

MASTER SOFTWARE AS A SERVICE AGREEMENT

This agreement (“Agreement”) is entered into, to be effective as of date last executed by either Subscriber or Service Provider (the “Effective Date”), by and between the undersigned subscribed located at the address set forth below (“Subscriber”) and **MOVING COMMANDER, LLC** (“Service Provider”).

RECITALS

WHEREAS, Subscriber requires third-party hosted “software as a service” (the “Services,” as further described herein) with respect to certain of its information technology needs;

WHEREAS, Subscriber requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to Subscriber to perform such Services on behalf of Subscriber;

WHEREAS, based on Service Provider’s superior knowledge and experience relating to such Services, Subscriber has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of Subscriber’s data (“Subscriber Data,” as further described herein) are critical to the operation of Subscriber’s business; and,

WHEREAS, Service Provider has agreed to provide the Services to Subscriber, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to license to Subscriber certain hosted software and provide all other services necessary for productive use of such software including customization/integration, user identification and password change management, data import/export, monitoring, technical support, maintenance, training, backup and recovery, and change management (the “Services”) as further set forth in an invoice or work order from the Company to the Subscribed (the “Invoice/Work Order”). The Agreement shall remain in effect unless terminated as provided for herein.
 - 1.1 Authorized Users; Authorized Uses. Unless otherwise limited in an Invoice/Work Order, Service Provider grants Subscriber a renewable, irrevocable (unless as provided for herein), nonexclusive, royalty-free, and worldwide right for any Subscriber employee, contractor, or agent, or any other individual or entity authorized by Subscriber, (each, an “Authorized User”) to access and use the Services. Other than those limitations expressly described in an Invoice/Work Order, Authorized Users will have no other limitations on their access or use of the Services.
 - 1.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a license grant of intellectual property in software form to Subscriber by Service Provider.
 - 1.3 Changes in Number of Authorized Users. The Services are provided on a tiered basis, such tiers as further described in an Invoice/Work Order. Subscriber agrees to license the initial number of Authorized Users described in such Invoice/Work Order (the “Minimum

Commitment“). Subscriber is entitled to increase or decrease the number of Authorized Users on an as-requested basis; provided, however, that Subscriber shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should Subscriber elect to change the number of Authorized Users, Service Provider shall reduce or increase Authorized Users to the corresponding tier described in the Invoice/Work Order and adjust the prospective Services Fees accordingly no later than five (5) business days from Subscriber’s written request.

1.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Subscriber.

1.4.1 Subcontractors. Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without Subscriber’s prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Service Provider’s use of subcontractors shall not relieve Service Provider of any of its duties or obligations under this Agreement.

1.4.2 Offensive or Disparaging Content. Where the Services or any web services affiliated with the Services contain offensive content or portray Subscriber in a disparaging way, either as solely determined by Subscriber, Service Provider shall immediately remove the offensive or disparaging content and Subscriber shall have the right, at Subscriber’s sole election, to: (a) immediately terminate this Agreement or any Invoice/Work Order corresponding to the offending or disparaging content and be entitled to a return of any prepaid fees, as liquidated damages and not as a penalty; or, (b) obtain or retain, as the case may be, all fees paid or payable for the entire period of the then-current term, as liquidated damages and not as a penalty, associated with any Invoice/Work Order corresponding to the offending or disparaging content.

1.5 Intentionally omitted.

1.6 No Effect of Click-Through Terms and Conditions. Other than this Agreement, where an Authorized User is required to “click through” or otherwise accept or made subject to any online terms and conditions in accessing or using the Services, such terms and conditions are not binding and shall have no force or effect as to the Services, this Agreement, or the applicable Invoice/Work Order.

2. Support; Maintenance; Additional Services.

2.1 Technical Support. Service Provider shall provide the Technical Support described in an Invoice/Work Order. The Services Fees shall be inclusive of the fees for the Technical Support set forth in the Invoice/Work Order.

2.2 Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Invoice/Work Order and the Documentation; and, (c) the Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and

Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

2.2.1 Required Notice of Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, Service Provider shall provide no less than thirty (30) calendar day's prior written notice to Subscriber of all non-emergency maintenance to be performed on the Services, such written notice including a detailed description of all maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to Subscriber and shall provide a detailed description of all maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

2.2.2 Acceptance of Non-Emergency Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, for non-emergency maintenance, Subscriber shall have a ten (10) business day period to test any maintenance changes prior to Service Provider introducing such maintenance changes into production (the "Maintenance Acceptance Period"). In the event that Subscriber rejects, for good cause, any maintenance changes during the Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if Subscriber has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by Subscriber and Service Provider shall be entitled to introduce the maintenance changes into production.

2.3 Customization / Integration Services. Service Provider shall provide the Customization / Integration Services, if any, described in an Invoice/Work Order. The Services Fees shall be inclusive of the fees for the Customization / Integration Services, unless otherwise stated in an Invoice/Work Order.

3. Intentionally omitted.

4. Audit Rights of Service Provider. No more than once annually, Service Provider shall have the right to request from Subscriber its certification of compliance with the permitted number of Authorized Users for an Invoice/Work Order. Where the actual number of users exceeds the permitted number of Authorized Users, Subscriber, at Subscriber's sole election shall, within thirty (30) business days: (a) reduce the actual number of users so as to be in compliance with the permitted number of Authorized Users in which case no additional Services Fees shall be due to Service Provider; or, (b) acquire the appropriate number of Authorized Users at the rate specified in the Invoice/Work Order so as to be in compliance with the permitted number of Authorized Users. Service Provider may conduct an on-premises audit of Subscriber's compliance with the use of the Services to verify Subscriber's reporting.

5. Change Control Procedure. Subscriber may, upon written notice, request changes to the scope of the Services under an Invoice/Work Order. If Subscriber requests an increase in the scope, Subscriber shall notify Service Provider, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Subscriber whether or not the change has an associated cost impact. If Subscriber approves, Subscriber shall issue a change control, which will be executed by the Service Provider. A reduction in scope of the Services by the Subscriber shall not reduce the fee payable.

6. Term and Termination; Renewals.

- 6.1 Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement or an Invoice/Work Order is terminated earlier in accordance with the terms set forth herein, the term of an Invoice/Work Order (the "Initial Term") shall commence on the Start Date and continue until the End Date set forth therein. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, an Invoice/Work Order shall automatically renew for successive one (1) year terms (each, a "Renewal Term") until such time as a party provides the other party with written notice of termination; provided, however, that: (a) such notice be given no fewer than sixty (60) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term.
- 6.2 Termination for Convenience. Without limiting the right of a party to terminate this Agreement or an Invoice/Work Order as provided for in this Agreement, a party may terminate this Agreement for convenience upon prior written notice to the other party provided that there is no Invoice/Work Order then in effect.
- 6.3 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement or an Invoice/Work Order for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's sole satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement or an Invoice/Work Order for cause as of a date specified in such notice.
- 6.4 Payments upon Termination. Upon the termination of this Agreement or an Invoice/Work Order, Subscriber shall pay to Service Provider all undisputed amounts due and payable hereunder, if any, and Service Provider shall pay to Subscriber all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 6.5 Return of Subscriber Data. Upon the termination of this Agreement or an Invoice/Work Order, Service Provider shall, within thirty (30) days following the termination of this Agreement or an Invoice/Work Order, provide Subscriber, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the Subscriber Data in the format reasonably determined by Service Provider. This Section shall survive the termination of this Agreement.
7. Transition Services. Provided that this Agreement or an Invoice/Work Order has not been terminated by Service Provider due to Subscriber's default or failure to pay any undisputed amount due Service Provider, Service Provider will provide to Subscriber and / or to the service provider selected by Subscriber (such service provider shall be known as the "Successor Service Provider") assistance reasonably requested by Subscriber to effect the orderly transition of the Services, in whole or in part, to Subscriber or to Successor Service Provider (such assistance shall be known as the "Transition Services") following the termination of this Agreement or an Invoice/Work Order, in whole or in part. The Transition Services shall be provided on a time and materials basis and may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to Subscriber or Successor Service Provider; (b) if required, transferring the Subscriber Data to Successor Service Provider; (c) using commercially reasonable efforts to assist Subscriber in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the Services; (d) using commercially reasonable efforts to make available to Subscriber, pursuant to mutually agreeable terms and conditions, any third-party

services then being used by Service Provider in connection with the Services; and, (e) such other activities upon which the parties may agree. Notwithstanding the foregoing, should Subscriber terminate this Agreement or an Invoice/Work Order due to Service Provider's material breach, Subscriber may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

8. Fees; Billing. Subscriber shall be responsible for and shall pay to Service Provider the fees as further described in an Invoice/Work Order, subject to the terms and conditions contained in this Agreement and such Invoice/Work Order. Any sum due Service Provider for the Services for which payment is not otherwise specified shall be due and payable thirty (30) calendar days after receipt by Subscriber of an Invoice/Work Order from Service Provider.
 - 8.1 Billing Procedures. Unless otherwise provided for under an Invoice/Work Order, Service Provider shall bill to Subscriber the sums due pursuant to an Invoice/Work Order by Service Provider's Invoice/Work Order, which shall contain: (a) Subscriber's purchase order number, if any, and Service Provider's Invoice/Work Order number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); taxes, if any; (e); any Performance Credits or other credits; and, (f) total amount due. Service Provider shall forward Invoice/Work Orders in hardcopy format to Subscriber's address stated on the first page. Payments may be made by recurring payment authorization by use of the form attached hereto as Schedule 1.
 - 8.2 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that Subscriber is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.
 - 8.3 Credits. Any amounts due to Subscriber, such as a Performance Credit, from Service Provider may be applied by Subscriber, at the sole election of Subscriber, against any current or future fees due to Service Provider. Any such amounts that are not so applied by Subscriber shall be paid to Subscriber by Service Provider within thirty (30) calendar days following Subscriber's request. This Section shall survive the termination of this Agreement.
 - 8.4 Non-binding Terms. Any terms and conditions included in a Subscriber purchase order or a Service Provider Invoice/Work Order, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.
 - 8.5 Auditable Records. Service Provider shall maintain accurate records of all fees billable to, and payments made by, Subscriber in a format that will permit audit by Subscriber for a period of no less than six months from when a fee was incurred or a payment was made. The foregoing obligation of Service Provider shall survive the termination of this Agreement.
 - 8.6 No Suspension of Services. Service Provider shall not suspend any part of the Services where: (a) Subscriber is reasonably disputing any amount due to Service Provider; or, (b) any unpaid but amount due (disputed or undisputed) to Service Provider is less than thirty (30) days in arrears.

9. Representations and Warranties.

9.1 Mutual. Each of Subscriber and Service Provider represent and warrant that:

- 9.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 9.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 9.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
- 9.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
- 9.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

9.2 By Service Provider. Service Provider represents and warrants that:

- 9.2.1 it is in the business of providing the Services;
- 9.2.2 the Services are fit for the ordinary purposes for which they will be used;
- 9.2.3 it is possessed of superior knowledge with respect to the Services;
- 9.2.4 it acknowledges that Subscriber is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Subscriber;
- 9.2.5 it is the lawful licensee or owner of the Services (excluding any Subscriber Data therein) and has all the necessary rights in the Services to grant the use of the Services to Subscriber;
- 9.2.6 the Services and any other work performed by Service Provider hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;
- 9.2.7 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;
- 9.2.8 it will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, a "Virus") are introduced into Subscriber's computing and network environment by the Services, and that, where it transfers a Virus to Subscriber through the Services, it shall reimburse Subscriber the actual cost incurred by Subscriber to remove or recover from the Virus, including the costs of persons employed by Subscriber; and,

9.2.9 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Invoice/Work Order and the Documentation.

10. Intentionally omitted.

11. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

11.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, Subscriber Data shall be deemed to be Confidential Information.

11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

11.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of Subscriber, at the sole election of Subscriber, the immediate termination, without liability to Subscriber, of this Agreement or any Invoice/Work Order corresponding to the breach or threatened breach.

11.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or Invoice/Work Order, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Service Provider shall return Subscriber Data to Subscriber following the timeframe and procedure described further in this Agreement. Should Service Provider or Subscriber determine that the return of any non-Subscriber Data Confidential Information is not feasible, such party shall destroy the non-Subscriber Data Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

12. Intentionally omitted.

13. Proprietary Rights.

13.1 Pre-existing Materials. Subscriber acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.

13.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

13.3 The provisions of this Section shall survive the termination of this Agreement.

14. Indemnification; Limitation of Liability; Insurance.

14.1 Indemnification by Service Provider. Service Provider agrees to indemnify, defend, and hold harmless Subscriber and its officers, directors, agents, and employees (each, a "Subscriber Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Subscriber Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of Service Provider, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; or, (b) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a Subscriber Indemnitee.

14.2 Indemnification by Subscriber. Subscriber agrees to indemnify, defend, and hold harmless Service Provider and its officers, directors, agents, and employees (each, a "Service Provider Indemnitee") from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Service Provider

Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of an Authorized User, Subscriber, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; (b) Subscriber Data, including any processing of Subscriber Data by or on behalf of Service Provider in accordance with this Agreement, or, (c) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of a Service Provider Indemnitee.

- 14.3 Indemnification Procedures. Promptly after receipt by a party of a threat, notice, or filing of any Claim against an indemnitee, the indemnifying party (the "Indemnitor") shall give notice thereof to indemnitee, provided that failure to give or delay in giving such notice shall not relieve Indemnitor of any liability it may have to the indemnitee except to the extent that Indemnitor demonstrates that the defense of the Claim is prejudiced thereby. Indemnitor shall have sole control of the defense and of all negotiations for settlement of a Claim and indemnitee shall not independently defend or respond to a Claim; provided, however, that: (a) indemnitee may defend or respond to a Claim, at indemnitee's expense, if indemnitee's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an indemnitee; and, (b) indemnitee shall have the right, at its own expense, to monitor Indemnitor's defense of a Claim. At Indemnitor's request, the indemnitee shall reasonably cooperate with Indemnitor in defending against or settling a Claim; provided, however, that Indemnitor shall reimburse indemnitee for all reasonable out-of-pocket costs incurred by indemnitee (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
- 14.4 Third-Party Beneficiaries. For the purposes of this Section, non-party Indemnitees are third-party beneficiaries of this Agreement in accordance with its terms. Other than as provided for in this Section, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.
- 14.5 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND / OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR, (C)

A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. This Section shall survive the termination of this Agreement.

14.6 Insurance. Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly qualified in those states (locations) where the Services are to be performed, covering the operations of Service Provider, pursuant to this Agreement: commercial general liability (\$500,000 per occurrence, \$1,000,000 aggregate); excess liability (\$500,000 per occurrence, \$1,000,000 aggregate); workers' compensation (statutory limits) and employers' liability (\$250,000 per accident); and, professional liability (\$1,000,000 per occurrence, \$1,000,000 aggregate). Subscriber shall be named as an additional insured in such policies which shall contain standard cross liability clauses. Service Provider shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policy shall be primary without right of contribution from any insurance by Subscriber. Such policies shall require that Subscriber be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. Subscriber shall have the right to request an adjustment of the limits of liability for commercial general liability and professional liability insurance as Service Provider's exposure to Subscriber increases. Service Provider shall provide Subscriber with certificates of insurance evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide Subscriber with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution.

15. General.

15.1 Relationship between Subscriber and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Subscriber. In recognition of Service Provider's status as an independent contractor, Subscriber shall carry no Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. Subscriber shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Subscriber.

15.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the state and federal courts in the Dallas County, Texas in all questions and controversies arising out of this Agreement.

15.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the

prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.

- 15.4 Compliance with Laws; Subscriber Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. Service Provider shall comply with Subscriber policies and procedures where the same are posted, conveyed, or otherwise made available to Service Provider.
- 15.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. Service Provider will cooperate with any Subscriber supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to Subscriber, including, without limitation, the Successor Service Provider. Service Provider agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 15.6 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. Where Service Provider fails to use its best efforts to minimize such delays. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. A force majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of Subscriber Data. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of Service Provider's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for Subscriber to access or use the Services. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan ("Business Continuity Plan") to Subscriber upon Subscriber's request. The Business Continuity Plan shall include: (a) Services and Subscriber Data backup and recovery procedures; (b) fail-over procedures; and, (c) how Service Provider will interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis until the termination of this Agreement and shall provide the test results to Subscriber upon Subscriber's request.
- 15.7 Advertising and Publicity. Service Provider shall not refer to Subscriber directly or indirectly in any advertisement, news release, or publication without prior written approval from Subscriber.
- 15.8 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce

such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.

- 15.9 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 15.10 Assignment of Agreement. This Agreement and the obligations of Service Provider hereunder are personal to Service Provider and its staff. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of Subscriber. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. Subscriber, at Subscriber's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of Subscriber's business.
- 15.11 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 15.12 Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Subscriber and Service Provider as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.
- 15.13 Cumulative Remedies. All rights and remedies of Subscriber herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Service Provider for the enforcement of this Agreement, and temporary and permanent injunctive relief.

[Remainder intentionally left blank, signatures follow]

Executed on the dates set forth below by the undersigned authorized representative of Subscriber and Service Provider to be effective as of the Effective Date.

SUBSCRIBER:

[Executed electronically by entering information and clicking I AGREE]

SERVICE PROVIDER:

[Signature on file]