

MASTER SERVICES AGREEMENT

BETWEEN

SUTHERLAND GLOBAL SERVICES, INC.

AND

BORDERS, INC.

Effective Date: _____, 200_

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MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT FOR OUTSOURCING SERVICES (the "Agreement") is made and entered into as of _____, 201__ (the "**Effective Date**"), between **Sutherland Global Services, Inc. ("Supplier")**, a New York Corporation, with principal offices at 1160 Pittsford Victor Road Pittsford, NY 14534 for itself and on behalf of its Affiliates, and **Borders, Inc. "Customer"**, a Colorado Corporation, with principal offices at 100 Phoenix Drive, Ann Arbor, MI 48108 USA..

1. Background and Objectives

1.1 Background

Customer issued a Request for Proposal, dated _____, 2010_, supplemented with other additional requests for information, proposals, qualification and other descriptions of services which Customer requires now and in the future, and which Customer may modify or supplement with additional information from time to time, (collectively, the "**Requirements**").

Based on Supplier's inquiries and evaluation of Customer's processes, systems and requirements, Supplier has submitted its response to the Requirements, based on which Customer and Supplier have engaged in discussions and negotiations that have resulted in the mutual intent of the Parties to form a relationship, as described in this Agreement, in order for Supplier to meet Customer's Requirements, subject to the terms and conditions set out in this Agreement.

This Agreement consists of the general terms and conditions which apply to the relationship and govern the basic expectations of both Parties. This Agreement is intended as a framework for the separate implementing agreements for specific Services ("**Statements of Work**"). Customer and Supplier will, when contracting for Services, set forth the mutually agreed upon specific terms and conditions applicable to the Services to be provided on a Statement of Work, in the form and manner and upon terms and conditions more specifically set forth.

Supplier is an established provider of customer contact center operations, account management, technology help desk and business process outsourcing services. Supplier has the expertise, experience and skills necessary to perform and manage the Services described in each Statement of Work in an efficient and qualitative manner.

1.2 Objectives

Customer's objectives in entering into this Agreement include obtaining:

quality outsourcing services in the areas described in this Agreement and related Statements of Work provided in an effective manner;

a flexible relationship with Supplier under which Supplier will be responsive to Customer Requirements and to changes in technology and methods of providing the Services, including accommodation of significant changes in business functions, volumes of operations and improved methods of monitoring, measuring and achieving improved levels of service; and

consistent and effective management of the relationship between Supplier and Customer.

Supplier's objectives in entering into this Agreement include:

obtaining a significant business opportunity with the potential for a high volume of business in which Supplier can provide to Customer superior quality outsourcing services in an effective and efficient manner; and

building a long term business relationship with Customer based on mutual trust and confidence to the Parties' mutual advantage.

1.3 Interpretation

The foregoing provisions set forth the background and inducements under which the parties are entering into this Agreement and are intended to be a general introduction to this Agreement. To the extent and in the event that the terms and conditions of this Agreement or any Statement of Work do not address a particular circumstance or are otherwise unclear or ambiguous, such terms and conditions are to be interpreted and construed consistent with the foregoing provisions.

2. Definitions

2.1 Specific Definitions

In this Agreement, any Statement of Work, and any Schedules to the Agreement or any Statement of Work, the following words or phrases shall have the indicated meaning:

"Affiliate" means with respect to any specified person or entity, any other person or entity Controlling, Controlled by or under common Control with such entity.

"Control" with regard to an entity, means the beneficial, equitable or legal ownership, either directly or indirectly, of more than fifty percent (50%) or more of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights, or effective control of the activities of such entity regardless of the percentage of ownership.

“Customer” means Customer and each of its Affiliates, and shall, for the avoidance of ambiguity, include any of Customer’s and any Customer Affiliates’ business units, divisions and operating subdivisions unless otherwise specifically indicated in the text; provided, however, that Statements of Work executed by Customer or any Customer Affiliate shall only obligate and legally bind and be applicable to the actual Customer legal entity executing and entering into such Statement of Work and shall not be deemed or construed to include “Customer” as defined above or each or all “Customer Affiliates” as defined below.

“Customer Affiliate” means each Affiliate of Customer and any other entity designated by Customer with whom Customer has a contractual and/or customer servicing relationship.

“Customer Data” means information entered or to be entered into Software or Equipment by or on behalf of or in respect of Customer, as well as information obtained or derived from this information, including any such information as stored in, accessed or transmitted through or processed by Equipment or Software, but excluding Supplier Data.

“Customer Data Security Policies” means Customer’s data security policies, as such policies may be modified, amended or replaced from time to time and provided to Supplier.

“Customer Information” means all information, in any form and on any medium, now known or hereafter discovered or developed, furnished or made available directly or indirectly to Supplier by Customer or on Customer’s behalf or otherwise obtained by Supplier from any source as a result of or in connection with this Agreement, including: (i) all information of Customer or any Customer Affiliates to which Supplier has access, whether in oral or written or other form, including business or financial information, plans, strategies, forecasts, forecast assumptions, business practices and methods, marketing information and material, customer, supplier, and employee information, and all information concerning Customer’s relationships with its customers, suppliers and employees, trading applications, proprietary ideas, concepts, know-how, methodologies, specifications, operations or systems manuals, decision processes, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, research and all other information related to Customer’s business or the business of any Customer Affiliate; (ii) all Work Product; (iii) all information of a third party in connection with or arising from this Agreement and/or Statement of Work hereunder, including customers of Customer or Customer Affiliates, and all analyses, reports and studies prepared by or on behalf of Supplier or any of Supplier’s representatives, during the term of the Agreement except for any Supplier Data; and (iv) all Customer Data.

“Customer Software” means Software (i) owned or licensed by Customer (including Software in which the copyright or embodied intellectual property is owned by Customer), and (ii) Third Party Software licensed to Customer, either of which is necessary for and made available to provide or support the Services.

“Equipment” means computers and related equipment including processors, controllers, communication and telecommunication equipment, cables, storage devices, printers, terminals, other peripherals and transmission devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, communication, transmission and retrieval of information and data, whether owned or leased by or for the benefit of Customer or Supplier in connection with the Services or used by or for the benefit of Supplier to provide or support the provision of the Services.

“Including” and its derivatives (such as **“include”** and **“includes”**) means including, without limitation. This term is used as defined, whether or not capitalized.

“Laws” means and refers to any and all federal (national), state, provincial, municipal and/or local laws, regulations, rules, judicial decrees, decisions and judgments, executive and government orders and ordinances, including any and all directives of regional legislative and regulatory bodies and implementing legislation, as well as the applicable rules and regulations of any self-regulatory organization including the National Association of Securities Dealers and the New York Stock Exchange, and unless the context clearly requires otherwise, shall be deemed to refer to Laws in each and every jurisdiction applicable to Customer, Supplier, the subject matter of this Agreement and the Services contemplated hereunder.

“Losses” means all losses, liabilities, damages, demands and claims, and all related costs and expenses (including any and all legal fees and costs of investigation, litigation, settlement, judgment, appeal, interest and penalties) incurred by an indemnified Party hereunder in connection with an indemnity or indemnification obligation as specifically set forth in the provisions of this Agreement or any Statement of Work.

“Out-of-Pocket Expenses” means reasonable and actual out-of-pocket expenses necessarily incurred by Supplier for Equipment, materials, supplies or Services provided to Customer, but not including Supplier’s overhead costs, administrative expenses or other mark-ups.

“Parties” means Customer (or, in the case of any particular Statement of Work, Customer or the Customer Affiliate executing said Statement of Work) and Supplier, and **“Party”** means either one of them.

“Schedules” means any schedule, exhibit, agreement or other document either: (i) attached to this Agreement; (ii) attached to any Statement of Work; or (iii) executed by the Parties at any time hereafter, if such document states that it is an attachment or otherwise part of this Agreement or any Statement of Work.

“Services” shall mean, individually and collectively, services whether known now or hereafter, which the Parties mutually agree to include on Statements of Work, including project and operations management, facilities and resources and such other functions, processes and responsibilities as the parties may hereafter agree upon and set forth on Statement of Work hereunder.

“Service Level Default Event” means Supplier’s failure to meet Service Levels or Performance Standards set out in an applicable Statement of Work for the periods indicated in such Statement of Work.

“Software” means the source and/or object code versions of any applications, programs, operating system software, computer software languages, utilities, computer programs and related documentation, in any form or media, including any tangible, intangible recorded and printed media relating thereto, together with all corrections, improvements, updates, derivative works, adaptations, versions, translations and releases thereof, which are used to provide or otherwise in support of the provision of the Services.

“Supplier Data” means all information, including report formats and layouts (but not including any Customer Information contained therein), other than Work Product or other data and information specifically defined as Customer Information hereunder, in any form and on any medium, now known or hereafter discovered or developed, furnished or made available directly or indirectly to Customer by Supplier or on Supplier’s behalf or otherwise including, Supplier proprietary information, data, processes, business or financial information, plans, strategies, forecasts, forecast assumptions, business practices and methods, marketing information and material, customer, supplier, and employee information, and all information concerning Supplier’s relationships with its customers, suppliers and employees, benchmarking data and analysis, proprietary ideas, concepts, know-how, methodologies, specifications, operations or systems manuals, decision processes, profiles, system and management architectures, diagrams, graphs, models, sketches, technical data, research and all other information related to Supplier’s business which are Supplier’s proprietary information or which are pre-existing as of the Effective Date of this Agreement and independently developed without use of or reference to any information or data of Customer.

“Supplier Equipment” means the Equipment owned or leased by Supplier and used by or on behalf of Supplier to provide the Services. Supplier Equipment includes all associated accessories and peripheral devices used in the provision of Services.

“Supplier Facilities” means the facilities owned or leased by Supplier and from or through which the Supplier will provide any Services, whether or not specifically identified in a Statement of Work.

“Supplier Personnel” means Supplier’s employees and Supplier’s approved subcontractors performing the Services.

“Supplier Software” means (i) Software used by or on behalf of Supplier in providing the Services that is owned by Supplier (including software in which the copyright or embodied intellectual property is owned by Supplier) or is Third Party Software licensed to Supplier, which is used to provide or support the Services.

“Third Party Software” means any Software used to provide or otherwise support the Services provided under license to Customer or Supplier by a third party.

“Third Party Software License” means a license agreement that authorizes Customer or Supplier to use Third Party Software in connection with the Services.

“Work Product” means any tangible or intangible work product, creation, material, item or deliverable, that are developed, conceived of, prepared, arise, procured, generated or produced, in connection with the performance of the Agreement or the Services hereunder, including concepts, works, inventions, information, modifications made to Customer’s training materials, drawings, designs, programs, or software, whether developed by Supplier or Supplier Personnel, either alone or with others, and whether completed or in-progress. Work Product shall not be construed to include Supplier Data, as that term is defined above.

2.2 Other Definitions

Any capitalized terms not otherwise defined in Section 2.1 and used in this Agreement, Schedules and Statements of Work, unless otherwise defined, shall be defined in the context in which they are used and have the meanings ascribed to them therein.

3. Master Services Agreement - General

3.1 Master Services Agreement

This Agreement contains the contractual terms and conditions for Services to be provided to Customer by Supplier pursuant to Statements of Work entered into by Customer and Supplier. Statements of Work may be entered into for discrete Services. Each Statement of Work shall, upon execution by Customer and Supplier, constitute a separate agreement. The terms and conditions of this Agreement shall apply to each Statement of Work and shall be incorporated into the Statement of Work by reference. Each Statement of Work shall be dated for identification and must include a description of the Services, materials, information and/or deliverables that Customer requests and Supplier agrees to provide pursuant to such Statement of Work, a requirements document outlining the functional and performance requirements and related terms and conditions for the performance of the Services, the fixed price or time and materials charges and related provisions for payment, any applicable Service Levels, testing criteria, specifications and any additional terms and conditions that are specific to the Statement of Work that the Parties mutually agree to include.

This Agreement and any Schedules thereto shall not be amended in any Statement of Work, except as specifically set forth in the applicable Statement of Work for any particular Services and no other terms and conditions in any form, document, purchase order or otherwise, shall or shall be construed to modify, amend or in any way alter the terms and conditions set forth herein, except for information specifically required and called for on the Statement of Work and even then, only to the extent and within the parameters specified therein.

This Agreement is effective as of the Effective Date, and the effective date with respect to a fully executed Statement of Work (the “**Statement of Work Effective Date**”) shall be the effective date provided in the applicable Statement of Work.

3.2 Interpretation and Precedence

- (a) This Agreement, the Statements of Work, and any Schedules hereto and thereto or referenced herein or therein, are to be interpreted so that all of the provisions are given as full effect as possible.
- (b) In the event of a conflict between or among any of the foregoing documents, precedence shall be given first to any Schedules to the applicable Statement of Work and then to such Statement of Work and second to any Schedules to this Agreement and then to this Agreement.
- (c) Provided further that any amendment, modification or change to any term or condition included in this Agreement or any Statement of Work issued thereunder, shall be limited, restricted and effective, interpreted and construed to be of any force and effect only and solely with respect to that term or condition in the Agreement or Statement of Work, even if the same or comparable Services are provided or performed on another Statement of Work.

3.3 No Implied Agreement; Non-Exclusivity

- (a) Nothing in this Agreement obligates Customer to enter into any Statement of Work with Supplier or requires Supplier to perform or provide any Services to Customer except to the extent that Supplier hereby commits to prepare good faith proposals for and offers to perform work as requested by Customer, at rates and on terms no less favorable than those set out herein.
- (b) Except as expressly required in a Statement of Work, nothing in this Agreement requires Customer to purchase, acquire or obtain Services from Supplier.
- (c) Supplier may provide services and sell goods and services to any other party or parties on terms and conditions established and determined by Supplier in its sole discretion from time to time, subject to the provisions of Article 14 herein.

- (d) Customer may obtain services similar to, identical to, or in addition to or outside the scope of the Services at any time during the Term from a third party or provide them internally. Customer shall have no obligation to obtain from Supplier any services, whether or not included within the definition of Services hereunder and Customer shall only be obligated to pay for Services, in such amounts, to the extent, at such locations and in such other manner as is specifically set forth in a Statement of Work mutually agreed upon and executed by the Parties.

4. Term

4.1 Master Services Agreement Term and Renewal

The term of this Agreement (the “**Term**”) shall commence as of the Effective Date and, unless renewed or earlier terminated in accordance with the terms hereof, shall continue for a period of three (3) years from the Effective Date; provided, however, that this Agreement shall continue in full force and effect with respect to any particular Statement of Work that is then in effect and that has not been completed or expired, until the expiration or termination of such Statement of Work, as provided therein. Customer shall have the option, upon at least ninety (90) days’ written notice to Supplier, to renew this Agreement for successive two (2) year terms which will terminate at the expiration of such two (2) year period unless subsequently renewed as permitted herein.

4.2 Statement of Work Term and Renewal

The Statement of Work Term (as defined below) shall be as set forth therein and may extend beyond the then current Term of this Agreement. Provided that this Agreement has not expired or otherwise been terminated, at any time during the Term, Customer shall have the option to renew each Statement of Work then in effect for three (3) successive one (1) year terms by delivering written notice of such renewal to Supplier at least ninety (90) days before expiration of the term or completion date of the Statement of Work involved. After three (3) such one (1) year terms, any subsequent renewal of any such Statement of Work shall be by mutual agreement prior to the expiration of the then-current Statement of Work Term. If Customer elects not to exercise any such options, the Statement of Work shall continue on a month-to-month basis until such time as either party provides notice of its election to terminate, which shall be given not less than ninety (90) days from the proposed termination date. Unless mutually agreed by the Parties and subject to the provisions of Section 13, there shall be no adjustment to the pricing of the Services provided to Customer under this Agreement or any Statement of Work following any renewal of the Term. All of the terms of this Agreement and the applicable Statements of Work shall continue to apply without change during any renewal period, unless otherwise expressly agreed in writing by the Parties. “**Term**” shall refer to both the original term of the Agreement and any renewal thereof. “**Statement of Work Term**” shall refer to both the original term of a Statement of Work and any renewal thereof.

5. Services

5.1 Provision of Services

- (a) Supplier will provide and perform the Services described in, and subject to the terms and conditions of this Agreement and the applicable Statements of Work. Services shall include any modifications or changes which may be made to the Services as permitted, together with any corresponding adjustments and/or changes to the Service Levels, prices, performance standards, schedules and any other rights or obligations involved or affected by such changes, all of which shall be effective when mutually agreed upon in writing by the Parties.
- (b) If any services, functions or responsibilities are not specifically described or included within the definition of "Services" hereunder, but are required for the proper performance of Services hereunder, they will be deemed to be implied by and included within the scope of the Services to the same extent as if specifically described in the Agreement.
- (c) Customer and Supplier mutually acknowledge that the volume of Services under this Agreement may fluctuate. At the beginning of each calendar month during the Term and each Statement of Work Term, the Parties will discuss the projected business volume for each Statement of Work for the following month.

5.2 Minimum Volume Commitments

The Parties may mutually agree that each applicable Statement of Work may specify a volume commitment (each a "Minimum Volume Commitment") during the Term or any portion thereof (each a "Commitment Period"). **Provision of Services to Customer Affiliates**

- (a) Supplier will provide the Services to those Customer Affiliates as identified by Customer from time to time provided that Customer and Supplier agree to the responsibilities to provide such Services as evidenced through a mutually agreed upon on a change control document.

- (b) In the event a Customer Affiliate becomes other than a Customer Affiliate or in the event that Customer relinquishes Control of a business unit or Customer Affiliate after the Effective Date (each such entity a “**Former Affiliate**”), then upon Customer’s or such Former Affiliate’s request, Supplier will continue to provide the Services to such Former Affiliate after the date such entity becomes a Former Affiliate, for the longer of the period of time up to the date of expiration, termination or completion of the applicable Statement of Work involved or for a period of time requested by Customer or such Former Affiliate, which latter period shall not exceed twelve (12) months; provided, however, the Former Affiliate agrees in writing to abide by the terms and conditions of this Agreement and compensate Supplier in accordance with the terms of the Statement of Work, the agreed upon change control documentation and this Agreement.

5.3 Resources

- (a) Except as otherwise expressly provided in this Agreement and subject to the terms and conditions by which Supplier is obligated to perform hereunder, all facilities, resources, personnel, information and materials required for the proper performance of Services by Supplier hereunder, shall be under the control, management and supervision of Supplier.
- (b) Supplier shall be responsible, at its sole cost and expense, for procuring, obtaining and making available, all such facilities, resources, personnel, information and materials, subject however to the provisions of 5.4(c) below.
- (c) At customer’s specific request, Supplier may obtain and provide to Customer certain identified third party products or specialized services reasonably related to the Services, including the benefit of any volume purchasing discounts, on a commercially best efforts basis. The cost of such third party products or specialized services will be entirely borne by the Customer and will include Supplier’s administrative fee or other markup, as mutually agreed to in writing between the Parties.

5.4 Laws

- (a) During the Term, Supplier will comply with all Laws that are applicable to Supplier and Supplier’s business, activities and Supplier’s Facilities, including Laws of any country or jurisdiction from which or through which Supplier provides the Services or obtains resources or personnel to do so.
- (b) Supplier will also comply with all Laws applicable to Customer and Customer’s Affiliates, the Services and/or the Service Levels or as a result of any circumstances that is unique to the Customer, to the extent that Customer notifies Supplier of such Laws.
- (c) If changes in Laws, in any way or to any extent, prevent Supplier from performing its obligations hereunder, Supplier shall develop and, subject to Customer’s prior approval, which shall not be unreasonably withheld, implement a suitable workaround until such time as Supplier can perform its respective obligations without such workaround.

- (d) Subject to the foregoing, upon the implementation of such workaround, the Parties shall negotiate and implement an equitable adjustment to the applicable charges for the affected Services.
- (e) Supplier will be responsible for any fines and penalties imposed on Supplier or Customer arising from any noncompliance by Supplier, Supplier's employees, subcontractors, agents or representatives, with any such Laws, except to the extent that such noncompliance is caused, directly or indirectly, by any act of omission of the Customer.

5.5 Consents, Licenses and Permits

As part of the Services or as expressly set forth in this Agreement or any related Statement of Work, Supplier will be responsible for obtaining, maintaining and complying with all applicable licenses, authorizations, consents, approvals and permits required of Supplier in connection with the performance of the Services and to otherwise carry out Supplier's obligations under each Statement of Work. Supplier will have financial, management and compliance responsibility for, and will pay all fees and taxes associated with such licenses, authorizations, consents, approvals and permits.

5.6 Security

- (a) Supplier acknowledges that Customer Information provided, available to or obtained by Supplier in connection with the Services and the performance of its obligations hereunder, will include or may contain proprietary, sensitive and confidential information of Customer, its Affiliates and its or their customers, clients, suppliers and others with or for whom Customer and/or Customer Affiliates conduct business and that disclosure thereof would subject Customer and/or Customer Affiliates to substantial, immediate and irreparable harm, whether in the form of damages or injury resulting from a breach of contract or arising from any legal or regulatory action or otherwise.
- (b) Supplier agrees to hold such information in trust and confidence and treat such information as strictly confidential, providing security provisions, at a minimum in accordance with Customer Data Security Policies and to the extent that Supplier, acting with due and proper regard for same, would provide security for its own proprietary, sensitive and confidential information and digitally stored files, data and programs and as otherwise required by Laws: (i) to safeguard all Customer Information under the control or in the possession of Supplier; (ii) to safeguard the physical integrity and condition of all Supplier Facilities, Equipment, Software and all media in Supplier's possession or control containing Customer Information; (iii) to ensure that access to Customer Information, in any form on any media, is available only to Customer, Customer Affiliates and their designated employees and/or authorized representatives; and (iv) to prevent use by or disclosure of any and all Customer Information to any third party, to any employee or agent of Supplier that does not have a need to know in the performance of Services hereunder or otherwise, unless Supplier has obtained Customer's prior written approval.

5.7 Statements of Work

- (a) Customer will initiate the request for Services by providing such request in writing (each such request, a “**Statement of Work Request**”) to Supplier. Each Statement of Work Request shall contain a general description of the Services requested and Customer’s associated business and operational requirements, together with any additional information reasonably requested by Supplier that is necessary to complete the proposed Statement of Work as required. Supplier will, within the time frame specified in such Statement of Work Request (and in any event, in no more than thirty (30) days), prepare and deliver to Customer a proposed Statement of Work as described in Section 5.8(d) below.
- (b) Once submitted to Customer, a proposed Statement of Work shall constitute an offer by Supplier to provide, deliver and implement the Services described therein on the terms set forth therein (including pricing and compensation), and shall be irrevocable for a period of thirty (30) days. If no changes are made to the proposed Statement of Work, it will become effective as a Statement of Work when accepted and executed by Customer.
- (c) Customer will review and may provide Supplier with comments regarding a proposed Statement of Work, and Supplier shall respond to such comments, if any. Except as specifically permitted and provided herein, Services shall be provided by Supplier to Customer only upon the execution and delivery by both Parties of a Statement of Work.
- (d) Each Statement of Work for Services shall be substantially in the form attached as Exhibit A to this Agreement and contain the information described in, and be developed subject to the procedures set forth therein.
- (e) Without in any way limiting Supplier’s obligations under Section 5.5 above, each Statement of Work shall specifically include a detailed description of all Laws, then known by the Parties to be applicable to the Services set forth therein, as well as a detailed description of the activities to be conducted, the measures and steps to be taken, the monitoring and enforcement procedures and standards which the Supplier agrees to establish, implement, maintain and fulfill in order to ensure that Customer and, to the extent applicable, Supplier, is and remains in compliance with all such Laws.
- (f) Each Statement of Work will include Service Levels applicable to the Services specified and described in the Statement of Work in accordance with the general terms relating to such Service Levels hereinafter referred to in Section 6.
- (g) Each Statement of Work will include an agreed upon forecasting methodology to which Customer commits to be obligated to and to which Supplier agrees to administer to.
- (h) Any change to a Statement of Work and the Services to be performed thereunder shall be made pursuant to the Change Control Procedures and, if applicable, any supplementary procedures set forth in the applicable Statement of Work.

6. Performance Standards and Service Levels

6.1 Service Levels

- (a) Supplier's level of performance in providing the Services will meet the quantitative and qualitative service levels set forth in each Statement of Work (individually and collectively, the "**Service Levels**").
- (b) Supplier's performance of the Services against the Service Levels will be measured on a periodic basis, to be mutually agreed in writing by the Parties and specified in an applicable Statement of Work.
- (c) The Parties acknowledge and understand that the Service Levels required by Customer will be based, amongst other criteria, upon Customer's applicable standards and the Requirements specified in the Statement of Work. Customer agrees that where Services are currently being performed by a party other than Supplier, it will provide Supplier with any available evidence of historical performance relevant to demonstrating the applicability of goals established for such Service Levels.
- (d) Service Levels and Performance Standards will be made binding on Supplier, only after a reasonable implementation period, which period shall be mutually agreed to in writing between the Parties and clearly specified in the applicable Statement of Work.
- (e) The Parties will meet to review the Service Levels at least bi-annually, or more frequently as either Party may reasonably request. As a result of those meetings and as necessary from time to time during the Term, the Parties may by mutual written agreement add to, delete or adjust the Service Levels, in whole or in part. The reasons for additions, deletions or adjustments to the Service Levels hereunder may include improved performance capabilities associated with advances in technology and methods used to perform the Services, or changes in Customer's business environment, such as the implementation of a major initiative that changes the nature of the Services or any business process or operational improvements implemented or instituted by Customer.

6.2 Performance Standards

- (a) With respect to any Services or obligation that does not have a specifically defined, designated or associated Service Level that is mutually agreed upon and set forth on the Statement of Work for the Services involved, Supplier shall perform such Service or obligation with a level of accuracy, quality, timeliness and responsiveness that at least meets the level of performance by Customer or any third party providing such services for Customer immediately before the applicable Statement of Work Effective Date (the "**Performance Standards**"). With respect to any of the foregoing Services, references to "Service Levels" hereinafter shall be deemed to include and refer to the applicable Performance Standards.
- (b) Regardless of whether there exists an associated Service Level, Supplier shall perform all Services and obligations promptly, diligently and in a workmanlike and professional manner, using qualified individuals.

6.3 Measurement and Reporting of Service Levels

- (a) The parties agree that the nature of Services to be performed and provided are varied. The measurement, quantification and reporting of Service Levels shall therefore be tailored to the Services involved and the particular Customer Requirements applicable to such Services under an applicable Statement of Work. Each Statement of Work shall include the specific and particular Service Levels which apply to the Services and each distinct measurable component of the Services under each Statement of Work as mutually agreed between the Parties (the “**Agreed Service Levels**”).
- (b) The Agreed Service Levels to be set forth on each Statement of Work shall also specify the maximum allowable tolerances, describe the methodology for measuring and quantifying the actual levels of performance and conformance for each of the Services and distinct components thereof, the reporting requirements and procedures to be taken if the Agreed Service Levels are not achieved and other remedies and actions which apply when actual Service Levels fall below specified tolerances.
- (c) Unless otherwise agreed to between the Parties in writing and specified in the Statement of Work:

Measurement of actual Service Levels against Agreed Service Levels for all Services will be conducted on a monthly basis;

All Service Level metrics and references to hours shall mean actual hours during a calendar day and not to business hours;

All Service Level metrics and references to time shall be to local time at the location where the Services are to be provided or performed for Customer or the Customer Affiliate; and

All Service Level metrics and references to days, months and quarters shall be to calendar days, calendar months and calendar quarters, respectively.

- (d) Supplier will provide to Customer, a monthly performance report, which will be delivered to Customer within such time frame after the end of each month of the Term, as may be mutually agreed to between the Parties, describing Supplier’s performance of the Services in that month in such format and containing such details and information as the parties may mutually agree (“**Monthly Performance Report**”).

6.4 Failure to Meet Service Levels

On the occurrence of a Service Level Default Event, for reasons solely attributable to the Supplier and other than a Force Majeure Event or those specified in the applicable Statement of Work, Customer will be entitled to (in addition to all other rights and remedies at law, in equity or under this Agreement that Customer may have) those damages set forth in the applicable Statement of Work, if any.

6.5 Service Level Bonuses

For each applicable Statement of Work, a Service Level Bonus, may be invoiced to Customer in respect of which Supplier became entitled to receive such Service Level Bonus as may be mutually agreed upon by the parties in the applicable Statement of Work.

7. Equipment and Facilities

7.1 Equipment

- (a) Except for the Equipment specifically provided by Customer and specified in the applicable Statement of Work, Supplier will be responsible for procuring, maintaining and making available all Equipment necessary and/or appropriate to effectively and properly provide the Services.

- (b) If and as specifically set forth in a Statement of Work, Customer makes available to Supplier, resources in Customer Facilities, that will continue to be owned or leased by Customer ("**Customer Resources**"), then Supplier shall: (i) use the Customer Resources for the sole purpose of providing the Services and support in relation to Services. Supplier shall, return such Customer Resources to Customer's possession, custody and control upon the expiration, cancellation or termination of, or as otherwise provided in, the applicable Statement of Work, in the same condition it was in on the Statement of Work Effective Date, ordinary and reasonable wear and tear excepted and shall otherwise use and maintain such Customer's Resources in the manner required by Customer.
- (c) If specified in a Statement of Work, upon Customer's request, Customer may assign, and Supplier may assume, all of Customer's obligations under any leases for certain equipment that is used to provide the Services as described in the Statement of Work or Customer may sell Equipment owned by it to Supplier (the "**Transferred Equipment**"). Customer, with Supplier's assistance, shall seek to obtain consents to such assignments and shall arrange for full releases of Customer's liability under such leases as commercially practicable. The applicable Statement of Work shall state any other terms and conditions applicable to the Transferred Equipment. Any assignment of Customer's interests in the Transferred Equipment is made "AS IS, WHERE IS," WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND AND SPECIFICALLY WITHOUT ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.2 Facilities

- (a) Except for Customer Facilities described in this Section 7.2 or as specifically set forth in an applicable Statement of Work hereunder, Supplier will be responsible for procuring, managing, maintaining and otherwise making available all facilities, space, Equipment, Software and related resources that are necessary to provide the Services as required hereunder. Supplier will seek and obtain, in advance and in writing, Customer's written approval for any relocation of any Supplier Facilities at, from or through which the Services are provided and shall manage any such changes in accordance with the Change Control Procedures.
- (b) Throughout the Term, Supplier shall ensure that adequate physical and logical security measures and safeguards are instituted, maintained and enforced at all Supplier Facilities (including security measures and safeguards specific to those areas of the Supplier Facilities that are partitioned from the rest of the Supplier Facilities and dedicated to the provision of the Services) to guard against the destruction, loss, damage or alteration of any Customer property, Services and/or Customer Information.
- (c) The security measures and safeguards at the Supplier Facilities shall be no less rigorous than those maintained by Supplier for its other facilities as may be necessitated by the Services.

- (d) With respect to any Supplier Facilities at or from which Customer Information is stored, used, accessible, transmitted, processed or otherwise made available, providing security guards on a 24x7 basis and maintaining access controls which include, at a minimum (1) restricting physical and logical, direct or remote access to the Supplier Facilities and any portions of the Supplier Facilities containing Customer Information, and (2) monitoring and logging access to the Supplier Facilities.
- (e) During the Statement of Work Term, Customer shall make available to Supplier such necessary space reasonably requested by Supplier in connection with Services and administrative support thereof ("**Customer Facility**") as may be identified in the applicable Statement of Work, for the performance of Supplier's obligations pursuant to the Statement of Work involved, at no cost to the Supplier.
- (f) Supplier shall: (i) use the space in the Customer Facilities solely and exclusively for the purpose of providing the Services and administrative support for Services applicable to the Statement of Work, including on-site account management functions relating to Services.
- (g) Customer remains responsible for the management and maintenance of the Customer Facilities. The Customer Facilities will be made available to Supplier on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

8. Personnel

8.1 Supplier Personnel – General

- (a) Supplier will assign an adequate number of personnel to perform the Services in accordance with the terms and conditions specified hereunder and each Statement of Statement of Work, including the Service Levels. The personnel Supplier assigns to perform the Services will be properly educated, trained and qualified for the Services they are to perform. Supplier will ensure appropriate training is in place to meet on-going training requirements of personnel assigned to perform Services.
- (b) Supplier shall be responsible, at its own cost and expense, for any and all recruitment, hiring, training, education and orientation for all Supplier Personnel assigned or to be assigned to perform Services or support the Customer in connection with this Agreement; provided however that any costs and expenses required in order to smoothly and successfully transition or migrate any Services from Customer to Supplier in a timely and efficient manner the "**Transition Costs**"), shall not be included in such costs and expenses. Such Transition Costs and the respective liability therefor shall be mutually agreed between the Parties and set forth in the Statement of Work to which such Services relate.

- (c) Supplier Personnel will comply with Customer Data Security Policies, as notified by Customer from time to time. Supplier Personnel working at Customer Facilities will be subject to Customer required security procedures, appropriate to the subject matter and jurisdiction involved, which may include background checks, finger printing, and drug testing or such other methods as Customer, in consultation with and with advice from Supplier, may deem appropriate.
- (d) The timing for transfer, reassignment or replacement of Supplier Personnel assigned to perform the Services will be closely coordinated with the requirements for timing and other elements of the Services so as to maintain continuity in the performance of the Services and avoid interruption or disruption to the Services and failures to maintain Service Levels. As appropriate, a transfer, reassignment or replacement will be performed in accordance with a succession plan mutually agreed upon by the Parties.

8.2 Key Supplier Positions

- (a) There will be a number of critical and important Supplier positions identified in this Agreement or in a Statement of Work as “Key Supplier Positions.” The Key Supplier Positions will include, at a minimum, the Supplier Account Executive described in Section 8.2(b) below, Supplier’s program manager for each Statement of Work and certain other of Supplier’s positions which will be specified in the applicable Statement of Work. Supplier intends that Personnel filling Key Supplier Positions will be assigned to Customer’s account, except in the case of death, resignation or termination for non-performance, misconduct or performance problems, consistent with Supplier’s standard policies and procedures. Any transfer, reassignment or replacement of Key Supplier Positions will be at the sole discretion of Supplier and performed in accordance with Section 8.1(d) above.
- (b) Supplier will designate an individual to serve as the “**Supplier Account Executive**” who will (i) be a senior officer and employee within Supplier’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder, (ii) serve as primary interface and the single-point of accountability and responsibility for the provision of Services by Supplier, (iii) have day-to-day responsibility and authority to ensure customer satisfaction, and (iv) devote time and dedicated efforts to managing and coordinating the Services.

- (c) For each Statement of Work, Customer shall designate a Customer Contact and Supplier shall designate a Supplier Statement of Work Manager who shall (i) be a reasonably senior employee within each Party's organization, with the information, authority and resources available to oversee the performance of the Services required under that Statement of Work; (ii) serve as primary interface, with primary accountability and responsibility for the provision of Services under that Statement of Work; (iii) have day-to-day responsibility and authority to ensure customer satisfaction in connection with the Services under that Statement of Work; (iv) devote time and dedicated efforts to managing and coordinating the Services under that Statement of Work; and (v) as required, be located at the primary location of Supplier's Facilities where or from which the Services under that Statement of Work are provided or performed. The Customer Contact and the Supplier Statement of Work Manager shall individually and collectively, be referred to as the "**Statement of Work Managers**".

8.3 Non-solicitation or Hiring of Personnel

Except by way of general advertisement or as otherwise specifically agreed by the Parties in writing or as otherwise set forth in this Agreement or any Statement of Work, during the Term of the Agreement and any Statement of Work Term and for a period of one (1) year from the expiration or termination of the later of any of the foregoing Term(s), neither Party, nor any of their respective Affiliates, shall, directly or indirectly, solicit, recruit, hire, retain or engage the services of each other's or each other's Affiliates' employee, subcontractors, agent or representative without the express prior written consent of the other Party, which may be withheld at the Party's sole discretion.

9. Software and Intellectual Property Rights and Obligations

Software Generally Any Software required to provide the Services will be set out in the applicable Statements of Work.

9.1 Customer Software

- (a) Each Statement of Work shall identify the Customer Software, if any, that Supplier is authorized to use to perform the Services and specify the rights of Supplier to use the Customer Software. Customer will retain all right, title and interest in and to Customer Software and except for the specific rights and license granted to Supplier under the provisions of this Article and subject to the applicable obligations and restrictions under the provisions of this Agreement and any applicable Statement of Work, nothing shall or shall be construed to restrict, impair, transfer, license, convey or otherwise alter or deprive Customer of any of its rights or proprietary interests therein, all of which are hereby expressly reserved.

- (b) As of the applicable Statement of Work Effective Date and subject to the terms and conditions contained therein, Supplier will have a limited license, during the applicable term of the Statement of Work, to use and access Customer Software for the sole purpose of providing the Services required under the Statement of Work involved. Supplier will cease use of such Customer Software upon completion, expiration or termination of the applicable Statement of Work.
- (c) Each Statement of Work will specify any Third Party Software licensed by Customer to which Supplier will be granted access for use in connection with the provision of the Services and the terms under which such access will be granted. Supplier will comply with the duties imposed on Customer under the licenses for such Third Party Software, including any use and confidentiality restrictions. Supplier will cease use of such Third Party Software upon expiration or termination of the applicable Statement of Work. Third Party Software, that the Parties mutually determine to be necessary or desirable to provide the Services will be procured, installed, managed, maintained and supported at Customer's sole cost and expense.

9.2 Supplier Software

- (a) As of the Effective Date, Supplier will be responsible in all respects for Supplier Software.
- (b) Each Statement of Work will identify any Supplier or Customer Software that will be used to provide the Services. Supplier shall install, operate, update and maintain, at its expense, all Supplier Software used in connection with the provision of Services. As of the applicable Statement of Work Effective Date, Supplier grants to Customer and its Affiliates, a worldwide, royalty free, non-exclusive right and license to use Supplier Software for the benefit of Customer, only to the extent any Supplier Software used in the Services is incorporated in, utilized in or otherwise intended to operate in conjunction with any Services, deliverable or Work Product delivered or made available to Customer as part of the Services or necessary to perform, receive, use or operate any Services. Except for the foregoing rights and license, Supplier retains all right, title and interest in and to the Supplier Software. Such non-exclusive right shall terminate upon the termination of this agreement, by whatsoever cause or reason.

9.3 New Third Party Software

Supplier will comply with the duties imposed on Customer under the licenses for any Third Party Software that is licensed after the effective date of an applicable Statement of Work by Customer and used by Supplier in relation to the Services. Supplier will cease use of such software upon expiration or termination of the Statement of Work. All new Third Party Software, that the Parties mutually determine to be necessary or desirable to provide the Services will be procured, installed, managed, maintained and supported at Customer's sole cost and expense.

9.4 Work Product

- (a) To the extent Supplier delivers or is required to deliver to Customer any Work Product developed specifically in connection with the Services, Customer owns or upon assignment by the creator will own all right, title and interest (including, but not limited to, all trademarks, trade secrets, copyrights, patents and any other intellectual property rights) (collectively, “**Proprietary Rights**”) in such Work Product.
- (b) Nothing contained in this Agreement shall be construed to transfer, convey, restrict, impair or deprive Supplier of any of its ownership or proprietary interest or rights in any work, ideas, inventions, discoveries, tools, methodology computer programs, processes and improvements, computer processes, specifications, operating instructions, notes, and any other documentation (whether or not patentable) created by Supplier prior to the provision of the Services and/or the delivery of the Work Product hereunder or which may be independently developed by Supplier outside the scope of the Services and without use of any confidential or otherwise restricted material or information of Customer (collectively, the “**Supplier Property**”).
- (c) The Work Product has been specially ordered and commissioned by Customer. Supplier agrees that the Work Product is a “work made for hire” for copyright purposes, with all copyrights in the Work Product owned by Customer. To the extent that the Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret, or any Proprietary Rights protection, Supplier hereby assigns to Customer, its successors and assigns, all right, title and interest in and to the Work Product, including, but not limited to, all rights in and to any inventions and designs embodied in the Work Product or developed in the course of Supplier’s creation of the Work Product.

9.5 Intellectual Property

- (a) Except for the limited license(s) granted in this Section 9, in connection with the provision of Services as specified in this Agreement or any applicable Statement of Work, each Party shall retain all right, title and interest in and to its intellectual property, information, systems, software, programs, processes, technology, services, methodologies, products and any other materials or rights, tangible or intangible (“**Intellectual Property**”) and nothing shall or shall be construed to restrict, impair, transfer, license, convey or otherwise alter or deprive either Party of any of its rights or proprietary interests therein.

- (b) Neither Party may use the other Party's Intellectual Property for any purpose other than as specified in this Agreement and any applicable Statement of Work. Upon expiration or termination of this Agreement or any applicable Statement of Work, all licenses granted by either Party to the other shall immediately terminate without notice required, and each Party shall return the other Party's Intellectual Property and all copies or derivative works made thereof, as specifically permitted hereunder. Each party shall have no further rights or licenses to use the Intellectual Property or any such copies or derivative works, except as specifically agreed between the Parties in writing.
- (c) Nothing contained in this Agreement shall be construed as granting to either Party any right or license under any of the other Party's present or future patent rights or copyrights, or as granting to either Party any right or license to use for any purpose other than those purposes expressly stated herein any of the other Party's information or any other information, materials or results received, discovered, or produced by either Party in connection with the Services performed for the Customer.

9.6 Residual Knowledge

Nothing contained in this Agreement shall restrict either Party from the use of any general ideas, concepts, know-how, methodologies, processes, technologies, algorithms or techniques retained in undocumented impressions of such party's personnel relating to the Services which either Party, individually or jointly, develops or discloses under the Agreement or any Statement of Work ("**Residual Knowledge**") provided that in doing so such Party does not (a) infringe the intellectual property rights of the other party or third parties who have licensed or provided materials to the other party, or (b) breach its confidentiality obligations under this Agreement or under agreements with third parties.

10. Program Management

Details pertaining to Program Management shall be discussed in the Statement of Work.

10.1 Change Control Procedures

- (a) The performance of Services for Customer may require the continued and dynamic setting of priorities based on, among other things, changing volumes, transactions, products, operations, business processes and services, the marketplace, legal and regulatory requirements or any other changes necessary to satisfy on-going requirements arising out of this Agreement or an applicable Statement of Work. The Parties shall use the following procedures ("**Change Control Procedures**") to implement any and all changes to the Services set forth on an applicable Statement of Work.
- (b) Change requests may be initiated by recommendations, suggestions or proposals from Supplier or Customer, or their Affiliates, subcontractors, agents and employees to (a) respond to Customer's end-customer requirements, (b) improve the efficiency of or enhance existing Services, (c) reduce Customer's cost for Services under a Statement of Work, or (d) take advantage of technological,

operational or economic opportunities that arise during the Term of this Agreement or a Statement of Work Term (the “**Change Request**”).

- (c) The Parties will, through a process of mutual consultation and discussion regarding any proposed change to Services, prepare and present for review and evaluation, materials and information which define, describe and identify, the nature and extent of the change to Services contemplated hereunder. This shall include a comprehensive analysis and statement of the impact and effect of such change on each and every aspect of the Services, whether applicable to the particular Statement of Work or any other Statement of Work or Services. The information and materials prepared for review and consideration hereunder shall be no less comprehensive or detailed and shall be prepared with the same degree of care and specificity as is required under the Agreement for the preparation of Statements of Work.
- (d) The Statement of Work Managers and, if necessary or desirable, the Customer Executive and the Supplier Account Executive and/or their respective designees knowledgeable in the Statement of Work involved, shall meet to review the documentation, coordinate the review and evaluation of proposed changes and make recommendations to their respective management as to the potential approval or rejection of any changes.
- (e) A Change Request shall be substantially in the form attached as Exhibit B to this Agreement.

10.2 Quality Assurance

As part of Supplier's total quality management process, Supplier will provide continuous quality assurance and quality improvement through (i) the identification and application of proven techniques and tools that might benefit Customer operationally, (ii) the use and application of quality processes and standards accepted in the industry, and (iii) the implementation of concrete programs, practices and measures mutually agreed between the Parties in writing.

10.3 Dispute Resolution and Arbitration Procedures

- (a) The Parties shall first attempt to resolve any dispute, whether arising under a Statement of Work or this Agreement, informally by submitting the dispute, in writing, to the Statement of Work Managers responsible for the Statement of Work giving rise to the dispute or, if the dispute involves more than one Statement of Work or this Agreement, to any and all Statement of Work Managers involved, and if necessary or required to the Supplier Account Executive and Customer Executive. The Statement of Work Managers or if necessary or required, the Supplier Account Executive and the Customer Executive, shall meet, in person or by telephone conference call, as often as they deem necessary to gather and analyze any information relevant to the resolution of the dispute. The Statement of Work Managers and, if applicable, the Supplier Account Executive and Customer Contract Executive shall negotiate in good faith in an effort to resolve the dispute.
- (b) During the course of negotiations and good faith attempts to resolve the dispute informally or by arbitration, all reasonable requests made by one Party to the other for non-privileged information, reasonably related to the dispute, shall be honored in order that each of the Parties may be fully advised of the other's position; provided, however, that the conduct and activities of the Parties in attempting to resolve the dispute in accordance with the provisions set forth herein, the furnishing of any information and the offers of compromise or attempts to settle any such dispute informally, as well as any and all proposals and information exchanged during any such informal proceedings shall: (i) be confidential and considered "Confidential Information" hereunder; (ii) be made, provided and/or offered without prejudice to a Party's legal position in any formal proceedings, each party reserving all of its rights; (iii) be considered settlement discussions and proposals, and shall be inadmissible in any subsequent proceedings; and (iv) shall in no way be construed or deemed to preclude, prohibit or restrict either Party, at any time or in any manner, from proceeding to litigation or otherwise exercising any right or remedy available to it under this Agreement, at law or in equity.
- (c) Both Parties shall remain obligated to perform their obligations under this Agreement or any Statement of Work, notwithstanding the pendency or continuation of any dispute or any formal or informal attempts by the Parties to resolve any such dispute and the existence of such dispute shall not relieve either

Party of any of its obligations under this Agreement and/or any and all Statements of Work, unless and until such obligations are terminated or expire in accordance with the provisions of this Agreement or the applicable Statement of Work and except to the extent the issue in dispute precludes performance.

- (d) Any dispute or controversy between the Parties with respect to the interpretation or application or enforcement of any provision of this Agreement or a Statement of Work, or the performance by Supplier or Customer of their respective obligations hereunder shall be resolved as provided in this Section.

11. Record Retention and Inspection

During the Term and any Statement of Work Term and for a period of one (1) year after the expiry of the later of the Term or any Statement of Work Term, Supplier shall keep, and Customer may examine and make copies of, all books and records relating to the Services. Customer may oversee, monitor, and inspect such books and records to determine Supplier's compliance with and performance of this Agreement or any applicable Statement of Work, operations and performance, data security measures and policies, or compliance with any Laws. Customer shall have access, during normal business hours upon reasonable notice for so long as such records are required to be retained, to Supplier's books and records and other data and personnel relating to the Services to achieve this objective.

12. Fees

12.1 General

- (a) All Fees for the Services will be calculated, priced and billed to Customer in United States dollars and may be subject to adjustment for fluctuations in currency exchange rates if mutually agreed to between the Parties. Fees for Services shall be computed on a calendar month basis and shall be prorated for any partial month.
- (b) In accordance with the provisions of this Agreement, Customer will pay Supplier the amounts set forth in each Statement of Work as payment in full for the Services under such Statement of Work performed by Supplier during the Term (the "**Fees**"). Except as otherwise expressly set forth in this Agreement, Customer shall not be obligated to pay any amounts to Supplier for its performance of the Services and its other obligations under this Agreement other than the amounts set forth in the relevant Statement of Work.

12.2 Pass-Through Expenses

- (a) “**Pass-Through Expenses**” means charges to be paid directly by Customer or through Supplier on an Out-of-Pocket Expenses basis. The Parties will use commercially reasonable efforts to minimize the amount of Pass-Through Expenses.
- (b) If the Parties agree that a Pass-Through Expense is to be paid: (i) by Customer directly, Supplier will promptly provide Customer with the original third party invoice and back-up substantiation for the expense, together with a written confirmation that Supplier has reviewed the invoiced charges and has determined the charges are proper and valid and should be paid by Customer; or (ii) by Supplier, Supplier will act as payment agent for Customer and after reviewing the invoiced charges and determining the charges are proper and valid, will pay third party charges comprising the Pass-Through Expense. In the event Supplier is acting as Customer’s payment agent pursuant to (ii) above, Supplier will provide Customer with a reasonable opportunity to review the invoice to confirm Supplier’s determination. Following this review by Supplier and Customer, Supplier will pay the amounts due and will invoice Customer for such Pass-Through Expense.

12.3 Incidental Expenses

Customer shall reimburse Supplier for reasonable business-related expenses incurred while performing Services, provided that the nature and amount of such expenses are set out in writing in an applicable Statement of Work and prior written approval for such expenses is obtained from the Customer on a case-by-case basis (the “**Incidental Expenses**”).

12.4 Taxes

- (a) Each Party shall pay any real property taxes or personal property taxes on property it either owns or leases from a third party or any other taxes, fees or costs related to Equipment or the lease of Equipment. Taxes payable on any Transferred Equipment shall be prorated as of the Statement of Work Effective Date of the applicable Statement of Work based on the number of days in the applicable tax period, with Customer paying the taxes allocable to the period before the Statement of Work Effective Date and Supplier paying the taxes allocable to the period on and after the Statement of Work Effective Date. If Supplier owes money to Customer pursuant to such pro-ratio, Supplier shall pay such amount to Customer in good and immediately available funds on the Statement of Work Effective Date. If Customer owes money to Supplier pursuant to such pro-ratio, Customer shall pay such amount to Supplier in good and immediately available funds on or before the date Supplier must pay the next installment of the applicable tax. If Customer purchases any Equipment from Supplier on the expiration or earlier termination of a Statement of Work, personal property taxes on such Equipment shall be prorated and paid in a similar manner, with Supplier paying the taxes allocable to the period before the date Customer purchases the Equipment and Customer paying the taxes allocable to the period on and after such date.
- (b) Customer is responsible for and shall pay any sales, use, excise, transfer, value-added, services, consumption, or other tax (any increase or decrease in any such tax, payable from time to time) imposed on the provision of the Services to Customer by any taxing jurisdiction in which Customer is receiving the Services (the "**Taxes**"). Such Taxes are exclusive of the Fees for Services set forth in this Agreement or any applicable Statement of Work. Supplier shall be responsible for properly calculating and invoicing applicable Taxes on the Services.
- (c) Customer shall withhold any taxes as required by Laws and any such withholding shall reduce the payment otherwise required to be made to Supplier; provided however that Customer shall not withhold any taxes if Supplier provides Customer with appropriate and relevant tax exemption certificates evidencing that Customer is not required to withhold any taxes on Fees payable for Services or other payments made by Customer to Supplier. Upon Supplier's reasonable request, Customer will provide Supplier with official receipts issued by the applicable taxing authority, or such other evidence as is reasonably requested by Supplier, to establish that such taxes have been paid.
- (d) The Parties shall cooperate with each other to enable the Parties to determine accurately their respective tax liabilities and to reduce such liabilities to the extent permitted by Laws. Supplier invoices to Customer shall separately state the amount of any taxes Supplier is collecting from Customer. Each Party shall provide to the other any resale certificates, exemption certificates, information regarding out-of-state or out-of-country sales or use of Equipment and services, and such other similar information as the other Party may reasonably request.

- (e) Supplier acknowledges that Customer shall have no liability for employee taxes, benefits and expenses arising from Supplier's performance of the Services, and that it shall indemnify the Customer from any claims for same.

12.5 New Services

Subject to any Change Control Procedures, Customer may request that Supplier perform services (1) substantially different from the Services, or (2) in addition to the Services but for which there are no Fees or for which the existing Fees were not intended to cover (each a “**New Service**”). Prior to performing such New Service, Supplier will quote to Customer, within fifteen (15) days of receiving such request for New Services, the new Fees for performing such New Service; and if Customer agrees to have Supplier perform such New Service based on such quote, Customer and Supplier will prepare and sign a written amendment to this Agreement and any applicable Statement of Work for implementation of such New Service at the agreed upon new Fees.

13. Invoicing and Payment

13.1 Invoices

- (a) Supplier shall issue to Customer, monthly in arrears, a separate invoice for all amounts due in Dollars under each Statement of Work for Services rendered by Supplier for Customer in the previous month, including Services provided pursuant to the Change Control Procedures.
- (b) Each invoice shall separately state Fees for each Statement of Work, Pass-Through Expenses, Incidental Expenses and Taxes, and shall otherwise be in such detail as Customer may require for its internal accounting and auditing needs, as specified by Customer from time to time. For ease of reference, the term “Fees” shall be used below to refer, individually and collectively, to Fees, Pass-Through-Expenses, Incidental Expenses, Taxes and other amounts payable by Customer to Supplier pursuant to the terms and conditions of this Agreement.
- (c) Each invoice shall state separately any Service Level Credit that Customer is entitled to receive pursuant to this Agreement and any applicable Statement of Work. Supplier shall provide Customer with such Service Level Credit on the first invoice delivered after such Service Level Credit is earned and mutually agreed to between the Parties in writing.
- (d) Each invoice shall state separately any Service Level Bonus that Supplier is entitled to receive pursuant to this Agreement and any applicable Statement of Work. Supplier shall claim such Service Level Bonus on the first invoice delivered after such Service Level Bonus is earned and mutually agreed to between the Parties in writing.

13.2 Payment

- (a) Subject to Section 13.3, and unless otherwise specifically provided in a particular Statement of Work, undisputed amounts in respect of each invoice delivered pursuant to Section 13.1 and/or any and all other undisputed amounts due and for which a payment date or time period is not otherwise specified (the “**Undisputed Amounts**”), shall be due and payable within thirty (30) days after the date the applicable invoice is received by Customer.

- (b) To the extent Customer is entitled to a credit other than a Service Level Credit pursuant to this Master Agreement or any Statement of Work, Supplier shall provide Customer with such credit on the first invoice delivered after such credit is earned. If the amount of any credit on an invoice exceeds the amount owing to Supplier reflected on such invoice, Supplier shall pay the balance of the credit to Customer within thirty (30) days after the invoice date. If no further amounts are payable to Supplier under this Master Agreement, Supplier shall pay the amount of the credit to Customer within thirty (30) days after the last invoice due date under the applicable Statement of Work.
- (c) Undisputed amounts that are not settled within 30 days of their receipt shall carry a penalty calculated as the product of (a) the undisputed amount due under the invoice (b) actual days outstanding in excess of 30 days divided by three hundred and sixty (360), and (c) interest at the rate of one (1.0) percent **per month or eighteen (18%) percent on an annual rate.**

13.3 Disputed Amounts

If Customer disputes all or any portion of any invoice, Customer shall pay the Undisputed Amounts of such invoice when due and may, at its option, withhold the disputed portion pending resolution of the dispute, by mutual agreement or pursuant to Section 10.7. If Customer withholds any payment pursuant to this Section, Customer shall notify Supplier of the basis for such withholding. Upon resolution of the dispute, Customer shall pay to Supplier such portion, if any, of the disputed amount determined to be owing to Supplier.

14. Confidentiality

14.1 Definitions

- (a) **"Disclosing Party"** means the Party furnishing Confidential Information and **"Receiving Party"** means the Party receiving the Confidential Information disclosed by the Disclosing Party.
- (b) **"Confidential Information"** includes, but is not limited to, any and all information related to the products or service offerings of either Party, product schematics or drawings, descriptive material, specifications, sales and customer information, customer contracts (including letters of agreement or intent, memoranda of understanding, master services agreements and letters of engagement entered into with customers), financial information, information relating to personnel, either Party's business policies or practices, intellectual property rights including proprietary methodologies, processes, tools, techniques, templates, methods, trade secrets, know-how etc, company strategy, information received from other individuals and entities that either Party is obligated to treat as confidential, and other materials and information of a confidential nature. For the purposes of this agreement, the term 'Confidential Information' shall mean and include 'Confidential Materials'.

- (c) Notwithstanding the foregoing, Confidential Information does not include information that the Receiving Party can establish:
 - (i) is or has become generally available to the public, without any breach of any agreement by which the Receiving Party may be bound;
 - (ii) is or was known to the Receiving Party prior to disclosure to or receipt by the Receiving Party free of any confidentiality, non-disclosure or comparable restriction and without breach of any agreement by which the Receiving Party may be bound;
 - (iii) was or is disclosed to or obtained by the Receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the Disclosing Party with respect to the disclosed information; or
 - (iv) was independently developed by the Receiving Party without any recourse to or use of any Confidential Information.

14.2 Rights, Restrictions and Obligations of the Receiving Party

- (a) During the Term, the Receiving Party may:
 - (i) disclose Confidential Information of the Disclosing Party only to its subcontractors, agents, representatives, employees, officers and directors and Affiliates, or to advisors bound by professional licensing or other independently recognized standards, fiduciary obligation or written contract, who have a need to know such information exclusively for the purpose of executing its obligations or exercising its rights under this Agreement; provided that the Disclosing Party may, on a case by case basis, require that the Receiving Party obtain its written consent prior to disclosure of certain categories of Confidential Information to such parties;
 - (ii) reproduce the Confidential Information of the Disclosing Party only as required to execute its obligations or exercise its rights under this Agreement; and
 - (iii) disclose Confidential Information as and to the extent required by Laws, provided the Receiving Party gives the Disclosing Party prompt notice prior to such disclosure (to the extent permitted by Laws) to allow the Disclosing Party to make a reasonable effort to obtain a protective order or otherwise protect the confidentiality of such information and the Receiving Party shall cooperate in all respects with such efforts.

- (b) Except as otherwise specifically provided in this Agreement, the Receiving Party shall not during the Term of this Agreement or any Statement of Work Term for a period of three (3) years after the expiry or early termination of the later of the Term or any Statement of Work Term:
 - (i) disclose, in whole or in part, any Confidential Information of the Disclosing Party; or
 - (ii) sell, rent, lease, transfer, encumber, pledge, reproduce, publish, transmit, translate, modify, reverse engineer, compile, disassemble, adapt, create derivative works from or otherwise use or allow anyone else to use, the Confidential Information, in whole or in part.
- (c) The Receiving Party shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. Reasonable care includes, without limiting the generality of the foregoing:
 - (i) informing each and every person, firm and enterprise who does or is in a position to receive, obtain or have access to Confidential Information, of the strictly confidential and sensitive nature of the Confidential Information and the applicable terms of this Agreement, requiring them to comply with these terms, and obtaining their written acknowledgment that they have been so informed and directed, and their written undertaking and agreement to abide by these terms; and
 - (ii) notifying the Disclosing Party immediately upon discovery of any actual, threatened or alleged violation or breach of any of the provisions of this Section, and assisting the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and to prevent further violations or breach hereof.
- (d) The Receiving Party acknowledges that:
 - (i) Confidential Information of the Disclosing Party has commercial value and is not in the public domain;
 - (ii) unauthorized use or disclosure of Confidential Information shall cause immediate injury and damages not readily measurable or compensable in monetary damages, and therefore irreparable;
 - (iii) in the event of any breach or threatened breach of the provisions of this Article, and without limiting or waiving any other rights and remedies available under this Agreement, at law or in equity all of which are hereby cumulatively reserved, the Disclosing Party shall be entitled, to injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction;
 - (iv) except for the rights expressly granted to the Receiving Party in this Agreement, the Disclosing Party retains all right, title and interest and reserves all rights in and to the Confidential Information; and

- (v) the Receiving Party shall be and shall remain primarily and fully liable for any violation or breach of the provisions hereof, by any Affiliate, officer, director, employee, subcontractor, agent, representative, advisors, director, officer and/or employee and Affiliates of the Receiving Party, as if the Receiving Party had disclosed the Confidential Information.

14.3 Rights and Remedies of the Disclosing Party

- (a) Immediately upon the Disclosing Party's request or at the expiration or earlier termination of this Agreement, the Receiving Party shall either return or, upon the request of the Disclosing Party, certify to the Disclosing Party the destruction of all Confidential Information in its possession, power or control in a manner that assures the Confidential Information is rendered unrecoverable.
- (b) Upon completion of the return or certification of the destruction of Confidential Information as required above, but in no event later than five (5) days from the request, an officer of the Receiving Party shall provide written certification to the Disclosing Party that the requirements of this Section have been complied with.

14.4 Ownership and Protection of Information

- (a) Disclosing Party's Confidential Information is and will remain the exclusive property of the Disclosing Party, as applicable. A Receiving Party will not possess or assert any lien, claim, demand or other right or interest in, against or to the Disclosing Party's Confidential Information, nor shall it use it for any purpose other than the execution and performance of this Agreement or any Services. Disclosing Party's Confidential Information, or any part thereof, will not be sold, assigned, leased, licensed or otherwise disposed of, directly or indirectly, to third parties or commercially exploited by or on behalf of the Receiving Party or used for any purpose, other than in support of the Receiving Party's performance of its obligations hereunder and then only to the extent necessary and permitted by Disclosing Party to do so.
- (b) Disclosing Party's will advise Receiving Party of all policies and procedures for informing personnel of restrictions regarding access to and use of Disclosing Party's Confidential Information and for monitoring and enforcing compliance with such restrictions. Disclosing Party shall have the right to require Receiving Party to take additional steps and security measures, physical, logical, by agreement, instruction or otherwise, to protect the confidentiality of Disclosing Party's Customer Information.
- (c) Receiving Party will, and will cause Receiving Party Affiliates and all others for whom Receiving Party is responsible hereunder, to, cooperate fully in resolving any actual, threatened or suspected violation or breach of the foregoing provisions.

14.5 Security

- (a) Receiving Party will comply with all reasonable written security procedures that are provided to it by Disclosing Party during the Term of this Agreement for the purposes of maintaining the security of Disclosing Party's Confidential Information.
- (b) Receiving Party agrees to defend, indemnify, and hold Disclosing Party, and its directors, officers, employees, harmless from and against any and all actual or alleged losses in connection with any claim or action relating to or arising out of a breach or alleged breach of this Agreement by Receiving Party, or any person, firm or entity, howsoever characterized or designated, acting under, through, in the name of, under authority of or on behalf of Receiving Party, including Receiving Party's employees, agents, representatives or subcontractors.

14.6 Destroyed or Lost Data

- (a) Receiving Party will not delete or destroy any Disclosing Party's Confidential Information or any form of media on which Disclosing Party's Confidential Information resides without prior authorization from Disclosing Party.
- (b) Disclosing Party hereby authorizes Receiving Party to delete or destroy Disclosing Party's Confidential Information in accordance with any Disclosing Party's document retention program, including Disclosing Party's approved media retention rules.
- (c) Receiving Party will maintain and provide to Disclosing Party one or more reports that identify the Disclosing Party's Confidential Information, including media that has been destroyed. In the event any Disclosing Party's Confidential Information is lost or destroyed due to any act or omission of Receiving Party, including any breach of the security procedures described herein, Receiving Party shall be responsible for the prompt regeneration, reconstruction or replacement of such Disclosing Party's Confidential Information. Receiving Party shall prioritize this effort so that the loss of Disclosing Party's Confidential Information will not have any adverse effect upon Disclosing Party's business.
- (d) Disclosing Party agrees to cooperate with Receiving Party to provide any available information, files or raw data needed for the regeneration, reconstruction or replacement of the Disclosing Party's Confidential Information. If Receiving Party fails to fully regenerate, reconstruct and replace the lost or destroyed Disclosing Party's Confidential Information within the time reasonably set by Disclosing Party, then Disclosing Party may obtain data reconstruction services from a third party, and Receiving Party shall cooperate with such third party as requested by Disclosing Party.

- (e) In addition to any damages incurred by Disclosing Party, Receiving Party will be responsible for the actual costs incurred by Disclosing Party for the regeneration, reconstruction and replacement of Disclosing Party's Confidential Information by a third party. In the event it is determined that Customer Information has been lost or destroyed as a result of the willful, intentional or grossly negligent acts or omissions of Receiving Party, Disclosing Party may terminate this Agreement and pursue any civil and criminal actions available to it.

15. Representations and Warranties

15.1 Mutual Representations and Warranties

Each Party represents and warrants that, as of the Effective Date of this Agreement:

- (a) It is a corporation duly incorporated (or is any other form of legally recognized entity), validly existing and is in good standing under the Laws of the jurisdiction in which it is incorporated, and is duly qualified and in good standing in each other jurisdiction where the failure to be so qualified and in good standing would have an adverse effect on its business, activities, ability to perform its obligations under this Agreement or any Statement of Work or compliance with any of its promises, representations and warranties hereunder.
- (b) It has all necessary corporate power and authority to own, lease and operate its assets and to carry on its business as presently conducted and as it will be conducted pursuant to this Agreement and any Statement of Work.
- (c) It has all necessary corporate power and authority to enter into this Agreement and each Statement of Work and to perform its obligations hereunder and thereunder, and the execution and delivery of this Agreement and each Statement of Work and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate actions.
- (d) This Agreement and each Statement of Work constitutes a legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally.
- (e) There are no threatened or actual claims or suits in connection with any matters, including patents and other intellectual property matters that would materially adversely affect either Party's ability to perform its obligations under this Agreement.

15.2 Customer Representation and Warranty

Customer represents and warrants to Supplier that it has appropriate entitlements to provide any third party property, including third party software delivered by Customer to Supplier for use in the course of Supplier's performance of Services hereunder and that the use of such property as contemplated by this Agreement or any Statement of Work, including schedules thereto shall not violate any third party's copyright, patent, trade secret or other intellectual property rights, proprietary or confidential information.

15.3 Supplier Representations and Warranties

Supplier represents and warrants that:

- (a) Supplier will properly render the Services in accordance with the requirements of this Agreement, with promptness and diligence and will execute them in a workmanlike manner, consistent with required levels of quality and performance as agreed upon with Customer.
- (b) During the Term, Supplier will make available and maintain the Supplier Facilities, Equipment and Software provided so that they operate in accordance with their applicable specifications.
- (c) The Services will utilize technology as agreed between parties in a Statement of Work or, if none is specified, as furnished or utilized by Supplier to support the Services as required hereunder.
- (d) Performance of the Services will not violate or infringe any third party's intellectual property rights, proprietary or confidential information.
- (e) Supplier and Supplier Personnel will comply with all laws, rules, regulations and orders of any governmental authority having relevant jurisdiction, including (without limitation) the provisions of any data protection laws and labor laws.
- (f) Supplier will hold, and fully comply with, all licenses, permits and approvals required by governmental authorities to perform the Services.

16. Insurance

16.1 Required Insurance Coverages

Throughout the Term Supplier will maintain in force, the insurance coverages described below.

- (a) Primary commercial general liability insurance with combined single limits of \$500,000 for personal injury, including death; and \$500,000 each occurrence and \$1,000,000 in the aggregate for property damage including: (i) premises and operations liability and (ii) products and completed operations; and (iii) contractual liability.
- (b) Workman's compensation insurance in amounts not less than the statutory requirements in the location where the Services are performed, even if such coverage is elective in that location as permitted by any Laws.
- (c) Employer liability insurance with a maximum limit of \$ 1,000,000.
- (d) Automobile liability with combined single limits upto \$ 500,000 for each occurrence and in aggregate.
- (e) Errors and Omissions liability insurance with a maximum limit of \$ 1,000,000 for each occurrence and in aggregate.
- (f) Third party crime and employee fidelity insurance with a maximum limit of \$ 1,000,000 for each occurrence and in aggregate.

16.2 Risk of Loss

As of the Effective Date, each Party shall be responsible for risk of physical or logical loss of, and damage to, any property, facilities, items of equipment, software or other materials, data or information in its possession or under its control. Supplier shall be responsible for risk of physical or logical loss of, and damage to and property, facilities, items of equipment, software or other items belonging to the Customer which are in Supplier's possession or under its control as has been reported to the Supplier's Compliance Department in writing, including item description and value.

17. Indemnification

17.1 Indemnification by Supplier

Supplier shall defend, indemnify and hold Customer, and its officers, directors, employees, harmless from and against all losses arising from, in connection with or relating to, third party claims, actions and/or allegations based upon any:

- (a) failure of Supplier, Supplier's Affiliates or its or their respective subcontractors, to perform any obligations required to be performed by it under this Agreement or any Statement of Work;
- (b) infringement or misappropriation of any patent, trade secret, copyright or other intellectual, industrial or other proprietary rights;
- (c) acts or omissions of Supplier Personnel located in any Customer Facility;
- (d) acts, omissions, occurrences and/or events Supplier is required to insure against, to the limits of those coverages;
- (e) Supplier's (or Supplier Personnel's) breach of its obligations with respect to Customer's Confidential Information;
- (f) the improper or wrongful termination of, or abandonment of work under, any Statement of Work;
- (g) any theft or other misappropriation of Customer's property or funds by Supplier or any Supplier Personnel;
- (h) any actual, alleged, threatened or potential violation or contravention of any Laws, including insider trading laws, by Supplier or Supplier Personnel; or
- (i) any breach of Supplier's warranties contained in this Agreement.

17.2 Indemnification by Customer

Customer shall defend, indemnify and hold Supplier, and its officers, directors, employees, , harmless from and against all Losses arising from, in connection with or relating to, third party claims, actions and/or allegations based upon:

- (a) Customer's failure to perform any obligations required to be performed by Customer under any third party service contracts, transferred equipment leases, third party software licenses or third party service contracts for which Supplier has assumed financial, administrative, or operational responsibility;
- (b) Customer's breach of its obligations with respect to Supplier's Confidential Information;

- (c) Third party claims of intellectual property infringement against Supplier based on any Customer Software, used and operated in accordance with the specifications and instructions provided by Customer in connection with such Customer Software; or
- (d) Any other breach of Customer's warranties contained in this Agreement.

17.3 Mutual Indemnification

Each Party shall indemnify, defend and hold harmless the other Party and their respective officers, directors, employees, from and against all Losses arising from:

- (a) death of or injury to any person, to the extent caused by the tortious conduct of the indemnitor or any person, firm or entity acting for, in the name of, at the direction or supervision or on behalf of the indemnitor (the "**Indemnitors**");
- (b) damage to, or loss or destruction of, any real or tangible personal property to the extent caused by the Indemnitors; and
- (c) a claim, demand, charge, action, cause of action or other proceeding asserted against the other Party but resulting from an act or omission of the Indemnitors as an employer, agent, representative or subcontractor of a person.

17.4 Indemnification Procedures

- (a) Promptly after receipt by an indemnitee of any written claim or notice of any action giving rise to a claim for indemnification by the indemnitee ("Claim"), the indemnitee shall notify the indemnitor and provide copies of such Claim and any documents relating to same. No failure to so notify an indemnitor shall relieve the indemnitor of its obligations under this Agreement except to the extent, but only to the extent, that the failure or delay is prejudicial. Within thirty (30) days following receipt of such written notice, but in any event no later than ten (10) days before the deadline for any responsive pleading, the indemnitor shall notify the indemnitee in writing (a "Notice of Assumption of Defense") if the indemnitor elects to assume control of the defense and settlement of such Claim.
- (b) If the indemnitor delivers a Notice of Assumption of Defense with respect to a Claim within the required period, the indemnitor shall have sole control over the defense and settlement of such Claim; provided, however, that (i) the indemnitee shall be entitled to participate in the defense of such Claim and to employ counsel at its own expense to assist in the handling of such Claim, and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such Claim or ceasing to defend against such Claim. After the indemnitor has delivered a timely Notice of Assumption of Defense relating to any Claim, the indemnitor shall not be liable to the indemnitee for any legal expenses incurred by such indemnitee in connection with the defense of such Claim; provided, that the indemnitor shall pay for separate counsel for the indemnitee to the extent that conflicts or potential conflicts of interest between the Parties, in the opinion of the indemnitee, make the retention of separate counsel necessary or desirable.

- (c) The indemnitor shall not be required to indemnify the indemnitee for any amount paid by such indemnitee in the settlement of any Claim for which the indemnitor has delivered a timely Notice of Assumption of Defense if such amount was agreed to without prior written consent of the indemnitor, which shall not be unreasonably withheld or delayed in the case of monetary Claim. An indemnitor may withhold consent to settlement of any Claim of infringement affecting its proprietary rights in its sole discretion.
- (d) If the indemnitor does not deliver a Notice of Assumption of Defense relating to a Claim within the required notice period, the indemnitee shall have the right to defend the Claim in such a manner as it may deem appropriate, at the cost and expense of the indemnitor. The indemnitor shall promptly reimburse the indemnitee for all such costs and expenses upon written request therefor.

17.5 Subrogation

In the event an indemnitor indemnifies an indemnitee pursuant to this Section 18, the indemnitor shall, upon payment in full of such indemnity, be subrogated to all of the rights of the indemnitee with respect to the Claim to which such indemnity relates.

18. Limitation of Liability

18.1 General Intent

Subject only to the limitations set forth in this Section, a Party who breaches any of its obligations under this Agreement or any Statement of Work shall be liable to the other for damages actually incurred by the other as a result of such breach.

18.2 Limit on Types of Damages Recoverable

EXCEPTING THIRD PARTY-CLAIMS ARISING UNDER SECTION 17, NEITHER PARTY SHALL BE LIABLE FOR INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES (OR ANY COMPARABLE CATEGORY OR FORM OF SUCH DAMAGES, HOWSOEVER CHARACTERIZED IN ANY JURISDICTION), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF FORESEEABLE OR IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

18.3 Limit on Amount of Direct Damages Recoverable

- (a) A Party's aggregate liability for damages under this Agreement (including each and every Statement of Work entered into hereunder, excepting its obligations with respect to Article 17 other than indirect damages arising from third party claims, shall not exceed an amount equal to the greater of (i) the total charges payable to Supplier pursuant to applicable Statement of Work for the proper performance of the Services for the six (6) months prior to the month in which the first event giving rise to liability occurred and (ii) \$ 1,000,000; provided that if such event giving rise to liability occurs during the first six (6) months after the Effective Date, liability shall be limited to an amount equal to the total Charges that would be payable to Supplier pursuant to the applicable Statement of Work for proper performance for the Services calculated by pro rating and annualizing

the amounts actually payable. Service Level Credits do not count against and do not reduce the amounts available under the foregoing limitations.

- (b) On the other hand, a Party's aggregate liability for indirect damages arising from third party claims as awarded by a duly recognized court or other legitimate body shall not exceed \$1,000,000.
- (c) The following are agreed to be direct damages and neither Party shall assert that they are consequential damages or any other form of damages for which recovery hereunder is denied by the provisions of Section 18.3(a) to the extent that such damages result from a Party's failure to fulfill its obligations in accordance with this Agreement and/or any Statement of Work:
 - (i) Costs of recreating or reloading any Party's lost or damaged information;
 - (ii) Costs of replacing lost or damaged Supplier Facilities, Equipment, Software or other materials;
 - (iii) Costs of implementing a workaround in respect of a failure to provide the Services;
 - (iv) Costs and expenses incurred to correct errors in Supplier Facilities, Equipment and/or Software maintenance and enhancements provided as part of the Services.
- (d) Each Party shall have a duty to mitigate damages for which the other Party is liable.

18.4 Force Majeure and Disaster Recovery

- (a) Subject to Section 18.4(f) below, neither Party will be liable for instances of material default or delay caused by fire, flood, earthquake, elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts or labor difficulties, Acts of God, actions or decrees of any governmental bodies, or any other similar events, in the performance of its obligations hereunder, if the default or delay is caused by any event beyond the reasonable control of such Party and without its fault or negligence.
- (b) The non-performing Party will be excused from performance or observance of obligations so affected for as long as (1) the circumstances prevail and (2) the Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay.
- (c) If any such excusable default or delay lasts for ten (10) consecutive days or twenty (20) days in the aggregate or such lesser period of time which is the shortest period specified in the Statement of Work for such Services, then the parties will mutually agree to develop and implement a work-around until such time either Party can perform its obligations under this Agreement without such workaround.
- (d) If Supplier is unable to implement any suitable workaround, or to perform the Services despite implementing any such workaround, for a period exceeding fifteen (15) business days, Customer may, by giving written notice, terminate either the applicable Statement of Work and all other Statements of Work

covering Services materially adversely affected thereby, provided that Customer reasonably concludes after consultation with Supplier that such Force Majeure Event is having a significant adverse effect on Customer.

- (e) Subject to any applicable cure period specified herein or in the applicable Statement of Work, nothing in this Section shall limit any of Supplier's obligations with respect to any Statement of Work or portions thereof that are not materially adversely affected by the Force Majeure Event.
- (f) Supplier shall at all times maintain business continuity, contingency and disaster recovery plans, procedures and capabilities (the "**Disaster Recovery Procedures**") with respect to the Services, including all Supplier Facilities, that meet applicable regulatory requirements, including Laws, if any. The Disaster Recovery Procedures will be mutually agreed upon between the Parties in writing and set down on the Directions Document. With respect to disaster recovery, Supplier will:
 - (i) Perform functions in accordance with accepted business continuity, contingency and disaster recovery planning standards and procedures mutually agreed between Customer and Supplier.
 - (ii) Perform tests and backups as specified in the Directions Document or as otherwise reasonably necessary to maximize availability of the Services during problems, including disaster/business recovery functions for all Customer Data.
 - (iii) Provide, maintain, and as appropriate, upgrade, replace and enhance uninterrupted power supplies for all critical Equipment used to provide the Services and maintain backup network services and telephony platform for call delivery. The back-up solution for telecommunications services (circuits/T1's) will be provided as a carrier-based failover that may not support call delivery for all disaster scenarios. Supplier will allow Customer to dial-in or otherwise connect to the alternate site or other remote facilities used by Supplier during a disaster via Supplier's redundant global data network..
 - (iv) Provide technology change and upgrade capability to ensure that business continuity, contingency and disaster recovery capabilities and resources stay current with required technology levels for the Services.
 - (v) Develop and maintain a plan for the transition back to the Supplier Facilities upon cessation of the disaster or recovery from the business interruption and promptly implement such plan to restore the Services to normal operation.

19. Termination

19.1 Termination by Supplier

- (a) Supplier may, by giving written notice to Customer, terminate a Statement of Work as of a date specified in the notice of termination only in the event that Customer fails to pay Supplier undisputed amounts under an applicable Statement of Work within thirty (30) days of written notice from Supplier of such failure to make payment.
- (b) Supplier may, while reserving cumulatively all other remedies and rights to it under this Agreement and at law and in equity, immediately terminate this Agreement or any Statement of Work, for any breach of Section 9, Section 14 or Section 17.2 by Customer which is not cured within thirty (30) days of written notice.
- (c) Supplier may, by giving no less than one hundred (180) days written notice to Customer, terminate a Statement of Work as of date specified in the notice of termination for any or no reason.

19.2 Termination by Customer

- (a) Customer may (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity), by giving written notice to Supplier, terminate any or all Statements of Work, or one or more categories of Services under a Statement of Work:
 - (i) subject to Section 19.2(a)(ii), for a material breach of a Statement of Work that is not cured by Supplier within thirty (30) days of the date on which Customer provides written notice of such breach, in accordance with Section 19.2(c);
 - (ii) for a material breach of a Statement of Work that is not reasonably subject to cure within thirty (30) days after its occurrence;
 - (iii) for numerous, multiple or repetitive breaches of one or more Statements of Work that collectively reasonably constitute a material breach;
 - (iv) immediately (notwithstanding the provisions of Section 19.2(c)) for any breach of Section 5.6, Section 9, Section 14 ; or
 - (v) for any or no reason, by giving no less than one hundred eighty (180) days written notice to Supplier.
- (b) Customer may (reserving cumulatively all other remedies and rights under this Agreement and at law and in equity), by giving written notice to Supplier, terminate this Agreement:
 - (i) subject to Section 19.2(b)(ii), for a material breach that is not cured by Supplier within thirty (30) days of the date on which Customer provides written notice, in accordance with Section 19.2(c);
 - (ii) for a material breach that is not reasonably subject to cure within thirty (30) days after its occurrence;

- (iii) for numerous, multiple or repetitive breaches of this Master Agreement that collectively constitute a material breach; or
 - (iv) immediately (notwithstanding the provisions of Section 19.2(c)) for any breach of Section 5.7, Section 9, Section 14 or Section 15.3(d).
- (c) Except as otherwise provided in this Section 19.2, Customer shall notify Supplier of the exercise of any termination option set forth in this Section by delivering to Supplier written notice identifying the scope of the termination and the effective termination date. If Customer chooses to terminate any Services or a Statement of Work in part, the Charges payable under such Statement of Work will be equitably adjusted by Customer to reflect those Services that are not terminated.

19.3 Termination for Insolvency

Either Party may immediately terminate this Agreement in its entirety (including all Statements of Work), if the other Party (a) becomes insolvent or is unable to meet its debts as they mature, (b) files a voluntary petition in bankruptcy (or any other equivalent, comparable or similar legal protection applicable to debtors in the jurisdiction) or seeks reorganization or to effect a plan or other arrangement with creditors, (c) files an answer or other pleading admitting, or fails to deny or contest, the material allegations of an involuntary petition filed against it pursuant to any applicable statute relating to bankruptcy, arrangement or reorganization, (d) shall be adjudicated a bankrupt or shall make an assignment for the benefit of its creditors generally, (e) shall apply for, consent to or acquiesce in the appointment of any receiver or trustee for all or a substantial part of its property, or (f) any such receiver or trustee is appointed and shall not be discharged within thirty (30) days after the date of such appointment.

19.4 Effect of Termination

- (a) Termination of a Statement of Work pursuant to Section 19.1 or 19.2 shall be effective only for the applicable Statement of Work and such termination shall not affect the continuity or validity of this Agreement or any other Statement of Work.
- (b) Termination of this Agreement or any Statement of Work or categories of Services, in whole or in part and for any reason, shall not affect (a) any liabilities or obligations of either Party arising before such termination or out of the events causing such termination, or (b) any damages or other remedies to which a Party may be entitled under this Agreement or any Statement of Work, at law or in equity.

19.5 Termination Assistance

- (a) Commencing upon any notice of termination or of non-renewal of the Agreement or any Statement of Work and continuing through the effective date of expiration or termination thereof, Supplier will provide to Customer, termination assistance, as mutually agreed between the Parties, to allow the Services to continue without interruption or adverse effect and to facilitate the orderly migration and transfer of the Services to Customer ("**Termination Assistance**"). To the extent Supplier is to provide Termination Assistance pursuant to the preceding sentence, all the provisions of this Agreement and the

applicable Statements of Work will be applicable as such provisions would have been applicable to the Services prior to the date of termination or expiration.

- (b) For a period of six (6) months, or such other extended period as the parties may mutually agree, following the date of termination or expiration of the Agreement or any Statement of Work Term, if later, Supplier will provide, at Customer's written request, any or all of the Services being performed by Supplier pursuant to such Statement of Work prior to such date, including Termination Assistance. To the extent Supplier is to perform Services pursuant to the preceding sentence, all the provisions of this Agreement and the applicable Statements of Work will be applicable as such provisions would have been applicable to the Services prior to the date of termination or expiration.

20. Miscellaneous

20.1 Interpretation

- (a) References herein to this Agreement, unless specified otherwise, shall be construed and deemed to include any and all Statements of Work, Exhibits and all other attachments and documents referred to in any of the foregoing, unless otherwise noted or the context clearly and unambiguously requires otherwise.
- (b) In this Agreement, words importing the singular number include the plural and vice versa and words importing gender include all genders. The word "person" includes, subject to the context in which it appears, an individual, partnership, association, corporation, trustee, executor, administrator or legal representative. The words "contractor", "subcontractor" and/or "independent contractor", subject to the context in which they appear, are used to refer to any person, firm or enterprise contracted, engaged or otherwise retained by one Party, directly or indirectly, to perform or provide Services, either to Customer or to Supplier or any contractor, agent, representative, affiliate or subsidiary of any of such entities.
- (c) The division of this Agreement into Sections, subsections and/or other subdivisions and the insertion of any captions or headings are for convenience of reference only and shall not affect its meaning, construction or interpretation.
- (d) In this Agreement, unless otherwise specifically provided:
 - (i) In the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding."
 - (ii) References to a specified Section, subsection, or other subdivision shall be construed as references to that specified Section, subsection, and all subdivisions and associated or referenced Exhibits and other attachments, unless noted otherwise or the context clearly and unambiguously requires otherwise.
 - (iii) The word "dollar" and the symbol "\$" refer to United States dollars.
 - (iv) Defined terms in this Agreement shall be deemed to include their respective derivatives, contractions, conjugations, tenses and other forms

so as to give due and proper meaning within the context of proper usage herein.

- (v) Whenever approvals, consents or other forms of assent are required, permitted or intended, such approvals, consents and assent shall be determined in good faith and shall not be unreasonably withheld or delayed; provided, however, that any words or terms such as “sole discretion,” “sole judgment,” “sole and exclusive,” “arbitrary” and the like shall, with respect to that particular provision, be construed and interpreted to mean that the Party whose approval, consent or assent is required, may withhold same or refrain from giving same, at any time and for valid reason which shall be communicated to the other Party.
- (vi) References to “days” mean calendar days unless “business days” are specified.
- (e) The Parties are sophisticated and have been represented by counsel during the negotiation of this Agreement and each applicable Statement of Work. As a result, the Parties believe the presumption of any Laws relating to the interpretation of contracts or clauses against the drafter thereof shall not apply, and hereby waive any such presumption.

20.2 Binding Nature and Assignment

- (a) Neither this Agreement, nor any rights or obligations hereunder, is assignable, by operation of Laws, voluntarily by either Party, or otherwise, without the prior written consent of the other Party and any attempt to do so without such written consent shall be void *ab initio*.
- (b) Either Party may with the written consent of the other Party, such consent not to be unreasonably withheld, assign any and/or all of its rights and obligations under this Agreement to: (a) an entity that acquires all or substantially all of its assets, or all or substantially all of the assets of one or more of its business units, (b) an Affiliate; or (c) a successor entity in a merger or acquisition. Subject to the foregoing, this Agreement and each Statement of Work shall be binding on the Parties and their respective successors and permitted assigns.

20.3 Expenses

In this Agreement, unless otherwise specifically provided, all costs and expenses (including the fees and disbursements of legal counsel) incurred in connection with this Agreement and the performance of the transactions and obligations contemplated by this Agreement shall be borne by the Party incurring such expenses.

20.4 Amendment and Waivers

No supplement, modification, amendment to or waiver of this Agreement shall be binding unless executed in writing by the Party against whom enforcement of such supplement, modification, amendment or waiver is sought and is executed, if applicable, in the manner and with respect to the subject matter, consistent with the requirements of this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

20.5 Further Assurances

Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary, appropriate or desirable to give effect to this Agreement and to carry out its provisions.

20.6 Publicity

Supplier may use Customer's name, trade names, designs and logo, if any, in Supplier's marketing materials, website, media or publicity releases, public announcements, advertising, promotions or other communications including internal distributions to identify Customer as a customer of Supplier; provided that the form and content of any such use shall have been approved in advance in writing by the Customer.

20.7 Severability

Any provision in this Agreement which is prohibited, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating, affecting or impairing the remaining provisions or affecting the validity or enforceability of such provision in any other jurisdiction. To the extent practicable, the prohibited, invalid or unenforceable provision shall be replaced, for purposes of such jurisdiction, with a permitted, valid and enforceable provision which comes closest to the intention of the Parties with respect to the provision so replaced.

20.8 Entire Agreement

All Statements of Work, Exhibits and all other attachments and documents referred to in any of the foregoing are incorporated into this Agreement by this reference and form a part hereof as if fully set forth herein. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior, inconsistent and/or contemporaneous agreements, understandings, promises, representations, warranties, negotiations and discussions, whether oral or written, of the Parties pertaining to the subject matter hereof.

20.9 Applicable Law

All questions concerning the validity, interpretation, enforcement and performance of this Agreement and all Statements of Work shall be governed by and decided in accordance with the substantive internal laws of the State of New York, United States of America without regard to its choice of law principles.

20.10 Survival

Any provisions of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to their meaning shall survive the expiration or termination of this Agreement.

20.11 Jurisdiction and Venue

THE PARTIES HEREBY SUBMIT AND IRREVOCABLY CONSENT TO VENUE IN AND THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURTS LOCATED WITHIN THE STATE OF NEW YORK AND IRREVOCABLY AGREE THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT AND ANY STATEMENT OF WORK SHALL BE LITIGATED IN SUCH COURTS, AND EACH OF THE PARTIES WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED ON IMPROPER VENUE OR FORUM NON CONVENIENS TO THE CONDUCT OF ANY SUCH ACTION OR PROCEEDING IN SUCH COURT. THE PARTIES HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY. SUPPLIER HEREBY CONSENTS TO BE JOINED IN ANY ACTION OR PROCEEDING IN WHICH CUSTOMER IS A DEFENDANT AND FOR WHICH SUPPLIER IS REQUIRED TO INDEMNIFY CUSTOMER PURSUANT TO THE PROVISIONS OF THIS AGREEMENT OR ANY STATEMENT OF WORK.

20.12 Equitable Remedies

The Parties agree that, notwithstanding the provisions of Section 10.7, either Party may seek immediate injunctive or equitable relief which may be enforced by the preliminary or permanent, mandatory or prohibitory injunction, temporary or permanent restraining or other order of a court of competent jurisdiction in the event of any breach or threatened breach of any provision of this Agreement or any Statement of Work involving: (i) Confidential Information; (ii) intellectual, industrial or other property rights; (iii) the protection from physical harm, personal injury or property damage; (iv) a good faith determination that damages from a breach will be immediate, irreparable or so severe or incapable of adequate redress or compensation, only injunctive or other equitable relief would be adequate; or (v) any other matter for which equitable rights may be granted and money damages would be an inadequate remedy.

20.13 Notices

- (a) Any notice, demand or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given, delivered to a Party and effective: (a) when delivered by hand or courier or by overnight delivery service with signature receipt required; (b) when sent by confirmed facsimile with a copy sent by another means specified in this Section; or (c) Ten (10) days after the date of mailing if mailed by United States certified mail, return receipt requested, postage prepaid, in each case to the address of such Party set forth below (or at such other address and/or addressee as the Party may from time to time specify in a Statement of Work or by notice delivered in the foregoing manner):

If to Supplier:

Sutherland Global Services Inc.,
1160 Pittsford Victor Road
Pittsford, NY 14534
Attention: Corporate Counsel
Facsimile: _____

With a required copy, that shall also constitute notice to: Borders, Inc.
100 Phoenix Drive
Ann Arbor, MI 48108 USA
Attention: Vice President, Store Operations
Facsimile: _____

If to Customer: Borders, Inc.
100 Phoenix Drive
Ann Arbor, MI 48108 USA
Attention: General Counsel
>
Facsimile: _____

- (b) For purposes of each Statement of Work, notices required or permitted hereunder or thereunder and which relate to routine notifications and communications between the Parties in the ordinary course of the performance of such Statements of Work, shall be sent, consistent with the mechanism in 21.13(a) above, to the Statement of Work Managers specified in such Statement of Work, with a copy to the Customer Executive and Supplier Account Executive.

20.14 Independent Suppliers

- (a) Supplier shall perform its obligations under this Agreement and for all purposes is and is acting as an independent contractor of Customer. Nothing herein shall be deemed to constitute Supplier and Customer as partners, joint venturers, or principal and agent or be construed as requiring or permitting the sharing of profits or losses. Supplier has no authority to represent or bind or create any legal obligations for or on behalf of Customer as to any matters, except as expressly authorized in this Agreement.
- (b) All Supplier Personnel including personnel of Supplier's Affiliates shall be and remain at all times during the Term of this Agreement and any Statement of Work Term, employees of Supplier or its Affiliates and not of Customer. Supplier has the right and duty to supervise and direct the activities of the Supplier Personnel. Supplier is solely responsible for payment of (i) salaries, wages and any other compensation to Supplier Personnel, (ii) all income, disability, withholding and other employment taxes and (iii) all medical benefit premiums, vacation pay, sick pay or other fringe benefits for its Personnel.

20.15 Third Party Beneficiaries

Nothing in this Agreement, express or implied, shall or is intended to confer on any other person, firm or enterprise, any rights, benefits, remedies, obligations or liabilities of this Agreement, other than the Parties, their respective successors or permitted assigns.

20.16 Cumulative Remedies

Unless otherwise expressly provided in this Agreement, rights and remedies hereunder are cumulatively reserved by each Party and are in addition to and not in lieu of any and all other remedies available to either Party at law, in equity or otherwise as provided hereunder.

20.17 Each Party to Inform Itself Fully; Waiver of Defense

Each Party shall be deemed to have notice of and to have fully examined and approved the Statement of Work, Directions Documents, Exhibits and all other documents referred to herein, and all terms and conditions of this Agreement, all Laws and regulations and other information in relation to this Agreement and/or any amendments, modifications or supplements hereto at any time on or after the Effective Date and to have fully examined, understood and satisfied itself as to all relevant information of which it is aware or should have been aware and that is relevant as to the risks, contingencies and other circumstances that could affect this Agreement and the transactions contemplated hereunder. Each Party hereby waives any defenses it may have related to a lack of information or understanding associated with the obligations it has undertaken in this Agreement.

20.18 Signatories

Each Party represents and warrants that the individual signing this Agreement and any Statements of Work on its behalf is fully authorized to execute and deliver this Agreement and ant Statements of Work and that this Agreement constitutes the valid and binding obligations of that Party.

20.19 Counterparts

This Agreement and any Statements of Work may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. This Agreement and any Statements of Work may be executed by facsimile signature.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date first above written.

SUTHERLAND GLOBAL SERVICES, INC.

BORDERS, INC.

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____