

Platform Activation Agreement

This Platform Activation Agreement ("Agreement") is made as of the "Effective Date" as set forth on page 3 hereof, by and between Guardian Alliance Technologies, Inc. ("Guardian"), located at 11 S. San Joaquin St., Suite 804, Stockton, CA 95202, and:

<u>Tupelo Police Department</u>	<u>John Quaka, Chief</u>
Customer Name (hereinafter referred to as "Customer")	Officer or Authorized Representative Name and Title

with an address of

<u>400 North Front Street, Tupelo MS 38801</u>	<u>662-841-6491</u>
Street Address, City, State, Zip	Phone Number

WHEREAS, Guardian has developed a cloud-based software platform (the "Guardian Platform") for use by law enforcement agencies in performing employment related background investigations; and

WHEREAS, the Customer desires to utilize the Platform, and Guardian desires to provide the Platform to the Customer pursuant to the terms and conditions of this Agreement.

A G R E E M E N T

NOW, THEREFORE, in consideration of the promises and covenants contained herein and the foregoing recitals, which are hereby incorporated into this Agreement, the Parties agree that the Terms of this Agreement shall govern Customer's use of the Platform as defined herein:

1. DEFINITIONS.

- 1.1 **"Account Administrator"** means an individual responsible for authorizing and managing all activity occurring under the Customer's Account.
- 1.2 **"Authorized User"** means an individual registered and identified by the Account Administrator by name who is authorized to use the Services on behalf of the Customer.
- 1.3 **"Terms of Service"** means, collectively, the Guardian Terms of Service and Guardian Privacy Policy. The Terms of Service may be updated from time to time at the discretion of Guardian and/or any Integrated Service providers as defined in the Guardian Terms of Service, respectively.
- 1.4 **"Social Media Screening"** means the collection of publicly available online Applicant information. For the purpose of this Agreement, Social Media Screening is referred to as an "Integrated Service".
- 1.5 **"OnDemand Services"** means services available through the Platform which are available for a fee.

- 2. **FCRA Compliance.** Customer hereby acknowledges that Customer is solely responsible for its compliance with the Fair Credit Reporting Act ("FCRA") and any other state and/or local consumer reporting laws in connection with its use of the Social Media Screening Service, **if applicable**.

3. Scope of Services.

- 3.1 **Activation.** By entering into this Agreement, Customer hereby requests that Guardian establish and

activate a Customer Account on the Guardian Platform for use by Customer and its Authorized Users.

3.2 Features and Fees. Use of the Triage Center, including access to the NAIC is available for use by Customer at no charge and Customer is under no obligation to use the OnDemand features listed below. Notwithstanding the foregoing, upon entering into this Agreement, Guardian shall make the Investigation Center and Social Media Screening Feature available for Customer's use on an OnDemand basis subject to the Fees set forth below. If Customer wishes to order Credit Reports from within their Guardian Account, a separate Credit Report Feature Activation Agreement is required.

(a) Investigation Center - \$50 per applicant assigned to an investigator.

(b) Social Media Screening - \$40 per report.

(c) Credit Reports - \$12 per report.

3.3 Payment Terms. Customer will be invoiced at the end of each calendar month for all use of the fee based features that occurs during the calendar month. Invoices will be due upon receipt. Invoices shall be considered past due after 45 days from issuance.

3.4 Failure to Pay/Customer Conduct. Guardian reserves the right to deactivate Customer's access to the Platform if any payment is not received within 60 days of the invoice date.

3.5 Late Fee. Guardian reserves the right to charge a late fee of 1.5% per month on all invoices not paid within 60 days of issuance.

3.6 Additional Authorized Users. The Account Administrator shall have the authority and ability, through their User Account, to establish as many User Accounts for other individuals in their organization who are Authorized to use the Services on Customer's behalf. Additionally, the Account Administrator shall be responsible for deactivating Authorized User accounts when necessary.

3.7 Security. Each of the Parties agree to maintain a security program consistent with federal and state laws, regulations, and standards, including the CJIS Security Policy, as well as any other applicable policies and standards established by the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB).

3.8 Terms of Service. By accessing and using the Services, Customer agrees to be bound by the Guardian Terms of Service.

4. Whitelist. Customer hereby agrees to whitelist all domains as may be indicated by Guardian at any time during the Term of this Agreement, including but not limited to:

(a) guardian.network

(b) www.guardianalliancetek.com

(c) www.guardianalliancetechnologies.com

(Note: Content filtering systems in use by Customer, if any, may unexpectedly cut parts of html pages out of the user interface as well as some email traffic, lead to unexpected errors, broken links, unclickable buttons, partially loaded pages or other unintended/unpredictable behaviors with the Services. These issues are completely resolved by "whitelisting" all Guardian domains.)

5. **Intellectual Property Infringement.** Guardian shall indemnify, defend or, at its option, settle any third-party claim, suit or proceeding against customer to the extent based on a claim that the services (excluding any third-party software) infringes any united states patent, copyright, trademark or trade secret and Guardian shall pay any final judgment entered against customer in any claim, suit or proceeding or agreed to in settlement. Customer will notify Guardian in writing of the claim, suit or proceeding and give all information and assistance reasonably requested by Guardian or its designee. If use of the services is enjoined, Guardian may, at its option, do one or more of the following: (i) procure for customer the right to use the services, (ii) replace the services with other suitable services or products, or (iii) refund the unearned prepaid portion of the fees paid by customer for the services or the affected part thereof (if any). Guardian will have no liability under this section 5 to the extent a claim or suit is based upon (a) use of the Guardian Platform in combination with software not provided by Guardian if infringement would have been avoided in the absence of the combination, (b) modifications to the Guardian Platform not made by Guardian, if infringement would have been avoided by the absence of the modifications, or (c) use of any version other than a current release of the services, if infringement would have been avoided by use of a current release. This section 5 states Guardian's entire liability and customer's sole and exclusive remedy for intellectual property infringement or misappropriation claims.
6. **Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
7. **Amendment.** The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement. If any part of this Agreement is found invalid or unenforceable that part will be enforced to the maximum extent permitted by law and the remainder of this Agreement will remain in full force.
8. **Mandatory Addendum.** By the signatures affixed to this contract, both parties hereby acknowledge the provisions of the City of Tupelo's Mandatory Addendum dated August 2019 is incorporated as part of this Agreement and attached hereto as Exhibit A.
9. **Marketing.** Guardian may use Customer's name as part of a general list of Customers and may refer to Customer as a user of the Services in its general advertising and marketing materials.
10. **Invoicing Contact Information.**

Key contact for invoicing	Robert Vail, LT
Email address for invoicing	robert.vail@tupeloms.gov

IN WITNESS WHEREOF, the parties are causing this Platform Activation Agreement to be executed by their duly authorized representatives.

Customer:



Signature of officer or authorized representative

John Quaka

Print Name

Chief

Title

1/25/22

Effective Date

Guardian Alliance Technologies, Inc.:



Signature of officer or authorized representative

Adam Anthony

Print Name

COO

Title

The City of Tupelo (TUPELO), despite any contrary provision contained in any contract to which TUPELO is a party, does not waive any rights, benefits, or prohibitions that may be provided under any law, statute(s), regulation(s), or policies. All provisions to the contrary in any contract to which TUPELO is a party are hereby null, void and deleted. Not intended to be an exhaustive list, the following are examples of such matters and shall be exceptions to any contrary provision(s) in any contract to which TUPELO is a party.

1. TUPELO does not indemnify or hold harmless any party.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
2. TUPELO does not make any warranty.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
3. TUPELO does not waive any claim; past, present, or future.
Miss. Const. Art. 4, § 100; Miss AG Op.; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
4. TUPELO does not waive its sovereign immunity. TUPELO shall only be responsible for liability resulting from the actions of its officers, agents, and employees acting within the course and scope of their official duties.
Miss. Code Ann. § 11-46-1, et seq.
5. TUPELO does not waive its Constitutional Eleventh (11th) Amendment immunity.
U.S. Const. Amend. XI.
6. TUPELO does not agree to the application of laws of another state.
U.S. Const. amend XI; Miss. Code Ann. 11-11-3; Miss. Code Ann. 11-45-1; *City of Jackson v. Wallace*, 196 So. 223 (1940)
7. TUPELO does not limit the tort liability of another party to the amount of the contract or to any other set amount.
Miss. Const. Art. 4, § 100; Miss AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002); Miss. AG Op., Hathorn (May 28, 1992); Miss. AG Op., Davis (March 3, 1993).
8. TUPELO does not agree to waive warranties of merchantability, fitness for a particular purpose, or any common law warranties to which TUPELO is entitled.
Miss. Const. Art 4, § 100; Miss Code Ann. § 75-2-719; Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).

9. TUPELO does not agree that a party may represent, prosecute or defend legal actions in the name of TUPELO. (CITATION NEEDED.)
10. Provisions that limit the time for TUPELO to pursue legal actions are deleted and void.
Miss. Const. Art. 4, § 104; Miss. Const. Art. 4, § 100; Miss Code Ann. § 15-1-5; Miss AG Op; Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct, 18, 2002).
11. TUPELO does not agree to submit to binding arbitration.
Miss. AG Op., Clark (June 7, 2002); Miss. AG Op., Chamberlin (Oct. 18, 2002).
12. TUPELO will make payments for all amounts owed under a contract agreement in accordance with state law.
Miss. Code Ann. § 31-7-305.
13. TUPELO advises for all contracts entered into, the provisions of the contract which will contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information, and shall be available for examination, copying or reproduction.
Miss. Code § 25-61-9 (7).
14. TUPELO must comply with Mississippi public records law. Records furnished to public bodies by third parties which contain trade secrets or confidential commercial or financial information shall not be subject to inspection, examination, copying or reproduction until notice to said third parties has been given, but such records shall be released within a reasonable period of time unless the said third parties shall have obtained a court order protecting such records as confidential.
Miss. Code § 25-61-9 (1).
15. Data processing software obtained by TUPELO under a licensing agreement that prohibits its disclosure and which software is a trade secret as defined in Miss. Code Section 75-26-3, and data processing software produced by a public body which is sensitive must not be subject to inspection, copying or reproduction under Mississippi public records law. "Sensitive" means only those portions of data processing software, including the specifications and documentation, used to:
(a) Collect, process, store, and retrieve information which is exempt; (b) Control and direct access authorizations and security measures for automated systems; (c) Collect, process, store, and retrieve information disclosure of which would require a significant intrusion into the business of the public body.

16. TUPELO is prohibited from binding its successors in office to contracts, including leases, which result in taking away the successors' rights and powers conferred by law, unless there is specific statutory authority to enter into such contract. In the absence of specific statutory authority, such contracts are voidable by the successors in office.
MS AG Ops., Barton (January 8, 2014) and Barton (July 15, 2011)(both relying on Biloxi Firefighters Assoc. v. City of Biloxi, 810 So.2d 589 (Miss. 2002).
17. TUPELO does not have the power to grant to any person, firm or corporation any exclusive franchise or any exclusive right to use or occupy the streets, highways, bridges, or public places in such municipality for any purpose. TUPELO cannot grant, renew, or extend any such franchise, privilege or right, without compensation or for any longer period than twenty-five years.
Miss. Code Anno. 21-27-1
18. All contracts must be approved by the City Council of TUPELO, subject to the veto power of the Mayor of TUPELO.
MS AG Ops. 2012-00013