

Master Platform Agreement

This Master Platform Agreement (the “**Agreement**”), effective as of [OPEN], 2025 (the “**Effective Date**”), is by and between Campfire Interactive, Inc., a corporation formed under the laws of the State of Michigan (“**Company**”) and [OPEN], a [OPEN] formed under the laws of [OPEN] (“**Client**”). Company and Client may be referred to herein collectively as the “**Parties**” or individually as a “**Party**.”

WHEREAS, Client desires that Company provide it with access to certain software and related services as further detailed in this Agreement and any attachments, exhibits and schedules hereto; and

WHEREAS, Company desires to provide Client access to the software and related services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

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 Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” has the meaning set forth in the preamble, and shall be deemed to include all Order Forms and Statements of Work.

“**Authorized Users**” means Client’s employees, consultants, contractors, and agents (a) who are authorized by Client to access and use the Services under the rights granted to Client pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

“**Availability Requirement**” has the meaning set forth in Section 5.1.

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

“**Company 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 Company or its designee to disable Client’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 Company or its designee.

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

“**Company Materials**” means the Services and Company 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 Company or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Company Systems. For the avoidance of doubt, Company Materials include Resultant Data and any information, data, or other content derived from Company's monitoring of Client's access to or use of the Services, but do not include Client Data.

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

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

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

“Client” has the meaning set forth in the preamble.

“Client Data” means any and all data, information, text, graphics, works and other materials, including personal information of any employees, provided to Company by Client during the Term, and all data processed using or obtained from the Software or in connection to the use and access to the Services, including, without limitation all of Client's results from the use of and access to the Services and Company Materials. Notwithstanding the foregoing, the Client Data shall not include any Usage Data or Feedback.

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

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

“Client Systems” has the meaning set forth in Section 7.3

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

“Documentation” means Company's user manuals, handbooks, and installation guides relating to the Software and Services that Company provides or makes available to Client which describe the functionality, components, features, or requirements of the Services and Software, including any aspect of the installation, configuration, integration, operation, or use of the Services and/or Software.

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

“Feedback” has the meaning set forth in Section 11.4.

“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 Client or any Authorized User from accessing or using the Services or Company Systems as intended by this Agreement. Harmful Code does not include any Company Disabling Device.

“Indemnitee” has the meaning set forth in Section 13.3.

“Indemnitor” has the meaning set forth in Section 13.3.

“Initial Term” has the meaning set forth in Section 15.1.

“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 all losses, damages, 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.

“Maintenance Release” means any update, upgrade, release, or other adaptation or modification of the Software, including any updated Documentation, that Company may provide to Licensee from time to time during the Term, which may contain, among other things, error corrections, enhancements, improvements, or other changes to the user interface, functionality, compatibility, capabilities, performance, efficiency, or quality of the Software and/or Services.

“Order Form” or **“Statement of Work”** means the Order Form and any other orders agreed to by the Parties during the Term pursuant to which Company agrees to provide access to Services to Client.

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

“Personal Information” means information that Client provides or for which Client provides access to Company, or information which Company creates or obtains on behalf of Client, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers). Client’s business contact information is not by itself Personal Information.

“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.

“Project Manager” has the meaning set forth in Section 8.2.

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

“Reinstatement Fee” shall have the meaning set forth in Section 2.7.

“Renewal Term” has the meaning set forth in Section 15.2.

“Representatives” means, with respect to a Party, that Party’s and its Affiliates’ employees, officers, directors, consultants, agents, independent contractors, service providers, subcontractors, and legal advisors.

“Resultant Data” means data and information related to Client’s use of the Services that is used by Company in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“Services” means all services to be performed by Company pursuant to this Agreement.

“Software” means the executable, object code version of the computer program(s) which Company agrees to provide in an Order Form, as well as any computer programs, code, enhancements or other materials provided to or developed for Client by Company pursuant to this Agreement, as well as any Maintenance Releases for any of the foregoing.

“Specifications” means the specifications for the Services set forth by Company and communicated to Client from time to time.

“Term” has the meaning set forth in Section 15.2.

“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 Company.

“Usage Data” has the meaning set forth in Section 2.8.

2. Services.

2.1 **Access and Use.** Subject to and conditioned on Client’s and its Authorized Users’ compliance with the terms and conditions of this Agreement including but not limited to the payment of Fees and compliance with all other terms and conditions of this Agreement, Company hereby grants to Client a non-exclusive, non-sublicensable, and non-transferable (except in compliance with Section 17.11) right to access and use the Services solely for Client’s and its Affiliates’ internal business purposes during the period set forth for such Services in the relevant Order Form or, if no such period is provided, then during the Term of this Agreement, and solely for use by Authorized Users in accordance with the terms and conditions herein. Company shall provide to Client the Access Credentials within a reasonable time following the Effective Date. The total number of Authorized Users will not exceed the number set forth in the Order Form, except as expressly agreed to in writing by the parties and subject to any appropriate adjustment of the Fees payable hereunder.

2.2 **Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:

- (a) Company has and will retain sole control over the operation, provision, maintenance, and management of the Company Materials; and
- (b) Client has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Client Systems, and sole responsibility for all access to and use of the Company Materials by any Person by or through the Client Systems or any other means controlled by Client or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Company; (ii) results obtained from any use of the Services or Company Materials; and (iii) conclusions, decisions, or actions based on such use.

2.3 **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, Company Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Company Materials, and the Third-Party Materials are and will remain with Company and the respective rights holders in the Third-Party Materials.

2.4 **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 this Agreement. 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. Client shall name a service manager on the Order Form. If Client's service manager ceases to be employed by Client or Client otherwise wishes to replace its service manager, Client shall promptly name a new service manager by written notice to Company. Company shall inform Client of its service manager by written notice from time to time.

2.5 **Changes.** Company reserves the right, in its sole discretion, to make any changes to the Services and Company Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Company's services to its customers; (ii) the competitive strength of or market for Company's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Such changes to the Services may include providing Maintenance Releases, updates, patches or effecting other changes to the Services and/or Company Materials. 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 the change procedure set forth in Exhibit Y. No changes requested by Client will be effective unless and until memorialized in a written change order signed by both Parties.

2.6 **Beta Features.** From time to time, Company may make available to Client certain features, services, or functionalities that are designated as beta, preview, pilot, limited release, or similar features ("**Beta Features**"). Client acknowledges that Beta Features are provided for evaluation purposes only, may not be fully functional, and may contain errors, defects, or other issues. Company does not guarantee that Beta Features will be generally released or continue to be available. Beta Features are provided "AS IS" without warranties of any kind, and Company shall have no liability arising out of or relating to Beta Features. Client's use of Beta Features is at its sole risk and may be subject to additional terms communicated by Company. Company may discontinue Beta Features at any time in its sole discretion.

2.7 **Suspension or Termination of Services.** Company may, directly or indirectly, and by use of a Company Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Client's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Company Materials, without incurring any resulting obligation or liability, if: (a) Company receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Company to do so; or (b) Company believes, in its sole discretion, that: (i) Client or any Authorized User has failed to comply with any 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 instruction or requirement communicated by Company to Client; (ii) Client or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement expires or is terminated. This section does not limit any of Company's other rights or remedies, whether at law, in equity, or under this Agreement. Upon reinstatement

of the reinstatement of access and use of the Services by Company under this section or following a suspension for any other reason permitted under this Agreement, Company may charge a reinstatement fee equal to [OPEN] (the “**Reinstatement Fee**”), which shall be invoiced to Client and paid in accordance with other Fees described herein.

2.8 **Usage Data.** Company may collect, maintain, process and use diagnostic, technical, usage and related information, including information about Client’s computers, systems and software, (“**Usage Data**”) for the purposes of evaluating Client’s usage and developing and improving its products and services. For the avoidance of doubt, any Usage Data shall be the property of Company and Client shall have no rights to the Usage Data, except as expressly provided by Company in a written instrument.

3. Use Restrictions.

3.1 **Restrictions.** Except as this Agreement expressly permits, Client shall not, and shall not permit, assist or allow any other Person to:

- (a) copy, modify, or create derivative works or improvements of the Services or Company Materials ;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Company Materials to any third party without the prior consent of the Company;
- (c) reverse engineer, disassemble, decompile, decode, or adapt, or otherwise attempt to derive or gain access to the source code of the Services or Company Materials, in whole or in part;
- (d) bypass or breach any security device or protection used for or contained in the Services or Company Materials or access or use the Services or Company 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 Company Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code, or that otherwise is inaccurate;
- (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Company Systems, or Company’s provision of services to any third party, in whole or in part;
- (g) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms of the Documentation, warranties, disclaimers, or Intellectual Property Rights, proprietary rights or other symbols, notices, marks, or serial numbers from any Services or Company Materials, including any copy thereof;
- (h) access or use the Services or Company Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any Person, or that violates any applicable Law; or
- (i) access or use the Services or Company Materials for purposes of:
 - (i) benchmarking or competitive analysis of the Software; (ii) developing, using, or providing a competing software product or service; or (iii) any other purpose that is to Company’s detriment or commercial disadvantage.

4. Client Obligations.

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

4.2 Effect of Client Failure or Delay. Company is not responsible or liable for any delay or failure of performance caused in whole or in part by Client's delay in performing, or failure to perform, any of its obligations under this Agreement, or for failure to provide accurate information (each, a "**Client Failure**").

4.3 Corrective Action and Notice. If Client becomes aware of any actual or threatened activity prohibited by Section 3.1, Client shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary 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 Company Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); (b) notify Company of any such actual or threatened activity, and (c) cooperate with Company in investigating, responding to, and remediating any harm caused by the prohibited activity.

4.4 Non-Solicitation. During the Term and for two years after, Client 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 12 months employed or engaged by Company or any Subcontractor. In the event of a violation of this Section 4.4, Company will be entitled to liquidated damages equal to the compensation paid by Company to the applicable employee or contractor during the prior six months.

5. Service Levels and Credits.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, Company will use commercially reasonable efforts to make the Services Available at least ninety-nine percent (99%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Client and its Authorized Users over the internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Client or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) access to or use of the Services by Client or any Authorized User, or using Client's or an Authorized User's Access Credentials, that does not strictly comply with this Agreement and the Specifications; (b) Client Failure; (c) Client's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Company pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 2.6.

5.2 **Service Level Failures and Remedies.** In the event of a Service Level Failure, Client shall be entitled to a credit in the amount of three percent (3%) of the portion of the annual Fees allocable to the Service Period in which the Service Level Failure occurred (calculable by prorating the annual Fees over twelve (12) months) (each a “**Service Credit**”), subject to the following:

- (a) Company has no obligation to issue any Service Credit unless: (i) Client reports the Service Failure to Company immediately on becoming aware of it; (ii) requests such Service Credit in writing within ten (10) days of the Service Level Failure; and (c) there are remaining years in the Term to apply any such Service Credit to; and
- (b) in no event will a Service Level Credit for any Service Period exceed fifteen (15%) percent of the annual Fees that would be payable for that Service Period if no Service Level Failure had occurred.
- (c) Any Service Credit payable to Client under this Agreement will be applied solely as a discount against the next annual Fees invoice issued by Company to Client during the Term. If the Agreement does not renew or if the Term ends before the next annual invoice is issued, all unused Service Credits will automatically expire. For the avoidance of doubt, Service Credits have no cash value and are not refundable to Client. This Section 5.2 sets forth Company’s sole obligation and liability and Client’s sole remedy for any Service Level Failure.

5.3 **Scheduled Downtime.** Company will use commercially reasonable efforts to give Client at least twenty-four hours prior notice of all scheduled outages of the Services (“**Scheduled Downtime**”).

5.4 **Service Support.** The Services include Company’s standard customer support services (“**Support Services**”) in accordance with the Company service support schedule included herein as **Exhibit A** as may be amended by Company from time to time. Company retains the right to amend its Support Services and **Exhibit A** in its sole discretion from time to time without prior notice to Client.

6. **Data Backup.** The Services do not replace the need for Client to maintain regular data backups or redundant data archives. COMPANY HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CLIENT DATA.

7. **Security.**

7.1 **Information Security.** Company will employ security measures in accordance with Company’s data privacy and security policy, as amended from time to time which can be found [here](#).

7.2 **Data Breach Procedures.** Company maintains a data breach plan 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 **Client Control and Responsibility.** Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the Services; (c) Client’s information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services (“**Client Systems**”); (d) the security and use of Client’s and its Authorized Users’ Access Credentials; and (e) all access to and use of the Services and Company Materials directly

or indirectly by or through the Client Systems or its or its Authorized Users' Access Credentials, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

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

8. **Professional Services.**

8.1 **Statements of Work.** Company shall provide implementation assistance, training or other services set forth in each Statement of Work.

8.2 **Project Management.** Each Party shall appoint a representative ("Project Manager") who shall administer that Party's activities in connection with this Agreement, including each subsequently agreed to statement of work, and shall serve as a single point of communication between the Parties in respect of their rights and obligations pursuant to this Agreement. Each Project Manager shall have sufficient authority and technical qualifications to carry out their duties.

8.3 **Access.** Client shall provide Company with such access to Client Systems as Company reasonably requests to perform its obligations under this Agreement. The Parties agree that Client shall only be required to provide Company with access to that limited portion of Client Systems necessary for Company to perform its obligations. Company shall not access or attempt to access any other portion of Client Systems except as necessary to perform its obligations and shall be liable to Client for any damage to Client's systems caused by Company's intentional conduct or gross negligence.

8.4 **Subcontractors.** Company may have any of the Services performed by subcontractors pursuant to written subcontracts between Company and such subcontractors, provided that: (i) Company uses due care in selecting professional and reputable subcontractors; (ii) Company remains liable to Client for performance of such Services by such subcontractors, including all acts and omissions of such subcontractors; (iii) Client has no obligations or liabilities under any such subcontracts; (iv) such subcontractors are subject to a non-disclosure agreement related to the Client's Confidential Information; and (v) nothing in such subcontracts in any way diminishes or relieves Company from any duties or obligations under this Agreement.

9. **Fees and Payment.**

9.1 **Fees.** Client shall pay Company the amounts set forth in the applicable Order Form in accordance with the terms of this Section 9. Unless otherwise indicated in a Statement of Work or Order Form, Company shall invoice Client annually for Services to be performed and/or Software to be provided in the following year and Client agrees that all invoices shall be due within thirty (30) days of receipt of such invoice. Client shall have thirty (30) days from receipt of any invoice to dispute such invoice; if no dispute is raised by Client, Client shall forego any right to dispute such invoice.

9.2 **Currency.** Except as otherwise agreed by the Parties, all monetary amounts in this Agreement are in respect of United States Dollars, and all payments shall be made in United States Dollars.

9.3 **Taxes.** All amounts payable by Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Client 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 Client hereunder, other than any taxes imposed on Company's income.

9.4 **Late Payment.** If Client fails to make any payment when due then, in addition to all other remedies that may be available to Company:

- (a) Company may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;
- (b) Client shall reimburse Company for all costs incurred by Company in collecting any late payment of amounts due or related interest, including attorneys' fees, court costs, and collection agency fees;
- (c) if such failure continues for thirty (30) days following written notice thereof, Company may: (i) withhold, suspend or revoke its grant of a license hereunder; and/or (ii) terminate this Agreement under Section 15.3(a); and
- (d) in the event Company exercises its suspension rights as set forth in Section 9.4(c)(i), Client may be subject to the Reinstatement Fee,

9.5 **No Deductions or Setoff.** All amounts payable to Company under this Agreement shall be paid by Client to Company in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable Law).

9.6 **Fee Increases.** Company may increase Fees no more than once annually by providing written notice to Client at least thirty (30) calendar days prior to the commencement of that contract year, and the applicable Order Form will be deemed amended accordingly. Such fee increase shall not exceed 7% of the then current Fees.

10. **Confidentiality.**

10.1 **Confidential Information.** In connection with this Agreement, each Party (the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (the "**Receiving Party**"). Subject to Section 10.2, "**Confidential Information**" means any information disclosed by either Party in written, graphic, oral, visual or physical form and includes, without limitation, Personal Information (if any), technology, know-how, designs, processes, inventions, software, codes, programs, special equipment, devices, products, operational information (including facilities listings), financial or business information (including pricing and costing), customer and/or supplier information (including warranty data), distribution information, computer software, information regarding information technology infrastructure, or any other data, plans or other records and information. All of such Confidential Information, together with any analysis or evaluations thereof, shall be deemed to be confidential and subject to this Agreement whether or not such information is specifically described or designated as Confidential Information. Without limiting the foregoing, all Client Data shall be Confidential Information of Client, the Company Materials, Documentation, Feedback and Usage Data shall be Confidential Information of Company, and the terms of this Agreement and the nature of the efforts undertaken by Company hereunder shall be the Confidential Information of Company.

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 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 under the terms and conditions of 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; 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;
- (c) not disclose any of the Disclosing Party's Confidential Information to any Person, including a Representative of the Receiving Party, who is a competitor of the Disclosing Party, without the Disclosing Party's prior written consent;
- (d) 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
- (e) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section 10.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 10 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

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 will: (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 will disclose only that portion

of the Confidential Information that the Receiving Party is legally required to disclose and will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

- 10.5 **Return.** Upon expiration or termination of this Agreement, and upon the request of a Party, each Party will return or sanitize the other Party's Confidential Information in accordance with industry standards. Further, upon request, each Party will provide written certification of this obligation to the other Party.
- 10.6 **Assistance.** Without limiting either Party's rights in respect of a breach of the confidentiality obligations set out in this Agreement, each Party will: (i) promptly notify the other Party of any attempted or actual unauthorized possession, use or knowledge of the other Party's Confidential Information by any person or entity that may become known to such Party; (ii) promptly furnish to the other Party full details of the attempted or actual unauthorized possession, use or knowledge; and (iii) assist the other Party in investigating or preventing the recurrence of any attempted or actual unauthorized possession, use or knowledge of Confidential Information. Each Party will cooperate with the other Party in any investigation or litigation deemed necessary by the other Party to protect its confidentiality or proprietary rights. Unless otherwise agreed, the Party responsible for the unauthorized possession, use or knowledge of the other Party's Confidential Information will bear the costs incurred in any such investigation or litigation.
- 10.7 **Relief.** Each Party acknowledges and agrees that any unauthorized use or disclosure by it of any of the other Party's Confidential Information, in whole or part, will cause irreparable damage to the disclosing Party, that monetary damages would be an inadequate remedy and that the amount of such damages would be extremely difficult to measure. In the event of any unauthorized use or disclosure, the Receiving Party agrees that the Disclosing Party shall be entitled to seek temporary and permanent injunctive relief to restrain the Receiving Party from such unauthorized disclosure or use. Nothing in this Agreement shall be construed as preventing the Disclosing Party from pursuing any and all remedies available to it for a breach or threatened breach of a covenant made in this Section 7, including the recovery of monetary damages from the Receiving Party.

11. Intellectual Property Rights.

- 11.1 **Company Materials.** All right, title, and interest in and to the Company Materials, including all Intellectual Property Rights therein, are and will remain with Company and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Client has no right, license, or authorization with respect to any of the Company Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Company Materials are expressly reserved by Company. In furtherance of the foregoing, Client hereby unconditionally and irrevocably grants to Company an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.
- 11.2 **Client Data.** As between Client and Company, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 11.3.
- 11.3 **Consent to Use Client Data.** Client hereby irrevocably grants all such rights and permissions in or relating to Client Data as are necessary or useful to Company, its Subcontractors, and the Company Personnel to enforce this Agreement and exercise

Company's, its Subcontractors', and the Company Personnel's rights and perform Company's, its Subcontractors', and the Company Personnel's obligations hereunder.

11.4 **Feedback.** If Client or any of its employees or contractors, either before or after the Effective Date, sends or transmits any communications or materials to Company by mail, email, telephone, or otherwise, suggesting or recommending changes to the Services, Company Materials, or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("Feedback"), Company is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback. Client hereby assigns to Company on Client's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Company is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Company is not required to use any Feedback.

11.5 **Cooperation.** Each Party shall, during the Term:

- (a) promptly notify the other Party in writing upon becoming aware of any actual or suspected infringement, misappropriation or other violation of the other Party's Intellectual Property Rights; and
- (b) at the other Party's sole expense, fully cooperate with and assist the other Party in all reasonable ways in the conduct of any Action to prevent or abate any actual or threatened infringement, misappropriation or violation of the other Party's Intellectual Property Rights.

12. **Representations and Warranties.**

12.1 **Mutual Representations and Warranties.** Each Party represents, warrants, and covenants 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;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, and authorizations it grants and is required to grant under this Agreement;
- (c) 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
- (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

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

12.3 **Client Warranties.** Client represents, warrants, and covenants to Company that Client owns or otherwise has and will have the necessary rights and consents in and relating to

the Client Data so that, as received by Company 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 **Exceptions.** Notwithstanding any provisions to the contrary in this Agreement, the warranties set forth in Section 12 do not apply to problems arising out of or relating to:

- (a) the access and use of, or other activity relating to, the Services and Company Materials other than as specified in the Documentation or as communicated to Client by Company;
- (b) Client's or any third party's negligence, abuse, misapplication, or misuse of the Services or Company Materials;
- (c) the operation of, or access to, Client's or a third party's system or network; or
- (d) Client's breach of any provision of this Agreement.

12.5 **Remedial Efforts.** If Company breaches, or is alleged to have breached, the warranties set forth in Section 12.2, Company shall, at its sole expense, re-perform Services which are subject of the breach. This shall constitute Client's sole remedy, and Company's sole liability, under the warranties set forth in Section 12.2.

12.6 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN SECTION 12, ALL COMPANY MATERIALS, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS (INCLUDING THE COMPANY MATERIALS), AND SERVICES PROVIDED BY COMPANY ARE PROVIDED "AS IS." COMPANY 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, COMPANY MAKES NO WARRANTY OF ANY KIND THAT THE COMPANY MATERIALS OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEMS, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, OR ERROR FREE.

13. **Indemnification.**

13.1 **Company Indemnification.** Company shall indemnify, defend, and hold harmless Client and Client's officers, directors, employees, agents, permitted successors and permitted assigns (each, a "**Client Indemnitee**") from and against any and all Losses incurred by the Client Indemnitee resulting from any Action by a third party (other than an Affiliate of a Client Indemnitee) that Client's or an Authorized User's use of the Services (excluding Client Data and Third-Party Materials) in accordance with this Agreement, infringes or misappropriates such third party's US patents, copyrights, or trademarks. This Section 13.1 does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Client Data;
- (b) access to or use of the Company Materials in or with, any technology (including any software, hardware, firmware, system, or network) or service not provided by

Company or specified for Client's use in the Documentation, unless otherwise expressly permitted by Company in writing;

- (c) modification of the Company Materials other than: (i) by or on behalf of Company; or (ii) with Company's express written authorization and in strict accordance with Company's written directions and specifications;
- (d) failure to timely implement any modifications, updates, replacements, or enhancements made available to Client;
- (e) use of the Company Materials after Company's notice to Client of such activity's alleged or actual infringement, misappropriation, or other violation of a third party's rights;
- (f) negligence, abuse, misapplication, or misuse of the Services or Company Materials by or on behalf of Client, Client's Representatives, or a third party;
- (g) use of the Company Materials by or on behalf of Client that is outside the purpose, scope, or manner of use authorized by this Agreement or in any manner contrary to Company's instructions;
- (h) events or circumstances outside of Company's commercially reasonable control (including any third-party hardware, software, or system bugs, defects, or malfunctions); or
- (i) act, omission, or other matter described in Section 13.2, whether or not the same results in any Action against or Losses by any Company Indemnitee.

13.2 **Client Indemnification.** Client shall indemnify, defend and hold harmless Company and its Subcontractors, Affiliates, and each of their respective officers, directors, employees, agents, successors and assigns (each, a "**Company Indemnitee**") from and against any and all Losses incurred by such Company Indemnitee resulting from any Action by a third party that arises out of or relates to:

- (a) Client Data, including any Processing of Client Data by or on behalf of Company in accordance with this Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including Company's compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by Company;
- (c) allegation of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with this Agreement.

13.3 **Indemnification Procedure.** Each Party shall notify the other in writing of any Action for which such Party believes it is entitled to indemnification pursuant to Section 13.1 or 13.2. The Party seeking indemnification ("**Indemnitee**") shall cooperate with the other Party ("**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume 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 may participate in and observe the proceedings at its own cost and expense with counsel reasonably acceptable to Indemnitee. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. 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 materially prejudiced as a result of such failure.

13.4 **Mitigation.** If any of the Services or Company Materials are, or in Company's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client's or its Authorized User's use of the Services or Company Materials is enjoined or threatened to be enjoined, Company may, at its option and sole cost and expense:

- (a) obtain the right for Licensee to continue to use the Services and Company Materials materially as contemplated by this Agreement;
- (b) modify or replace the Services and/or Company Materials, in whole or in part, to seek to make the Services and/or Company Materials non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software will constitute Services or Company Materials as applicable under this Agreement; or
- (c) if none of the remedies set forth in the above Section 13.4(a) or Section 13.4(b) are reasonably available to Company, terminate this Agreement, in its entirety or with respect to the affected part or feature of the Services or Company Materials, effective immediately on written notice to Client, in which event:
 - (i) Client shall cease all use of the Services and Company Materials immediately on receipt of Client's notice; and
 - (ii) provided that Client fully complies with its post-termination obligations set forth in Section 15.4, Company shall promptly refund to Client, on a pro rata basis, the share of any license fees prepaid by Client for the future portion of the Term that would have remained but for such termination.

13.5 **Sole Remedy.** THIS SECTION 13 SETS FORTH CLIENT'S SOLE REMEDIES AND COMPANY'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND COMPANY MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

14. **Limitations of Liability.**

14.1 **EXCLUSION OF DAMAGES.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL COMPANY OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, SUPPLIERS OR SUBCONTRACTORS 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) INCREASED COSTS, DIMINUTION IN VALUE, LOST BUSINESS OR LOST PROFITS, PRODUCTION, REVENUES OR PROFITS, (b) LOSS OF GOODWILL OR REPUTATION, (c) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2, (d) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (e) COST OF REPLACEMENT GOODS OR SERVICES, OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, IN EACH CASE REGARDLESS OF WHETHER SUCH PARTY WAS 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. EXCEPT AS EXPRESSLY OTHERWISE PROVIDED IN SECTION 14.3, IN NO EVENT WILL THE AGGREGATE LIABILITY OF COMPANY AND ANY OF ITS LICENSORS, SERVICE PROVIDERS, SUPPLIERS OR SUBCONTRACTORS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE LESSER OF (A) THE TOTAL AMOUNTS PAID TO COMPANY UNDER THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (B) ONE-HUNDRED AND FIFTY THOUSAND DOLLARS (\$150,000). THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

14.3 Exceptions. The exclusions and limitations in Section 14.1 and 14.2 do not apply to amounts or claims arising out of Section 3 (Use Restrictions), Section 7 (Security), Section 10 (Confidentiality), Section 13 (Indemnification), or a Party's gross negligence or willful misconduct.

15. Term and Termination.

15.1 Initial Term. The initial term of this Agreement commences as of the Effective Date and continues in effect until three (3) years from such date unless terminated earlier pursuant to any of the Agreement's express provisions (the "**Initial Term**").

15.2 Renewal Term. This Agreement will automatically renew for additional successive one year terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**").

15.3 Termination. This Agreement and any Order Form or Statement of Work may be terminated at any time:

- (a) by Company, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder, and such failure continues more than fourteen (14) days after Company's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1 (Use Restrictions), Section 7.3 (Client Control and Responsibility), or Section 10 (Confidentiality);
- (b) by either Party, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;

(c) by either Party, effective immediately, if the other Party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

15.4 Effect of Termination or Expiration. On the expiration or earlier termination of this Agreement:

- (a) all rights, licenses and authorizations granted to Client hereunder will immediately terminate;
- (b) Company shall (A) immediately cease all use of Client Data and Client's Confidential Information; (B) within thirty (30) days return to Client, or at Client's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on Client Data or Client's Confidential Information; and (C) permanently erase all Client Data and Client's Confidential Information from all systems Company directly or indirectly controls, provided that, for clarity, Company's obligations under this Section do not apply to any Resultant Data;
- (c) Client shall immediately cease all use of any Services or Company Materials and (i) within thirty (30) days return to Company, or at Company's written request destroy, all documents and tangible materials containing, reflecting, incorporating, or based on any Company Materials or Company's Confidential Information; and (ii) permanently erase all Company Materials and Company's Confidential Information from all systems Client directly or indirectly controls; and (iii) upon request by Company, certify to Company in a signed written instrument that it has complied with the requirements of this Section;
- (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) Company may also retain Client Data in its backups, archives, and disaster recovery systems until such Client Data is deleted in the ordinary course; and (iii) all information and materials described in this Section 15.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;
- (e) Company may disable all Client and Authorized User access to the Company Materials;
- (f) if Client terminates this Agreement pursuant to Section 15.3(c), Client will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Company will refund to Client Fees paid in advance for Services that Company has not performed as of the effective date of termination. Any unpaid Service Credits shall be deemed void and not be used to offset any amounts owed to Company or entitle Client to a payment, refund, or other credit;
- (g) if Company terminates this Agreement pursuant to Section 15.3(a) or Section 15.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Client shall pay such Fees, together with all previously accrued but not yet paid Fees, on receipt of Company's invoice therefor.

In the event this Agreement expires and, at the time of expiration, there are one or more pending Order Forms or Statements of Work pursuant to which Company agreement to provide Services to Client, each such Order Form or Statement of Work shall immediately terminate effective as of the date of expiration or termination of this Agreement.

15.5 **Surviving Terms.** The provisions set forth in the following sections, and any other right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: this Section 6, Section 10, Section 11, Section 12.6, Section 13, Section 14, Section 17.

16. **Insurance.**

16.1 **Insurance Scope.** Company shall, at its expense, maintain and keep in full force and effect during the Term:

- (a) commercial general liability insurance having a minimum inclusive coverage limit, including personal injury and property damage, of one million United States dollars (USD\$1,000,000) per each occurrence and two million United States dollar (USD\$2,000,000) in the general aggregate;
- (b) professional liability insurance with a minimum limit of one million United States dollars (USD\$1,000,000) per occurrence and in the aggregate;
- (c) to the extent required by law, workers' compensation (or local equivalent) at statutory limits and employer's liability (or local equivalent) in an amount not less than five hundred thousand United States dollars (USD\$500,000) per employee by accident, five hundred thousand United States dollars (USD\$500,000) per employee by disease and five hundred thousand United States dollars (USD\$500,000) policy limit by disease; and, shall include waiver of subrogation endorsement; and
- (d) Automobile general liability insurance having a minimum coverage of one million United States dollars (USD\$1,000,000) per each occurrence and in the aggregate.

16.2 **Insurance Documentation.** Company shall forthwith as soon as reasonably possible after entering into this Agreement, and from time to time thereafter at the request of Client, furnish to Client a memorandum of insurance or an insurance certificate setting out the terms and conditions of each policy of insurance maintained by the Company in order to satisfy the requirements of this Section.

17. **Miscellaneous.**

17.1 **Further Assurances.** On 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, as may be necessary to give full effect to this Agreement.

17.2 **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will 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.

17.3 **Public Announcements, References.** Neither Party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating

to this Agreement or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably delayed or withheld. Notwithstanding the foregoing, Company may, without Client's consent, include Client's name and other indicia in its lists of Company's current or former customers of Company in promotional and marketing materials, including, but not limited to, on Company's website. Client agrees to participate in at least one (1) reference call per calendar quarter, if requested by Company, with a prospective or current customer of Company. Such reference call shall be scheduled at a mutually convenient time and shall not exceed 60 minutes. Further, Client shall participate in providing materials and information to Company for the development and creation of a case study or testimonial during the Initial Term. For each Renewal Term, Client shall provide similar materials and information to allow for Company to update any created testimonials or case studies developed during the Term. In furtherance of the above, Client grants to Company a non-exclusive, limited license during the Term to Client's trademarks, service marks, trade names, logos and materials and information shared related to the preparation of the case study or testimonial contemplated by this Section strictly for use as contemplated by this Section.

17.4 **Notices.** Any notice, request, consent, claim, demand, waiver, or other communication under this Agreement have legal effect only if in writing and addressed to a Party as follows (or to such other address or such other person that such addressee Party may designate from time to time in accordance with this Section 17.4):

If to Company: Campfire Interactive, Inc.
 2211 Old Earhart Road, Suite 175
 Ann Arbor, MI 48105
 Email: meyerd@cfi2.com
 Attn: Daniel Meyer, President & CEO

If to Client: [OPEN]
 [OPEN]
 Email: [OPEN]
 Attn: [OPEN]

Notices sent in accordance with this Section 17.4 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 email, 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 third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

17.5 **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 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.

- 17.6 **Non-Exclusive.** Nothing herein shall be deemed to preclude Client from retaining the services of other persons or entities undertaking the same or similar services as those undertaken by Company.
- 17.7 **Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.
- 17.8 **Review.** Each Party acknowledges that they have carefully read and fully understand the terms, nature and effect of this Agreement, and execute this Agreement voluntarily and without duress. Each Party further acknowledges that they have had the opportunity to seek independent legal, financial and/or other professional advice as the terms, nature and effect of this Agreement, and have been duly advised to retain such independent legal, financial and/or other professional advice at their own expense prior to signing this Agreement, and agrees that any failure on their part to retain such independent legal, financial and/or other professional advice shall not affect (and they shall not assert that it affects) the validity of any of the provisions of this Agreement.
- 17.9 **Entire Agreement.** This Agreement including all appendices, exhibits, any Order Forms and any Statements of Work entered into by the Parties which refer to this Agreement, 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 appendices or any Statement of Work or Order Form (other than an exception expressly set forth as such therein), the following order of precedence governs: (a) first, this Agreement, excluding the appendices and any Statement of Work or Order Form; (b) second, the appendices to this Agreement as of the Effective Date; and (c) third, any Statement of Work or Order Form.
- 17.10 **Client Forms.** Client may use its standard purchase orders or other business forms when purchasing Services or Software, but use of such documents is for Client's convenience only, and does not alter the terms of this Agreement. Acceptance of this Agreement is expressly limited to the terms of this Agreement, and Company specifically objects to any terms or conditions that are different from, inconsistent with, or in addition to the terms and conditions of this Agreement. Performance of Services or provision of Software does not constitute acceptance of any terms or conditions on any business form presented by Client, and does not serve to modify or amend the terms of this Agreement.
- 17.11 **Assignment.** Client may transfer or assign this Agreement and any of its rights under this Agreement provided: (a) Company provides its prior written approval for such transfer; (b) Client transfers this Agreement, any Software and the Documentation and deletes any existing copies of the Software and Documentation from its computer(s) and backup or archival media and ceases use of and access to the Services; and (c) prior to the transfer, the transferee must inform Company in writing that it agrees to all the terms and conditions of this Agreement. Company may assign this Agreement without restriction in connection with any merger, reorganization, or similar transaction. Any purported assignment, delegation, or transfer in violation of this Section 17.10 is void. This Agreement is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

17.12 **Force Majeure.** Neither Party shall be liable for any delays resulting from circumstances or causes beyond its reasonable control and without its fault or negligence, including, without limitation, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

17.13 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or will confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

17.14 **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 and signed by each Party. No waiver by any Party of any of the provisions hereof is 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 will operate or be construed as a waiver thereof; nor will 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.

17.15 **Severability.** In the event that any provision (or any portion of a provision) of this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision (or portion of a provision) had never been contained herein in regards to that particular jurisdiction.

17.16 **Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the State of Michigan 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 Michigan. In the event of any dispute, controversy, or claim arising out of or relating to this Agreement (a “**Dispute**”), the Parties shall first attempt to resolve the Dispute through good faith negotiations. If the Dispute is not resolved by the project managers or primary points of contact within five (5) business days of the initial written notice of the Dispute, either Party may refer the matter to the Senior Executives of the Parties. Upon referral, the “**Senior Executives**” (which shall mean a Chief Executive Officer, a Chief Operations Officer, a Chief Financial Officer, or persons with commensurate roles, or their designees with full authority to settle the Dispute) shall meet and confer, either in person or via remote teleconference, in a good faith attempt to resolve the Dispute. Neither Party may commence any arbitration or court proceeding regarding the Dispute until the Parties have engaged in such negotiations for a period of at least thirty (30) days following the initial referral to Senior Executives. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of Michigan in each case located in the city of Ann Arbor, and each Party irrevocably submits to the exclusive jurisdiction of such courts, and agrees that venue will be proper in such courts, in any such suit, action, or proceeding. Each Party waives any objection relating to improper venue or *forum non conveniens* to the conduct of any proceeding in any such court. Service of process, summons, notice, or other document by mail to such Party’s address set forth herein will be effective service of process for any suit, action, or other proceeding brought in any such court.

17.17 **Waiver of Jury Trial.** Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

17.18 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of this Agreement by portable document format (“.pdf”) or other form of electronic transmission shall be binding upon the person whose signature appears on the transmitted copy and shall be equally as effective and binding as delivery of an originally executed counterpart of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

Campfire Interactive, Inc.

Client Name

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Exhibit A

Support and Problem Resolution

Company shall be available for a weekly one-hour support call during which a Representative of Company shall answer detailed questions regarding the Services and Company Materials. Additionally, Company shall provide Client with phone and email support from 8:00 am to 6:00 pm Eastern Time, business days (“**Support Hours**”) and shall respond to and resolve all support requests submitted during Support Hours in accordance with the below response and resolution time matrix.

Severity	Definition	Response and Resolution
1	Entire system or a significant component of the system is not working at all	<p>Within 4 hours of notification from Client, Company will respond acknowledging the issue and will deploy its best efforts to fix the issue within 24 hours.</p> <p>If the issue is not able to be fixed within 24 hours, Company will continue to deploy its best efforts to fix the issue as soon as possible and will provide progress reports to the Client every 12 hours.</p>
2	Major functionality of the system is not working as expected.	<p>Within 4 hours of notification from Client, Company will respond acknowledging the issue and will deploy its best efforts to fix the issue within 72 hours.</p> <p>If the issue is not able to be fixed within 72 hours Company will continue to deploy its best efforts to fix the issue as soon as possible and will provide progress reports to the Client every 12 hours.</p>
3	Minor functionality is not working as expected or annoyances with functionality.	<p>Within 5 days of notification from Client, Company will respond acknowledging the issue.</p> <p>Company will deploy its best efforts to fix the problem with the next bug fixing cycle according to the priority considering all the bugs that are in consideration to be fixed.</p>

Requests for support and problem resolution will be submitted to an agreed upon Company support resource.

If Company does not respond to a support request within the above response times, Licensee may escalate to the Parties’ relationship manager and then to their respective senior management.