

## TERMS AND CONDITIONS

**1. The Services and the Products.** Subject to the terms of this Agreement, the Company shall make available to Reseller the Company's proprietary uServe products: the Services, the Equipment, and the Software.

**2. Right to Use the Software Services.**

Company hereby grants to Reseller and Reseller hereby accepts from Company a limited, non-exclusive, non-transferable right to access and use and permit Authorized Users to access and use the Software Services. The Software Services shall not be used by Reseller or by any Authorized Users for, or on behalf of, third parties that are not authorized under this Agreement. Reseller shall use its commercially reasonable efforts to ensure that the Authorized Users use the Software Services in accordance with the terms and conditions of this Agreement.

**3. Fees and Term.**

(a) This Agreement will extend from the Effective Date indicated in this agreement for an initial term of one (1) year (the "**Initial Term**") and shall renew every year (together with the Initial Term, the "**Term**") unless either party provides written notice to the other of its intent not to extend at least sixty (60) days prior the end of the then current Term. Any exhibits, schedules, and addenda incorporated herein shall terminate automatically upon the termination of the Agreement.

(b) The refund of the deposit can be requested by Reseller as set forth on Schedule A and complies with all terms and conditions of the agreement. Shall there be undisputed, unpaid outstanding balance, Company may apply part or all of the deposit towards the balance. However, Company is not limited to the total deposit amount and Reseller remains liable for any balance.

(c) Either party may terminate this Agreement immediately upon written notice to the other if the other party (i) materially breaches this Agreement and fails to cure such breach within thirty (30) days following written notice thereof, or (ii)

becomes or is declared insolvent or bankrupt, commits an act of bankruptcy, or is subject to any proceeding in bankruptcy, receivership, liquidation, or insolvency.

(d) Reseller shall pay the fees for the Services, the Equipment, the Software, and shipping as set forth in the Schedule A. All one-time fees including the deposit shall be paid within 7 days after each order is placed. All monthly service fees will be billed in advance on the first day of each month. Reseller agrees to allow the Company to debit Reseller's account via ACH transfer for all undisputed amounts due under this Agreement. Any taxes, duties, fees, and other governmental charges of any kind (including sales, service, and use taxes), which are imposed by or under the authority of any government or any political subdivision thereof on the fees for the Services, the Equipment, and the Software shall be borne by Reseller and shall not be considered a part of, a deduction from, or an offset against such fees. If Reseller fails to pay any undisputed fees when due, the Company may charge a \$50 late fee. For any debit rejected by the Reseller's bank account, the Company may charge \$35 ACH reject fee per occurrence, and, if Reseller has not cured such failure to pay within thirty (30) days after the due date, the Company may take such further action in its discretion including, without limitation, termination of the Agreement immediately upon notice to Reseller (which shall not relieve Reseller of its obligation to pay all outstanding fees and all fees payable under the remaining length of the Initial Term or then-current Renewal Term).

(e) Reseller agrees to promptly and carefully review any statements or other documents provided or made available (physically, electronically, or otherwise provided by the Company or others. If either party notices any problems or potential problems or believes any adjustments should be made on Reseller's account. Such party must notify the other party in writing within sixty (60) days after the subject debit or credit is or should have been affected; if a party fails to notify the other party within such time, neither party shall have an obligation to investigate or take any other action.

**4. Service Level Agreement.** Company shall use commercially reasonable efforts to make the Software and the Software Services available on a twenty-four hours per day, seven days per week basis during the Term, except for: (a) scheduled system back-up or other on-going maintenance as required and scheduled in advance by Company; or (b) for any unforeseen cause beyond Company's reasonable control, including internet service provider or communications network failures, denial of service attacks or similar attacks, or any Force Majeure. Company will monitor performance indicators on the systems and network infrastructure (its own and that of third-party suppliers) in order to gauge the overall performance of the Software and the Software Services and will use commercially reasonable efforts to maintain satisfactory performance of the Software and the Software Services.

**5. Support and Maintenance.** Company shall maintain the Software and the Software Services and provide all necessary patches and fixes to the Software and the Software Services if all usage fees are paid in full and on time. Such maintenance shall not include any additional functionality or custom programming, which Company, at its discretion, may provide at an additional cost as otherwise agreed between the Parties.

**6. Intellectual Property.**

(a) **Company IP.** All right, title and interest in and to the Software, and all trade names, trademarks, trade secrets, proprietary information and other intellectual property of Company (collectively the "Company IP"), is, and at all times shall remain, the sole and exclusive property of Company. Except the right to use the Software and the Software Services, as expressly provided herein, this Agreement does not grant to Reseller any rights to, or in, any Company IP. Reseller shall not, directly or indirectly, copy, modify, duplicate, create derivative works from, frame, mirror, republish, reverse compile, disassemble, reverse engineer, download, transmit or distribute all or any portion of the Software in any form or media or by any means, and shall not authorize or knowingly permit any Authorized Users to do so. Reseller acknowledges and agrees that all Software and Services provided under this Agreement and all intellectual property provided, embodied, or used in association therewith, including without limitation all trademarks, service

marks, logos, software, designs, templates, encryption algorithms, copyrights, and other proprietary rights, and any documentation related to any of the foregoing (collectively, "***Intellectual Property Rights***"), shall be, are, and shall remain the solely and exclusively owned by the Company (or other third party owner as the case may be).

(b) To the extent Reseller obtains any right, title or interest in any of the foregoing or in any update, enhancement, derivative, or modification to the foregoing, Reseller hereby assigns to the Company any and all such right, title and interest. Reseller acknowledges that any improvements, additions, or modifications to the Services, the Equipment, the Software, or any documentation related to the foregoing suggested by Reseller, and all Intellectual Property Rights contained therein, are the property of the Company, and Reseller hereby assigns all rights, title, and interest therein to the Company. Reseller agrees to execute such documents as may be necessary or helpful for the Company to perfect and record the assignments set forth above. Except for the license grants expressly set forth in the Agreement, nothing in the Agreement grants to or confers in Reseller any license or right of ownership in any of the foregoing. The Company grants no implied licenses hereunder. Reseller acknowledges and agrees that it shall not import, export, or re-export from the Services, the Equipment, or the Software, or otherwise provide to any third party, directly or indirectly, any data that is captured through use of the Services, the Equipment, or the Software.

(c) Reseller shall comply with all security and operational requirements, policies, and procedures relating to the Services, the Equipment, and the Software as specified in the documentation related thereto and as may be otherwise communicated or provided by the Company to Reseller in writing. Reseller shall use the Services, the Equipment, and the Software solely in the conduct of its business and in compliance with all laws, rules, and regulations of every governmental authority or card association having jurisdiction over Reseller or any of the foregoing.

(d) **Limited Warranty.** Company hereby warrants that the Software shall be free of any viruses, Trojan horses, worms and any other software

routines or code designed to: (i) permit unauthorized access by third parties; or (ii) disable, erase, ransom or otherwise harm any data or other software or hardware of Reseller (collectively “Malicious Code”). In the event of a breach of this warranty, Company shall remove the Malicious Code from Reseller’s data or other software or hardware and use commercially reasonable efforts to assist Reseller in restoring any affected software and hardware and restoring any lost data. Company hereby warrants that it has the power and authority to enter into this Agreement and perform its obligations hereunder.

**(e) No Other Warranties; Limitation of Liability.** Except as set forth in this Agreement, the Software is provided on an “as-is” and “as-available” basis and Company makes no representation, warranty or guaranty as to the reliability, timeliness, quality, suitability, availability, accuracy or completeness of the Software. Except as set forth in this Agreement, Company does not represent or warrant that: (A) the use of the Software will be secure, uninterrupted or error-free or operate in combination with any other hardware, software, system or data; or (B) the Software will meet Reseller’s requirements or expectations. Under no circumstances and under no legal or equitable theory, whether in tort, contract, strict liability or otherwise, shall either party be liable to the other party for any direct, indirect, special, incidental or consequential losses or damages of any nature arising out of or in connection with the use of or inability to use the Software including damages for lost profits, loss of goodwill, loss of data, work stoppage, accuracy of results or computer failure or malfunction, even if such party has been advised of or should have known of the possibility of such damages. EXCEPT AS SET FORTH IN THIS SECTION 5, COMPANY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF RESELLERABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Reseller accepts sole and complete responsibility for: (A) the selection of the Software and the Software Services to achieve Reseller’s intended results; (B) use of the Software and the Software Services; (C) the results obtained from the Software and the Software

Services; and (D) the terms of any contracts between Reseller and Authorized Users.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE SOFTWARE SERVICES, WHETHER BASED UPON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOSSES, LIABILITIES, COSTS, EXPENSES OR DAMAGES IN ANY AMOUNT EXCEEDING THE USAGE FEE ACTUALLY PAID BY RESELLER TO COMPANY IN THE PRIOR TWELVE-MONTH PERIOD.

## **7. Default.**

**(a)** Reseller shall be in default of this Agreement if Reseller fails to make any payment when due and fails to cure the default within five (5) days after receipt of written notice thereof from Company. Reseller shall have the obligation to dispute a payment or a portion of a payment due within three (3) business days of its occurrence. Reseller’s dispute must be in good faith and, in the event, the Reseller’s dispute is not vindicated through clear and convincing evidence, the Reseller will need to make the necessary payment with the expected late fee.

**(b)** Except for Reseller defaults described in Section 7(a) (which are governed by Section 7(a)), either Party will be in default of this Agreement if the Party is in material breach of this Agreement and fails to cure such breach within ten (10) days after receipt of written notice thereof from the non-breaching Party. If a Party is in default, the non-breaching Party may terminate this Agreement or seek

any other remedies available at law or in equity, except as otherwise provided in this Agreement.

(c) In the event a party breaches or attempts to breach any of the provisions of this Agreement, the non-breaching party shall have the right, in addition to such other remedies that may be available, to injunctive relief enjoining such breach or attempted breach.

## **8. Confidentiality.**

(a) The parties acknowledge that in the course of this Agreement it (the “*Recipient*”) may obtain from the other (the “*Provider*”), directly or from performance of its obligations under this Agreement, information relating to the Intellectual Property Rights, and business of the Provider, and certain other non-public information the Provider designates as confidential, including without limitation computer programs and code, documentation, trade secrets, technology, knowhow, ideas, algorithms, operating and testing procedures, structure, interfaces, specifications, documentation, problem reports, analysis and performance information, potential pricing, marketing, licensing and other technical and business information of the other party (collectively “*Confidential Information*”). The terms of the Agreement and the Company IP shall also be considered Confidential Information.

(b) The Recipient agrees not to use Confidential Information for any purpose except in connection with the Services and the Products in accordance with the terms and conditions of this Agreement. Recipient will not disclose Confidential Information to anyone other than its employees or third parties, as approved by the Provider, who have a need to access the information for the foregoing purpose and who have agreed to abide by the provisions hereof. Recipient shall protect the secrecy of Confidential Information, exercising at least those measures used to protect its own confidential information of like importance, which shall in no event be less than a reasonable degree of care. “Confidential Information” does not include any information that: (i) is or becomes generally available to the public other than as a result of a wrongful disclosure (including as a result of a breach of this Agreement) by the Receiving Party or the Receiving Party’s

Representatives (as defined below) (ii) was in the Receiving Party’s possession or known to it prior to receipt from the Disclosing Party provided that the Receiving Party did not obtain such information through improper means; (iii) becomes available to the Receiving Party on a non-confidential basis from a source which is not to the Receiving Party’s knowledge prohibited from disclosing such information; (iv) is developed independently by the Receiving Party; or (v) was generally made available to third parties by the Disclosing Party without restrictions similar to those imposed under this Section.

(c) The Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any third party, except as otherwise set forth herein. Notwithstanding anything to the contrary contained herein, the Receiving Party may disclose Confidential Information on a need-to-know basis to its and its affiliates’ employees, officers, directors, shareholders, advisors and representatives (collectively, “Representatives”). The Receiving Party shall instruct each of its Representatives who receives or accesses Confidential Information as to its confidential nature and each such recipient shall be strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of the Disclosing Party, any of the Confidential Information, except in compliance with this Agreement. The Receiving Party further agrees to be responsible for any breach of this Agreement by its Representatives.

(d) In the event that Receiving Party, or anyone to whom the Receiving Party provides the Confidential Information, receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or by a governmental body, such Party agrees (a) to notify the Disclosing Party immediately of the existence, terms, and circumstances surrounding such request, except as otherwise prohibited by applicable law, (b) to consult with the Disclosing Party on the advisability of taking legal available steps to resist or narrow such request, and (c) if disclosure of such Confidential Information is required to furnish only such portion of the Confidential Information as, in the opinion of counsel to the Receiving Party, it is legally compelled to disclose and to exercise its commercially reasonable efforts to obtain an order or other reliable

assurance that confidential treatment will be accorded to the disclosed Confidential Information.

(e) Notwithstanding anything in this Agreement to the contrary, the Receiving Party shall comply with all privacy and data protection laws, rules and regulation which are, or which may in the future be applicable to the terms of the Agreement. Without limiting the generality of the preceding sentence, the Receiving Party agrees that it will not use or disclose to any other Party any nonpublic personal information, which it receives from a financial institution in connection with this Agreement, except in accordance with the performance of its obligation under this Agreement. For the purposes of this subsection, the terms “nonpublic personal information” and “financial institution” shall have the meanings set forth in Section 509 of the Gramm-Leach-Bliley Act (P.L. 106-102) (15 U.S.C. Section 6809) and implementing regulations thereof.

(f) Upon termination of the Agreement, or upon Provider’s request, Recipient shall promptly return or destroy and remove from all computers, hard drives, networks, and other storage media, all copies and manifestations of Confidential Information and so certify to Provider in writing. The obligations in this Section 6 shall continue indefinitely during the term and after the termination or expiration of the Agreement.

(g) Recipient acknowledges that a breach of this Section 8 would cause irreparable injury to Provider for which monetary damages may not be an adequate remedy. Accordingly, in addition to other available remedies, Provider shall be entitled to seek appropriate injunctive relief and other equitable remedies without posting a bond in the event of such breach.

**9. Indemnification.** (a) Reseller will indemnify, defend, and hold harmless the Company, any subcontractor of the Company, and any payment service provider associated with the Company or the Services, the Equipment, or the Software, and their respective officers, directors, agents, and employees, from and against any and all claims, losses, demands, liabilities, damages, costs, and expenses (including reasonable attorneys’ fees), arising out of or relating to (i) Reseller’s access to or use of the Services, the

Equipment, or the Software, or (ii) Reseller’s access to or use of any services or products of any Third-Party Payment Processor (including without limitation breach of any contractual or other obligations owed to any Third-Party Payment Processor).

(b) The Company will indemnify, defend, and hold harmless Reseller, any affiliate, parent, or subsidiary of Reseller and, their respective officers, directors, agents, and employees, from and against any and all third party claims, losses, demands, liabilities, damages, costs, and expenses (including reasonable attorneys’ fees), arising out of or relating to (i) the Company’s breach of this Agreement with respect to the provision herein of the Services, the Equipment, or the Software, (ii) any willful misconduct, or grossly negligent act or omission of the Company, or (iii) an infringement claim related to the Services, the Equipment, or the Software.

## **10. Miscellaneous.**

(a) **Remedies.** Upon the occurrence of any Event of Default, the nonbreaching party, in that party’s sole discretion and with or without further notice to the breaching party, and in addition to all rights and remedies at law or in equity including cease payments to the breaching party under this agreement.

(b) **Time.** Time is of the essence in this Agreement.

(c) **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party’s right to enforce the provision, nor shall any waiver of any breach of any provision be a waiver of any succeeding breach of any provision or a waiver of the provision itself for any other provision.

(d) **Assignment.** Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party; provided, however, that no such consent shall be required if the assignment is to an affiliate or is in connection with a merger, an acquisition of a majority of a Party’s outstanding capital stock, or a purchase of all or substantially all of a Party’s assets.

(e) **Governing Law.** This Agreement and any claims arising out of relating to this

Agreement, whether in contract or tort, statutory or common law, shall be governed exclusively by, and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws.

**(f) Jurisdiction.** THE PARTIES CONSENT THAT ANY LEGAL ACTION OR PROCEEDING AGAINST IT UNDER, ARISING OUT OF OR IN ANY MANNER RELATING TO THIS AGREEMENT, OR ANY OTHER INSTRUMENT OR DOCUMENT EXECUTED AND DELIVERED IN CONNECTION HERewith SHALL BE BROUGHT EXCLUSIVELY IN ANY COURT OF THE STATE OF NEW YORK OR IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK. THE PARTIES, BY THE EXECUTION AND DELIVERY OF THIS AGREEMENT, EXPRESSLY AND IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF ANY OF SUCH COURTS IN ANY SUCH ACTION OR PROCEEDINGS. ASSUMING DELIVERY OF THE SUMMONS IN ACCORDANCE WITH THE FOLLOWING PROVISION, THE PARTIES HEREBY EXPRESSLY AND IRREVOCABLY WAIVES ANY ALLEGED LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON-CONVENIENS OR ANY SIMILAR BASIS.

**(g) Service of Process.** Each party hereto hereby (a) consents to service of process in any Action between any of the parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Document, or the negotiation, terms or performance hereof or thereof, in any manner permitted by New York law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his, her or its address specified pursuant to the notice provisions in the Agreement will constitute good and valid service of process in any such Action and (c) waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such Action any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process.

**(h) Waiver of Jury Trial.** TO THE EXTENT NOT PROHIBITED BY APPLICABLE

LAW THAT CANNOT BE WAIVED, THE PARTIES HERETO HEREBY WAIVE, AND COVENANT THAT THEY WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY DOCUMENT, THE PURCHASE AND SALE OR THE NEGOTIATION, TERMS OR PERFORMANCE HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**(i) Attorney Fees.** In the event an arbitration, suit or action is brought by any party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorney's fees, which shall be paid by the non-prevailing party, said fees to be fixed by the arbitrator, trial court, and/or appellate court.

**(j) Presumption.** This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement, or any section thereof was drafted by said party.

**(k) Computation of Time.** In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday or a legal holiday, in which event the period shall run until

the end of the next day thereafter which is not a Saturday, Sunday or legal holiday.

**(l) Prior Agreements.** This Agreement supersedes any verbal or written agreement that may have existed between us prior to the date of this Agreement. This Agreement governs all terms and conditions of the relationship between us and renders the terms of any verbal or written agreement that may have existed before the date of this Agreement null and void.

**(m) Execution.** Both of us represent to each other that the execution of this Agreement by either of us does not violate the terms of any other agreement or contract nor does it infringe upon the rights of a third party and both of us agree to defend and indemnify each other against third party claims (including costs) alleging otherwise.

**(n) Agreement Binding.** This Agreement shall be binding upon the successors and assigns of the parties hereto.

**(o) Further Action.** The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

**(p) Good Faith, Cooperation and Due Diligence.** The parties hereto covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

**(q) Counterparts.** This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on all the parties hereto even though all the parties are not signatories to the original or the same counterpart.

**(r) Entire Agreement, Updates, Amendments and Modifications. Entire Agreement.** The Agreement (including any and all exhibits and addenda incorporated herein) constitutes the complete agreement between the parties with respect to the Services, the Equipment, and the Software and supersedes all prior or contemporaneous

discussions, representations, and proposals, whether written or oral, with respect to the subject matter hereof. The Agreement may not be amended or modified except by a writing signed by both parties hereto. If Reseller chooses to use the Company for acquiring payment processing services, Reseller may also be required to accept and execute the Reseller Services Program Terms and Conditions in order to make full use of certain of the processing Services. No other terms and conditions will govern, including any terms of any purchase order or other document submitted by Reseller in connection herewith, and such terms will not modify the Agreement and are hereby rejected by the Company. Notwithstanding the foregoing, the Company may in its sole discretion and without liability to Reseller amend the Agreement to delete any Services or Products set forth on the Order Schedule or terminate the Agreement with regards to any part of the Platform, upon 30 days prior written notice to Reseller, in the event that the Company determines that it is no longer reasonably able to offer such parts of the Platform to Reseller and similarly situated resellers. The Services and Software provided by the Company hereunder are the Services and Software as they exist on the Effective Date. Additional or upgraded services and products may be provided pursuant to different terms and/or costs in the Company's sole discretion.

The Agreement may only be updated, modified or amended (each an "Amendment") by a written document signed by a representative of each Party. In the case of the Reseller, only the Reseller's designee shall have contract signature authority with respect to the Agreement. It shall be the responsibility of each Party to ensure that all such documents are signed by their authorized representative. Any terms and conditions varying from the Agreement on any order or written notification from either Party or its Affiliates shall not be effective or binding on the other Party or its Affiliates.

**(s) Force Majeure.** Neither Party shall be liable for any default or delay in the performance of its obligations hereunder, except for payment defaults, if and to the extent and while such default or delay is caused, directly or indirectly, by a Force Majeure Event. If a Force Majeure Event occurs, the non-performing Party will be excused from any further performance or observance of the obligations so

affected for as long as such circumstances prevail and such Party continues to use Commercially Reasonable Efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Party so delayed in its performance will promptly notify the other by telephone and describe at a reasonable level of detail the circumstances causing such delay (to be confirmed in writing within twenty-four (24) hours after telephonic notice).

**(t) Notices.** Whenever one Party is required or permitted to give legal notice to the other Party under the Agreement, such legal notice will be in writing unless otherwise specifically provided herein and will be deemed given when delivered in hand, 1 day after being given to an express courier for overnight delivery with a reliable system for tracking delivery, or 5 days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, postage prepaid. Operational notices may be sent via email.

Legal notifications, including Contract Change notices, will be addressed as follows:

In the case of the Company at the address set forth above with copy to Brinen & Associates, LLC, 90 Broad Street, Tenth Floor, New York, New York 10004, such copy shall not constitute notice.

In the case of the Reseller to the address set forth on page 1 of the Agreement.

Operational notifications under a Transaction Document will be addressed to the Services Delivery Manager and the Reseller Account Executive.

Either Party may from time to time change its address for notification purposes by giving the other prior written notice of the new address and the date upon which it will become effective.

**(u) Third Party Beneficiaries.** The Parties do not intend, and the Agreement shall not be deemed, to create any third party beneficiary rights for any person.

**(v) Other Documents.** Upon request of the other Party on or after the Effective Date of the Agreement or any amendment or modification thereto,

each Party shall furnish to the other such certificates of its Secretary or Assistant Secretary as shall evidence that the Agreement or any Amendment or revision hereto has been duly executed and delivered on behalf of such Party or its Affiliates.

**(w) Liens.** The Provider shall not assert, and shall cause its employees, contractors and subcontractors not to assert, any liens or claims against the real and personal property and other assets of the members of the Reseller in connection with the Agreement or the Services or otherwise, and the Provider shall keep the real and personal property and other assets of the Reseller, free and clear of all such liens or lien claims.

**(x) Rules of Construction.** Interpretation of the Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires, (b) the word “including” and words of similar import shall mean “including without limitation” (c) provisions shall apply, when appropriate, to successive events and transactions, and (d) the Agreement was drafted with the joint participation of both Parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning hereof.

**(y) Further Assurances.** During the Term and at all times thereafter, each Party shall provide to the other Party, at its request, reasonable cooperation and assistance (including the execution and delivery of affidavits, declarations, oaths, assignments, samples, specimens and any other documentation) as necessary to effect the terms of the Agreement.

**(z) Expenses.** Each Party shall be responsible for its own costs and expenses associated with the preparation or completion of the Agreement and the transactions contemplated hereby except as specifically set forth in the Agreement.

**(aa) Language.** The Agreement (including all of its component parts) and all notices and other communications, however described, between the Parties and their representatives and other participating persons and entities relating to the





Agreement shall be made and conducted in the English language.

**(bb) Unenforceable Terms.** In the event any term or provision of the Agreement shall for any reason be declared or held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction (i) such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement and (ii) such term or provision shall be (a) reformed to the extent necessary to render such term or provision valid and enforceable and to reflect the intent of the parties to the maximum extent possible under applicable law or (b) interpreted and construed as if such term or provision, to the extent unenforceable, had never been contained herein.

**(cc) No Partnership, Joint Venture or Agency.** Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Parties, or authorize either Party to act as an agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise bind the other Party in any way.