

**Structure of the Agreement.** The outsourcing agreement may be structured as a “master” allowing for future and multiple sub-agreements or a single, holistic instrument. Because of the long duration of most outsourcing relationships, the outsourcing agreement should include procedures by which the parties can address expected and unexpected changes and disputes with minimal disruption to the relationship.

**Outsourcing Agreement**

This Outsourcing Agreement ("Agreement") is entered into by and between the following Parties:

<p><b>[Insert applicable Corporate Name]</b> Client ("Client"), <b>[Insert state of incorporation and type of corporation]</b> a _____ corporation, having a place of business at:  <b>[Insert Address]</b></p> <p>Attention: _____ cc: General Counsel Telephone: _____ Facsimile: _____ E-mail: _____</p>	<p><b>[Insert applicable Supplier Corporate Name]</b> _____ ("Supplier"), <b>[Insert state of incorporation and type of corporation]</b> a _____ corporation, having a place of business at:  <b>[Insert Address]</b></p> <p>Attention: _____ cc: _____ Telephone: _____ Facsimile: _____ E-mail: _____</p>
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For purposes of this Agreement, Client and Supplier each will be referred to individually as a "Party" and together as the "Parties."

The effective date of this Agreement is the [redacted] day of [redacted], 20[redacted] ("Effective Date").

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Definitions.

For purposes of this Agreement, the following terms will have the following meanings and such definitions will be equally applicable to both the singular and plural forms of any term herein defined.

1.1 "Acceptance" means Client's written acknowledgment that the Services are operating properly after Implementation.

1.2 "Additional Services" are the Services referred to in Section 3.4.

1.3 "Affiliate" means any present or future entity that, directly or indirectly through one (1) or more intermediaries, controls or is controlled by a party or is under common control with such party. For the purposes of this definition, "control" will mean ownership of fifty percent (50%) or more of the voting securities of such entity.

1.4 "Base Systems Staff Support" is the staff of personnel hired and supervised by Supplier to work on a full-time basis to provide the Services as further addressed in Section 3.5 hereof.

1.5 "Basic Services" are the Services referred to in Section 3.2 hereof.

1.6 "Business Day" is each weekday, Monday through Friday, excluding days that are Client holidays.

1.7 "CPI" will mean the "Consumer Price Index, Revised, Urban Wage Earners and Clerical Workers," U.S. City Average, Unadjusted, issued by the Bureau of Labor Statistics of the United States Department of Labor. If the CPI ceases to be compiled and published at any time during the Term of this Agreement, but a comparable successor index is compiled and published by the Bureau of Labor Statistics of the United States Department of Labor, the fee adjustments described in this Agreement will be computed according to such successor index, with appropriate adjustments in the index to reflect any difference in the method of computation from the CPI. If, at any time during the Term, neither the CPI nor a comparable successor index is compiled or published by the Bureau of Labor Statistics, the index for "all items" compiled and published by any other branch or department of the Federal government will be used for the fee adjustments described in this Agreement, and if no such index is compiled and published by any branch or department of the Federal government, the statistics reflecting cost of living increases as compiled by any institution, organization or individual generally recognized as an authority by financial and insurance institutions will be used as a basis for such adjustments.

1.8 "Deficiency" is any breach or non-performance of this Agreement by Supplier, or any other act, omission, event, or occurrence that may give rise to a claim against Supplier relating to the subject matter of this Agreement (whether in contract, tort, or otherwise).

1.9 "Exclusive Use Software" means any Licensed Software identified in Exhibit "G," attached hereto and incorporated herein, used by or on behalf of Supplier only for purposes of

providing the Services to Client, and will not be used by Supplier for any other purpose except with the prior written consent of Client, or as may be required by binding and applicable laws, regulations, and industry rules.

1.10 "License Agreement" means that Software License Agreement entered into by and between Client and Supplier with an effective date as of the [redacted] day of [redacted], 20[redacted].

1.11 "Licensed Software" means any exercisable license to any portion of the System.

1.12 "Software" means that software licensed by Supplier to Client pursuant to the License Agreement.

1.13 "Client Required Equipment" is the equipment indicated in Exhibit "A," attached hereto and incorporated herein ("Equipment"), plus any telecommunications lines, modems, and other equipment, including terminals and control units, required by Client, in Supplier's reasonable judgment, for Client to obtain and use the Services.

1.14 "Implementation Plan Statement of Work" is the implementation plan set forth in Exhibit "B," attached hereto and incorporated herein ("Implementation Plan" or "SOW"), under which Supplier provides the Services. The Implementation Plan includes a time schedule, management and staffing plan, communications and hardware requirements, programming requirements, plan for parallel operations, remedial response and escalation procedures, testing and acceptance criteria, performance measurements, and budget. These activities will also be referred to as "Implementation."

1.15 "Improvement" means any enhancement, addition, modification, revision, or fix to, or any new version or any portion of, the System, other than ordinary Maintenance activities.

1.16 "Initial Term" means [redacted] ( ) years from the Effective Date.

1.17 "Maintain" or "Maintenance" means any correction or modification of a System or related equipment to correct bugs or errors insofar as such correction or modification: (a) does not materially improve or add functionality or features to the System; or (b) is required to cause the System to comply with any new statutory, federal, state, local, or other governmental regulatory requirements.

1.18 "Operational Date" or "Go-Live Date" is the start-up date for the Services after Implementation.

1.19 "Service" or "Services" are all of the Services to be performed by Supplier under this Agreement, comprising the Basic Services and Additional Services.

1.20 "Client Site" is the space at [redacted] where Supplier performs the Services for Client.

1.21 "System" or "Systems" are: (a) all computer programs (both source code and object code, unless otherwise indicated) including, without limitation, Licensed Software, Exclusive Use Software and any other software, firmware, application programs, operating systems, files, and utilities; (b) supporting documentation for such computer programs, including, without limitation, input and output formats, program listings, narrative descriptions, operating instructions and procedures, user and training documentation, special forms, and source code; and (c) the tangible media on which such programs are recorded, including, without limitation, chips, tapes, disks, and diskettes. The current configuration of Supplier's Systems

is described in Exhibit "C," attached hereto and incorporated herein ("Supplier's Systems and Functional Specifications").

1.22 "Supplier's Cost" means actual cash expenditures exclusive of non-cash items.

[Drafting Notes: The definitions section is key to establish basic concepts for the outsourcing arrangement. Supplier will want to note the minimum level of Services to be supplied, and note any other services that will cost additional fees for Client. Depending on the nature of the Services, Client may need to utilize Supplier's information technology. Client may also want to define its organizational structure to include as many entities as possible to receive the Services.]

2. Agreement in General.

During the Term, and in accordance with the provisions of this Agreement, Supplier will provide and, except as otherwise provided herein, Client will purchase, the Services described herein.

The scope of the services to be outsourced is a key issue because of the greater potential for conflict or ambiguity stemming from imprecise or ambiguous terms.

A. Clarity. The specification of the scope of services should be as clear as possible at the time of execution of the agreement because the scope of the services affects many other critical aspects of the agreement, such as pricing, service levels, warranties and exclusivity.

B. Content. The specification of the scope of services should include the following:

(i) all functions that the parties intend to expressly include within the scope of services;

(ii) all functions that the parties intend to expressly exclude from the scope of services;

(iii) all functions that are the responsibility of the customer or third parties;

(iv) all dependent services (*i.e.*, those functions that the service provider must perform that are contingent upon the performance of the customer's or a third party's responsibilities); and

(v) all assumptions regarding the scope of services.

C. Exclusivity. The agreement should expressly delineate where, along the continuum of degree of exclusivity, the relationship between the service provider and the customer is (*i.e.*, whether the agreement will be the exclusive, sole, right of first offer or refusal, preferred provider or

nonexclusive)).

3. Supplier Responsibilities.

3.1 General. Commencing on the Effective Date, both Parties will use their best efforts to carry out the Implementation Plan. Both Parties agree to perform the tasks shown in the Implementation Plan, and to cooperate fully with each other as necessary to carry out the Implementation Plan in a timely and efficient manner. Commencing on the Operational Date, Supplier will commence providing Client with the Services in accordance with the schedule and performance requirements set forth in the Implementation Plan.

3.2 Basic Services. Supplier will provide Client with the following Basic Services:

3.2.1 Services. Supplier will provide the Services as more fully provided on Exhibit \_\_\_\_.

3.2.2 Operations. Operate, manage, and maintain the Systems in accordance with the terms and conditions of this Agreement.

3.2.3 Reports. Timely furnish such information and reports as Client requires.

3.2.4 Documentation for System Usage. Provide, for Client's use, \_\_\_\_\_ (\_\_\_\_) copies of Supplier's standard user documentation describing the use and operation of the Systems. Upon Client's request, Supplier will provide additional copies of such documentation at [ENTER RATE, IF APPLICABLE.] Client may copy and distribute any or all documentation and media provided by Supplier, including user manuals, solely for Client's own internal use. Client recognizes that such documentation may be copyrighted or otherwise protected by Supplier or Supplier's suppliers. Client agrees to be bound by any restrictions imposed by Supplier's suppliers with regard to the copying and distribution of such materials, and Client agrees not to copy for distribution or to distribute such materials to any other third party.

3.2.5 Error Correction. Correct any errors in the Systems, or related reports or other output that come to Supplier's attention.

3.2.6 Change Control Procedure Reference. As may be agreed to by the Parties pursuant to the Change Control Procedure (as defined in Section 6.3), Supplier may acquire or create additional or replacement Systems and equipment for Client.

3.2.7 Staff. Provide the Base Systems Support Staff and, as an Additional Service, such additional personnel of at least the same qualifications and levels of experience as the Base Systems Support Staff, as may be necessary to perform the Services.

3.2.8 Communication Lines. [IF APPLICABLE] Operate and maintain the data and telecommunications network to the same extent heretofore provided.

3.2.9 Backup. Store and safeguard storage media containing Client's data when in the custody of Supplier. Supplier will provide all systems, applications, and database backups by utilizing \_\_\_\_\_ technologies ("Backup Tapes.") Backups are scheduled in a production mode by an automated scheduling system.

Full backups are performed nightly and differential backups are performed at intervals during operating hours, but no less than nightly. User availability of Supplier's software applications is maintained by conducting the differential backups during periods of high volume; similarly full backups are limited to periods when the application use is at its lowest. Furthermore, Client acknowledges that, depending upon the degree of software application updates over the course of a week, a full system restoration may require up to \_\_\_\_\_ ( ) Business Day(s) to apply. Supplier will send the Backup Tapes to an off-site storage facility subject to Client's approval. Client will be given access, at its request, to any such facility during normal business hours and subject to reasonable security procedures or other restrictions in effect at the time of access. Supplier agrees to provide Client, subject to reimbursement of associated costs of media and delivery charges, with copies of the Backup Tapes, at such intervals, in such quantities, and in such format as Client may request.

[Drafting Notes: This section outlines an overview of all Supplier's responsibilities in providing the Services. The detail of the responsibilities should be provided in an exhibit attached to the Agreement. If Supplier is not utilizing information technology as part of the Services, those sections may be deleted or modified as needed.]

3.3 Internal Purposes. With the exception of its Affiliates, Client agrees that, except as otherwise permitted by Supplier, Client will use the Services only for its own internal business purposes and will not sell or otherwise provide, directly or indirectly, any of the Services or any portion thereof to any other customer.

[Drafting Notes: Supplier may have concerns with competitive efforts by Client or with passing on any of Supplier's Services to its customers without following the proper protocols.]

3.4 Additional Services. If Client requests Supplier to perform any Services that are not a Basic Service, then Supplier will provide and Client will pay for such service ("Additional Service") upon mutually agreeable terms and conditions.

[Drafting Notes: Supplier will want to ensure appropriate compensation for Services that fall outside of the Basic Services.]

3.5 Base Systems Staff Support. As the Base Systems Staff Support, Supplier will assign a full-time account manager ("Supplier Account Manager"), \_\_\_\_\_ ( ) systems engineers, and \_\_\_\_\_ ( ) training and customer support personnel. The Supplier Account Manager will be responsible for directing all Supplier activities affecting the provision of the Services. The Supplier Account Manager will also work with Client to establish priorities for the Services provided. The systems engineer(s) will assist the Supplier Account Manager, implement Maintenance procedures and improvements, and, if the Supplier Account Manager and Client mutually agree, assist in completing future activities that Client may request.

Supplier will cause its personnel, while they are present at Client's facilities, to comply with reasonable security requirements imposed by Client.

Client will have the right to disapprove the assignment of any Supplier personnel.

[Drafting Notes 1: In an outsourcing arrangement, Supplier is providing Services that typically would be done in-house for a Client, therefore account managers become important for the Client to discuss issues or problems as they may appear daily. The supplier may interact with Client's customers so the relationships with appropriate personnel with Supplier become more heightened.]

[Drafting Notes 2: Human resources are a key issue in many business process outsourcing arrangements. Typically, the concerns are different in outsourcing arrangements where the customer's employees are being transferred to the service provider. In those transactions, this aspect can be the source of the greatest concern and disruption in the customer's work place. (Note, this is atypical in offshore outsourcings.)]

[Drafting Notes 3: The parties should discuss how and when the contemplated outsourcing arrangement will be disclosed to the customer's employees (and independent contractors). Since the fact that the customer is considering an outsourcing arrangement typically leaks out, it is usually better to put in place an employee (and independent contractor) communications plan that keeps people apprised of the status of such arrangement so that rumors, misinformation and the potential for sabotage are reduced. This communications plan must be consistent with, and take into account, the communications plans for various other interested constituencies (e.g., customers, Wall Street, governments) and the requirements of applicable law.]

3.6 Hours of Operation. Beginning on the Operational Date, Supplier will provide Basic Services in accordance with Sections 3.2 and 5.1. Times of operation may be modified to provide for: (a) regularly scheduled System Maintenance; (b) System Maintenance required as a result of matters beyond Supplier's reasonable control; (c) System capacity shortfalls and events beyond Supplier's control; (d) Client's failure to perform its obligations under this Agreement;

or (e) special production jobs, testing procedures, or other services that are given priority at the request of Client.

[Drafting Notes: It is important for Supplier to have set hours when Client can expect the Services to be performed.]

3.7 Discontinuance of Services. Components of the Services may be discontinued:

3.7.1 At Client's election, provided that Client gives Supplier at least ( ) Business Days prior written notice thereof.

3.7.2 At Supplier's election, provided that Supplier gives Client at least ( ) Business Days prior written notice thereof and provided further that without Client's consent, Supplier may not terminate [NOTE: DESCRIBE "CORE" BASIC SERVICES THAT MAY NOT BE TERMINATED].

4. Client Responsibilities. [If applicable.]

[NOTE: INSERT ANY CLIENT RESPONSIBILITIES NOT OTHERWISE COVERED IN THIS AGREEMENT HERE.]

[Drafting Notes: This clause allows for flexibility for the Client and Supplier to modify the Services as needed during the Agreement. The key here is negotiating an appropriate time-frame for both Parties internal requirements. Although Supplier's business model may change and Supplier may discontinue some of its Services, Client may still need those Services and may negotiate for that service to continue for a certain amount of time until Client can either migrate to the new Services or transition to a new supplier.]

5. Performance Standards and Warranties.

5.1 Basic Services. Except for unavailability which may result from: (a) insufficient or inadequate Client bandwidth or technology; (b) Internet black-outs and slowdowns; (c) failure of telecommunications providers to provide sufficient service; or (d) preventative maintenance by Supplier in the ordinary course of its business that is necessary to maintain, update, or refresh the System; Supplier warrants that the Services will be available to Client percent ( )% of the time, twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, as measured over each twelve (12) month contract term. In addition, Supplier warrants and represents that the Services will operate in accordance with the written specifications and all documentation, describing the Services, including, but not limited to, the documentation described in Section 3.2.3, Exhibit "C," and any other functional specifications defining the Services, which specifications Supplier has provided and may provide, in writing, to Client.

If Supplier fails to meet these service level commitments and those listed in the Service Level Agreement, attached hereto and incorporated herein as Exhibit "D" ("Service Level Agreement"), or provide an Issue Circumvention Service solution more than twice in any given month, then Supplier will provide Client with a credit equal to fifteen percent (15%) of the pro-rated monthly Service Fees ("Service Credit"). Client may use Service Credits against future Service Fees. "Issue Circumvention" is defined as implementation of Reasonable Workaround. "Reasonable Workaround" is defined as a temporary solution that imposes minimal or no technical support requirements on Client's staff. In some critical security related cases, Reasonable Workaround may consist of temporary suspension access to all or a portion of the Services until the permanent fix can be put in place. Such Reasonable Workarounds do not constitute problem "resolution," and in all cases, Supplier will work with Client to determine what is and is not reasonable based on the specific situation and impact to Client's staff. The Service Credit

provision will not apply if the problem is the fault of Client (e.g., failure to maintain operable equipment for Client's linkage to the Services).

Supplier will provide monthly reports confirming uptime/downtime percentages, responses and resolution to service requests and corresponding Service Credits.

5.2 Maintenance. In addition to the provisions in this Section, the Supplier represents and warrants that it will fulfill the service level terms and conditions described in Exhibit "D," attached hereto and incorporated herein.

5.2.1 General. Supplier agrees to perform the Services in a professional, workmanlike, and commercially reasonable manner. Supplier agrees to maintain an adequate staff of persons who are knowledgeable of the Systems, as necessary, to timely and adequately perform its obligations herein. Supplier warrants that the Systems are capable of performing the Services in accordance with the provisions of this Agreement.

5.2.2 Response Measures.

5.2.2.1 In the event that any Deficiency occurs with respect to this Agreement and Client reasonably and in good faith determines and notifies Supplier that such Deficiency could adversely affect the operation, business, or revenues of Client in any material respect, then, upon Client's request and at no additional cost to Client, the following will occur:

5.2.2.1.1 Supplier's senior, technical and operating managers will promptly meet, as often as reasonably requested by Client, with representatives designated by Client to determine, in good faith, appropriate actions to be taken and resources to be committed by Supplier to eliminate the Deficiency;

5.2.2.1.2 Supplier's senior, technical and operating managers will, in good faith, give due consideration to any specific recommendation provided by Client concerning the appropriate actions and resources to eliminate the Deficiency; Supplier will comply with the measures specified in Exhibit "D," attached hereto and incorporated herein.

5.2.2.1.3 Supplier will provide Client with complete and accurate written status reports and action plans concerning the Deficiency as often as reasonably requested by Client.

5.2.2.2 In the event that Supplier's performance of the Services for Client fails to meet any applicable performance objective benchmark requirement, or there occurs any other Deficiency with respect to this

Agreement that adversely affects the operation, business, or revenues of Client in any material respect, then, upon Client's request and at no additional cost to Client, Supplier will redirect its resources in order to eliminate or alleviate such Deficiency to the fullest extent possible, giving due consideration and treating fairly its other obligations and priorities, including any other Deficiencies with respect to this Agreement. In the event that Supplier fails to cooperate with Client with regard to such Deficiency, or in the event the Deficiency is otherwise not eliminated or alleviated to Client's reasonable satisfaction, within a reasonable period of time after Supplier has been notified of the Deficiency, then Client will have the right to resort to arbitration as provided in Section 17.11 hereof.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SUPPLIER SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SYSTEM AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

[Disclaimers. Supplier will also want to disclaim other warranties and set forth certain situations for which a party will not be held responsible (e.g., malfunctions of third-party Software.)

[Drafting Notes: This Section outlines service levels and response times. They act not only as metrics of performance by which to measure the service provider's performance but also as a means of providing both parties with meaningful information on which to base fees, costs, remedies, and performance incentives and disincentives.]

5.3 Quality Assurance and Reporting. Supplier will promptly report to Client: (a) all malfunctions in Supplier Systems discovered by Supplier; (b) any knowledge of circumstances that could reasonably result in a malfunction or lead to a delay in the performance of the Services; and (c) Supplier's proposed solution to items (a) and (b), including a detailed description of all solutions to such problems.

Client will have the right to receive and review all quality assurance reports produced by Supplier. Supplier will accommodate reasonable Client requests to expand, alter, or modify Supplier's quality assurance procedures, at Client's expense, if such expansion, alteration, or modification benefits Client.

5.4 Privacy and Security.

Supplier's privacy and security policies, as of the Effective Date of this Agreement, are attached hereto and incorporated herein as Exhibit "J," or reference to such policies are listed on Exhibit "J." Supplier reserves the right to modify its privacy and security policies in its reasonable discretion from time to time by notice, in writing, to Client; provided, however, that any

modifications that would materially adversely affect Client's rights or interests must be approved in advance and in writing by Client before Supplier implements such modifications.

[Drafting Notes: In addition to the disaster recovery rights, this provision is beneficial for who regulatory or customer data concerns and want to ensure that privacy and security policies meet Client's needs.]

5.5 Force Majeure and Disaster Recovery / Contingency Planning.

5.5.1 Force Majeure. Subject to Section 5.5.2 below and notwithstanding Supplier's Information Security, Disaster Recovery and/or Business Continuity obligations set forth in this Agreement, neither Party will be liable for any failure or delay in the performance of its obligations under this Agreement to the extent such failure or delay both:

5.5.1.1 is caused by any of the following: acts of war, domestic and/or international terrorism, civil riots or rebellions, quarantines, embargoes and other similar unusual governmental actions; extraordinary elements of nature or acts of God (other than localized fire, hurricane, tornado or flood); and

5.5.1.2 could not have been prevented by the non-performing Party's reasonable precautions or commercially accepted processes, or could not have been reasonably circumvented by the non-performing Party through the use of substitute services, alternate sources, work-around plans or other means by which the requirements of a buyer of services substantively similar to the Services hereunder would be satisfied.

Events meeting both criteria set forth in subsections 5.5.1.1 and 5.5.1.2 above are referred to individually and collectively as "Force Majeure Events." The Parties expressly acknowledge that Force Majeure Events do not include vandalism, the regulatory acts of governmental agencies, labor strikes, or the non-performance of third parties or subcontractors relied on for the delivery of the Services, unless such failure or non-performance by a third party or subcontractor is itself caused by a Force Majeure Event. Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from any further performance or observance of the affected obligation(s) for as long as such circumstances prevail, and such Party continues to attempt to recommence performance or observance to the greatest extent possible without delay.

[Drafting Notes: The Force Majeure clause allow either Party to be excused from performance for a variety of scenarios. Disaster recovery is the back-up plan for a force majeure event.]

5.5.2 Disaster Recovery / Contingency Planning. Notwithstanding any other provision of this Section, a Force Majeure Event will obligate and require Supplier to commence and successfully implement disaster recovery

of all of the Services and restoration of Client data and information as follows:

5.5.2.1 Disaster Recovery Contingency Planning. Supplier will maintain backup servers and telecommunications connections for all Client applications and/or data storage. Supplier will backup such data on a [redacted] [monthly, weekly, hourly] basis. The backup data will be stored at a site that is [redacted] [miles, floors, Buildings] away from the physical location of Supplier's [redacted]. Supplier's disaster recovery and contingency planning, equipment, software and telecommunications connections will enable Supplier to provide the Services and restoration of Client data and information on and from such backup servers within [redacted] [hours, minutes, seconds] of any disruption of the Services.

5.5.2.2 Use of Third Parties for Disaster Recovery. Should Supplier utilize third party(ies) to provide equipment, software and telecommunications connections for disaster recovery and contingency planning, then Supplier's agreement(s) with such third party(ies) must contain provisions that meet or exceed those provisions set forth above.

5.5.2.3 Testing of Disaster Recovery Systems. Supplier will test its disaster recovery capabilities at least once each calendar year. At Client's request, Supplier agrees to provide such disaster recovery test results to Client. Supplier acknowledges that Client may request to participate in such disaster recovery testing. In the event Client chooses to do so, and upon Supplier's receipt of Client's request, Supplier will advise Client of the date, time and scope of such disaster recovery test. Supplier further acknowledges, that Client may wish to participate in the test through one or more of the following methods: (a) by accessing the disaster recovery facility from Client's locations; or (b) by being physically present at Supplier's disaster recovery site (at Client's expense), by signing on, entering sample data and/or reviewing on-line response if so requested by Supplier.

5.5.3 Replacement Services. If a Force Majeure Event causes a material failure or delay in the performance of any Services for more than five (5) calendar days, Client may, at its option, and in addition to any other rights Client may have, procure such Services from an alternate source until Supplier is again able to provide such Services, and Supplier will be liable for all payments made and costs incurred by Client required to obtain the Services from such alternate source during such period. Client will continue to pay Supplier the charges established hereunder during such period, but Supplier will not be entitled to any additional payments as a result of the Force Majeure Event. If a Force Majeure Event causes a material failure or delay in the performance of any Services for more than thirty (30) calendar days, Client may, at its option, and in addition to any other rights Client may have, immediately terminate this Agreement without liability to Supplier.

[Drafting Notes: Supplier may request this clause as mutual or at least to guarantee a minimum of Client to meet payment obligations.]

5.5.4 Acknowledgment of Obligations. Supplier expressly acknowledges and agrees that in no circumstance will a Force Majeure Event relieve it from any of its Information Security, Disaster Recovery and/or Business Continuity obligations set forth in this Agreement.

[Drafting Notes: Physical security should not be overlooked. Supplier should be able to provide Client with a written security plan setting forth the protections implemented at its data centers including limiting physical access, restricting physical access to required personnel, badging, and training. Supplier needs to maintain a written comprehensive information security program that includes reasonable security procedures and practices to ensure the security, confidentiality, privacy, availability, and integrity of user content and other information if transmitted through or stored in connection with the Services.]

5.6 Notice of Unauthorized Acts. Each Party will: (a) promptly notify the other Party of any material unauthorized possession, use, knowledge, or attempt thereof, of the other Party's data-processing files, transmission messages, or other Proprietary Information by any person or entity that may become known to such Party; (b) assist the other Party in investigating such unauthorized acts and taking action to prevent the continuation or recurrence thereof; and (c) provide reasonable cooperation with respect to any litigation or other action deemed necessary by the other Party to protect its proprietary rights.

## 6. Project Management and Change Control Procedures.

6.1 Principal Contacts. Each Party will designate and maintain a senior manager within its organization who will be available to the other Party for purposes of discussing all work and business between them (each, a "Project Manager").

6.2 This Agreement will be subject to Change Control Procedures (as defined below) only for the following reasons: (a) mutually agreed to changes in the Services; (b) any issues that Supplier did not know of and did not have a reasonable basis for knowing that impact effort required; or (c) acts or omissions of Client that impact the schedule for the Services or effort required.

6.3 Any change in the Services will be subject to the procedures set forth below ("Change Control Procedures") if such change would materially alter: (a) the functionality, performance standards, or technical environment of the Services; (b) the scope or schedule of the Services; (c) the manner in which the Services are provided; or (d) the cost to Client. The Change Control Procedures are as follows:

6.3.1 The Party requesting the change will notify, in writing, the other Party's Project Manager that it desires a change that is subject to the Change Control Procedures. Thereafter, the Parties will negotiate, in good faith, to reach a mutual agreement with respect to such change and any change in fees that may be charged within a

reasonable amount of time. Each Party will designate a duly authorized executive who has authority to fully and finally resolve the matter and to participate in such negotiation.

6.3.2 No change under the Change Control Procedures will be implemented without Client's approval, except as may be necessary on a temporary basis to maintain the continuity of the Services, and Supplier will schedule changes so as not to unreasonably interrupt Client's business operations and to monitor the status of changes against the applicable schedule. With respect to any change made on a temporary basis to maintain the continuity of the Services, Supplier will document and provide to Client notification of the change no later than the next Business Day after the change is made.

6.3.3 If a dispute arises during negotiations as to: (a) whether the change became necessary due to problems caused by a third party such that additional fees may be charged; (b) whether the change became necessary due to noncompliance by Supplier with this Agreement such that additional fees should not be charged; (c) whether the change is a request by Client for Additional Services or work product such that additional fees may be charged; or (d) whether the change should be covered by the warranties set forth in this Agreement, then the Parties will attempt to settle such dispute by negotiating a resolution.

6.3.4 If such dispute cannot be settled within ten (10) Business Days of written notification from either Party to the other Party of its desire to arbitrate such dispute, such dispute will be resolved by binding arbitration in accordance with the procedures set forth in this Agreement.

6.3.5 While any dispute is pending, Supplier will continue to provide the Services (excluding any changes not agreed upon by the Parties), and Client will continue to pay all undisputed amounts due. To the extent commercially feasible, Supplier will implement any change requested by Client, notwithstanding that such change is the subject of a dispute, provided that Client agrees to pay the cost of such change (with any cost being paid by Client upon delivery of such change).

[Drafting Notes: Change control clauses are common in services/consulting, and outsourcing agreements. One or both parties may require modifications to the original project and this provision outlines the procedure for how such changes should be initiated, when they occur, and the process for such change.]

[Drafting Notes 2: The agreement must be sensitive to the interrelationship among price, the scope of service and service levels. To this end, the agreement should include:

(i) change control procedures;  
a definition of change (e.g., a requirement for a specified number of transactions

or resources that are above or below defined "bandwidths" of numbers of

(i) transactions or resources required to perform the services); and

(ii) a definition of change (e.g., a requirement for a specified number of transactions or resources that are above or below defined "bandwidths" of numbers of

transactions or resources required to perform the services); and either established incremental increases and decreases for the base charges or a process of negotiating changes in pricing terms as the need arises.

[Drafting Notes: One of the key issues often associated with the outsourcing arrangement is the relationship between the outsourced function and the information technology function. The parties should decide what and whose information technology resources will be used.]

Alternative Section: The Supplier may develop software during the course of the Agreement and this section outlines the process, ownership issues, testing, and compliance.]

## 7. Software Development.

7.1 Dedicated Software Development. Commencing on the Effective Date and thereafter during the Term, Supplier will provide, for the benefit of Client, software development personnel resources, together with associated computer and related resources, of approximately the person-hours set forth in Exhibit "K," attached hereto and incorporated herein ("Dedicated Software Development"), for the development of Improvements specified in the Implementation Plan or otherwise requested by Client.

Client will regularly communicate with Supplier in order to designate and prioritize the projects to be worked on using such resources, which projects and priorities will initially consist of those established in the Implementation Plan.

Supplier will be entitled to rely on the information communicated to it by Client for purposes of planning for and allocating its personnel and other resources, but Client may make changes in any such information, if and when deemed appropriate by Client, in accordance with the Change Control Procedures described above. If Client makes any change in the projects or priorities contained in any such information that could result in any disruption in the utilization of those resources or in the Services provided by Supplier for Client, then Supplier will inform Client of the potential disruption and, if Client decides to proceed with the changes, Supplier and Client will work together, in good faith, to minimize the disruptive effects of the changes, with Client being responsible for any expenses related to the changes that are not thereby avoided.

7.2 Independent Development. Client may, at its sole cost, contract with third parties or use its own internal resources to develop or otherwise acquire Improvements ("Independent

Improvements"). Supplier will, at Client's expense, cooperate with such Independent Improvements to the extent as reasonably requested by Client.

**[NOTE: REVIEW SECTION 10.2 TO CONFIRM THAT CLIENT AGREES THAT SUPPLIER MAY OWN INDEPENDENT IMPROVEMENTS.]**

Upon acquisition or completion of each such Independent Improvement, Client may request that the Independent Improvements be incorporated into the System. Thereupon, Supplier will, at Client's expense, test such Independent Improvements to determine whether they will function as planned, will interfere or conflict with any then-existing portion of the System, or will require an unreasonable portion of Supplier's resources or personnel to install, maintain or operate such Independent Improvements. If any such problem is identified, either prior to or after any such problem is identified or either prior to or after implementation of such Independent Improvements, then Supplier will immediately advise Client of the problem, the modifications necessary to resolve the problem and, at Client's election and expense, either:

7.2.1 such modifications will be accomplished; or

7.2.2 such Independent Improvements will not be incorporated into, or will be removed from, the System. After any such problem identified prior to implementation of such Independent Improvements is resolved to Supplier's reasonable satisfaction, Supplier will implement such Independent Improvements on a schedule mutually agreed on by the Parties hereto.

7.3 Technical Cooperation. Client acknowledges that, in connection with testing new software and equipment that may be incorporated into the System, from time to time, Supplier may require the technical assistance and cooperation of Client, and Client agrees to provide, at no charge to Supplier, such technical assistance and cooperation as Supplier may, from time to time, reasonably request and that is ordinarily and customarily provided at no charge in comparable circumstances.

7.4 Regulatory Compliance. Supplier will use its best efforts to maintain the Systems so they comply with federal and/or state regulatory authorities with jurisdiction over Client's business. Client will promptly inform Supplier of any modification to the Systems that Client believes is required under any law, rule, or regulation. Supplier will perform any modification to the Systems or recommend changes to operating procedures of Client to meet regulatory requirements. Supplier will provide new or enhanced features, functions, reports, or other services that may result from such modifications or recommendations as an Additional Service.

8. Payments to Supplier.

8.1 Quarterly/Monthly Base Charge. Client will pay Supplier fees in accordance with Exhibit "E," attached hereto and incorporated herein ("Fees"), as may be adjusted, from time to time, in accordance with this Agreement.

**[Drafting Notes: Pricing Options. The appropriate pricing mechanism will vary from relationship to relationship.]**

**Options include:**

- (i) fixed price;
- (ii) resource-based (e.g., number of FTEs);
- (iii) volume-based (e.g., price per transaction);
- (iv) time and materials;

- (v) cost-plus arrangements;
- (vi) gain-sharing/risk-sharing; or
- (vi) hybrids of the above.

B. Price Controls. The parties may consider price control terms, such as:

- (i) CPI/PPI/ECI adjustment factors;
- (ii) price ceilings or floors/percentage cap on increases or decreases;
- (iii) "most favored nation" clauses;
- (iv) shared cost reductions; and
- (v) benchmarked pricing.

**[Drafting Notes: Cost savings are typically a common reason why companies want to outsource so it's important to identify early in the negotiations the pricing mechanisms, and what will work best for the Parties involved.]**

8.2 Most Favored Customer. Supplier's charges to Client, with respect to the Services, will not exceed Supplier's charges to any other organization of similar size for use of systems similar to the Systems for similar baseline volumes of service. In determining whether Supplier's charges to any other entity are less than Supplier's charges to Client, the Parties will compare the total price for all the Services provided as a whole, and not individual prices and services, unless there is a material discrepancy between a significant individual component of such charges to Client (e.g., charges in respect to telecommunications) and a significant individual component of the charges to such other \_\_\_\_\_ organization.

**[Drafting Notes: Agreements that include a "most favored nations" clause, a "most favored customer" clause or similar clause purporting to grant Client terms at least as favorable as any other client.]**

8.3 Taxes. Client will be responsible for, and will promptly pay or reimburse Supplier for, the payment of all sales, use, excise, value-added or similar taxes, assessments, or duties (or other similar charges) imposed by any governmental agency (including any interest and penalty imposed thereon as a result of any act or omission of Supplier that is in accordance with the direction or request of Client) that are based on or with respect to any Services or goods provided by Supplier to Client, or the amounts payable to Supplier therefore. Supplier will bill any taxes payable by Client as a separate item on Supplier's invoice and will not include such taxes in Supplier's prices. Supplier will cooperate with Client to minimize any such taxes for which Client is responsible and, upon Client's reasonable request and at Client's expense, will: (a) refuse to pay any such taxes if permissible under applicable law in connection with the protest of the taxes; (b) pay any such taxes under protest; (c) pay any such taxes and seek a refund of the taxes; and (d) allow Client to participate in the response to and settlement of any claims for or disputes regarding any such taxes.

**Drafting Notes: The outsourcing agreement should include terms regarding the responsibility for taxes arising from the outsourcing**

arrangement. Note that certain jurisdictions impose taxes on services. This fact should be considered in determining whether using a service provider makes economic sense and, if so, determining the location where the services are to be provided.]

8.4 Time and Manner of Initial Payment. Client will pay Supplier: (a) on the Effective Date, the Implementation Fees of \$ [redacted] ([redacted]) dollars as specified in Exhibit "E"; and (b) when due and payable, the other fees as specified in Exhibit "E."

[Drafting Notes: Implementation Fees may have a different schedule because they are normally project-based, and once the implementation is completed, there are no further fees.]

Invoice terms are "Net 30 days." Invoices disputed in good faith are considered past due if not paid the later of: (a) thirty (30) calendar days following the invoice date; or (b) ten (10) calendar days following the date such dispute is resolved.

Client acknowledges that Client is responsible for payment of all fees imposed by any background investigation firm or regulatory agency, to include, without limitation, fees charged by: [redacted] ("Third Party Fees"). Client further acknowledges that in the event of any increase in Third Party Fees, Supplier will begin billing Client for such increase as of the effective date of said increase.

[Drafting Notes: Supplier will want to ensure that all third-party costs associated with Client's industry will be passed onto to Client in providing the Services.]

8.5 Audit Rights. Supplier will maintain complete and accurate books, records and accounts to support and document all charges hereunder, in accordance with this Agreement and otherwise in accordance with generally accepted accounting principles consistently applied with respect to prior periods. For a period of up to three (3) years following the calendar year in which any of the Services were provided by Supplier hereunder, Client's in-house accounting staff and any independent accountants selected by Client will be entitled, following reasonable notice to Supplier, to audit Supplier's books and records with respect to the Services provided, the service levels achieved, and the determination of charges due pursuant to this Agreement. Any such audit will be conducted during regular business hours at Supplier's offices. Additionally, any such audit will be conducted at Client's expense, unless such audit demonstrates that Supplier's total charges to Client in any given calendar year exceeded the correct charges for that year by more than [redacted] percent ([redacted]%), in which event, Supplier will pay or reimburse Client for the cost of such audit.

[Drafting Notes: Client will to retain audit rights to ensure conformity with the terms of the Agreement and to ensure that Supplier is meeting Client's internal standards.]

Alternative Clauses: payments  
Payment. All Monthly Service Fees shall be payable within thirty (30)

days of receipt of invoice. All Monthly Service Fees not paid within thirty (30) days shall be subject to a monthly service charge of 1.5% of the unpaid balance.

Adjustments and Fee Calculation. The Monthly Service Fees is based on Supplier's actual costs for providing the Services and includes a predetermined margin of thirty percent (30%) which shall be adjusted according to the Margin Plan (as defined below). Within forty-five (45) days of the Effective Date the parties shall mutually agree on a sliding scale mechanism under which the thirty percent (30%) predetermined margin set forth above shall be adjusted upward or downward based on utilization rates (as well as other factors which may be agreed to by the parties) which actually are occurring in the Data Centers (the "Margin Plan"). The Margin Plan shall be amended quarterly as necessary and included in the Budget (as defined below). Supplier's actual costs for providing the Services shall be calculated monthly and the Monthly Service Fees adjusted up or down accordingly. Adjustments will be reflected in the next monthly invoice for Services. Supplier shall prepare a budget quarterly (the "Budget") including the resources, costs and other expenses it expects to incur in providing the Services for the upcoming quarter. Client shall review and promptly approve the Budget in the event there are any disputes regarding the Budget, the parties shall meet and in good faith negotiate a reconciliation of the Budget.

Each party shall maintain records of all activities subject to revenues, payments, fees, commissions and costs pursuant to this Agreement. Each party shall permit a reputable independent certified public accounting firm designated by the other party to have access, at a mutually agreed upon time during normal business hours, to the records and books of account which relate solely to this Agreement for the purpose of determining whether the appropriate fees and commissions have been paid. Such audits may not be required more often than once every year; provided, however, that either party may audit the other within six (6) months of any audit in which a discrepancy of five percent (5%) or greater is discovered. If a discrepancy is discovered, the party in whose favor the error was made will promptly pay the amount of the error to the other. The party requesting the audit will pay the cost of the audit, provided, that if a discrepancy is discovered of five percent (5%) or greater in favor of the party requesting the audit, then the audited party will be required to pay the reasonable costs of the audit.

9. Term and Termination.

9.1 This Agreement will commence as of the Effective Date and will terminate \_\_\_\_ ( ) years later, or upon completion of the Services ("Term"), unless earlier terminated in accordance with the provisions of this Agreement. The Parties may renew this Agreement for subsequent terms by written amendment to this Agreement.

9.2 Either Party may immediately terminate this Agreement in the event the other Party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium; provided that such proceeding is not dismissed within sixty (60) calendar days.

9.3 Client may immediately terminate this Agreement, as a whole, in the event that Supplier breaches any material obligation under this Agreement and such breach remains uncured for \_\_\_\_ ( ) Business Days after written notice of such breach is delivered to Supplier.

9.4 Supplier may immediately terminate this Agreement, as a whole, in the event that Client breaches any material obligation under this Agreement, other than non-payment of any fees due if Client disputes such fees, in good faith, and such breach remains uncured for \_\_\_\_ ( ) Business Days after written notice of such breach is delivered to Client.

9.5 After expiration or termination of this Agreement by either Party for any reason, Supplier will, upon Client's request, for a period of time not to exceed \_\_\_\_ ( ) calendar days: (a) continue to perform the Services pursuant to this Agreement; (b) reasonably cooperate with Client or another service provider designated by Client in the transfer of Services to Client or such other service provider; and (c) perform any Additional Services reasonably requested by Client to facilitate the transfer of Services to Client or another service provider (collectively referred to as "Termination Assistance Services"). Supplier will provide the Termination Assistance Services at Supplier's rates for such services immediately prior to the expiration or termination of this Agreement. After the expiration or termination of such Termination Assistance Services, Supplier will: (a) answer questions from Client regarding the subject matter of this Agreement on an "as needed" basis at Supplier's then standard billing rates; and (b) deliver to Client any remaining reports due Client pursuant to this Agreement.

Upon Client's request at any time during the Term and upon the expiration or termination of this Agreement, Supplier will: (a) promptly return to Client, in the format and on the media that Client reasonably requests, all or any part of the Records [define] in the following format: \_\_\_\_\_; and (b) erase or destroy all or any part of the Records in Supplier's possession, in each case to the extent that Client requests. Supplier will use any archival media containing the Records solely for back-up purposes. In the event that Supplier's return of all or any part of the Records reduces Supplier's ability to perform its Services under this Agreement, Supplier will notify Client of such reduced ability prior to returning the Records. Upon mutual agreement of the Parties, for an appropriate duration, Supplier may be relieved of its obligations under this Agreement to the extent that such obligations are directly and adversely impacted by such return of the Records to Client.

9.6 Initiation of Discussions. Provided that Client has reason to be concerned that this Agreement may terminate or the Services may be discontinued, Client will be free to initiate discussions and/or negotiations with other suppliers with regard to possible replacement of the Services, and neither Client nor any other applicable suppliers

will incur any liability to Supplier as a result of such discussions and/or negotiations.

[Drafting Notes: Due to the specialized Services that Supplier may be providing to Client, limited termination rights for Supplier become very important to ensure continuity for Client. Termination assistance should help to fill the gaps, but if there are specific issues of concern that are industry specific, those issues should be noted and identified at the contractual formation stage. Key issues to consider include the following:

- Transition planning assistance;
- Inventories of equipment, software and other assets that the service provider uses to provide the services;
- Copies of data, procedures, error logs, documentation and other information that the service provider generates as a part of providing the services (along with the right to provide this information to potential successor service providers);
- The right to hire the people, buy the assets, license the software and assume the subcontracts used by service provider to provide the services;
- Consulting services in connection with the transition;
- Parallel processing for some period, with the right to extend the term as necessary to resolve issues before the final cutover to the new service provider or your own internal personnel, and
- Continued use of shared networks or other similar assets after the transition is complete.

10. Ownership.

10.1 Ownership of Systems. Except as otherwise provided in this Agreement, Supplier reserves the right to determine the Systems that it is willing to use or operate to provide the Services and otherwise carry out its obligations under this Agreement. Except as otherwise provided in this Agreement, all Systems are and will remain the exclusive property of Supplier (or licensors of such Systems to Supplier, as applicable).

**[NOTE: CONFIRM THAT CLIENT AGREES THAT SUPPLIER MAY OWN INDEPENDENT IMPROVEMENTS, SEE SECTION 7.2.]**

10.2 Ownership of Improvements. Without limiting the generality of Section 10.1 hereof, as between the Parties hereto, all

Independent Improvements, including all copyright, patent, trade secret, and other intellectual property rights related thereto, will be owned by and be the property of Supplier. With respect to any Independent Improvement created or acquired by Client using Client's own internal resources or developed by or otherwise acquired from third parties, prior to the incorporation thereof into the System, Client will execute, and will cause any such third party to execute, such instruments, agreements, and other documents that Supplier may reasonably request in order to transfer and assign to Supplier any and all rights, title, and interest in and to such Independent Improvement.

[Drafting Notes: Use and ownership of intellectual property are key issues in the business process outsourcing agreement because the outsourcing relationship, depending on the nature of the services, often produces new or improved products, services, technologies or other intellectual property. Also, the Client and Supplier share many of the same resources in an outsourcing relationship, some of which may be proprietary. The outsourcing agreement should state whether the Client or the Supplier will retain ownership of any intellectual property that may be used or developed by the other party during the course of their arrangement. The agreement should also address the issue of which party will own the results of any new developments or improvements.]

10.3 Subcontracting Rights. In addition to any other right that Supplier may have and subject to obtaining any necessary consents from third parties, Supplier will be entitled, subject to the other provisions of this Section, to grant to any responsible third party the right to have access to all or any portion of the System for the purpose of allowing such third party the ability to provide services to or on behalf of Supplier. However, notwithstanding the provisions of the preceding sentence, Supplier will not enter into any contract or arrangement in which any third party will have responsibility for management and technical execution, on behalf of Supplier, of [enumerate exceptions]. In no event will any contract or arrangement described in this Section or any other subcontract relieve Supplier of any responsibility for the performance of its obligations hereunder.

[Drafting Notes: The quality of the Services may decline if Supplier than transfers such obligations to a third-party and the incentive to hire Supplier for its specialized skills or customer service may be hampered. If Supplier wants to have the option to transfer such obligations, it may be easier to transfer some of the incidental services.]

Alternative Clause: Ownership Rights  
Except as expressly set forth on any Statement of Work, all right, title and interest in and to all products, services and materials provided to Client by Supplier under this Agreement shall be and remain the property of Supplier exclusively. Client shall have no right, title

or interest in or to any products, services or materials except as expressly set forth in this Agreement. Supplier retains shall retain all rights and title to any and all capital improvements and intellectual property it utilizes or contributes to the Data Centers or as part of the Services.

10.4 Exclusive Use Software. Notwithstanding Supplier's ownership thereof, the Systems will be used by or on behalf of Supplier only for purposes of providing the Services to Client, and will not be used by Supplier for any other purpose except with the prior written consent of Client, or as may be required by binding and applicable laws, regulations, and industry rules. The Parties will meet, at least annually, to review the then-current Exclusive Use Software and to consider, in good faith, making portions of the Exclusive Use Software available, on mutually acceptable business terms (which may include payments to Client), for use by or on behalf of Supplier to provide services for Supplier's other customers when and to the extent that competitive conditions or unique needs warrant.

10.5 Escrow of Software. Upon the request of Client, at any time during the Term and at the expense of Client, Supplier will deposit with a third party escrow agent, reasonably selected by Client and reasonably acceptable to Supplier, a fully executable copy of the software then being used by Supplier to provide the Services for Client, including all related documentation and databases, and will thereafter regularly update such deposit on a mutually agreeable basis, all as more fully set forth in the Source Code Escrow Agreement attached hereto and incorporated herein as Exhibit "H" ("Source Code Escrow Agreement").

[Drafting Notes: Use and escrow of the software would become important to Client if the software was key in providing the Services and if a dedicated system was key to Client's operations. Escrow arrangements become key if the software is vital to Client's core business and if continuity may be an issue if Client is unable to procure the services from another 3<sup>rd</sup> party.]

10.6 License to System.

10.6.1 General License. Subject to the terms and conditions of this Agreement, Supplier hereby grants to Client a perpetual, non-exclusive, non-transferable (except as provided herein), non-sublicensable license to the System in accordance with the terms and conditions of this Agreement. . In addition to any rights granted in this Section, Client will have the right and license to allow third parties, who may be located within or outside the United States of America, to access and use the System for Client's operations so long as Client ensures that such access and use by a third party is in accordance with the terms and conditions of this Agreement.

10.6.2 License to Use System Under Source Code Escrow Agreement. In addition to the above, and subject to any and all applicable laws and regulations and to obtaining any necessary consent, Supplier hereby grants to Client a perpetual license, effective without any further action, which license will be:

10.6.2.1 Exercisable from and after the giving of any applicable notice that Client, in accordance with the provisions of Section 9 hereof, will discontinue obtaining from Supplier any Services, to use any portion of the System that is then being used by Supplier to provide the Services being discontinued (including any Independent Improvements thereto that are incomplete, are not then being operated by Supplier, and that are reasonably available to Supplier) and with respect to which Supplier has the right to grant such a license to Client; and

10.6.2.2 Exercisable from and after the giving of any applicable notice of termination of this Agreement for any reason, to use any portion of the System that is then being used by Supplier to provide the Services for Client (including any Independent Improvements thereto that are incomplete, are not then being operated by Supplier, and that are reasonably available to Supplier) and with respect to which Supplier has the right to grant such a license to Client.

10.6.3 Third-Party Licenses. Upon the request of Client, at any time during the Term and at the expense of Client, Supplier will use its commercially reasonable business efforts to obtain from third parties, on the best available terms, any consent that may be necessary to allow any applicable System to be licensed to Client hereunder. Supplier agrees that when obtaining any additional System from third parties, Supplier will use its commercially reasonable business efforts to obtain such System on terms and conditions that permit Supplier to grant Client a license to use such System as provided in this Section, without any additional consents or payments, and that Supplier will not, at any time, agree to or otherwise create any additional restrictions on any then-existing or after-acquired System that would prohibit Supplier from granting Client a license to use such System as provided in this Section, without any additional consents or payments.

10.6.4 License Fees and Use Restrictions. Any exercisable license to any portion of the System will be subject to, and the Parties will comply with, the following terms and conditions:

10.6.4.1 There will be no charge to Client for such license, except that Client will pay or reimburse Supplier for any payments to third parties required in connection with such license;

10.6.4.2 Upon the request and at the expense of Client, Supplier will promptly deliver to Client a fully executable copy of the Licensed Software, including all related documentation and databases. In the event that, along with the Licensed Software, Supplier delivers to Client such additional System that cannot be readily separated from the Licensed Software, Client agrees that it will not be authorized to and will not use any such additional System for any purpose and that Supplier will be entitled to, from time to time, at its expense and in a manner that does not unduly disrupt Client's operations, replace

the Licensed Software with a fully executable copy thereof that replaces the prior copy of the Licensed Software in all respects but does not include such additional System;

10.6.4.3 Client will be authorized to make additional copies of the Licensed Software for the purposes permitted herein and may make and copy derivative works or collective works that include partial or complete copies of the Licensed Software. Any such additional copies and derivative works will be considered part of the Licensed Software for purposes of this Agreement;

10.6.4.4 The Licensed Software may be used only: (a) for the internal purposes of Client; and (b) for providing Services to Client; and

10.6.4.5 The Licensed Software will be kept confidential and will not be disclosed to anyone other than the employees, agents, and contractors of Client who have a "need to know" the same in order to further or facilitate the exercise, by Client, of its rights therein and who are legally bound to respect the confidentiality thereof.

**[Drafting Notes: This section outlines the license grant if Client will also need access to Supplier's information technology to perform the Services.]**

## 11. Information Security.

11.1 Supplier will provide information, data back-up procedures, and information security so as to reasonably ensure that any NPPI provided by or for Client is not lost and that it is not modified or disclosed to any other party or accessed by any other party without Client's prior written approval. Such security measures will equal or exceed standard industry practices for similar suppliers dealing with NPPI.

11.2 Supplier warrants to Client that Supplier will reasonably monitor, evaluate and adjust its information security systems and procedures in response to relevant changes in technology, changes in the sensitivity of any NPPI, as reasonably determined by Client, and internal and external threats to information security. Supplier will promptly notify Client of: (a) any unauthorized possession, use, or knowledge or attempt thereof, of the data-processing files, transmission messages, or other NPPI by any person or entity that may become known; (b) the effect of such; and (c) the corrective action taken in response thereto.

11.3 During the term of this Agreement, and for one (1) year following termination:

11.3.1 Solely with respect to NPPI, Client will have the right to conduct a remote or on-site audit of Supplier, at Client's discretion and at Client's expense (except as set forth below), to review the information security systems and procedures, the data security systems, and the processes of Supplier, at any time during Supplier's regular business hours, upon no less than three (3) Business Days prior notice to Supplier. Such audit and review may be performed by Client, its agent, or an independent third party bound by a nondisclosure provision substantially similar to that set forth above in

this Agreement, and may include reasonable testing of the security systems, procedures and processes. Any such security tests will be scheduled by mutual agreement of the Parties. Supplier agrees to promptly grant reasonable access to logs, policies, records, other materials, and Supplier personnel reasonably required for Client to perform the audit. Client will reasonably determine the extent and methodology of the testing subject to the approval of Supplier, such approval not to be unreasonably withheld. Further, Supplier agrees to make available to Client the results of any third party's or its own testing, monitoring and auditing of such systems and procedures; provided, however, that Supplier will not be required to make available any such results which would breach confidentiality obligations between Supplier and any third party.

11.3.2 Should such an audit, test or review reveal that Supplier's security systems and procedures or its contemplated services do not effectively protect any NPPI, then Supplier will complete and install modifications, the cost, expense, and allocation of which will be agreed upon by the Parties, to its security systems or implement recommended changes to its operating systems to meet the security requirements of Client, its regulators, and the provisions of applicable law, including, but not limited to, the Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801-6809) ("G-L-B").

11.3.3 Prior to initiation of any audit as permitted under this Agreement, the Parties will discuss and mutually agree upon a reasonable estimate of the total costs of the audit, which Party will bear these costs, and the payment schedule for such costs. Client will reimburse Supplier's reasonable incremental direct expenses associated with the audit (e.g., reasonable copy charges or other reasonable standard expenses), but not any other expenses, such as a charge for access to Supplier personnel or other sources of information. It is the intent of the Parties that Client bear the agreed upon cost of any such audit as described in this paragraph, unless a substantial and previously unknown security breach is identified as a result of such audit.

11.3.4 To the extent that regulations promulgated under G-L-B, any implementing regulations, or any other relevant law require additional or modified security, privacy, or confidentiality agreements between financial institutions and third party suppliers, Supplier agrees that it will execute such additional or modified agreements as reasonably required by Client. Client will make a good faith effort to ensure that any additional or modified agreement complies with the requirements of G-L-B, any implementing regulations, or any other relevant law, but Client does not warrant that such modifications will be in legal compliance with G-L-B.

[Drafting Notes 1: This provision is applicable if Client is subject to regulation under Gramm-Leach-Bliley Act. Appropriate security protocols and audit rights are key for Client's adherence to this statute. Privacy standards are dictated by state and federal law and are thus dependent on the laws governing the agreement, the type of data involved, and the jurisdictions in which the data is located. The parties should work closely to

determine whether they are subject to any industry specific privacy laws such as HIPAA and Gramm-Leach-Bliley to ensure compliance as Client cannot delegate its compliance obligations. In the event of a breach, Client will be held responsible even if Supplier caused the breach.

[Drafting Notes 2: Client should contractually identify the privacy and other laws with which Supplier is contractually obligated to comply. From Supplier's perspective, Supplier cannot be obligated to comply with any laws that are not identified within the contract as Supplier cannot be expected to understand the regulatory environment in which Client operates.]

[Drafting Notes 3: One point to highlight with respect to post-incident data breach assessment. Being able to conduct an independent assessment may be crucial for a customer whose data was exposed. That assessment will allow for the gathering and preservation of potential evidence to support the customer's defense in the event of a lawsuit or regulatory action. That information may also reveal whether and to what extent the Supplier itself may have breached its contract or violated the law.

## 12. Confidentiality of Proprietary Information.

12.1 In the performance of this Agreement, each Party may disclose to the other Party certain Proprietary Information. For the purposes of this Agreement, the following terms will have the definitions set forth herein.

12.1.1 "Proprietary Information" means Trade Secrets, Confidential Business Information, and Confidential Personal Information.

12.1.2 "Trade Secrets" mean trade secrets as defined under Georgia law, as amended from time to time, and will include without limitation and without regard to form, technical or non-technical data, a formula, a pattern, a compilation, a program, a software program, a device, a method, a technique, a drawing, a process, financial data, financial plans, product plans, non-public forecasts, studies, projections, analyses, all customer data of any kind, including non-public personal information or information derived from non-public personal information, if such derivation includes or references the non-public personal information in a way that makes it identifiable ("NPPI"), or a list of actual or potential customers or suppliers, business and contractual relationships, or any information similar to the foregoing which: (a) derives economic value, actual or potential, from not being generally known and not being readily

ascertainable by proper means to other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

12.1.3 "Confidential Business Information" means any valuable, secret business information, other than Trade Secrets, that is designated or identified as confidential at the time of the disclosure or is by its nature clearly recognizable as confidential information to a reasonably prudent person with knowledge of the Disclosing Party's business and industry. "Confidential Business Information" also means information regarding either Party's activities that is not available to the public and that, if disclosed, would likely provide such person with an advantage over the Disclosing Party or other third parties in a transaction with either Party or could otherwise be used to the detriment of the Disclosing Party. . **The following exception applies, if applicable: It is the Parties' mutual intent that the tax structure and tax treatment of the transactions contemplated by this Agreement are not confidential and that notwithstanding anything herein to the contrary that each of us (and our employees, representatives and agents) may disclose to any and all persons, without limitation of any kind, the federal tax structure and federal tax treatment of the transactions contemplated herein such that the transactions will be treated as not having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Internal Revenue Code of 1986, as amended.**

12.1.4 "Confidential Personal Information" means personally identifiable health, medical, employment, and similar private information related to individuals employed by Client, or engaged by Client as contractors, that has been provided to Client by such individuals or their representatives for employment purposes and that has not otherwise been disclosed to the public. "Confidential Personal Information" is also NPPI, but is distinguishable from NPPI only because it relates to private information of individuals employed by Client or engaged by Client as contractors, and not to other individuals.

12.1.5 "Disclosing Party" means the Party disclosing any Proprietary Information hereunder, whether such Party is Client or Supplier and whether such disclosure is directly from the Disclosing Party or through the Disclosing Party's employees or agents.

12.1.6 "Receiving Party" means the Party receiving any Proprietary Information hereunder, whether such Party is Client or Supplier and whether such disclosure is received directly or through the Receiving Party's employees or agents.

12.1.7 For sake of clarity, if the foregoing conditions are met, Proprietary Information will include, without limitation, information created or obtained by Client or

Client's customers (including NPPI), agents, or suppliers, the financial information of any person whatsoever, and the computer software and documentation of third parties.

12.2 Notwithstanding subsection 12.1 above, Proprietary Information does not include any information that: (a) was in the Receiving Party's possession before receipt from the Disclosing Party; (b) is or becomes a matter of public knowledge through no fault of the Receiving Party; (c) is rightfully received by the Receiving Party from a third party without a duty of confidentiality; (d) is independently developed by the Receiving Party; or (e) is disclosed by the Receiving Party with the Disclosing Party's prior written approval. **[Add the following sentence, if the Parties should have the right to use retained knowledge from the relationship:] Nothing contained in this Agreement will restrict either Party from using ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in the unaided mental impressions of such Party's or its contracted personnel (i.e., independent contractors) relating to the Proprietary Information; provided that: (a) such personnel have not intentionally memorized any of the foregoing information; and (b) no right or license, either express or implied, is granted to use or exploit the other Party's copyrightable or patentable ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques.**

12.3 The Receiving Party acknowledges and agrees that the Proprietary Information of the Disclosing Party will remain the sole and exclusive property of the Disclosing Party or a third party providing such information to the Disclosing Party. The disclosure of the Proprietary Information to the Receiving Party does not confer upon the Receiving Party any license, interest, or right of any kind in or to the Proprietary Information, except as provided under this Agreement. At all times and notwithstanding any termination or expiration of this Agreement, the Receiving Party agrees that it will hold in strict confidence and not disclose to any third party the Proprietary Information of the Disclosing Party, except as approved in writing by the Disclosing Party. The Receiving Party will only permit access to the Proprietary Information of the Disclosing Party to those of its employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations substantially similar to those contained in this Agreement. The Receiving Party will be responsible to the Disclosing Party for any third party's use and disclosure of the Proprietary Information that the Receiving Party provides to such third party in accordance with this Agreement. The Receiving Party will use at least the same degree of care it would use to protect its own Proprietary Information of like importance, but in any case with no less than a reasonable degree of care, including maintaining information security standards for such Proprietary Information as are commercially reasonable and customary for the type of Proprietary Information. In addition, with regard to NPPI, Supplier will comply with the information security standards specific to such Proprietary Information as set forth in this Agreement.

12.4 If the Receiving Party is required by a governmental agency or law to disclose any of the Proprietary Information of the Disclosing Party, the Receiving Party must, if legally permissible, first give written notice of such required disclosure to the Disclosing Party, make a reasonable effort to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which disclosure is required, take reasonable steps to allow the Disclosing Party to seek to protect the confidentiality of the Proprietary Information required to be disclosed, and will disclose only that part of the Proprietary Information which, in the written opinion of its legal counsel, it is required to disclose.

12.5 Each Party to this Agreement will immediately notify the other Party in writing upon discovery of any loss or unauthorized disclosure of the Proprietary Information of the other Party.

12.6 The Receiving Party will not reproduce the Disclosing Party's Proprietary Information in any form except as required to

accomplish the intent of this Agreement. Any reproduction of any Proprietary Information by the Receiving Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

12.7 Upon termination of this Agreement, upon written request of the other Party, or when no longer needed by either Party for fulfillment of its obligations under this Agreement, each Party will either: (a) promptly return to the other Party all documents and other tangible materials representing the other Party's Proprietary Information, and all copies thereof in its possession or control; or (b) destroy all tangible copies of the other Party's Proprietary Information in its possession or control by the following methods.

TYPE OF PROPRIETARY INFORMATION STORED OR USED	DESTRUCTION METHOD
Hard Copy	Shredding, pulverizing, burning, or other suitable destruction method so that any Proprietary Information is not readable at all and cannot be reassembled or reconstructed in any way so that it is practicably readable.
Electronic Tangible Media, such as CDs, Disks, Tapes	Destruction or erasure of such media so that any Proprietary Information is not readable at all and cannot be reassembled or reconstructed in any way so that it is practicably readable.
Hard Drive Storage or similar Computer or Device Storage	Erasure or elimination of Proprietary Information from such device so that any Proprietary Information is not readable at all and cannot be reassembled or reconstructed in any way so that it is practicably readable.

12.8 Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

12.9 If either Party should breach or threaten to breach any provision of this Section of the Agreement, the non-breaching Party, in addition to any other remedy it may have at law or in equity, will be entitled to seek a restraining order, injunction, or other similar remedy in order to specifically enforce the provisions of this Agreement. Each Party specifically acknowledges that money damages alone would be an inadequate remedy for the injuries and damages that would be suffered and incurred by the non-breaching Party as a result of a breach of any provision of this Agreement. In the event that either Party should seek an injunction hereunder, the other Party hereby waives any requirement for the submission of proof of the economic value of any Proprietary Information or the posting of a bond or any other security. In the event of a dispute between the Parties, the non-prevailing Party will pay all costs and expenses, including, but not limited to, reasonable attorneys' fees, associated with resolving the dispute.

12.10 Notwithstanding any expiration or termination of this Agreement, all of the Receiving Party's nondisclosure and use obligations pursuant to this Agreement will survive for two (2) years after expiration or termination with respect to any Confidential Business Information received prior to such expiration or termination. With respect to Trade Secrets, nondisclosure and use obligations pursuant to this Agreement will continue for so long as such information continues to constitute a trade secret under applicable Georgia law; and with respect to Confidential Personal

Information, for so long as required by applicable state and federal laws.

12.11 The provisions set forth in this Section of the Agreement supersede any previous agreement between the Parties relating to the protection of any Proprietary Information as set forth herein.

[Drafting Notes 1: The confidentiality obligations clause details the actions and forbearances required on the part of a party receiving confidential information. Sometimes the obligation is simply to keep the information confidential and not to disclose it to others and language is included in the definition of confidential information. Where additional obligations are imposed, those obligations are typically specified in a separate clause.]

[Drafting Notes 2: It is common to execute separate confidentiality agreements to ensure such agreement is not held invalid due to the survival of obligations once the underlying Agreement is terminated. Thus it is important to limit the timeframe to three (3) years or less to preserve the confidentiality obligations. Two years is common. Client may require the Supplier to have its employees to execute separate confidentiality agreements or review the existing agreements that Supplier may have on file for each employee to confirm whether such agreements are acceptable to Client. The destruction instructions are helpful if either party will have access of the other party's data. Its important to provide guidelines once the obligations end.]

13. Indemnification.

13.1 Mutual General Indemnity. Each Party (the "Indemnifying Party") will indemnify, defend, and hold the other Party, its respective shareholders, officers, directors, administrators, managers, employees, servants and agents, successors and assigns (each, an "Indemnified Party") harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees, incurred by the Indemnified Party which arise out of or relate to any material breach of this Agreement by the Indemnifying Party (including, but not limited to, any breach by such Indemnifying Party of its obligations of Confidentiality of Proprietary Information) or acts or omissions of gross negligence, willful misconduct, or fraud of the Indemnifying Party or its employees or agents, including, but not limited to, third party claims and claims for property damage or personal injury to the Indemnifying Party's Personnel ("Personnel" defined as such Party's employees, servants and agents, independent contractors and subcontractors); provided, however, that the foregoing does not in any manner relieve either Party or any third party of its obligations under statutory workers' compensation law

and other laws regarding employer obligations as to such Party's own employees. The Indemnifying Party's obligations under this subsection 13 will be subject to the Indemnified Party's providing the Indemnifying Party prompt notice of the event giving rise to an indemnity obligation, providing reasonable cooperation and assistance in the defense or settlement of any claim, and granting the Indemnifying Party control over the defense and settlement of the same, provided that the Indemnified Party does not evoke its retained right to defend as stated in subsection 13.3 below.

[Drafting Notes: This provision is very equitable allowing protection from either Party's breach of various obligations of the Agreement. This is very broad indemnity capturing almost every potential claim that could occur during the course of the Agreement. Either party may want to limit its liability for each claim in the limitation of liability clause provided below.]

### 13.2 Intellectual Property.

13.2.1 Supplier, at its expense, will defend, indemnify, and hold each Client Indemnified Party harmless from and against any and all damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, actions, demands, lawsuits, costs, and expenses including, without limitation, reasonable attorneys' fees, incurred by any Client Indemnified Party that arise out of a claim, action, lawsuit, or proceeding made or brought against Client by a third party alleging that Client's use of any Services or System infringes or otherwise violates such third party's patent, trade secret, copyright, trademark or other intellectual property right (each a "Claim"). Supplier's obligation under this Section will be subject to Client's providing Supplier with prompt notice of any Claim, Client's providing reasonable cooperation with and assistance to Supplier in the defense and settlement of the Claim, and Client's granting Supplier sole control over the defense or settlement of the Claim, provided that Client does not evoke its right to defend as stated below in Section 13.3.

13.2.2 In the event a court of competent jurisdiction makes a determination that any Services or System infringes or otherwise violates any third party intellectual property right, or if Supplier determines that any Services or System likely infringes or otherwise violates such third party's intellectual property right, Supplier, at its option and expense, will: (a) modify the infringing portion of the Services or System so as to make it non-infringing and non-violating, while maintaining substantial similar functionality; (b) replace the infringing portion of the Services or System with a non-infringing and non-violating product having substantial similar functionality; (c) obtain the right for Client to continue using the infringing or violating portion of the Services or System; or (d) refund to Client the fees paid for the Services or System.

13.2.3 Supplier's obligations under this Section will not apply to the extent of any Claim or infringement resulting from: (a) Client's continued use of the infringing Services or System after receipt of written notice from Supplier of a Claim or after receipt of the remedy required of Supplier under this Section; (b) modifications

to the Services or System by any party other than Supplier that are made without Supplier's written approval and only to the extent such modifications caused the infringement or violation; (c) the combination of the Services or System with other products, processes, or materials not provided or approved, in writing, by Supplier or described in the applicable specification if but for such other products, processes, or materials the infringement would not have occurred; or (d) Client's use of the Services or System other than in accordance with the terms and conditions of this Agreement or with the applicable specifications relating to such Services or System.

[Drafting Notes: An indemnity for intellectual property is important to ensure that Client is protected if Supplier provides services that may infringe upon a third party's intellectual property rights. It may be necessary to make this clause mutual if Client is also providing any of its intellectual property to produce or provide the Services. Most Parties provide this indemnity and may instead focus on capping liability as provided in Section 14 below.]

13.3 Reservation of Right to Defend. Each Party will promptly notify the other Party, in writing, of any claim (including, without limitation, any Claim. If the Indemnified Party reasonably determines that the Indemnifying Party has failed to diligently assume and maintain a prompt defense of any claim or Claim, the Indemnified Party will have sole control of the defense and all related settlement negotiations as provided below. If the Indemnified Party provides sufficient evidence to support its right to defend pursuant to this Section 13.3, the Indemnified Party will be entitled to defend with counsel of its own choosing, and the Indemnifying Party will pay any final judgment or settlement and will indemnify and hold the Indemnified Party harmless from all costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Party in such defense. Notwithstanding anything to the contrary in the foregoing, the Indemnified Party will not accept any settlement on behalf of the Indemnifying Party that results in an unreimbursed monetary obligation or admission of liability without the express written consent of the Indemnifying Party.

[Drafting Notes: The procedures are important to provide to set expectations of both Parties regarding litigation procedures if there is an indemnity claim. The Indemnitor will want complete control of the proceedings without having to discuss or receive consent from the Indemnitee. But the Indemnitee will want to ensure its rights are also being protected at the table, and want to ensure that Indemnitor has the appropriate amount of funds to defend, or take over the defense if the Indemnitor fails somehow.]

### 14. Limitation of Liability.

EXCEPT FOR EITHER PARTY'S MATERIAL BREACH OF THIS AGREEMENT (INCLUDING, BUT NOT

LIMITED TO, BREACH OF EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY OF PROPRIETARY INFORMATION), CLIENT'S CLAIMS AGAINST SUPPLIER FOR INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION, EITHER PARTY'S CLAIMS AGAINST THE OTHER PARTY FOR ACTS OR OMISSIONS OF GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF THE OTHER PARTY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, AS APPLICABLE), NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY LOSS OF INCOME, PROFITS OR DATA, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF, OR HAD REASON TO KNOW OF, THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR EITHER PARTY'S MATERIAL BREACH OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, BREACH OF EITHER PARTY'S OBLIGATIONS OF CONFIDENTIALITY OF PROPRIETARY INFORMATION), CLIENT'S CLAIMS AGAINST SUPPLIER FOR INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION, EITHER PARTY'S CLAIMS AGAINST THE OTHER PARTY FOR ACTS OR OMISSIONS OF GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT OF THE OTHER PARTY (INCLUDING ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBCONTRACTORS, SUCCESSORS OR ASSIGNS, AS APPLICABLE), EITHER PARTY'S TOTAL LIABILITY TO THE OTHER PARTY UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF: (A) [MULTIPLIER OF] THE FEES THAT CLIENT IS OBLIGATED TO PAY PURSUANT TO THIS AGREEMENT; OR (B) \$ [ENTER DOLLAR AMOUNT].

[Drafting Notes: Outsourcing agreements often contain a cap on direct damages for which a party may be liable. This cap can be an absolute dollar amount or a percentage of the fees paid or to be paid under the agreement.

Exclusion of Consequential Damages. Most outsourcing agreements will contain an exclusion of any special, indirect, exemplary, incidental or consequential damages (including loss of profits). Sometimes the parties consider certain specific exemptions from such exclusion, such a gross negligence, willful misconduct certain breaches (e.g., confidentiality obligations) and indemnification obligations as provided herein.

Alternative Clause: Limitation of Remedies. The Parties entire liability and exclusive remedy in any cause of action based on contract, tort or otherwise in connection with any Services furnished pursuant to this Agreement including its Exhibits shall be limited to the total fees paid by Client to Supplier. No action, regardless of form, arising out of this Agreement may be brought by either party more than one (1) year after the occurrence of the event giving rise to such cause of action.

EXCEPT WITH RESPECT TO AMOUNTS PAYABLE ARISING OUT OF CLAIMS BASED UPON WILLFUL, MALICIOUS OR GROSSLY NEGLIGENT CONDUCT OF THE LIABLE PARTY, NEITHER SUPPLIER NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION, OR DELIVERY OF THE SERVICES SHALL IN ANY EVENT WHATSOEVER BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES IN EXCESS OF THE TOTAL PRICE PAID BY CLIENT TO SUPPLIER (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SERVICES EVEN IF CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

#### 15. Change Management.

15.1 If any modification to the Services or System will be required by law or by governmental regulation or if Supplier elects to change the Services or System of its own accord, for any reason, Supplier and Client will use commercially reasonable efforts to accommodate necessary changes subject to the following. Supplier will not modify or change the Services or System in any way that could adversely affect Client or its customers (if the Services or System could affect Client's customers) without first providing ninety (90) calendar days notice to Client of the intended change or modification. After ninety (90) calendar days written notification from Supplier with respect to proposed modifications of the Services or System, if Client does not terminate the Services or System, Client will pay for any commercially reasonable increase in Supplier's costs and charges therefore; provided, however, that if the modification affects other clients of Supplier, such costs and charges will be shared equitably by all of Supplier's affected clients.

15.2 Subject to the provisions of Section 15.1 above, without prior notice to Client, Supplier, at its expense, may make any commercially reasonable modifications, changes, adjustments or enhancements to the Services or System that it considers to be suitable, which do not diminish the functionality of the Services or System and which do not have an adverse effect on Client.

[Drafting Notes: This clause is important to any successful outsourcing arrangement by providing effective communication between Client and Supplier to facilitate the outsourcing arrangement. Key factors to consider: A broad-based communications strategy for each key stakeholder groups in the organization, including not only HR but also executives, managers, and employees;

- An effective staff transition strategy, including appropriate redeployment, severance, and retention policies;
- An organizational design strategy for both the new governance organization and the retained organization whose positions are affected by the change in roles and responsibilities due to outsourcing;
- A change acceptance strategy to help make the HR transformation initiatives “stick;” and
- A training program to help employees, managers, and the retained organization understand how to work with the Supplier in the post-outsourcing environment.

16. Insurance.

16.1 Unless otherwise agreed to in writing, Supplier will, at its own expense, carry and maintain during the Term, the insurance coverage (with companies satisfactory to Client) in amounts no less than those specified on Exhibit "I," attached hereto and incorporated herein (“Insurance Requirements”). All insurance policies or bonds required by this Agreement will be issued by insurance companies with an A.M. Best Rating of not less than "A." Supplier will also be responsible for insuring that its subcontractors comply with the insurance requirements of this Section.

16.2 Supplier agrees to waive, and will require its insurers to waive, all rights of subrogation against Client, its directors, officers, and employees as it relates to this Agreement on all of the insurance coverage. On or prior to the execution hereof, Supplier will provide Client with a certificate of insurance evidencing such required coverage. In addition, Client will be notified of any material change or cancellation of such policies with at least thirty (30) calendar days prior written notice. If Supplier, at any time, neglects or refuses to provide or causes to be provided the insurance required herein, or should such insurance be canceled or materially changed without Client's consent, Client will have the right to procure the same and the cost thereof will be deducted from monies then due or subsequently due Supplier. Supplier will not commence work until all of the insurance required herein will have been obtained and approved by Client.

[Drafting Notes: The parties should consider the existence of, and need for, insurance for various types of losses as part of the overall risk allocation construct.]

[Drafting Notes 2: An insurance clause establishes the rights and obligations of the parties with respect to insurance policies covering the services, to be conducted during the course of the relationship. The clause usually serves five functions:

- (1) Identify who must purchase the insurance;
- (2) Identify what kinds of insurance policies must be purchased;
- (3) Identify the coverage amounts of the

- insurance policies;
- (4) Resolve ancillary issues concerning the form of the insurance; and
- (5) Waive the parties’ rights to subrogation for losses covered by the insurance policies.]

17. Miscellaneous.

17.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto. No course of dealing or usage of trade will be used to modify the terms and conditions hereof.

[Drafting Notes: The Entire Agreement clause states that any prior discussions or writings are invalid if not noted in this Agreement.]

17.2 No Oral Modification. No modification, extension or waiver of or under this Agreement will be valid unless made in writing and signed by an authorized representative of the Party sought to be charged therewith. No written waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.

[Drafting Notes: The Amendment clause informs the parties how the terms of the Agreement may be modified preventing any oral modifications.]

17.3 Wet Signatures. Only amendments, which each Party signs in wet signature, will be binding upon either Party subsequent to the Effective Date of this Agreement. No soft copy “click wrap” agreements may amend the terms and conditions of the Agreement, despite any provisions in other agreements to the contrary.

17.4 Unenforceability. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole; rather, this Agreement will be construed as if not containing the particular invalid or unenforceable provision or portion thereof, and the rights and obligations of the Parties hereto will be construed and enforced accordingly. In such event, the Parties will negotiate, in good faith, a replacement provision that would best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

[Drafting Notes: This provision preserves the Agreement even if a court determines certain provisions are held invalid, i.e., the confidentiality clause may be held invalid because the length of time to maintain the confidentiality is longer than 2-3 years.]

17.5 Assignment. Supplier may not assign or transfer any right or obligation under this Agreement without the prior written consent of Client. Supplier hereby consents to Client’s assigning this Agreement, in whole or in part.

17.6 Limitation on Supplier Assignment of Account Receivables from Client. Supplier may not assign to another party any account receivable that Client owes Supplier until Supplier has fulfilled the following requirements; any attempted assignment made without fulfilling these conditions will be null and void and ineffective as to any Client receivable:

17.6.1 Supplier has provided Client written notice of the proposed assignment at least thirty (30) calendar days before Client's payment obligation on the account receivable is due, such assignment notice containing, at a minimum, the following information or requirements:

17.6.1.1 a clearly designated effective date of the assignment;

17.6.1.2 a detailed description of each receivable being assigned;

17.6.1.3 signatures by the President or Controller of the Supplier and by the President or Controller of the assignee; and

17.6.1.4 if either the Supplier or the assignee are corporations, affixed corporate seal(s) with attestation by the corporation's Records Custodian of the signatures of the President or Controller of each corporation; and

17.6.2 Client has acknowledged the assignment in writing.

[Drafting Notes: Assignment clause determines whether rights, obligations and duties under an agreement may be transferred in whole in or part to another, and under what conditions. Under U.S. law, contractual rights are freely assignable or delegable, unless prescribed or limited by agreement. The cause frequently overlaps with "successors and assign" or "parties in interest" clauses that controls whether successors or assigns can assume the rights and obligations under the contract.]

#### Alternative Clause: Assignment

Neither party may, without the prior written consent of the other party, assign this Agreement, in whole or in part, either voluntarily or by operation of law, and any attempt to assign this Agreement in violation of this Section shall be a default of the Agreement pursuant to Section 7.2 above and such assignment shall be null and void. In the event the majority owner of a party becomes less than a 50% owner and/or the majority owner's equity position drops below 35% of said party such events shall be deemed assignments for purposes

hereof ("Change of Control Events"). An owner of a party which has a Change of Control Event shall have thirty (30) days from the date of the Change of Control Event to declare such event an assignment, or such event is waived as an assignment.

17.7 Notices.

17.7.1 Default, Modifications, Amendments and Termination Notices. With respect to notices permitted or required under this Agreement related to the following matters, such notices must be in writing and delivered by personal delivery or certified mail or overnight carrier mail, return receipt requested: (a) notices from one Party to the other Party of the other Party's default and right to cure, if applicable; (b) notices intended to extend the Term or otherwise amend the Agreement if the Agreement permits such actions; and (c) notices of Agreement termination. Such notices will be deemed given upon personal delivery, five (5) Business Days after deposit in the mail, or upon the date of the certification of written reply acknowledgment, whichever is applicable.

17.7.2 Other Notices. All other notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, facsimile transmission, certified or registered mail (return receipt requested), or electronic mail. Such notices will be deemed given upon personal delivery, five (5) Business Days after deposit in the mail, upon the date of the certification of written reply acknowledgment, upon acknowledgment of receipt of facsimile transmission, or upon personal electronic reply acknowledging receipt, whichever is applicable.

17.7.3 Applicable Address for Notices. Notices will be sent to the addresses set forth on the first page of this Agreement or to such other address as either Party may specify in writing.

[Drafting Notes: The Notices clause as noted above defines **how** notice is to be made, **where** notice may be made, and **when** the notice is deemed to have been received. The clause works in conjunction with other provisions of the agreement stating the circumstances when notice is required.]

17.8 Survival. Any and all provisions, promises and warranties contained herein, which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement, will survive the termination of this Agreement and remain binding upon and for the benefit of the Parties hereto.

[Drafting Notes: The survival clause allows the parties to enforce certain clauses of the Agreement even after the Agreement is terminated. Indemnities, confidentiality, intellectual property obligations, and some of the miscellaneous clauses as discussed here are

common clauses that survive termination of the Agreement.]

17.9 Publicity. Unless otherwise specified in writing by Client, Supplier will not disclose that Client is a customer of Supplier and will not use the name "Client" or any mark, logo or tradename owned or used by Client.

[Drafting Notes: Once the Agreement is signed, most suppliers want the option to send a press release announcing their new Customer. This clause is helpful to control that process or prevent it in its entirety.]

17.10 Independent Contractor. Supplier will perform Agreement solely as an independent contractor, and not as Client agent or employee. Supplier has no authority to make any statement representation or commitment of any kind or to take any action binding upon Client, without Client's prior written authorization.

Drafting Notes: The independent contractor clause informs the customer that supplier understands it's not an employee or agent of customer and therefore could not receive any employee benefits offered by customer or obligate customer in any contractual obligations with third-parties.]

17.11 Disputes and Arbitration. Except as otherwise expressly set forth in this Agreement, the Parties agree that any dispute arising in connection with the interpretation of this Agreement or performance of either Party under this Agreement or otherwise relating to this Agreement will be treated in accordance with the procedures set forth in this Section, prior to the resort by either Party to arbitration or litigation in connection with such dispute. Any dispute will be referred for resolution first to the [redacted] for Client, and [redacted] for Supplier. Such procedure will be invoked by either Party presenting to the other Party a Notice of Request for Resolution of Dispute ("Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone or personal conference of those executives will be held within ten (10) Business Days after the delivery of the Notice. In the event that the telephone or personal conference between these executives does not take place or does not resolve the dispute, either Party may refer the dispute to binding arbitration pursuant to the arbitration provisions set forth below.

[Drafting Notes: Arbitration or litigation? There are pros and cons for either path. Arbitration is known to be cheaper and offers a quicker resolution of the issues more commonly than litigation, but depending on the parties, there could be a panel of arbitrators which could extend the timeframe and increase costs. Arbitration also allows every piece of evidence to be considered since there are

no exclusionary rules, but decisions may be more subjective based on broader principles of justice and equity which may or may not have any real substance in a body of law. There is no jury to decide the issues which may be advantageous to one party, but not the other, but the real disadvantage, the decision is final and there is no right to appeal.]

#### Alternative Clause: Mediation and Arbitration

**Mediation and Arbitration**. The parties agree that any dispute arising in connection with the interpretation of this Agreement or the performance of any party under this Agreement or otherwise relating to this Agreement, except as set forth in the Injunctive Relief section hereof, shall be treated in accordance with the procedures set forth in this Section, prior to the resort by any party to further proceedings in connection with such dispute. The dispute shall be referred for resolution first to a senior executive for Customer, and Consultant. Such procedure shall be invoked by either Consultant or Customer presenting to the other a "Notice of Request for Resolution of Dispute" ("a Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone or personal conference of those executives will be held within ten (10) days after the delivery of the Notice. In the event that the telephone or personal conference between these executives does not take place or does not resolve the dispute, either party may refer the dispute to binding arbitration in New York, NY, in accordance with the rules of the American Arbitration Association by a panel of three arbitrators. The arbitration shall be binding, final, not appealable, enforceable and in lieu of any right to sue or seek other arbitration in any court or tribunal.

Except as otherwise expressly set forth in this Agreement, all claims or disputes between the Parties arising out of or relating to this Agreement will be decided by arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association currently in effect and in accordance with Title 9 of the United States Code, unless the Parties mutually agree otherwise in writing. Notice of the demand for arbitration must be filed in writing with the other Party and must be made within a reasonable time after the dispute has arisen. All statutes of limitation, which would otherwise be applicable in a judicial action brought by a Party, will apply to any arbitration or reference proceeding hereunder. The arbitration will be decided by a panel of three (3) arbitrators selected under the Commercial Arbitration Rules of the American Arbitration Association. Arbitration will be initiated in Atlanta, Georgia. Said arbitration will occur within thirty (30) calendar days after the Party demanding arbitration delivers the written demand on the other Party, unless the Parties mutually agree otherwise in writing. The award rendered by the arbitrators will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the Parties, no arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person

or entity not a party to this Agreement under which such arbitration arises. The arbitration agreement herein among the Parties will be specifically enforceable under applicable law in any court having jurisdiction thereof. Neither Party will appeal such award nor seek review, modification, or vacation of such award in any court or regulatory agency.

The arbitrators will award to the prevailing Party, if any, as determined by the arbitrators, all of its Costs and Fees. "Costs and Fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses (such as copying and telephone), court costs, witness fees and attorneys' fees.

[Drafting Notes: The time and expense involved in effecting the orderly transition of services from the Client to the Supplier (and back again) typically dictate that the outsourcing relationship must last for several years to make economic sense. Therefore, the outsourcing agreement should set forth procedures for the resolution of disputes between the parties that fall short of termination or litigation. The agreement should also state whether the customer will pay for the services during disputes. One option is to have the customer put any disputed payments in an interest-bearing escrow account until the dispute is resolved, with interest on the escrowed amount disbursed in accordance with the resolution.]

17.12 Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without reference to conflict of laws principles. If the Parties mutually agree to litigate a dispute in court, the Parties agree that any legal action brought under or in conjunction with this Agreement will be brought in a federal or state court of appropriate jurisdiction in the State of Georgia and venue will be proper in that court.

[Drafting Notes: A governing law or choice of law clause specifies that the laws of a mutually agreed upon jurisdiction will govern the interpretation of the terms of the contract.]

17.13 Permits, Etc. Supplier will obtain and pay for all permits, governmental fees, and licenses necessary for the performance of the Services to be provided hereunder and will obtain all required inspections, authorizations and approvals prior to commencement of the Services hereunder.

Drafting Notes: Depending on the particular industry, there may be certain regulatory requirements that Supplier needs to meet to provide the services. Often, the Supplier wants to pass those 3<sup>rd</sup> party costs to Client but Client may negotiate if it's the nature of Supplier's business to service this particular industry, then

maintaining such licenses or permits should be considered a business expense. Supplier would have to have those same licenses for all its customers, not just Client.]

17.14 Non-Solicitation. Each Party agrees that, during the Term and for twelve (12) months thereafter ("Restricted Period"), it will not, directly or indirectly, solicit or induce any employee of the other Party to consider or accept employment with the first Party. Neither Party is prohibited from responding to or hiring employees of the other Party who inquire about employment with the first Party on their own accord or in response to a public advertisement or employment solicitation in general.

[Drafting Notes: Suppliers often request this clause of the customer of the nature of the outsourcing business and the close relationship with Client. To ensure continuity of its business and human capital, suppliers often require this clause.]

17.15 Export Laws Compliance. Neither Party will export, directly or indirectly, any technical data acquired from the other Party pursuant to this Agreement (or any product utilizing any such data) to any country for which the U.S. Government, any agency thereof, or any applicable foreign governmental body at the time of export requires an export license or other governmental approval without first obtaining such license or approval. The Receiving Party will comply with all applicable export and import laws and regulations.

17.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same instrument.

[Drafting Notes: This clause provides that parties need not sign the same copy of an agreement and any of the copies can be treated as an original for evidentiary purposes.]

17.17 Compliance With Laws - Including OSHA and Anti-Discrimination. During the Term of this Agreement, Supplier and all its subcontractors, employees, agents, representatives and invitees will fully comply with all applicable laws, governmental regulations, rules, requirements, ordinances and other governing requirements of local and state authorities and the Federal government, as promulgated and amended from time to time, including, but not limited to: The U.S. Equal Employment Opportunity Commission; Executive Order 11246, as amended; Sections 501, 503, 504 and 505 of the Rehabilitation Act of 1973, as amended; 38 U.S.C. 4212 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; Executive Order 13201, as amended; the Occupational Safety and Health Act of 1970 ("OSHA"); the Immigration Reform and Control Act of 1986 ("IRCA"); the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act of 1990, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Equal Pay Act of 1963, as amended; and Title IX of the Education Amendments of 1972. Supplier further agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, age, disability, veteran status, or any classification protected by applicable laws. Supplier is not authorized to take any action in the

name of, or on behalf of Client, which would violate any of the foregoing.

**Alternative Clause: Compliance**  
Supplier represents and warrants to Client that as of the Effective Date the operations of the Data Centers and the provision of services to its customers is compliant with: (a) Supplier's service level agreements with its Data Center customers; (b) its vendor contracts; (c) the operating lease and real estate covenants for each Data Center; and (c) state or federal government laws, regulations and/or filing requirements related to the Data Centers.

17.18 Headings. Headings of particular sections are inserted only for convenience and are not to be considered a part of this Agreement or be used to define, limit or construe the scope of any term or provision of this Agreement. Should any provision of this Agreement require judicial interpretation, the Parties agree that the court interpreting or construing the same will not apply a presumption that the terms and conditions of this Agreement will be more strictly construed against one Party than against the other Party.

[Drafting Notes: Courts have held contracts unenforceable due to a misplaced heading hence the need for this provision.]

17.19 Audits.

17.20.1 Business Records. Supplier will make and keep complete and systematic written records (electronic or otherwise) of the Services performed, the equipment provided, expenses and receipts therefore incurred under this Agreement. Such records will include records relevant to any cost or expense incurred by Supplier, its employees or subcontractors and the employees or subcontractors of same, and Supplier will preserve all such records until three (3) years after Services are completed or equipment is provided hereunder. During the term of this Agreement and for three (3) years thereafter, Client (or its authorized agent or independent third party) will have the right to inspect and copy such records during Supplier's regular business hours, and such records may be used by Client, without limitation, subject to the provisions regarding Proprietary Information set forth in this Agreement, if any, in order to determine whether fees are accurate and Services have been properly provided. If an audit reveals that Supplier has overcharged Client, Supplier will promptly issue a credit against fees due or pay Client the amount of the overcharge. If an audit reveals an overcharge in excess of five percent (5%) of the fees being audited, Supplier will reimburse Client for the reasonable cost of such audit.

[Drafting Notes: The parties should specify responsibilities with respect to record retention (e.g., the Supplier shall retain records relating to the provision of services under the outsourcing agreement for the term of outsourcing agreement and for three years thereafter). The outsourcing agreement may also include terms regarding audits, such as the types of audit, the numbers of

audits that may be conducted within a given period for time, restrictions on who may conduct the audits and remedies in the event an audit reveals erroneous billing.]

17.19.2 Information Security. In addition to the information security audit and recourse rights afforded Client with respect to NPPI, Client (or its authorized agent or independent third party), subject to any limitations regarding Proprietary Information set forth in this Agreement, if any, will have the right to conduct a remote or on-site audit of Supplier, at Client's discretion, to review the information security systems and procedures, the data security systems, and the processes of Supplier, at any time during Supplier's regular business hours, upon no less than thirty (30) business days prior notice to Supplier to ensure the effective protection of Client Proprietary Information (other than NPPI). Such audit and review may include reasonable testing of Supplier's information security systems, procedures, the data security systems, and processes. Any such information security tests will be scheduled by mutual agreement between the Parties. Supplier agrees to promptly grant reasonable access to logs, policies, records, other materials, and Supplier personnel reasonably required for Client to perform the audit. Should such an audit, test or review reveal that Supplier's information security systems and procedures or its contemplated services do not effectively protect any Client Proprietary Information, then Supplier will complete and install modifications, the cost, expense, and allocation of which will be mutually agreed upon by the Parties, to its information security systems or implement recommended changes to its operating systems to meet the information security requirements of Client. If Supplier is unable to complete and install adequate modifications within thirty (30) calendar days of completion of the audit, then Client may immediately terminate this Agreement for cause. Prior to initiation of any audit as permitted under this Agreement, the Parties will discuss and mutually agree upon a reasonable estimate of the total costs of the audit, which Party will bear these costs, and the payment schedule for such costs. Client will reimburse Supplier's reasonable incremental direct expenses associated with the audit (e.g., reasonable copy charges or other reasonable standard expenses), but not any other expenses, such as a charge for access to Supplier personnel or other sources of information. It is the intent of the Parties that Client bear the agreed upon cost of any such audit as described in this Section, unless a substantial and previously unknown information security breach is identified as a result of such audit.

17.20 Exhibits. The following Exhibits are attached hereto and incorporated herein by this reference:

- Exhibit "A": Client Required Equipment
- Exhibit "B": Implementation Plan Statement of Work
- Exhibit "C": Supplier's Systems and Functional Specifications
- Exhibit "D": Service Level Agreement
- Exhibit "E": Fees
- Exhibit "F": Client's Travel Expense Policy
- Exhibit "G": Exclusive Use Software (if applicable)
- Exhibit "H": Source Code Escrow Agreement
- Exhibit "I": Insurance Requirements
- Exhibit "J": Privacy & Security Statement (if applicable)
- Exhibit "K": Dedicated Software Development (if

applicable)

**Structure of the Agreement.** The outsourcing agreement may be structured as a “master” allowing for future and multiple sub-agreements or a single, holistic instrument. Because of the long duration of most outsourcing relationships, the outsourcing agreement should include procedures by which the parties can address expected and unexpected changes and disputes with minimal disruption to the relationship.

**WHEREFORE, the Parties hereto have signed this Agreement.**

**[Insert applicable Client Corporate Name (same as on page one)]**  
**CLIENT**

**[Insert applicable Supplier Corporate Name (same as on page one)]**  
**SUPPLIER**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit "A":  
Client Required Equipment**

As of the Effective Date of this Agreement, Supplier recommends the following configurations:

**[NOTE: INSERT CONFIGURATIONS HERE.]**

**Exhibit "B":**  
**Implementation Plan Statement of Work**

This Implementation Plan Statement of Work ("Implementation Plan" or "SOW") is an Exhibit to and a part of that certain Outsourcing Agreement ("Agreement") entered into by and between Client ("Client") and [redacted] ("Supplier"), effective as of [insert date]. This SOW will be effective only when signed by Client and the Supplier and upon the later of the Effective Date as defined in the Agreement or the last date indicated below. This SOW may be amended only as provided for in the Agreement.

1. Definitions. Unless otherwise defined herein, all capitalized terms will have the meanings ascribed to them in the Agreement.

2. Description of Services.

2.1 Project Name.

2.2 Overview of Project.

2.3 Description of Project.

2.4 Objectives and Point of Arrival.

2.5 Assumptions.

2.6 Work Breakdown.

2.7 Project Schedule.

Milestone	Due Date	Associated Fee (if any)	Deliverable (if any)

3. Project Staffing.

3.1 Project Managers. The Project Managers for the Services described in this SOW will be:

	Name and Title	Mailing Address	Phone, Fax and E-mail Address
<b>For Client:</b>			
<b>For Supplier:</b>			

3.2 Client Staffing. Client will ensure that the persons listed below will perform the tasks set forth below. Unless otherwise indicated, Client will have discretion to substitute one or more persons for those listed below without obtaining approval from Supplier.

Name and Title	Function

3.3 Supplier Staffing. Supplier will ensure that the persons listed below will perform the tasks set forth below for the hourly fees set forth below, if applicable. Unless otherwise indicated, Supplier will have discretion to substitute one or more persons for those listed below without obtaining approval from Client; provided, however, that the hourly rate for such substitute(s) will not be increased without Client's written approval.

Name and Title	Function	Hourly Rate (if applicable)

3.4 Reporting. Client and Supplier will meet regularly during the course of the work set forth in this SOW. Unless Client and Supplier agree otherwise, they will meet at least pursuant to the following schedule to discuss the matters set forth therein:

Date (or schedule) of meeting	Content and format	Chair	Minutes prepared by	Distribution

4. Fees.

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To the extent Client requests Supplier to provide services substantially similar to those set forth in the Agreement but beyond the scope of the fees described above, Supplier will provide such services for fees equal to those set forth above, subject to annual increases, on the anniversary of the Effective Date, not to exceed [redacted] percent ([redacted]%).

5. Testing and Acceptance of System and Services.

**WHEREFORE, Client and Supplier have signed this Implementation Plan Statement of Work.**

[Insert applicable Client Corporate Name (same as on page one)]  
**CLIENT**

[Insert applicable Supplier Corporate Name (same as on page one)]

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Exhibit "C":  
Supplier's Systems and Functional Specifications**

**[Attached]**

**Exhibit "D":  
Service Level Agreement**

**[Attached]**

Exhibit "E":  
Fees

[Attached]

[NOTE: CONSIDER MILESTONE PAYMENTS, IF SUPPLIER REQUIRES UPFRONT FEES OTHER THAN IMPLEMENTATION.]

**Exhibit "F":  
Client's Travel Expense Policy**

**Transportation:  
Lodging and Meals:**

**Personal Expenses:**

**Business Calls:**

**Gratuities:**

**Exhibit "G":**  
**Exclusive Use Software**  
**[Attached, if Applicable]**



the performance of or compliance with the terms or conditions of any such instrument; for the maintenance of any property covered by this Agreement, including, but not limited to, payment of taxes, assessments, upkeep charges, or repair bills; for the sufficiency or priority of any security or the value or title of any property; for any loss which may occur by reason of forgeries, false representations, or the exercise of Escrow Agent's judgment in any particular manner; or for any other reason except negligence or intentional misconduct.

6.2 Escrow Agent will protect the confidentiality of the Escrow Material. Except as provided in this Agreement or any subsequent agreement between the Parties, Escrow Agent will not disclose, transfer, make available, or use the Escrow Material. Escrow Agent will not disclose the terms or conditions of this Agreement to any third party. If Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Escrow Material, Escrow Agent will immediately notify the Parties to this Agreement, unless prohibited by law. Client and/or Supplier will be responsible for challenging any such order; provided, however, that Escrow Agent does not waive its right to present its position with respect to any such order. Escrow Agent will not be required to disobey any order from a court or other judicial tribunal.

6.3 Upon termination of this Agreement, Escrow Agent will destroy, return, or otherwise deliver the Escrow Material in accordance with Supplier's instructions. If there are no instructions, Escrow Agent may, at its sole discretion, destroy the Escrow Material or return it to Supplier. Escrow Agent will have no obligation to destroy or return the Escrow Material if the Escrow Material is subject to another escrow agreement with Escrow Agent or has been released to Client in accordance with Sections 7 and 8 of this Agreement.

#### 7. Right to Escrow Material

Client will be entitled to receive all of the Escrow Material upon or after the occurrence of any of the following events ("Events of Default"):

7.1 The making of an assignment for the benefit of creditors by Supplier (i.e., the transfer of all or substantially all of Supplier's property to another person or entity in trust to collect any money owing to Supplier, to sell property, to distribute the proceeds to Supplier's creditors, and to return the surplus, if any, to Supplier);

7.2 The determination by a court of competent jurisdiction or an arbitrator that Supplier is bankrupt; an admission by Supplier that it is bankrupt; Supplier applying for or consenting to the appointment of, or the taking of possession by a receiver, custodian, trustee, or liquidator of itself or all or the substantial part of its property; or an order for relief is entered adjudicating Supplier as bankrupt under Chapter 7 of the Federal Bankruptcy Code;

7.3 The sale of Supplier or a merger in which Supplier is not the surviving Party if the acquiring or surviving Party in such sale or merger does not assume Supplier's rights and duties under the License Agreement;

7.4 The liquidation of Supplier or Supplier's failure to continue in its current business;

7.5 Supplier's ceasing of support for all Versions and Releases of the Products; or

7.6 Supplier's Persistent Failure to fulfill its service obligations under the License Agreement and/or applicable

exhibits thereto. For purposes herein, "Persistent Failure" is defined as a breach by Supplier of the License Agreement and/or applicable exhibits thereto, which in Client's commercially reasonable discretion, substantially incapacitates Client's use of the **[Insert name of application or system to be operating]** so that Products do not fulfill their essential purpose for Client during any **[ninety (90) calendar day period]** during the term of the License Agreement.

#### 8. Procedure.

8.1 Demand. Subject to Section 8.2, Escrow Agent will hold the Escrow Material until such time as the Escrow Agent receives an affidavit signed by an officer of Client, under penalty of perjury ("Client's Affidavit"), stating that: (a) one of the events described in Section 7 has occurred entitling Client to receive the Escrow Material; and (b) Client has delivered a copy of Client's Affidavit and any accompanying documents to Supplier in accordance with Section 17.7. Upon receipt of Client's Affidavit, Escrow Agent will, within three (3) Business Days of such receipt, provide Supplier with a copy of Client's Affidavit.

8.2 Objection. Escrow Agent will deliver the Escrow Material to Client or as otherwise directed in Client's Affidavit, within ten (10) Business Days following the date on which Client delivers Client's Affidavit to Escrow Agent under Section 8.1, unless within such time period Escrow Agent receives a reasonable written objection from Supplier in the form of an affidavit signed by an officer of Supplier, under penalty of perjury ("Supplier's Affidavit"), that: (a) specifically denies the statements made by Client in Client's Affidavit and describes the basis for such denial; (b) is accompanied by proof that a copy of Supplier's Affidavit was delivered to Client in accordance with Section 17.7; and (c) states that Supplier will submit to arbitration in accordance with Section 8.3 and will abide by any final order or decision rendered by the arbitrators in such arbitration. If Supplier's Affidavit is timely and in appropriate form when received, then Escrow Agent will not deliver the Escrow Material until it receives: (x) a written, notarized agreement between Supplier and Client authorizing such delivery; (y) any court order determining that Client is entitled to delivery of the Escrow Material under this Agreement; or (z) a final order or decision by the arbitrators under Section 8.3. Escrow Agent will deliver the Escrow Material in accordance with the directions in the written agreement, court order, or arbitrators' order or decision described in (x) through (z) above.

8.3 Arbitration. Upon receipt of Supplier's Affidavit, Supplier and Client will submit the issue to arbitration proceedings in Atlanta, Georgia, which proceedings will be conducted under the commercial rules then prevailing of the American Arbitration Association by a panel of three (3) arbitrators. Supplier and Client will modify the time schedules provided under such rules and will use their best efforts to meet deadlines such that the arbitration is concluded within ninety (90) calendar days following its initiation. The sole issue for arbitration will be whether Client is entitled to receive the Escrow Material under Section 7 including, without limitation, issues related to the License Agreement necessary to determine whether Client is entitled to the Escrow Material under Section 7, and the award of costs and fees described below. If the arbitrators determine that Client is entitled to receive the Escrow Material under Section 7, the arbitrators will order Escrow Agent to release the Escrow Material to Client. The prevailing Party in the arbitration proceedings will be awarded reasonable attorneys' fees, expert and non-expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings, including, but not limited to, any fees and expenses incurred by Escrow Agent, notwithstanding any other provision of this Agreement. The decisions of the arbitrators will be final and binding for all purposes on Supplier, Client, and

Escrow Agent and may be entered and enforced in any court of competent jurisdiction.

8.4 Equitable Relief. Both Supplier and Client acknowledge that important issues are at stake related to both Supplier's and Client's rights to the Escrow Material hereunder. Therefore, both Supplier and Client will be entitled, at their discretion, to seek court relief, including, but not limited to, preliminary injunctive, emergency, specific performance, and other equitable relief without proof of monetary damages. Supplier's and Client's agreement to submit to arbitration under Section 8.3 will not preclude Supplier or Client from seeking such relief pending the outcome of arbitration. Client will not disclose any Escrow Material obtained through judicial relief under this Section to any person other than employees, agents, contractors, and affiliates of Client who need to know and are obligated to keep the Escrow Material confidential, and will use the Escrow Material only as authorized under Section 9 or under the License Agreement. Client will return the Escrow Material and all copies of the Escrow Material to Escrow Agent if so directed by the final order or decision of the arbitrators under Section 8.3.

9. Use.

Client may use the Escrow Material provided under this Agreement solely to maintain, support, modify, enhance, and upgrade the Software for the License it has purchased from Supplier. Except for assignments and transfers of the Software permitted in the License Agreement, Client will not, under any circumstance, sell, disclose, assign, transfer, convey, or dispose of, in any manner, the Escrow Material or any portion of the Escrow Material.

10. Reliance.

Escrow Agent may conclusively rely upon and will be protected, indemnified, and held harmless by Client and Supplier, jointly and severally, in acting upon the written instructions (which will include instructions given by facsimile, e-mail or other telecommunications device) of any officer of either Supplier or Client, or of counsel to either of them, with respect to any matter relating to its actions as Escrow Agent under this Agreement. The Escrow Agent will comply with any such instruction, notwithstanding any demand or notice to the contrary from any person, and is relieved from liability for doing so.

11. Indemnification.

Client and Supplier, jointly and severally, covenant and agree to indemnify Escrow Agent and hold it harmless (without prejudice to a determination between Client and Supplier as to which Party will bear the ultimate responsibility) against any loss, liability, or expense arising out of or in connection with the performance of its duties under this Agreement, including, but not limited to, legal and other fees and expenses and including specifically, but without limitation, any legal or other expenses with respect to any action for interpleader by Escrow Agent, except that Escrow Agent will not be indemnified against any such loss, liability, or expense arising out of its negligence, fraud or intentional misconduct. Escrow Agent will be under no obligation to institute or defend any action, suit, or legal proceeding in connection with this Agreement, unless first indemnified and held harmless to its satisfaction in accordance with the foregoing.

12. Term of Agreement; Termination.

The Term of this Agreement will commence upon the Effective Date above and will continue in effect until Supplier and Client will both notify Escrow Agent, by notarized certificate, signed by an officer of both Supplier and Client, that Supplier no

longer has any obligation to Client requiring the deposit of the Escrow Material in Escrow, whereupon Escrow Agent will destroy the Escrow Material and provide acknowledgment thereof to Supplier.

13. Duties of Escrow Agent.

Escrow Agent will have no duty or obligation, except those expressly set forth in this Agreement, and no implied duty or obligation will be read into this Agreement against Escrow Agent. Escrow Agent will have no responsibility or liability to either Party or their successors for any action taken by it, in good faith, upon receipt of any instrument or other writing believed by it to be genuine and to be properly signed or presented. In case any property deposited under this Agreement will be attached, garnished, or levied upon pursuant to an order of court or other authority having jurisdiction, or the delivery thereof will be stayed or enjoined by an order of court, or any other order, judgment, or decree will be made or entered by any court affecting such property or any part thereof (unless such order, judgment, or decree has been stayed, pending appeal), Escrow Agent will obey and comply with all final writs, orders, judgments, or decrees so entered or issued by any court, without the necessity of inquiry whether such court had jurisdiction; and, in case such Escrow Agent obeys or complies with any such writ, order, judgment, or decree, it will be held harmless and indemnified by Client by reason of such compliance. Upon receipt of notice of an order, writ, judgment, or decree, Escrow Agent will transmit copies of said writ and other process or pleading received to all Parties, and will not comply with any writ, order, judgment, or decree until seven (7) Business Days following delivery of such copies to the Parties, if permitted under such document.

14. Expenses.

14.1 Within ninety (90) calendar days of receipt of an invoice from Escrow Agent, Supplier and Client will each pay one-half of the fees and expenses to Escrow Agent directly in accordance with Escrow Agent's fee schedule. The Escrow Agent's fees and expenses will be paid annually, in advance. Any cost incurred by the Escrow Agent will be billed at the end of the month in which it is incurred and will be due within ninety (90) calendar days.

14.2 In the event of non-payment of the fees owed to Escrow Agent, Escrow Agent will provide written notice of delinquency to the Parties to this Agreement. Either Party to this Agreement will have the right to make payment to Escrow Agent to cure the default. If the past due payment is not received in full by Escrow Agent within thirty (30) Business Days of the date of such notice, then Escrow Agent will have the right to terminate this Agreement, at any time thereafter, by sending written notice of termination to the Parties. Escrow Agent will have no obligation to take any action under this Agreement so long as any payment due to Escrow Agent remains unpaid.

15. Taxes.

Supplier and Client will each be responsible for one-half of any federal, state, excise, and local government fees, assessments, charges, and taxes connected with this Agreement.

16. Withdrawal of Escrow Agent.

Escrow Agent may resign upon sixty (60) Business Days written notice to Client and Supplier. Thereafter, upon payment of all fees and costs earned or incurred by Escrow Agent in connection with this Agreement, Escrow Agent will deliver the Escrow Material to a successor escrow agent named by Supplier and Client or, if none, to the party named in written instructions

from Supplier and Client. If a successor escrow agent has not been appointed and has not accepted appointment by the end of such sixty (60) Business Days period, Supplier or Client may apply to a court of competent jurisdiction for the appointment of a successor escrow agent and the reasonable costs, expenses, and attorneys' fees of Escrow Agent that are incurred in connection with such a proceeding will be paid equally by Supplier and Client.

17. Miscellaneous.

17.1 Entire Agreement. This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes all written or oral prior agreements or understandings with respect thereto. No course of dealing or usage of trade will be used to modify the terms or conditions hereof.

17.2 No Oral Modification. No modification, extension or waiver of or under this Agreement will be valid unless made in writing and signed by an authorized representative of the Party sought to be charged therewith. No written waiver will constitute, or be construed as, a waiver of any other obligation or condition of this Agreement.

17.3 Wet Signatures. Only amendments, which each Party signs in wet signature, will be binding upon either Party subsequent to the Effective Date of this Agreement. No soft copy "click wrap" agreements may amend the terms and conditions of the Agreement, despite any provisions in other agreements to the contrary.

17.4 Unenforceability. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole; rather, this Agreement will be construed as if not containing the particular invalid or unenforceable provision or portion thereof, and the rights and obligations of the Parties hereto will be construed and enforced accordingly. In such event, the Parties will negotiate, in good faith, a replacement provision that would best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

17.5 Assignment. Supplier may not assign or transfer any right or obligation under this Agreement without the prior written consent of Client. Supplier hereby consents to Client assigning this Agreement, in whole or in part.

17.6 Limitation on Supplier Assignment of Account Receivables from Client. Supplier may not assign to another party any account receivable that Client owes Supplier until Supplier has fulfilled the following requirements; any attempted assignment made without fulfilling these conditions will be null and void and ineffective as to any Client receivable:

17.6.1 Supplier has provided Client written notice of the proposed assignment at least thirty (30) calendar days before Client's payment obligation on the account receivable is due, such assignment notice containing, at a minimum, the following information or requirements:

17.6.1.1 a clearly designated effective date of the assignment;

17.6.1.2 a detailed description of each receivable being assigned;

17.6.1.3 signatures by the President or Controller of the Supplier and by the President or Controller of the assignee; and

17.6.1.4 if either the Supplier or the assignee are corporations, affixed corporate seal(s) with attestation by the corporation's Records Custodian of the signatures of the President or Controller of each corporation; and

17.6.2 Client has acknowledged the assignment in writing.

17.7 Notices.

17.7.1 Default, Modifications, Amendments and Termination Notices. With respect to notices permitted or required under this Agreement related to the following matters, such notices must be in writing and delivered by personal delivery or certified mail or overnight carrier mail, return receipt requested: (a) Notices from one Party to the other Party of the other Party's default and right to cure, if applicable; (b) Notices intended to extend the term or otherwise amend the Agreement if the Agreement permits such actions; and (c) Notices of Agreement termination. Such notices will be deemed given upon personal delivery, five (5) Business Days after deposit in the mail, or upon the date of the certification of written reply acknowledgment, whichever is applicable.

17.7.2 Other Notices. All other notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, facsimile transmission, certified or registered mail, return receipt requested, or electronic mail. Such notices will be deemed given upon personal delivery, five (5) Business Days after deposit in the mail, upon the date of the certification of written reply acknowledgment, upon acknowledgment of receipt of facsimile transmission, or upon personal electronic reply acknowledging receipt, whichever is applicable.

17.7.3 Applicable Address for Notices. Notices will be sent to the addresses set forth on the first page of this Agreement or to such other address as either Party may specify in writing.

17.8 Survival. Any and all provisions, promises and warranties contained herein, which by their nature or effect are required or intended to be observed, kept or performed after termination of this Agreement, will survive the termination of this Agreement and remain binding upon and for the benefit of the Parties hereto.

17.9 Publicity. Unless otherwise specified in writing by Client, Supplier will not disclose that Client is a customer of Supplier and will not use the name "Client" or any mark, logo or tradename owned or used by Client.

17.10 Independent Contractor. Supplier will perform this Agreement solely as an independent contractor, and not as Client's agent or employee. Supplier has no authority to make any statement, representation or commitment of any kind or to take any action binding upon Client, without Client's prior written authorization.

17.11 Disputes and Arbitration. The Parties agree that, other than as set forth in Section 8 of this Agreement, any dispute arising in connection with the interpretation of this Agreement or the performance of either Party under this Agreement or otherwise relating to this Agreement will be treated in accordance with the

procedures set forth in this Section, prior to the resort by either Party to arbitration or litigation in connection with such dispute. The dispute will be referred for resolution first to the \_\_\_\_\_ for Client, \_\_\_\_\_ for Supplier, and \_\_\_\_\_ for Escrow Agent. Such procedure will be invoked by any Party presenting to the other a Notice of Request for Resolution of Dispute (a "Notice") identifying the issues in dispute sought to be addressed hereunder. A telephone or personal conference of those executives will be held within ten (10) Business Days after the delivery of the Notice. In the event that the telephone or personal conference between these executives does not take place or does not resolve the dispute, any Party may refer the dispute to binding arbitration pursuant to the arbitration provisions set forth below.

Other than as set forth in Section 8 of this Agreement, all claims or disputes between the Parties arising out of or relating to this Agreement will be decided by arbitration pursuant to the Commercial Arbitration Rules of the American Arbitration Association currently in effect and in accordance with Title 9 of the United States Code, unless the Parties mutually agree otherwise in writing. Notice of the demand for arbitration must be filed in writing with the other Parties to this Agreement and must be made within a reasonable time after the dispute has arisen. All statutes of limitation, which would otherwise be applicable in a judicial action brought by a Party, will apply to any arbitration or reference proceeding hereunder. The arbitration will be decided by a panel of three (3) arbitrators selected under the Commercial Arbitration Rules of the American Arbitration Association. Arbitration will be initiated in Atlanta, Georgia. Said arbitration will occur within thirty (30) calendar days after the Party demanding arbitration delivers the written demand on the other Parties, unless the Parties mutually agree otherwise in writing. The award rendered by the arbitrators will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Except by written consent of the Parties to this Agreement, no arbitration arising out of or relating to this Agreement may include, by consolidation, joinder or in any other manner, any person or entity not a party to this Agreement under which such arbitration arises. The arbitration agreement herein among the Parties will be specifically enforceable under applicable law in any court having jurisdiction thereof. The Parties will not appeal such award or seek review, modification, or vacation of such award in any court or regulatory agency.

The arbitrators will award to the prevailing Party, if any, as determined by the arbitrators, all of its Costs and Fees. "Costs and Fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees.

17.12 Governing Law and Jurisdiction. Where the Dispute and Arbitration provisions of this Agreement are inapplicable, this Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without reference to conflict of laws principles. If the Parties mutually agree to litigate a dispute in court, the Parties agree that any legal action brought under or in conjunction with this Agreement will be brought in a federal or state court of appropriate jurisdiction in the State of Georgia and venue will be proper in that court.

17.13 Non-Solicitation. Each Party agrees that, during the term of this Agreement and for **twelve (12) months** thereafter (the "Restricted Period"), it will not, directly or indirectly, solicit or induce any employee of the other Party to consider or accept employment with the first Party. Neither Party is prohibited from responding to or hiring employees of the other Party who inquire about employment with the first Party on their own accord or in response to a public advertisement or employment solicitation in general.

17.14 Counterparts. This Agreement may be executed in one or more counterparts, each of which will for all purposes be deemed an original and all of which will constitute the same instrument.

17.15 Headings. Headings of particular sections are inserted only for convenience and are not to be considered a part of this Agreement or be used to define, limit or construe the scope of any term or provision of this Agreement. Should any provision of this Agreement require judicial interpretation, the Parties agree that the court interpreting or construing the same will not apply a presumption that the terms and conditions of this Agreement will be more strictly construed against one Party than against the other Party.

**WHEREFORE, the Parties hereto have signed this Agreement.**

**[Insert applicable Client Corporate Name (same as on page one)]**  
**CLIENT**

**[Insert applicable Supplier Corporate Name (same as on page one)]**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[Insert applicable Escrow Agent Name (same as on page one)]**  
\_\_\_\_\_  
("ESCROW AGENT")

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Exhibit "I":  
Insurance Requirements**

**[NOTE: THE TYPES OF COVERAGE AND INSURANCE LIMITS WILL BE DETERMINED BY CLIENT'S RISK MANAGEMENT DEPARTMENT AFTER SUPPLIER SELECTION HAS BEEN MADE. IF A PRE-DETERMINATION OF REQUIRED COVERAGE IS PREFERRED, CONSULT WITH RISK MANAGEMENT BEFORE SENDING OUT AN RFP.]**

**Workers' Compensation:**

(A)	Workers' Compensation: Statutory	
(B)	Employer's Liability:	
(1)	Bodily Injury by Accident, for Each Accident:	\$1,000,000
(2)	Bodily Injury for Each Employee by Disease:	\$1,000,000
(3)	Policy Limit for Bodily Injury by Disease:	\$1,000,000

**Commercial General Liability:**

Written on a per occurrence basis to include coverage for: Broad Form Property Damage; Bodily Injury; Personal Injury; Blanket Contractual Liability; Products/Completed Operations.

(A)	Combined Single Limit Per Occurrence:	\$1,000,000
(B)	General Aggregate:	\$2,000,000
(C)	Fire Legal Liability Per Occurrence:	\$ 50,000
(D)	Medical Expense Per Person per Occurrence:	\$ 5,000

This insurance policy shall be endorsed to name as additional insureds: Client, its subsidiaries, affiliate companies, its officers, directors and employees. This policy shall be primary and non-contributory.

**Automotive Liability:**

Such policy shall include coverage for all vehicles owned, hired, non-hired, non-owned and borrowed by Supplier in the performance of the Services covered by this Agreement.

Combined Single Limit:	\$1,000,000
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**Umbrella Liability:**

Combined Single Limit:	\$5,000,000
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This insurance policy shall be endorsed to name as additional insureds: Client, its subsidiaries, affiliate companies, its officers, directors and employees.

**Errors & Omissions Liability (Professional Liability)**

Such policy shall include coverage for actual or alleged breach of duty, act, error, omission, misstatement, misleading statement or neglect in the rendering of or failure to render the Services under this Agreement.

Combined Single Limit:	\$5,000,000
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**Fidelity Bond (Crime Insurance):**

Including blanket employee dishonesty:	\$5,000,000
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**Cyber Risk:** \$5,000,000

**Intellectual Property Liability** (may be a stand-alone policy or included in one of the policies above).

Such policy shall include coverage for infringement of any patent, trademark, or copyright.	
Combined Single Limit:	\$5,000,000

Exhibit "J":  
Privacy & Security Statement  
[Attached, if Applicable]

**Exhibit "K":  
Dedicated Software Development**

**[Attached, if Applicable]**

## CHECKLIST FOR SUPPLIER IN OUTSOURCING ARRANGEMENT

1. Determine the structure of the arrangement, as a “master” allowing for future and multiple sub-agreements or a single document. Because of the long duration of most outsourcing relationships, the outsourcing agreement should include procedures by which the parties can address expected and unexpected changes and disputes with minimal disruption to the relationship.
2. **Scope of Services.** The outsourcing agreement should identify not only the functions included in the scope of services, but also what functions are excluded from the scope of services and what functions are the responsibility of the customer.
3. **Quality of Services.** Measurements by which the Supplier’s performance may be monitored can be subjective (*e.g.*, reasonable efforts in providing services) and objective (*e.g.*, conformance to specifications). Supplier should focus on utilizing objective standards at all times.
4. **Fees and Payments.** The outsourcing agreement should specify the pricing mechanism (*e.g.*, fixed price, time and materials), any price controls (*e.g.*, CPI/PPI/ECI adjustment factors, price ceilings or floors), requirements regarding records retention, audit rights and responsibility for taxes. Supplier should also specify the services that fall outside of the fixed price and what services may be considered time and materials.
5. **Human Resources.** The outsourcing agreement should include the parties’ understanding regarding the retention, or transfer of the customer’s employees, as applicable.
6. **Intellectual Property.** The outsourcing agreement should state the parties’ intentions with respect to ownership of, and responsibility for, intellectual property, including intellectual property belonging to one party but used by the other and intellectual property developed in the course of the outsourcing relationship. Confidentiality covenants are necessary to better protect confidential information.
7. **Change Control and Change Management** are key clauses to be included to address the fluidity of the Parties’ intentions during the outsourcing arranging, and the processes to effect such change.
8. **Risk Allocation.** Typically included in the outsourcing agreement are provisions limiting each party’s liability for direct damages and excluding each party’s liability for indirect damages (*e.g.*, lost profits). The parties may also allocate risk through indemnities, disclaimers of liability, and insurance.
9. **Dispute Resolution.** Procedures for the resolution of disputes that fall short of termination or litigation should be included in the outsourcing agreement. The outsourcing agreement should contain terms regarding the provision of services and payment of fees during resolution of the dispute. Supplier should have a separate clause addressing injunctive relief.
10. **Termination.** The termination provisions should specify the circumstances under which one or both of the parties may terminate the agreement and the effect of termination or expiration on the rights and duties of the parties (*e.g.*, a party may not continue to be obligated under a non-competition covenant in the outsourcing agreement if the other party has materially breached that agreement). The outsourcing agreement should also include terms regarding the provision of termination transition services. Supplier should build in termination assistance fees, as well as early termination fees if Client wants to terminate the Agreement for convenience.
11. **Other Provisions.** The parties should consider and include provisions regarding audit, disaster recovery/business continuity, data privacy and protection and tax.

## CHECKLIST FOR CLIENT/CUSTOMER IN OUTSOURCING ARRANGEMENT

1. Determine the structure of the arrangement, as a “master” allowing for future and multiple sub-agreements or a single document. Because of the long duration of most outsourcing relationships, the outsourcing agreement should include procedures by which the parties can address expected and unexpected changes and disputes with minimal disruption to the relationship. Customer should conduct its due diligence internally and compare costs to keep the function in-house or outsource. Pricing should be a material focus to capture the cost savings that Customer hopes to achieve when selecting vendors or conducting a RFP.
2. **Scope of Services.** The outsourcing agreement should identify not only the functions included in the scope of services, but also what functions are excluded from the scope of services and what functions are the responsibility of the Customer. Customer will want a clear picture of its costs involved to have a true measure of cost savings.
3. **Quality of Services.** Measurements by which the Supplier’s performance may be monitored can be subjective (*e.g.*, reasonable efforts in providing services) and objective (*e.g.*, conformance to specifications). Customer should negotiate with Supplier to include Supplier’s internal requirements when drafting performance measures and acceptance criteria.
4. **Fees and Payments.** The outsourcing agreement should specify the pricing mechanism (*e.g.*, fixed price, time and materials), any price controls (*e.g.*, CPI/PPI/ECI adjustment factors, price ceilings or floors), requirements regarding records retention, audit rights and responsibility for taxes.
5. **Human Resources.** The outsourcing agreement should include the parties’ understanding regarding the retention, or transfer of the customer’s employees, as applicable.
6. **Intellectual Property.** The outsourcing agreement should state the parties’ intentions with respect to ownership of, and responsibility for, intellectual property, including intellectual property belonging to one party but used by the other and intellectual property developed in the course of the outsourcing relationship. Confidentiality covenants are necessary to better protect confidential information. Customer may want to retain ownership of intellectual property created by Supplier to transfer to a new Supplier if necessary.
7. **Change Control and Change Management** are key clauses to be included to address the fluidity of the Parties’ intentions during the outsourcing arranging, and the processes to effect such change.
8. **Risk Allocation.** Typically included in the outsourcing agreement are provisions limiting each party’s liability for direct damages and excluding each party’s liability for indirect damages (*e.g.*, lost profits). The parties may also allocate risk through indemnities, disclaimers of liability, and insurance. Customer will want to have an unlimited cap for damages regarding intellectual property, confidentiality, compliance with laws, fraud, willful misconduct, and gross negligence. Depending on the cost or fees of the Services, it may be appropriate to limit damages to fees paid.
9. **Dispute Resolution.** Procedures for the resolution of disputes that fall short of termination or litigation should be included in the outsourcing agreement. The outsourcing agreement should contain terms regarding the provision of services and payment of fees during resolution of the dispute. Customer should have a separate clause addressing injunctive relief.
10. **Termination.** The termination provisions should specify the circumstances under which one or both of the parties may terminate the agreement and the effect of termination or expiration on the rights and duties of the parties (*e.g.*, a party may not continue to be obligated under a non-competition covenant in the outsourcing agreement if the other party has materially breached that agreement). The outsourcing agreement should also include terms regarding the provision of termination transition services.
11. **Other Provisions.** The parties should consider and include provisions regarding audit, disaster recovery/business continuity, data privacy and protection and tax.