

## Master Services Agreement

This Master Services Agreement (this "**Master Agreement**") is incorporated by reference into and made a part of each SOW (as defined below) by and between **Navisite LLC** and its Affiliates, as defined below (the "**Company**"), and the Customer identified on the signature page to this Master Agreement (the "**Customer**"). This Master Agreement, along with each such SOW, may be referred to herein from time to time, collectively, as this "**Agreement**." By executing a SOW, the Customer agrees to the terms and conditions set forth in this Master Agreement. The Company and Customer may be referred to herein or in any SOW from time to time each as a "**Party**" and, collectively, as the "**Parties**." Capitalized terms used in this Agreement and not otherwise defined shall have the meanings ascribed to them in Section 15.

### Section 1: Scope of Services; Performance.

**1.1 Services; Deliverables.** The Company agrees to provide, and Customer agrees to accept in accordance with the terms and conditions of this Agreement those services described in an applicable SOW (the "**Services**") and the Deliverables described therein. Company and Customer may, by mutual agreement and in accordance with this Agreement, from time to time enter into additional SOWs which, upon execution by both Parties, shall become attachments to and shall be incorporated into this Agreement. Each SOW, together with this Master Agreement, shall be deemed to be a separate agreement by and between the Parties.

**1.2 Commencement; Method of Performing Services.** Unless otherwise provided in an applicable SOW, the Company shall commence performance of the Services within 30 days after both Parties shall have executed and delivered the applicable SOW. Unless otherwise set forth in the applicable SOW, the Company shall have the right to determine the method, details, and means of performing the Services and delivering the Deliverables.

**1.3 Changes to Specifications.** Changes to any Specification shall become effective only when a written change order describing such changes and setting forth the terms and conditions thereof (a "**Change Order**") is executed by authorized representatives of both Parties. Each Change Order shall describe any mutually-agreed-upon changes or additions; provide a schedule for the development, installation, implementation of the additional Services or Deliverables and include the applicable fees for the aforementioned changes, modifications, and/or customizations. The Company will not commence, and Customer shall not be liable for any charges associated with any change request until the Company and Customer have approved a final Change Order. In the event that a pending Change Order describes Services or Deliverables which could affect the Company's performance of other Services or Deliverables under an outstanding SOW, the Company may delay its performance of such Services and delivery of such Deliverables until such time as the applicable Change Order shall have been accepted or rejected in

writing by Customer. The Company's time for performance under any such affected SOW shall be extended to account for any delays caused by Customer's failure to accept or reject any Change Order and for any other delays that result from the changes made pursuant to such Change Order.

**Section 2: Invoicing; Payments.** Unless otherwise provided in an applicable SOW, the Company will endeavor to submit invoices to Customer for payment for Services and/or Deliverables on a monthly basis. All initial set-up and other one-time fees will be invoiced upon execution of the applicable SOW. Usage-based overage charges shall be invoiced in arrears and Monthly Recurring Fees will be invoiced for the Current month. Invoices may be provided to Customer by email. Customer shall pay all undisputed invoices within thirty (30) days of the invoice issuance date. Monthly commitment fees for metered services are not prorated. All invoices shall (i) specifically refer to the SOW to which they relate and (ii) separately set forth reimbursable expenses, if any. Disputed fees (excluding AWS and equipment purchases which must be paid when due regardless of any dispute) must be reported by Customer to the Company in writing as follows (x) for invoices issued in arrears, within thirty (30) days of the applicable invoice date and (y) for invoices issued in advance, within sixty (60) days of the applicable invoice date. Without limiting the Company's rights under Section 9 of this Agreement, if Customer fails to pay any undisputed invoice within fifteen (15) days of the due date, the Company may cease all further work until such time as it receives payment in full. Furthermore, if Customer is more than fifteen (15) days delinquent in any payments to the Company, the Company may modify its payment terms in its sole and absolute discretion, including without limitation, the Company may require further assurances or security from Customer or full payment prior to commencing any Services or delivering any Deliverables under any and all SOWs or other agreements with Customer. All payments shall be made in U.S. Dollars. Payments by credit or debit card may be subject to a 3.0% surcharge. All overdue payments from Customer shall incur interest at the rate of one and one-half percent (1.5%) per month, assuming 30-day months, but in no event in excess of the maximum rate allowed by law.

### Section 3: Compensation.

**3.1 Compensation.** In consideration of the Deliverables and/or the Services to be performed by the Company, the Company shall be entitled to compensation in accordance with the payment and compensation terms described in the SOW pertaining to such Services and/or Deliverables; provided, however, in the event that such SOW shall not specify payment and compensation terms, the Company shall be entitled to compensation on a time and materials basis at its then-current rates therefor. Prices for Services listed in a SOW shall remain in effect for the initial term of the applicable SOW. After the initial term of a SOW, the Company may adjust its prices for Services and

Deliverables upon written notice to Customer.

**3.2 Public Cloud Hosting Fees.** In addition to the compensation described in Section 3.1, when acting as Customer's Public Cloud reseller, the Company will pass through the cost of all services provided by the Public Cloud to the Company on Customer's behalf ("**Cloud Fees**"). The amount of such Cloud Fees will be as determined by the Public Cloud provider from time-to-time and may be increased or decreased in the Public Cloud provider's sole discretion, whether due to usage charges, changes in base rates or other factors as Public Cloud may determine. Customer agrees that Company may change the Cloud Fees charged with respect to Public Cloud services at any time based upon changes in rates implemented by Public Cloud provider. The Company will invoice the Customer separately on the applicable invoice for all Cloud Fees, Customer acknowledges and agrees that the Cloud Fees can vary based on a variety of circumstances outside the control of the Company (including without limitation hacking attempts, poorly optimized data processing and/or lack of appropriate employee supervision) and the Company shall not have any liability to Customer as a result thereof.

**3.3 Hardware and Software Purchases.** Any and all hardware, software and other purchases by the Company for Customer shall be agreed upon in writing by the Parties prior to the Company placing an order therefor. In the event of purchases of \$2,000 or more in the aggregate, upon the Company's request, Customer shall pay 50% of the order amount prior to the Company's placement of the order. The remaining balance must be paid before delivery, but in no event later than five (5) days after placement of the applicable order.

**3.4 Delays in Services and/or Deliverables.** **Delays.** In the event of a delay in the provision of the Services or delivery of any Deliverables, or if additional work outside the scope of an applicable SOW is required by the Company due to no fault of the Company, the Company may cease provision of the affected Services and Deliverables until such time as the Customer and the Company have entered into an appropriate Change Order to address such delays and additional work.

**3.5 Credits.** From time to time the Company may, in its sole discretion, offer and/or grant certain incentive credits to Customers pursuant to an applicable SOW. Such incentive credits have no cash value and may not be redeemed in any form except as payment for future Services and/or Deliverables to be provided under the particular SOW pursuant to which such credits were granted. Anything to the contrary notwithstanding, the maximum amount of incentive credits that Customer may redeem under a particular SOW is expressly limited to an amount equal to ten percent (10%) of the total amount payable by Customer to the Company under such SOW for Services and Deliverables. Unless otherwise agreed by the Company in writing, the total amount payable under an SOW for purposes of calculating the maximum incentive credit amount shall exclude amounts paid by the Customer to cover the Company's out of pocket expenses (including without limitation, all AWS Fees and amounts paid for hardware, software and other purchases by the Company on behalf

of Customer). In the event that the amount payable for a usage-based Service's value is less than any maximum amount specified in an applicable SOW, the Company may adjust the amount of such credit downward accordingly without further action on the part of Customer. Third party credits, including those provided by AWS, are solely provided subject to the approval of the applicable third party. Under no circumstances will the Company guarantee or otherwise contribute these third-party credits or the value they imply.

**3.6 Taxes.** Customer shall have sole responsibility for the payment of all taxes and duties imposed by all governmental entities, including but not limited to federal, state, local, and foreign sales, use, excise, utility, gross receipts, value added and other taxes, tax-like charges, and tax-related charges, except solely taxes imposed on the net income of the Company.

#### **Section 4: Acceptance.**

**4.1 Acceptance.** Unless otherwise set forth in an applicable SOW, the Services and each Deliverable shall be deemed to be accepted upon the earliest to occur of: (i) receipt by the Company from Customer of written notice that the Service or Deliverable has been accepted by Customer, or (ii) the date which is ten (10) business days after performance of the Service or delivery of such Deliverable to Customer, unless Customer shall have previously provided to the Company a written statement describing the nonconformance of the applicable Service or Deliverable. In the event of a dispute, acceptance or rejection shall be determined as provided in Section 10 using the criteria set forth in Section 4.2.

**4.2 Criteria.** A Deliverable may not be rejected unless it contains a material defect which would prevent such Deliverable from functioning substantially in accordance with the applicable Specification and the Services may not be rejected unless the Services were not performed in a professional and workmanlike manner substantially in accordance with the applicable Specification. Only defects affecting the function, performance or fit of such Deliverable or its failure to substantially satisfy other specific requirements included in the applicable Specification may result in rejection for noncompliance. A determination that the Services or any Deliverable fails to comply with its Specification may not be based upon any No-Fault Condition.

#### **Section 5: Ownership and Rights.**

**5.1 Ownership of Intellectual Property.** Customer retains all right, title and interest in and to any and all data, content or documentation owned, used, licensed or created by Customer in connection with its Environment ("**Customer Data**"), along with all software and other works, materials and Intellectual Property created by Customer or its third-party providers and made accessible by Customer to Company in connection with this Agreement ("**Customer-Provided Materials**"). Customer, not the Company, shall have sole responsibility for the use, accuracy, quality, integrity, legality, reliability, appropriateness, and ownership and/or rights to use, all Customer Data and Customer-Provided Materials. Except for the Company Tools (as defined below) and unless otherwise set forth in an applicable SOW, all Intellectual Property made,

conceived, reduced to practice and/or developed by the Company and delivered to Customer as a Deliverable during the term of this Agreement shall be the sole property of Customer upon payment of the applicable fees therefor. To the extent of any interest of the Company in the Deliverable, the Company agrees to assign and, upon its creation, automatically assigns to Customer all right, title and interest in and to such Intellectual Property, without the necessity of any further consideration. The Company hereby further agrees to execute, and to cause its employees, agents and representatives, as applicable, to execute upon request any other lawful documents and likewise to perform any other lawful acts which may be reasonably necessary to secure fully the ownership of such Intellectual Property to Customer, including the execution of applications for patents, and the execution of substitution, reissue, divisional or continuation applications and preliminary or other statements and the giving of testimony in any interference or other proceeding in which said invention or any application or patent directed thereto may be involved.

## 5.2 The Company Tools.

(a) In order to provide the Services and/or Deliverables, the Company may install certain tools, including without limitation software tools, on Customer's Environment. Customer hereby consents to the installation and use of such tools solely for the purpose of providing the Services and/or Deliverables during the term of this Agreement (including without limitation any transition period). Such tools shall be for the sole use of the Company and its permitted subcontractors and shall comprise the Company Tools (as defined below).

(b) Anything to the contrary notwithstanding, the Company shall retain all right, title and interest in and to (a) any portion of the Company's Intellectual Property in existence prior to the effective date of this Agreement including, but not limited to software tools, methods and know-how that Company originated and uses in its business, (b) any Intellectual Property created by or on behalf of the Company during the term of this Agreement for the benefit of the Company or its customers generally, but only to the extent such Intellectual Property does not embody or contain Confidential Information of Customer, (c) any information, data, reports, writings, works of art, ideas, source code, inventions or know how that consist solely of improvements to the foregoing, if such improvements can be used by the Company and/or such customers independently of any of Customer's Confidential Information and (d) Intellectual Property licensed to the Company by third parties (all of the foregoing, collectively, the "**Company Tools**"). To the extent of any interest of Customer in any Company Tools, Customer agrees to assign and, upon its creation, automatically assigns to the Company or the Company's designee(s) all right, title and interest in and to such Company Tools, without the necessity of any further consideration. Customer hereby further agrees to execute, and to cause its employees, agents and representatives, as applicable, to execute upon request any other lawful documents and likewise to perform any other lawful acts which may be deemed necessary to

secure fully the aforesaid Company Tools to the Company or its designee, including the execution of applications for patents, and the execution of substitution, reissue, divisional or continuation applications and preliminary or other statements and the giving of testimony in any interference or other proceeding in which said invention or any application or patent directed thereto may be involved.

## 5.3 Licenses; Limitations.

(a) In the event that an SOW shall provide that a specific Deliverable shall not be owned by Customer (pursuant to Section 5.1) or a Deliverable comprises the Company Tools, such Deliverables shall be licensed and not sold as set forth herein. Subject to the terms of this Agreement, including without limitation any additional rights or limitations set forth in an applicable SOW, so long as Customer continues to have an effective SOW for the provision of maintenance or management services covering such Deliverables, the Company grants to Customer a worldwide, nonexclusive, non-transferable (except in connection with an assignment of this entire Agreement in accordance with Section 14.9), royalty-free right and license to use, execute, and display each such Deliverable in connection with its Environment.

(b) Unless otherwise provided in an applicable SOW:

- (i) Customer agrees that it shall not cause or permit the disassembly, de-compilation, modification or reverse engineering of any Deliverable or otherwise attempt to gain access to the source code to any Software delivered to Customer as part of a Deliverable and/or Service;
- (ii) Customer shall not, and shall not permit any third-party to take any action which would cause any or all Company Intellectual Property to be placed in the public domain or to become Open-Source Software; and
- (iii) except as provided in Section 5.1 or in an applicable SOW, Customer acknowledges that this Agreement does not provide Customer with title to or ownership of any Intellectual Property, but only a license of limited use under the terms and conditions of this Agreement.

(c) Unless otherwise provided in a separate written agreement, all third-party software products shall be licensed directly to Customer by the applicable third party pursuant to the terms and conditions of applicable license agreements provided by such third parties. To the extent that any third-party software is sublicensed to Customer by the Company, the foregoing provisions shall be for the benefit of the Company and its third-party licensors.

## 5.4 Company Use of Customer Materials.

Solely for the purpose of performing the Services and delivering the Deliverables, the Company shall have the irrevocable, nonexclusive, worldwide, royalty-free right and license during the term of this Agreement to (i) access the Customer Data, (ii) to use, execute, reproduce, display, perform, distribute and prepare

Derivative Works based upon the Customer-Provided Materials and Derivative Works thereof and (iii) to authorize or sublicense others from time to time to do any or all of the foregoing on its behalf.

**5.5 Availability of Support for Customer-Provided Materials.** During the term of this Agreement, Customer shall ensure that any and all Customer-Provided Materials are currently supported versions and/or releases of such Customer-Provided Materials, as determined by the supplier or vendor thereof. Customer acknowledges and agrees that, anything to the contrary notwithstanding, the Company shall not be liable for any loss or damage whatsoever which results from the use by the Company of any Customer-Provided Materials, whether such loss or damage occurs because (a) such Customer-Provided Materials are not supported by the applicable supplier or vendor, (b) such Customer-Provided Materials are no longer compatible with other applications employed by Customer or (c) a vendor-provided patch or fix is not available to the Company without charge (each, an “**EOL Event**”). Customer hereby waives all rights, claims and causes of action in connection therewith and acknowledges and agrees that in the event that Customer continues to use any Customer-Provided Materials after an EOL Event shall have occurred, the Company shall not be in breach of any obligation under or related to this Agreement or liable or responsible for any loss or damage whatsoever caused by such usage (or by virtue of such Customer-Provided Materials no longer being supported) or incur any obligation for any SLA credits or any other amounts related to such Customer-Provided Materials. In the event that an EOL Event impairs the Company’s ability to perform the Services and/or deliver Deliverables, the Company may cease provision of the affected Services and/or Deliverables until such time as the Customer and the Company have entered into an appropriate Change Order to address such EOL Event.

**5.6 Certain Warranties and Representations.** Customer represents and warrants that it has obtained all rights and licenses necessary for the Company to use all Customer Data and Customer-Provided Materials, as contemplated by this Agreement, including without limitation all consents or authorizations required under applicable laws, rules or regulations relating to the processing of personal data by Company, and that the use by the Company of such Customer Data and Customer-Provided Materials as contemplated by this Agreement will not (a) result in any breach or violation of the rights of any third party by the Company, (b) cause the Company to incur any liability or other obligation to any third party or (c) result in any violation of any laws, rules or governmental regulations. In the event of a breach of the foregoing representations and/or warranties, the Company shall not be required to use the applicable Customer Data and/or Customer-Supplied Materials and the Company may cease provision of the affected Services and/or Deliverables until such time as the Customer and the Company have entered into an appropriate Change Order to address such breach.

**5.7 Certain Third-Party Software.** Anything to the contrary in this Agreement notwithstanding, any

Software provided as part of a Deliverable may link to or be provided with Open-Source Software, which Open-Source Software shall be subject to and licensed by Customer from the appropriate third parties pursuant to the terms and conditions of applicable license agreements provided by such third parties. The Company provides no license directly to Customer to use any third-party software, including without limitation any Open-Source Software.

## **Section 6: Confidential Information.**

**6.1 Use of Confidential Information.** Except as specifically provided in this Agreement, each Party shall treat as confidential all Confidential Information (as defined below) of the other Party, shall not use such Confidential Information except as contemplated under this Agreement, and neither Party shall disclose such Confidential Information to any third-party. However, Confidential Information may be disclosed to directors, officers, managers, members, partners, employees, attorneys, accountants, financial advisors, contractors or representatives (collectively, “**Representatives**”) of the receiving Party, but only if such Representatives need to know the Confidential Information in order to assist such Party in performing under or complying with this Agreement, each such Representative has an obligation of confidentiality to such receiving Party no less restrictive than the terms of this Agreement and, in any event, the receiving Party shall be responsible for any breach of this Agreement by its Representatives. The foregoing notwithstanding, this Agreement will not prohibit the receiving Party from compliance with information requests of a legally compulsory nature, such as subpoenas or court orders, provided that the receiving Party provides the disclosing Party with notice of receipt of such information requests so that the disclosing Party may seek legal protection of said Confidential Information. The Parties’ obligations under this paragraph shall terminate one (1) year from the latter of the termination date of this Agreement or the date upon which such Confidential Information was returned or destroyed in accordance with Section 6.4; provided, however obligations with respect to Confidential Information constituting trade secrets and information which is required to be kept confidential under applicable laws or governmental regulations (e.g. without limitation information privacy or data protection laws) shall not expire.

**6.2 General Knowledge.** Anything to the contrary in this Agreement notwithstanding, the Company and its personnel shall be free to use and employ its and their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as it or they acquire and apply such information without disclosure of any Confidential Information of Customer.

**6.3 Marketing.** The Company may, for the purpose of marketing its services, divulge (by way of example and without limitation, via a listing on its website or in other promotional materials) to its customers and prospects that the Company has performed Services for Customer. The Company may demonstrate any Deliverables to its customers and/or

prospects, so long as such Deliverables do not contain or display any personal information or Confidential Information of Customer or its customers.

**6.4 Ownership; Return.** Except as provided in this Agreement, Confidential Information shall remain the property of the disclosing Party. Upon expiration or earlier termination of this Agreement, the receiving Party shall immediately cease to use the disclosing Party's Confidential Information and, at the disclosing Party's written request, either return to the disclosing Party or destroy all Confidential Information and all copies, summaries or reports thereof that are in the possession or control of the receiving Party or its Representatives; provided, that the receiving Party may retain a copy of this Agreement and any records necessary to ensure or determine compliance herewith so long as such records are kept confidential. Any destruction pursuant to the preceding sentence shall be promptly confirmed in writing.

## **Section 7: Warranties; Indemnification.**

### **7.1 Warranty; Remedies.**

(a) Unless otherwise provided in an applicable Specification or as set forth below, the Company warrants for a period of sixty (60) days from the performance of Services or delivery of a Deliverable, as applicable, that such Services shall have been performed in a professional and workmanlike manner, consistent with generally accepted industry standards, and that such unmodified Deliverable will operate substantially in accordance with its Specification. Anything to the contrary notwithstanding, no warranty shall apply with respect to any No-Fault Condition.

(b) The warranties above shall be contingent upon the continued satisfaction of all the following conditions: (i) all software and the Customer's Environment are implemented and operated by Customer in accordance with all applicable documentation and manufacturer specifications; (ii) Customer is not in breach of any of its representations, warranties and/or obligations set forth in this Agreement; (iii) Customer shall have notified the Company of any warranty defect as promptly as reasonably possible after becoming aware of such defect; (iv) Customer shall have properly installed and used all updates made available, and any updates recommended by the Company with respect to any third-party products that affect the performance of the Environment; (v) Customer shall have properly maintained all associated equipment and software in accordance with applicable written specifications provided by the applicable manufacturer of such equipment and software; (vi) Customer shall not have introduced other equipment or software that causes an adverse impact on the Environment; (vii) Customer shall have paid all undisputed amounts due hereunder and is not in default of any provision of this Agreement; and (viii) Customer shall have made no changes, nor permitted any changes to be made, to the Services and/or Deliverables, other than with the express written approval of the Company.

(c) In addition, the Company does not (i) warrant that the Deliverables will run properly on all systems,

that the Deliverables or Services will meet any Customer's requirements not specified in an applicable SOW, that the Deliverables will operate in the combinations which Customer may select for use, that the operation of the Deliverables will be uninterrupted or error-free, or that all Deliverable errors will be corrected, (ii) provide any warranty with respect to any Third Party Products, but will assign to Customer, to the extent permitted, any warranties given to the Company by the manufacturers or vendors of such Third Party Products and, upon Customer's reasonable request, will assist Customer with obtaining warranty coverage, if any, available from the applicable third-parties or (iii) provide any warranty with respect to the failure of any Services or Deliverables or any degradation of performance resulting from Customer software or system environment modifications, including without limitation new reports or patches added to Customer's Environment, unless such modifications shall have been reviewed and approved by a Company remote database administrator prior to installation.

(d) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7.1 OR IN AN APPLICABLE SPECIFICATION, THE DELIVERABLES, ANY SERVICES AND ALL OTHER PRODUCTS PROVIDED HEREUNDER ARE BEING PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND THE COMPANY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE DELIVERABLES AND ANY SERVICES INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ALL IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, AND/OR USAGE OF TRADE.

**7.2 Exclusive Remedies.** If Customer notifies the Company, within the applicable warranty period, that it believes there has been a breach of this warranty, and states in reasonable detail the nature of the claimed breach, then the Company will promptly investigate the matter. If the Company determines that there has been a breach of the warranty herein, Customer's exclusive remedies, and the Company's sole liability, will be for the Company to correct or re-perform any defective Services and/or Deliverables so that such Services and Deliverables comply with this warranty or, if the Company determines after making commercially reasonable efforts to remedy the breach, that it will be unable or impracticable to correct such breach, to provide any applicable credit pursuant to this Agreement or to terminate this Agreement as set forth in Section 9. The Parties acknowledge that the provisions of this Section 7 have been negotiated by them and reflect a fair allocation of risk between the Parties.

### **7.3 Indemnification of Customer.**

(a) The Company will defend, indemnify and hold harmless Customer against any third party claim, suit, action, and/or proceeding (a "**Claim**") and any costs, liabilities, losses, expenses and/or damages resulting therefrom ("**Damages**") in the event that any Deliverables (specifically excluding any Open Source Software) furnished and used within the scope of this Agreement infringe a United States copyright or patent, provided that: (i) Customer notifies the Company in

writing within fifteen (15) days of the claim; provided that Customer's failure to so notify the Company shall not relieve the Company of any of its indemnification obligations unless such failure materially and adversely affects the Company's ability to investigate and defend such Claim; (ii) the Company has sole control of the defense and all related settlement negotiations; provided, that the Company may not settle any such claim in a manner that imposes any unreasonable restrictions or obligations on Customer without Customer's prior written consent; and (iii) Customer provides the Company with the assistance, information and authority necessary to perform the Company's obligations under this section.

(b) The Company shall have no liability for any Damages or Claim of infringement based on: (i) the Company's compliance with any of Customer's particular requirements (e.g. use of any specific process, design, product or software) set forth in any applicable Specification, (ii) use of a superseded or altered release of any Deliverable if the infringement would have been avoided by the use of a current unaltered release of the Deliverable; (iii) the combination, operation or use of any Deliverables furnished under this Agreement with software, hardware or other materials not furnished by the Company, if such infringement would have been avoided by the use of the Deliverable without such software, hardware or other materials; (iv) the adaptation or modification of any Deliverable without the Company's written approval, if such infringement would have been avoided by the use of the Deliverable without such adaption or modification; (v) a Claim based on Intellectual Property owned by the Customer or any of its affiliates, to the extent that the Company's use of such Intellectual Property is in connection with its performance under this Agreement; (vi) misuse of any Deliverable, Services, Open Source Software or Third Party Products; (vii) any Third Party Products or (viii) any Open Source Software (each, other than items (vii) and (viii), an "**Excluded Claim**").

(c) In the event a Deliverable is held or is believed by the Company to infringe a third party's Intellectual Property rights, the Company shall have the option, at its expense, to (i) modify the Deliverable to be non-infringing, (ii) obtain for Customer a license to continue using the Deliverable; or (iii) terminate the license for the infringing Deliverable and refund a portion of the purchase price paid to the Company for such Deliverable, as reduced in accordance with a three (3) year, straight-line depreciation schedule commencing on the date of delivery of the Deliverable.

THIS SECTION 7.3 STATES THE COMPANY'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY.

#### **7.4 Indemnification of the Company.**

Customer will defend, indemnify and hold harmless the Company against all Claims and Damages to the Company arising from any (i) breach by Customer of the terms of this Agreement, (ii) personal injury and property damage resulting from Customer's negligence, gross negligence or willful misconduct, (iii) any violation of the Company's Acceptable Use Policy, as it may exist from time to time, and (iv) any Excluded Claims, or otherwise, excepting only those claims for which the

Company is required to indemnify Customer under Section 7.3(a).

### **Section 8: Limitation on Liability.**

**8.1 Generally.** NEITHER PARTY SHALL HAVE ANY LIABILITY UNDER THIS AGREEMENT FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES OR LIABILITIES, INCLUDING WITHOUT LIMITATION SUCH DAMAGES OR LIABILITIES FOR LOSS OF REVENUE, LOSS OF BUSINESS, FRUSTRATION OF ECONOMIC OR BUSINESS EXPECTATIONS, WORK DELAYS, LOSS OF PROFITS, OR COST OF CAPITAL, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT OR OTHERWISE, EVEN IF A PARTY HERETO HAS BEEN ADVISED, KNOWS, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE LIMITATION ON LOST PROFITS SHALL NOT APPLY TO EITHER PARTY'S LIABILITY, IF ANY, FOR EXCEEDING THE SCOPE OF THE LICENSES GRANTED TO SUCH PARTY BY THE OTHER PARTY AND THAT NO LIMITATION SHALL APPLY TO EITHER PARTY'S LIABILITY, IF ANY, FOR A BREACH OF ITS CONFIDENTIALITY OR INDEMNIFICATION OBLIGATIONS HEREUNDER.

EXCEPT WITH RESPECT TO THE COMPANY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 6 AND ITS INDEMNITY OBLIGATIONS SET FORTH IN SECTION 7.3, THE COMPANY'S LIABILITY FOR DAMAGES TO CUSTOMER FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, SHALL NOT EXCEED THE GREATER OF THE AGGREGATE FEES PAID BY CUSTOMER FOR THE DELIVERABLES AND/OR SERVICES UNDER THE APPLICABLE, SOW DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO CUSTOMER'S CLAIM. IN NO EVENT WILL THE COMPANY BE LIABLE TO THIRD PARTIES FOR ANY DAMAGES WHATSOEVER.

THE LIMITATION ON THE COMPANY'S LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS TO CUSTOMER FOR CLAIMS OR DAMAGES UNDER THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS OR SUITS WILL NOT ENLARGE THE LIMIT. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION UNDER OR RELATING TO THIS AGREEMENT (CONTRACT, TORT OR OTHERWISE).

THE COMPANY EXPRESSLY DISCLAIMS, AND CLIENT EXPRESSLY RELEASES THE COMPANY FROM ANY LIABILITY ARISING FROM OR ASSOCIATED WITH A CLIENT'S RESERVED INSTANCE USAGE, LACK OF USAGE, RECOMMENDATION OR PURCHASE OF RESERVE INSTANCES WHETHER BY CLIENT DIRECTLY OR BY THE COMPANY AS INSTRUCTED BY CLIENT OR ON THE BASIS OF INFORMATION PROVIDED BY ANY THIRD-PARTY TOOLS.

**8.2 SLA Credits.** The credits stated in any applicable Service Level Agreement are Customer's sole and exclusive remedy for the Company's failure to meet those criteria for which credits are provided. Customer is not entitled to a credit if Customer is in breach of this Agreement or the applicable SOW at the time of the occurrence of the event giving rise to the credit unless

and until Customer shall have remedied the breach. Anything to the contrary notwithstanding, no credit will be due to the extent that the Company's failure to achieve any service level criteria results from Customer's acts or omissions.

### **Section 9: Term and Termination.**

**9.1 Term of Agreement.** This Master Agreement shall be effective so long as any SOW shall remain outstanding and shall remain in force until terminated as provided herein.

**9.2 Termination of Agreement.** Unless otherwise specified in a particular SOW, a Party (the "**Terminating Party**") may terminate this Master Agreement or any SOW:

(a) If the other Party breaches any of its material representations, warranties, covenants or obligations under this Master Agreement or the applicable SOW and such breach results in a material adverse effect to the Terminating Party, upon providing thirty (30) days (or five (5) days in the case of breach for nonpayment) written notice to the breaching Party, provided, however, that if the breaching Party shall have cured the breach or, other than in the case of non-payment, shall have commenced and continues to diligently pursue a cure of such breach within such thirty (30) day period with the reasonable expectation of success within a reasonable period of time after such thirty (30) day period, this Master Agreement and the applicable SOW shall continue in full force and effect;

(b) upon giving written notice to the other Party, if the other Party (i) files in any court or agency pursuant to any statute or regulation of any state or country, a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of the other Party or of its assets; (ii) proposes a written agreement of composition or extension of its debts; (iii) is served with an involuntary petition in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up arrangement, composition or readjustment of its debts or any other relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect, which petition is not dismissed within sixty (60) days after the filing thereof; (iv) has any attachment, execution, or similar process issued against it which is not dismissed or stayed within sixty (60) days after the issuance thereof; (v) proposes to be a Party to any dissolution or liquidation; or (vi) makes an assignment for the benefit of creditors or a trust mortgage.

**9.3 Effects of Termination.** In the event that this Master Agreement or a particular SOW is terminated pursuant to Section 9.2, with respect to the terminated agreement(s) (i) the Company will immediately cease providing the applicable Services and Deliverables, (ii) payment of all amounts due for the applicable Services rendered and Deliverables delivered on or prior to such termination shall become immediately due and payable, and (iii) except as otherwise provided in the applicable Specification, any licenses granted by the Company to Customer shall immediately terminate and Customer shall remove any materials containing the

Company's Intellectual Property from its technology infrastructure.

### **Section 10: Dispute Resolution.**

**10.1 Parties' Objective.** The Parties recognize that disputes as to certain matters may from time to time arise during the term of this Agreement that relate to either Party's rights or obligations hereunder. It is the objective of the Parties to establish procedures to facilitate the resolution of disputes arising from, concerning or in any way relating to this Agreement in an expedient manner by mutual cooperation and without resort to litigation. To accomplish this objective, the Parties agree to follow the procedures set forth in this Section 10 if and when a dispute arises under this Agreement.

**10.2 Dispute Resolution.** Except as set forth below, the Parties shall attempt in good faith to resolve any and all disputes that arise between them promptly, voluntarily and amicably. Any dispute arising between the Parties relating to, arising out of, or in any way connected with this Agreement (a "**Dispute**"), whether before or after expiration or termination of this Agreement, which is not settled by the Parties within thirty (30) days after written notice of such Dispute is first given by a representative of one Party to the other Party in writing, will be settled by arbitration in the Commonwealth of Massachusetts, pursuant to the rules then obtaining from JAMS. Any award in any such arbitration shall be final, binding and conclusive upon the Parties and a judgment rendered thereon may be entered in any court having jurisdiction thereof. The Parties specifically authorize and empower the arbitrator to issue injunctive or other equitable relief, where appropriate.

**10.3 Other Court Actions.** Anything to the contrary notwithstanding, (a) as between the Parties, any dispute, controversy or claim relating to the scope, use, validity, enforceability, inventorship or ownership of Intellectual Property and/or any rights therein, shall be submitted by either Party to a court of competent jurisdiction in the country in which such rights apply, and (b) to the full extent allowed by law, either Party may bring an action in any court of competent jurisdiction for specific performance or injunctive relief (or any other provisional remedy) to protect the Parties' rights in any Confidential Information or enforce a Party's confidentiality or privacy obligations under this Agreement.

**Section 11: Insurance.** The Company shall maintain the following coverage: (a) worker's compensation within minimum statutory limits, (b) commercial general liability with limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate and (c) business automobile liability with a combined single limit of \$1,000,000 and covering any owned, hired, borrowed and non-owned vehicles.

### **Section 12: Customer Obligations, Etc.**

**12.1 Non-Solicitation.** During the Term of this Agreement and continuing for a period of twelve (12) months thereafter, Customer agrees that it will not, and will ensure that its affiliates do not, (i) directly or indirectly, solicit or attempt to solicit for engagement,

either as employees, consultants or otherwise, any persons employed by the Company or contracted by the Company to provide Services to Customer, except insofar as such solicitation or attempt to solicit for engagement results solely from a general solicitation of employment not specifically directed towards employees or subcontractors of the Company and (ii) directly or indirectly, hire or otherwise engage, either as employees, consultants or otherwise, any persons employed by the Company who performed Services for Customer or who Customer became acquainted with during the performance of Services by the Company hereunder.

**12.2 Access and Cooperation.** Customer will provide the Company with access to Customer's Environment for the purpose of performing the Services and invoicing. Customer must cooperate with the Company's reasonable investigation of outages, security problems, and any suspected breach of the Agreement. Customer is responsible for keeping its account permissions, billing, and other account information up to date. Customer agrees that its use of any Environment provided or managed by the Company will comply with the Company's Acceptable Use Policy. Customer is solely responsible for the suitability of the Services and Customer's compliance with any applicable laws, including export laws and data privacy laws. The Company will not use or disclose Customer Data except as materially required to perform the Services or as required by law. Customer must use reasonable security precautions in connection with its use of the Services, including where applicable appropriately securing and encrypting personally identifiable or other sensitive data stored on or transmitted using the Environment. Customer Data is, and at all times shall remain, Customer's exclusive property.

**12.3 Third Party Support and Software.** For the Term, if Customer uses any non- Company provided software on its Environment, Customer represents and warrants to the Company that Customer has the legal right to use such software and to grant to the Company the right to use such software on Customer's behalf. If the Company has agreed to install, patch or otherwise manage software in reliance on Customer's license with a third party then Customer hereby consents to the Company's posting or sharing of Customer's name, contact information and environment log files with third party support services (including without limitation Oracle or Microsoft support services) as the Company may deem necessary to perform its obligations under this Agreement, provided that such disclosure shall be subject to Customer's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, in the event that the Company should be required to disclose any other Confidential Information of Customer to such third parties. The Company may agree to install Third Party Products (for example, Oracle EBS software) on Customer's behalf as part of the Services. Where such activity requires the acceptance of an End User License Agreement (or similar terms), and only applicable when Customer's data is being hosted on the Company's servers or in the Company's environment. Customer hereby authorize the Company to accept such terms on Customer's behalf, agree to be bound by and adhere to such terms, and acknowledge that Customer,

and not the Company, is bound by such terms. The Company will promptly identify and provide Customer with a copy of any such terms the Company accepts upon Customer's behalf upon written request.

### **Section 13: Privacy and Security.**

**13.1 Obligations.** Without limiting the provisions of Section 8, Company will implement commercially reasonable administrative, technical and physical controls to protect Customer Data and Confidential Information in its possession against unauthorized access, use, acquisition, loss or disclosure. Customer acknowledges and agrees that Customer controls the transfer or upload of Customer Data to the Services and Customer's Environment and that Customer controls and directs the processing, use and disclosure of Customer Data through the Services. The Company stores and processes Customer Data only at Customer's direction and instruction. The Company is not responsible for any data loss, disclosure, transfer, storage or processing that occurs as a result of Customer's acts or omissions or Customer's violation of any provision of this Agreement or applicable laws, rules or regulations. Customer acknowledges and agrees that Customer controls the transfer or upload of Customer Data in order for the Services to be performed and that Customer controls and directs the processing, use and disclosure of Customer Data through the Services. The Company stores and processes Customer Data only at Customer's direction and instruction. The Company is not responsible for any data loss, disclosure, transfer, storage or processing that occurs as a result of Customer's actions or Customer's violation of any provision of this Agreement.

**13.2 Audit Rights.** Company shall, at least annually, engage an independent third party to assess the Company's information security controls (the "Security Audit"). The Audit shall be conducted according to recognized information security industry standards. Upon reasonable written notice, the Company shall provide Customer with a copy of its most recent Security Audit report. Such report and the results of such Security Audit are Confidential Information of the Company.

**13.3 Security Breaches.** Company shall promptly notify Customer of any incident resulting in the unauthorized access, acquisition, destruction, or loss or alteration of Customer's Confidential Information (a "Security Incident"). In the event that a Security Incident affecting Customer Data occurs as the result of a breach by the Company of its obligations under this Agreement, the Company shall: (a) promptly start an investigation of the Security Incident, (b) take all appropriate actions to mitigate any material risk that may arise from the Security Incident; and (c) upon Customer's reasonable written request, provide Customer with a written report on outcome of its investigation. Information regarding any Security Incidents or other notifications pursuant to this Section 13 comprise the Company's Confidential Information, provided, however, that Customer may disclose the occurrence of a Security Incident to the extent required by Applicable Law or pre-existing contractual obligations to third parties. The forgoing notwithstanding, Customer shall disclose information relating to a Security Incident only to the extent required



by applicable laws, rules or regulations, court order, or as necessary to comply with pre-existing contractual obligations to third parties; provided, however, that Customer shall provide prior written notice thereof to the Company to the extent not prohibited by law. The Company shall cooperate in good faith regarding the timing and manner of any notification to affected parties concerning a Security Incident and disclosures to appropriate governmental entities, which cooperation shall be at Customer's sole cost and expense, except to the extent such Security Incident arises out of the acts or omissions of the Company.

#### **Section 14: Miscellaneous.**

**14.1 Delay; Force Majeure.** Either Party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such Party; provided that, in order to be excused from delay or failure to perform, such Party must act diligently to remedy the cause of such delay or failure.

**14.2 No Agency.** The Company is acting solely as an independent contractor, Customer does not undertake by this Agreement or otherwise to perform any obligation of the Company, whether by regulation or contract. In no way is the Company to be construed as the agent or to be acting as the agent of Customer in any respect, any other provisions of this Agreement notwithstanding.

**14.3 Section Headings; Exhibits.** The section and subsection headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. The agreements and other documents referred to herein and attached or to be attached hereto, or to the SOW are incorporated herein to the same extent as if set forth in full herein.

**14.4 No Waiver.** No delay or omission by either Party hereto to exercise any right or power occurring upon any noncompliance or default by the other Party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the Parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity, or otherwise.

**14.5 Language; Governing Law; Currency.** This Agreement shall be entered into by the Parties in the English language. In the event of any translation, the English language version shall be determinative. The validity, construction and performance of this Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, applicable to contracts executed in and performed entirely within such Commonwealth, without reference to any choice of law principles of such Commonwealth. The application to this Agreement of the United Nations Convention on Contracts for the International Sale of Goods is hereby

expressly excluded. Customer specifically and irrevocably consents to the personal and subject matter jurisdiction and venue of the federal and state courts of the Commonwealth of Massachusetts and, except as provided in Section 10.3, such courts shall have exclusive jurisdiction with respect to all matters concerning this Agreement or the enforcement of any of the foregoing.

**14.6 Entire Agreement.** This Agreement and each together with any exhibits or addenda annexed thereto or hereto, constitute the entire agreement between the Parties relating to the subject matter hereof and thereof and, unless specifically referenced in this Agreement or an applicable SOW, supersede all prior or simultaneous representations, discussions, proposals, negotiations, letters of intent, and all prior non-disclosure, non-competition, non-solicitation and other agreements, whether oral, written or based on a course of dealing or performance, with respect to the subject matter hereof or thereof. Any extraneous terms on Customer's purchase order or other documents shall be void and of no effect. Except as otherwise provided in this Agreement, each SOW shall be treated as a separate agreement. No amendment, change, waiver, or discharge hereof shall be valid unless it is in writing and is executed by the Party against whom such amendment, change, waiver, or discharge is sought to be enforced.

**14.7 Notices.** All notices, demands, requests or other communications that may be or are required to be given, served or sent by any Party pursuant to this Agreement will be in writing (and shall be deemed to have been duly given upon receipt), will reference this Agreement and shall be transmitted by express courier or hand delivery or facsimile transmission, addressed to the address for such party set forth in the SOW or to such Party's registered address in its jurisdiction of formation, if any; provided that each Party may designate by notice in writing in accordance with this paragraph a new address to which any notice, demand, request or communication may thereafter be so given, served or sent. Each notice that is delivered or transmitted in the manner described above shall be deemed sufficiently given, served, sent and received for all purposes at such time as it is delivered to the addressee (with the delivery receipt or the affidavit of messenger or courier being deemed conclusive evidence of such delivery) or at such time as delivery is refused by the addressee upon presentation, whichever shall occur first.

**14.8 Injunctive Relief.** It is hereby agreed and acknowledged that it will be impossible to measure in money the damage that would be suffered if the parties fail to comply with their obligations under Section 6 and/or Section 12.1 of this Agreement and that in the event of any such failure, a Party will be irreparably damaged and will not have an adequate remedy at law. Any such Party shall, therefore, be entitled (in addition to any other remedy to which it may be entitled in law or in equity) to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the Parties hereto shall raise the defense that there is an adequate remedy at law.

**14.9 Survival.** In the event of any termination of this Agreement, Sections 5, 6, 7, 8, 9.3, 10, 12.1, 14 and 15 hereof shall survive and continue in effect and shall inure to the benefit of and be binding upon the Parties and their legal representatives, heirs, successors, and assigns.

**14.10 Assignment.** The rights and liabilities of the Parties hereto will bind and inure to the benefit of their respective successors and assigns, as the case may be; provided that after such assignment, both Customer and Customer's assignee shall continue to be responsible for Customer's obligations under this Agreement, unless and until otherwise agreed by the Company in writing. Any attempted assignment in violation of the provisions of this Section will be void. Notwithstanding the foregoing, Company shall have the right to assign this Agreement to a successor in interest that is a result of a sale, merger or acquisition.

**14.11 U.S. Government Restricted Rights.** Any Software being provided by the Company to Customer under this Agreement and/or any Specification is so provided with "Restricted Rights." If Customer is the U.S. government, Customer acknowledges that the use, duplication, or disclosure by the U.S. government of such Software is subject to restrictions as set forth in all applicable laws and regulations, including without limitation FAR52.227-14 and DFAR252.227-7013 et seq. or their applicable successors.

**14.12 Compliance with Laws.** The Parties agree that they shall comply with all applicable laws and regulations of governmental bodies or agencies in their performance under this Agreement. Without limiting the generality of the foregoing, neither Party will knowingly export or re-export, directly or indirectly, any technical data (as defined by the U.S. Export Administration Regulations) produced or provided under this Agreement, or export or re-export, directly or indirectly, any direct product of such technical data, including software, to a destination to which such export or re-export is restricted or prohibited by U.S. or non-U.S. law, without obtaining prior authorization from U.S. Department of Commerce and other competent government authorities to the extent required by those laws.

**Section 15: Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and together shall be deemed to be one and the same agreement.

**15.1 Definitions.** When used in this Agreement the capitalized terms listed in this Section 15 shall have the following meanings:

**"Affiliates"** means the Company and any other entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Company.

**"Acceptable Use Policy"** means the Company's acceptable use policy, as it may exist from time to time, which is available at the Company's website.

**"Confidential Information"** means any business, trade or technical information of a Party or its affiliates, which information such Party considers to be confidential or

proprietary information, including without limitation business and financial data; business plans; technical information; software; samples; devices; prototypes; designs; specifications; processes; inventions; discoveries; or other Intellectual Property or physical embodiments thereof, whether disclosed orally, visually, in writing, or in document form, by observation or inspection of a Party's property or facilities or by conversation with the Party's officers, directors, employees, affiliates or agents, but specifically excludes any information that the receiving Party can demonstrate: (i) was rightfully in the possession of, or was rightfully known by, the receiving Party without an obligation to maintain its confidentiality prior to receipt from the furnishing Party; (ii) was or has become generally available to the public other than as a result of disclosure by the receiving Party or any of its agents; (iii) after disclosure to the receiving Party, was received from a third party who, to the receiving Party's knowledge, had a lawful right to disclose such information to the receiving Party without any obligation to restrict its further use or disclosure; or (iv) was independently developed by the receiving Party without use of or reference to any confidential information of the furnishing Party.

**"Customer Data"** means all data which Customer receives, stores, processes or transmits using the Environment, but specifically excludes data related to system usage and/or performance metrics.

**"Deliverables"** means all physical materials or electronic data developed for or delivered to Customer by the Company under this Agreement as set forth in an applicable SOW but shall not include any Open-Source Software.

**"Derivative Work"** means a work that is based upon one or more preexisting works, such as a revision, modification, translation, abridgement, condensation, expansion, or any other form in which such preexisting works may be recast, transformed, or adapted, and that, if prepared without authorization of the owner of the intellectual property rights in such preexisting work, would constitute an infringement of such intellectual property rights.

**"Environment"** means the Customer environment and systems for which the Company is providing Services and/or Deliverables pursuant to this Agreement.

**"Error"** means any error, problem, or defect which causes a Deliverable to fail to conform to its Specification, based upon the acceptance criteria set forth in Section 4.2.

**"Intellectual Property"** means (i) copyrights, trademarks, and patents, and substitutions, divisions, continuations, continuations-in-part, reissues, reexaminations and extensions thereof and supplemental protection certificates relating thereto, and all counterparts thereof in any country in the world, (ii) applications for any of the foregoing and (iii) Know-How.

**"Know-How"** means inventions, ideas, discoveries, data, instructions, designs, concepts, drawings, prototypes, information, components, processes, methods, tools, developments, innovations, techniques, materials, technology, protocols, procedures, results,

formulae, templates, devices, assemblies, modules, algorithms, trade secrets, computer program code or other know-how, whether or not patentable, and improvements, modifications or refinements thereof.

**"No-Fault Condition"** means (i) the failure of any Customer-Provided Materials or other components to operate in accordance with their published or advertised specifications, (ii) the lack of availability of support for or updates to any Customer-Provided Materials; (iii) the failure of a Deliverable to properly interface or inter-operate with any Customer or third-party provided hardware, software or other components, which are not specified as part of the Specification for the Deliverable, (iv) the failure of any testing apparatus not supplied by the Company to provide accurate measurements, (v) the failure of Customer or any third-party hired by Customer to provide adequate or satisfactory services relating to the testing, installation or acceptance of any Services or Deliverable, (vi) damage of any Deliverable by Customer or any third-party acting on Customer's behalf, (vii) alteration or modification of a Deliverable or Service by anyone other than the Company; (viii) use, adjustment, installation or operation of any Deliverable or Service other than in accordance with instructions furnished by the Company or with an application or in an environment other than as intended or recommended by the Company, (ix) data format or content which produces an unattractive display, requiring only cosmetic or aesthetic changes, unless such format or display is specifically described in the applicable Specification as an essential feature or (x) failures due to new reports or patches added to the database environment by Customer or its agents, unless such modifications shall have been reviewed and approved by a Company remote database administrator prior to installation and properly installed.

**"Open-Source Software"** means Software that refers to, or is based upon, any form of software license from or substantially similar to any software license provided

by the Free Software Foundation, including without limitation GNU General Public License, the GNU Lesser General Public License or the GNU Free Documentation License; or any software that is "copylefted."

**"SLA"** means any provision providing a specified credit remedy for an identified failure to deliver or provide the Services to the identified standard.

**"Software"** means the software programs in executable form, including all corrections, updates, modifications and enhancements to such software, all related source code, and all documentation and information pertaining to software, whether in online, hard-copy or other form, together with any updates, revisions, new versions and supplements thereto, which is made available by either Party and used, directly or indirectly, by Company in connection with the Services. The term "Software" shall not include any Open Source Software or any software licensed to Customer by third parties.

**"SOW"** means a separate written document by and between the Company and customer describing the Services, including without limitation any "Service Schedule," "Statement of Work", "Professional Service Description" or "Operational Service Description."

**"Specification"** means the description and/or specification of the Services to be performed by the Company set forth in the applicable SOW, as may be amended from time to time in accordance with this Agreement, which may include, without limitation, a description of any Services and/or Deliverables to be delivered to Customer; a description of the form, fit and function of any such Deliverables; the pricing and the time schedule for performance and for delivery of any such Services and/or Deliverables.

**"Third Party Products"** means any products manufactured by third parties and delivered to Customer pursuant to this Agreement.

## SIGNATURES

### Navisite LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

### Customer's Full Legal Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_