

# General Terms and Conditions

*Supplier Diversity Management System by Datalou, LLC.*

*These are the Terms that govern the use of the Services.*

## 1. Definitions.

**“Access Credentials”** means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the Hosted Services.

**“Action”** has the meaning set forth in **Section 13.1**.

**“Agreement”** has the meaning set forth on the preamble of the Subscription Agreement Cover Page.

**“Authorized User”** means each of the named individuals authorized to use the Services pursuant to **Section 3.1** and the other terms and conditions of this Agreement as identified in Schedule B.

**“Confidential Information”** has the meaning set forth in **Section 10.1**.

**“Customer”** has the meaning set forth in the preamble.

**“Customer Data”** means information, data and other content, in any form or medium, that is provided, directly or indirectly, by Customer or an Authorized User for Processing by the Services. For the avoidance of doubt, Customer Data excludes Resultant Data.

**“Customer Failure”** has the meaning set forth in **Section 4.2**.

**“Customer Indemnitee”** has the meaning set forth in **Section 13.1**.

**“Customer Systems”** means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

**“Datalou”** has the meaning set forth in the preamble.

**“Datalou Disabling Device”** means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by Datalou or its designee to disable Customer’s or any Authorized User’s access to or use of the Services automatically with the passage of time or under the positive control of Datalou or its designee.

**“Datalou Indemnitee”** has the meaning set forth in **Section 13.2**.

**“Datalou Materials”** means the Service Software, Specifications, Documentation and Datalou Systems and any and all other information, data, documents, materials, works and other content,

devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Datalou or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Datalou Systems. For the avoidance of doubt, Datalou Materials include Resultant Data and any information, data or other content derived from Datalou’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

**“Datalou Personnel”** means all individuals involved in the performance of Services as employees, agents or independent contractors of Datalou or any Subcontractor.

**“Datalou Systems”** means the information technology infrastructure used by or on behalf of Datalou in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Datalou or through the use of third-party services.

**“Disclosing Party”** has the meaning set forth in **Section 10.1**.

**“Documentation”** means any manuals, instructions or other documents or materials (listed in Schedule C) that Datalou provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services or Datalou Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

**“Effective Date”** has the meaning set forth in the preamble.

**“Fees”** has the meaning set forth in **Section 8.1**.

**“EULA”** means the End User License Agreement.

**“Force Majeure Event”** has the meaning set forth in **Section 15.1**.

**“Harmful Code”** means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Services or Datalou Systems as intended by this Agreement. Harmful Code does not include any Datalou Disabling Device.

**“Hosted Services”** has the meaning set forth in **Section 2**.

**“Prohibited Data”** has the meaning set forth in **Section 7.3**.  
**“Indemnitee”** has the meaning set forth in **Section 13.3**.  
**“Indemnitor”** has the meaning set forth in **Section 13.3**.

**“Intellectual Property Rights”** means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**“Losses”** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**“Permitted Use”** means any use of the Services by an Authorized User for the benefit of Customer solely in or for Customer’s internal business operations relating to supplier diversity and the Customer may only share the Resultant Data with its direct clients in order to develop diversity strategies for such clients (however, these direct clients may not directly access any of the Services or Resultant Data), and Licensee may not provide this material, in whole or in part, to any other third party for any reason.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**“Personal Information”** means any information that: (i) is processed under or in connection with this Agreement and (ii) individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted or located and that is protected under applicable Law. Personal Information includes all “nonpublic personal information” as defined under the Gramm-Leach-Bliley Act, “protected health information” as defined under the Health and Insurance Portability and Accountability Act of 1996, and the HITECH Act, “Personal Data” as defined in the EU Data Protection Directive (Directive 95/46/EEC), and as defined by the California Consumer Privacy Act of 2018, and all rules and regulations issued under any of the foregoing.

**“Process”** means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **“Processing”** and **“Processed”** have correlative meanings.

**“Receiving Party”** has the meaning set forth in **Section 10.1**.

**“Reimbursable Expenses”** has the meaning set forth in **Section 8.3**. **“Renewal Term”** has the meaning set forth in **Section 11.2**.

**“Representatives”** means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, consultants, agents and legal advisors.

**“Resultant Data”** means de-identified, anonymous information, data and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Processing of such information, data or content.

**“Security Incident”** means the theft, loss, or unauthorized disclosure, access to, or use of Personal Information processed under or in connection with this Agreement.

**“Service Allocation”** has the meaning set forth in **Section 3.4**.

**“Service Manager”** has the meaning set forth in **Section 2.2**.

**“Service Software”** means the Datalou software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Datalou provides remote access to and use of as part of the Services.

**“Services”** has the meaning set forth in **Section 2**.

**“Specifications”** means the specifications for the Services set forth in Schedule C.

**“Subcontractor”** has the meaning set forth in **Section 2.4**.

**“Term”** means the length of the Agreement.

**“Territory”** means the United States.

**“Third Party Materials”** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or components of or relating to the Services that are not proprietary to Datalou.

## 2. Services.

Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, Datalou shall provide to Customer and its Authorized Users the services described in the attached Schedule A and this Agreement (collectively, the **“Services”**) in accordance with the Specifications and terms and conditions hereof, including to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users (**“Hosted Services”**) in conformity with the Specifications 24 hours per day, seven days per week every day of the year, except for: (i) scheduled downtime for which Customer has received at least five business days advanced written notice and which occurs outside of the hours of 8am to 8pm Monday – Friday E.S.T.; (ii) Service downtime or degradation due to a Force Majeure Event; (iii) any other circumstances beyond Datalou’s reasonable control, including

Customer's or any Authorized User's use of Third Party Materials, misuse of the Hosted Services, or use of the Services other than in compliance with the express terms of this Agreement and the Specifications; and (iv) any suspension or termination of Customer's or any Authorized Users' access to or use of the Hosted Services as permitted by this Agreement.

2.1 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the parties: (a) Datalou has and will retain sole control over the operation, provision, maintenance and management of the Services and Datalou Materials, including the: (i) Datalou Systems; (ii) location(s) where any of the Services are performed, including in the United States, in countries outside the United States, or outside the borders of the country in which Customer or the Customer Systems are located; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Support Services and Service maintenance, upgrades, corrections and repairs; and (b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Datalou Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Services or Datalou; (ii) results obtained from any use of the Services or Datalou Materials; and (iii) conclusions, decisions or actions based on such use.

2.2 Service Management. Each party shall, throughout the Term, maintain within its organization a Service Manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services ("**Service Manager**") to be named on Schedule B. Each Service Manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its Service Manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. The parties' initial Service Managers are set forth on the Cover Page. Each party shall use commercially reasonable efforts to maintain the same Service Manager in place throughout the Term. If either party's Service Manager ceases to be employed by such party or such party otherwise wishes to replace its Service Manager, such party shall promptly name a new Service Manager by written notice to the other party.

2.3 Changes. Datalou reserves the right, in its sole discretion, to make any changes to the Services and Datalou Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Datalou's services to its customers, (ii) the competitive strength of or market for Datalou's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law; provided that if Datalou makes a change to the Services that materially reduces their functionality to Customer, then within 30 business days of the implementation of such change, Customer shall have the right to terminate this Agreement immediately on written notice to Datalou and receive a full refund of any amounts prepaid by Customer for Services to be provided after the effective date of such termination. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with a change procedure

mutually agreed to by the parties. No requested changes will be effective unless and until memorialized in a written change order signed by both parties, except that Customer may increase or decrease the number of Authorized Users for any Services pursuant to **Section 3.4**.

2.4 Subcontractors. Datalou may from time to time in its discretion engage third parties to perform Services (each, a "**Subcontractor**"). Datalou shall be responsible for any act or omission of any Subcontractor as if it was the act of Datalou.

2.5 Suspension or Termination of Services. Datalou may, upon written notice to Customer via Customer's designated representative (e-mail being acceptable), directly or indirectly, and by use of a Datalou Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Services or Datalou Materials, without incurring any resulting obligation or liability, if: (a) Datalou receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Datalou to do so; or (b) Datalou reasonably believes, in good faith that: (i) Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 2.5** does not limit any of Datalou's other rights or remedies, whether at law, in equity or under this Agreement.

### 3. Authorization and Customer Restrictions.

3.1 Authorization. Datalou hereby authorizes Customer to access and use, solely in the Territory and during the Term, the Services and such Datalou Materials as Datalou may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, and the conditions and limitations set forth in this Agreement and the EULA, subject to Datalou's rights under **Section 8.6**.

3.2 Reservation of Rights. Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Datalou Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Services, the Datalou Materials and the Third Party Materials are and will remain with Datalou and the respective rights holders in the Third Party Materials.

3.3 Use Limitations and Restrictions. Customer shall not, and shall not knowingly permit any other Person to, access or use the Services or Datalou Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement as disclosed to Customer in writing. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits: (a) copy, modify or create derivative works or improvements of the Services or Datalou Materials; (b) rent, lease, lend, sell,

sublicense, assign, distribute, publish, transfer or otherwise make available any Services or Datalou Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Datalou Materials, in whole or in part; (d) bypass or breach any security device or protection used by the Services or Datalou Materials or access or use the Services or Datalou Materials other than by an Authorized User through the use of his or her own then valid Access Credentials; (e) input, upload, transmit or otherwise provide to or through the Services or Datalou Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code; (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Datalou Systems or Datalou's provision of services to any third party, in whole or in part; (g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, EULA, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Datalou Materials, including any copy thereof; (h) access or use the Services or Datalou Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Datalou customer), or that violates any applicable Law; (i) access or use the Services or Datalou Materials for purposes of competitive analysis of the Services or Datalou Materials, the development, provision or use of a competing software service or product or any other purpose that is to Datalou's detriment or commercial disadvantage; or (j) otherwise access or use the Services or Datalou Materials beyond the scope of the authorization granted under **Section 3.1**.

3.4 Service Use and Data Storage. Schedule A sets forth a schedule of Fees for designated levels of Hosted Service usage and data storage (each a "**Service Allocation**"), beginning with the Fees payable by Customer for the levels of Hosted Service usage and data storage in effect as of the Effective Date. If Customer exceeds its Service Allocation by more than 3% for any relevant period, Customer agrees to pay to Datalou the applicable excess usage and storage Fees.

#### 4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) reasonably provide Datalou Personnel with such access to Customer's premises and Customer Systems as is necessary for Datalou to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide reasonable cooperation and assistance as Datalou may reasonably request to enable Datalou to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Customer Failure or Delay. Datalou is not responsible or liable for any delay in delivering the acceptance version or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under the Agreement (each, a "**Customer Failure**");

provided, however, that Datalou (i) shall provide Customer's Service Manager with prompt written notice (e-mail being acceptable) of any such Customer Failure, specifically detailing the nature thereof, and (ii) shall use its commercially reasonable efforts to fulfill its obligations.

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.3**, Customer shall, and shall cause its Authorized Users to, immediately: (a) take reasonable and lawful measures within their respective control that are necessary to stop, or attempt to stop, the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Datalou Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Datalou of any such actual or threatened activity.

4.4 Non-Solicitation. During the Term and for six months after, Customer shall not, and shall not assist any other Person to, directly or indirectly recruit or solicit (other than by general advertisement not directed specifically to any Person or Persons) for employment or engagement as an independent contractor any Person then or within the prior six months employed or engaged by Datalou and involved in any respect with the Services or the performance of this Agreement.

5. Data Backup. The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, DATALOU HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION OR RECOVERY OF CUSTOMER DATA.

6. [RESERVED]

#### 7. Security.

7.1 Datalou Systems and Security Obligations. Datalou shall employ commercially reasonable physical, administrative and technical controls, screening and security procedures and other safeguards designed to: (a) protect Customer Data and Personal Information provided by Customer to Datalou; and (b) prevent any Security Incident.

7.2 Data Breach Procedures. Datalou maintains a data breach plan which complies with standards customary to providers of supplier diversity SaaS products and services and shall implement the procedures required under such data breach plan on the occurrence of a "Data Breach" (as defined in such plan).

7.3 Prohibited Data. [INTENTIONALLY OMITTED].

7.4 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content, but excluding Datalou's processing of Personal Information; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer Systems; and (d) the security and use of Customer's and its Authorized Users' Access Credentials.

7.5 Access and Security. Customer shall employ commercially reasonable physical, administrative and technical controls, screening and security procedures and other safeguards designed to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

#### 8. Fees; Payment Terms.

8.1 Fees. Customer shall pay Datalou the fees set forth in Schedule A (“**Fees**”) in accordance with this **Section 8**, unless Customer disputes the Fees in accordance with **Section 8.6**.

8.2 Fee Increases. Datalou may increase Fees no more than once annually for any contract year after the first contract year of the Initial Term, by providing written notice to Customer at least 60 calendar days prior to the commencement of such Renewal Term, and Schedule A will be deemed amended accordingly.

8.3 Reimbursable Expenses. Customer shall reimburse Datalou for out-of-pocket expenses incurred by Datalou in connection with performing the Services that have been approved in advance in writing and are reasonably substantiated in accordance with Customer’s standard travel and expense policy (“**Reimbursable Expenses**”).

8.4 Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer, other than any taxes imposed on Datalou’s income, provided such taxes are properly invoiced in the year in which they are due.

8.5 Payment. Customer shall pay all Fees (not disputed in accordance with **Section 8.6**) and Reimbursable Expenses on or prior to the due date set forth in Schedule A. Customer shall make all payments hereunder in US dollars. Customer shall make payments to the address or account specified in Schedule A or such other address or account as Datalou may specify in writing from time to time.

8.6 Late Payment; Disputes. If Customer fails to make any payment within 45 days after the applicable due date, and does not provide Datalou with a good faith written basis for disputing the amount of such payment within the 45-day period, then, in addition to all other remedies that may be available, and upon written notice to Customer via Customer’s designated representative (email sufficient) Datalou may suspend performance of the Services until all past due amounts have been paid. For the avoidance of doubt, Customer’s dispute of an amount under this **Section 8.6** shall not relieve it of its obligation to timely pay any and all undisputed amounts under this Agreement (including any undisputed amounts under a disputed invoice).

8.7 No Deductions or Setoffs. All amounts payable to Datalou under this Agreement shall be paid by Customer to Datalou in full without any setoff, recoupment, counterclaim, deduction,

debit or withholding for any reason (other than any deduction or withholding of tax as required by applicable Law).

#### 9. Intellectual Property Rights.

9.1 Services and Datalou Materials. All right, title and interest in and to the Services and Datalou Materials, including all Intellectual Property Rights therein, are and will remain with Datalou and the respective rights holders in the Third-Party Materials. Customer has no right, license or authorization with respect to any of the Services or Datalou Materials (including Third-Party Materials) except as expressly set forth in **Section 3.1** or the applicable third-party license, in each case subject to **Section 3.2**. All other rights in and to the Services and Datalou Materials (including Third-Party Materials) are expressly reserved by Datalou and the respective third-party licensors. In furtherance of the foregoing, to the extent applicable, Customer hereby unconditionally and irrevocably grants to Datalou an assignment of all right, title and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

9.2 Customer Data. As between Customer and Datalou, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 9.3**.

9.3 Consent to Use Customer Data. During the Term, Customer hereby grants all such rights and permissions in or relating to Customer Data to Datalou, its Subcontractors and the Datalou Personnel solely as are necessary to perform the Services. During the Term, Datalou shall not deny Customer access to any Customer Data for retrieval or backup, and shall assist Customer with such retrieval or backup, at Customer’s request and at Datalou’s then-current applicable hourly rates, provided that Customer is not then in breach of any of its material obligations hereunder, including any breach of **Section 8.5**.

#### 10. Confidentiality.

10.1 Confidential Information. In connection with this Agreement each party (as the “**Disclosing Party**”) may disclose or make available Confidential Information to the other party (as the “**Receiving Party**”). Subject to **Section 10.2**, “**Confidential Information**” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, strategies, customers, vendors, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”. Without limiting the foregoing all Datalou Materials are the Confidential Information of Datalou and Customer Data is the Confidential Information of Customer.

10.2 Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such

information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

**10.3 Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall: (a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (b) except as may be permitted by and subject to its compliance with **Section 10.4**, not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 10.3**; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 10.3**; (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and (d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this **Section 10**.

**10.4 Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under **Section 10.3**; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this **Section 10.4**, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## 11. Termination.

**11.1 Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement: (a) all rights, licenses, consents and authorizations granted by either party to the other hereunder will

immediately terminate; (b) Datalou shall promptly cease all use of any Customer Data or Customer's Confidential Information and (i) return to Customer (at Customer's sole cost and expense), or at Customer's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Customer Data or Customer's Confidential Information; and (ii) permanently erase all Customer Data and Customer's Confidential Information from all systems Datalou directly or indirectly controls, provided that, for clarity, Datalou's obligations under this **Section 11.1** do not apply to any Resultant Data; (c) Customer shall immediately cease all use of any Services or Datalou Materials and (i) promptly and within 10 business days return to Datalou, or at Datalou's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on any Datalou Materials or Datalou's Confidential Information; and (ii) permanently erase all Datalou Materials and Datalou's Confidential Information from all systems Customer directly or indirectly controls; and (iii) certify to Datalou in a signed and notarized written instrument that it has complied with the requirements of this **Section 11.1**; (d) notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party's Confidential Information; and (ii) Datalou may retain Customer Data; (iii) Customer may retain Datalou Materials, in the case of each of subclause (i) and (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law; (iv) Datalou may also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this **Section 11.1** will remain subject to all confidentiality, security and other applicable requirements of this Agreement; (e) Datalou may disable all Customer and Authorized User access to the Hosted Services and Datalou Materials; (f) if Datalou terminates this Agreement for Customer's uncured (if curable) material breach of this Agreement, Customer shall pay on receipt of Datalou's invoice therefor, all previously-accrued but not yet paid Fees and Reimbursable Expenses, together with (i) if the Agreement is terminated during its initial 12-month period, any other Fees that would have become payable during the initial 15 months of the Term (as if the Agreement had not been terminated); and (ii) if the Agreement is terminated after its initial 12-month period, any other Fees that would have become payable during the 90-day period thereafter (as if the Agreement had not been terminated); (g) on Customer's written request made within 10 business days of the effective date of expiration or termination, Datalou shall, within five business days following its receipt of such request, retrieve and deliver to Customer, at Datalou's then current hourly rates and solely at Customer's sole cost and expense, the then most recent version of Customer Data maintained by Datalou.

**11.2 Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 3.3**, **Section 4.4**, **Section 9**, **Section 10**, **Section 11.1**, this **Section 11.2**, **Section 12**, **Section 13**, **Section 14** and **Section 16**. For the avoidance of doubt, Customer's obligations under **Section 8** to make payments and reimbursements of amounts accruing under this Agreement during the Term shall survive termination or expiration of the Agreement.

## 12. Representations and Warranties.

12.1 Mutual Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement; (b) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (c) when executed and delivered by it, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.

12.2 Additional Datalou Representations, Warranties and Covenants. Datalou represents, warrants and covenants to Customer that Datalou will perform the Services using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with all applicable Laws and generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

12.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Datalou that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Datalou and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

12.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, ALL SERVICES AND DATALOU MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND DATALOU HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND DATALOU SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, DATALOU MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR DATALOU MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE ENTIRELY SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" "AS AVAILABLE" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

### 13. Indemnification.

13.1 Datalou Indemnification. Datalou shall indemnify, defend and hold harmless Customer and Customer's officers, directors, employees, agents, permitted successors and permitted

assigns (each, a "Customer Indemnitee") from and against any and all Losses incurred by such Customer Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an "Action") by a third party (other than an Affiliate of a Customer Indemnitee) to the extent that such Losses arise from any allegation in such Action that: (a) Customer's or an Authorized User's use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the Specifications) infringes a U.S. Intellectual Property Right; (b) Datalou's breach of this Agreement; (c) Datalou's violation of applicable law, rule, or regulation; (d) Datalou's gross negligence or willful misconduct; or (e) any Security Incident relating to Personal Information in Datalou's possession or control. The foregoing obligation does not apply to any Action or Losses to the extent arising out of or relating to any: (i) access to or use of the Services or Datalou Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by Datalou; (ii) modification of the Services or Datalou Materials other than: (A) by or on behalf of Datalou; or (B) with Datalou's written approval in accordance with Datalou's written specification; or (C) failure to timely implement any modifications, upgrades, replacements or enhancements made available to Customer by or on behalf of Datalou.

13.2 Customer Indemnification. Customer shall indemnify, defend and hold harmless Datalou and its Subcontractors and Affiliates (including Access Media, LLC), and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a "Datalou Indemnitee") from and against any and all Losses incurred by such Datalou Indemnitee in connection with any Action by a third party (other than an Affiliate of a Datalou Indemnitee) that/to the extent that such Losses arises out of or relates to any: (a) Customer Data, except to the extent such Action arises out of or relates to the use of the Customer Data in violation of the terms herein; (b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, , except to the extent such Action arises out of or relates to the use of such materials or information in violation of the terms herein; or (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants or obligations under this Agreement.

13.3 Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 13.1** or **Section 13.2**, as the case may be. The party seeking indemnification (the "Indemnitee") shall cooperate with the other party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 13.3** will not relieve the Indemnitor of its obligations under this **Section 13** except to the extent that the Indemnitor can demonstrate that it has been actually and materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

13.4 Mitigation. If any of the Services or Datalou Materials are, or in Datalou's reasonable, good faith opinion are

likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer's or any Authorized User's use of the Services or Datalou Materials is enjoined or threatened to be enjoined, Datalou may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Datalou Materials materially as contemplated by this Agreement; (b) modify or replace the Services and Datalou Materials, in whole or in part, to seek to make the Services and Datalou Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Datalou Materials, as applicable, under this Agreement; or (c) by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Datalou Materials in exchange for a full refund of any amounts prepaid by Customer for Services to be provided after the effective date of such termination, and require Customer to immediately cease any use of the Services and Datalou Materials or any specified part or feature thereof.

THIS SECTION 13 SETS FORTH CUSTOMER'S SOLE REMEDIES AND DATALOU'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE SERVICES AND DATALOU MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

#### 14. Limitations of Liability.

14.1 EXCLUSION OF DAMAGES. DURING EACH CALENDAR MONTH FOLLOWING DELIVERY OF THE ACCEPTANCE VERSION, THE SERVICES WILL BE AVAILABLE TO CUSTOMER AND ITS AUTHORIZED USERS, IN A MANNER CONSISTENT WITH CUSTOMER'S PAST EXPERIENCE WITH THE SERVICES, AT LEAST 99% OF THE TIME (EXCLUDING DOWNTIME FOR REASONS SPECIFIED IN SECTION 2(I) THROUGH SECTION 2(IV)) (THE "SERVICE LEVEL"); PROVIDED THAT, IN THE EVENT THE SERVICE LEVEL IS NOT MET FOR ANY TWO CONSECUTIVE MONTHS OR FOR THREE NON-CONSECUTIVE MONTHS DURING ANY SIX-MONTH PERIOD, THEN CUSTOMER SHALL HAVE THE RIGHT TO TERMINATE THIS AGREEMENT IMMEDIATELY ON WRITTEN NOTICE TO DATALOU AND RECEIVE A FULL REFUND OF ANY AMOUNTS PREPAID BY CUSTOMER FOR SERVICES TO BE PROVIDED AFTER THE EFFECTIVE DATE OF SUCH TERMINATION. THIS SECTION 14.1 PROVIDES CUSTOMER'S SOLE REMEDY FOR DATALOU'S FAILURE TO MEET THE SERVICE LEVEL AND, EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 14.1, IN NO EVENT WILL DATALOU BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE FOR ANY FAILURE TO MEET THE SERVICE LEVEL. IN ADDITION, IN NO EVENT WILL A PARTY HERETO BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; OR (b) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR (c) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF

WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF A PARTY HERETO UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED AN AMOUNT EQUAL TO FOUR TIMES THE AMOUNT PAID AND PAYABLE FOR THE SERVICES HEREUNDER DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM TO WHICH THE LIABILITY RELATES. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

14.3 Exceptions. The exclusions and limitations in Section 14.1 and Section 14.2 do not apply to limit either party's (a) obligations under Section 7 (Security), (b) obligations under Section 10 (Confidentiality) (c) obligations under Section 13 (Indemnification) or (d) liability for damages caused by such party's gross negligence or willful misconduct.

#### 15. Force Majeure.

15.1 No Breach or Default. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or Internet outage. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more.

15.2 Affected Party Obligations. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

#### 16. Miscellaneous.

16.1 Further Assurances. Upon a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.



16.2 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

16.3 Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided that, during the Term, Datalou may accurately identify Customer as a Datalou customer and user of the Services on Datalou's customer lists and website without Customer's consent.

16.4 Notices. Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to a party as set forth on the Master Subscription Agreement Cover Page (or to such other address or such other person that such party may designate from time to time in accordance with this **Section 16.4**). Notices sent in accordance with this **Section 16.4** will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by e-mail with confirmation of transmission, if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

16.5 Interpretation. For purposes of this Agreement: (a) the words "include," "includes" and "including" are deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

16.6 Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

16.7 Entire Agreement. This Agreement, together with the terms incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, the Datalou Subscription Agreement, dated [INSERT]; (b) second, this Agreement, excluding its exhibits, schedules, attachments and appendices; (b) third, the exhibits, schedules, attachments and appendices to this Agreement as of the Effective Date; and (c) forth, any other documents incorporated herein by reference, such materials shall control where explicitly stated.

16.8 Assignment. Neither party may assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the other party's prior written consent, not to be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement on written notice to the other party (a "**Notice of Assignment**") and without the other party's consent in connection with any merger, consolidation or reorganization (regardless of whether such party is a surviving or disappearing entity) or as part of a sale of all or substantially all of such party's assets, provided that if (a) the non-assigning party believes in its reasonable commercial judgment that the assignee does not have the financial wherewithal to fulfill its obligations under this Agreement, or (b) the assignee is a direct competitor of the non-assigning party, then the non-assigning party may terminate this Agreement immediately on written notice given within 30 days of the non-assigning party's receipt of the Notice of Assignment, and in the case of termination by Customer under this **Section 16.8**, Customer shall receive a full refund of any amounts prepaid by Customer for Services to be provided after the effective date of such termination.

Any purported assignment, delegation or transfer in violation of this **Section 16.8** is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

16.9 No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

16.10 Amendment and Modification; Waiver. No amendment to or modification of or rescission, termination or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each

party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

16.11 Severability. If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

16.12 Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of New York in each case located in New York City and County of New York, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

16.13 Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 10** or, in the case of Customer, **Section 3.3**, **Section 4.3** or **Section 7.3**, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.

16.14 Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.