CITY CLERK
ORIGINAL

:ADDENDUM

Public Engines ("Consultant") further agrees as follows:

I. Immigration Law Compliance.

A. Consultant, and on behalf any subconsultant, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.

B. Any breach of warranty under subsection (A) above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.

C. City of Glendale ("City") retains the legal right to inspect the papers of Consultant or subconsultant employee who performs work under this Agreement to ensure that Consultant or any subconsultant is compliant with the warranty under subsection (A) above.

D. City may conduct random inspections, and upon request of the City, Consultant shall provide copies of papers and records demonstrating continued compliance with the warranty under subsection (A) above. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section I.

E. Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon itself and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any subconsultant to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City.

F. Consultant's warranty and obligations under this Section I to the City are continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this section is no longer a requirement.

G. The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

II. Conflicts. The Terms of Service Agreement (the "Agreement") between the parties is subject to cancellation for conflicts of interest under the provisions of A.R.S. § 38-511.

III. Confidential Information. Consultant acknowledges and agrees that the City of Glendale is a public entity subject to public record disclosure laws currently codified at A.R.S. § 39-101, *et seq.*, and that the City of Glendale may be required to disclose records and other items pursuant to such laws.

IV. Governing Law. The Agreement will be governed by the laws of the State of Arizona, and venue for any action brought relating to the Agreement is proper only in Maricopa County, Arizona.

V. Addendum and Agreement Conflict. In the result of any conflict between the Agreement and this Addendum, the terms of this Addendum prevail.

[SIGNATURES ON NEXT PAGE]

Contractor

16 December, 2013

Date

City

1/2/14

Date

ATTEST:

City Clerk

Approved as to form

City Attorney

PublicEngines™

Creators of CrimeReports, CommandCentral and TipSoft

11781 South Lone Peak Parkway
Suite 200
Draper, UT 84020

Invoice

Invoice Date	8/1/2013
Invoice #	18414
Due Date	8/31/2013
Agency ID #	101418

Bill To:

Glendale Police Department
Attn: Accounts Payable
6835 N 57th Drive
Glendale AZ 85301-3235

Service Period Start	Service Period End	Purchase Order #	Payment Terms
9/1/2013	8/31/2014		Net 30

Description	Qty/Term	Rate	Amount
TipSoft v5 Online, WebTips & SMS Text Tips Annual Subscription Renewal	1	2,503.00	2,503.00
Agency Contact: Commander Rick St. John			

Billing questions? Email or call prior to due date:
accounting@publicengines.com | (801) 828-2727

Invoice Total $2,503.00

Remittance Slip

Public Engines, Inc.

Invoice # 18414

Amount Due $2,503.00

Amount Paid _____

Please Enter Your Credit Card Information

Type: ____Discover ____Master Card ____VISA ____American Express
Credit Card #: _____
Expiration Date: _____Month _____Year
Signature: _____

Make Checks Payable To

Public Engines, Inc.
11781 South Lone Peak Parkway
Suite 200
Draper UT 84020

Completed credit card information may be faxed to (801) 998-3093 or scanned and emailed to accounting@publicengines.com.

Federal Tax ID# 65-1295498

Form **W-9**
(Rev December 2011)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give Form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
Public Engines, Inc.

Business name/disregarded entity name, if different from above
CrimeReports

Check appropriate box for federal tax classification
☐ Individual/sole proprietor ☑ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company Enter the tax classification (C=C corporation, S=S corporation, P=partnership) ▶

☐ Other (see instructions) ▶

☐ Exempt payee

Address (number, street, and apt or suite no.)
11781 South Lone Peak Parkway, Suite 200

Requester's name and address (optional)

City, state, and ZIP code
Draper, UT 84020

List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on the "Name" line to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[ ][ ][ ] - [ ][ ] - [ ][ ][ ][ ]

Employer identification number
[redacted]

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below)

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here Signature of U.S. person ▶ [signature] Date ▶ 2013

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

PublicEngines™

Dear Valued TipSoft Customer,

At PublicEngines we have endeavored to make the best products available for our customers at a reasonable price. In particular, with TipSoft we have always tried to provide the best product in the market and are proud that we have been able to maintain the same pricing we started with many years ago without a single price increase.

Unfortunately, however, we have recently reached the need to increase the price of TipSoft to accommodate additional development costs and variable costs of the product. You will see this price increase reflected in the accompanying invoice.

While no one wants to receive notice of a price increase, I hope that you will consider the many improvements we have made to TipSoft over the years. In the last three years alone we have released more than 100 improvements, including TipSoft Alerts, bulk mapping of tips with filtering criteria, private alert groups and web-based disposition forms. We have also made significant "behind the scenes" improvements to TipSoft's security and reliability

With a history of more than three million tips received and disposed, $3.6 billion in stolen goods and contraband recovered, and more than 170,000 arrests attributed to TipSoft, the product has been a valuable tool in your hands.

Because of our dedication to you, and our knowledge of how important this product is to the public, I am prepared to make a unique offer to you. While I would hope that you will continue to see high value in TipSoft at the new price and are able to help us cover our costs, I also recognize that public safety budgets are often tight. Therefore, if you believe that you cannot justify TipSoft at the new price, my offer is that you can pay us any amount between your old price from previous years and your new price. That's right—if you feel you can't afford the new price, you can name a price within that range that you think is reasonable. Not only will we accept it, but if you choose to pay for multiple years in advance, we will honor the price for the duration of your extended contract term. If you need to offer us a different price, simply call Jennifer Usry at (801) 828-2727 to make arrangements.

Thank you for your dedication to increasing public safety and improving your community. We value you as a customer and look forward to continuing to work with you now and in the future.

Sincerely,

William Kilmer
Chief Executive Officer

PublicEngines™
11781 SOUTH LONE PEAK PARKWAY
SUITE 200
DRAPER, UT 84020

Dear Valued Customer:

In light of today's economic climate, Public Engines Inc. would like to offer you the opportunity to take advantage of our Customer Loyalty Extended Term Discount that could **save you up to 28%** on your subscription renewal.

Your TipSoft subscription is scheduled to renew next month. Having had the opportunity to evaluate the quality and value of our service, now may be the time to take advantage of our significant customer loyalty discount by extending your subscription term to two, three or five years. Committing to a longer term allows Public Engines Inc. to amortize its service costs over a longer assured period and, consequently, pass savings on to you.

Should you wish to take advantage of this discount, please specify a contract term below, sign the bottom of this letter, and return it by email to accounting@publicengines.com or by fax to (801) 998-3093. We will then send you a revised invoice for the **entire extended renewal term**, including the applicable discount, **due upfront**.

Extended Renewal Term	Extended Term Discount	Your Selection
Two (2) Years	10%	☐
Three (3) Years	20%	☐
Five (5) Years	28%	☐

If you select an Extended Renewal Term, your contract will automatically renew at the end of the Extended Term for successive periods equal to the initial Extended Term. If either party chooses not to renew, the non-renewing party agrees to provide written notice at least one (1) day before the end of the Extended Term. Additionally, at the end of any Extended Term, you may elect to have your Contract Term reduced to one (1) year by providing written notice at least thirty (30) days prior to the end of the current term. In doing so, you will forfeit the discounted subscription rate.

The provisions set forth above pertaining to the Terms of Service and procedure for renewal and termination supersede the corresponding provisions set forth in the Terms of Service (https://www.crimereports.com/home/termsOfService).

Should you decide not to take advantage of this savings opportunity, please remit payment for the enclosed invoice. We will not automatically change your contract term without your consent.

We appreciate your business and look forward to serving you in the years to come! If you have any questions, please feel free to contact me by email at accounting@publicengines.com, or by phone at (801) 828-2727.

Sincerely,

Jennifer Usry

Jennifer Usry
Accounting Department

Customer: Signature	**Public Engines Rep: Signature**
Customer: Print Name	**Public Engines Rep: Print Name**
Agency ID # (located at the top of your invoice)	**Date**

You are currently on the US and Canada site.
Switch here to see UK.
Login
Email Password (Forgot?)
Not a member? Join CrimeReports today!

PUBLIC ENGINES, INC.
TERMS OF SERVICE

Revision: August 6, 2010

This Terms of Service agreement (the "Agreement") is between Public Engines, Inc. ("Public Engines") and the entity or organization ("Customer") named on one or more Order Forms (as defined below) for purchasing various Licensed Products and associated support or other professional services from Public Engines, including, but not limited to, certain computer programs, documentation, and other proprietary material that belong to Public Engines and its suppliers (collectively, "the Services"). Customer's use of the Services is subject to Customer's acceptance of the terms and conditions of this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY. BY CHECKING THE BOX INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, AND: 1) CLICKING SUBMIT; OR, 2) SIGNING THE ORDER FORM, OR OTHERWISE ACCESSING OR USING THE SERVICES. THE PERSON PERFORMING SUCH ACTION (THE "INSTALLER") REPRESENTS AND WARRANTS THAT HE/SHE: (I) HAS READ THIS AGREEMENT AND UNDERSTANDS IT; AND, (II) IS AUTHORIZED TO ENTER INTO THIS AGREEMENT ON BEHALF OF CUSTOMER AND BIND CUSTOMER TO THE TERMS OF THIS AGREEMENT. IF CUSTOMER DOES NOT AGREE TO ANY OF THE TERMS BELOW, OR INSTALLER DOES NOT HAVE THE REQUISITE AUTHORITY TO ENTER INTO THIS AGREEMENT, THEN PUBLIC ENGINES IS NOT WILLING TO GRANT A LICENSE TO USE THE SERVICES TO CUSTOMER, AND THE INSTALLER SHOULD CLICK ON THE "CANCEL" BUTTON AND MUST NOT ACCESS OR USE THE SERVICES.

1. BACKGROUND. Public Engines has developed Services (as further described below). Customer wishes to utilize the Services, and Public Engines desires to make the Services available to Customer subject to the following terms and conditions. In connection with this Agreement, Customer shall execute one or more Public Engines order forms that will contain provisions regarding fees, payment process, and other business terms (the "Order Form"). Once executed by the parties, any Order Form becomes part of this Agreement, and is incorporated by reference herein.

2. DEFINITIONS. All definitions below or elsewhere in this Agreement apply to both their singular and plural forms, as the context may require. The terms "herein", "hereunder", and "hereof" and similar expressions refer to this Agreement. Notwithstanding anything to the contrary express or implied herein, all references in this Agreement to the "sale" or "purchase" of software or Intellectual Property (defined below) shall only mean the sale or purchase of a license or sublicense, as the case may be, to use such software or Intellectual Property pursuant to this Agreement. Capitalized terms shall have the meanings set forth in this Section 2, or in the section where they are first used.

2.1 Administrator means Customer's designated system administrator who receives administrative logins for the Services and issues access rights to Customer's Users.

2.2 Customer Data means Customer's data that is provided by Customer to Public Engines hereunder to be processed via the Services.

2.3 De-Identified Data means a copy of the Customer Data that has been incorporated into Public Engines' Systems, modified to remove the following information with respect to any particular victim, suspect, witness, officer or perpetrator: names, specific street addresses, criminal histories or arrest or investigative information.

2.4 Documentation means the technical materials provided by Public Engines to Customer in hard copy or electronic form describing the use and operation of the Software, including any technical manuals, but excluding any sales, advertising or marketing materials or proposals.

2.5 Effective Date is the Effective Date as indicated on the first Order Form executed by Customer, or as explicitly amended in writing by the parties hereto thereafter.

2.6 Error means a failure of the Software to substantially conform to the Documentation that is reported to Public Engines by Customer and which Public Engines can replicate.

2.7 Error Corrections means bug fixes or workarounds intended to correct Errors in the Software and provided by Public Engines to Customer.

2.8 Fees has the meaning set forth in Section 6.

2.9 Help Resources means any resources, including online guides, documentation, tutorials or other services, which may be provided by Public Engines hereunder to support the System.

2.10 Intellectual Property or Intellectual Property Rights means any and all now known or hereafter existing: (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout-design rights, design rights, and other proprietary rights of every kind and nature; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

2.11 Licensed Products means the various Software (whether hosted or installed at Customer's site), including, as applicable, the Documentation, proprietary CrimeReports Publisher, associated user interfaces, Help Resources (as defined above), and any related technology or other services Public Engines makes available via the System (as defined below) and the Internet, and all Updates and Upgrades thereto, if any, all as further described in the Order Form(s).

2.12 Software means the software programs delivered as part of the Licensed Products, and all Updates and Upgrades thereto, if any.

2.13 Supported Environment means the minimum hardware, software, and connectivity configuration specified from time to time by Public Engines as required for use of the Services. The current requirements are detailed online at www.crimereports.com/requirements.

2.14 System means, collectively, the Software, servers and any other hardware or equipment operated by Public Engines and used in conjunction with the Services.

2.15 Term has the meaning given in Section 7.1.

2.16 Updates means Error Corrections, and improvements or additions to the Software that Public Engines may make available to Customer from time to time. Updates do not include Upgrades and will not result in the payment of additional fees by the Customer.
2.17 Upgrades means improvements or enhancements that add new features or substantial additional functionality to the Software which Public Engines determines, in its sole discretion, to provide to Customer subject to the payment of additional license fees and/or agreement on alternative licensing terms as approved by the Customer.

2.18 Users means Customer's employees who are authorized to utilize the Services and who will be provided access to the Services by virtue of a password or the equivalent thereof. Users may be required to acknowledge and accept terms of use as a condition to and prior to access or use of Services. Users do not include any of Customer's independent contractors, agents, consultants, former employees, or any other individuals that are not current employees of Customer under applicable law.

3. INTELLECTUAL PROPERTY.

3.1 License Grant. Subject to the terms and conditions of this Agreement, Public Engines grants to Customer a limited, non-exclusive, non-transferable, revocable license during the Term, solely for Customer's internal business purposes and in accordance with the limitations set forth in the Order Form(s), (a) to use, perform, and digitally display the Software solely as required for use of the Services and in accordance with the Documentation; (b) to access, display, search, analyze, reformat, download, and print reports of any results generated by the authorized use of the Software solely as provided through the Services, and once downloaded, to modify the downloaded results for analysis purposes; and (c) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer's use of the Services.

3.2 Usernames and Passwords. Public Engines will provide each User a unique username and password to enable such Users to access the Licensed Products pursuant to this Agreement. As applicable to certain Licensed Products, Public Engines may alternatively provide an Administrator with a unique username and password, which such Administrator will use to create and issue additional unique usernames and passwords for Customer's additional Users. Public Engines reserves the right to change or update these username and passwords in Public Engines' sole discretion from time to time, with notice to Customer. Each username and password may only be used to access the Licensed Products during one (1) concurrent login session. Customer acknowledges and agrees that only Users are entitled to receive a username and password and to access the Services. Customer will provide to Public Engines information and other assistance as necessary to enable Public Engines to establish usernames for Users, and Customer will verify all User requests for account passwords. Customer will ensure that each username and password issued to a User will be used only by that User. Customer is responsible for maintaining the confidentiality of all Users' usernames and passwords, and is solely responsible for all activities that occur under these usernames. Customer agrees (a) not to allow a third party to use its account, usernames or passwords at any time, and (b) to promptly notify Public Engines customer support in writing of any actual or suspected unauthorized use of its account, usernames or passwords, or any other breach or suspected breach of the obligations contained in this Section 3. Public Engines reserves the right to terminate any username and password which Public Engines reasonably determines may have been used by an unauthorized third party or by any User or individual other than the User to whom such username and password was originally assigned.

3.3 Restrictions on Use. Customer acknowledges that the Services, the structure, organization and source code of the foregoing, and the selection, compilation, and analysis of all data in the Licensed Products (the Products) constitute valuable Intellectual Property of Public Engines. Customer agrees that it will not, and will not permit any User or other third party to: (a) permit any third party to access the Licensed Products or use the Services, other than the Users authorized under this Agreement; (b) modify, adapt, alter or translate the Services, except as expressly allowed herein; (c) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services; (e) use or copy the Services (including any Documentation) except as expressly allowed under this Section 3; or (f) disclose or transmit any data contained in the Services to any individual other than a User, except as expressly allowed herein. The copyright and all other Intellectual Property Rights in the Services are the sole and exclusive property of Public Engines or its suppliers. Customer acknowledges that the Services are extremely valuable, are confidential and proprietary to Public Engines, and have been compiled by Public Engines through the expenditure of considerable time, effort and expense. Customer shall prevent the disclosure, dissemination, copying and use of the Licensed Products or any portion thereof in violation of the terms of this Agreement. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the Services. All rights not expressly granted to Customer are reserved to Public Engines. Subject to Section 8.1, Customer agrees that Public Engines shall be permitted to review and use the Customer Data and other user registration and statistical information for its own purposes, including but not limited to, planning, response to service questions, technical matters and other purposes.

3.4 Appropriate User Conduct. Customer agrees not to use the Products or information from the Products to: (a) send unsolicited or unauthorized email, advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (b) harvest, collect, gather or assemble information or data regarding other users, including email addresses; (c) transmit through or post on the Products, unlawful, immoral, libelous, abusive, harassing, tortuous, defamatory, threatening, harmful, invasive of another's privacy, vulgar, obscene or otherwise objectionable material of any kind or nature or which is harmful to minors in any way; (d) transmit any material that may infringe the intellectual property rights or other proprietary rights of third parties, including trademark, copyright or right of publicity; (e) transmit any material that contains software viruses or other harmful or deleterious computer code, files or programs such as Trojan horses, worms, time bombs or cancel bots; (f) interfere with or disrupt the integrity of any data or computer-based information or any servers or networks connected to the Products or violate the regulations, policies or procedures of such networks; (g) attempt to gain unauthorized access to the Products, other accounts, computer systems or networks connected to the Products, through password mining or any other means; or, (h) harass or interfere with another user's use and enjoyment of the Products.

4. DELIVERY, INSTALLATION, ACCEPTANCE. Public Engines will make the Services available to Customer via an online user interface within five (5) business days after the Effective Date. The Licensed Products will be deemed accepted upon the delivery of usernames and passwords to Customer as set forth in Section 3.2, provided that such acceptance will not affect the warranties in Section 9. If usernames and passwords have been issued to Customer prior to the Effective Date, the Licensed Products will be deemed accepted on the Effective Date. Customer shall provide the Customer Data to Public Engines in the form and format specified by

Public Engines, or as otherwise agreed upon by the parties. From time to time during the Term, Customer may provide Public Engines with updates to the Customer Data (which may include revised data files or directions regarding corrections of inaccuracies and/or required deletions) as Customer deems appropriate; whereupon Public Engines will use reasonable efforts to promptly implement Customer's requested changes and update the appropriate Public Engines' database(s) accordingly. Additional charges may apply when Public Engines' staff time is required for such corrections.

5. SUPPORT. Subject to Customer's payment of the Fees (as defined in Section 6), Public Engines will provide commercially reasonable support services for the Services as specified in the Order Form(s).

6. PAYMENT. Customer will pay to Public Engines the fees set forth in the Order Form(s) ("Fees"). In the event the number of Customer's employees exceeds the maximum number of Users for the organization size set forth in the Order Form(s) for which Fees have been paid, Customer shall be required to pay additional fees associated with the increased organizational size, prorated for the remainder of the Term. Except as otherwise provided in the Order Form(s), all Fees and other charges are due and payable to Public Engines within thirty (30) days after the date of Public Engines' invoice to Customer. The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on Public Engines' income in the United States), fees, duties, and charges and any related penalties and interest, arising from the payment of the Fees or the delivery or license of the Licensed Products to Customer, except where exempted by applicable Federal and/or State law. All costs and expenses incurred by Customer in connection herewith are the sole responsibility of Customer. An administrative fee of $35.00 per invoice will be charged for any electronic transaction that is declined and any returned checks. In addition, any amounts not paid when due shall bear interest at a nominal rate of one and one half percent (1.5%) per month, or the maximum legal rate if less. Public Engines shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. Customer shall have ninety (90) days from receipt of an invoice to dispute any portion of the invoice, and any issue not raised by Customer in writing within ninety (90) days from receipt of the invoice is hereby irrevocably waived by Customer.

7. TERM AND TERMINATION.

7.1 Term. This Agreement commences on the Effective Date and remains in effect for the time period indicated in the Order Form(s), or, if no specific period is set forth in the Order Form(s), then for a period of one (1) year thereafter (the Initial Term) unless earlier terminated in accordance with Section 7.2. This Agreement shall be automatically renewed for consecutive one (1) year terms at then current rates unless either party provides written notice to the other of its intention not to renew at least one (1) day prior to the expiration of the term then in effect; provided that in the event that Public Engines provides written notice to Customer prior to the end of the Initial Term or any subsequent term (which notice may take the form of the last invoice sent to Customer prior to the end of the applicable term then in effect) of an increase in the Fees to be charged to Customer, such increase shall automatically take effect for the subsequent term unless Customer notifies Public Engines of its intention not to renew prior to the expiration of the term then in effect (in any such event Customer shall have at least fifteen (15) days following any such notice of an increase in Fees to notify Public Engines of its intention not to renew for such additional period even if such additional period would have otherwise

commenced). The Initial Term and any renewals thereof shall be collectively referred to as the "Term."

7.2 Termination.

(a) For Convenience. This Agreement may be terminated by Customer at any time for any reason upon: (i) thirty (30) days written notice to Public Engines and (ii) the payment to Public Engines of fifty percent (50%) of the then remaining Fees due during the Initial Term, or the then-current renewal term, as applicable, based on the then existing number of Users (Termination Charge).

(b) For Cause. This Agreement may be terminated immediately by either party: (i) upon the material breach by the other party of any of such other party's obligations hereunder, which breach has not been cured within thirty (30) days after the breaching party has received notice thereof; (ii) if all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver or to a trustee in bankruptcy, a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days, or the other party is adjudged bankrupt; or (iii) immediately upon written notice if Customer (a) fails to make the payments specified under Section 6 when due for a second time in any calendar year or (b) violates the restrictions in Sections 3 or 8. Public Engines may terminate this Agreement immediately upon written notice to Customer if Customer undergoes a change in control, or sells all or substantially all of its assets or shares to a third party without the written consent of Public Engines.

(c) For Discontinuation of the Services. This Agreement may be terminated by Public Engines, without liability to Customer, upon thirty (30) days' written notice to Customer, if Public Engines discontinues offering the Services on a general commercial basis. Customer shall not owe Public Engines a Termination Charge if Public Engines terminates this Agreement for discontinuation of the Services. In the event of such termination, Public Engines shall reimburse Customer for the Fees prepaid by Customer for the remaining portion of the applicable term, if any.

7.3 Effect of Termination. Upon termination of this Agreement for any reason, any amounts owed to Public Engines under this Agreement before such termination (which shall include all fees for the remaining portion of the Initial Term or then-current renewal Term except if this Agreement is terminated: (i) for cause by Customer, (ii) pursuant to Section 7.2(a) in which case solely the applicable Termination Charge shall apply or (iii) pursuant to Section 7.2(c)) will be immediately due and payable, all licenses (except licenses granted pursuant to Section 8.4, which shall continue as set forth in such Section) granted herein shall immediately terminate, and each party shall return to the other all property (including any Confidential Information) of the other party in its possession or control. Public Engines will promptly cease performing all Services (and all other services which may have been agreed upon by the parties) and all Customer and User access to the Services shall be immediately terminated by Public Engines. Notwithstanding the foregoing, provided that Customer is not in breach and has made all payments required under Section 6, Customer may request and receive from Public Engines a text file copy of all Customer Data in an "as is and with all faults" condition. All payment obligations of Customer, and Sections 2, 3.3, 8.2, 8.3, 8.4, 9, 10 and 11 shall survive any termination or expiration of this Agreement.

8. CONFIDENTIALITY AND NON-DISCLOSURE.

8.1 Confidential Information. During the Term of this Agreement, each party (the "Disclosing party") may provide the other party (the "Receiving party") with certain information regarding

the Disclosing party's business, technology, products, or services or other confidential or proprietary information (collectively, "Confidential Information"). The Disclosing party will mark all Confidential Information in tangible form as "confidential" or "proprietary" or other similar legend and identify all Confidential Information disclosed orally as confidential at the time of disclosure and provide a written summary of such Confidential Information within thirty (30) days after such oral disclosure. Regardless of whether so marked or identified, the Services and all enhancements and improvements thereto will be considered Confidential Information of Public Engines, and all Customer Data (excluding De-Identified Data) will be considered Confidential Information of Customer.

8.2 Protection of Confidential Information. The Receiving party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing party, except as expressly permitted under this Agreement. The Receiving party shall use the Disclosing party's Confidential Information solely for the purpose of performing such party's obligations hereunder, or receiving the benefits of this Agreement as expressly set forth herein. The Receiving party will limit access to the Confidential Information to Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to Public Engines). In addition, the Receiving party will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as it protects its own proprietary information of a similar nature, and in no event with less than reasonable care. At the Disclosing party's request or upon termination of this Agreement, the Receiving party will return to the Disclosing party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving party does not have a continuing right to use under this Agreement, and the Receiving party shall provide to the Disclosing party a written affidavit certifying compliance with this sentence.

8.3 Exceptions. The confidentiality obligations set forth in Section 8.2 will not apply to any information that the Receiving party can demonstrate: (a) becomes generally available to the public through no fault of the Receiving party; (b) is lawfully provided to the Receiving party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving party at the time of disclosure; or (d) and can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving party who had no access to the Confidential Information. In addition, the Receiving party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving party to (i) enforce its rights under this Agreement or (ii) as required by law or by the order of a court or similar judicial or administrative body, provided that the Receiving party promptly notifies the Disclosing party in writing of such required disclosure and cooperates with the Disclosing party to seek an appropriate protective order.

8.4 Ownership. The Services, Licensed Products, Public Engines' Confidential Information, and all other materials provided to Customer by Public Engines hereunder, including all manuals, reports, records, programs, data and other materials, and all Intellectual Property Rights in each of the foregoing are the exclusive property of Public Engines and its suppliers. Customer acknowledges that Public Engines owns or has the right to license use of the Services in accordance with the terms hereof, and all right (including all Intellectual Property Rights), title, and interest in and to are and shall remain vested in Public Engines or its third party licensors. Except for the limited license granted herein, Customer does not claim and shall not assert any right, title, or interest, or other ownership or proprietary rights, in or to the Services or Licensed Products. Customer shall take no action that jeopardizes Public Engines' rights, and shall keep the Services and Licensed Products free and clear of all claims, liens, and encumbrances. Customer

shall at all times exclusively own all right, title, and interest in and to its Confidential Information, including all original Customer Data (but not including the De-Identified Data), and nothing in this Agreement shall be construed as limiting or restricting Customer's ability to make further use of such Customer Data as Customer deems appropriate. Customer understands and agrees that Public Engines will include the De-Identified Data in the Public Engines' database(s) which form part of the Services, and that all such De-Identified Data shall be owned solely and exclusively by Public Engines without any limitation or restriction whatsoever. For avoidance of doubt, Public Engines' ownership rights shall only extend to the De-Identified Data, not to Customer Data as it is originally provided to Public Engines hereunder. To the extent any De-Identified Data is not owned solely and exclusively by Public Engines following the Effective Date and without limiting the generality of this Section 8.4, Customer hereby grants to Public Engines a non-exclusive, worldwide, perpetual, royalty-free, fully paid-up and irrevocable right and license to incorporate such De-Identified Data into Public Engines' applications and databases (the Incorporated Customer Data), and to use, reproduce, display, modify, create derivative works of, distribute (through multiple tiers), and sublicense such Incorporated Customer Data, for any purpose (including, without limitation, purposes outside the scope of this Agreement) without any limitation or restriction whatsoever.

9. LIMITED WARRANTY. Public Engines warrants to Customer that, during the Term, the Services will operate substantially in accordance with the Documentation. This limited warranty shall not apply to problems that result from: (i) factors outside of Public Engines' reasonable control; (ii) any failure by Customer to comply with this Agreement; (iii) any failure by Customer to use the Services in accordance with the Documentation or other instructions provided to Customer by Public Engines; (iv) any unauthorized use of the Services; (v) Customer's or any third party's hardware, software, and equipment; (vi) Customer errors in entering, analyzing, or reporting data; (vii) the fault or negligence of Customer, Users, operator error, improper use or misuse of the Services, or any other causes external to the Services or Public Engines; or (viii) downtime as a result of scheduled maintenance performed by or for Public Engines. In the event of a breach of the foregoing warranty, Customer's sole and exclusive remedy, and Public Engines' only obligation, at Public Engines' discretion, will be to repair or replace the nonconforming Software within thirty (30) days after Public Engines receives Customer's written notice of the material nonconformity, or if Public Engines determines that it is not commercially feasible to repair or replace the Software, Public Engines will refund the amount of any Fees actually paid by Customer to Public Engines under this Agreement for the previous three (3) months. Any Updates or Upgrades provided to Customer hereunder shall be warranted to the same extent as the Software.

10. DISCLAIMERS AND LIMITATION OF LIABILITY.

10.1 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 9 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9, THE LICENSED PRODUCTS AND SERVICES ARE PROVIDED "AS IS," AND, TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, PUBLIC ENGINES MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AGAINST INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE LICENSED PRODUCTS OR SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY PUBLIC ENGINES, WITH RESPECT TO ANY UNAUTHORIZED USE OR MISUSE OF ANY DATA OR

INFORMATION GENERATED OR COMMUNICATED PURSUANT TO THIS AGREEMENT, OR OTHERWISE UNDER THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, PUBLIC ENGINES DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE LICENSED PRODUCTS AND SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE.

10.2 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EXCEPT FOR ANY BREACH BY CUSTOMER OF THE LICENSE RESTRICTIONS HEREUNDER, OR TO SATISFY CUSTOMER'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL PUBLIC ENGINES OR CUSTOMER, OR ANY PARENT, SUBSIDIARY, AFFILIATE, OR SUPPLIER OF THE FOREGOING BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL, PERSONAL OR PROPERTY DAMAGE REGARDING THIS AGREEMENT OR RESULTING FROM OR IN CONNECTION WITH PUBLIC ENGINES' PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE LICENSED PRODUCTS OR SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF THE LIABLE PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW: (I) IN NO EVENT SHALL PUBLIC ENGINES BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES; (II) IN NO EVENT SHALL PUBLIC ENGINES BE LIABLE FOR ANY UNAUTHORIZED USE OR MISUSE OF ANY DATA OR INFORMATION GENERATED OR COMMUNICATED PURSUANT TO THIS AGREEMENT, EXCEPT IN CASES OF PUBLIC ENGINES' GROSS NEGLIGENCE WITH RESPECT TO SUCH USE OR MISUSE; AND (III) THE CUMULATIVE LIABILITY OF PUBLIC ENGINES, ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY OR CAUSE OF ACTION, SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO PUBLIC ENGINES FOR THE PREVIOUS THREE (3) MONTHS. THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE A PARTY'S LIABILITY IN EXCESS OF THE FOREGOING.

10.3 Basis of the Bargain. The parties agree that Section 9 shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

10.4 NOT FOR 911 LEVEL EMERGENCY USE. **NONE OF PUBLIC ENGINES' ONLINE PRODUCTS ARE INTENDED FOR 911 LEVEL EMERGENCY USE**. Some of Public Engines' processes are not under the direct control of Public Engines, which processes are subject to unexpected service interruptions. **CUSTOMER AGREES THAT IT SHALL NOT PROMOTE OR RELY UPON ANY OF PUBLIC ENGINES' PRODUCTS FOR TRUE EMERGENCY OR URGENT USE**.

10.5 Telecommunications Service Providers. Customer hereby acknowledges and agrees that there can be no assurances that (i) any particular telecommunications service will be accepted by one or all of the telecommunications service providers with which Public Engines maintains

connectivity or (ii) that all or any telecommunications service providers will maintain connectivity with Public Engines' licensed platform.

11. INDEMNIFICATION. To the extent permitted by applicable law, Customer will defend at its expense any suit brought against Public Engines and will pay any settlement Customer makes or approves or any damages finally awarded in such suit insofar as such suit is based on a claim by any third party based upon, resulting from or related to: (a) Customer's and its Users' use of the Services, including any search, analysis, report or conclusion generated from the Services; or (b) any improper or unauthorized use of the Services by Customer, including its Users. Customer's obligation as set forth in the foregoing sentence is expressly conditioned upon each of the foregoing: (i) Public Engines shall promptly notify Customer in writing of any threatened or actual claim or suit; (ii) Customer shall have sole control of the defense or settlement of any claim or suit, except that Customer may not, without Public Engines' prior written consent, enter into any settlement that does not unconditionally release Public Engines from liability; and (iii) Public Engines shall cooperate with Customer to facilitate the settlement or defense of any claim or suit.

12. GENERAL PROVISIONS.

12.1 Compliance with Laws. Customer will comply with all applicable export and import control laws and regulations in its use of the Licensed Products and, in particular, Customer will not export or re-export the Licensed Products without Public Engines' prior written consent, and, if such consent is granted, without Customer first obtaining all required United States and foreign government licenses. Customer further agrees to comply with all applicable laws and regulations in providing the Customer Data to Public Engines, and Customer warrants and represents to Public Engines that Customer has all rights necessary to provide such Customer Data to Public Engines for the uses as contemplated hereunder. Customer shall obtain at its expense all necessary licenses, permits and regulatory approvals required by any and all governmental authorities as may from time to time be required in connection with its activities related to this Agreement. To the extent permitted by applicable law, Customer will defend, indemnify, and hold harmless Public Engines from and against any violation of such laws or regulations by Customer or any of its agents, officers, directors, or employees.

12.2 Assignment. Customer may not assign or transfer, by operation of law or otherwise, any of its rights under this Agreement to any third party, or transfer any of the license rights granted hereunder, without the prior written consent of Public Engines, which consent shall not be unreasonably withheld or delayed. Any attempted assignment or transfer in violation of the foregoing will be void. Public Engines may freely assign this Agreement, or subcontract or otherwise delegate its obligations hereunder, in whole or in part, to any third party, provided that such third party assignee agrees in writing to be bound by the terms hereof; and further provided, with respect to any such delegation or subcontracting of any of Public Engines' duties hereunder, Public Engines shall remain obligated to Customer for performance of such duties as set forth herein. Subject to the foregoing, this Agreement shall inure to the benefit of each party's successors and permitted assigns.

12.3 Counterparts, Fax Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to constitute one and the same instrument. The parties hereby agree that signatures transmitted and received via facsimile or other electronic means shall be treated as original signatures for all purposes of this Agreement.

12.4 Force Majeure. Except for obligations of payment, neither party shall be liable for any delay or failure in performing hereunder if such failure arises, directly or indirectly, out of causes beyond the reasonable control of such party, including acts of strike, shortages, failure of suppliers, riots, insurrection, fires, floods, storms, earthquakes, acts of God, war, government action, labor conditions, lightning, power surges or failures, terrorism, failure of telecommunications services (including the Internet), or acts or omissions of communications carriers. Performance shall be deferred until such cause of delay is removed, provided that the delayed party shall notify the other party of such occurrence.

12.5 Notices. All notices or other communications required hereunder shall be made in writing and shall be deemed to be effectively given if made as follows: (a) if hand delivered, when received; (b) if mailed, three (3) days after being deposited postage prepaid in the United States mail or its equivalent, and sent via certified mail, return receipt requested, or its equivalent; (c) if faxed, on the date of the sending party's receipt of confirmation of transmission; or (d) if mailed for overnight delivery, when delivered by the overnight carrier. Each party may change its notices address by giving notice in the manner set forth herein. Customer agrees to promptly notify Public Engines in writing of any breach or suspected breach of this Agreement.

12.6 Press Releases, Joint Marketing, Advertising. Either party shall be free to advertise and publicize the existence of this Agreement and the general nature of the parties' relationship.

12.7 Construction. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to". This language of this Agreement shall not be construed in favor of or against either party.

12.8 Governing Law. This Agreement will be governed by the laws of the State of Utah without regard to conflict of laws principles, or any other principles that would result in the application of a different body of law. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

12.9 Remedies. Customer acknowledges that the Licensed Products contain valuable trade secrets and proprietary information of Public Engines, that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to Public Engines for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. Notwithstanding anything in this Agreement to the contrary, Public Engines reserves the right to obtain injunctive relief and any other appropriate remedies from any court of competent jurisdiction in connection with any actual, alleged, or suspected breach of Section 3, infringement, misappropriation or violation of Public Engines' Intellectual Property Rights, or the unauthorized use of Public Engines' Confidential Information. Any such action or proceeding may be brought in any court of competent jurisdiction. Except as otherwise expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative.

12.10 Inspections. Customer will permit Public Engines or its representatives to review Customer's relevant records and inspect Customer's facilities to ensure compliance with this Agreement. Public Engines will give Customer at least twenty (20) days advance notice of any such inspection and will conduct the same during normal business hours in a manner that does not unreasonably interfere with Customer's normal operations. If any such audit should disclose any underpayment of fees, Customer shall promptly pay Public Engines such underpaid amount, together with interest thereon at the rate specified in Section 6. In addition to the foregoing, if the amount of such underpayment exceeds five percent (5%) of fees actually paid, then Customer

shall immediately reimburse Public Engines for Public Engines' expenses associated with such audit.

12.11 Independent Contractors. Public Engines and Customer are independent contractors under this Agreement, which shall not be construed to create any employment relationship, partnership, joint venture, franchisor-franchisee or agency relationship, or to authorize any party to enter into any commitment or agreement binding on the other party except as expressly stated herein. The parties have no authority to make statements, warranties, or representations or to create any liabilities on behalf of the other.

12.12 Severability; Waiver. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in full force and effect, and this Agreement shall be deemed amended to replace, to the extent legally permitted, the rights and obligations contained in such invalid or unenforceable provision. Except as otherwise provided, any failure or delay by either party hereto to detect, protest, or remedy any breach of this Agreement, or to exercise (or any single or partial exercise of) any right or remedy shall not constitute a waiver or impairment of any such term or condition, or be deemed a waiver of any further, prior, or future right or remedy hereunder. Except as otherwise provided, a waiver may only occur pursuant to the prior written express permission of an authorized officer of the other party. The parties agree and acknowledge that the restrictions contained in this Agreement are: (i) inherently reasonable in all respects; (ii) material and bargained for terms of this Agreement; (iii) material inducement for each party's decision to enter into this Agreement and each party is relying thereon; (iv) necessary to protect each party's legitimate interests in this arm's length commercial transaction; (v) necessary to prevent the inevitable disclosure and improper use of each party's Confidential Information; (vi) reasonable in geographic scope given that the scope of business activities contemplated under this Agreement; and (vii) if enforced, will not cause any undue hardship to either party nor prevent either party from continuing its business operations generally. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

12.13 Updates to Terms of Service. This Agreement may be modified by Public Engines as needed, upon written notice to Customer via presentation of such updated terms (the Updated Terms) in connection with Customer's use of the Services and acceptance of such Updated Terms by Customer, which acceptance shall be deemed to have been given by Customer by Customer's continuing to use the Services. In the event that Customer does not accept the Updated Terms, Customer shall notify Public Engines within ten (10) days of receiving notice of Updated Terms from Public Engines, provided that in such event Public Engines shall have a right to terminate this Agreement in the manner set forth in Section 7.2(c) regardless of actual discontinuation of Services.

12.14 Prior Agreements. In the event Customer has previously executed a Terms of Service or equivalent agreement (Previous Agreement), this Agreement replaces and supersedes any Previous Agreement, and incorporates by reference any Order Forms and any Addendums previously executed by Customer into this Agreement, upon acceptance of this Agreement by Customer.

12.15 Entire Agreement. This Agreement and the Order Form(s) together are a binding contract and constitute the entire agreement and understanding of the parties, whether oral or written, relating to the subject matter hereof; are intended as the parties' final expression and complete and exclusive statement of the terms hereof, superseding all prior or contemporaneous

agreements, representations, communications, promises and understandings, whether written or oral; and may be amended or modified only by an instrument in writing signed by both parties.