



shall not reverse-engineer or access the Master Service in order to build a competitive product or service.

2.5 **Customer Data.** Customer is responsible for obtaining any necessary right and licenses for use of the Customer Data in connection with this Agreement. Customer represents and warrants that it has the legal right and authority to access, use and disclose to Company any Customer Data. The parties shall use commercially reasonable efforts to limit use of the Customer Data except as necessary under this Agreement and will not disclose Customer Data to any third party except to those of its employees and subcontractors who have a business need to know such Customer Data; provided that each such employee and subcontractor is bound to restrictions consistent with the terms set forth in this Agreement. Each party will protect the Customer Data from unauthorized use and disclosure using commercially reasonable efforts. The Master Services includes functionality that permits Customer to download Customer Data as an archive file consisting of individual files in an industry standard data file format. In the event that any Customer Data is lost or corrupted, Company will use commercially reasonable efforts to restore such Customer Data. COMPANY'S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS SECTION SHALL CONSTITUTE COMPANY'S SOLE AND EXCLUSIVE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA. Customer shall use commercially reasonable efforts to maintain back-up copies of its then current Customer Data. Company and its agents will only access, use, and process Customer Data to provide the Master Services and to fulfill Company's obligations under the Agreement. Company shall keep and maintain Customer Data consistent with its Data Processing Addendum, which is hereby incorporated by reference and, upon advance notice to Customer, may be updated from time to time.

2.6 **Usage Data.** Company may collect and analyze data and other information relating to the provision, use and performance of the Master Services and related systems and technologies, which may include Customer Data, and data derived therefrom ("**Usage Data**") in order to improve and enhance the Master Services. Insights drawn from Usage Data may be disclosed to Customer and other users of the Master Services in connection with their respective use of the Master Services. For clarification, Usage Data is anonymized and will not identify Customer or a Customer's users, and will not be disclosed in a manner that would permit a third party to determine Customer's or Customer's users' identity.

2.7 New Provision.

### 3. FEES; EXPENSES; TAXES

3.1 **Fees.** Customer shall pay to Company the Fees in accordance with the terms set forth in any Order Form and this Section 3.

3.2 **Invoices; Payment.** Unless otherwise set forth in an Order Form, Company shall invoice Customer annually in advance for the Service. Each invoice shall be due and payable Net 30 of receipt by Customer. All payment obligations are non-cancellable, and other than as provided in the Agreement, all amounts paid are non-refundable. Company shall be entitled, in its sole discretion, to withhold performance and discontinue Customer's access to the Master Services until all amounts past due are paid in full.

3.3 **Taxes.** All Fees and other amounts stated or referred to in this Agreement are exclusive of all taxes, duties, levies, tariffs, and other governmental charges (collectively, "**Taxes**"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on Company's net income.

### 4. PROPRIETARY RIGHTS.

Customer shall own (i) the Customer Data and (ii) Customer's name, logo and other trademarks, and (iii) all Intellectual Property Rights in and to any of the foregoing.

Company shall own: (i) the Master Services, and all improvements, enhancements or modifications made by any party; (ii) any software, applications, inventions or other technology developed by

Company in connection with providing the Master Services; (iii) Company's name, logo, and other trademarks; and (iv) all Intellectual Property Rights in and to any of the foregoing.

Each party shall take all actions necessary to vest rights consistent with the terms of this Section.

## 5. CONFIDENTIALITY

- 5.1 **Definition.** "Confidential Information" means any business or technical information disclosed by one party to the other party that is other than Customer Data and: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of disclosure; or (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary.
- 5.2 **Exclusions.** The obligations and restrictions set forth in Section 5.3 will not apply to any information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure; (iii) is independently developed by the receiving party without access to the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party who has the right to disclose such information without breach of any confidentiality obligation to the disclosing party.
- 5.3 **Use and Nondisclosure.** A receiving party will not use the disclosing party's Confidential Information except as necessary under this Agreement and will not disclose Confidential Information to any third party except to those of its employees and subcontractors who have a business need to know such Confidential Information; provided that each such employee and subcontractor is bound to confidentiality restrictions consistent with the terms set forth in this Agreement. Each receiving party will protect the disclosing party's Confidential Information from unauthorized use and disclosure using efforts equivalent to the efforts that the receiving Party uses with respect to its own confidential information and in no event less than a reasonable standard of care. The provisions of this Section 5.3 will remain in effect during the Term and for a period of three (3) years after the expiration or termination thereof, except with regard to trade secrets of the disclosing party, which shall be held in confidence for as long as such information remains a trade secret.
- 5.4 **Permitted Disclosures.** The provisions of this Section 5 will not restrict either party from disclosing the other party's Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that to the extent legally permitted, the party required to make such a disclosure gives reasonable notice to the other party to enable it to contest such order or requirement or limit the scope of such request; (ii) on a confidential basis to its legal or professional financial advisors; (iii) as required under applicable securities regulations.

## 6. WARRANTY

- 6.1 **Warranty for Master Services.** Company warrants solely to Customer that the Master Services will materially conform to the description set forth in the Order Form under normal use and circumstances as used consistent with the terms of this Agreement. As Company's sole and exclusive liability and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section 6.1 Company will use commercially reasonable efforts to modify the Master Services to correct the non-conformity.
- 6.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT OR THE MASTER SERVICES AND COMPANY HEREBY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. COMPANY DISCLAIMS ANY WARRANTY THAT THE MASTER SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. Customer assumes sole responsibility and liability for results obtained from the use of the Master Services and for conclusions drawn from such use. Company shall







