



## Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is entered into as of \_\_\_\_\_ (“**Effective Date**”), by and between Noviant, Inc. (“**Noviant**”) located at Suite 401, 32 Broadway, New York, New York 10004 and the customer entity (“**Customer**”), (each a “**Party**” and collectively the “**Parties**”).

**WHEREAS**, Noviant is engaged in the business of providing managed information technology (“**IT**”) services, products, equipment and solutions; and

**WHEREAS**, Customer wishes to retain Noviant to provide such IT-related services, products, equipment and solutions as described herein, and Noviant wishes to provide same to Customer;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1. Definitions.** In addition to any other terms defined in this Agreement, the following terms are defined:

1.1. “**Confidential Information**” means any information that is treated as confidential by a disclosing Party (the “**Disclosing Party**”) and provided to the other Party (the “**Receiving Party**”) for purposes of this Agreement, including trade secrets, technology, processes, software, algorithms, information pertaining to business operations, finances and strategies, information pertaining to customers, pricing and marketing, and the terms and existence of this Agreement. Confidential Information shall not include information that the Receiving Party can demonstrate by documentation: (i) was already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information directly or indirectly from or on behalf the Disclosing Party; (ii) was or is independently developed by the Receiving Party without reference to or use of any of the Disclosing Party’s Confidential Information; (iii) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or any of its Representatives; or (iv) was received by the Receiving Party from a Third Party who was not, at the time, under any obligation to the Disclosing Party or any other Person to maintain the confidentiality of such information.

1.2. “**Intellectual Property**” or “**IP**” means proprietary rights, title and interest in all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable law in any jurisdiction throughout the world. The term “Intellectual Property” or “IP” may also be used herein to refer to the embodiments (e.g., software or data) that are protected by the foregoing IP rights.

1.3. “**Open Source Software**” or “**OSS**” means any Software component that is subject to any open-source copyright license agreement, including any GNU General Public License or GNU Library or Lesser Public License, or other similar license agreement; or that otherwise may require disclosure or licensing to any Third Party of any source code with which such Software component is used, compiled, linked or integrated.

1.4. **“Background Technology”** means all Software, data, know-how, ideas, methodologies, specifications, and other technology in which a Party may own IP rights prior to the Effective Date of this Agreement, or is outside the scope of this Agreement.

1.5. **“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

1.6. **“Software”** means all computer program(s) (e.g., cloud-based products or solutions), including any associated programming tools and scripts, that Noviant is required to or otherwise does develop or otherwise provide to Customer under this Agreement, as described more fully in a PO attached hereto, including all updates, upgrades, new versions, new releases, enhancements, improvements, and other modifications made or provided.

1.7. **“Third Party”** means any Person other than Customer or Noviant.

**2. Overview.** This Agreement states the terms and conditions under which Noviant will provide and Customer will receive the Products, Equipment, Services and Deliverables as set forth in one or more negotiated purchase orders (each a **“Purchase Order”**) as agreed and executed in writing by the Parties, and attached hereto. Such Purchase Orders may include: i) a list (a **“Product List”**) of the **“Products”** and **“Equipment”** that Customer will purchase from Noviant, that includes any special terms of such purchase, and/or ii) statement(s) of work (each a **“SOW”**) under which Noviant will provide certain IT services (the **“Services”**) and/or solutions, software, data files, forms, databases or other similar products (**“Deliverables”**). A form of Purchase Order is attached hereto as Exhibit 1, including a Product List (Schedule A) and SOW (Schedule B). Changes to POs may be made upon written agreement of the Parties with respect to any changes or additions to the Services or Deliverables. In the event of any conflict of terms between this Agreement and a PO (including its attached Product List and/or SOW), the terms of the PO will govern and control solely with respect to the subject matter or activities authorized by that particular PO.

### **3. Payments.**

3.1. Fees and Expenses. Customer agrees to pay Noviant all fees for the Products, Equipment, Services and Deliverables as set forth in any PO (**“Fees”**) (plus all applicable sales tax, insurance, shipping costs and other reasonable Expenses). Noviant may bill Customer for Fees as: (i) an initial amount (the **“Initial Bill”**) equal to all non-recurring charges for immediate payment, and (ii) monthly recurring charges the **“Recurring Bill”**) in arrears for each month of Services rendered. Customer will further reimburse Noviant for its reasonable out-of-pocket expenses (**“Expenses”**) as related to travel and lodging, express shipping (including insurance) and similar expenses incurred by Noviant in performing hereunder. Unless otherwise agreed in a PO, Customer agrees to pay any Initial Bill within fifteen (15) days after receipt of invoice, and all Recurring Bills within thirty (30) days after receipt of invoice (the **“Due Date(s)”**). Noviant expressly reserves the right to alter, change or amend its billing practices at its sole discretion, including, but not limited to, the date on which billing will occur and the types of charges that will be included in invoices. Customer will make all payments to Noviant in U.S. Dollars.

3.2. Late Payments. In the event that Customer fails to pay any amounts before fifteen (15) days after the applicable Due Date, then Noviant shall send written notice of such payment delinquency to Customer. If Customer does not pay undisputed overdue amounts within five (5) days of receipt of such notice (a **“Payment Default”**), then Noviant may suspend work under the affected PO. If any invoiced amount is not received by Noviant by the applicable Due Date, then without limiting Noviant’s rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. Customer agrees to pay court costs, expenses

and reasonable attorneys' fees with respect to the collection efforts as to any such amounts which are invoiced and not paid by the Due Date.

3.3. Taxes. All taxes, duties, fees and other governmental charges of any kind (excluding taxes based on the gross revenues or net income of Noviant) arising out or relating to any PO shall be borne by Customer.

#### 4. **Term and Termination.**

4.1. Term. This Agreement shall continue in force for an initial term of one (1) year from the Effective Date ("**Initial Term**"), and upon the expiration of this Initial Term, this Agreement shall be automatically renewed for successive one (1) year terms (each a "**Renewal Term**"), unless terminated by either Party upon thirty (30) days' notice prior to such renewal date. The Initial Term plus all Renewal Terms shall collectively be referred to as the "**Term**" of this Agreement.

4.2. Termination Without Cause. Either Party may terminate this Agreement or any PO at any time after the Initial Term for any or no reason upon either Party giving to the other no less than ninety (90) days' prior written notice of termination. No matter which Party terminates the Agreement or PO pursuant to this Section, any and all payment obligations of Customer under this Agreement or PO through the date of such termination will immediately become due, and Customer shall be required to prepay for any portion of Fees for Products, Equipment, Services or Deliverables that have not been paid for and are to be rendered during such ninety (90) day period.

4.3. Termination For Cause by Noviant. In addition to any other rights it may have under this Agreement or applicable law, Noviant may immediately terminate this Agreement or any PO, or suspend service without notice, in the event of (i) a Payment Default, or (ii) Customer's material breach or failure to comply with any other obligation of Customer under this Agreement including, but not limited to, its failure to comply with any Noviant rules, regulations or other policies as made available to Customer. If Noviant terminates this Agreement under this Section, all remaining Recurring Bills and any other charges specified in the applicable POs for the balance of the then current Term shall immediately become due and payable. In addition to the foregoing, Noviant reserves the right to prohibit any conduct or to remove any materials that Noviant believes in its sole discretion may be illegal or potentially harmful to others or that may expose Noviant to harm or liability.

4.4. Termination for Cause by Customer. Customer may terminate this Agreement and/or any PO upon written notice if Noviant materially breaches this Agreement or a PO and fails to correct the breach within thirty (30) days following written notice specifying the breach.

4.5. Termination for Bankruptcy. Either Party may terminate this Agreement at any time if the other Party enters into insolvency or bankruptcy, or is unable to pay its debts as they become due, or a trustee or receiver or the equivalent is appointed for the Party, or proceedings are instituted against the Party relating to dissolution, liquidation, winding up, bankruptcy or insolvency, if such proceedings are not terminated or discharged within thirty (30) calendar days.

4.6. Effect of Termination. In the event of any termination of this Agreement and/or any PO, Customer shall pay Noviant any and all amounts due under this Agreement or any PO. Noviant shall deliver to Customer any and all work product, work-in-process and Deliverables created or developed under this Agreement. Upon termination, each Party shall deliver or destroy all Confidential Information of the other Party that is in its possession, care or control at the other Party's election (except for information that is required to be kept for backup or data retention purposes, in which case such

information will be kept confidential in accordance with Section 10 until deletion), and upon the other Party's request, provide a written certification of the same.

4.7. Survival. The following provisions of this Agreement will survive indefinitely after the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the Parties as applicable: Sections 1, 4.6, 5.1, 5.3, 5.4, 7.2, 8, 9, 10 and 11.

## 5. **Property Rights.**

5.1. Reservation of Rights. Subject to any licenses granted herein, each Party or its licensors shall retain exclusive ownership of its Background IP. Except for express grants of rights in Products, Equipment, Services or Deliverables under a PO (if any), no IP rights will pass from one Party to the other under this Agreement. To the extent any Background IP is used or incorporated in connection with any Services or Deliverables, the Noviant hereby grants to Customer a perpetual, royalty-free, paid-up, transferable, worldwide, nonexclusive license to use such Background IP only as necessary to enable use of such Services and Deliverables for Customer's business purposes as contemplated under this Agreement or the applicable PO.

5.2. Customer Materials. Customer hereby grants to Noviant the limited, royalty-free, non-exclusive right and license to use Customer Software, documentation, products, equipment and/or materials ("Customer Materials") as directed by Customer and solely as necessary to incorporate such Customer Materials into, or otherwise use such Customer Materials in connection with providing Services or creating any Deliverables. Subject to the foregoing license, Customer reserves all rights in any Customer Materials, and Customer Materials shall be deemed Customer's Confidential Information.

5.3. Restrictions. Customer shall not (i) remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on or during use of any Products, Equipment, Services, Deliverables or Third Party Products; or (ii) reverse engineer, decompile, or disassemble any Products, Equipment, Services, Deliverables or Third Party Products, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

5.4. Marks. Nothing in this Agreement shall give either Party any rights, title, or interest in and to any trademarks, trade names, service marks or the like ("**Marks**") of the other Party. Each Party recognizes that the other Party is the owner of all rights, title, and interest in and to its Marks and the goodwill now and hereafter associated with such Marks and shall take no action inconsistent with such ownership. Neither Party will engage in any act or thing that would impair the exclusive rights of the other Party in and to its Marks, or the registration thereof or the validity thereof. Each Party agrees not to use or register in any country any trademarks or service marks which embody all or any portion of the Marks of the other Party.

5.5. Use of Customer's Name for Marketing and Promotion. Customer agrees that during the Term, Noviant may publicly refer to Customer, orally and in writing, as a customer of Noviant in resumes, client lists and in other promotional materials and communications, including, but not limited to, press releases, brochures and reports.

6. **Customer Site Services**. For any Services to be provided by Noviant at any Customer site or Customer client site, Customer shall provide Noviant personnel with: (i) a suitable and adequate work environment, including space for work, office furniture, and on-site equipment for performance of the Services, as necessary, and (ii) any other items as may be mutually agreed by the Parties. Noviant shall, unless otherwise agreed by the Parties, be responsible for providing its personnel all necessary mobile equipment, including but not limited to: pagers, laptops and cell phones, as required for performance of

the Services. Unless Customer agrees otherwise in a PO, Customer shall not provide work space or other equipment to Noviant in connection with Noviant's performance of the Services away from Customer sites or Customer client sites.

## 7. Warranties and Disclaimers.

7.1. Warranties. Customer represents and warrants that: (a) Customer's execution, delivery and performance of this Agreement: (i) are authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which Customer is subject or the terms of any material agreement to which Customer may be subject and (iii) are not subject to the consent or approval of any Third Party; (b) this Agreement is the valid and binding obligation of Customer, and is enforceable against Customer in accordance with its terms; (c) Customer is not subject to any pending or threatened litigation or governmental action which could interfere with such Customer's performance of its obligations hereunder; (d) Customer will use the Products, Equipment, Services and Deliverables only for lawful purposes and in accordance with this Agreement; and (e) Customer will comply at all times with all applicable laws and regulations. In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Noviant will have the right, in its sole discretion, to immediately suspend or terminate its obligations under this Agreement and any PO.

### 7.2. Disclaimers.

7.2.1. THE SERVICES AND DELIVERABLES ARE PROVIDED TO CUSTOMER ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES AND DELIVERABLES IS AT ITS OWN RISK. EXCEPT AS PROVIDED IN A PO, NOVIANT DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NOVIANT DOES NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

7.2.2. NOVIANT DOES NOT AND CANNOT CONTROL THE FLOW OF INFORMATION TO OR FROM NOVIANT'S SYSTEMS, NETWORKS, CLOUD RESOURCES OR ANY PORTION OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES MAY IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). NOVIANT CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY NOVIANT DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

7.2.3. EXCEPT AS EXPRESSLY WARRANTED IN A PO, NOVIANT EXPRESSLY MAKES NO WARRANTIES REGARDING PROTECTION OF CUSTOMER DATA, AND BEARS NO RESPONSIBILITY FOR ESTABLISHING PROCEDURES FOR THE CREATION OF BACK-UP COPIES OR SECURITY OF CUSTOMER DATA OR OTHER INFORMATION.

7.2.4. Third Party Products. Noviant may provide Customer with access to or use of Third Party software and/or services ("**Third Party Products**") through its reseller relationships that Noviant has established with certain commercial vendors, including without limitation, Microsoft Corporation ("**Third Party Vendors**"). NEITHER NOVIANT NOR ANY THIRD PARTY VENDOR MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING ANY THIRD PARTY PRODUCTS. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES

THAT USE OF THIRD PARTY PRODUCTS IS AT CUSTOMER'S SOLE RISK AND SUCH THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND FROM NOVIANT OR ANY THIRD PARTY VENDOR, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES OR RESULTS, CORRESPONDENCE TO DESCRIPTION, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

## **8. Limitations of Liability.**

8.1. Indirect Damages. EXCEPT WITH RESPECT TO OBLIGATIONS FOR INDEMNIFICATION, BREACH OF CONFIDENTIALITY, AND CLAIMS INVOLVING GROSS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR VIOLATION OF APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT OR GOODWILL ("INDIRECT DAMAGES"), FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF THE PARTY WITH ALLEGED LIABILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2. Direct Damages. EXCEPT WITH RESPECT TO OBLIGATIONS FOR INDEMNIFICATION, BREACH OF CONFIDENTIALITY, AND CLAIMS INVOLVING GROSS NEGLIGENCE, FRAUD, WILLFUL MISCONDUCT OR VIOLATION OF APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER FOR DIRECT DAMAGES EXCEED THE GREATER OF: (A) THE AGGREGATE AMOUNTS PAID OR OWED BY CUSTOMER TO NOVIANT UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE FIRST OCCURRENCE OF THE EVENTS GIVING RISE TO ANY CLAIM, OR (B) \$50,000.

8.3. Delays and Interruptions. NOVIANT SHALL NOT BE LIABLE FOR ANY LOSS OF CUSTOMER OR THIRD PARTY DATA RESULTING FROM DELAYS, DATA CORRUPTION, NON-DELIVERIES, MIS-DELIVERIES, OR SERVICE OR NETWORK INTERRUPTIONS. CUSTOMER SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SERVICES AND DELIVERABLES, AND NOVIANT SHALL HAVE NO LIABILITY THEREFORE. EXCEPT IF CAUSED BY NOVIANT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER NOVIANT NOR ITS NETWORK SERVICES SUPPLIERS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO NOVIANT'S OR CUSTOMER'S TRANSMISSION FACILITIES OR PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF NOVIANT'S OR ITS NETWORK SERVICE SUPPLIER'S NEGLIGENCE.

8.4. Third Party Products. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER NOVIANT NOR ANY THIRD PARTY VENDOR WILL BE RESPONSIBLE FOR ANY DIRECT OR INDIRECT DAMAGES ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY PRODUCT. CUSTOMER AGREES TO OBSERVE THE TERMS OF ANY LICENSE AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENT FOR THIRD PARTY PRODUCTS AND THAT CUSTOMER SHALL BE FULLY LIABLE TO THIRD PARTY VENDORS AND NOVIANT WITH RESPECT TO ANY IMPROPER USE OF SUCH THIRD PARTY PRODUCTS

OR VIOLATION OF LICENSE AGREEMENTS AND/OR APPLICABLE END USER SUBSCRIBER AGREEMENTS. Customer understands that product support for Third Party Products may be provided by Noviant under an applicable PO, but not by any Third Party Vendor.

## **9. Indemnification.**

9.1. Each Party (the “**Indemnifying Party**”) shall indemnify the other Party and its affiliates, owners, officers, directors, shareholders, agents and employees (the “**Indemnified Party**”) from and against any and all losses, costs, damages, injuries, awards, judgments or liabilities, including but not limited to legal and professional fees, costs and expenses (“**Losses**”), incurred by the Indemnified Party as a result of any claim, suit, proceeding or cause of action asserted against the Indemnified Party by a Third Party (“**Claim**”) and shall defend the Indemnified Party against any such Claims arising from: i) any actual or alleged infringement or misappropriation of any IP rights by the Indemnifying Party in connection with use of Third Party hardware or software with any of the Services or Deliverables (but excluding any infringement contributorily caused by the Indemnified Party); or ii) any breach of this Agreement by the Indemnifying Party.

9.2. Customer (as the “**Indemnifying Party**”) further agrees to indemnify Noviant and its affiliates, owners, officers, directors, shareholders, agents and employees (as the “**Indemnified Party**”) against any Losses incurred by the Indemnified Party as a result of any Claim arising out of, or relating to any information, data or other content provided by Customer or its customers/clients, and input or processed by the Products, Equipment, Services or Deliverables.

9.3. The Indemnifying Party shall defend each Claim under this Section, and control and direct the investigation, defense and settlement of each such Claim at its expense. When seeking indemnification, the Indemnified Party shall: 1) promptly notify the Indemnifying Party in writing of the Claim for which indemnification is sought, 2) permit the Indemnifying Party to control the defense and settlement negotiations of the Claim, 3) cooperate with the Indemnifying Party as reasonably requested to assist in the defense and/or settlement of the Claim at the Indemnifying Party’s expense, and 4) have the right to provide for its own separate defense at its own expense. Notwithstanding the foregoing, the failure to give notice to the Indemnifying Party within a reasonable time of the commencement of any Claim under this Section will not relieve the Indemnifying Party of any liability to the Indemnified Party under this Section unless such failure materially prejudices the Indemnifying Party’s ability to defend such Claim.

## **10. Confidentiality.**

10.1. Non-Disclosure Obligation. In the course of performance of this Agreement, each Receiving Party may receive Confidential Information of the other Disclosing Party. Any and all Confidential Information in any form or media so obtained by a Receiving Party shall be held in confidence and shall not be used, copied, reproduced, or disclosed to Third Parties for any purpose whatsoever, except as necessary in connection with the obligations of the Receiving Party under this Agreement. Each Receiving Party further agrees that it will take reasonable security precautions to protect the confidentiality of such Confidential Information. Notwithstanding the foregoing, a Receiving Party may disclose the Disclosing Party’s Confidential Information to its employees, consultants, affiliates or professional advisers who have a need to know such information for the purposes of this Agreement, provided that the Disclosing Party shall be responsible for compliance by such persons with the requirements of this Section. The non-disclosure provisions of this Agreement shall survive the termination of this Agreement, and shall remain in effect for a minimum period of ten (10) years from the date of termination, except that the Parties shall protect all trade secrets under the non-disclosure

provisions of this Agreement indefinitely until such Confidential Information no longer qualifies as a trade secret.

10.2. Permitted Disclosure. Notwithstanding any provision hereof, a disclosure by a Receiving Party of any of the Disclosing Party's Confidential Information (1) in response to a valid order by a court or other governmental body; (2) as otherwise required by law; or (3) necessary to establish the rights of either Party under this Agreement shall not be considered to be a breach of this Agreement by the Receiving Party; provided, however, that Receiving Party must provide prompt prior written notice thereof to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent the disclosure. Further, the Receiving Party shall disclose only the minimum amount of the Confidential Information that it is legally required to furnish and, where appropriate, will exercise its best efforts to obtain written assurances that confidential treatment will be accorded to such Confidential Information.

10.3. In the case of a breach of the confidentiality provisions of this Section, the Parties hereby agree that their respective remedies at law are inadequate, and consent to equitable enforcement of their obligations under said provisions without the requirement to show irreparable harm, by a court of appropriate equity jurisdiction hereunder.

## **11. General.**

11.1. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the State of New York without giving effect to its choice or conflict of law provisions. All disputes and/or legal proceedings related to this Agreement shall be brought and maintained exclusively in Federal or state courts located in New York, New York, and the Parties agree to personal jurisdiction and convenient forum therein.

### 11.2. Dispute Resolution.

11.2.1. The Parties agree to attempt in good faith to resolve any controversy, claim, or dispute of any nature whatever arising out of, or relating to, this Agreement, or the breach, termination, enforceability, or validity of this Agreement (a "Dispute") promptly by negotiation between executives or managers who have authority to settle the Dispute and who are at a higher level of management than the persons who have direct responsibility for the execution of this Agreement.

11.2.2. In the event of a failure to resolve a Dispute per the foregoing, the Parties agree to use a mutually agreed alternative dispute resolution technique, such as mediation, prior to resorting to arbitration or litigation.

11.2.3. If the foregoing informal resolution does not resolve the Dispute within thirty (30) days, the Parties hereto agree to submit the dispute to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA") then in effect. THE PARTIES UNDERSTAND AND AGREE TO SUBMIT TO ARBITRATION PROCEEDINGS TO SETTLE ANY DISPUTES HEREUNDER, THAT SUCH ARBITRATION WILL BE IN LIEU OF LITIGATION, AND EACH PARTY HEREBY WAIVES THE RIGHT TO SUE IN COURT IN FAVOR OF THE ARBITRATION PROCEEDING EXCEPT AS PERMITTED UNDER THIS AGREEMENT. Any such arbitration shall proceed in accordance with the laws and venue of Section 11.1, above. THE PARTIES HEREBY WAIVE ANY OBJECTION TO THIS VENUE AS INCONVENIENT OR INAPPROPRIATE, AND AGREE TO EXCLUSIVE JURISDICTION AND VENUE IN THE DISPUTE RESOLUTION LOCATION. Within ten (10) calendar days after the arbitration demand is served upon a Party, the Parties must jointly select an arbitrator with at least five (5) years' experience in that capacity.



If the Parties do not agree on an arbitrator within ten (10) calendar days, a Party may petition the AAA in order to appoint an arbitrator. The decision of the arbitrator shall be final and binding and no Party shall have rights of appeal. Each Party shall bear its own costs and fees in connection with the arbitration, however, the arbitrator shall have the power to order one Party to contribute to the reasonable costs and expenses of the other Party, or to pay all or any portion of the costs of the arbitration. This provision shall not limit either Party's right to petition for interim judicial relief, such as an injunction, specific performance or similar relief.

11.3. Notice. All notices and requests in connection with this Agreement shall be given or made upon the respective Parties in writing and shall be deemed to be given as of the day such notice or request is received by the other Party. All such notices and requests should be directed to the addresses identified above in the preamble to this Agreement, or any other address identified via written notice to the other Party.

11.4. No Third Party Beneficiaries. Nothing in this Agreement shall create any rights in any Third Party beneficiaries, and neither Party has any obligation to any Third Party by virtue of this Agreement.

11.5. Independent Contractor. The Parties agree that each is an independent contractor and this Agreement does not create any employment relationship between the Parties for taxation or any other purpose. Each Party shall be responsible for the payment of compensation (including provision for employment taxes, workmen's compensation and any similar taxes) associated with the employment of its personnel. Neither Party shall have the right to bind the other to any agreement with a Third Party, or to incur any obligation or liability on behalf of the other Party. During the Term hereof and for a period of twelve (12) months thereafter, neither Party shall, directly or indirectly, solicit for employment or employ, or accept services provided by, any employee, officer or independent contractor of the other Party who performed any work in connection with or related to the subject matter hereof unless approved by the other Party in writing.

11.6. Assignment. Neither Party may assign or otherwise transfer all or any or of its rights, obligations or interest under this Agreement without the written consent of the other Party, and any attempt to do so shall be void and of no force or effect for any purpose whatsoever and shall constitute a breach of this Agreement. Notwithstanding the foregoing, either Party may assign or otherwise transfer this Agreement to an affiliate or to a Third Party that is not a direct competitor of the non-assigning Party, without requiring consent from the non-assigning Party in the event of a sale, merger or other divestiture of substantially all of that assigning Party's assets to such Third Party, and the existence and terms of this Agreement may be disclosed in confidence to such Third Party for the sole purpose of effecting such assignment or transfer, provided that the assigning Party must give notice of any such assignment or transfer to the other Party at least sixty (60) days prior to the time at which such assignment or transfer shall take effect. Subject to the foregoing, this Agreement will bind and inure to the benefit of each of the Parties and their respective successors and permitted assigns, and shall not otherwise give rise to any rights to entities other than the immediate Parties hereto, including but not limited to Third Party beneficiary rights.

11.7. Severability. If any provision of this Agreement is in violation of any applicable law, such provision shall to such extent be severable and be deemed null and void, and the remainder of the Agreement shall remain in full force and effect.

11.8. No Waiver. The failure of either Party to insist upon the performance of any provision herein or to exercise any right or privilege granted to it hereunder, will not be construed as a waiver of such provision or any provisions herein, and the same will continue in full force. The various rights and

remedies given to or reserved by either Party herein or allowed by law, are cumulative, and no delay or omission to exercise any of its rights will be construed as a waiver of any default or acquiescence, nor will any waiver of any breach or any provision be considered a condonement of any continuing or subsequent breach of the same provision.

11.9. Entire Agreement. This Agreement, together with any exhibits or other attachments, constitutes the entire Agreement between the Parties in relation to this engagement. Any revision or modification of this Agreement shall be effective only if it refers to this Agreement, is in writing, and is signed by an authorized representative of both Parties. Facsimile signatures are effective to bind the signing Party and admissible in any court and/or for any lawful purpose.

11.10. Force Majeure. Neither Party will be liable for delay or failure to perform any of its obligations where such delay or failure is due to the acts or omissions of the other Party, unavailability of parts or software, war, civil insurrection, natural disaster (such as flood, earthquake, hurricane or lightning strike) or other act of God or any other event or condition beyond the reasonable control of such Party.

11.11. Headings and Recitals. The section headings in this Agreement are to be given no legal effect. The preamble recitals are included as an integral part of this Agreement and are to be given full legal effect.

11.12. Counterparts. This Agreement may be executed by any of the Parties hereto in counterparts, via written, electronic or scanned signature, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.