



**LOCKWOOD  
MOORE  
INC.**

OFFICE TECHNOLOGY MANAGEMENT

# MASTER AGREEMENT

## AGREEMENT TERMS AND CONDITIONS

### DEFINITIONS

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

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

**"Fees"** means any Equipment Costs, Usage Charges, Parts, Supplies, Subscription Fees, Professional Services Fees and/or other fees which are mutually agreed to between DEALER and CUSTOMER, or on any future mutually agreed upon in any Exhibit, Addendum, Statement of Work signed by both parties.

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

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

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

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

**"Exhibit, Addendum, Statement of Work"** means the document that will be created, and mutually agreed upon and signed by both parties, to define the details of the services and/or equipment to be provided or be performed as described.

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

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

**"Site"** means each CUSTOMER site that will be receiving the DEALER Services and/or equipment, which sites are set forth on the attached Exhibit, Addendum, or Statement of Work.

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

**Additional Documents** means the Exhibits, Addendum, or Statements of Work added from time to time to this Agreement and the corresponding

terms and conditions entered into by the Parties from time to time, and made a part hereof.

**Additional Services** refers to consulting and other technology services, security services, and/or maintenance and support service that may be provided by DEALER, or third party subcontractors, which are outside the scope of this Agreement and related Exhibits, Addendum, and Statements of Work.

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

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

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

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

**CUSTOMER Network** means the technology equipment owned or leased by CUSTOMER, or through which CUSTOMER receives services (e.g., hosted virtual servers, firewalls, etc.) including but not limited to, routers, firewall appliances, switches, computer servers, cabling, computer workstations, portable computers, tablets, peripheral devices, storage devices, remote-connectivity and wireless devices, software, firmware, drivers and related products.

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

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

**Equipment** means that hardware set forth on an attached Exhibit, Addendum or Statement of Work.

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

**Party or Parties** means DEALER and CUSTOMER individually or collectively.

**Product** means technology equipment and/or services, not already owned or leased by CUSTOMER, which DEALER may supply as a part

of the Services and other projects, including but not limited to, computers, networking equipment and peripherals, as well as services delivered solely by automated systems.

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

**Remediation Fees** mean those fees and costs necessary to bring equipment, systems, or network to the operating specifications in existence prior to an intrusion, breach, or failure of CUSTOMER's equipment, system, or network.

**Service Fees** mean the periodic fees paid to DEALER by CUSTOMER for services included under one or more Exhibits. Addendum, or Statement of Work to this Agreement.

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

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

**Service Level Agreement(s) (SLA)** means the performance standards described in each Exhibit, Addendum, or Statement of Work.

**Setup Fee(s)** refers to a one-time fee payment required to bring equipment to industry standards prior to the initiation of Services under one or more Exhibits, Addendum, or Statement of Work to this Agreement.

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

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

**Term** refers to a period time during which services are provided under one or more Exhibits, Addendum, or Statement of Work to this Agreement.

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

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

**Monthly Copy Count** refers to the total number of 8.5 x11 impressions made by CUSTOMER during the month multiplied by the monochrome, color, or oversize rate.

**End User Billing** refers to a direct billing relationship between DEALER and CUSTOMER. End user billing is computed by multiplying the CUSTOMER Billing Rate for a Service by the Monthly User or Copy Count or amount in excess of a base amount for a Service.

## 1. DEALER SERVICES AND DEPLOYMENT.

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

1.2 **Deployment.** Upon execution of this Agreement by both parties, both parties will promptly undertake the activities and set-up necessary to allow CUSTOMER access to the DEALER Services. After the Effective Date, DEALER will follow the estimated "go-live" date and CUSTOMER shall cooperate with all CUSTOMER responsibilities. Both parties agree to make a good faith effort to complete the site preparation, setup, training and, if applicable, conversion activities (the "**Deployment**") in a timely fashion and

to perform the Deployment according to the responsibilities described in the Exhibit, Addendum, or Statement of Work. CUSTOMER further agrees to cooperate with DEALER in fulfilling any reasonable request that is necessary to complete the Deployment in a timely and professional manner. DEALER will notify CUSTOMER when the Deployment is complete (the "**Commencement Date**").

1.3 **Commencement and Testing.** On the Commencement Date, DEALER will provide access to the test environment for inspection and evaluation purposes of certain Services, but not for productive or commercial use. CUSTOMER will execute the Site Sign-Off within three (3) days from the Commencement Date ("**Testing Period**"), and CUSTOMER will indicate either (a) that Deployment is complete in accordance with the responsibilities set forth in the Exhibit, Addendum or Statement of Work, or (b) within such Testing Period, describe in reasonable detail, all Deployment requirements that are not completed. If CUSTOMER does not provide timely notice of uncompleted Deployment activities during the Testing Period as set forth above or if CUSTOMER uses the hosted site for productive or commercial purposes for a period of two (2) business days or more at the Site, then the test environment will be deemed accepted by CUSTOMER ("**Deemed Acceptance**").

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

1.5 **Licensing:** Software must be properly licensed. In certain instances, CUSTOMER will be required to register the use of license keys with the software vendor (i.e. all Microsoft licenses) and complete and file requisite documentation and maintain software assurance or other maintenance as required by the software vendor. **ALL THIRD PARTY SOFTWARE IS PROVIDED "AS IS" AND CUSTOMER SHALL LOOK SOLELY TO THE SOFTWARE DEVELOPER FOR ANY CLAIMS.**

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

3. **SECURITY.** DEALER and CUSTOMER agree to strictly comply with the security measures set forth on the attached Exhibit, Addendum, or Statement of Work in order to protect CUSTOMER Equipment, Network, and Data (the "**Security Measures**"). CUSTOMER acknowledges that, notwithstanding any physical, technical, and/or administrative controls and safeguards that DEALER may institute to protect CUSTOMER Equipment, Network, and Data, the use of or connection to the Internet provides unauthorized third parties the opportunity to circumvent these precautions to gain access to the DEALER Services and CUSTOMER Data. If DEALER reasonably believes that CUSTOMER Data has been accessed by or disclosed to an unauthorized person as a result of the Security Measures being compromised, then DEALER will immediately notify CUSTOMER of the problem's existence and extent (as known) and what DEALER is or can do to correct or Remediate the problem. However, DEALER may temporarily delay notification, to the extent that such delayed notification is required by court order or applicable laws in order for DEALER to assist in

any governmental or criminal investigation relating to the unauthorized access to CUSTOMER Data. CUSTOMER shall be solely responsible for informing its customers about any unauthorized access or disclosure of CUSTOMER Data according to applicable law. If a Security breach is a result of CUSTOMER's failure to secure any Dealer Service, CUSTOMER shall be solely responsible for all Remediation Fees necessary to restore CUSTOMER's Equipment or Network.

#### 4. **CHANGES TO THE EQUIPMENT, SERVICES.**

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

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

4.3 Changes in Equipment. Customer may add Equipment by execution of an appropriate Exhibit, Addendum, or Statement of Work. Maintenance and support of CUSTOMER Equipment is for a set period of time and may not be cancelled during the term or any renewal.

#### 5. **FEES.**

5.1 Subscription Fees. Commencing on the Effective Date and continuing each month thereafter, CUSTOMER will pay DEALER the Subscription Fees reflected in DEALER's invoice (which will be in accordance with the terms set forth on the applicable Exhibit, Addendum, or Statement of Work within twenty (20) days of receipt of such invoice. Unless otherwise specified in an Exhibit Addendum, or Statement of Work, Subscription Fees for the DEALER Services will be due on a monthly basis. For any partial month, CUSTOMER shall pay a pro-rata amount, calculated from the beginning date in which the Subscription Fee or Equipment use is due until the end of the applicable month. During the Initial Term, the Subscription Fees will not be changed other than for increases for third party costs (fuel, parts, supplies, taxes) incurred by DEALER. DEALER may change its Subscription Fees for DEALER Services by notifying CUSTOMER in writing at least thirty (30) days in advance of any Renewal Term, with such new pricing to take effect upon commencement of such Renewal Term.

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

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

errors or defects; (iii) CUSTOMER change orders and/or CUSTOMER requested customizations; (iv) CUSTOMER requested additional services and products, (v) Remediation Services and (vi) failure of CUSTOMER to bring Equipment to industry standards. CUSTOMER requests for professional services that are outside the scope of the type of DEALER Services being provided under this Agreement, are subject to DEALER's acceptance, which acceptance may be withheld in DEALER's discretion.

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

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

#### 6. **ACCESS TO DEALER SERVICES.**

6.1 DEALER Services to CUSTOMER Through Remote Access to the Equipment/Hosted System. DEALER will have the right to manage the Equipment and/or Hosting Site, and all equipment, peripheral devices and databases at the hosted site as DEALER deems necessary, and CUSTOMER hereby grants Dealer the right to remote access.

6.2 Privacy and Hosting Site Requirements.

a. Privacy Requirements. DEALER agrees to comply with the privacy terms and conditions, if any, set forth on the attached Exhibit, Addendum or Statement of Work.

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

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

7. **THIRD PARTY APPLICATIONS.** DEALER Services may include certain applications listed on an Exhibit, Addendum, or Statement of Work as updated from time to time by DEALER during the term of this Agreement ("**Third Party Applications**") provided by third parties ("**Third Party Providers**") in connection with providing the DEALER Services to CUSTOMER hereunder. DEALER has listed on the Exhibit, Addendum, or Statement of Work those Third Party Applications and Third Party Providers currently being used as of the Effective Date. DEALER will provide CUSTOMER with written notification of any future changes in such Third Party Applications and/or Third Party Providers and update an Exhibit, Addendum, or Statement of Work as applicable. If CUSTOMER orders a Third Party Application as identified on an Exhibit, Addendum, or statement of Work (or in a future mutually agreed upon proposal), CUSTOMER agrees that (i) access to the Third Party Application is subject to, and CUSTOMER agrees to comply fully with, that Third Party Application's terms and conditions, and (ii) to the extent authorized by the Third Party Providers, DEALER will pass through any warranty terms applicable to the Third Party Application. DEALER, however, is not responsible for any warranty support related to that Third Party Application, except to assist CUSTOMER in communicating warranty claims to the Third Party Provider. NOTWITHSTANDING ANYTHING TO THE CONTRARY, DEALER IS NOT LIABLE FOR ANY DELAY IN DELIVERY OR UNAVAILABILITY OF THIRD PARTY APPLICATIONS USED BY CUSTOMER AND DEALER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE RELATED TO SUCH THIRD PARTY APPLICATIONS. ALL SUCH THIRD PARTY APPLICATIONS ARE PROVIDED BY DEALER "AS IS" AND "AS AVAILABLE". Orders by CUSTOMER for Third Party Applications may be non-cancellable and non-returnable to DEALER. DEALER reserves the right to change Third Party Providers or to provide similar services directly to CUSTOMER with notice, provided that the services shall not be materially diminished in quality or performance. DEALER may pass through any increase in fees from Third Party Providers. CUSTOMER shall reimburse DEALER for any Third Party Provider fees or charges incurred by DEALER on behalf of CUSTOMER. The continued availability of Third Party Applications is not within the control of DEALER and CUSTOMER therefore agrees that DEALER may cancel and cease to provide any Third Party Applications with a minimum of fifteen (15) days prior notice at any time without liability to CUSTOMER. In case of cancellation, DEALER will reasonably assist CUSTOMER in identifying an alternative provider of the Third Party Applications. DEALER does not support Third Party Applications other than the Third Party release version commercially supported by DEALER. DEALER does not warrant that the versions of the Third Party Applications set forth on the attached Exhibit, Addendum, or Statement of Work (as well as the versions of any Third Party Applications added to an Exhibit, Addendum, or Statement of Work by DEALER at a future date), shall operate with the DEALER Application Services to permit CUSTOMER to effectively access and utilize the DEALER Services throughout the Term of this Agreement.

#### 8. **DATA SUPPORT SERVICES AND BACKUP.**

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

8.2 Exceptions. CUSTOMER may be responsible for expenses incurred in resolving problems caused by any of the following: (i) CUSTOMER software or other CUSTOMER systems not provided by or

through DEALER or approved by DEALER, (ii) failure by CUSTOMER in fulfilling CUSTOMER Responsibilities described below; (iii) customizations or development of new interfaces performed by parties other than DEALER or a DEALER approved or recommended Third Party Provider or (iv) CUSTOMER's failure to secure DEALER services that would prevent the incident. In such event, DEALER and CUSTOMER shall agree on the additional fee to be charged to CUSTOMER for such services.

8.3 Data Backup. DEALER will assist in the recovery of any lost or damaged items or data as an Additional Service not included within the standard services and in the event CUSTOMER declined DEALER back-up services.

#### 9. **CUSTOMER RESPONSIBILITIES.**

9.1 Management of CUSTOMER Resources. Unless otherwise agreed in writing CUSTOMER is responsible for obtaining and maintaining, at its own expense, all data processing and communications equipment, as well as any third party hardware, software, or services (collectively the "**CUSTOMER Resources**") unless otherwise provided in an Exhibit, Addendum, or Statement of Work.

9.2 CUSTOMER Networks. CUSTOMER acknowledges that changes to CUSTOMER's computer networks may adversely affect the performance of the DEALER Services. Therefore, if CUSTOMER changes its computer networks after Acceptance without receiving written approval from DEALER, then CUSTOMER assumes all risks.

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

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

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

#### 9.6 CUSTOMER Indemnification.

a. CUSTOMER Indemnification. CUSTOMER will defend, and/or settle, any third party claim or suit brought against DEALER or its employees, agents, officers, directors, or contractors ("**DEALER Indemnified Parties**") caused by the negligent actions or omissions or intentionally wrongful actions of CUSTOMER arising out of or related to: (i) the use or transmission of CUSTOMER Data, (ii) the loss, theft, or misuse

of passwords and/or login information used to access the Administrative Login or User Accounts, (iii) breach or intrusion of CUSTOMER's Equipment or Network due to CUSTOMER's security failure or failure to contract DEALER's Security Services, or (iv) violation of Regulatory Requirements applicable to CUSTOMER's business operations, and CUSTOMER will pay all damages finally awarded by a court of competent jurisdiction or agreed to in settlement by CUSTOMER attributable to such claim, provided that in each case (a) CUSTOMER is notified in writing of such claim; (b) DEALER provides information and assistance reasonably requested by CUSTOMER or CUSTOMER's designee and (c) CUSTOMER is given and assumes responsibility for sole control of defense and settlement of such third party claim; provided that (i) CUSTOMER shall not settle such claim without the consent of DEALER which consent will not be unreasonably withheld and (ii) DEALER or its designee may participate at its own cost in any defense.

b. CUSTOMER Hold Harmless. CUSTOMER agrees to hold DEALER harmless from and against any loss, expense or damage (including attorneys' fees and costs) arising out of any claim, suit, or action which may be brought against DEALER with respect to the DEALER Services or resulting from any act or omission of CUSTOMER which is in contravention of CUSTOMER's obligations under this Agreement or CUSTOMER's failure to contract any offered Services.

## 10. **WARRANTY.**

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

10.2 Disclaimers and Exclusions. Neither DEALER nor any of its Third Party Providers, licensors, employees, or agents warrant that the operation of the applications will be uninterrupted or error free. Except as expressly provided in this Agreement, DEALER shall not be liable for any damages arising out of use or inability to use the applications unless caused by DEALER's sole acts or omissions which constitute gross negligence or reckless or intentional wrongful acts. DEALER shall not be liable for unauthorized access to or alteration, theft, or destruction of CUSTOMER's Data files, programs, procedures, or information through accident, fraudulent means or devices, or any other method, unless such access, alteration, theft, or destruction is solely caused as a result of DEALER's gross negligence or reckless, or intentional wrongful acts. DEALER does not warrant that the DEALER Services will meet CUSTOMER's requirements or operate in combination with other hardware, equipment, software, systems, or data not provided by or through (or approved or authorized by) DEALER or otherwise conforming to the written specifications provided by DEALER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, DEALER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT, BY STATUTE OR BY OPERATION OF LAW OR OTHERWISE, CONTAINED IN OR DERIVED FROM OR RELATED TO THIS AGREEMENT, ANY OF THE ATTACHED EXHIBITS, ADDENDUMS OR STATEMENT OF WORK, ANY OTHER REFERENCED DOCUMENTS, THE SERVICES PERFORMED OR IN ANY OTHER MATERIALS, PRESENTATIONS, OR OTHER DOCUMENTS OR COMMUNICATIONS, WHETHER ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

## 11. **INTELLECTUAL PROPERTY OWNERSHIP.**

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

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

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

## 12. **CONFIDENTIAL INFORMATION.**

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

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

the other party of any actual or suspected misuse or unauthorized disclosure of the other party's Confidential Information.

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

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

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

14. **TERM.** Unless otherwise terminated in accordance with the terms of this Agreement including Section 15 ("Termination of Agreement"), this Agreement (including the Services provided under an Exhibit, Addendum, or Statement of Work shall continue from the Effective Date through the

conclusion of the Term stated in the Exhibit, Addendum, or Statement of Work, unless terminated by Dealer for cause. An Exhibit, Addendum, and Statement of Work is a term agreement and is not cancellable or refundable.

## 15. **TERMINATION OF AGREEMENT.**

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

### 15.2 Effect of Termination.

a. If this Agreement terminates for any reason, then: (i) all relevant rights and licenses that have been granted to CUSTOMER associated therewith (including without limitation access to the applicable DEALER Services) shall terminate. Furthermore, CUSTOMER and DEALER will destroy or return to the other party all copies of Confidential Information of the other party, and CUSTOMER will destroy or return all relevant copies of DEALER Software contained on any CUSTOMER hard drive or other fixed medium of storage.

b. In the event of termination of this Agreement for any reason, CUSTOMER will pay DEALER (i) the full amounts due under the applicable Exhibit, Addendum, and Statement of Work ; (ii) any unpaid out-of-pocket costs of DEALER incurred in acquiring any Third Party Applications or providing any Services; and (iii) any applicable de-conversion costs under Section 15.3. The termination of this Agreement shall not affect either party rights to pursue its remedies at law or in equity for the other party's breach prior to such termination.

c. The defined terms, Section 9.6 ("CUSTOMER Indemnification"), Section 10.3 ("Disclaimers and Exclusions"), Section 11 ("Intellectual Property Ownership"), Section 12 ("Confidential Information"), Section 13 ("Limitation of Liability"), Section 15.2 ("Effect of Termination"), and Section 17 ("Miscellaneous"), shall survive any termination or expiration of all of or part of this Agreement, together with any provision otherwise expressly stated to survive such termination or expiration for the maximum period allowed by law.

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

## 16. **MISCELLANEOUS.**

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

16.2 Interpretation of this Agreement. Pronouns, nouns, and terms used in this Agreement include the masculine, feminine, and/or neuter and singular and/or plural forms wherever appropriate to the context. "Including" is used to list examples and is not used by way of limitation. "Will", "shall", and "may not" are used as mandatory terms and "may" is used as a permissive term. If any provision of this Agreement is held to be unenforceable or invalid, then all of the remaining provisions will continue in

full force and effect. This Agreement shall be deemed to be drafted equally by both parties after consultation with legal counsel.

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

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

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

16.6 Publicity. DEALER at any time may request CUSTOMER to approve CUSTOMER's name and logo use in DEALER CUSTOMER lists used for marketing purposes; CUSTOMER's specific advance written consent will be required for any such use. Upon prior written consent of the other party, a party may issue a press release (or a joint press release may be issued) relating to the business relationship between the parties. Neither party may use the trade names, trademarks, service marks, logos, or other proprietary marks of the other party or any Third Party Provider in any advertising, marketing, public statement, or trade display without the prior written approval of the other party and, if applicable, the Third Party Provider.

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

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

16.9 Dispute Resolution.

a. Informal Dispute Resolution. In the event of a dispute between the parties over any matter relating to this Agreement ("**Dispute**"), each party agrees to use its best good faith efforts to resolve the Dispute by informal means through discussions and meetings with the other party. The parties agree to spend a minimum of thirty (30) days, in which at least two face-to-face meetings between the parties have occurred, and at which at least one senior level executive from each party is present.

b. Mediation. If the parties are not able to informally resolve a Dispute within such thirty (30) day period (or such longer period as is mutually agreed to between parties), then either party may request in writing that the Dispute be mediated, and the Dispute shall be mediated (the "**Mediation**") with such Mediation to begin within fifteen (15) days of the date of the written request for Mediation. The Mediation shall take place at a mutually agreeable location, or if there is no mutual agreement, in

DEALER's corporate offices. The Mediation shall be conducted before a single mediator to be agreed upon by the parties. If the parties are unable to agree on a single mediator, each party shall select a mediator and such two mediators shall together unanimously select a neutral third mediator, which neutral third mediator will conduct the Mediation. Each party shall bear the fees and expenses of its selected mediator and the parties shall equally bear the fees and expenses of the mediator that is agreed upon by the parties or chosen by the mediators selected by the parties.

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

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

16.11 Non-Hire. During the term of this Agreement and any Exhibit, Addendum, or Statement of Work and for a period of one (1) year following expiration or termination thereof, CUSTOMER shall not directly or indirectly hire, contract with, solicit, or encourage any DEALER employee, consultant, contractor, or agent to leave the employ of DEALER, consultant, contractor, or agent. Violation of this provision shall result in the CUSTOMER compensating DEALER one (1) year's compensation, including benefits, of the individual engaged not as a penalty, but as liquidated damages.

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

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