

MASTER PROFESSIONAL SERVICES AGREEMENT

This MASTER PROFESSIONAL SERVICES AGREEMENT, (together with any Exhibits, Schedules, Amendments and the Terms and Conditions, (the "Agreement"), effective as of [EFFECTIVE DATE] (the "Effective Date") by and between [VENDOR COMPANY], a [VENDOR STATE OF FORMATION] corporation, having its principal place of business at [VENDOR ADDRESS] (the "Vendor"), and [COMPANY] a [COMPANY STATE OF FORMATION] corporation, having its principal place of business at [COMPANY ADDRESS] (the "Company").

WHEREAS, Vendor desires to provide Services to Company under the terms and conditions set forth herein (the "Terms and Conditions") and in accordance with the Exhibits and Schedules that are attached hereto and incorporated by reference into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and intending to be legally bound hereby, the parties agree as follows:

1. Definitions. The following terms as used in this Agreement have the following meanings:

1.1 "Affiliate" with respect to an entity, means any other entity directly or indirectly controlling, controlled by or under common control with such entity, where "control" means, with respect to an entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

1.2 "Deliverables" means all items and things identified as such in one or more Schedules.

1.3 "Government Authority" means any governmental authority or court, tribunal, agency, department, commission, arbitrator, board, bureau, or instrumentality of the United States of America or any other country or territory, or domestic or foreign state, prefecture, province, commonwealth, city, county, municipality, territory, protectorate or possession.

1.4 "Intellectual Property Right(s)" means all right, title and interest to intellectual and industrial property rights recognized in any jurisdiction, including patents, trade and service marks, trade names, domain names, rights in designs, copyrights, mask work rights, trade secrets, moral rights, topography rights and rights in databases, in all cases whether or not registered or able to be registered in any particular jurisdiction in the world for the full term of such rights (including any extension or renewal of the terms of such rights, registrations and applications for registration of any of such rights, rights to apply for such rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of such rights anywhere in the world).

1.5 "Jobsite" means the location designated by Company at which Services are being performed.

1.6 "Law" means all laws, statutes, ordinances, codes, regulations and other pronouncements having the effect of law of any Government Authority.

1.7 "Milestone" means a significant point or date in the Timeline or completion point of specific short-term goals, as set forth in one or more Schedules.

1.8 "Schedule" means any written agreement executed by Company and Vendor pursuant to this Agreement in a form acceptable to both parties, including any agreement regarding specific Services (e.g. Statement of Work).

1.9 "Services" means all the obligations of Vendor hereunder and any other Services as may be added to or performed in connection with this Agreement. Services includes all activities and Deliverables, as specified in one or more Schedules.

1.10 "Subcontractor" means a separate legal entity from that of Vendor who performs Services under this Agreement under contract to Vendor and/or under the direction of Vendor.

1.11 "Timeline" means the timing of the Services to be performed, as set forth in one or more Schedules.

1.12 "Vendor Items" means (i) any of Vendor's commercially available products as of the Effective Date of the applicable Schedule; and (ii) any item in which Vendor or a third party (who has licensed rights to Vendor) owns all Intellectual Property Rights as of the Effective Date of the applicable Schedule.

1.13 "Vendor Personnel" means fully trained and competent employees or Subcontractors of Vendor having a skill level appropriate for the tasks assigned to them in accordance with this Agreement.

2 Services. Vendor agrees to provide Services to Company in connection with a particular project, as specified in one or more Schedules.

2.1 Resources. Vendor shall commit the necessary time and resources to provide the Services in accordance with any Milestones, specifications and Timelines specified in the Schedules. Company shall not be liable for any work carried out by Vendor prior to the Effective Date.

2.2 Subcontractors. All Services described herein are to be performed by employees of Vendor unless approved in advance in writing by Company. Vendor shall indemnify, defend and hold Company harmless from any and all costs and liabilities arising from differences in any terms, costs, insurance, etc. attributable to Vendor's contract with its Subcontractors having different terms and conditions from this Agreement. The performance of Services by Subcontractors shall comply with the conditions prescribed by this Agreement and a Subcontractor must sign a written agreement, pursuant to which such Subcontractor, shall, among other things, agree to be bound by this Agreement as if such Subcontractor were Vendor.

2.3 Vendor Monitoring. Vendor shall be responsible for monitoring and managing the time and efforts expended by Vendor Personnel, and shall give this Agreement the priority required, so as to provide to Company the Services set forth in this Agreement within the costs and Timelines set forth in one or more Schedules. Vendor represents and warrants to Company that Vendor Personnel providing the Services hereunder shall have expertise in the relevant subject matter, and shall perform the Services in a professional and workman-like manner, and in accordance with the highest ethical standards. The performance of Vendor Personnel shall be continuously satisfactory to

Company, and Company shall have the right to require Vendor to take such action as necessary to remedy any performance deficiencies.

2.4 Reports. Vendor shall, as specified in one or more Schedules or when reasonably requested by Company, furnish to Company written reports as to the progress of completing the Services under this Agreement. Such reports shall provide specific details with respect to the timing and completion of each Milestone set forth in the applicable Schedule and shall set forth the reasons for any delays or issues. Company shall have [NUMBER OF DAYS 1] from the date a report is received or the date of completion of the Milestone, whichever is later, to make a determination whether Vendor has met the requirements of that Milestone.

2.5 Changes. No changes in the Services constituting a change to the scope of Services or resulting in cost or schedule changes shall be made except upon written order of Company. Any claim made by Vendor for adjustment to the price, performance schedule, or both, shall be deemed waived unless asserted in writing no later than [NUMBER OF DAYS 2] from Vendor's first knowledge of the change. Under no circumstances shall any pending claim or dispute excuse Vendor from proceeding with its performance under this Agreement. If Services are suspended or terminated for default, then Vendor shall be responsible for all damages or costs incurred by Company.

2.6 Inspection. Vendor shall provide and maintain an inspection system covering the Services, including material and services, to be furnished under this Agreement. Records of such system shall be maintained and available to Company. Company shall have the right, but not the obligation, to inspect any Services furnished by Vendor and may reject and/or require re-performance of any Services not performed in accordance with the requirements set forth herein. If any Services or portion thereof is determined to be unsuitable or defective, Vendor shall bear and pay all expenses incidental to the correction of unsuitability and/or correction of such Services, including without limitation any fines or penalties. The foregoing rights and remedies are in addition to any others available to Company at law or in equity or elsewhere in this Agreement.

2.7 Work Performed. Vendor shall perform all Services at its risk and if the Services or any portion thereof shall be damaged in any way before the final completion and acceptance of the Services, Vendor shall promptly repair or replace such damaged Services without expense to Company. Vendor shall be responsible for any loss or damage to equipment or other articles used or held for use in connection with the Services.

2.8 Location of Services. All Services hereunder must be performed in the United States unless otherwise agreed to in advance by Company in writing. In no event shall any of Company's data be processed, accessed or transmitted outside of the United States without Company's advance express written consent. Any authorization by Company to perform Services hereunder, or process, access or transmit Company's data outside the United States shall be limited to the specific instance or circumstances detailed in any written authorization by Company.

3 Work Product.

3.1 Work Product. Work Product includes, but is not limited to, any tangible or intangible property, data, works of authorship (whether or not embodied in a tangible medium), formulae, artwork, sketches, software code, designs, graphics, discoveries, inventions, ideas, know-how, techniques, concepts, and improvements. All Work Product produced, conceived, developed or provided by Vendor or Vendor's Personnel in the course of performing Services pursuant to any Schedule, is deemed to be "Work Product."

3.2 Vendor Items Excluded. To the extent that they are identified specifically in a Schedule as Vendor Items, Vendor Items are not included in the definition of Work Product.

3.3 License to Vendor Items. In the event that any Work Product incorporates Vendor Items, or Company's use of any Work Product would constitute a violation of any rights in the Vendor Items, Vendor grants Company an irrevocable, perpetual, non-exclusive, worldwide, transferable, sublicenseable, royalty-free license in the Vendor Items to permit Company to exercise all Intellectual Property Rights and proprietary rights to the Vendor Items, but only as embodied in the Work Product and not separate and apart from the Work Product.

3.4 Ownership of Work Product. Vendor acknowledges and agrees that Company contracted with Vendor to create all Work Product for Company and that all Work Product is owned by Company in the entirety as: (i) a "Work Made for Hire" (to the extent permitted by Law) in which Company owns all copyrights as the author and all other Intellectual Property Rights and proprietary rights, if legally applicable; and (ii) the exclusive owner or assignee of all Intellectual Property Rights and proprietary rights to the Work Product. To the extent that any works within the Work Product may not be considered a Work Made for Hire under the United States copyright Laws, and to the extent that any rights to the Work Product may be vested in any person other than Company, Vendor hereby irrevocably grants and assigns, and represents and covenants to cause any third party to irrevocably grant and assign, free and clear of any liens, claims or encumbrances, exclusively to Company, each and every right in the Work Product throughout the world, including all copyright, patent, trade secret, and all other Intellectual Property Rights and proprietary rights, together with all renewals and extensions thereto, and the right to bring actions for past and future infringement. Such grant and assignment is to be in a form acceptable to Company. Work Product is deemed to be Confidential Information of Company, and Vendor is a Receiving Party of all such Confidential Information.

3.5 Further Assurances. Vendor acknowledges and agrees to take all appropriate steps at the request of Company to secure for Company all rights and benefits in and to the Work Product, to protect Company's rights in the Work Product and to appoint Company as Vendor's attorney-in-fact to enable Company to record, file and prosecute any application for, and acquire, maintain and enforce, any Intellectual Property Rights, proprietary rights or any other rights in the Work Product throughout the universe in all languages and in all media and forms of expression and communication now or later developed. Vendor agrees to waive any and all rights of attribution and integrity Vendor may have in any of the Work Product pursuant to [SECTION 17] U.S.C. §106A of the United States copyright Laws and any right of privacy or publicity for the Work Product identified in each Schedule for all uses as stated and contemplated.

4 Acceptance. If, within [NUMBER OF BUSINESS DAYS] after the delivery of any Work Product, or any part thereof, to Company, Company notifies Vendor that the Work Product is not satisfactory to Company, Vendor agrees to correct any and all such unsatisfactory deficiencies in the Work Product and redeliver the corrected Work Product to Company. If the corrected Work Product is not satisfactory to Company, then Company may: (i) continue to require Vendor by notice to correct the Work Product; or (ii) upon notice to Vendor terminate the applicable Schedule and obtain a refund of any payment already made by Company for such Work Product, in which case Company is relieved of any further duty to pay for such unsatisfactory Work Product. In the event Company has required Vendor to correct the Work Product [NUMBER OF TIMES], and Vendor has failed to do so, then Company may no longer require Vendor to correct the Work Product without Vendor's consent and Company may exercise its rights under (ii) above.

5 Vendor Personnel.

5.1 Vendor Personnel. Vendor agrees to provide the Services through Vendor Personnel, as set forth in any Schedule.

5.2 Key Personnel. If a Schedule designates certain Vendor Personnel as "Key Personnel," Vendor agrees to provide the Services through such Key Personnel. If one or more Key Personnel terminate their employment with Vendor or otherwise become unavailable to perform work under a Schedule, Vendor agrees to notify Company of such termination or unavailability and provide replacement Vendor Personnel who have comparable training and experience.

5.3 Satisfaction with Performance. If Company becomes dissatisfied with the performance of any Vendor Personnel, Company may, at its option, either: (i) notify Vendor of the details of the unsatisfactory performance, and Vendor agrees to remedy the problem to the satisfaction of Company, including replacement of Vendor Personnel, as quickly as possible, but in no event more than [NUMBER OF DAYS 3] from Company's notification to Vendor; or (ii) upon notice to Vendor, require removal of such Vendor Personnel. The hourly rate for any replacements for any reason may not exceed the hourly rate paid by Company for the previous Vendor Personnel and the skill level will be equal to or better than the initial Vendor Personnel. Unless otherwise agreed by Company in writing, Company is not responsible for any fees or expenses arising from any change in Vendor Personnel, including any "Ramp Up" time required to be spent acquainting the replacement Vendor Personnel with the Services.

5.4 Project Manager. Each Schedule must contain an initial designation of a "Project Manager" for each party who is the principal point of contact between the parties for all matters relating to such Schedule. Company may designate a new Project Manager by written notice to Vendor. Vendor's Project Manager is deemed to be Key Personnel.

5.5 System Access and Security Requirements.

(a) Compliance with Security Policies. If Vendor is given access to the Company's, Company's customers', or other vendors' web site(s) (including, without limitation, secure access areas), computer system(s), software or hardware ("Systems") in connection with performance of the Services, Vendor agrees to not tamper with, compromise or circumvent any security or audit measures used in conjunction with the System.

(b) Auditing Use of the System. Vendor agrees that Company may audit Vendor's use of any Systems. Vendor agrees that Company has the right, but not the obligation, to review any information, emails, or other data stored on or contained in any computer hard drive, disk, or any other storage medium in any way connected to the Systems or containing Company property or data (the "Vendor Information") to determine whether there have been any violations of this Agreement or Law.

(c) Disclosure of Vendor Information. Company reserves the right to disclose any and all Vendor Information, except to the extent it contains Confidential Information of Vendor, in which case Company must abide by the confidentiality requirements hereunder.

5.6 Procedures. Vendor agrees to ensure that all Vendor Personnel comply with Company's procedures applicable to Company's personnel and third party visitors when visiting any of Company's facilities. To that end Vendor shall inform Vendor Personnel that Company facilities are tobacco free. Vendor's Personnel shall, while at any Company location, in connection with this Agreement, comply with Company's rules and regulations with regard to safety and security. Vendor shall have full control over such Vendor Personnel and shall be entirely responsible for their compliance with Company's rules and regulations. To the fullest extent not prohibited by Law, Vendor agrees to indemnify and save Company harmless from any claims or demands, including the costs, expenses and reasonable attorneys' fees incurred on account thereof, that may be made by (i) anyone for injuries to persons or damage to property to the extent they are caused by violations of Law, the willful misconduct or negligence of Vendor's Personnel; or (ii) Vendor's Personnel based on Worker's Compensation or any other employment related claims. Vendor agrees to defend Company, at Company's request, against any such claim or demand.

6 Price and Payments.

6.1 Payment. The price of fees shall be as set forth in the applicable Schedule. Vendor may invoice Company no more than once a month. Company agrees to pay to Vendor all undisputed amounts due under a Schedule for the Services properly completed and accepted by Company, within [NUMBER OF DAYS 4] after the date of Company's receipt of a Complete Invoice. A Complete Invoice is one that contains the following format requirements (and any other information specifically requested by Company): Name of Vendor and "Remit to" address, Company's purchase order number, invoice number, invoice date, description of the Services (including, if applicable, Company's part number), total invoice amount with miscellaneous/travel charges (if applicable) listed separately from labor charges and payment terms consistent with and not additional to any provisions under this Agreement. If any amount on any invoice is reasonably disputed by Company, Company may elect to return the invoice unpaid or pay only the undisputed portion. In no event will Company pay finance charges or other related fees or costs. Company's Accounts Payable address is: [COMPANY ACCOUNTS PAYABLE ADDRESS].

6.2 Programs. Company reserves the right to: (i) make payments, through a procurement card program designated by Company; (ii) make payments through electronic funds transfer upon receipt of complete banking and transmittal information from Vendor; and (iii) utilize its electronic commerce program for payments to Vendor when appropriate and as determined by Company. Company may not charge Vendor for the use of such forms of payment without Vendor's prior written consent. If payment

is made through the ACH system, the date of payment shall be the date Company initiates such payment in the system.

6.3 Taxes. To the extent that Services supplied hereunder are subject to any sales, use, value added or any other taxes, payment of such taxes, if any, is Company's responsibility. Vendor is liable for any and all taxes on any and all income it receives from Company under any agreement.

6.4 Expenses. If specifically set forth in a Schedule, Company agrees to reimburse Vendor under the applicable Schedule for reasonable travel, materials and supplies and other reasonable out-of-pocket expenses incurred in providing the Services, if: (i) Company pre-approves the expenses in writing; (ii) Vendor Personnel submit valid receipts and other appropriate documentation substantiating the expenses, including an itemized expense statement contained with Vendor's invoice; (iii) all travel expenses are incurred in conformance with Company's travel policy as provided by Company to Vendor, upon Vendor's request; (iv) such expenses do not exceed the limit set forth in the applicable Schedule; and (v) Vendor uses Company's Corporate Travel Department to arrange and book all travel.

6.5 Travel Time. Hours Vendor incurs during Vendor's travel time may not be charged to Company.

6.6 No Minimum. Company is not obligated to purchase any minimum amount of Services, Work Product or Vendor Items under this Agreement.

6.7 Most Favored Customer. Vendor represents that all terms and conditions Vendor grants to Company under this Agreement are at least as favorable as those Vendor offers to any of its other customers for similar products and services at similar volume levels. If Vendor contracts with any other customer and provides materially more favorable terms or conditions than are contained in this Agreement, Vendor agrees to so notify Company in writing within [NUMBER OF DAYS 5] and to offer Company those materially more favorable terms and conditions under the same conditions offered to the other customer.

7 Affiliates. Vendor agrees to offer the same pricing, for the Services as Vendor is obligated to provide to Company hereunder, to Affiliates of Company. Company and/or its Affiliates may place orders under this Agreement. All such orders shall indicate the Company entity placing the order.

8 Representations, Warranties and Covenants. Vendor represents, warrants and covenants to Company that (and throughout the Term, Vendor agrees to promptly notify Company of any change in the status of Vendor's compliance with the following):

8.1 General. Vendor: (i) is duly organized and validly existing and in good standing under the Laws of its jurisdiction of organization; (ii) is qualified or licensed to do business and in good standing in every jurisdiction where such qualification or licensing is required; and (iii) has the corporate power and authority to negotiate, execute, deliver and perform its obligations under this Agreement.

8.2 Infringement. The Work Product, Vendor Items and Services do not violate any patent, trade secret, or other Intellectual Property Rights or proprietary rights of any third party, and as of the Effective Date, Vendor is unaware of any such violation. To

the extent that any Vendor Items are licensed to Company, it has the right to grant such licenses to Company.

8.3 No Litigation. There is no actual or, to Vendor's knowledge, threatened litigation concerning: (i) Vendor that affects Vendor's ability to comply with this Agreement; or (ii) any Work Product, Vendor Items or Services.

8.4 Malicious Code. All Services, Vendor Items and Work Product are free of any time-bombs, worms, viruses, Trojan horses, protect codes, data destruct keys or other programming devices or code that might, or might be used to, access, modify, delete, damage, deactivate or disable any Work Product, Vendor Items, Services, or Company's other software, computer hardware, or data.

8.5 Services Performance. The Services are performed in a professional and competent manner, conforming to generally accepted standards applicable to services provided by nationally recognized firms specializing in the Services that Vendor is rendering under this Agreement. Each of the Vendor Personnel assigned to provide any Services under this Agreement have the proper skill, training, and background to provide the Services.

8.6 Background Check. A criminal background check and a social security number check has been conducted for each Vendor Personnel in accordance with [EXHIBIT B] and with applicable Law prior to assignment of any member to perform Services, and the results of such checks have been favorable/satisfactory. For Vendor Personnel who will provide Services at any Company facility, Vendor agrees to provide Company with written verification that the results of all such checks were favorable/satisfactory and, upon request, provide a copy of the relevant report along with the Vendor Personnel member's consent to the release of such report to Company. Vendor acknowledges that Vendor Personnel will not be permitted access to the Jobsite until a fully executed [EXHIBIT B] is provided to Company's Project Manager. Vendor will be responsible for all delays attributed to late submittal.

8.7 Equal Opportunity Employment. It is an equal opportunity employer and it hires and assigns Vendor Personnel regardless of race, sex, color, religion, creed, ancestry, national origin, disability, age, marital status or other protected class status pursuant to applicable Law.

8.8 Employment and Immigration Law Compliance. It complies with all applicable Laws, including, without limitation, immigration, equal employment opportunity, nondiscrimination and workers' compensation Laws, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Occupational Safety and Health Act of 1970 (known as "OSHA"), Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (known as "HIPAA"), and the Immigration and Nationality Act (compliance with the Immigration and Nationality Act includes, without limitation, completing an I-9 form for all Vendor Personnel and otherwise complying with the employer sanction provisions of Section 274A thereunder). It has obtained any and all immigration documents, visas, clearances, permits and the like necessary and appropriate for the lawful provision of the Services in the United States and other locations contemplated by this Agreement. At Company's request, Vendor agrees to provide legible copies of the foregoing immigration materials.

8.9 No Interference. It is under no obligation to any third party that would interfere with it rendering to Company the Services as described under this Agreement or which would be inconsistent with any terms or conditions of this Agreement.

8.10 Employees Compliance. The obligations under this Agreement applicable to the Vendor extend to all Vendor Personnel, all of which must fulfill such obligations.

8.11 Debarment and Exclusion. Vendor and Vendor's Personnel: (i) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) ("Federal Health Care Programs") or generally from federal procurement and non-procurement programs; (ii) are not convicted of a criminal offense related to the provision of health care items or services but not yet excluded, debarred, or otherwise declared ineligible to participate in the Federal Health Care Programs, or generally from federal procurement and non-procurement programs; (iii) are not under investigation or otherwise aware of any circumstances which may result in such exclusion from participation in the Federal Health Care Programs, or generally from federal procurement and non-procurement programs; (iv) shall at all times maintain accurate and complete accounting and other financial records in accordance with the applicable Laws of the country in which the Services are to be performed; and (v) will, in their performance under this Agreement and in connection with their activities in relation thereto, ensure that no payments of money or anything of value will be offered, promised or paid, directly or indirectly, to any foreign official, or public or political officer, to induce such official to use their influence with a foreign government or instrumentality to obtain an improper business advantage for Company; will report immediately to Company any information that may indicate there has been a payment of money or anything of value offered, promised or paid, directly or indirectly, to any foreign official, or public or political officer as described above (an "Improper Payment"); will, upon Company's request, certify that they have no knowledge of an Improper Payment; agree that Company may withhold payments under this Agreement and/or suspend or terminate this Agreement upon learning information giving it a factual basis to conclude that Vendor has made or offered an Improper Payment; and agree that payments will be made to government officials or political parties only for lawful purposes, which will first be fully disclosed in writing to Company. Any breach of this Section shall give Company the right to terminate this Agreement immediately for cause, without penalty to Company.

8.12 Non-Competition. Since the nature of Vendor's services involves confidential and proprietary information of Company, during the term of this Agreement and for a period of [NUMBER OF YEARS 1] from termination: (a) Vendor agrees that it will not offer to any competitor of Company any information directly related to any Services in which it may be or has been involved or which it may have performed or be performing as a Vendor for Company under this Agreement. Vendor agrees to disclose all prior and existing relationships to Company.

8.13 Compliance with Laws.

(a) Compliance. It complies with the AdvaMed Code of Conduct, as amended, all Laws, including any Laws governing the privacy or security of personally identifiable information stored or processed on behalf of Company, including any notification requirements. In no event shall any Services be performed outside the United States of America. Further, Company's data shall not be accessed by Vendor or Vendor's Personnel via internet or otherwise outside the United States of America.

(b) Notices. It will immediately notify Company of any unauthorized access of any computerized data that compromises the security, confidentiality or integrity of Company data (including any personally identifiable information stored or processed on behalf of Company) and any event that requires Vendor or Company to take any actions (including providing notices) under any Laws.

(c) Communications. The content of any filings, communications, notices, press releases or reports required by or made in connection with any applicable Laws must first be approved by Company prior to any publication or communication thereof to any third party.

(d) Costs. It will pay for or reimburse Company for all costs and expenses relating to any filings, communications, notices, press releases or reports that Company makes, including any credit monitoring, as a result of any unauthorized access by Vendor or Vendor Personnel to any Company data, any unauthorized access to Company data that is stored or processed on behalf of Company by Vendor, or any failure by Vendor to comply with any Laws.

(e) Security Measures. It uses measures consistent with accepted industry standards and all applicable Laws, to ensure the security and integrity of all Company data obtained under this Agreement.

(f) Assistance. It shall provide all necessary information and assistance to Company in a timely and accurate manner to enable Company to comply with any filing, notice or registration requirement under any applicable Law.

(g) Control Laws. It complies with all U.S. or other export and import Laws and restrictions ("Control Laws") applicable to any commodities, software or technology provided or disclosed in connection with any Service, Work Product, Vendor Item, activity, delivery or development hereunder, including, without limitation, any restrictions on the exposure or release of technical data, software source code or other information ("Information") to any non-U.S. national Vendor Personnel whether located within or outside of the United States. It implements and maintains appropriate technology control programs and procedures compliant with the Control Laws to prevent the unauthorized exposure or release of Information. It will advise Company immediately of any violation of a Control Law, cooperate with Company in any investigation thereof and take any measures Company reasonably may request to rectify or address such violation.

(h) Export-Related Information. It will provide to Company all export control classification numbers (U.S. ECCNs or foreign equivalents, where applicable), export licenses, advisory opinions, Government Authority classifications, classification requests and commodity jurisdiction requests relating to any commodities, software or technology provided or disclosed in connection with any Service, Work Product, Vendor Item, activity, delivery or development hereunder, and any Government Authority correspondence relating thereto.

(i) Prohibited Persons. Neither it nor any Vendor Personnel appear on any list of prohibited persons maintained by the United States or other applicable government ("Prohibited Lists"), including, but not limited to, the list of "Specially Designated Nationals and Other Blocked Persons" maintained by the United States Department of Treasury, and the "Denied Persons List" maintained by the Bureau of Industry &

Security. It monitors all changes to the Prohibited Lists and ensures continuing compliance. It will immediately remove from all Company projects any Vendor Personnel identified on a Prohibited List, immediately inform Company of such identification, will cooperate with Company in any investigation thereof, and take any measures Company reasonably may request to rectify or address any violation of applicable Law that is discovered.

8.14 Buyer's Right to Rely. Company shall be entitled to rely without independent verification on the accuracy, currency and completeness of information supplied by Vendor.

8.15 Expectation for Suppliers. Vendor has read and agrees to comply with the Company's Expectation for Suppliers publication as posted on the internet at [COMPANY ADDRESS]. In addition to the foregoing, Company encourages Vendor to maintain a legal/ethics hotline and consider obtaining third party certifications of its ethics program.

9 Records and Audits.

9.1 Retention of Financial Records. Vendor agrees to maintain, segregated by each Schedule, complete and accurate books and records regarding all financial matters hereunder in accordance with generally accepted accounting practices during the Term and for a period of at least [NUMBER OF YEARS 2] following the date of termination or expiration of this Agreement and for any additional time required by Government Authority with jurisdiction over Vendor ("Retention Period"); provided, however, that in the event of any dispute arising with respect to this Agreement, the Retention Period lasts until the resolution of the dispute becomes final and non-appealable and all obligations of the parties are fully satisfied. For Services billed on a time and materials basis, such books and records must contain complete and accurate records of the time Vendor Personnel spend providing the Services and the expenses Vendor incurs, including the identity of the individuals providing the Services, a description of the work effort of each such individual, the time spent by each individual in connection therewith, the date on which the effort was undertaken, and the location at which the effort was undertaken.

9.2 Audits. Company or its designee has the right, but not the obligation, during the Term and the Retention Period, to audit and inspect, during normal business hours and with reasonable notice, Vendor's books and records and any other documents including without limitations, security logs, as well as Vendor's facilities used in rendering the Services. Vendor agrees to reasonably cooperate in any audit or inspection of such records that Company may undertake. During the Retention Period, Vendor agrees to:

(a) Availability and Copying. Make its books and records, as well as external audit opinions, external audit letters, external audit statements, and external audit reports relating to Vendor's provision of the Services, Work Product and Vendor Items, available for inspection by Company and or its authorized representatives, who will have the right to make copies on Vendor's premises or by taking any of these materials to an off site location for the sole purpose of copying at Company's expense.

(b) Access. In connection with the audit, give Company's authorized representatives reasonable access, during regular business hours, to Vendor's officers, employees and other representatives, including, without limitation, attorneys and accountants.

(c) Reasonable Working Conditions. Provide, without charge, computer access, office space, furniture, telephone, and electric service as necessary for Company's authorized representatives to conduct the audit.

(d) Overcharge. If an auditor notifies Vendor that Vendor overcharged Company with a reasonable description of how the auditor calculated the overcharge, Vendor agrees to pay Company the amount of the overcharge. Company agrees to pay its own costs of the audit unless the overcharge exceeds five percent (5%) of the correct cost for the item at issue, in which case Vendor agrees to pay Company's costs of the audit.

10 Claims and Losses. The term "Claim" means any claim, suit or action by any third party, excluding Affiliates of Vendor and Affiliates of Company, and the term "Losses" means any damages awarded and fines assessed in any Claim by a court of competent jurisdiction or pursuant to an arbitration proceeding, any amounts due under Claim settlement, and any other costs or expenses incurred in complying with any injunctive or equitable relief or any settlement requirements, court costs and reasonable attorney's fees.

10.1 Vendor agrees to indemnify, defend, and hold harmless Company and its Affiliates, subsidiaries, shareholders, members, directors, officers, employees, agents, parents, and contractors (other than Vendor), from and against any Claim, and any associated Losses, arising from: (i) the failure of Services, Work Product or Vendor Items provided by Vendor hereunder to meet the representations, warranties and covenants set forth in [SECTION 8] (Representations, Warranties and Covenants); (ii) a breach by Vendor of any terms or conditions under this Agreement and/or any Schedule; (iii) violation of any patent, trade secret, or other intellectual property or proprietary right due to Vendor's provision of the Services, Work Product or Vendor Items; and (iv) bodily injury, death, personal injury, tangible property damage and theft, resulting from the acts and omissions of Vendor, Vendor's Personnel, or any person for whom Vendor is legally liable.

10.2 In addition to and not in lieu of Vendor's obligations herein, should the Services, Work Product or Vendor Items become, or in either party's reasonable opinion be likely to become, the subject of a Claim, Vendor agrees to procure for Company the right to continue to exercise all of its rights in the Services, Work Product or Vendor Items as contemplated under this Agreement, or, with Company's prior written consent, modify or replace the Services, Work Product or Vendor Items to eliminate any Claim, provided that the modification or replacement is functionally equivalent. If Vendor cannot do any of the foregoing, then Company may terminate this Agreement and/or the applicable Schedule, as to the violating Services, Work Product or Vendor Items, and Vendor must refund to Company all fees paid for the applicable violating Services, Work Product or Vendor Items.

10.3 The term "Indemnifying Party" means the party assuming indemnification obligations under this Agreement, and the term "Indemnified Party" means all parties, including any third parties, which the Indemnifying Party agrees to indemnify under this Agreement.

(a) The Indemnified Party must give the Indemnifying Party prompt written notice of a Claim, provided, however, that failure of an Indemnified Party to give prompt written notice does not relieve the Indemnifying Party from its indemnification obligations under this Agreement unless the defense is materially prejudiced by the failure. When the Indemnifying Party receives notice of a Claim from an Indemnified Party, the Indemnifying Party agrees, at its sole cost and expense, to assume the defense of the Claim by representatives chosen by the Indemnifying Party. The Indemnified Party may participate in the defense of the Claim and employ counsel at its own expense to assist in the defense of the Claim, subject to the Indemnifying Party retaining final authority and control over the conduct of the defense.

(b) The Indemnifying Party's defense attorneys must be reasonably experienced and qualified in the areas of litigation applicable to the defense. The Indemnifying Party has the right to assert any defenses, causes of action or counterclaims arising from the subject of the Claim available to the Indemnified Party and also has the right to settle the Claim, subject to the Indemnified Party's prior written consent to the extent such settlement affects the rights or obligations of the Indemnified Party, which shall not be unreasonably withheld or delayed. The Indemnified Party agrees to provide the Indemnifying Party with reasonable assistance, at the Indemnifying Party's expense, as may be reasonably requested by the Indemnifying Party in connection with any defense, including, without limitation, providing the Indemnifying Party with information, documents, records and reasonable access to the Indemnified Party as the Indemnifying Party reasonably deems necessary.

(c) If the Indemnifying Party, within [NUMBER OF DAYS 6] after receiving of notice of any such Claim, fails to assume the defense and make an appearance in the Claim, then the Indemnified Party, upon providing notice to the Indemnifying Party, may at the Indemnifying Party's expense (including, without limitation, reasonable attorneys' fees): (A) assume the defense; and/or (B) with the consent of the Indemnifying Party, not to be unreasonably withheld or delayed, settle the Claim on behalf of and for the account and risk of the Indemnifying Party. However, the Indemnifying Party may assume the defense of the Claim at any time prior to settlement or final determination.

11 Term and Termination.

11.1 Term. The term of this Agreement (together with any renewals or extensions, (the "Term") begins on the Effective Date and expires on [TERM END DATE]. Immediately upon expiration this Agreement automatically renews on the same terms and conditions for [NUMBER OF YEAR] on each anniversary of the Effective Date, unless Company gives the other party notice that the Agreement does not renew before the end of the then applicable term. The term of a Schedule, if any, is as specified therein, provided that no such term shall extend beyond the Term of this Agreement.

11.2 Termination of Agreement.

(a) If either party is adjudged insolvent or bankrupt, or upon the institution of any proceedings by it seeking relief, reorganization or arrangement under any Laws relating to insolvency, or if an involuntary petition in bankruptcy is filed against a party and the petition is not discharged within [NUMBER OF DAYS 7] after filing, or upon any assignment for the benefit of a party's creditors, or upon the appointment of a receiver, liquidator or trustee of any of a party's assets, or upon the liquidation, dissolution or winding up of its business (each, an "Event of Bankruptcy"), then the party affected by

any such Event of Bankruptcy must immediately give notice of the Event of Bankruptcy to the other party, and the other party may terminate this Agreement by notice to the affected party.

(b) If Vendor or Vendor's Personnel breach any provision contained in this Agreement, and the breach is not cured within [NUMBER OF DAYS 8] after Vendor receives notice of the breach from Company, Company may then deliver a second notice to Vendor immediately terminating this Agreement. If Company terminates the Agreement under this Section, Vendor is not entitled to any compensation for Services, Work Product or Vendor Items not provided or accepted as of the date of Company's initial notice of breach.

(c) This Agreement may be terminated by Company for any reason or no reason, effective upon [NUMBER OF DAYS 9] prior written notice to Vendor. In the event of such termination, Company shall pay Vendor in accordance with [SECTION 11.4.4] herein.

11.3 Termination of Schedules.

(a) Company may, in its sole discretion, terminate a Schedule at any time without cause upon written notice to Vendor. Upon Vendor's receipt of such notice from Company, Vendor must immediately discontinue all Services described in the applicable Schedule and not incur any further fees or expenses without Company's prior written approval.

11.4 Effects of Termination.

(a) Survival. The following Sections survive cancellation, termination, expiration or non-renewal of this Agreement for any reason: 3 (Work Product); 9 (Records and Audits) (but only for the length of the Retention Period); 10 (Claims and Losses); 11.4 (Effects of Termination); 12 (Insurance) (but only for a period of [NUMBER OF YEARS 3]); 14 (Notices); 16 (Publicity); 17 (English Language); 18 (Confidentiality) and 19 (General).

(b) No Effect. The expiration or the termination of this Agreement does not affect any licenses to the Vendor Items, and/or assignments granted or ownership rights regarding the Work Product. The expiration or the termination of any Schedule, or the required cessation of Services thereunder, does not affect this Agreement or any other Schedule, and does not affect any licenses to the Vendor Items, and/or assignments granted or ownership rights regarding the Work Product purchased under such Schedule, any other Schedule, or this Agreement.

(c) Return of Work Product. If this Agreement or a Schedule individually is terminated or non-renewed, Vendor agrees to return to Company within [NUMBER OF DAYS 10], at Company's expense, any Work Product, including, without limitation, any Work Product in process and any Vendor Items contained therein. Company agrees to specify the location to which delivery is to be made.

(d) No Additional Fees. Upon Vendor's receipt of such notice of termination of an Agreement or a Schedule individually from Company, Vendor agrees to immediately discontinue all work described in the applicable Schedule and not incur any further fees or expenses without Company's prior written approval. If Company has paid in advance for any Services or Work Product under such Schedule that have not been rendered to Company's satisfaction as of the date of termination, within [NUMBER OF

DAYS 11] of termination Vendor agrees to reimburse Company all amounts paid in advance with respect to such Services or Work Product.

(e) Transition Cooperation. Vendor agrees that upon termination of this Agreement for any reason, it shall provide sufficient efforts and cooperation to ensure an orderly and efficient transition of services to Company or another vendor. The Vendor shall provide full disclosure about how the Services are performed for Company. Vendor shall transfer licenses or assign agreements for any software or third-party services used to provide the services to Company or to another vendor.

12 Insurance. Vendor agrees to comply with all of the requirements of [EXHIBIT A] (Insurance Requirements). Nothing in the Agreement including any indemnification shall be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

13 Non-Exclusivity. This Agreement is not an exclusive contract. Company is free to purchase products and services similar to or the same as the Services, Work Product and Vendor Items from other suppliers.

14 Notices. The term "Notice" as used throughout this Agreement shall mean written notice, except where specifically provided herein to the contrary. Notice shall be delivered by: (i) certified mail, return receipt requested (or the equivalent); (ii) hand delivery with receipt acknowledged; (iii) overnight courier service that provides a delivery receipt; or (iv) transmitted by facsimile with printed confirmation of receipt together with mailing of an original to the following addresses or to such other address or person as a party may specify by notice given in accordance with this provision. Notice given in accordance with this provision shall be deemed delivered: (x) when received; or (y) upon refusal of receipt.

If to COMPANY:

[COMPANY ADDRESS]

Attn: [COMPANY ATTENTION NAME]

With Copy To:

[COPY TO ADDRESS]

Attn: [COPY TO ATTENTION NAME]

If to VENDOR:

[VENDOR ADDRESS]

Attn: [VENDOR ATTENTION NAME]

15 Force Majeure.

15.1 Force Majeure. Time is of the essence in Vendor's performance of its obligations hereunder. Neither party shall be considered in default in the performance of its obligations hereunder to the extent that such performance is delayed by causes outside its control and not due to its fault or negligence and not reasonably foreseeable or, if foreseeable, cannot be avoided by the exercise of all reasonable efforts; including acts of civil or military authority, acts of God, acts of war, acts of terrorism, acts of government, riot, insurrection, blockages, embargoes, sabotage, epidemics, fire, flood, and/or famine (each, a "Force Majeure Event"). No such interruption shall relieve Vendor of its duty to perform or give rise to any damages or additional compensation from Company. The party failing or delaying due to a Force Majeure Event agrees to give notice to the other party describing such Force Majeure Event including a good faith estimate as to the impact of such Force Majeure Event upon its responsibilities hereunder, including, but not limited to, any scheduling changes. However, should any failure to perform or delay in performance due to a Force Majeure Event last longer than [NUMBER OF DAYS 12], or should [NUMBER OF EVENTS] Events apply to the performance of a party during any calendar year, the party not subject to the Force Majeure Event shall be entitled to terminate this Agreement by notice to the party subject to the Force Majeure Event. The default of a subcontractor or vendor at any tier is not a Force Majeure Event.

15.2 Disaster Recovery Plan. Vendor will implement and maintain adequate disaster recovery plans and business continuity plans in respect of Vendor's service locations and Vendor's business. Vendor's plans applicable to the Services as of the Effective Date are attached as [EXHIBIT C]. Vendor will (i) periodically update and test the operability of any applicable recovery plan (at least once during every [NUMBER OF PERIODS] period of the Agreement Term), (ii) certify to Company upon completion of each such test (or such other time as reasonably requested by Company) that each such plan is fully operational and (iii) implement each such plan upon the occurrence of a disaster (as such term is defined in the applicable recovery plan).

16 Publicity. Vendor agrees to not make, publish or distribute (whether in print, electronically or otherwise) any public announcements, press releases, advertising, marketing materials or promotional materials regarding the execution or performance of this Agreement without Company's prior written consent.

17 English Language. This Agreement, as well as all reports, documents and notices required hereunder, referred to herein or requested by Company in connection herewith shall be written in the English language. Except as otherwise required by applicable Law, the binding version of all of the foregoing shall be the English version.

18 Confidentiality.

18.1 Confidential Information. In the performance of this Agreement each party may have access to private or confidential information, data or materials of the other party, including, but not limited to, trade secrets, marketing and business plans and technical information. Disclosures made by one party ("Disclosing Party") to the party receiving the private or confidential information, data or materials of the Disclosing Party ("Receiving Party"), are pursuant to all terms and conditions of this Agreement, and, in the case of Vendor, all such private or confidential information, data or materials must be either marked as "Confidential" or "Proprietary" to the Disclosing Party or, within [NUMBER OF DAYS 13] after an oral disclosure, be described in a written notice provided to the Receiving Party referencing the time, date, and receiving individuals

for such disclosure, in which case such described information, data or materials become Confidential Information of Vendor on a going forward basis from the date of Company's receipt of such letter, while, in the case of Company, all such private or confidential information, data or materials consist of all of Company's information, data and materials which Vendor may access in the course of this Agreement, regardless of whether the disclosure of such information, data or materials occurred before, on or after the Effective Date (in both cases and collectively, "Confidential Information"). All Confidential Information of the Disclosing Party will remain the exclusive property of the Disclosing Party. The existence and Terms and Conditions of this Agreement are deemed to be Confidential Information of Company.

18.2 Exclusions. Except for Personal Data, Confidential Information does not include information, data or materials that, as proved by written records:

- (a) Public Domain. Are or become a part of the public domain through no act or omission on the part of the Receiving Party and no violation of any obligation of nondisclosure by any third party; or
- (b) Independently Developed. Are independently developed by the Receiving Party without reference to the Disclosing Party's Confidential Information, as evidenced through written records created in the normal course of the Receiving Party's business; or
- (c) Third Party Source. Are disclosed to the Receiving Party through a third party source or series of sources without any violation of nondisclosure with respect to such information, data or materials by any source(s) in the series (however, such information only becomes Confidential Information once the Receiving Party is aware of such breach).
- (d) Nondisclosure and Uses. Each party must use commercially reasonable methods, at least as substantial as the methods it uses to protect its own confidential information, data and materials of a similar nature, to maintain and cause its employees to maintain the confidentiality of the Confidential Information by not copying, publishing, disclosing to third parties (including, without limitation, Affiliates) or using the Confidential Information; except employees of a Receiving Party may use the Confidential Information in order to perform the Receiving Party's obligations or engage in activities contemplated under the Agreement. A Receiving Party may not modify or delete any Intellectual Property Rights or proprietary rights legend appearing in the Disclosing Party's Confidential Information.

18.3 Duties. Without limiting any other obligations under this Agreement, the parties agree to the following specified duties:

- (a) Advise Employees. The Receiving Party must advise each employee before receiving direct or indirect access to the Confidential Information of the obligations of the Receiving Party regarding the Confidential Information under this Agreement.
- (b) Disclosures to Agents and Subcontractors. A Receiving Party may share Confidential Information with: (a) its attorneys, accountants and financial advisors under an obligation of confidentiality and nondisclosure no less protective of the Disclosing Party's Confidential Information than the Terms and Conditions of this Agreement; and (b) its Subcontractors pursuant to a written confidentiality agreement no less protective of the Disclosing Party's Confidential Information than this

Agreement (a "Subcontractor Confidentiality Agreement"), provided that in no event may an agent or Subcontractor of a Receiving Party disclose Confidential Information to any other third party, with the exception of a Government Authority to which a disclosure may be made pursuant to a provision in the Subcontractor Confidentiality Agreement identical to [SECTION 18.5] (Disclosures Required by Law) of this Agreement, except that the agent or Subcontractor must give the prior notice required therein to both the Receiving Party and the Disclosing Party. Vendor agrees to assume all liability and responsibility for such agents' and Subcontractors' compliance with and breach of the Terms and Conditions of this Agreement as if such agents' and Subcontractors' acts and omissions were Vendor's own.

(c) Notice. Upon discovery, Receiving Party agrees to provide Disclosing Party immediate telephonic and written notice of a breach of: (a) any obligation of confidentiality and nondisclosure required hereunder prior to a disclosure; and (b) any Subcontractor Confidentiality Agreement.

(d) Return of Confidential Information. After a request by the Disclosing Party, and after termination or expiration of this Agreement, Receiving Party must within thirty [NUMBER OF DAYS 14] return or destroy (and certify to such destruction in writing, such certification not to be unreasonably withheld or delayed) all Confidential Information of the Disclosing Party, including, without limitation: (a) all tangible and electronic documents, drawings, materials, hardware, disks, tapes; and (b) all copies, notes, summaries and excerpts of any of the foregoing; and (c) all Confidential Information in the possession of any third parties to whom Receiving Party disclosed Confidential Information pursuant to this Agreement. Notwithstanding the foregoing, Receiving Party may retain Confidential Information as required by applicable Laws or orders of a Government Authority with jurisdiction over Receiving Party ("Retention Requirements"), and any such uses or disclosures of Confidential Information by the Receiving Party will be limited to only those uses and disclosures mandated by the Retention Requirements.

18.4 Disclosures Required by Law. In the event any Confidential Information is required to be disclosed by Law or order of any Government Authority having jurisdiction over the Receiving Party (including as necessary for a party to assert a claim in a court of competent jurisdiction), before any such disclosure the Receiving Party will provide notice to the Disclosing Party reasonably sufficient to allow the Disclosing Party the opportunity to apply for a protective order or other restriction regarding such disclosure. In the event such Confidential Information is disclosed in such circumstances, such Confidential Information shall continue to constitute Confidential Information in all other circumstances pursuant to this Agreement.

18.5 Data Processing Requirements. As a result of this Agreement, Vendor may have access to certain information relating to identified or identifiable individuals (the "Personal Data"). Vendor shall not be entitled to use Personal Data for its own purposes, and may only process Personal Data on behalf of Company and its designated Affiliates, for purposes of providing the Services.

(a) Vendor shall:

(i) process the Personal Data only on the written instructions of Company;

(ii) implement appropriate technical and organizational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorized disclosure or access in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing;

(iii) not permit the transmission of Personal Data outside the United States or access of such data by its employees outside the United States;

(iv) ensure that Personal Data is encrypted at all times, including at rest, and appropriately protected in transit and storage;

(v) not disclose the Personal Data to any person unless Company has given its prior written consent to such disclosure and Vendor has procured that such person is bound by the same obligations as the Vendor hereunder;

(vi) promptly notify Company of any facts known to the Vendor concerning any accidental or unauthorized disclosure or use, or accidental or unauthorized loss, damage or destruction of Personal Data by any current or former employee, contractor or agent of the Vendor or by any other person or third party;

(vii) cooperate fully with Company in the event of any accidental or unauthorized disclosure or use, or accidental or unauthorized loss, damage or destruction of Personal Data by any current or former employee, contractor or agent of Vendor or by any other person or third party, to limit the unauthorized disclosure or use, seek the return of any Personal Data, and assist in providing notice if requested by Company; and

(viii) upon termination or expiration of the Agreement for whatever reason, or upon request by Company, Vendor shall immediately cease to process the Personal Data and shall promptly return to Company all such Personal Data, or destroy the same, in accordance with such instructions as may be given by Company at that time. The obligations set forth in these data processing requirements shall remain in force notwithstanding termination or expiration of this Agreement.

(b) Vendor acknowledges that it shall have no right, title or interest in any Personal Data obtained by it as a result of this Agreement and further acknowledges and agrees that Company owns all rights, title and interest to and in all such Personal Data.

19 General.

19.1 Entire Agreement. This Agreement (i) is the entire agreement between the parties and supersedes any other oral or written communications, advertisements or understandings with respect to the subject matter hereunder; (ii) supersedes any and all pre-printed terms on any invoices, business forms, purchase orders, proposals, quotations and other related documents; and (iii) supersedes any "Click-Through" agreements, "Browse-Wrap" agreements, "Shrink-Wrap" agreements, and any other electronic agreements contained in the Services (if any), or otherwise provided by Vendor.

19.2 Amendments. Except as expressly stated otherwise in this Agreement, this Agreement may be amended only in writing, signed by both parties.

19.3 No Third Party Beneficiaries. No third party is a beneficiary of this Agreement.

19.4 Assignment. This Agreement is not assignable, delegable, sublicenseable, or otherwise transferable by Vendor in whole or in part, without the prior written permission of Company. Any such assignment, delegation, sublicense or other transfer without Company's prior written consent (including, without limitation, direct and indirect transfers and assignments, transfers and assignments by operation of Law, as well as transfers and assignments in connection with a merger or other change in the effective voting control of Vendor) will be null, void, and invalid, and the purported transferee will not acquire any rights nor assume any duties under this Agreement. A sale of all or substantially all of Vendor's assets or a sale of a controlling interest in the equity of Vendor, as applicable, shall constitute an unauthorized transfer.

19.5 Definitions and Headings. Singular terms shall be construed as plural, and vice versa, where the context requires, and the headings or titles of the Sections or Subsections of this Agreement are for convenience only and shall not be used as an aid in construction of any provision hereof. References to and mentions of the word "Including" or the phrase "e.g." means "Including without Limitation".

19.6 Governing Law; Jurisdiction. The construction, interpretation and enforcement of this Agreement, as well as any and all tort claims arising from this Agreement or arising from any of the proposals, negotiations, communications or understandings regarding this Agreement, shall be governed by and construed in accordance with the laws of the State of New Jersey, applicable to contracts made entirely within and wholly performed in the State of New Jersey, without regard to the choice or conflict of laws provisions thereto. The sole jurisdiction and venue for any litigation arising out of this Agreement shall be an appropriate federal or state court located in the State of New Jersey, and the parties agree not to raise, and waive, any objections or defenses based upon venue or forum non conveniens, except that either party may seek temporary injunctive relief in any venue of its choosing. The parties acknowledge and agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Both parties agree to accept service of any summons, complaint, or other process in connection with any litigation arising out of this Agreement (the "Process Service").

19.7 Cumulative Remedies; Waiver; Equitable Remedies. Except where specifically stated to the contrary, all remedies available to Company for breach of this Agreement, or at Law or in equity, are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. The failure of Company at any time to require performance by Vendor of any provision hereof shall not affect the full right to require such performance at any time thereafter, nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. If a party actually, threatens to, or would inevitably breach this Agreement, such party acknowledges that the breach would cause the other party irreparable harm, a remedy at Law alone would be inadequate, and the other party is entitled to apply for injunctive relief without any requirement to post a bond or other security.

19.8 Severability; Conflict. In the event that any portion of this Agreement is held to be unenforceable (i) the unenforceable portion must be construed as nearly as possible to reflect the original intent of the parties; (ii) the remainder of the Agreement shall remain in full force and effect; and (iii) the unenforceable portion shall remain enforceable in all

other contexts and jurisdictions. In the event of a conflict between any Exhibits or Schedules and any of the terms and conditions contained in this Agreement, this Agreement shall govern.

19.9 Independent Contractor; Subcontracting. The parties are acting in performance of this Agreement as independent contractors. Except as specifically stated herein, a party, including, without limitation, any of a party's respective employees or agents, shall not have the power or authority to bind or obligate the other party. Nothing in this Agreement shall be construed to constitute either party as the partner, joint venturer, agent, employee or Affiliate of the other, it being intended that the parties shall remain independent contractors and neither party shall be liable for the obligations, liabilities or representatives of the other. A party and its employees are not employees or agents of the other party, and are not entitled to any of the other party's employee benefits. Each party is exclusively responsible for all obligations imposed upon employers by any applicable statute or regulation related to the Services rendered by its respective personnel hereunder, including, without limitation, all employment verification, work authorization, compensation, taxation, insurance and levy responsibilities. Vendor agrees to withhold from the compensation it pays its respective personnel and to pay all applicable employment taxes related to its respective personnel's performance hereunder. Upon notice, Vendor shall provide Company with documentation and/or adequate proof that Vendor has complied with the above obligations.

19.10 Opportunity to Consult with Counsel; No Construction Against the Drafter. Both parties acknowledge and agree that they had a full and ample opportunity to consult legal counsel regarding this Agreement prior to signing, have freely and voluntarily entered into this Agreement, and have read and understood each and every provision, including, but not limited to, all rights, obligations, and applicable Terms and Conditions as set forth herein. Both parties acknowledge and agree that any interpretation of this Agreement shall not be construed against a party by virtue of its having drafted the Terms and Conditions hereunder.

IN WITNESS WHEREOF, the parties execute this Agreement as of the Effective Date. Each person who signs this Agreement below represents that such person is fully authorized to sign the Agreement on behalf of the applicable party.

[COMPANY]:

By:

Name: [COMPANY SIGNATORY NAME]

Title: [COMPANY SIGNATORY TITLE]

Date: [COMPANY SIGNATURE DATE]

[VENDOR COMPANY]:

By:

Name: [VENDOR SIGNATORY NAME]

Title: [VENDOR SIGNATORY TITLE]

Date: [VENDOR SIGNATURE DATE]

EXHIBIT A

INSURANCE REQUIREMENTS

EXHIBIT B

BACKGROUND CHECK

EXHIBIT C

DISASTER RECOVERY PLAN