

# iRely MASTER AGREEMENT

**YOU AGREE THAT BY PLACING AN ORDER THROUGH AN ORDERING DOCUMENT, SUCH AS A PROPOSAL OR SOW FOR PROFESSIONAL SERVICES, THAT INCORPORATES THESE GENERAL TERMS, YOU AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THESE GENERAL TERMS. IF YOU ARE PLACING SUCH AN ORDER ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THIS MASTER AGREEMENT AND THE APPLICABLE SCHEDULES AS DEFINED HEREIN. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU OR SUCH ENTITY DO NOT AGREE TO FOLLOW AND BE BOUND BY THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THESE GENERAL TERMS, YOU SHALL NOT PLACE AN ORDER OR USE PRODUCTS OR SERVICES OFFERINGS.**

## **PROVIDER MASTER AGREEMENT**

THIS MASTER AGREEMENT (together with any applicable Ordering Document and all applicable Schedules, the "Agreement"), is effective as of the date (the "Effective Date") the Ordering Document(s) is executed by iRely LLC, a Delaware limited liability company with a principal place of business located at 4242 Flagstaff Cove, Ft. Wayne, Indiana, 46815 ("Provider") and the entity that has executed such Ordering Document(s) ("Customer").

### **1. SCOPE OF AGREEMENT AND SCHEDULES**

This Agreement includes several Schedules appended hereto, as determined by the types of Products and Services described in the Ordering Document. Each applicable Schedule is incorporated herein by reference.

1.1. Schedule 1 – Proposal, defines the scope of goods and services to be provided under this Agreement. Once executed by both parties hereto, a Proposal becomes an Ordering Document hereunder.

1.2. Schedule 2.1 – Software License, governs the license of the Software if the Customer has selected to use the Software installed on its own servers or as hosted by Provider

1.3. Schedule 2.2 – Software as a Service License, governs the purchase of the SaaS Services if the Customer has selected to use the SaaS Services.

1.4. Schedule 3 – Implementation Process Schedule, describes the implementation process.

1.5. Schedule 4 – Maintenance Schedule, describes the Maintenance Services Provider will provide to Customer.

1.6. Schedule 5 – Invoicing and Payment Schedule, describes how Provider will invoice Customer and Customer's payment obligations.

1.7. Schedule 6 – Change Procedure Schedule, describes the process by which the parties hereto shall may the scope of goods and services during the Term of this Agreement.

1.8. Schedule 7 – Hosting Schedule, Provider governs Provider's hosting of Customer data on its servers.

1.9. Schedule 8 – Privacy Policy, describes Provider's current privacy policies.

## **2. DEFINITIONS**

The following definitions apply to this Agreement and the attached Schedules. Additional capitalized terms used in this Agreement or attached Schedules shall have the meaning described therein.

2.1. "Affiliate" means any corporation or other entity controlled by, controlling, or under common control with any party, and "control" means the direct or indirect beneficial ownership of a majority interest in the voting stock, or other ownership interests, of such corporation or entity, or the power to elect at least a majority of the directors or trustees of such corporation or entity, or majority control of such corporation or entity, or such other relationship, which in fact constitutes actual control.

2.2. "Application" means the Products, modules, platform, user interfaces, on-line help, and associated Documentation of Provider to which Customer may have access pursuant to the Software as a Service License.

2.3. "Customer Data" means any data, information, content, or material, which Customer or its Affiliates enter, load onto, or use in connection with the Application, and all results from processing the same while using the Application.

2.4. "Deliverables" means information and other materials prepared for Customer during the performance of the Services and pursuant to an Implementation Project Plan or in connection with other Professional Services.

2.5. "Documentation" means the user and technical information, provided to Customer by Provider, regarding the access and use of the Application or any Products by means of an on-line help system describing the operation of the Application or any Products under normal circumstances.

2.6. "Fees" means the License Fee, Subscription Fee, Maintenance Fees, Hosting Fee and Professional Services Fees, as applicable to the types of Products and Services described in the Ordering Document.

2.7. "Hosting Fee" means the fee for Provider to host, if applicable, the Software and Customer's related data on behalf of Customer.

2.8. "Intellectual Property Rights" means, on a worldwide basis, any (i) copyrights and copyrightable works, whether registered or unregistered; (ii) trademarks, service marks, trade dress, logos, registered designs, trade and business names (including, without limitation, internet domain names, corporate names, and e-mail address names), whether registered or unregistered; (iii) patents, patent applications, patent disclosures, mask works and inventions (whether patentable or not); (iv) trade secrets, know-how, data privacy rights, database rights, know-how, and rights in designs; and (v) all other forms of intellectual property or proprietary rights, and derivative works thereof, in each case in every jurisdiction worldwide.

2.9. "License Fee" means the one-time Software license fee.

2.10. "Maintenance Fee" means the annual fee for Maintenance Services.

2.11. "Ordering Document" means any executed Proposal or SOW, which upon execution represents a binding commitment to purchase Products or Services.

2.12. "Products" means, collectively the Software and applicable hardware provided by Provider as set forth in either Schedule 2.1 – Software License or Schedule 2.2 – Software as a Service License.

2.13. "Professional Services Fees" means fees for Professional Services, paid at Provider's then current standard rates.

2.14. "Professional Services" means custom software development and other support services provided by Provider in connection with implementation or ongoing use of the Products, which are specifically quoted and billed at the Professional Service Fee Rates listed on Schedule 5 – Invoicing and Payments.

2.15. "Services" means the services described in the Ordering Document.

2.16. "Software" means the software described in Schedule 2.1 – Software License or Schedule 2.2 – Software as a Service License, as the case may be.

2.16. "SOW" means a Statement of Work, which sets forth the Deliverables, timelines and cost estimate for Professional Services as a result of the Change Procedure described in Schedule 6 – Change Procedure or for Professional Services.

2.18. "Subscription" means the right to use and access the Application as described in Schedule 2.2, SaaS License, upon payment of the Subscription Fee.

2.19. "Subscription Fee" means the fee for the Subscription, and to receive the Standard Support Services, during the corresponding Subscription period.

2.20. "User(s)" means Customer's employees and Affiliates authorized to use the Application or Products in accordance with this Agreement and supplied user identifications and/or passwords in accordance with this Agreement.

### **3. INTELLECTUAL PROPERTY RIGHTS**

3.1. Customer Intellectual Property. "Customer IP" means Customer's Confidential Information, materials, inventions, and data. The Customer IP shall be owned by Customer. Provider may not use, access, reproduce, publish, sell, license, display, or exploit (collectively, "Use") any Customer IP without Customer's prior written consent. Provider shall have the right to Use Customer IP to perform the Services and Customer grants Provider a limited, royalty-res, non-exclusive, revocable, terminable license to Use the Customer IP as necessary for Provider to perform the Services.

3.2. Provider Intellectual Property. "Provider IP" means any item or material, and any modifications, enhancements or feedback thereon, including, without limitation, intellectual property (such as written materials, software, its configurations and standard reporting and interfaces, websites or patented inventions) or physical assets (such as equipment or other products), that is: (a) owned, leased or licensed by Provider or Provider's Affiliates or subcontractors (other than licensed

from Customer hereunder); (b) contained in the Products, Software and Documentation; or (c) furnished by Provider in connection with the Services. The Provider IP shall be owned exclusively by Provider. Customer shall not use Provider IP for any purpose not expressly permitted in this Agreement.

#### **4. PERFORMANCE OF SERVICES**

All Services shall be performed in a workmanlike and professional manner by qualified representatives of Provider who are fluent in written and spoken English.

#### **5. MAINTENANCE SERVICES**

Please refer to Schedule 4 – Provider Maintenance Agreement.

#### **6. PAYMENT AND INVOICING**

Please refer to Schedule 5 – Payment and Invoicing.

#### **7. CONFIDENTIAL INFORMATION**

7.1. Confidential Information. "Confidential Information" means all financial, technical, strategic, marketing, and other information relating to a disclosing party (the "Disclosing Party") or its actual or prospective business, products, or technology that may be, or has been, furnished or disclosed to the other party (the "Recipient") by, or acquired by Recipient directly or indirectly from the Disclosing Party, whether disclosed orally or in writing or electronically or some other form, and shall include the terms and conditions and pricing information of this Agreement, and the Application and Products (including, without limitation, Documentation, source code, translations, compilations, implementation methodologies, partial copies, and derivative works).

7.2. Limitations. Confidential Information does not include that which was: (i) as of the Effective Date of this Agreement, generally known to the public without breach of this Agreement; (ii) is or became generally known to the public after the date of this Agreement other than as a result of the act or omission of Recipient or Recipient's Affiliates; (iii) was already in the possession of the Recipient without any obligation of confidence; (iv) released by Disclosing Party with its written consent to third parties without restriction on use and disclosure; (v) lawfully received by Recipient from a third party without an obligation of confidence; (vi) independently developed by Recipient outside the scope of this relationship by personnel not having access to any Confidential Information; or (vii) is required to be disclosed in accordance with a judicial or governmental order or decree, provided that the Recipient provides prompt notice of the order or decree to the Disclosing Party and reasonably cooperates with the Disclosing Party to limit the disclosure and use of the applicable information.

7.3. Non-Disclosure. Recipient shall: (i) use at least the same degree of care that it uses with respect to its own confidential information, but in no event less than a reasonable degree of care to

avoid disclosure, publication or dissemination of the other party's Confidential Information; (ii) disclose Confidential Information only to its personnel, Affiliates and subcontractors who have a need to know such information and are bound by a confidentiality agreement with Recipient; and (iii) promptly report any loss of any Confidential Information to the Disclosing Party.

7.4. Notices. Recipient shall not: (i) alter or remove from any Confidential Information of the Disclosing Party any proprietary legend, or (ii) decompile, disassemble or reverse engineer the Confidential Information (and any information derived in violation of such covenant shall automatically be deemed Confidential Information owned exclusively by the Disclosing Party).

7.5. Return of Confidential Information. Upon the written request of the Disclosing Party or termination or expiration of this Agreement, and regardless of whether a dispute may exist, Recipient shall return or destroy (as instructed by Disclosing Party) all Confidential Information of Disclosing Party in its possession or control and cease all further use thereof.

7.6. Injunctive Relief. Recipient acknowledges that violation of the provisions of this Section 7 would cause irreparable harm to Disclosing Party not adequately compensable by monetary damages. In addition to other relief, it is agreed that injunctive relief shall be available without the necessity of posting bond to prevent any actual or threatened violation of such provisions.

7.7. PII. "Personally Identifiable Information" or "PII" means information which can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information, which is linked or linkable to a specific individual. If Provider has access to PII (except for business contact information and e-mail addresses of the Customer), such access will likely be incidental. The intended purpose of the Application and the Products is not to accept or use PII. Customer shall retain control of its PII. To the extent Provider has incidental access to Customer PII, Provider shall use or disclose PII only: (i) in furtherance of or in performing the services pursuant to this Agreement and the relevant Ordering Document; (ii) pursuant to a lawful subpoena, service of process, or otherwise required or permitted by law; (iii) as directed or instructed by Customer; or (iv) with prior informed consent of the individual about whom the PII pertains.

7.8 Non-Exclusive Agreement. Customer acknowledges that Provider is engaged in the development of software for clients other than Customer, and that Provider can and will develop software and provide services for its other customers and will utilize and market software, services and other items, including without limitation those developed under or in connection with this Agreement, without any restrictions hereunder, and may solicit and provide similar Products and Services on behalf of companies that Customer may consider to be its direct or indirect competitors, provided that Customer's Confidential Information shall be subject to the confidentiality and nondisclosure restrictions set forth in Section 7.3.

7.9 Publicity. Provider shall have the right, and Customer hereby consents, to (i) list Customer's logo as a Provider client on Provider's website and on marketing materials and include a link to Customer's website and company introduction; and (ii) mention Customer as a Provider Customer during sales pitches to Provider prospects. Provider will seek Customer's consent prior to using Customer's name in White Papers or other similar written material.

7.10 Survival. This Section shall survive termination of this Agreement for a period of three (3) years.

## **8. CHANGE CONTROL PROCEDURE**

Please refer to Schedule 6 – Change Control Schedule.

## **9. TERM; TERMINATION**

9.1. Initial Term. The initial term of this Agreement begins on the Effective Date specified in the first executed Ordering Document and shall continue in full force and effect and unless extended or terminated earlier pursuant to this Agreement or stated in such Ordering Document (the "Initial Term").

9.2. Renewal Term. Certain Products or Services will automatically renew in accordance with the relevant Ordering Document (each a "Renewal Term"), unless a party delivers written notice of its intent to cancel at least 60 days before the expiration of the Initial Term or the then current Renewal Term. Unless otherwise set forth in an Ordering Document, SaaS Subscriptions and Software Maintenance will each automatically renew for additional one-year Renewal Terms at the end of the Initial Term and each Renewal Term. For the purposes of this Agreement, the Initial Term and Renewal Terms are collectively referred to as the "Term".

9.3. Termination.

9.3.1. Either party may terminate this Agreement at any time during the Term (i) upon thirty (30) days' prior written notice, in the event that the other party materially breaches a provision of this Agreement and fails to cure such breach within the thirty (30) days after it receives such notice (or immediately, if such breach is not capable of being cured) or (ii) in accordance with Section 10 (Force Majeure).

9.3.2. Either party may terminate this Agreement immediately upon written notice, if the other party becomes insolvent; or files, or has filed against it and not dismissed within sixty (60) days, a petition for bankruptcy.

9.3.3. Provider may terminate this Agreement on thirty (30) days' written notice if Customer fails to make timely payments hereunder.

9.4 Procedures Upon Termination. When this Agreement terminates or expires:

9.4.1. Customer will pay Provider for all Services performed and expenses incurred by Provider prior to the date of termination. In the event this Agreement has been terminated early not due to Provider's breach or insolvency, then Customer shall repay any discounts set forth in the Ordering Document governing the unfinished Term.

9.4.2. Provider will immediately discontinue (and cause its contractors and personnel to immediately discontinue) all use of Customer Materials. Upon termination or expiration of this Agreement, this clause does not permit Customer to retain Provider Materials for any purpose and Customer must return Provider Materials within ten (10) days.

## **10. FORCE MAJEURE**

Neither party will be liable under or deemed to be in breach of this Agreement for any delay or failure in performance under this Agreement or an applicable Ordering Document that is caused by any of the following events: acts of God, civil or military authority; act, order or requirement of any governmental or regulatory authority or body; war; fires; power outages; earthquakes; floods; unusually severe weather; strikes or labor disputes; disruptions of labor forces or supply chains; delays in transportation or delivery; epidemics, pandemics or viral or communicable disease outbreaks; quarantines; national emergencies; terrorism or threats of terrorism; and any similar event that is beyond the reasonable control of the non-performing party (collectively, a "Force Majeure Event"). This Section 10 does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligations to pay for Products and Services ordered or delivered. The party affected by the Force Majeure Event must diligently attempt to perform (including, without limitation, through alternate means). During a Force Majeure Event, the parties hereto will negotiate changes to this Agreement in good faith to address the Force Majeure Event in a fair and equitable manner. If a Force Majeure Event continues for ten (10) days or longer, and the non-performing party is delayed or unable to perform under this Agreement or any Ordering Document because of the Force Majeure Event, then the performing party will have the right to terminate this Agreement or the Ordering Document, in whole or in part, upon written notice to the non-performing party.

## **11. DISCLAIMERS AND LIMITATIONS OF LIABILITIES**

11.1. Except as expressly set forth in this Agreement, neither party makes, and each such party hereby specifically disclaims, all representations and warranties, express or implied, arising by law or otherwise, arising under or relating to this Agreement.

**11.2. THE PRODUCTS, APPLICATION, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER GOODS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER ARE "AS IS", AND PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT WITH RESPECT TO THE PRODUCTS, APPLICATION, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER GOODS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER OR WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THIS AGREEMENT. CUSTOMER'S USE OF THE PRODUCTS, APPLICATION, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER GOODS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER WILL NOT BE DEEMED LEGAL, TAX OR INVESTMENT ADVICE.**

**11.3. PROVIDER'S TOTAL LIABILITY UNDER THIS AGREEMENT WILL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID BY CUSTOMER TO PROVIDER UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE EVENT OF LIABILITY, LESS ALL AMOUNTS PAID BY PROVIDER IN CONNECTION WITH ANY OTHER EVENTS OF LIABILITY HEREUNDER.**

**11.4. UNDER NO CIRCUMSTANCES WILL PROVIDER (OR ANY PROVIDER AFFILIATES PROVIDING PRODUCTS, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER GOODS AND SERVICES TO CUSTOMER HEREUNDER) BE LIABLE TO CUSTOMER, ANY AUTHORIZED USER OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, TRADING LOSSES, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO SUCH DAMAGES ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF PROVIDER HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.**

11.5. Provider will have no liability to Customer under the following circumstances: Customer fails to follow Provider's instructions relating to the Products, Application, Hosting Services, Maintenance Services or SaaS Services; the Products, Application, Hosting Services, Maintenance Services or SaaS Services are used in violation of this Agreement; the Products or Application are configured, customized, installed or maintained by anyone other than Provider; Customer modifies any Products or Application without the prior written consent of Provider; and/or the Products, Application, Hosting Services, Maintenance Services or SaaS Services are used in conjunction with any hardware, software, products or interfaces not specified by Provider. The obligations of Provider under this Agreement run only to Customer and not to its Affiliates, Authorized Users or any other persons. Under no circumstances will any Affiliate, Authorized User or client of Customer or any other person be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement, even if such Affiliates, Authorized Users, clients or other persons are provided access to any Hosting Services, SaaS Services, Professional Services or Maintenance Services. Customer will have no rights or remedies against Provider except as specifically provided in this Agreement. No action or claim of any type relating to this Agreement may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim.

11.6. The exclusions, disclaimers and limitations set forth in this Agreement have been considered and accepted by the parties hereto in the pricing of the Application, Products and Services provided in this Agreement.

## **12.1. NOTICES**

All notices from one party to the other under this Agreement will be in writing and will be deemed given when (i) delivered personally with receipt signature; (ii) sent via certified mail with return receipt requested; or (iii) sent by commercially recognized air courier service with receipt signature required, to the following address:

if to iRely, LLC:

*iRely, LLC*

*4242 Flagstaff Cove*



Ft. Wayne, Indiana, 46815

ATTENTION: Chris Pelz ([chris.pelz@irely.com](mailto:chris.pelz@irely.com))

if to CUSTOMER:

[NAME & ADDRESS]

ATTENTION: \_\_\_\_\_

and

ATTENTION: \_\_\_\_\_

### **13. REPRESENTATIONS AND WARRANTIES OF CUSTOMER**

13.1. Representations and Warranties. Customer represents and warrants to Provider that:

13.1.1. Customer owns Customer Data or has all necessary rights to use and input Customer Data into the Application and Products;

13.1.2. Customer Data shall not infringe upon any third-party Intellectual Property Rights or violate any rights against defamation or rights of privacy; and

13.1.3. Customer has not falsely identified itself nor provided any false information to gain access to the Application or Products, and that Customer's billing information is correct.

13.2. EU Data Transfer. If Customer resides or operates in the European Union (EU) or if any transfer of information between Customer and the Application or Products is governed by the European Union Data Protection Directive or national laws implementing that Directive, then Customer expressly consents to the transfer of such information outside of the European Union to the United States and to such other countries as may be contemplated by the features and activities of the Application or Products under this Agreement. Customer will indemnify Provider against all claims arising out of a violation of these data laws or any other law.

### **14. EXPORT CONTROL**

14.1. Export Laws. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Products. Customer agrees that such export laws govern its use of the Products (including, without limitation, technical data) and Services provided under this Agreement, and Customer agrees to comply with all such export laws and regulations (including, without limitation, "deemed export" and "deemed re-export" regulations). Customer further agrees that no data, information, Product and/or Deliverables will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

14.2. No Representations. Provider and its licensors make no representation that the Application, Products and Services are appropriate or available for use in other locations. Customer is solely responsible for compliance with all applicable laws, including, without limitation, export and import regulations of other countries. Any diversion of the Customer Data contrary to U.S. and other relevant law is prohibited.

## **15. INTEGRATION AND AMENDMENTS**

This Agreement and the attached Schedules, constitute a complete and exclusive final written expression of the terms of agreement between the parties hereto regarding the subject matter hereof. This Agreement supersedes all earlier and contemporaneous agreements, understandings and negotiations concerning the subject matter. In the event of a conflict or inconsistency between this Agreement and any Schedule, the terms of this Agreement will prevail, provided that if this Agreement is silent on or does not expressly provide for or address a right, limitation or obligation, then the applicable Schedule will govern and control this Agreement to the extent the Schedule expressly provides for or addresses a right, limitation or obligation hereunder. The parties hereto may amend this Agreement only in writing, and no oral representation or course of dealing shall modify this Agreement.

## **16. SECURITY, NO CONFLICTS**

Each party shall inform the other of any information made available to the other party that is classified or restricted data, shall comply with the security requirements imposed by any state or local government, or by the United States Government, and shall return all such material upon request. Each party represents and warrants that its participation in this Agreement does not conflict with any contractual or other obligation of the party or create any conflict of interest and shall promptly notify the other party if any such conflict arises during the Term.

## **17. INSURANCE**

Each party shall maintain commercially reasonable insurance protection covering its respective activities hereunder, including coverage for statutory workers' compensation, comprehensive general liability for bodily injury and tangible property damage, and shall provide Certificates of Insurance to the other party, upon reasonable request, evidencing such coverage and amounts.

## **18. GOVERNING LAW AND DISPUTES**

18.1. The construction and performance of this Agreement shall be governed by the substantive laws of the United States and the State of Delaware, without regard to conflicts of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any claim by one party against the other party must be brought within one (1) year after such claim arose.

18.2. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration shall be conducted in Allen County, Indiana by a single arbitrator appointed by the AAA. Any appeal of the arbitration decision shall be brought exclusively in the federal or state courts situated in Delaware. Customer consents to exclusive personal jurisdiction and venue in Delaware.

18.3. Provider shall be entitled to its reasonable attorneys' fees, costs and expenses if it prevails in any legal dispute with Customer.

## **19. PRIVACY POLICY AND GDPR**

Schedule 8 contains Provider's current Privacy Policy.

## **20. ASSIGNMENT OR CHANGE IN CONTROL**

This Agreement may not be assigned by either party without the prior written approval of the other party, but may be assigned without consent in the event of a merger or reorganization in which the surviving entity owns or controls more than 50% of the acquired party and agrees in writing to assume the obligations under this Agreement. Any purported assignment in violation of this Section 20 shall be void. Any actual or proposed change in control of Customer that results, or would result, in a direct competitor of Provider directly or indirectly owning or controlling 50% or more of Customer shall entitle Provider to terminate this Agreement for cause immediately upon written notice.

## **21. SEVERABILITY; CERTAIN TERMS**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. For the purposes of this Agreement: "including" and cognates thereof means "including but not limited to"; and "person" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.

## **22. NO AGENCY**

The parties hereto acknowledge and agree that each is an independent contractor, and nothing herein constitutes a joint venture, partnership, employment, or agency between Customer and Provider because of this Agreement or use of the Application, Products or Services. Neither party shall have the right to bind the other party or cause it to incur liability.

### **23. WAIVER**

The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by such party in writing.

### **24. NON-SOLICITATION**

During the Term of this Agreement and for a period of one (1) year thereafter, neither party will, except with the other party's prior written approval, solicit the employment of any employee, consultant or subcontractor of such other party that directly participated in the activities set forth in this Agreement. The foregoing shall specifically not apply to general solicitations of employment issued by either party to which an employee of the other may voluntarily respond.

### **25. SURVIVABILITY**

Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment and others which by their nature are intended to survive.