

MANAGED LEGAL LIABILITY



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PAGES DECLINING

- Information Flow Increases
- Trusted Consultant
- Increase Expertise/
Increase Exposure
- 3D Printers
- Networks
- Security
- Documentation Critical



CONTRACT TEMPLATES



- Managed Print Services
- Managed Services
- Master Agreement
- Checklists

ROSETTA STONE--TLA

- MPS-Managed Print Services
- PaaS-Platform as a Service
- SaaS-Software as a Service
- IaaS-Infrastructure as a Service
- HaaS-Hardware as a Service
- MCS-Managed Content Services
- CCS-Cloud Computing Storage
- BDR-Backup Disaster Recovery
- NOC-Network Operations Center
- PSA-Professional Services Automation
- ECM-Enterprise Content Management
- RRM-Remote Monitoring & Management
- SSP-Single Service Provider

CONFIDENTIAL PRPOSAL

THIS AGREEMENT, entered into on _____, 20____ by and between RESELLER (hereinafter referred to as "RS"), and _____ (hereinafter referred to as "END-USER").

Whereas, RS agrees to furnish the END-USER certain confidential information relating to the solutions proposed by RS for purposes of the END-USER's document management needs; specifically: _____

Whereas, the END-USER agrees to review, examine, and consider such information only for the purposes described above, and to otherwise hold such information confidential pursuant to the terms of this agreement,

BE IT KNOWN, that RS has or shall furnish to the END-USER certain confidential and proprietary information and suggestions, as set forth in the proposal on Schedule A, attached to this Agreement, all on the following conditions:

1. The END-USER agrees to hold the proposal, and all confidential or proprietary information or trade secrets ("information") in confidence and agrees that it shall be used only for the purpose of evaluating RS proposal and shall not be used for any other purpose or disclosed to any third party.
2. No copies will be made of the proposal and it shall only be disclosed within the company on a need to know basis.
3. At the conclusion of our discussions, or upon demand by RS made at any time, the proposal and all copies shall be returned to RS.
4. This information shall not be disclosed to any employee unless they agree to be bound by the terms of this Agreement.
6. The END-USER fully understands that RS is prepared, based upon the representations made in this Agreement, to disclose to the END-USER valuable trade secret information, which is critical to the continued success of RS' business, and END-USER agrees that END-USER will be subject to damages if it violates this agreement by disclosing to others this valuable information.

IN WITNESS WHEREOF, the parties hereto have provided herein.

DATED: _____, 20____.

END-USER:

RESELLER:

By: _____
Title: _____
Address: _____
Telephone: _____

By: _____
Title: _____
Address: _____
Telephone: _____

MANAGED PRINT SERVICES AGREEMENT CHECKLIST

1. Term Agreement
2. Toner
3. Exclusions
4. Page Size Included
5. Consent
6. Guaranty
7. Exclusion Confirmation
8. Guaranty
9. Parts Belong To Dealer
10. Service Limitations
11. Coverage Included
12. Return of Toner

SUPPLY INVENTORY

To provide maximum operation of your equipment, _____ will inventory, at your location, toner cartridges and supplies for each piece of equipment. Inventory toner cartridges and supplies are the property of _____ and must be returned at the conclusion of our Maintenance Agreement. Customer agrees that failure to return any toner cartridge shall result in a page charge in the amount of the full yield of each unreturned cartridge.

13. Relocation
14. Limitations of Liability
15. Remote Access
16. Cost Increases

MANAGED PRINT SERVICE AGREEMENT

Customer Bill-To Information:

Customer Name	Billing Contact Name; Title
Customer Address (line 1)	Billing Contact Phone #
Customer Address (line 2)	Billing Contact e-mail
City, State, Zip Code	Billing Contact Fax #

1 Agreement Information: THIS IS A TERM AGREEMENT MAY NOT BE CANCELLED OR REFUNDED.

Length of Term: _____ months

Billing Cycle: Quarterly _____ or Monthly _____

Items included in the Cost Per Page Charge:

2 Toner _____	On-Site Service Labor _____	Service Parts (3 excluding PM Kits, Drums & Fusers, Paper Cassettes, Paper, Staples, Panels, Doors, Receiving Trays, Data Cleansing)	Preventative Maintenance Kits, Drums, Fusers _____
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Payment Terms:

All payments are exclusive of sales and use tax.

Group A (see attached Equipment Schedule which is incorporated herein by reference):

Base Use Charge: \$ _____	Charge per page above Pages Included in Base Use Charge
4 8.5x11 Pages Included in Base Use Charge:	\$ _____ per Black Page
Black Pages _____ Color Pages _____	\$ _____ per Color Page

Group B (see attached Equipment Schedule which is incorporated herein by reference):

Base Use Charge: \$ _____	Charge per page above Pages Included in Base Use Charge
8.5x11 Pages Included in Base Use Charge:	\$ _____ per Black Page
Black Pages _____ Color Pages _____	\$ _____ per Color Page

5 CUSTOMER HAS READ AND AGREES TO THE TERMS AND CONDITIONS ON ALL FOUR PAGES OF THIS AGREEMENT:

Customer

Dealer

By _____	By _____
Title _____	Title _____
Printed Name/Title _____	Printed Name/Title _____
Date _____	Date _____

6 Guaranty: Name _____ Signature _____ Date _____

THIS AGREEMENT CONTAINS PROVISIONS SET FORTH ON THE REVERSE SIDE, ALL OF WHICH ARE MADE A PART OF THIS AGREEMENT

- A. **SCOPE OF SERVICES:** The charges established by this Agreement include payment for maintenance by **Dealer Legal Name** (hereafter referred to as "_____") (during normal business hours): inspection, adjustments, parts replacement, drums and cleaning material required for the proper operation as determined by _____. Paper and staples must be separately purchased by customer. **7** It is understood that the scope of services shall include only those items checked and initiated by the customer on the face page of this Agreement. No other services shall be expected or required.
- B. **8 GUARANTY:** As additional inducement for _____ to enter into this Agreement, the undersigned ("you") unconditionally, jointly and severally, personally guarantees that Customer will make all payments and all the other charges required under the Agreement and any supplements when they are due. You agree that we may make other arrangements with the customer including extending the term and adding additional equipment and you will still be responsible for those payments and other obligations. If Customer defaults, you will immediately pay in accordance with the default provision of the Agreement all sums due under the original terms of the Agreement and as modified by any supplement and will perform all other obligations of Customer under the Agreement. It is not necessary for Dealer to first proceed legally against the Customer. If it is necessary for us to proceed legally to enforce this guaranty, you expressly consent to the jurisdiction of the court set out in paragraph M and agree to pay all costs, including attorneys fees incurred in enforcement of this guaranty.
- C. **ADVANCE INSPECTION:** Dealer reserves the right to inspect all equipment to be covered under this Agreement to determine its mechanical condition. Equipment that is identified as requiring immediate repair will be identified to Customer. Customer, at its option, can elect to have said unit repaired at the then current hourly service labor rate plus parts or may elect to have the unit excluded from the Agreement.
- D. **REMEDIAL MAINTENANCE:** During the term of this Agreement, Dealer agrees to perform the maintenance and repair that will keep the Equipment in good working order and condition, normal wear and tear excepted. If Dealer is notified by Customer during the term of the agreement that the equipment is not in good working condition, Dealer will, during normal service hours, make necessary adjustments and repairs including replacement of parts (if parts are included as part of the terms of this Agreement.) If parts are not included in the Agreement, Dealer will promptly provide a quote for the appropriate part(s). Dealer service hours are 9:00 a.m. to 5:00p.m. Monday thru Friday, excluding holidays. Dealer may from time to time adjust these hours as may be required in the course of business, at which time the customer will be advised. Service at times other than Dealer's normal service hours may be furnished on an "as available basis" at published rates then in effect. Replacement parts may have been used and/or reconditioned. **9** Parts that have been replaced are the property of Dealer.
- E. **SERVICE LIMITATIONS: 10** Customer agrees Dealer will not be required to make adjustments, repairs or replacements made necessary resulting from (i) unauthorized **third parties** performing any maintenance, repair or replacement, (ii) Customer modifying, **relocating**, damaging (including without limitation, unavoidable accidents), abusing or misusing the Equipment (including without limitation, the spilling of toner or other substance in the machine), and the breaking of lids, hinges, cassettes, etc., (iii) unauthorized Equipment alteration and tampering, or interconnection with non-compatible Equipment, (iv) placing the Equipment in an area that does not conform to space, electrical and environmental requirements, or (v) failure of improper telephone or electrical **power**, (vi) **Acts of God**, lightning, climatic conditions, or incidents of excess voltage or power surges, or (vii) Customer using toner, drum, processing units, ink, film, etc., from any other source other than the service provider, due to improper conditions of the environment such as excessive dust, chemical residues, abnormal high or low temperatures. If Dealer provides maintenance made necessary resulting from any of the above listed occurrences or other work not covered under the foregoing remedial maintenance obligation, such maintenance shall be billed to Customer (and shall be due and payable in full upon receipt of invoice) at Dealer's then current rates for labor and parts. Customer agrees that Dealer will not be required to make adjustments, repairs, or replacements if Dealer is not provided reasonable access to the Equipment
- F. **TONER:** Toner-inclusive contracts are **11 based on manufacturer supply consumption rates**. Dealer will determine and deliver supplies in accordance with agreed upon usage. Use of covered supply products above the expected usage may result in additional charges. Toner may be OEM original or non-OEM at the discretion of Dealer. **12 At the conclusion of this Agreement all unused toner must be returned or additional charges shall be incurred.**
- G. **RELOCATION: 13** Customer agrees to keep the Equipment at the installation position and not move it from that location without prior written consent of Dealer. Customer agrees to be responsible for all costs associated with relocation. If the Equipment is moved to a new position or location, Dealer shall have the right to

charge a new rate for the new position or location and Customer agrees to pay the difference between the old rate and the new rate.

- H. **CUSTOMER RESPONSIBILITY:** Customer will be responsible for daily care and cleaning of the top glass, dusting Equipment, replenishing toner, replacing disposal tank, clearing jams, etc., (where applicable).
- J. **LIABILITY LIMITATION: 14** Dealer's total liability is limited to repair and maintenance of the covered Equipment. Dealer will not be held liable to Customer or any other party, for any personal injury or indirect, consequential damage, including, but not limited to, loss of use, revenue or profit. Dealer will not be liable for any **delay or failure to perform it's obligations due to any cause beyond it's reasonable control**, including without limitation, performing services at a location deemed by Dealer as hazardous to health and safety, acts of God or government, labor difficulties, **unavailability of parts or supplies**, or failure of improper transportation, telephone or power. In no event shall Dealer be responsible for lost data, lost profits, damages, or consequential damages. Dealer's sole liability shall be limited to the amount Customer has paid Dealer pursuant to this Agreement. **DEALER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE FOR AND USE, AND NONINFRINGEMENT.**
- K. **TAXES:** Customer shall be responsible for all sales tax, use tax or other taxes (including without limitations personal property taxes accessible on the Equipment) and fees charged relative to this agreement. Customer agrees to reimburse Dealer for all amounts paid or payable by Dealer in discharge of the foregoing taxes. Customer shall not be responsible for taxes based on Dealer's gross or net income.
- L. **DEFAULT:** Customer shall be in default under this agreement if Customer: (i) fails to make any payment under this or any agreement with Dealer within ten (10) days of when due or (ii) breaches any other term or condition included in this agreement and Customer fails to cure any such breach within ten (10) days. In the event of a default, Dealer may, in addition to other remedies, (i) declare all sums (including penalties) due under the terms of this Agreement, and terminate this Agreement without advance notice.
- M. **NOTICES:** Notices required under this agreement shall be written and sent to **Dealer at _____** and to the Customer at the "bill to address" identified on the front side of this Agreement. All notice will be effective upon date of postmark.
- N. **JURISDICTION:** This agreement shall be interpreted and enforced according to the laws of the State of _____.
- N. **INDEMNITY:** With respect to, arising from, or in connection from this agreement, or from manufacture, maintenance, repair or use of any Equipment, Customer agrees to indemnify and hold harmless Dealer and it's agent, representative, and employees from and against any and all claims, liabilities, damages, demands, cost and expenses of every kind and nature (including reasonable attorney's fees) arising from any injury or damage to any person, property, or business, excluding, however, any of the foregoing resulting solely from the negligence or misconduct of Dealer or it's agents, representatives or employees.
- O. **METER READINGS:** Customer agrees to provide Dealer with accurate meter readings based on the billing term from the front of the agreement, or hereby **15 grants Dealer remote access to all Equipment so that Dealer may obtain remote meter readings as required.** If accurate meter readings are not provided, or if timely access is not provided, Dealer reserves the right to estimate the meter reading from previous meter readings.
- P. **RENEWAL/TERMINATION:** Unless otherwise indicated, this is a Term Agreement that may not be terminated. This Agreement will automatically renew yearly after the initial period at the then current rates unless cancelled by Customer in writing, thirty (30) days prior to renewal date. Said automatic renewal is to provide uninterrupted coverage to Customer. **16** During the term of this Agreement the charges may be increased to reflect increases in the cost of fuel, supplies, parts, or labor. This agreement is subject to acceptance by Dealer and will remain in force until cancelled as stated above. Dealer reserves the right to cancel this contract at its discretion upon five (5) days written notice.
- Q. **ASSIGNMENT:** This contract is for the sole benefit of the Customer whose name appears on the front hereof and cannot be assigned by the customer to any further owners of the covered Equipment
- R. **CONFIDENTIALITY CLAUSE:** Dealer recognizes that it must conduct its activities in a manner designed to protect any information concerning Customer, its affiliates or clients (such information hereinafter referred to collectively as "Customer Information") from improper use or disclosure. Dealer agrees to use their best efforts to treat Customer Information on a confidential basis. Dealer agrees not to disclose any Customer Information to any person, firm or corporation who does not have a need to know said information

Equipment Covered by this Agreement: (Group A)

(The Equipment listed below is covered under the terms and conditions of this Agreement and will be billed at the Group A billing rate):

[illegible]

Equipment Covered by this Agreement: (Group B)

(The Equipment listed below is covered under the terms and conditions of this Agreement and will be billed at the Group B billing rate):

[illegible]

MANAGED SERVICES AGREEMENT CHECKLIST

- | | |
|---|--------------------------------------|
| 1. Hourly Rate | 13. Support Services Provided |
| 2. Scope of Coverage | 14. Liaison |
| 3. Acceptance | 15. Manufacturer Services |
| 4. Automatic Renewal | 16. Additional Work |
| 5. Renewal Rate | 17. Charges |
| 6. Cap On Renewal Rate | 18. Hours |
| 7. Pass Through Increases | 19. Past Due Balances |
| 8. Customer Termination | 20. Suspend All Services |
| 9. Non-Cancellable, Non-Refundable | 21. Collection Costs |
| 10. Dealer Termination | 22. Limitation of Liability |
| 11. Transfer To Another Vendor | 23. Non-Solicitation |
| 12. Managed Services Provided | 24. Confidentiality |

CUSTOMER		BILL TO	
Description	Unit Price	Quantity	Total
Email:		-	-
1 Hourly Rate Hourly rate for all services performed outside the scope of the Managed Services Program	\$ per hour		
Monthly Services Package 2 Includes ____ office, ____ server, and up to ____ PC's 1. Network monitoring and alerting 2. Monitor that established backup plan has completed 3. Perform routine and scheduled preventative network maintenance such as server reboots and defrags 4. Apply operating system and security updates 5. Monitor established anti-virus software status 6. Monthly System Report 7. Ongoing strategic IT consulting	\$ per month		
System Backup as a Service Includes server image backup for ____ server.	\$ per month per server		
Anti-virus Protection as a Service Includes ____ server and up to ____ PC's	\$ per month up to ____ PC's		
Additional Work - Firewall Monitoring	\$ per hour		
Excluded Services			
Total Monthly Managed Services Fee			
Total Due Upon Signing (Includes first months service and additional work)			

3 By executing this agreement, I acknowledge that I have read and understand this Agreement and I certify that I am authorized to execute this Agreement on behalf of customer. Authorized signature acknowledges terms / conditions and expiration dates and/or meter readings. The terms and conditions within this Agreement correctly set forth the entire agreement between parties.

Authorized Signature

Customer Authorized Signature

Name

Name

Title

Title

Date: _____

Date: _____

Managed Services Agreement

1. Term of Agreement

1. This agreement shall become effective upon receipt of payment by _____ ("_____") of the Total Due Upon Signing provided on page one and coverage shall be continuous for the time frame as specified on page one. Unless notified in writing thirty (30) days prior to the expiration date by the Customer or _____, this Agreement shall be **4** automatically renewed for the same successive period of time upon the terms and conditions **5** then in effect subject to any price/rate increase at any twelve (12) month interval thereafter. **6** All Agreements are reviewed annually and subject to annual price adjustments, not to exceed ____%, based on changes in current service costs. **7** In addition direct prices increase such as fuel, parts, supplies may be passed on to Customer when incurred.

2. Termination

1. This Agreement may be **8** terminated by the Customer upon thirty (30) days written notice if _____:
 1. Fails to fulfill in any material respect its obligations under this Agreement and does not substantially cure such matter within thirty (30) days of receipt of such written notice.
 2. Breaches any material term or condition of this Agreement and fails to substantially remedy such breach within thirty (30) days of receipt of such written notice.
 3. Terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.
 4. **9** Absent the above this Agreement is Non-Cancellable and Non-Refundable.
2. This Agreement may be **10** terminated by _____ upon thirty (30) days written notice to the Customer.
3. If either party terminates this Agreement, _____ will assist Customer in the orderly termination of services, including timely transfer of the services to another designated provider. **11** Customer agrees to pay _____ the actual costs of rendering such assistance.

3. Managed Services

1. _____ will perform specific scheduled support, monitoring and administration identified below. Devices to be monitored under this agreement are provided on page one. **12**
 1. _____ will monitor all devices under this agreement 24 hours a day, 7 days a week via an Internet connection from _____ corporate offices. Customer hereby consents to remote access by _____ to Customer's network.
 2. All Devices under this agreement will be monitored for up/down status. Should a device go off-line, _____ will notify the Customer immediately during normal business hours.
 3. _____ will connect to each of the devices via an Internet connection and perform routine and preventative maintenance such as reboots, security updates, desktop defrags, and review backup events as described on page one, and verify anti-virus and malware services are current.

4. Support Services **13**

1. _____ will provide Technical Support Services consisting of assistance to Customer in the resolution of network and/or network related problems via telephone, remote control software over the Internet, or on-site visits as _____ determines best.
2. _____ will provide phone support for Customer during the standard business hours of 8:00a.m to 5:00P.M. Monday through Friday. Customer may contact _____ to resolve any network related problem that may arise on Customer's network environment.
3. Should emergency service be required outside the standard business hours, weekends, or _____ Observed Holidays the Customer shall call _____ Service Desk number (____) ____-____ and select the voice mail option for Emergency Service.
4. _____ shall act as a **14** liaison between Customer and designated software and hardware manufacturer(s) for problem resolution. **15** In the event services are required from the manufacturer, it shall be the Customer's responsibility to pay the manufacturer for such services. In the event a manufacturer provides _____ with a "fix" and _____ installs such fix, upon Customer request and _____ acceptance, Client will be billed by _____ for such installation service as detailed in Section 5 of this agreement.

5. Additional Work **16**

1. _____ may recommend improvements (Additional Work) to Customer's network and/or network related hardware and software based on _____ experience and industry accepted best practices in the use and deployment of technology systems. The Charge for Additional Work under this agreement shall be the amount set forth as the "Additional Work Fee" on page one of this agreement. Customer agrees that should they have Additional Work to pay the total of all Additional Work charges at the terms set forth on page one of this agreement.

6. Charges **17**

1. The monthly charge for Managed Services under this agreement shall be the amount set forth as the "Monthly Managed Services Fee" on page one of this agreement. The Monthly Managed Services Fee with respect to any renewal term will be _____'s charge in effect at the time of renewal. Customer agrees to pay the total of all charges for service during the initial term and any renewal term within fifteen (15) days of the date of invoice for such charges.
2. All services performed remotely by _____ on Customer's network outside the original scope of this agreement will be billed at the amount set forth as the "Rate" on page one of this agreement in quarter (1/4) hour increments with a quarter hour (1/4) minimum.
3. All services performed on-site by _____ on Clients network outside the original scope of this agreement will be billed at the amount set forth as the "Rate" on page one of this agreement with a one- (1) hour minimum.
4. All rates in this Agreement are based upon services provided during normal business hours defined as Monday – Friday, 8A.M. – 5P.M. in the Eastern Time Zone.

1.1.

18 Service Hours		Surcharges
Normal	Monday through Friday, 8:00 AM to 5:00 PM	None
Extended	Monday through Friday, 5:01 PM to 7:59 AM	Agreement Rate x 1.5 (2 hr. minimum)
Weekend	Saturdays, Sundays and National Holidays	Agreement Rate x 2 (2 hr. minimum)

_____ will invoice Customer for additional services or products not specifically included in this agreement.

2. Past Due Balances

- 2.1. Customer agrees that should they have **19 any past due balances** with _____ that exceed 30 days, for any reason, service under this agreement will be suspended until the full past due balance has been satisfied. Finance charges in the amount of 1.5% per month will be assessed on all past due balances.

3. Breach or Default

- 3.1. If the customer does not pay all charges for equipment, maintenance, supplies or parts as provided hereunder, promptly when due, _____ may refuse to service the equipment covered by this agreement and any other agreement **20**.
- 3.2. Customer agrees to pay _____'s costs and expenses of collection including the reasonable attorney's fees permitted by law in addition to all other rights and remedies available to _____. **21**

4. Work Space

- 4.1. Customer agrees that _____ shall have full and free access and sufficient workspace to provide service on equipment covered by this agreement.
- 4.2. Customer shall designate a Systems Administrator for communications between _____ and Customer.

5. Limitation of Liability 22

- 5.1. Except as expressly provided in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.
- 5.2. Each party hereby agrees to indemnify and hold the other party harmless from and against any and all third party claims, demands, actions, losses, liabilities, costs and expenses (including reasonable attorney's fees) arising out of or resulting from the performance, or lack of performance, of each party's activities under this Agreement except to the extent caused by either party's sole negligence or willful misconduct.
- 5.3. _____ and/or its agents shall not be liable for damages for failure to furnish or interruption of any services, nor shall _____ or its agents be responsible for lost data, files or software damage regardless of the cause. _____ shall not be liable for damage to property or for injury to any person arising from the installation or removal of equipment unless caused by the sole neglect of _____. _____ shall not be liable for loss of profits or loss of business or loss of contracts or depletion of goodwill or loss of anticipated savings or loss of, damage to or corruption of data and/or any special, indirect, consequential loss or damage of any kind howsoever arising.
- 5.4. Warranties except as provided herein, there are no other agreements, warranties or representations, expressed or implied, either in fact or by operation of law, statutory or otherwise, including warranties of merchantability and fitness for a particular purpose, relating to the services. Services provided are a best efforts service and _____ does not warrant that the services, equipment or software shall be error-free or without interruption.

6. Force Majeure

- 6.1. _____ shall not be liable for failure to perform any of its obligations under this Agreement during any period in which such performance is delayed by events or occurrences beyond _____ reasonable control, such as, but not limited to fire, flood, or other natural disasters, or, embargo, court order, riot, or other intervention of any government authority, provided that _____ immediately notifies Customer of such delay. If _____ performance is delayed for these reasons for a cumulative period of forty-five (45) days or more from the date of such notice, Customer may terminate this Agreement by giving _____ written notice.

7. Non-Solicitation of Employees 23

- 7.1. Customer acknowledges that _____ is involved in a highly strategic and competitive business. Customer further acknowledges that Customer would gain substantial benefit and that _____ would be deprived of such benefit, if Customer were to directly hire any personnel employed by _____. Except as otherwise provided by law, Customer shall not, without the prior written consent of _____, solicit the employment of _____ personnel during the term of this Agreement and for a period of one (1) year following the termination or expiration of this Agreement. If

a _____ employee shall come to work for Customer during said period, Customer agrees to pay _____ the sum equal to that employee's total compensation for the previous twelve (12) months.

Confidentiality 24

Each Party shall hold in trust for the other party and shall not disclose to any non-party to the Agreement, any confidential information of the other party. Confidential Information is information which relates to either party's research, development, trade secrets, or business affairs, but does not include information which is generally known or easily ascertainable by nonparties of ordinary skill in computer design, programming, networking, information technology, or the specific business interests of either party.

Miscellaneous

This agreement shall be governed by and construed according to the laws of the State of _____ applicable to agreements wholly negotiated, executed and performed in _____. It constitutes the entire agreement between parties and may not be modified except in writing signed by duly authorized officers of _____ and the customer.

Entire Agreement

This agreement sets forth the entire understanding of the parties with respect to the subject matter contained herein and is binding upon both parties in accordance with the terms and conditions. There are no understandings, representations, and agreements other than those set forth herein. This agreement shall not be amended or altered except in writing signed by the authorized representatives of the parties.

Intellectual Property

All programing, copyrightable works, writings, drawings, designs, or other works created or developed by _____ or its personnel during the performance of this Agreement shall remain the sole and exclusive property of _____.

Acceptance

This agreement shall not be effective until it has been approved and accepted by _____.

MASTER AGREEMENT

- New Format
- Master Agreement
- Addendum/SOW/Schedules
- Inconsistent Terms Prevail
- Simplify Administration
- Checked/Initialed



MASTER CONTRACT CHECKLIST

- 1. Format: Master Terms and Conditions, Addenda, Statements of Work/Schedules**
- 2. Scope of Services: Preference Checked Options**
- 3. Included Items: Devices by Serial Numbers**
- 4. Excluded Items: Back-up, Data Recovery, Ant-Virus, Firewall**
- 5. Hourly Rates: Standard, Off Hours, Holidays**
- 6. Remote Access Permission**
- 7. On-Site Permission**
- 8. On-Site Conditions: Work Area, Temperature, Lighting, Electrical**
- 9. Effective Date: Receipt of Payment/Date Signed**
- 10. Automatic Renewal: Current Rates**
- 11. Pass On Costs: Increase Fuel, Parts, Supplies, Licenses**
- 12. Non-Cancellable**
- 13. Non-Refundable**
- 14. Dealer Obligations at Termination/Expiration: Data Provided, Data Transfer, Charges**
- 15. Monitoring: 24/7, Upgrades, Virus, Third Party Failures**
- 16. Guaranteed Up-Time**
- 17. Technical Support: Hours, Days, Recognized Holidays, Minimum Charges**
- 18. Contract Charges: Monthly, Quarterly, Annually**
- 19. Additional Charges: Remote, On-Site, Expenses**
- 20. Past Due: Any Contract, Suspend, Interest**
- 21. Software Developer/Licenser Support: Role, Charges**
- 22. Breach: Attorneys Fees and Costs to Enforce or Collect**
- 23. Contract Liaisons**
- 24. Limitations of Liability: Exclusions, Damage Limitation, Third Party Causes, Lost Data, Loss Profits, Indirect Damages, Consequential Damages**
- 25. Damages Limited to Amounts Paid**
- 26. Exclusion Of Warranties: Fitness, Merchantability, Infringement**
- 27. Force Majeure: Causes Beyond Dealers Control, Rain, Wind, Fire**
- 28. Non-Solicitation of Employees: Payment One-Year Salary and Benefits**
- 29. Confidentiality**
- 30. Choice of Law/Jurisdiction**
- 31. Mediation-Arbitration-Litigation**
- 32. Rights To Products Developed**
- 33. Relocation of System**
- 34. System Support By Others**
- 35. Regulatory Compliance/Insurance, Healthcare, Financial**
- 36. Taxes**
- 37. Training**
- 38. Password Management**
- 39. Security**
- 40. Contract Assignment**

MASTER AGREEMENT

This **Master Agreement, including the attached Exhibits/Schedules** (this “**Agreement**”), is entered into by and between (_____ DEALER _____), a _____ corporation with principal offices located at _____ (“**DEALER**”) and _____ CUSTOMER _____, a _____ corporation with principal offices located at _____ (“**CUSTOMER**”). This Agreement is made effective as of the ____ day of _____, 20____ (the “**Effective Date**”). In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, **DEALER** and CUSTOMER hereby enter into this Agreement. Whenever used in this Agreement, the term CUSTOMER shall be understood to include CUSTOMER and each of its subsidiary entities. The individuals signing this document acknowledge that they have **the authority** and are authorized to do so on behalf of the Party indicated.

This Agreement includes the following attachments:

Terms and Conditions

Exhibit A –

Exhibit B –

Exhibit C –

Exhibit D –

Exhibit E –

Exhibit F –

CUSTOMER (“**CUSTOMER**”)

DEALER (“**DEALER**”)

By: _____

By: _____

Printed Name

Printed Name

Title

Title

Date

Date

AGREEMENT TERMS AND CONDITIONS

DEFINITIONS

"Agreement" means the Master Agreement being entered into between DEALER and CUSTOMER, which Agreement includes these Terms and Conditions and **all of the attached Exhibits and Schedules** which may be added to and become a part hereof by the mutual consent of the Parties.

"CUSTOMER and/or CUSTOMER Data" means CUSTOMER's data and content that is transferred by CUSTOMER to DEALER or received from CUSTOMER and processed by DEALER.

"Fees" means any Subscription Fees, Professional Services Fees and/or other fees which are mutually agreed to between DEALER and CUSTOMER, or on any future mutually agreed upon proposal signed by both parties.

"Intellectual Property Rights" means any patent rights, copyrights, trade secrets, trademarks, service marks, know-how, and any other similar rights or intangible assets recognized under any laws or international conventions and in any country or jurisdiction in the world, and all present and future registrations, applications, disclosures, renewals, extensions, continuations, or reissues of the same.

"Internal Use" means ordinary use by CUSTOMER for its own internal business purposes. Except as permitted in the preceding sentence, Internal Use does not include the right to provide the DEALER Services to third parties for other commercial purposes whether by lease, rental, transfer, assignments, sale, sublicense, or any other means, including commercial time-sharing, rental, or service bureau use.

"DEALER Services" means all the services (such as application services) described in this Agreement that are provided by DEALER, or **third party subcontractors**, to CUSTOMER under this Agreement including, but not limited to, those services set forth within Exhibit ____ – as well as any other services that may be specified in a future mutually agreed upon proposal signed by both parties.

"DEALER Software" means the application and utility software developed by DEALER.

"Hosting Site" means the computer networks and operating system software that is provided by DEALER OR **A THIRD PARTY** through AN arrangement of DEALER.

"Statement of Work" means the document that will be created, and mutually agreed upon and signed by both parties, to define the details of the services to be performed as described in Exhibit ____.

"Regulatory Requirements" mean Federal, State and local laws, rules and regulations applicable to this Agreement, the DEALER System, and CUSTOMER's use of the DEALER Services.

"Site" means each CUSTOMER site that will be receiving the DEALER Services, which sites are set forth on the attached Exhibit ____.

"Site Sign Off" means a checklist indicating completion of set up, training, and if applicable, data conversion services.

Additional Documents means the Exhibits (as well as any schedules or Statements of Work) added from time to time to this Agreement and the corresponding terms and conditions entered into by the Parties from time to time, and made a part hereof.

Additional Services refers to consulting and other technology services that may be provided by DEALER, or third party subcontractors, which are **outside the scope of this Agreement** and related Exhibits, in terms of purpose, proposal, statement of work, agreement and execution of services, service and product fees, and scheduling.

Applications mean any and all software products or services that may operate on the CUSTOMER Network or may be delivered as a Service.

Authorized Contact(s) means contacts designated by CUSTOMER who may approve Services requested, and on whose approval shall be considered valid and payable under the terms of this Agreement.

Business Hours, unless otherwise noted, means the hours of 8:00 am until 5:00pm Eastern Time, Monday through Friday, excluding recognized DEALER holidays.

CUSTOMER Equipment refers to any equipment owned by CUSTOMER and within DEALER's management, control or possession.

CUSTOMER Network means the technology equipment owned or leased by CUSTOMER, or through which CUSTOMER receives services (e.g.,

hosted virtual servers, firewalls, etc.) including but not limited to, routers, firewall appliances, switches, computer servers, cabling, computer workstations, portable computers, tablets, peripheral devices, storage devices, remote-connectivity and wireless devices, software, firmware, drivers and related products.

Confidential Information means the terms of this Agreement and any confidential and/or proprietary information and data related to technology and business activities, including, but not limited to, trade secret, technical, developmental, marketing, sales, strategies, operating, performance, cost, know-how, business and process information; computer programming techniques, file formats, interface protocols and interface formats, computer programs and software (including, but not limited to architecture diagrams, source code, object code, software output, screen displays/file hierarchies, graphics and user interfaces), all record bearing media containing or disclosing such information and techniques; samples, models or prototypes, or parts thereof; formulas; CUSTOMER or third party data. Confidential Information does not include information which (a) has been or may in the future be published or is now or may in the future be otherwise in the public domain through no fault of the receiving Party; (b) prior to disclosure pursuant to this Agreement is property within the legitimate possession of the receiving Party; (c) subsequent to disclosure pursuant to this Agreement is lawfully received from a third party having rights in the information without restriction; and (d) is independently developed by the receiving Party through parties who have not had access to such Confidential Information.

Connectivity refers to data transmission with satisfactory throughput from computer(s) within CUSTOMER Resources destined for hosted service(s) through the global Internet or a dedicated network facility rented from a communications carrier and connected to the hosted data center for the purpose of using network services.

Material Breach means any material failure to comply with any material term of this Agreement.

Party or Parties means DEALER and CUSTOMER individually or collectively.

Product means technology equipment and/or services, not already owned or leased by CUSTOMER, which DEALER may supply as a part of the Services and other projects, including but not limited to, computers, networking equipment and peripherals, as well as services delivered solely by automated systems.

Recognized Holidays means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

Service Fees mean the periodic fees paid to DEALER by CUSTOMER for services included under one or more Exhibits to this Agreement.

Service Request(s) refers to specific requests for Products or Services made by a CUSTOMER's Authorized Contact to DEALER.

Service Requestor(s) means contacts designated by CUSTOMER who are authorized to request Products or Services.

Service Level Agreement(s) (SLA) means the performance standards described in each Exhibit.

Setup Fee(s) refers to a one-time fee payment related to the initiation of Services under one or more Exhibits to this Agreement.

Setup Period means the period beginning on the date Services are scheduled to begin and ending on the date when services are fully provisioned, as defined by one or more Exhibits attached to this Agreement.

Technician refers to various DEALER employees **who may work on the CUSTOMER Network, either in person on the CUSTOMER site, remotely by means of telephone support, through remote access of the CUSTOMER Network** or by other activities either at the CUSTOMER site, DEALER facilities or other locations.

Term refers to a period time during which services are provided under one or more Exhibits to this Agreement.

Labor Rate refers to the hourly rate charged to CUSTOMER for the use of DEALER labor for services which are outside the scope of DEALER's monthly service agreement with CUSTOMER. Rates may vary by skill set.

Monthly User Count refers to the total number of distinct named users who utilized a Service during the monthly billing period for which charges are being computed.

End User Billing refers to a direct billing relationship between DEALER and

CUSTOMER. End user billing is computed by multiplying the End User Billing Rate for a Service by the Monthly User Count for that Service.

1. DEALER SERVICES AND DEPLOYMENT.

1.1 DEALER Services Purchased. DEALER agrees to provide to CUSTOMER the DEALER Services set forth in this Agreement including those specifically set forth on the attached Exhibit ____; additional DEALER Services may be provided to CUSTOMER to the extent set forth in any additional Statement of Work or Exhibit executed in the future by both parties.

1.2 Deployment. Upon execution of this Agreement by both parties, both parties will promptly undertake the activities necessary to allow CUSTOMER access to the DEALER Services. After the Effective Date, DEALER will prepare a **Statement of Work with an estimated "go-live" date** and submit it to CUSTOMER for CUSTOMER's approval, which will not be unreasonably withheld or delayed. Both parties agree to make a good faith effort to complete the setup, training and, if applicable, conversion activities (the "Deployment") in a timely fashion and to perform the Deployment according to the responsibilities described in the **Planning Schedule**. CUSTOMER further agrees to cooperate with DEALER in fulfilling any reasonable request that is necessary to complete the Deployment in a timely and professional manner. DEALER will notify CUSTOMER in writing when the Deployment is complete (the "**Commencement Date**").

1.3 Commencement and Testing. On the **Commencement Date**, DEALER will provide access to the **test environment** for inspection and evaluation purposes but not for productive or commercial use. CUSTOMER will execute the Site Sign-Off within three (3) days from the Commencement Date ("**Testing Period**"), and CUSTOMER will indicate either (a) that Deployment is complete in accordance with the responsibilities set forth in the Planning Schedule, or (b) within such Testing Period, describe in reasonable detail, all Deployment requirements set forth in the Planning Schedule that are not completed. If CUSTOMER does not provide timely notice of uncompleted Deployment activities during the Testing Period as set forth above or if CUSTOMER uses the hosted site for productive or commercial purposes for a period of fourteen (14) days or more at the Site, then the test environment will be deemed accepted by CUSTOMER ("**Deemed Acceptance**").

1.4 Acceptance or Correction. CUSTOMER's acceptance of the test environment ("**Acceptance**") occurs on the earlier of (i) the receipt of CUSTOMER's notice of acceptance or (ii) Deemed Acceptance. If, during the Testing Period, CUSTOMER provides notice describing uncompleted Deployment requirements, then DEALER will use commercially reasonable efforts to complete the Deployment Requirements.

1.5 Licensing: **Software must be properly licensed**. In certain instances, CUSTOMER will be required to register the use of license keys with the software vendor (i.e. all Microsoft licenses) and complete and file requisite documentation and maintain software assurance or other maintenance as required by the software vendor. **All Third Party Software is provided "As Is"** and Customer shall look solely to the software developer for any claims.

2. **LICENSE GRANT; RESTRICTIONS**. Subject to the terms and conditions of this Agreement and upon Acceptance, DEALER grants to CUSTOMER, during the Term of this Agreement as defined in Section 14, license to access and use the applicable DEALER Services and DEALER Software solely for CUSTOMER's Internal Use. CUSTOMER acknowledges that nothing in this Agreement provides CUSTOMER with a right to directly access the code of the DEALER Software and that the DEALER Software will be installed only on the servers provided by the Hosting Sites. CUSTOMER will not: (i) copy, modify, or create derivative works of the DEALER Services or DEALER Software; (ii) license, sublicense, sell, resell, market, reproduce, transfer, assign, or distribute the DEALER Software in any way; (iii) reverse engineer, decompile, disassemble, or translate the DEALER Software; (iv) access the DEALER Software in order to build a competitive product or service.

3. **SECURITY**. DEALER and CUSTOMER agree to comply with the security measures set forth on the attached Exhibit ____ in order to protect CUSTOMER Data (the "**Security Measures**"). CUSTOMER acknowledges that, notwithstanding any physical, technical, and/or administrative controls and safeguards that DEALER may institute to protect CUSTOMER Data, the use of or connection to the Internet provides unauthorized third parties the opportunity to circumvent these precautions to gain access to the DEALER Services and CUSTOMER Data. If DEALER reasonably believes that CUSTOMER Data has been accessed by or disclosed to an unauthorized person as a result of the Security Measures being compromised, then DEALER will immediately notify CUSTOMER of the problem's existence and extent (as known) and what DEALER is doing to correct the problem. However, DEALER may temporarily delay notification, to the extent that such delayed notification is required by court order or applicable laws in order for DEALER to assist in any governmental or criminal investigation relating to the unauthorized access to CUSTOMER Data. **CUSTOMER shall be responsible for informing its customers** about any unauthorized access or disclosure of CUSTOMER Data according to applicable law.

4. CHANGES TO THE SERVICES.

4.1 Changes in DEALER Services. In the normal course of business, DEALER may modify the DEALER Services and/or the DEALER System for reasons including changes in Regulatory Requirements, changes in product and service offerings, changes in communications and computer industry products and standards, and new equipment or system software offerings by DEALER suppliers. DEALER may, at any time, discontinue any of the DEALER Services upon providing CUSTOMER fifteen (15) days' prior notice. DEALER may discontinue any of the DEALER Services immediately upon the imposition of any regulatory, legislative, or judicial determination that the DEALER Services violate any applicable law or regulation or in the event that any Third Party Services or software are no longer available.

4.2 **Service Versions**. It is agreed that **routine upgrades** and modifications, including routine enhancements, patches, bug fixes, and minor updates made generally commercially available ("Standard Updates") to the DEALER Services and DEALER System used by DEALER to provide the Application Services to CUSTOMER will be provided at **no additional cost to CUSTOMER**.

5. FEES.

5.1 **Subscription Fees**. Commencing on the Effective Date and continuing each month thereafter, CUSTOMER will pay DEALER the Subscription Fees reflected in DEALER's invoice (which will be in accordance with the terms set forth on Exhibit ____ within thirty (30) days of receipt of such invoice. Unless otherwise specified in Exhibit ____, Subscription Fees for the DEALER Services will be due on a monthly basis. For any partial month, CUSTOMER shall pay a pro-rata amount, calculated from the beginning date in which the Subscription Fee is due until the end of the applicable month. During the Initial Term, the Subscription Fees will not be changed. **DEALER may change its Subscription Fees for DEALER Services by notifying CUSTOMER in writing at least thirty (30) days in advance of any Renewal Term, with such new pricing to take effect upon commencement of such Renewal Term.**

5.2 **Professional Services Fees**. CUSTOMER will pay the Professional Services Fees set forth on Exhibit ____ (and any mutually agreed upon Professional Services Fees that may be set forth in the future). CUSTOMER agrees to reimburse DEALER for all reasonable out-of-pocket expenses (e.g. travel, lodging, meals, long distance telephone calls, and printing and copying charges) in connection with the Services; provided that meals and incidental expenses shall be invoiced at amounts actually incurred. **Additional training may be purchased by CUSTOMER** at the then prevailing rates, subject to availability of DEALER personnel and resources.

5.3 **Additional Fees; Out of Scope Services**. Without limiting the general applicability of the foregoing, the following are "out of scope" services subject to additional charges on a mutually agreed basis: (i) delay caused by CUSTOMER's failure to timely fulfill CUSTOMER's responsibilities under the Planning Schedule or to make available the personnel, network configuration, or other system requirements; (ii) correction by DEALER of CUSTOMER errors or defects in CUSTOMER Data or the format thereof and/or additional reformatting or verification testing required as a result of such CUSTOMER errors or defects; (iii) CUSTOMER change orders and/or CUSTOMER requested customizations; and (iv) CUSTOMER requested additional services and products. CUSTOMER requests for professional services that are outside the scope of the type of DEALER Services being provided under this Agreement, are subject to DEALER's

acceptance, which acceptance may be withheld in DEALER's reasonable discretion.

5.4 Taxes and Additional Charges. CUSTOMER agrees to pay any sales, use, withholding, VAT, excise, personal property, or any other similar tax or charge, or duty or assessment levied or assessed by any governmental authority as a result of receipt of the DEALER Services under this Agreement, or any other service or materials provided to CUSTOMER under this Agreement, with the exception that DEALER will pay any income or similar taxes assessed on DEALER by any governmental authority as a result of DEALER's receipt of revenues pursuant to this Agreement. For avoidance of doubt, to the extent that a sales tax is due and owing to a governmental authority as a result of receipt of the DEALER Services under this Agreement, CUSTOMER (and not DEALER) shall be responsible for payment of any such applicable sales or use taxes.

5.5 Late Payment. CUSTOMER will not make or assert any right of deduction or set-off against DEALER's fees and other charges. Without limiting DEALER's rights and remedies under this Agreement, at law or in equity, DEALER may charge CUSTOMER a late fee of up to 2% per month or the maximum rate permitted by law, whichever is lower, on any fees or other charges to the extent not timely and reasonably disputed ("Undisputed Amounts") that are not paid on or before the due date. CUSTOMER shall be responsible for collection costs incurred by DEALER in order to collect Undisputed Amounts owed by CUSTOMER under this Agreement, including without limitation, legal costs. Without limiting the foregoing or any other rights and remedies of DEALER in law or in equity, upon three (3) days written advance notice, DEALER may suspend and or terminate CUSTOMER's access to any DEALER Services for failure to pay DEALER any Undisputed Amounts which are delinquent under this Agreement.

6. ACCESS TO DEALER SERVICES.

6.1 DEALER Services to CUSTOMER Through Remote Access to the Hosted System. DEALER will have the right to manage the Hosting Site, and all peripheral devices and databases at the hosted site as DEALER deems appropriate.

6.2 Privacy and Hosting Site Requirements.

a. Privacy Requirements. DEALER agrees to comply with the privacy terms and conditions set forth on the attached Exhibit ____.

b. Transmission of Data. CUSTOMER is responsible for the input, transmission, or delivery to DEALER of all information and data required by DEALER to perform the services in Exhibit _____. Provided, however, in the event that CUSTOMER deletes or modifies any CUSTOMER Data, DEALER shall have no liability for such CUSTOMER deletion or modification of CUSTOMER Data. The CUSTOMER Data utilized by CUSTOMER in connection with the DEALER Services must be in a format and manner approved by DEALER.

6.3 Errors in Data Supplied. DEALER will process items and data and perform the DEALER Services on the basis of information input and supplied by CUSTOMER. DEALER will be entitled to rely upon any data, information, or instructions provided by CUSTOMER. If any error results from incorrect data supplied by CUSTOMER, then CUSTOMER (a) is responsible for discovering and reporting that error to DEALER and supplying the data necessary to correct the error, and (b) assumes any risk of loss caused by such CUSTOMER error in the transportation or transmission by electronic means of data and information from any terminal or remote unit.

7. THIRD PARTY APPLICATIONS. DEALER Services may include certain applications listed on Exhibit ____ as updated from time to time by DEALER during the term of this Agreement ("Third Party Applications") provided by third parties ("Third Party Providers") in connection with providing the DEALER Services to CUSTOMER hereunder. DEALER has listed on Exhibit _____ those Third Party Applications and Third Party Providers currently being used as of the Effective Date. DEALER will provide CUSTOMER with written notification of any future changes in such Third Party Applications and/or Third Party Providers and update Exhibit ____ as applicable. If CUSTOMER orders a Third Party Application as identified on Exhibit ____ (or in a future mutually agreed upon proposal), CUSTOMER agrees that (i) access to the Third Party Application is subject to, and CUSTOMER agrees to comply with, that Third Party Application's terms and conditions, and (ii) to the extent authorized by the Third Party Providers, DEALER will pass through any warranty terms applicable to the Third Party Application. DEALER, however, is not responsible for any warranty support related to that Third Party Application, except to assist CUSTOMER in communicating warranty claims to the Third Party Provider. NOTWITHSTANDING ANYTHING TO THE CONTRARY, DEALER IS NOT LIABLE FOR ANY DELAY IN DELIVERY OR UNAVAILABILITY OF THIRD PARTY APPLICATIONS ORDERED BY CUSTOMER AND DEALER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY APPLICATIONS. ALL SUCH THIRD PARTY APPLICATIONS ARE PROVIDED BY DEALER "AS IS" AND "AS AVAILABLE". Orders by CUSTOMER for Third Party Applications may be non-cancellable and non-returnable to DEALER. DEALER reserves the right to change Third Party Providers or to provide similar services directly to CUSTOMER with notice, provided that the services shall not be materially diminished in quality or

performance. DEALER may pass through any increase in fees from Third Party Providers. CUSTOMER shall reimburse DEALER for any Third Party Provider fees or charges incurred by DEALER on behalf of CUSTOMER. The continued availability of Third Party Applications is not within the control of DEALER and CUSTOMER therefore agrees that DEALER may cancel and cease to provide any Third Party Applications with a minimum of fifteen (15) days prior notice at any time without liability to CUSTOMER. In case of cancellation, DEALER will reasonably assist CUSTOMER in identifying an alternative provider of the Third Party Applications. DEALER does not support Third Party Applications other than the Third Party release version commercially supported by DEALER. DEALER does not warrant that the versions of the Third Party Applications set forth on the attached Exhibit ____ (as well as the versions of any Third Party Applications added to Exhibit ____ by DEALER at a future date), shall operate with the DEALER Application Services to permit CUSTOMER to effectively access and utilize the DEALER Services throughout the Term of this Agreement.

8. DATA SUPPORT SERVICES AND BACKUP.

8.1 Technical Support. DEALER will have personnel available to CUSTOMER's designated technical contact via telephone and/or email to respond to technical or maintenance issues related to the DEALER Services during the hours of 8:00 am – 5:00 pm Eastern Time, Monday through Friday, with the exception of DEALER holidays. ("Technical Support".) In the event that Technical Support is required to address a "Production Critical Incident" (as defined on Exhibit ____), DEALER will provide CUSTOMER with personnel who will be available to promptly address and resolve the production critical incident on a 24/7/365 basis.

8.2 Exceptions. CUSTOMER may be responsible for expenses incurred in resolving problems caused by any of the following: (i) CUSTOMER software or other CUSTOMER systems not provided by or through DEALER or approved by DEALER, (ii) failure by CUSTOMER in fulfilling CUSTOMER Responsibilities described below; or (iii) customizations or development of new interfaces performed by parties other than DEALER or a DEALER approved or recommended Third Party Provider. In such event, DEALER and CUSTOMER shall agree on any additional fee to be charged to CUSTOMER for such services.

8.3 Data Backup. DEALER will assist in the recovery of any lost or damaged items or data as an Additional Service not included within the standard services of Exhibit ____.

9. CUSTOMER RESPONSIBILITIES.

9.1 Management of CUSTOMER Resources. Unless otherwise agreed in writing CUSTOMER is responsible for obtaining and maintaining, at its own expense, all data processing and communications equipment, as well as any third party hardware, software, or services (collectively the "CUSTOMER Resources"). CUSTOMER Networks. CUSTOMER acknowledges that changes to CUSTOMER's computer networks may adversely affect the performance of the DEALER Services. Therefore, if CUSTOMER changes its computer networks

after Acceptance without receiving written approval from DEALER, then CUSTOMER assumes all risks.

9.3 **Training.** CUSTOMER's personnel who will administer CUSTOMER's implementation of the DEALER Services must take DEALER's standard product training. **In the event of turnover and or reassignment, CUSTOMER agrees to schedule and pay for additional DEALER standard product training to ensure that CUSTOMER maintains trained technical staff at all times during the term of this Agreement.**

9.4 **Acceptable Use; Security.** CUSTOMER will comply with DEALER's operating instructions for the use of the DEALER Services. CUSTOMER will also abide by all local, state, and federal laws applicable to the use by CUSTOMER of the DEALER Services, including without limitation as such laws are amended or adopted from time to time during the term of this Agreement. **CUSTOMER acknowledges that DEALER does not control the information passing through the network and that it is CUSTOMER's responsibility to ensure that any CUSTOMER Data complies with all applicable laws and regulations and does not infringe the Intellectual Property Rights or other rights of DEALER or third parties.** CUSTOMER: (i) will not use the network to gain or attempt to gain unauthorized access to other computer systems accessible; (ii) will not use the network to interfere with or disrupt use and enjoyment of other customers (interference or disruptions include propagation of computer worms or viruses or use of the network to make unauthorized entry into any other computer or machine accessible via the Internet) and (iii) will take commercially reasonable steps to prevent its users from doing any of the prohibited activities described in either (i) or (ii) above.

9.5 **Password and Login Information.** DEALER will issue to CUSTOMER an administrative login to access administrative tools and back end support ("**Administrative Login**"). CUSTOMER shall only provide CUSTOMER's employees who are authorized to administer DEALER Services ("**Authorized Administrators**") with access to the Administrative Login. CUSTOMER and its Authorized Administrators are responsible for maintaining the confidentiality of the Administrative Login. CUSTOMER and DEALER will comply with the requirements set forth on Exhibit ___ to help ensure that User Accounts will only be used by the person for whom it was created or other authorized personnel

9.6 **CUSTOMER and DEALER Indemnification.**

a. **CUSTOMER Indemnification.** CUSTOMER will defend, and/or settle, any third party claim or suit brought against DEALER or its employees, agents, officers, directors, or contractors ("**DEALER Indemnified Parties**") caused by the negligent actions or omissions or intentionally wrongful actions of CUSTOMER arising out of or related to: (i) the use or transmission of CUSTOMER Data, (ii) the loss, theft, or misuse of passwords and/or login information used to access the Administrative Login or User Accounts, or (iii) violation of Regulatory Requirements applicable to CUSTOMER's business operations, and CUSTOMER will pay all damages finally awarded by a court of competent jurisdiction or agreed to in settlement by CUSTOMER attributable to such claim, provided that in each case (a) CUSTOMER is notified in writing of such claim; (b) DEALER provides information and assistance reasonably requested by CUSTOMER or CUSTOMER's designee and (c) CUSTOMER is given and assumes responsibility for sole control of defense and settlement of such third party claim; provided that (i) CUSTOMER shall not settle such claim without the consent of DEALER which consent will not be unreasonably withheld and (ii) DEALER or its designee may participate at its own cost in any defense.

b. **DEALER Indemnification.** DEALER will defend, and/or settle, any third party claim or suit brought against CUSTOMER or its employees, agents, officers, directors, or contractors ("**CUSTOMER Indemnified Parties**") caused by the negligent actions or omissions or wrongful actions of DEALER arising out of or related to: (i) the use or transmission of CUSTOMER Data, (ii) the loss, theft, or misuse of passwords and/or login information used to access the Administrative Login or User Accounts, or (iii) violation of Regulatory Requirements applicable to DEALER's business operations, and DEALER will pay all damages finally awarded by a court of competent jurisdiction or agreed to in settlement by DEALER attributable to such claim, provided that in each case (a) DEALER is promptly notified in writing of such claim, (b) CUSTOMER provides information and assistance reasonably requested by DEALER or DEALER's designee, and (c) DEALER is given and assumes responsibility for sole control of defense and settlement of such third party claim; provided that (i) DEALER shall not settle such claim without the consent of CUSTOMER which consent will not be unreasonably withheld and (ii) CUSTOMER or its designee may participate at its own cost in any defense.

10 **WARRANTY.**

10.1 **Limited Professional Services Warranty and Remedy.** DEALER warrants that any Professional Services provided by DEALER will be performed in a professional and workmanlike manner consistent with the prevailing standards of the industry.

10.2 **Disclaimers and Exclusions.** Neither DEALER nor any of its Third Party Providers, licensors, employees, or agents warrant that the operation of the applications will be **uninterrupted or error free**. Except as expressly provided in this Agreement, DEALER shall not be liable for any damages arising out of use or inability to use the applications unless caused by DEALER's sole acts or omissions

which constitute gross negligence or reckless or intentional wrongful acts. DEALER shall not be liable for unauthorized access to or alteration, theft, or destruction of CUSTOMER's Data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, unless such access, alteration, theft, or destruction is solely caused as a result of DEALER's gross negligence or reckless, or intentional wrongful acts. DEALER does not warrant that the DEALER Services will meet CUSTOMER's requirements or operate in combination with other hardware, software, systems, or data not provided by or through (or approved or authorized by) DEALER or otherwise conforming to the written specifications provided by DEALER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, **DEALER DISCLAIMS ALL OTHER WARRANTIES**, EXPRESS OR IMPLIED, IN FACT, BY STATUTE OR BY OPERATION OF LAW OR OTHERWISE, CONTAINED IN OR DERIVED FROM OR RELATED TO THIS AGREEMENT, ANY OF THE ATTACHED EXHIBITS OR SCHEDULES, ANY OTHER REFERENCED DOCUMENTS, THE SERVICES PERFORMED OR IN ANY OTHER MATERIALS, PRESENTATIONS, OR OTHER DOCUMENTS OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

11 **INTELLECTUAL PROPERTY OWNERSHIP.**

11.1 **CUSTOMER.** All CUSTOMER Data is and will remain CUSTOMER's property. CUSTOMER grants DEALER and its sub-contractors a limited right and license to modify, copy, use, reformat, display and transmit CUSTOMER Data to the extent necessary to provide CUSTOMER with the DEALER Services set forth in this Agreement and/or Exhibits or Schedules and to allow DEALER and its subcontractors to perform DEALER's obligations under this Agreement and to comply with any applicable laws.

11.2 **DEALER and its Licensors.** CUSTOMER acknowledges and agrees that DEALER and its licensors retain all right, title, and interest in and to the DEALER Services, the DEALER Software, and the related documentation. This Agreement is not a sale and does not convey to CUSTOMER any rights of ownership in or related to the DEALER Services, including the DEALER Software, or the Intellectual Property Rights owned by DEALER. DEALER shall retain all right, title, and interest in and to any and all innovations, inventions, improvements, modifications, and works of authorship created, developed, conceived, or reduced to practice by DEALER resulting from the DEALER Services or the performance of any other services hereunder ("**Developed IP**"), and **CUSTOMER shall have no rights in the Developed IP whether by implication, estoppel, or otherwise.** The DEALER name and logo and DEALER product names are trademarks of DEALER or third parties, and no right or license is granted to use them. DEALER and/or its affiliates have the sole rights to register the DEALER Services, DEALER Software, documentation, Developed IP, DEALER product names and logos for purposes of copyrights, trademarks, service marks, patents, or otherwise. CUSTOMER shall not remove any notices of such copyrights, trademarks, service marks, patents or other notices from the DEALER Services or the Documentation.

11.3 **Indemnification by DEALER.** If part or all of the DEALER Service becomes, or in DEALER's opinion is likely to become, the subject of an IP Claim, then DEALER may, at DEALER's option and in its sole discretion, as the

sole and exclusive remedy of the CUSTOMER elect to (a) procure for CUSTOMER the right to use the DEALER Services, (b) replace the DEALER Services with other suitable products or modify the DEALER Services so that it becomes non-infringing (subject to any applicable rights of CUSTOMER under Section 4.2 hereof), or (c) terminate the DEALER Services and refund the prepaid portion of any Fees paid by CUSTOMER for unused access to the DEALER Services or any affected portion of such Services. DEALER shall have no liability under this Section 11.3 or otherwise to the extent a claim or suit is based upon (v) any act or omission of any Third Party Providers, (w) the use of the DEALER Services in a manner prohibited under this Agreement, (x) the use of the DEALER Services by CUSTOMER in a manner for which the DEALER Services were not designed or intended, or (y), use of the DEALER Services by CUSTOMER in combination with software (except for Third Party Applications provided by DEALER to CUSTOMER), hardware, data (including without limitation, CUSTOMER Data), or content not provided, by DEALER if the infringement would have been avoided in the absence of that combination. THIS SECTION 11.3 SETS FORTH CUSTOMER'S EXCLUSIVE REMEDIES, AND DEALER'S ENTIRE LIABILITY, FOR INTELLECTUAL PROPERTY INFRINGEMENT AND/OR MISAPPROPRIATION CLAIMS DESCRIBED IN THIS SECTION 11.3.

12. CONFIDENTIAL INFORMATION.

12.1 **Definition.** "Confidential Information" means any information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party") which, if in written, graphic, machine readable, or other tangible form, is marked as "Confidential" or "Proprietary.". Furthermore, the parties acknowledge that Confidential Information includes the DEALER Software, CUSTOMER Data, and both parties' financial data, prices, and product roadmaps.

12.2 **Confidentiality.** Each party will treat as confidential all Confidential Information of the other party, will not use any Confidential Information except to fulfill the purpose of this Agreement, and will not disclose any Confidential Information except to the Receiving Party's employees and subcontractors who specifically "need to know" that information and who are bound by obligations of confidentiality at least as restrictive as those described above. Without limiting the foregoing, each party will use at least the same degree of care and security safeguards (and not less than a reasonable degree of care) it uses to prevent the disclosure of its own confidential information to prevent the unauthorized disclosure of any Confidential Information of the other party. Each party will promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

12.3 **Exceptions.** Confidential Information excludes information that: (i) was in the public domain at the time of disclosure or has entered the public domain without fault of the Receiving Party; (ii) was known to the Receiving Party without restriction of confidentiality at the time of disclosure; (iii) is disclosed with the prior written approval of the Disclosing Party; (iv) was independently developed by the Receiving Party without any use of the Confidential Information; or (v) becomes known to the Receiving Party, without restriction of confidentiality, from a source other than the Disclosing Party and without breach of this Agreement by the Receiving Party. The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent that it is required to do so by applicable law or regulating agency, provided that Receiving Party gives notice to Disclosing Party prior to the disclosure and reasonably cooperates with the Disclosing Party's efforts to obtain a protective order or otherwise protect or restrict the disclosure.

12.4 **Confidentiality of this Agreement.** Both parties acknowledge that this Agreement contains Confidential Information and each party agrees to limit distribution of this Agreement to those individuals with a need to know its contents, including the party's employees, accountants, bankers, auditors, attorneys, and other advisers, and may be disclosed to subcontractors (provided that such subcontractors are not competitors of the other party) or other third parties with whom DEALER or CUSTOMER have a contractual relationship so long as such third party is under a duty of confidentiality in connection with the information disclosed.

3. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, OTHER THAN WITH RESPECT TO ACTS OF GROSS NEGLIGENCE OR ACTS OF WILLFUL

MISCONDUCT BY A PARTY, NEITHER DEALER NOR CUSTOMER (INCLUDING WITHOUT LIMITATION DEALER, CUSTOMER AND THEIR RESPECTIVE SUPPLIERS, LICENSORS, OR THIRD PARTY PROVIDERS) SHALL BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF DATA, BUSINESS, OR PROFITS, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT BASED ON BREACH OF WARRANTY, CONTRACT, OR TORT (INCLUDING NEGLIGENCE) IN CONNECTION WITH THIS AGREEMENT OR THE PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT REASONABLE DEFENSE COSTS AND/OR PAYMENT OBLIGATIONS AS SET FORTH IN SECTION 9.6.a OR b OR SECTION 11.3 AS APPLICABLE, SHALL BE DEEMED DIRECT DAMAGES. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS, OTHER THAN WITH RESPECT TO INDEMNIFICATION OBLIGATIONS OF A PARTY UNDER SECTION 9.6 OR SECTION 11.3 HEREOF AND/OR WITH RESPECT TO ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY A PARTY, A PARTY'S TOTAL AGGREGATE LIABILITY FOR DAMAGES UNDER THIS AGREEMENT WILL NOT IN ANY EVENT EXCEED THE GREATER OF: (A) THE TOTAL AMOUNT OF FEES PAID OR OWED BY CUSTOMER UNDER THIS AGREEMENT UNDER EXHIBIT ____ FOR THE INITIAL INSTALLATION AND TRAINING FEES (INCLUDING ONE TIME CHARGES FOR DEALER PROFESSIONAL SERVICES AND THIRD PARTY INTEGRATED SOLUTIONS), UNDER THIS AGREEMENT, OR (B) THE AMOUNT OF A PARTY'S INSURANCE COVERAGE AVAILABLE TO PAY ANY SUCH CLAIM (BUT ONLY TO THE EXTENT SUCH CLAIM IS COVERED BY INSURANCE AND ONLY UP TO THE AMOUNT OF INSURANCE PROCEEDS ACTUALLY PAID IN CONNECTION WITH SUCH CLAIM). THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY LIMITED REMEDY TO MEET ITS ESSENTIAL PURPOSE.

14. TERM. Unless otherwise terminated in accordance with the terms of this Agreement including Section 15 ("Termination of Agreement"), this Agreement (including the Services provided under Exhibit ____ shall continue from the Effective Date through the conclusion of the Term stated in the Exhibit or Schedule (the "Term") unless earlier terminated under the provisions of Section 15.

15. TERMINATION OF AGREEMENT.

15.1 **Termination by DEALER.** DEALER may terminate this Agreement, including all Exhibits, Schedules, and proposals hereunder, terminate access to all DEALER Services, and all Amounts payable under this Agreement to be immediately due and payable, at any time on or after, the occurrence of any of the following (i) CUSTOMER becomes insolvent or a receiver or conservator is appointed with respect to the CUSTOMER, (ii) CUSTOMER fails to timely pay any Amounts owed to DEALER under this Agreement and then, after ten (10) days written notice, does not cure that failure, or (iii) CUSTOMER materially fails to perform any of its other covenants or obligations under this Agreement and then, after ten (10) days written notice, does not cure that failure.

15.2 **Termination by CUSTOMER.** CUSTOMER may terminate this Agreement, including all Exhibits, Schedules, and proposals hereunder, at any time on or after, the occurrence of any of the following: (i) DEALER becomes insolvent or a receiver or conservator is appointed with respect to the DEALER, (ii) subject to any applicable Force Majeure events, as otherwise expressly permitted under this Agreement, or (iii) DEALER materially fails to perform any of its covenants or obligations under this Agreement and then, after 90 days written notice, does not cure that failure.

15.3 **Termination for Non-Acceptance.** This Agreement or an applicable Order Form may also be terminated in accordance with Section 1.4. for non-Acceptance.

15.4 **Effect of Termination.**

a. If this Agreement or an applicable proposal terminates for any reason, then: (i) all relevant rights and licenses that have been granted to

CUSTOMER associated therewith (including without limitation access to the applicable DEALER Services) shall terminate. Furthermore, CUSTOMER and DEALER will destroy or return to the other party all copies of Confidential Information of the other party, and CUSTOMER will destroy or return all relevant copies of DEALER Software contained on any CUSTOMER hard drive or other fixed medium of storage.

b. In the event of termination of this Agreement for any reason, CUSTOMER will pay DEALER (i) all unpaid amounts due and owing to DEALER under the applicable Exhibit, Schedule, and proposal from the Effective Date of such proposal up to and including the date of termination; (ii) any unpaid out-of-pocket costs of DEALER incurred in acquiring any Third Party Applications or providing any Services; and (iii) any applicable de-conversion costs under Section 15.5. No refund of fees will be made to CUSTOMER with respect to any Services rendered by DEALER prior to date of termination. The termination of this Agreement shall not affect either party's rights to pursue its remedies at law or in equity for the other party's breach prior to such termination.

c. The defined terms, Section 9.6 ("CUSTOMER and DEALER Indemnification"), Section 10.3 ("Disclaimers and Exclusions"), Section 11 ("Intellectual Property Ownership"), Section 12 ("Confidential Information"), Section 13 ("Limitation of Liability"), Section 15.4 ("Effect of Termination"), and Section 17 ("Miscellaneous"), shall survive any termination or expiration of all or part of this Agreement, together with any provision otherwise expressly stated to survive such termination or expiration for the maximum period allowed by law.

15.1 **De-conversion.** Within ten (10) days of the termination or expiration of this Agreement, DEALER will provide CUSTOMER with a file(s), in accordance with the DEALER Software's standard data export capability, containing the CUSTOMER Data. Any customization to the standard data export or file format will be charged at DEALER's professional service rates at the then prevailing rate hereof. CUSTOMER shall bear its own out-of-pocket costs for non-DEALER Services required for migration of the CUSTOMER Data.

16 MISCELLANEOUS.

16.1 **Entire Agreement; Amendment.** This Agreement (including all Exhibits and Schedules) constitutes the parties' entire agreement and understanding relating to the DEALER Services and any related matters and supersedes all prior or contemporaneous communications, agreements, or understandings of any nature, whether oral or in writing, between the parties. This Agreement may be modified, amended, or supplemented only by a written instrument executed by both parties.

16.2 **Interpretation of this Agreement.** Pronouns, nouns, and terms used in this Agreement include the masculine, feminine, and/or neuter and singular and/or plural forms wherever appropriate to the context. "Including" is used to list examples and is not used by way of limitation. "Will", "shall", and "may not" are used as mandatory terms and "may" is used as a permissive term. If any provision of this Agreement is held to be unenforceable or invalid, then all of the remaining provisions will continue in full force and effect. This Agreement shall be deemed to be drafted equally by both parties after consultation with legal counsel.

16.3 **No Third Party Beneficiaries.** This Agreement confers no rights upon either party's employees, agents, users, or contractors or upon any other legal person or legal entity of any kind.

16.4 **Assignment.** Neither party may transfer or assign this Agreement or any associated rights, in whole or in part, without the prior written consent of the other party, whether through operation of law, change of control, or otherwise; provided that either party may assign this entire Agreement to an acquirer of all or substantially all the stock or assets of such party if the acquiring entity agrees in writing to be bound by the terms and conditions of this Agreement as it existed prior to such assignment.

16.5 **Waiver.** A waiver of any default by either party will not be deemed to be a continuing waiver or a waiver of any other default or of any other provisions of this Agreement.

16.6 **Publicity.** DEALER at any time may request CUSTOMER to approve CUSTOMER's name and logo use in DEALER CUSTOMER lists used for marketing purposes; CUSTOMER's specific advance written consent will be required for any such use. Upon prior written consent of the other party, a party may issue a press release (or a joint press release

may be issued) relating to the business relationship between the parties. Neither party may use the trade names, trademarks, service marks, logos, or other proprietary marks of the other party or any Third Party Provider in any advertising, marketing, public statement, or trade display without the prior written approval of the other party and, if applicable, the Third Party Provider.

16.7 **Force Majeure.** Neither DEALER nor CUSTOMER will be deemed in default of this Agreement to the extent that performance of its obligations or attempts to cure any breach are not caused by the gross negligence or wrongful actions or omissions of such party, but instead are delayed or prevented by reason of any act of God, act of war, act or threat of terrorism, fire, natural disaster, accident, act of government, vendor shortages or delays, public health emergency, technical failures of Internet infrastructure not caused by the negligent or intentionally wrongful actions or omissions of such party or any other cause beyond the reasonable control of such party, provided that such party gives the other party written notice thereof promptly and, in any event, within two (2) business days of discovery thereof, and uses reasonable commercial efforts to cure the delay. Upon the occurrence of such an event, the time for performance or cure will be extended for a period equal to the duration of such event; provided, however, that if a party is not able to materially perform its obligations under this Agreement for more than sixty (60) days because of a Force Majeure event, the other party that is continuing to perform may terminate this Agreement upon fifteen (15) days written notice to the non-performing party.

16.8 **Notices.** Any notice must be in writing and delivered as follows, with notice deemed given as indicated: (i) by personal delivery or by email delivery, when delivered; (ii) by overnight courier, upon written verification of receipt; or (iii) by certified or registered mail, return receipt requested, upon verification of receipt.

16.9 **Dispute Resolution.**

a. **Informal Dispute Resolution.** In the event of a dispute between the parties over any matter relating to this Agreement ("Dispute"), each party agrees to use its best good faith efforts to resolve the Dispute by informal means through discussions and meetings with the other party. The parties agree to spend a minimum of 60 days, in which at least two face-to-face meetings between the parties have occurred, and at which at least one senior level executive from each party is present.

b. **Mediation.** If the parties are not able to informally resolve a Dispute within such 60 day period (or such longer period as is mutually agreed to between parties), then either party may request in writing that the Dispute be mediated, and the Dispute shall be mediated (the "Mediation") with such Mediation to begin within 60 days of the date of the written request for Mediation. The Mediation shall take place at a mutually agreeable location, or if there is no mutual agreement, in Chicago, Illinois. The Mediation shall be conducted before a single mediator to be agreed upon by the parties. If the parties are unable to agree on a single mediator, each party shall select a mediator and such two mediators shall together unanimously select a neutral third mediator, which neutral third mediator will conduct the Mediation. Each party shall bear the fees and expenses of its selected mediator and the parties shall equally bear the fees and expenses of the mediator that is agreed upon by the parties or chosen by the mediators selected by the parties.

c. **Failure to Resolve.** If a Dispute remains after the Dispute Resolution procedures set forth in Section 16.9a and b above, then either party may proceed with such other legal remedies as the party deems appropriate under the circumstances. Except as otherwise provided in this Agreement, if any claim, suit, or other proceeding is instituted to compel compliance with or remedy the breach of this Agreement, then the prevailing party will be awarded all reasonable litigation expenses, including attorney's fees, in addition to any other remedies available.

16.10 **Injunctive Relief.** Each of the parties recognizes that the damages which will arise out of a breach of Section 12 ("Confidential Information") are of a special, unique and extraordinary character, and that monetary damages alone are an inadequate remedy. Either party may therefore seek specific performance, including injunctive relief, for a breach of Section 12.

16.11 Governing Law; Venue. This Agreement is governed by the laws of the United States of America and the State of Illinois, without giving effect to principles of conflicts of law.

16.2 Counterparts and Copied Signatures. This Agreement may be executed in counterparts, all of which taken together shall constitute one single agreement between the parties. A facsimile or PDF transmission of this Agreement's executed signature page constitutes due and proper execution of this Agreement by the party signing that page.



QUESTIONS?



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