and use of the American Teleservices Association (ATA) Audit Tool for auditing compliance with the rules developed by ATA's Self-Regulatory Organization (the ATA SRO Audit Tool).

WHEREAS, the ATA has created a Self-Regulatory Organization (SRO) which in turn has developed: 1) a set of rules relating to outbound and inbound telemarketing, and 2) an Internet-based tool for auditing compliance with those rules; and

WHEREAS the ATA has developed a process for issuing Seals of Compliance for Subscribers who have successfully passed an audit against the SRO rules,

WHEREAS, Subscriber desires to utilize the SRO Audit Tool to determine its compliance with the SRO rules and possibly subject itself to an outside audit and apply to the ATA for a Seal of Compliance;

NOW THEREFORE, the Subscriber agrees as follows:

1. Services Provided. ATA SRO Audit Tool (hereinafter the Audit Tool) is available through the Internet and provides the following features:

- Presentation of the SRO rules, organized by item into audit modules
- Documentation suggesting nonexclusive methodology to be used by the auditor in determining compliance with each rule
- Documentation suggesting nonexclusive guidelines for the auditor for rating the level of a Subscriber's compliance with each rule
- Online document repositories to store documents and information demonstrating the Subscriber's compliance with the rules
- Access controls to limit access to the Subscriber's information to its own authorized users, the auditor(s) of its own selection (if applicable), and representatives of the ATA SRO Seal of Compliance approval committee (if applicable).

The specific audit modules ordered by Subscriber are specified in Attachment A to this Agreement, the Subscriber Order Form, which may be amended from time to time in writing by Subscriber. The functionality, features or capabilities are subject to change in the ATA's unilateral discretion.

The services include phone-based, online training on the Audit Tool as specified in the Subscriber Order Form. The services include the following Subscriber support:

- Live phone support - M-F 8:00 am . 7:00 pm (Eastern)
- E-mail support/phone call-back M-F 7:00 pm . 11:00 pm (Eastern) and Sat 9:00 am . 5:00 pm (Eastern)

2. License to Use SRO Audit Tool. During the term of this Agreement, ATA grants to Subscriber a non-exclusive, non-transferable, terminable end-user license to use the ATA SRO Audit Tool solely for the purposes permitted by the terms and conditions of this Agreement.

3. Compensation and Payment. As compensation for the license of the Audit Tool, Subscriber agrees to pay fees according to the audit modules ordered and the prices and terms agreed to in Attachment A to this Agreement.

4. Conditions for License and Use of the Audit Tool. As the Tool is accessible exclusively online, Subscriber shall be responsible for obtaining Internet access at its sole expense utilizing its own equipment and software, through a service provider of its choosing. The Subscriber's web

browser must be compatible with Internet Explorer Version 6.0 or higher or Firefox Version 2.0 or higher. The web browser must support SSL encryption in order for the security features to function.

5. Access to Audit Tool, Access Security and Passwords. The Audit Tool may be accessed by the Subscriber only by one or more employees, agents or representatives of the Subscriber who are authorized by the Subscriber to use the Audit Tool pursuant to this Agreement (hereinafter, an "Authorized User"). The number of Authorized Users shall be as set forth on Attachment A, the Subscriber Order Form (as it may be amended from time to time). A unique login ID and password will be issued to each Authorized User. Each Authorized User may access the Audit Tool using only the login ID and password assigned to the Authorized User, and no person may access the Audit Tool using a login ID and password other than the Authorized User to which the login ID and password are assigned. Subscriber is responsible for the confidentiality and use of login ID(s) and password(s) provided to the Subscriber and any Authorized User. Subscriber agrees to notify ATA immediately of any loss or theft or unauthorized use of any login ID(s) and password(s). Subscriber acknowledges that the Audit Tool provides certain notices, statements, and other communications to Subscriber solely through e-mail, posting on the Services, or other electronic transmission. Subscriber understands that it and its Authorized Users are solely responsible for maintaining accurate and current e-mail addresses within the Audit Tool in order to receive such notices through the Audit Tool.

6. Availability. The Audit Tool shall be generally available for use 24 hours per day, 7 days per week, subject to ~~down time~~ for maintenance. The Audit Tool may not be available during scheduled maintenance periods, from midnight Saturday through 8:00AM Sunday Eastern Time. In the event that a special scheduled maintenance period is required, a minimum 48 hours notice will be given via e-mail and posted on the Audit Tool.

7. Data Transmission Security. Subscriber agrees to use web browser software that supports the Secure Socket Layer (SSL) protocol for secure data transfers. Subscriber acknowledges that ATA is not responsible for notifying it of any upgrades, fixes or enhancements to any such software or for any compromise of data transmitted across the Internet. Subscriber acknowledges that it is possible that data transmitted over the Internet may be accessed by unauthorized third parties when communicated between Subscriber and ATA.

8. Confidential Information. ATA shall safeguard and hold confidential from disclosure to any person or organization, except a person or organization approved by Subscriber in its sole discretion, all information that ATA receives directly or indirectly from Subscriber in connection with this Agreement and through the Audit Tool, herein referred to as ~~Confidential Information~~. Notwithstanding the foregoing, Subscriber specifically approves disclosure of its Confidential Information to ATA sub-contractors, agents, or representatives who: 1) have a need to know the information in connection with fulfilling responsibilities related to this Agreement or related to the approval and issuance of a Seal of Compliance, and 2) are covered by non-disclosure agreements at least as stringent as this one with respect to the Confidential Information. Confidential Information subject to this paragraph shall not include information which is, or becomes part of, the public domain other than by an act or omission of the ATA (or any of its approved sub-contractors, agents, or representatives) or which is or becomes known to ATA internally other than through ATA's receipt of Confidential Information or from third parties not under an obligation of confidence.

9. Data Retention. Subscriber may enter information to support the SRO audit into the Audit Tool (the Audit Information). Subscriber may delete Audit Information from its account up until the time that it submits the Audit Information to the ATA to apply for a Seal of Compliance. ATA agrees to retain the Audit Information in the Audit Tool for as long as this Agreement is in effect and the Subscriber's account is active. If this Agreement is terminated by either party or the Subscriber's account is closed for any reason, ATA will retain all Audit Information that is in the Audit Tool for ninety (90) days, unless Subscriber specifically provides a written request for ATA

to delete it sooner. If the ATA awards a Seal of Compliance to a Subscriber, the information associated with that audit is saved as a %Successful Audit.+The ATA reserves the right to retain the Audit Information associated with a Successful Audit for up to five (5) years after the award of a Seal of Compliance associated with that audit.

10. Proprietary Rights. ATA acknowledges Subscriber's proprietary rights in the Audit Information. Subscriber acknowledges ATA's proprietary rights in the Audit Tool and agrees that the software underlying the Audit Tool is ATA's proprietary and confidential information and is protected by applicable intellectual property and other laws. Subscriber agrees not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Audit Tool, in whole or in part. Subscriber agrees not to reproduce, duplicate, or copy any portion of the Audit Tool, use of the Audit Tool, or access to the Audit Tool. Subscriber agrees that it will not (and will not allow any third party to) reverse engineer, reverse assemble, disassemble, or decompile the software or any part thereof or otherwise attempt to discover any source code, or sell, assign, sublicense, grant a security interest in or otherwise transfer any right in or to the software. Subscriber may not use the Audit Tool to develop, have developed, assist in the development of, or support, directly or indirectly, any product or service which has, entirely or partially, the same functions as those of the Audit Tool, or which would in direct or indirect competition with the Audit Tool. Subscriber agrees not to modify the software in any manner or form, or to use modified versions of the software, including (without limitation) for the purpose of obtaining unauthorized access to the Audit Tool. Subscriber agrees not to access the Audit Tool by any means other than through the interface that is provided by ATA for use in accessing the Audit Tool.

11. Trademarks. ATA and Subscriber specifically acknowledge that this Agreement does not confer upon the other party any interest in or right to use any trademark or service mark of the other party or its Affiliates, unless the party wishing to use a trademark or service mark receives the prior written consent of the owning party, which the owning party may grant or withhold in its sole discretion. Upon termination of this Agreement, each party shall immediately cease and discontinue all use of the trademarks or service marks of the other party. Further, if either party wishes to utilize the trademarks or service marks in advertising or promotional materials or any type of publicity, it must submit such materials to the owning party for final written approval before utilizing them.

12. ATA Warranties. ATA warrants that it will use its best efforts to ensure that the Audit Tool shall conform in all material aspects to and provide the services described in Section 1 of this Agreement. ATA further warrants that it is authorized to provide the Audit Tool and that by executing this Agreement it does not violate any law, statute or regulation, or breach any other agreement to which it is a party or is bound. This Agreement contains no other warranties, express or implied, including but not limited to, implied warranties of merchantability, accuracy, or fitness for a particular purpose.

13. Limitation of Liability. Neither party shall be liable for any consequential, incidental, special or indirect damages (including, but not limited to, loss of profits, goodwill, use, data, or other intangible items) even if the other party has been advised of the possibility of such damages or losses. With respect to any other damages, each party's liability hereunder shall in no event exceed an amount equal to the amount actually paid by Subscriber to ATA in the one year prior to a claim under this Section, regardless of the basis for the claim. Furthermore, the parties acknowledge that the Audit Tool is intended solely to facilitate the performance of audits by Auditor. The information contained in the Audit Tool is not intended to be a substitute for the Auditor's independent knowledge of the ATA-SRO Standards, federal and/or state laws, or experience with the performance of audits. Accordingly, notwithstanding any provisions contained herein to the contrary, ATA shall not be liable to Subscriber for any damages arising out of the information provided by and within the Audit Tool, or suggested audit methodologies contained therein.

14. No Legal, Financial or Tax Advice Provided. No financial, legal or tax advice or counsel is given, or shall be deemed to have been given by ATA or by the Audit Tool.

15. Compliance with Applicable Laws. The Audit Tool shall be provided in compliance with all applicable federal, state and local laws and/or regulations.

16. Effective Date and Term. This Agreement shall be effective as of the date of the signature below and shall continue for one (1) year.

17. Termination. This Agreement may be terminated immediately upon Subscriber's failure to pay ATA in a timely manner for services rendered in accordance with this Agreement. In the event that either party breaches any term or condition of this Agreement (other than the payment of ATA's invoices in a timely manner), the non-breaching party may send a written notice of such default to the other party, and may terminate this Agreement in the event the default has not been cured by the expiration of such fifteen (15) day period. In the event of termination for any reason, Subscriber is entitled to request and receive any audit reports within Subscriber's account within the Audit Tool, provided the request is received by ATA within ninety (90) days of termination. ATA shall have thirty (30) days to provide said reports upon request by Subscriber.

18. Notices. Any such notice, request, or demand made under this Agreement shall be deemed to have been sufficiently given if either served personally or sent by prepaid first class mail, registered or certified mail addressed to the party at its address set forth below:

Subscriber:

ATA:

19. Applicable Law. This Agreement shall be governed in accordance with the laws of the State of Indiana, excluding its conflicts of law principles. Any controversies surrounding the terms of this Agreement shall be resolved through litigation that shall take place exclusively in the courts of Marion County, Indiana.

20. Other Agreements. It is the intention of the parties that this Agreement be the final and binding understanding and agreement. No agreement, either written or oral, entered into between the parties prior to this Agreement shall be deemed merged into this Agreement.

21. Waiver. Waiver by either ATA or Subscriber of a breach of any provision hereto shall not be deemed a waiver of any future compliance with this Agreement. Such provisions shall remain in full force and effect.

22. Force Majeure. ATA shall not be responsible for failure to fulfill its obligations under this Agreement due to acts of God, acts of nature, strikes, walkouts, or any other causes beyond its control. Should ATA be rendered unable, due to any of the aforesaid causes, to supply its services and fulfill its obligation under this Agreement, this Agreement may, at Subscriber's option, be terminated immediately upon notice to ATA.

23. Survival. All provisions of this Agreement relating to Confidentiality shall survive the termination of the Agreement.

24. Headings Have No Legal Effect. The headings and captions of this Agreement are for convenience of reference only, and have no legal effect, and are not to be construed as defining or limiting, in any way, the scope or provisions of this Agreement.

IN WITNESS WHEREOF, the Subscriber has executed this Agreement on this day and year first written below.

Subscriber

Company: _____

Name: _____

Signature: _____

Title: _____

Date: _____