



**DAON LICENSING
AGREEMENT
[CREDIT UNION]**

Effective Date: [DATE]

CONFIDENTIAL

CONTENTS

- 1. DAON IDENTITYX SOFTWARE LICENSES..... 3
- 2. FEES, RE-PRICING AND PAYMENT..... 4
- 3. TERM AND TERMINATION..... 4
- 4. CONSENT AND COMPLIANCE..... 4
- 5. SECURITY..... 5
- 6. WARRANTIES AND INDEMNIFICATION..... 5
- 7. LIMITATION OF LIABILITY..... 7

*THIS DAON LICENSE AGREEMENT (“Agreement”) is made as of [DATE], by and between CU*ANSWERS, INC., a Credit Union Service Organization, of 6000 28th Street S.E., Grand Rapids, Michigan 49546 (“CU*ANSWERS”) and CREDIT UNION, [ADDRESS] (“CREDIT UNION”).*

This Agreement is in addition to the Master Services Agreement. All terms and conditions of the Master Services Agreement apply to this Agreement

1. DAON IDENTITYX SOFTWARE LICENSES.

- (a) **LICENSE.** CU*ANSWERS grants to CREDIT UNION a non-transferable, non-exclusive annual license to access and use the Daon IdentityX Software Licenses during the Term, subject to the terms and conditions of the Master Services Agreement, the Daon Commercial Software License Agreement between CU*ANSWERS and Daon, and this Agreement, including the fee, term and termination provisions.

Each Daon IdentityX Software License shall include the following:

IdentityX Server Platform (includes Device/PIN authentication);
IdentityX Fingerprint Biometrics;
IdentityX Face Biometrics;
IdentityX Voice Biometrics; and
IdentityX Mobile Software Development Kits (SDKs).

IdentityX may be provided to CREDIT UNION under a different brand identity (e.g. “MACO”).

- (b) **RESTRICTIONS.** Except to the extent and in the circumstances expressly permitted by Daon, CREDIT UNION shall not reverse engineer, disassemble, decompile, translate, adapt or modify the Daon IdentityX Software or any part of the Daon IdentityX Software, or create derivative works based on the Daon IdentityX Software or permit any third party to do so, without the prior permission in writing from Daon.

CREDIT UNION shall not modify or remove any copyright or proprietary notices on the Daon IdentityX Software or the Daon IdentityX Software Documentation. CREDIT UNION shall comply with all relevant import and export laws, rules and regulations affecting the Software or any portion of it including, without limitation, those applied by the United States.

2. FEES, RE-PRICING AND PAYMENT.

- (a) All pricing and fees are hereby established in the current version of the applicable Pricing Guide.
- (b) Fees are subject to annual review and re-pricing by CU*ANSWERS in its discretion.
- (c) All payments shall be due within fifteen (15) days of receipt of an invoice from CU*ANSWERS. CREDIT UNION agrees to pay a late payment charge in the amount of one and one-half percent (1 ½%) per month on any unpaid amount for each calendar month (or portion thereof) that any payment is in default. CU*ANSWERS may apply any payment received to any delinquent amount outstanding.
- (d) CREDIT UNION agrees to pay all applicable taxes levied by any tax authority on the Services performed under this Schedule, excluding any and all taxes based on the net income of CU*ANSWERS.

3. TERM AND TERMINATION.

This Agreement is for an initial term of three (3) years. This Schedule shall automatically renew for additional three (3) year periods unless terminated by CREDIT UNION, or if either party provides at least 90-days' written notice prior to the expiration of the initial term or any renewal term.

4. CONSENT AND COMPLIANCE; EULA.

- (a) **CONSENT.** By using Daon IdentityX Software License, CREDIT UNION hereby agrees to obtain all necessary prior written consent from any user, and provide any necessary disclosures as required by law. This includes, but is not limited to, consent to use Voice Recognition, PIN, Fingerprint, and/or Face Recognition technology for the purpose of authenticating the user.
- (b) **COMPLIANCE.** CREDIT UNION agrees to abide by any state or federal laws regarding the use and storage of biometric information.

In the event that the Daon IdentityX Software is held by a court of competent jurisdiction or is believed by Daon to infringe any applicable legal requirement, Daon shall have the option, at its own expense and in its sole discretion, to:

- (1) Modify or amend the Daon IdentityX Software or the infringing part of the Daon IdentityX Software in order to avoid any infringement; or
- (2) Terminate the use of the Daon IdentityX Software.

(c) **EULA.** End users end users who are authenticated using the Daon IdentityX Software are required to accept the mandatory terms of the End User License Agreement attached as Exhibit 1 prior to their use of the Daon IdentityX Software.

(d) **DISCLAIMER TO USERS.** CREDIT UNION further agrees to advise users not to use Daon IdentityX Software licenses if the user shares the device or allow others to use Daon IdentityX Software licenses. CREDIT UNION further agrees to advise users that the user is responsible for all transactions made using any form of Daon IdentityX Software authentication if the person conducting the transaction(s) did not have the user's authority or exceeded the user's authority.

5. SECURITY.

Neither CU*ANSWERS nor Daon store biometric information. Biometric information used for authentication is stored on the device used for authentication. Any information transmitted between the device and CU*ANSWERS or Daon shall be transmitted in a commercially reasonable secure fashion.

6. WARRANTIES AND INDEMNIFICATION.

(a) **PASS THROUGH WARRANTY AND INDEMNIFICATION.** CU*ANSWERS agrees to pass through warranties and indemnification CU*ANSWERS receives from Daon, including:

(1) **NON-CONFORMANCE.** If the Daon IdentityX Software fails to substantially conform to its specifications and provided the non-conformity is reported to CU*ANSWERS in writing, then the Daon, as its sole obligation and as the CREDIT UNION'S sole remedy, shall remedy the non-conformity, PROVIDED THAT such non-compliance has not been caused by:

- (i) any modification, variation or addition to the Daon IdentityX Software not authorized in writing by CREDIT UNION; or
- (ii) the incorrect use, abuse or corruption of the Daon IdentityX Software; or
- (iii) the use of the Daon IdentityX Software with other software or on equipment with which it is incompatible.

CREDIT UNION agrees biometric technology is probabilistic, meaning that false matches and false non-matches and spoofing can occur and do not constitute Daon IdentityX Software product defects or breaches of this Agreement. Best practice is to implement and update best practice security measures such as "liveness"

techniques (e.g., for facial recognition blinking, head-nodding and head-shaking) as part of the authentication workflow in order to lessen or mitigate the possibility of biometric spoofing.

(2) INTELLECTUAL PROPERTY INDEMNIFICATION. Daon shall defend and indemnify the CREDIT UNION against all costs, including reasonable legal fees, subject to the provisions of this Agreement, arising from a claim that the Daon IdentityX Software used within the scope of this Agreement knowingly infringes a third party's Intellectual Property Rights enforceable in the Territory provided that:

- (i) CREDIT UNION promptly notifies the Licensor in writing and in any event within 30 days of the claim;
- (ii) Daon is given immediate and sole control of the defense of such claim and all related settlement negotiations; and
- (iii) CREDIT UNION is provided with all reasonable assistance, information, and authority necessary to perform the above; with reasonable out-of-pocket expenses incurred by the CREDIT UNION in providing such assistance to be reimbursed by Daon.

The Licensor shall have no liability for any claim of infringement by reason of:

- (i) Any alteration or modification which was not made by Daon or with its prior written consent;
- (ii) Use of a superseded or altered release of the Daon IdentityX Software if such infringement would have been avoided by the use of a current unaltered release of the Daon IdentityX Software that Daon or CU*ANSWERS has provided to CREDIT UNION; or
- (iii) The combination, operation, or use of any of the Daon IdentityX Software furnished under this Agreement with equipment, programs or data not furnished by Daon or CU*ANSWERS if such infringement would have been avoided by the use of the Software without such equipment, programs or data.

In the event that the Software is held by a court of competent jurisdiction or is believed by Daon to infringe, Daon shall have the option, at its own expense and in its sole discretion, to:

- (i) Modify or amend the Daon IdentityX Software or the infringing part of the Daon IdentityX Software in order to avoid any infringement;

- (ii) Procure for the CREDIT UNION the right to continue using the Daon IdentityX Software or infringing part of the Daon IdentityX Software;
- (iii) Substitute the Daon IdentityX Software or infringing part of the Daon IdentityX Software with other software reasonably suitable to the CREDIT UNION.

This Clause states Daon's entire liability for infringement of Intellectual Property Rights of any third party.

(b) **WARRANTY EXCLUSIONS.** Neither CU*ANSWERS nor Daon warrants that the IdentityX Software will be error free or operate without interruption, or all program errors will be corrected. CREDIT UNION acknowledges that the existence of such errors shall not constitute a breach of this Agreement. The warranties above are exclusive and in lieu of all other warranties, including warranties or conditions of merchantability, satisfactory quality and fitness for a particular purpose, conditions, terms, undertakings and obligations, express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

7. LIMITATION OF LIABILITY.

NEITHER CU*ANSWERS NOR DAON SHALL BE LIABLE, IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR FOR BREACH OF STATUTORY DUTY OR IN ANY OTHER WAY FOR ANY ECONOMIC LOSSES (INCLUDING LOSS OF REVENUES, PROFITS, CONTRACTS, BUSINESS, DATA, OR ANTICIPATED SAVINGS); OR ANY LOSS OF GOODWILL OR REPUTATION; OR ANY SPECIAL OR INDIRECT OR CONSEQUENTIAL LOSSES, IN ANY CASE, WHETHER OR NOT SUCH LOSSES WERE WITHIN THE CONTEMPLATION OF THE PARTIES AT THE DATE OF THIS AGREEMENT, OR WERE SUFFERED OR INCURRED ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE DAON IDENTITYX SOFTWARE OR ANY MATTER ARISING UNDER THIS AGREEMENT.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CU*ANSWERS, INC.

CREDIT UNION

Randy Karnes
CEO

[NAME]
CEO

Date

Date

EXHIBIT 1:

IDENTITYX AUTHENTICATION SOFTWARE EULA TERMS

CREDIT UNION agrees to require users who are authenticated using the IdentityX Software (“the End Users”) to accept the terms of the following End User License Agreement, prior to their use of the IdentityX Software, or terms that provide equivalent protection to Daon, CU*ANSWERS, and the IdentityX Software.

CREDIT UNION FURTHER AGREES THAT THESE TERMS ARE PRESENTED WITHOUT WARRANTY. NEITHER DAON NOR CU*ANSWERS PROVIDES LEGAL ADVICE, PROVIDE AN OPINION AS TO WHETHER THESE TERMS ARE SUFFICIENT TO CREDIT UNION IN THE JURISDICTION(S) WHERE CREDIT UNION DOES BUSINESS. CREDIT UNION SHOULD CONSULT WITH ITS OWN LEGAL COUNSEL REGARDING APPLICABLE CONSENT AND COMPLIANCE WITH BIOMETRIC LAWS IN THE JURISIDITION(S) WHERE CREDIT UNION DOES BUSINESS.

IDENTITYX END USER LICENSE AGREEMENT

This is an Agreement between you the user of this Software (the Licensee) and CREDIT UNION (the Licensor). Clicking the "Accept" button and/or using the Software indicates acceptance of these license terms.

You have enrolled to use the IdentityX software (“the Software”). This software may be presented to you under a different brand identity (e.g. “MACO”).

In order to use the Software, you must download the IdentityX Authenticator App on your mobile device.

Acceptance of this Software license is a precondition to downloading the IdentityX Authenticator App and use of the Software.

“Software” refers to both the IdentityX software downloaded to mobile devices, including without limitation the IdentityX Authenticator App, and to the software resident on backend servers. This includes without limitation Software, including the object code and/or source code, functionality, concept, processes, internal structure, design, external elements, user interface, technology and documentation.

1. **LICENSE.** Licensor hereby agrees to license the Software to Licensee, pursuant to the terms herein, for the purpose of online banking authentication only. Licensee may not

remove copyright, trademark, trade secret, confidentiality and patent notices from Software. Licensee shall comply with all US import and export laws.

Licensee shall not modify, vary, enhance, reverse engineer, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements of the Software or any supporting software or have any software or other program written or developed based on Software or its concepts. Licensee may not use Software for the purpose of developing competing software based on concepts, functions, or operations like those disclosed in the Software. This clause shall survive the termination of this agreement indefinitely.

2. **CONFIDENTIAL INFORMATION.** Licensee acknowledges that the Software and any and all information provided in connection therewith, is proprietary to, and forms part of, the confidential information of the Licensor or its licensors, as the case may be. The Licensee hereby agrees to maintain all confidential information of the Licensor in strictest confidence, not to disclose same to any third party, and to use all reasonable measures to prevent any unauthorized disclosure of thereof. This protection shall continue in force for the period of this license agreement and thereafter for a further period of six years.
3. **INTELLECTUAL PROPERTY RIGHTS.** Licensee only acquires the right under this Agreement to use the Software and all intellectual property rights in Software and all derivatives, enhancements and modifications belong to and shall remain vested in the Licensor or its licensors, as the case may be.

The Licensee undertakes not to copy the software nor otherwise reproduce nor allow a third party to do so, except to the extent and in the circumstances expressly required to be permitted by the Licensor by law, and to effect and maintain adequate security measures to safeguard the Software from access or use by any unauthorized person. The Licensee shall notify the Licensor immediately if the Licensee becomes aware of any unauthorized use of the whole or any part of the Software by any person.

4. **WARRANTY.** All Software is provided "as is" without any express or implied warranty of any kind. No liability is accepted by Licensor. Under no circumstances shall Licensor be liable for any special, consequential, direct or indirect loss or damage including without limitation, loss of profits, loss of data or loss of business opportunity.
5. **LIABILITY.** Licensee shall be liable for any breach of this Agreement and any damage caused.
6. **TRANSACTIONS.** [CREDIT UNION MUST INCLUDE LANGUAGE HERE REGARDING CONSUMER LIABILITY FOR TRANSACTIONS UNDER APPLICABLE FEDERAL AND STATE ELECTRONIC FUNDS TRANSFER LAWS. SAMPLE LANGUAGE USED BY OTHER CREDIT UNIONS:

Once the Software has been activated, any person who has stored their biometric information on the device will be able to access accounts using the device. CREDIT UNION does not recommend using the Software if Licensee shares the device or allows others to use the Software. Licensee is responsible for all transactions made using any form authentication stored on Licensee's device which were, and these transaction(s) will be considered authorized by Licensee, even if the person initiating the transaction was someone other than the Licensee even if the person conducting the transaction(s) did not have Licensee's authority or exceeded Licensee's authority. A transaction will not be considered unauthorized if it was initiated (1) By a person who was furnished the access device to the Licensee's account by the Licensee, unless the Licensee has notified CREDIT UNION that transactions by that person are no longer authorized; or (2) With fraudulent intent by the Licensee or any person acting in concert with the Licensee.

HOWEVER, THIS LANGUAGE MAY NOT BE SUFFICIENT IN THE JURISDICTION(S) WHERE THE CREDIT UNION DOES BUSINESS].

7. **TECHNICAL SUPPORT.** For information or technical support for the Software please contact CREDIT UNION.
8. **MISCELLANEOUS.** The relationship between Licensor and Licensee is that of independent contractors. The invalidity or unenforceability of any term of, or any right arising pursuant to, this Agreement for any reason whatsoever shall not affect the validity or enforceability of the remaining terms or rights which shall continue in full force and effect. This Agreement shall constitute the entire extent of the Agreement between the parties regarding its subject matter and supersedes any prior agreement understanding, arrangement, statement or representation made between them whether oral or in writing. Licensee hereby acknowledges that unauthorized disclosure or use of Software may cause immediate and irreparable harm to Licensor. Accordingly, Licensor will have the right to seek and obtain preliminary and final injunctive relief to enforce this Agreement in case of any actual or threatened breach, in addition to other rights and remedies that may be available to Licensor.
9. **NOTICES.** Any notices and other communications required or permitted to be given under this Agreement shall be in writing and delivered by mail or electronic means, and shall be effective when received, with evidence of receipt.
10. **LAW AND JURISDICTION.** The construction, validity and performance of this Agreement is governed by the laws of the Commonwealth of Virginia.

