



**CONCUR TECHNOLOGIES, INC.**  
**BUSINESS SERVICES AGREEMENT**  
**(Concur Expense Service)**

This Business Services Agreement ("Agreement") is entered into as of the effective date specified in Section 2 of this Agreement (the "Effective Date") between CONCUR TECHNOLOGIES, INC. ("Concur"), with its address for notices being 18400 N.E. Union Hill Road, Redmond, Washington 98052, Attention: Legal Department, Facsimile: (425) 497-5930, and the customer specified in Section 1 of this Agreement ("Customer"), with its address for notices specified in Section 1 of this Agreement. In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**1. CUSTOMER INFORMATION**

**Company Name (full legal name):** ALERIS INTERNATIONAL INC.

**Address For Notices:** 25825 Science Park Drive      **Address for Invoices:** \_\_\_\_\_  
Suite 400 \_\_\_\_\_

**City, State, Zip Code:** Beachwood, OH 44122      **City, State, Zip Code:** \_\_\_\_\_

**Attention:** \_\_\_\_\_      **Attention:** \_\_\_\_\_

**Facsimile No.:** \_\_\_\_\_      **Facsimile No.:** \_\_\_\_\_

**Phone No.:** \_\_\_\_\_      **Phone No.:** \_\_\_\_\_

**Customer PO To Be Issued:**     Yes     No

**Tax Exemption Claimed:**         Yes     No

**2. SERVICES ORDERED**

Customer hereby orders the following services (collectively, the "Service") during the term of this Agreement, and Concur hereby agrees to perform such Service, subject to the terms and conditions set forth in this Agreement: (a) the items ordered by Customer as specified below and described in Concur's then-current Service Description Guide for the Service Model specified below, which is incorporated herein by this reference; and (b) any additional services ordered by Customer pursuant to a mutually acceptable written addendum or change order to this Agreement.

**Service Options**

**Service Model:**    Concur Expense Service

**Service Type(s):** Expense Reporting and Travel Booking

**Effective Date:**    December 18, 2007

**Initial Term:**        3 year(s) after the Effective Date

**Payment Period:**    Monthly beginning on the Commencement Date

**Configuration Fees for Service Type(s)**

**Initial Configuration Fee:**    US\$26,323

**Transaction Fees for Service Type(s)**

| Number of Base Transactions<br>(per Payment Period) | Base Transaction Fee<br>(per Payment Period) | Incremental Transaction Fee<br>(per Incremental Transaction) |
|---|--|--|
| 700   | US\$5,486                                    | US\$7.84   |

**Additional Services Ordered**

| Description  | Unit Quantity | Initial Configuration Fee | Recurring Fee  |
|--|---------------|---------------------------|--|
| Concur Reporting, Powered by Cognos,™ which includes:<br><br>1 Named User for Professional Author Role (the Professional Author Role is assigned to the expert user, who has access to Report Studio and Query Studio for highly advanced report creation)<br><br>4 Named Users for Business Author Role (the Business Author Role has access to Query Studio for query/report creation and scheduling of publication or distribution of reports)<br><br>15 Named Users for Consumer Role (the Consumer Role is assigned Report Viewer to "run" saved reports which are created either by a Professional or Business Author) | 1 Bundle      | US\$5,000                 | US\$620 (per Payment Period based on 700 Base Transactions per Payment Period) |

**3. PAYMENT TERMS**

3.1 **General.** Concur shall be entitled to invoice Customer for the Initial Configuration Fees specified above at any time on or after the Effective Date. In addition, beginning on the Commencement Date and continuing thereafter for each Payment Period during the term of the Agreement, Concur shall be entitled to invoice Customer for the recurring Transaction Fee for Service Type(s) specified above and any other recurring fees specified in this Agreement. Except as otherwise expressly set forth in this Agreement: (a) Customer will pay each accurate Concur invoice within thirty (30) days after the applicable invoice date; and (b) all fees and other charges hereunder shall be paid to Concur in United States dollars. If Customer specifies in Section 1 above that it is issuing a purchase order for this Agreement, then Concur will reference the applicable Customer purchase order number on its invoices so long as Customer provides the purchase order number to Concur prior to the date of the applicable Concur invoice. For purposes of the Agreement, the following terms will have the meanings specified below:

**"Transaction Fee for Service Type(s)"** means the fee to be paid for each Payment Period consisting of: (i) the applicable Base Transaction Fee specified in this Agreement; and (ii) an Incremental Transaction Fee equal to the number of Incremental Transactions for the applicable Payment Period, multiplied by the applicable rate per Incremental Transaction specified in this Agreement. The Base Transaction Fee component will be invoiced for payment in advance of each Payment Period and the Incremental Transaction Fee component will be invoiced for payment in arrears for the preceding Payment Period.

**"Transaction"** means each expense report that is submitted by or on behalf of an employee or agent of Customer during a given Payment Period through the use of the Service; provided, however, that all submissions and re-submissions of a single expense report shall be counted as a single Transaction. In addition, if the "Travel Booking" Service Type is provided under the Agreement, then the definition of Transaction shall also include each travel booking transaction submitted through the use of the Service that does not correspond to an expense report submitted through the use of the Service within 120 days after the date of such travel booking transaction.

**"Base Transactions"** means, collectively, the stipulated number of Transactions for which Customer is required to pay the corresponding Base Transaction Fee specified in this Agreement for a given Payment Period during the term of this Agreement. The initial stipulated number of Base Transactions is specified in Section 2 above.

**"Incremental Transactions"** means, collectively, the number of Transactions, in excess of the number of Base Transactions, for which Customer is required to pay the corresponding Incremental Transaction Fee specified in this Agreement for a given Payment Period during the term of the Agreement.

**"Commencement Date"** means Concur's regularly-scheduled billing date for Service for the second calendar month after the Effective Date.

3.2 **Taxes.** Concur's fees do not include any governmental taxes, assessments, fees, or duties that may be applicable in connection with the transactions contemplated by this Agreement ("Taxes"). Customer will be responsible for paying all Taxes, except for taxes based on Concur's net income or its authority to do business within a given jurisdiction. If Concur has a legal obligation to pay or collect Taxes for which Customer is responsible under this Agreement, then the appropriate amount will be invoiced to and paid by Customer, unless Customer specifies in Section 1 above that it



claims tax exempt status for amounts due under this Agreement and provides Concur a valid tax exemption certificate (authorized by the applicable governmental authority) prior to the date of the applicable Concur invoice.

**4. DOCUMENTS COMPRISING THE AGREEMENT**

This Agreement shall be comprised of the terms and conditions set forth in this Agreement together with any exhibits attached hereto and documents incorporated herein by reference, all of which are made a part of this Agreement.

EXECUTED as of the Effective Date by the parties hereto each acting under due and proper authority.

**CONCUR TECHNOLOGIES, INC.**

**ALERIS INTERNATIONAL INC.**

By \_\_\_\_\_

By \_\_\_\_\_

Kyle R. Sugamele  
Print Name

Scott McKinley  
Print Name

Chief Legal Officer  
Title

SVP + Treasurer  
Title

**Attachment:**

Exhibit A – General Terms and Conditions

**EXHIBIT A  
GENERAL TERMS AND CONDITIONS**

This Exhibit is made as of the Effective Date and pertains to and is made a part of the Business Services Agreement (the "Agreement") between Concur and Customer. All undefined capitalized terms herein shall have the meanings ascribed to such terms as set forth in the Agreement. In the event that any terms of this Exhibit are inconsistent with the terms of the Agreement, then the terms of this Exhibit shall control.

**1. GRANT OF RIGHTS; OWNERSHIP OF PROPERTY; USE RESTRICTIONS**

- 1.1 Grant of Rights. Subject to the terms of the Agreement: (a) Concur hereby grants Customer a non-exclusive, non-transferable, worldwide right during the term of the Agreement to access and use the Service solely for Customer's internal business purposes as contemplated by the Agreement, subject to the scope and pricing specified in the Agreement with respect to the Service; and (b) Customer hereby grants Concur a non-exclusive, non-transferable, worldwide right to use the data specifically pertaining to Customer and/or its users that Concur may obtain in the course of performing the Service as necessary for the limited purpose of performing the Service hereunder.
- 1.2 Ownership. Concur and its licensors and suppliers own and retain all right, title, and interest in and to the following (collectively, "Concur Property"): (a) the Service and all other software, hardware, technology, documentation, and information provided by Concur in connection with the Service; (b) all ideas, know-how, and techniques that may be developed, conceived, or invented by Concur during its performance under the Agreement; and (c) all worldwide patent, copyright, trade secret, trademark and other intellectual property rights in and to the property described in clauses (a) and (b) above. Except as otherwise expressly authorized herein or by Concur in writing, the non-exclusive use rights set forth in the Agreement are the entirety of Customer's rights in connection with the Concur Property. Accordingly, all rights in the Concur Property are hereby expressly reserved.
- 1.3 Restrictions. Except as expressly permitted under the Agreement, Customer shall not directly or indirectly do any of the following: (a) access, use, sell, distribute, sublicense, broadcast, or commercially exploit any Concur Property or any rights under the Agreement, including without limitation any access or use of any Concur Property on a service bureau or for any Customer processing services beyond the scope specified in this Agreement (such as for any third parties on a rental or sharing basis); (b) introduce any infringing, obscene, libelous, or otherwise unlawful data or material into the Service; (c) copy, modify, or prepare derivative works based on Concur Property; (d) reverse engineer, decompile, disassemble, or attempt to derive source code from any Concur Property; or (e) remove, obscure, or alter any intellectual property right or confidentiality notices or legends appearing in or on any aspect of any Concur Property.

**2. WARRANTIES AND LIMITATIONS**

- 2.1 Mutual Warranties. Concur and Customer each hereby represents, warrants, and covenants to the other that: (a) it has the authority to enter into the Agreement, to grant the rights granted by it under the Agreement, and to perform its obligations under the Agreement; (b) no consent, approval, or withholding of objection is required from any third party or governmental authority with respect to the entering into or the performance of the Agreement by such party; and (c) it will comply with all applicable laws and regulations that may be in effect during the term of the Agreement as they apply to such party's obligations under the Agreement.
- 2.2 Service Warranties. Concur warrants that, during the term of the Agreement, the Service provided hereunder: (a) will be performed in a professional manner consistent with generally accepted industry standards reasonably applicable to the provision of the Service; (b) will be performed substantially in accordance with the technical manuals and user documentation relating to the operation and use of the Service that are provided by Concur to Customer under the Agreement, as reasonably updated by Concur from time to time; and (c) does not contain any disabling code (defined as computer code designed to interfere with the normal operation of the Service) or any program routine, device or other undisclosed feature (including but not limited to, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, trojan horse, or trap door) which is designed to delete, disable, deactivate, interfere with or otherwise harm the Service or Customer's Confidential Information. Notwithstanding the foregoing, nothing in the Agreement shall restrict Concur from including or requiring passwords and other security measures designed to restrict unauthorized use of the Service.
- 2.3 Up-Time Warranty. Concur warrants that, following commencement of the Service, the Service will be available to Customer at least 99% of the time in each calendar month during the term of the Agreement, excluding the following (collectively, "Excused Down Time"): (a) down time to perform routine maintenance during the Concur standard maintenance windows (which windows shall not exceed five hours per week); (b) scheduled down time under any separate written agreement between the parties; or (c) down time due to any factors beyond Concur's reasonable control. Concur will be in breach of the foregoing warranty only if the Service fails to achieve the 99% availability described above (and subject to the Excused Down Time described above), as measured over the period of a given calendar month, in accordance with the following formula:

$a = \frac{[(b - c) - d] \times 100}{b - c}$ , where:

"a" = the actual percentage of availability in such month;

"b" = the total number of hours in such month;

"c" = the total number of hours of Excused Down Time in such month; and

"d" = the total number of hours that the Service is not available in such month, less any Excused Down Time.

Customer's sole and exclusive remedy and Concur's entire liability for any breach of the foregoing warranty shall be as follows: (i) for a breach in a given month, such remedy shall be Customer's right to receive a pro-rata credit against its Base Transaction Fee for Service for the next Payment Period, based on the difference between the warranted percentage of availability and the actual percentage of availability in such month, to be applied to the next invoice for the Base Transaction Fee; and (ii) for a breach in any three (3) months in any twelve (12) consecutive month period, such remedy shall be Customer's right to terminate the Agreement by delivery of a written notice of termination and such termination shall be effective as of the date of such notice.

2.4 Limitation of Warranty. THE EXPRESS WARRANTIES SET FORTH IN THE AGREEMENT ARE THE SOLE WARRANTIES PROVIDED BY CONCUR HEREUNDER. CONCUR SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, AND GUARANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICE OR ANY OTHER ITEMS OR SERVICES COVERED BY OR FURNISHED UNDER THE AGREEMENT, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, OR (III) ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. CONCUR DOES NOT WARRANT THAT ANY ITEMS OR SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

2.5 Limitation of Liability. EXCEPT FOR LIABILITY ARISING UNDER SECTIONS 1.3, 3 OR 4 OF THIS EXHIBIT OR FOR PERSONAL INJURY, FRAUD, WILLFUL MISCONDUCT, OR AMOUNTS OWED HEREUNDER: (A) NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY UNDER THE AGREEMENT, FOR WHATEVER CAUSE, WHETHER IN AN ACTION IN CONTRACT OR IN TORT OR OTHERWISE, WILL BE LIMITED TO GENERAL MONEY DAMAGES AND SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AGGREGATE OF ALL FEES ACTUALLY PAID OR OWING HEREUNDER BY CUSTOMER TO CONCUR DURING THE TWELVE MONTH PERIOD PRECEDING THE TIME THAT THE CLAIM AROSE (BUT NOT LESS THAN THE AMOUNT OF BASE TRANSACTION FEES DUE DURING THE FIRST YEAR AFTER THE EFFECTIVE DATE).

### 3. INDEMNIFICATION

- 3.1 By Concur. Subject to the terms of the Agreement, Concur shall indemnify and hold harmless Customer and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by a third party to the extent: (a) alleging that the Service, as provided by Concur and used in accordance with the terms of the Agreement, infringes upon any valid patent, copyright, trademark, trade secret, or other proprietary right of such third party; or (b) resulting from the failure of Concur to comply with its obligations under the Agreement or from the acts or omissions of Concur or its employees, agents, successors or assigns, whether negligent or otherwise. Notwithstanding the above, Concur shall have no liability for any infringement claim which: (i) pertains to any Concur Property that has been altered or modified without Concur's prior written approval; (ii) is based on use of the Service in conjunction with any item not provided by Concur, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by Concur; or (iii) identifies any third-party software, hardware, or service as forming the basis of such infringement.
- 3.2 By Customer. Subject to the terms of the Agreement, Customer shall indemnify and hold harmless Concur and its employees, agents, successors and assigns from and against any and all loss, damage, liability, and expense arising from any claim brought against any such indemnified party by any third party to the extent resulting from the failure of Customer to comply with its obligations under the Agreement or from the acts or omissions of Customer or its employees, agents, successors or assigns, whether negligent or otherwise.
- 3.3 Defense Procedure. For any indemnifiable claim described in this Section 3: (a) the indemnifying party shall have the sole responsibility, at its expense, to defend and, at its sole discretion, to settle any such claim, provided that, if any settlement requires a non-monetary obligation of an indemnified party (other than ceasing use of the Service), then such settlement shall require the indemnified party's prior written consent, which consent will not be unreasonably withheld; and (b) each indemnified party shall provide the indemnifying party with prompt written notice of any such claim brought against it, together with copies of all related court documents involving such claim. An indemnified party's failure to provide prompt notice to the indemnifying party of any such claim shall not relieve the

indemnifying party from any liability under this Section 3 with respect to such claim, unless the indemnifying party is materially prejudiced by such failure, in which case the indemnifying party shall have no obligation under this Section 3 with respect to such claim. If any compromise or settlement is made with respect to such claim, the indemnifying party shall pay all amounts in settlement of such claim. The indemnifying party shall keep the indemnified party advised of the status of any such claim and of its defense and/or negotiation efforts. The indemnified party shall provide the indemnifying party with such information and assistance for the defense of such claim as the indemnifying party reasonably requests. The indemnified party, at its own expense, shall have the right to participate in the defense of any such claim through counsel of its choosing. However, the indemnifying party shall have at all times the full and complete authority to defend and settle such claim as described above.

#### **4. CONFIDENTIALITY**

- 4.1 **Confidential Information.** In connection with the Agreement, each party hereto (a "disclosing party") may disclose its confidential and proprietary information to the other party (a "receiving party"). Subject to the exceptions listed below, a disclosing party's "Confidential Information" shall be defined as information disclosed by the disclosing party to the receiving party under the Agreement that is either: (a) clearly marked or otherwise clearly designated as confidential or proprietary; or (b) should be reasonably understood by the receiving party to be the confidential or proprietary information of the disclosing party. The Concur Property and all pricing under the Agreement shall be the Confidential Information of Concur.
- 4.2 **Confidential Treatment.** During the term of the Agreement and for three (3) years after its expiration or termination, a receiving party shall not use, or otherwise disclose to any third party, a disclosing party's Confidential Information without the prior written consent of the disclosing party; provided, however, that Concur may use and disclose the Confidential Information of Customer as necessary for the limited purpose of performing the Service hereunder. In addition, each party agrees to take reasonable measures to protect the other party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of the Agreement (which measures shall be no less than that which a reasonable person would take with respect to like confidential, proprietary, or trade secret information).
- 4.3 **Exceptions.** Notwithstanding anything to the contrary, the obligations of the receiving party set forth in this Section 4 shall not apply to any information of the disclosing party that: (a) is or becomes a part of the public domain through no wrongful act of the receiving party; (b) was in the receiving party's possession free of any obligation of confidentiality at the time of the disclosing party's communication thereof to the receiving party; (c) is developed by the receiving party completely independent from the Confidential Information of the disclosing party; or (d) is required by law or regulation to be disclosed, but only to the extent and for the purpose of such required disclosure after providing the disclosing party with advance written notice if reasonably possible such that the disclosing party is afforded an opportunity to contest the disclosure or seek an appropriate protective order. In addition, the obligations of Concur set forth in this Section 4 shall not apply to any suggestions and feedback for product or service improvement, correction, or modification provided by Customer in connection with any present or future Concur product or service, and, accordingly, neither Concur nor any of its customers or business partners shall have any obligation or liability to Customer with respect to any use or disclosure of such information.
- 4.4 **Remedies.** The parties recognize and agree that money damages are an inadequate remedy for breach of this Section 4 and further recognize that any such breach would result in irreparable harm to the non-breaching party. Therefore, in the event of any such breach, the non-breaching party may seek injunctive relief from a court of competent jurisdiction to enjoin such activity in addition to any other remedies available to it.

#### **5. TERM AND TERMINATION**

- 5.1 **Term.** The term of the Agreement will commence on the Effective Date and will continue thereafter for an initial term specified in Section 2 of the Agreement (the "Initial Term"). After the Initial Term, the Agreement shall continue thereafter until either party elects to terminate the Agreement by delivering written notice of termination to the other party at least ninety (90) days before the desired effective date of such termination. All terms and conditions hereof shall remain in effect during any renewal term, except as the parties otherwise expressly agree to in writing.
- 5.2 **Termination for Breach.** Upon material breach of the Agreement by any party (the "breaching party"), if the other party ("non-breaching party") gives written notice of such breach and the same is not cured within thirty (30) days after delivery of such notice, then, without limitation of any other remedy available hereunder, the non-breaching party may terminate the Agreement by delivery of a written notice of termination at any time thereafter, and such termination shall be effective as of the date of such subsequent notice.
- 5.3 **Duties Upon Termination; Survival.** Upon termination of the Agreement: (a) all rights granted to Customer under the Agreement shall immediately terminate, in which case Concur may invalidate the passwords and/or other user identification for Customer and its users and otherwise deny further access to the Service; (b) upon Concur's request made within thirty (30) days after such termination, Customer will return to Concur or destroy all Concur Property that is in its possession or control; and (c) upon Customer's request made within thirty (30) days after such termination, Concur will return to Customer or destroy all Confidential Information of Customer that is in its possession or control.

After such 30-day period, each party may destroy any such information of the other party in its possession or control. Termination of the Agreement shall not be construed to waive or release any claim that a party is entitled to assert at the time of such termination (including any claim for fees accrued or payable to Concur prior to the effective date of termination), and the applicable provisions of the Agreement shall continue to apply to such claim until it is resolved. The terms of Sections 1.2, 1.3, 2.4, 2.5, 3, 4, 5.3, and 6 of this Exhibit shall survive the termination of the Agreement for any reason.

## **6. MISCELLANEOUS**

- 6.1 **Relationship of Parties.** Concur and Customer are independent contractors and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Concur and Customer. Neither Concur nor Customer will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in the Agreement.
- 6.2 **Notices.** All notices hereunder by either party shall be given by personal delivery (including reputable courier service), fees prepaid, or by sending such notice by registered or certified mail return receipt requested, postage prepaid, and addressed as set forth on the first page of the Agreement. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the applicable postal service on any return receipt card shall be conclusive evidence of receipt. Notices also may be sent by facsimile transmission, which shall be deemed received when transmitted if: (a) a document is electronically generated by the transmitting machine confirming that the transmission was received; and (b) the party transmitting the notice also sends such notice the same day by any of the other notice methods described above. Any party, by written notice to the other as above described, may alter the address for receipt by it of written notices hereunder.
- 6.3 **Assignment.** The Agreement may not be assigned or transferred by either party without the prior written consent of the other party, which permission shall not be unreasonably withheld. Any attempted assignment without such consent will be void. Notwithstanding the foregoing, either party may assign its rights and obligations under the Agreement, in whole but not in part, without the other party's permission, in connection with any merger, consolidation, sale of all or substantially all of such assigning party's assets, or any other similar transaction; provided, that the assignee: (a) is not a direct competitor of the non-assigning party; (b) provides prompt written notice of such assignment to the non-assigning party; (c) is capable of fully performing the obligations of the assignor under the Agreement; and (d) agrees to be bound by the terms and conditions of the Agreement. The Agreement is binding on the parties hereto and their respective successors and permitted assigns.
- 6.4 **Waiver and Severability.** Failure to enforce any term or condition of the Agreement shall not be deemed a waiver of the right to later enforce such term or condition or any other term or condition of the Agreement. If any provision of the Agreement is found to be void or unenforceable, that provision will be enforced to the maximum extent possible, and the remaining provisions of the Agreement will remain in full force and effect.
- 6.5 **Excused Performance.** Neither party shall be liable for any delay or failure to perform due to causes beyond its reasonable control.
- 6.6 **Payment Default.** If, at any time, Customer is delinquent in the payment of any fees due hereunder, Concur may notify Customer in writing of such breach and, in such case, Customer will have ten (10) days from Concur's written notice to cure the breach. If Customer fails to cure such breach within such 10-day period, then Concur may suspend Service in its sole discretion and without prejudice to its other rights until such fees are paid in full. Late payments hereunder will accrue interest beginning as of the due date at the rate of one and one-half percent per month or the highest rate allowed by applicable law, whichever is lower.
- 6.7 **Entire Agreement.** The Agreement (together with any exhibits attached thereto and documents incorporated therein and made a part of the Agreement by this reference) contains the entire agreement and understanding between Concur and Customer with respect to the subject matter thereof and supersedes all prior agreements, negotiations, representations, and proposals, written and oral, relating to such subject matter.
- 6.8 **Amendments.** The Agreement shall not be deemed or construed to be modified, amended, or waived, in whole or in part, except as set forth herein or by a separate written agreement duly executed by the parties to the Agreement. No document, purchase order, or any handwritten or typewritten text which purports to alter or amend the printed text of the Agreement shall alter or amend any provision of the Agreement or otherwise control, unless Concur and Customer both specify in writing that such terms or conditions shall control. Notwithstanding the above, (a) Concur may effect reasonable modification to the Service from time to time, provided that any such modification does not reduce in any material respect the overall level of beneficial service provided to Customer immediately prior to such modification; and (b) if the "Travel Booking" Service Type is provided under the Agreement, then Concur shall have the right to effect reasonable change to the Transaction Fee for Service Type(s) to the extent of any general fee change assessed across Concur's customers of such Service Type due to changes in Concur's costs associated with its travel management business, upon notice to Customer at least 30 days before the effective date of the change.



- 6.9 Governing Law. The Agreement shall be governed by, subject to, and interpreted in accordance with the laws of the state of New York, without regard to conflict of laws principles. The parties hereby irrevocably consent to the nonexclusive jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in San Francisco, California or New York, New York for the purposes of adjudicating any action or proceeding to enforce the terms of the Agreement. The parties agree that the Agreement and the transactions contemplated therein shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods or the Uniform Computer Information Transactions Act, as currently enacted by any jurisdiction or as may be codified or amended from time to time by any jurisdiction. English shall be the governing language of the Agreement.
- 6.10 Dispute Resolution. All controversies or claims arising out of or relating to the Agreement shall be resolved in accordance with the provisions of this Section. First, the disputing party shall give the other party written notice (the "Notice") of the controversy or claim in accordance with the notice provision of the Agreement. The parties will attempt in good faith to resolve each controversy or claim within thirty (30) days from the delivery of the Notice by negotiations between senior executives of the parties who have settlement authority and who do not have direct responsibility for the administration of the Agreement. If the controversy or claim has not been resolved within thirty (30) days of delivery of the disputing party's Notice, then either party may submit the dispute or controversy to a court of competent jurisdiction. Nothing in this Section shall be deemed to prohibit or restrict either party from: (a) seeking injunctive relief, or (b) seeking such other rights and remedies as it may have at law or equity for any actual or threatened breach of any provision of the Agreement relating to a party's Confidential Information or proprietary rights.
- 6.11 Interpretation. The Agreement is the result of negotiations between the parties and is being signed after consultation by the parties with their respective legal counsel. The Agreement will not be construed in favor of or against any party by reason of the extent to which any party participated in the preparation of the Agreement. The Agreement may be executed by facsimile copy and in any number of counterparts, all of which taken together will constitute one single agreement between the parties. Concur's obligation to perform Service under the Agreement is subject to the execution and delivery of the Agreement signed by a duly authorized representative of Customer and Concur.