

**The Paciello Group, LLC**

**immixTechnology Rider to Product Specific License Terms and Conditions  
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached The Paciello Group, LLC ("Manufacturer") product specific license terms establish the terms and conditions enabling immixTechnology ("Contractor") to provide Manufacturer's information technology products and services to Ordering Activities under immixTechnology's GSA MAS contract number GS-35F-0265X (the "Schedule Contract"). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and immixTechnology agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the "Manufacturer Specific Terms" or the "Attachment A Terms") are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 552.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
  - a) **Contracting Parties.** The GSA Customer ("Licensee") is the "Ordering Activity", defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
  - b) **Changes to Work and Delays.** Subject to GSAR Clause 552.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
  - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
  - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
  - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
  - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
  - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
  - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe

weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

- i) **Assignment.** All clauses regarding the Contractor's assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor's assignment in the Manufacturer Specific Terms are hereby superseded.
- j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.
- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that immixTechnology as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.

- s) **Public Access to Information.** immixTechnology agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
  - t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
  - u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.
3. **Order of Precedence/Conflict.** To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.



## **Master Subscription Service Agreement**

It is agreed between the parties that:

### **1. Definitions.**

In this Agreement the following defined terms shall have the meanings set forth below:

**"Affiliate"**

means any entity that directly or indirectly controls, is controlled by, or is under common control of a party.

"Control", for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of a party.

**"Agreement"**

means this Master Subscription Service Agreement (including any exhibits and attachments), together with the underlying GSA Schedule Contract, Schedule Pricelist, any Order Forms and any other documents attached and incorporated herein.

**"Business Hours"**

means Monday thru Friday 8:00 AM to 5:00 PM Eastern Time.

**"Confidential Information"**

means information relating to a party, its business or assets or that of any of its clients, customers, affiliates, subcontractors or other persons that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, inventions, trade secrets, know-how, customer lists, business plans, promotional and marketing activities, and finances), that is or previously has been disclosed or otherwise comes into a party's possessions as a result of this Agreement; provided, that Confidential Information shall not include any information that: (i) is or becomes publicly available through publication, inspection of commercially available product, or otherwise without breach of this Agreement, unless further disclosure is otherwise prohibited by law; (ii) was known to the receiving party at the time of its receipt; (iii) is received from a third party without an obligation of confidentiality; or (iv) has been independently developed by the receiving party prior to the date hereof without the use or benefit of the disclosing party's Confidential Information or intellectual property.

**"Customer"**

means the Ordering Activity under GSA Schedule contracts listed in an Order Form.

**"Documentation"**

means the user guide, help information, content and/or other documentation and materials accompanying and associated with the Service, including associated media, printed materials and any "online" or electronic documentation provided by TPG for use with the Service.

**"Effective Date"**

means the start date of this Agreement as set out in the first Order Form.

**"End User"**

means Customer's employees, representatives, contractors or other individuals who are authorized by You to Use the Service.

**"Fees"**

means the fees set out in each Order Form in accordance with the GSA Schedule Pricelist payable by You during the Subscription Term of each Order Form.

**"Order Form"**

means the order form evidencing the initial subscription for the Services and any subsequent Order Forms specifying, among other things, the applicable Fees.

**"Planned Maintenance"**

means maintenance, Upgrades, updates installation of new versions and repairs which are non -critical and not urgent, to hardware and software.

**"Service(s)"**

means the products and services that are ordered by You under an Order Form or online purchasing portal, or provided to You free of charge or under a free trial, and made available online by TPG.

**"Subscription Start Date"**

means the subscription start date as set out in each Order Form.

**"Subscription End Date"**

means the subscription end date as set out in each Order Form.

**"Term"**

means the term of this Agreement which start on the Effective Date and continues until the date on which all Subscription Terms included in all Order Forms have expired or been terminated.

**"TPG"**

Means the Paciello Group, LLC and its Affiliates

**"Updates"**

means subsequent versions or releases of the Service that are made available to Subscriber pursuant to this Agreement, but it does not include any releases or future products or other services TPG licenses or otherwise makes available separately or subject to a separate subscription arrangement.

**"Use"**

means to access and use the Service, as more fully described in an Order Form, solely in connection with a Customer's internal business operations.

**"Website"**

means a web page having the same letters and numbers to the left of the period adjacent to the top-level domain and after any period that precedes the period adjacent to the top-level domain. For example, "[abcdefg.com](#)" and "[abcdefg.net](#)" are separate Websites. Further, distinct sub-domains are treated as their own separate Websites. For example, "[abcdefg.com](#)" and "[mail.abcdefg.com](#)" are their own Websites.

**"You" or "Your"**

means the Customer named in the Order Form.

**2. Service.**

- i. TPG agrees to make the Service available to You from the Effective Date for the Term of this Agreement. The Services shall be provided to You as set forth in an Order Form subject to the terms of this Agreement.
- ii. TPG shall use best efforts to make the Services available 24 hours a day, 7 days a week, excluding Planned Maintenance and any unavailability caused by Force Majeure. TPG shall use best efforts to provide support for the Services during Business Hours.

**3. License to Use the Service.**

- i. Subject to your payment of the Fees, You are granted a limited, non-exclusive, non-transferable and non-sublicensable right to allow End Users to Use the Service from the Effective Date for the term of each Order Form for your own internal business operations. All rights and title in and full ownership of the Service that are not expressly granted by this Agreement are expressly reserved by TPG. You obtain no right, title or interest in the Service or any of the associated materials, or any right, title or interest to any intellectual property rights in the Service, other than as expressly set forth in this Agreement.
- ii. You may not Use the Service for any purpose other than those expressly set forth in this Agreement and any Order Form. You may not, and may not allow any third party to: (i) decompile, disassemble, decrypt, or reverse engineer the Service, attempt to derive the source code for any part of the Service, or modify or create derivative works of the Service (except that Subscriber's code written to Subscriber's systems to permit access to or interface with the Service will not be deemed a derivative work); (ii) make copies of the Documentation other than as expressly permitted by this Agreement; (iii) sell, lease, lend, or sublicense the Service to any third party, or permit the Service to be Used for timesharing or service bureau purposes; (iv) encumber any right in the Service in favor of a third party, whether by agreement, operation of law, or otherwise; (v) remove from the Documentation any product identification or proprietary rights notices; (vi) publish or disclose to any third party the results of any benchmark tests or other evaluation run on the Service without the prior written consent of TPG; or (vii) otherwise Use the Service except as expressly provided herein.

**4. Fees, Invoicing and Payments.**

- i. TPG shall charge you the Fees set forth in each Order Form in accordance with the GSA Schedule Pricelist.
- ii. All invoices shall be paid within 30 days after the receipt of an invoice.
- iii. In addition to all other remedies available in this Agreement, where payment of any Fee is not received within 30 days of the due payment date, TPG may, without liability to You, disable Your password, account and access to all or part of the Service and TPG shall be under no obligation to provide any or all of the Service while the invoice(s) concerned remains unpaid. TPG shall be entitled to charge interest on overdue Fees at the applicable statutory rate indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

- iv. All Fees are non-refundable and non-cancelable.
- v. All Fees exclude all applicable sales, use, consumption, VAT, GST and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on TPG's income) arising from the provision of Service and any other products or services provided by TPG, or the payment of fees, under this Agreement. You will make all payments without setoff of any kind and without reduction for any tax withholding.

#### 5. *Termination.*

- i. Termination for Cause. Either party may terminate this Agreement if the other party defaults under any provision of this Agreement and the defaulting party fails to cure such default within thirty (30) days (fifteen (15) days for any non-payment of fees) after receiving written notice of such default from the non-defaulting party (or, if the default cannot be cured, immediately upon receipt of such notice).
- ii. TPG may terminate this Agreement or the provision of the Service immediately if You have used the Service, or permitted the use of the Service other than in accordance with this Agreement.
- iii. Upon any termination Your right to use the Service and possess any Documentation will immediately cease and You shall (i) immediately cease using the Service, and (ii) either promptly return to TPG or destroy (and provide prompt written certification of such destruction to TPG) all copies of any Documentation in Your possession.

#### 6. *Warranties.*

- i. TPG warrants that during the applicable Term for which You have paid all applicable Fees for use of the Service, and while the Service provided by TPG hereunder is hosted by TPG, that the Service (excluding Updates for purposes of this Section 6) will conform in all material respects to TPG's then-current Documentation for the Service. In the event of any claim by Subscriber under this limited warranty, Subscriber must notify TPG in writing describing in reasonable detail the nature of the non-conformity and provide to TPG sufficient detail to allow TPG to reproduce the problem. The limited warranty contained in this section will not apply if, and to the extent that: (i) the Service is not used in accordance with this Agreement or the Documentation; (ii) the Service or any part thereof has been customized, modified, altered or changed (a) by any entity other than TPG or, (b) to meet Your unique specifications; or (iii) a malfunction in the Service has been caused by any of Your equipment, any communications infrastructure used by You to connect to the Service, or any third-party software.
- ii. Except for the express limited warranty contained herein and to the maximum extent allowable by law, TPG provides the Service to You "as is" and with all faults, makes no other warranties related to the Service or the results to be obtained from the use of the Service, and provides the Service without any other warranties of any kind, either expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose.

#### 7. *Indemnity.*

- i. TPG will indemnify, have the right to intervene to defend and hold You harmless notwithstanding any limit of liability based on or arising out of any claim or threatened claim that the Service or any part or use thereof infringes or violates any patent, copyright, trademark, trade secret, license or other property or proprietary right of any third party, provided that: (i) You notify TPG in writing within thirty (30) days of the claim; (ii) TPG receives reasonable assistance from You necessary to perform TPG's obligations hereunder; and (iii) TPG has control over the defense and all negotiations for a settlement or compromise.
- ii. The indemnity provided for above shall not apply with respect to the Service or portions or components thereof: (i) not provided by TPG; (ii) Used in a manner not expressly authorized by this Agreement; (iii) modified in accordance with Your specifications; (iv) if the alleged infringement or misappropriation results from any customizations, modifications, alterations or changes to the Service not developed or provided by TPG; or (v) combined with other products or services not provided by TPG where the alleged infringement would not exist but for such combination.
- iii. In the event that the Service is held by a court of competent jurisdiction to constitute an infringement or the use of the Service is enjoined (or TPG reasonably believes that any of the foregoing are reasonably likely to occur) TPG may, at its option: (i) procure for Subscriber the right to continue to Use the Service; (ii) provide a modification to the Service so that its use becomes non-infringing; (iii) replace the Service with services that are substantially similar in functionality and performance; or (iv) if none of the foregoing alternatives is reasonably available to TPG, TPG may terminate the subscription for the infringing Service and refund a pro-rated amount of the subscription fees actually paid by Subscriber for the Service. The prorated amount will be (i) the actual subscription fee paid multiplied by (ii) the percentage which is determined by dividing (a) the number of days remaining in the then-current term of this Agreement for which subscription fees have been paid to TPG (from the effective date of

termination through the end of the then-current term) by (b) the total number of days for the then-current term for which such subscription fees have been paid. This Section 5 states TPG's sole liability and Subscriber's exclusive remedy for any claim by a third party that the Service, or any other good, service, or software provided by TPG pursuant to this Agreement infringes upon, violates, or misappropriates any right of a third party.

- iv. To the extent permitted under applicable law, You agree to indemnify and hold TPG and its affiliates and subsidiaries, and their respective officers, directors, employees, agents, representatives, successors, assigns, service providers and suppliers harmless from any and all claims, losses, demands, fines, penalties, costs, and expenses, including reasonable attorney fees and court costs ("Claims"), made by any third party in connection with or arising out of (i) bodily injury (including death) or damage to real property or tangible personal property; (ii) Your use of the Service or any information transmitted during Your use of the Service, (iii) Your breach or violation of any provision of this Agreement, and (iv) Your violation of applicable laws or any rights of another person or entity, to the extent such Claims do not result from the willful misconduct or gross negligence of TPG.

#### *8. Limitation of Damages.*

- i. To the fullest extent permitted by applicable law, regardless of whether or not any remedy set forth herein fails in its essential purpose, in no event will either party be liable to the other party for any consequential, incidental, indirect, special, punitive or other damages whatsoever (including, without limitation, damages for loss of business profits or information, business interruption, or any other pecuniary loss), arising out of or in any way related to their respective obligations under this Agreement and whether based on contract, tort, strict liability or otherwise, even if such party has been advised of the possibility of such damages. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor's negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.
- ii. Except for its indemnification and confidentiality obligations under this Agreement, the entire liability of TPG for any damages under any provision of this Agreement shall be limited to the actual fees paid to TPG by You under the order giving rise to the liability. As a limitation of damages may not be permitted by some states or jurisdictions, the foregoing provision may not apply to Subscriber.
- iii. Neither party shall have liability for any cause of action against the other which occurred more than six (6) years prior to the filing of a suit alleging such cause of action.

#### *9. Confidentiality.*

- i. Each party agrees to use Confidential Information solely in connection with this Agreement and not to use the Confidential Information for any other purpose whatsoever.
- ii. Each of the parties agrees to protect the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and Confidential Information, but in any event no less than a reasonable degree of care.
- iii. Each party may disclose Confidential Information of the other party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement, but only if the employee or agent is bound by confidentiality undertakings equivalent to those set out in this Agreement.
- iv. If a party is requested to disclose Confidential Information of the other party or the substance of this Agreement in connection with a legal or administrative proceeding or otherwise to comply with a requirement under the law, it will provide prompt notice of such request, unless prohibited by law, so that the other party may seek an appropriate protective order or other remedy, or waive compliance with the relevant provisions of this Agreement. The party's will cooperate with and assist reasonably in such efforts.
- v. The Confidential Information of the parties will remain the exclusive property of the provider of the information and the receiving party will have no rights, by license or otherwise, to use the Confidential Information except for the purposes permitted hereunder and strictly in accordance with the terms of this Agreement. Except for any Confidential Information provided to TPG in connection with the provision of the Service and which is required by law or regulation to be retained by TPG for backup and/or record keeping purposes only, and for which TPG may retain a copy of such Confidential Information in compliance with such law or regulation, upon written request the parties will return or destroy (in a manner that it cannot be read or reconstructed) all Confidential Information it has received, together with all copies thereof.
- vi. The parties shall promptly notify the other by telephone and in writing at the address set forth at the beginning of this Agreement (or as otherwise notified in writing by a party to the other party) if the Confidential Information has been stolen, destroyed, altered, lost, or accessed by unauthorized persons.

*10. Assignment.*

- i. You may not transfer, assign, or delegate any right or obligation under this Agreement without the prior written consent of TPG, which consent TPG will not unreasonably withhold, delay, or condition. Any transfer, assignment, or delegation in violation of this Agreement will be voidable at TPG's option.

*11. Notices.*

- i. TPG may give notice by means of a notice on the Service, electronic mail to Your email address on record in TPG's account information, or by written communication sent by first class mail or pre-paid post to Your address on record. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or prepaid post) or 12 hours after sending (if sent by email) or posting a notice on the Services.
- ii. You may give notice to TPG (such notice shall be deemed given when received by TPG) at any time by any of the following: letter delivered by nationally recognized delivery service or first class postage prepaid mail to TPG at the following address: 17757 US Highway 19N, Suite 560, Clearwater, FL, 33764 addressed to the attention of: "Legal".

*12. Miscellaneous.*

- i. This Agreement shall be governed interpreted, construed and enforced in accordance with the Federal laws of the United States. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.
- ii. You may not export, ship, transmit or re-export the Service in violation of any applicable law or regulation, including but not limited to, Export Administration Regulations issued by the U.S. Department of Commerce. Unless in compliance with applicable law and specifically authorized in writing by TPG, You shall not export the Service under any circumstances whatsoever. In any case, You will indemnify and hold TPG harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorney's fees) arising from, or relating to, any breach by You of Your obligations under this section.
- iii. No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. In the event that any one or more of the provisions of this Agreement are held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired and enforced to the full extent permitted by law.
- iv. Neither party hereto shall be liable for loss or damage resulting from any delay or non-performance, or be held to be in breach, nor shall the other party be entitled to terminate this Agreement, due to any cause or causes beyond its reasonable control, including an act of the other party, malfunctioning or nonfunctioning of equipment, a delay in transportation, acts of God, fire, flood, earthquake, storm, war, sabotage, riot, civil commotion, or because of any law, rule, regulation, order or other action by any public authority, provided the delayed party: (i) gives the other party written notice of such cause promptly; and (ii) uses its reasonable commercial efforts to correct such failure or delay.
- v. Each of the parties agrees that in the event of a breach of any provision of this Agreement, then to the extent permitted by law the non-breaching party shall be entitled to seek and obtain injunctive or other equitable relief, or both, against the breaching party, in each case without the requirement to post any bond or other form of security, and without such act constituting an election of remedies or disentitling the non-breaching party to each and every remedy available at law or in equity for a breach of this Agreement.
- vi. TPG's relationship to You is that of an independent contractor and all of the services provided by TPG under this Agreement shall be as an independent contractor.
- vii. This Agreement, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire agreement between You and TPG related to the Service and supersedes all prior or contemporaneous agreements, proposals, negotiations, representations and communications between You and TPG related to the Service. You acknowledge that it has not been induced to enter into this Agreement by any representations or promises not specifically stated herein. The provisions of the Agreement shall be binding upon, and inure to the benefit of, the parties, their successors, and their permitted assigns.
- viii. Other than as specified herein, this Agreement may only be supplemented or modified by an amendment in a writing executed by the party against whom enforcement is sought.
- ix. If You are a government or public agency, instrumentality or institution, including without limitation a public educational, research or medical institution or body, and any terms in this Agreement (including by way of example, all or part of the termination, limitation of liability, exclusive remedies, limited

warranty, and indemnification sections) are invalid or unenforceable against You because of applicable law, then those terms will be deemed excluded and unenforceable (as the case may be), and instead construed in a manner most consistent with applicable governing law. In addition, if the applicable governing law for this Agreement is precluded for You under laws of the country, state, province or other jurisdiction in which Your applicable law, then this Agreement will be governed and construed under the primary office is located.

## **End User License Agreement – JAWS® Inspect**

Last updated: November 6, 2017

IMPORTANT! BE SURE TO CAREFULLY READ AND UNDERSTAND ALL OF THE RIGHTS, OBLIGATIONS AND RESTRICTIONS SET FORTH IN THIS END USER LICENSE AGREEMENT (“EULA”). LICENSEE IS NOT AUTHORIZED TO USE THE JAWS INSPECT PROGRAM, UNLESS AND UNTIL LICENSEE ACCEPTS THE TERMS OF THIS EULA.

BY AGREEING TO THE TERMS OF THIS EULA, LICENSEE SIGNIFIES ITS ACCEPTANCE OF AND INTENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS EULA. IF LICENSEE DOES NOT ACCEPT THE TERMS AND CONDITIONS OF THIS EULA, THEN DO NOT USE, INSTALL OR DOWNLOAD THE PROGRAM.

This EULA is entered into between **Freedom Scientific, Inc.** a Delaware corporation doing business as Vispero™, with an address at 11800 31st Court North, St. Petersburg, Florida 33716, U.S.A. (referred to as “Licensor”) and you, an Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document, (referred to as “Licensee” or “Ordering Activity”) and shall be effective as of the date Licensee accepts the terms of this EULA by any of the means noted above (“Effective Date”).

### **1. DEFINITIONS**

- 1.1 “Computer” means a computer, workstation, terminal or device.
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### **9.5 Waiver.**

No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

### **9.6 Severability.**

In the event that any one or more of the provisions of this EULA are held to be invalid or otherwise unenforceable, the enforceability of the remaining provisions shall be unimpaired and enforced to the full extent permitted by law.

### **9.7 Injunctive Relief.**

To the extent permitted under applicable law, the parties agree that in the event of a breach by either party of any provision of this EULA, the non-breaching party shall be entitled to seek and obtain injunctive or other equitable relief, or both, in each case without the requirement to post any bond or other form of security, and without such act constituting an election of remedies or disentiing the non-breaching party to each and every remedy available at law or in equity for a breach of this EULA by the other party.

## **9.8 Entire Agreement.**

Except to the extent governed by an Organizational License, this EULA, together with the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s), constitutes the entire agreement between Licensee and Licensor related to the Program and supersedes all prior or contemporaneous agreements, proposals, negotiations, representations and communications between Licensee and Licensor related to the Program. Licensee acknowledges that Licensee has not been induced to enter into this EULA by any representations or promises not specifically stated herein.

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**If Licensee is government or public agency, instrumentality or institution, including without limitation a public educational, research or medical institution or body, and any terms in this EULA (including by way of example, all or part of the termination, limitation of liability, exclusive remedies, limited warranty, indemnification and injunctive relief sections) are invalid or unenforceable against Licensee because of applicable law, then those terms will be deemed excluded and unenforceable (as the case may be), and instead construed in a manner most consistent with applicable governing law.** In addition, if the applicable governing law for this EULA set forth in Section 9.3 is precluded for Licensee under applicable law, then this EULA will be governed and construed under the laws of the country, state, province or other jurisdiction in which Licensee's primary office is located.

If Licensee has questions concerning this EULA, please contact Licensor for clarification at 11800 31st Court North, St. Petersburg, FL 33716, or phone (727) 803-8000.

## **MASTER CONSULTING AGREEMENT**

**THIS CONSULTING AGREEMENT** ("Agreement") is made as of the Date set forth in the Purchase Order, Statement of Work, or similar document (the "Effective Date") by and between the Ordering Activity under GSA Schedule contracts identified in the Purchase Order, Statement of Work, or similar document ("Company" or "Ordering Activity") and The Paciello Group, LLC a New Hampshire Limited Liability Company, with a place of business located at 17757 US Highway 19 North, Suite 560, Clearwater, Florida 33764 ("TPG"). Company and TPG are also sometimes referred to individually as a "party" and together as "parties."

**WHEREAS**, TPG has extensive expertise and experience with providing specialized consulting services; and

**WHEREAS**, Company desires to secure the benefit of TPG's expertise and experience with providing such services;

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, it is agreed as follows:

### **1. Contract for Services**

Company hereby contracts for, and TPG hereby agrees to provide from time to time at Company's request, the services as defined in a "Statement of Work" ("Services") which Statements of Work will attach to this Agreement (each, a "SOW" or "Statement of Work"), and be subject to the terms and conditions contained herein. In the event of any conflict or inconsistency between the provisions of the main body of this Agreement and the provisions of a SOW, the provisions of the main body of this Agreement shall control unless specific reference is made to overriding same in the respective SOW. All services or work hereunder shall be authorized only by the execution of a SOW by duly authorized representatives of the parties hereto. In no event shall Company be liable in any way for any services provided or work performed which is outside the scope of Services.

### **2. Fees**

Company agrees to pay TPG the fees set forth in the applicable SOW for Services rendered in accordance with the GSA Schedule Pricelist. Unless a SOW states otherwise, TPG will invoice Company on a monthly basis and payment terms will be net 30 days from TPG's invoice date. Any invoiced amount not paid when due shall be subject to a service charge as indicated by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

### **3. Business Expenses**

Ordering Activity agrees to pay any travel expenses in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. Business expenses related to the completion of a SOW will be billed to Company on a monthly basis with appropriate documentation for verification. Prior written approval by the Company project manager is required for all expenditures sought for such reimbursement. Reimbursable expenses may not include any increase, mark up, burden or uplift and must be billed to Company at TPG's actual cost.

#### **4. Independent Contractor**

TPG is an independent contractor; TPG and its employees and contractors (if any) are not employees of Company. TPG shall perform the Services in a safe and professional manner. TPG must pay all applicable taxes and other costs associated with the Services, including, but not limited to, social security taxes, withholding or other income taxes, worker compensation charges, employer's liability insurance, and general liability insurance, in each case as is required by law and, as to such insurance, as is expressly required of TPG under this Agreement. TPG represents warrants and covenants that it will, as to each person performing Services on behalf of TPG hereunder, verify the identity and work authority of each such worker and/or consultant under the United States immigration laws. TPG further represents and warrants that each person performing Services on behalf of TPG shall, to TPG's knowledge, be eligible to be covered under a third party fidelity bond, and TPG shall have never been refused or had canceled coverage under a third party fidelity bond. TPG shall indemnify and hold Company harmless from and against any and all assessments, taxes, levies, claims, fines, penalties, losses, charges and expenses (including reasonable attorneys' fees) arising from TPG not complying with the preceding provisions of this Section 4. Neither TPG nor Company has any authority to bind or obligate the other party in any manner.

#### **5. Term/Termination**

This Agreement shall be in effect for a period of one year from the Effective Date and will continue thereafter until completion of any then incomplete SOW.

#### **6. Confidentiality**

Each party (for purposes of this Section 6, "Recipient") agrees that any information concerning the other party's (for purposes of this Section 6, "Discloser") business operations, systems, practices, computer systems (without limitation the programs and products used therein or related in any way thereto), products and programs (including without limitation all information whatsoever concerning or pertaining to (i) shareholders or security holders of securities issued by or serviced by clients of Discloser or (ii) clients of Discloser or such clients' customers and any documents, letters, memoranda, charts, graphs, programs and other writings or documents of any nature given to Recipient by Discloser or Discloser's agents, or obtained by Recipient (if TPG) in the course of performing a SOW or by Recipient (if Company) in connection with evaluating TPG prior to the Effective Date or in interacting with TPG in connection with this Agreement or Services, shall constitute confidential and proprietary information (the "Confidential Information"), and that Recipient, if TPG, shall use such Confidential Information of Company solely for the purpose of performing Services, and that Recipient, if Company, shall use such Confidential Information of TPG solely in connection with Company's use of the Services and Deliverables as permitted under this Agreement. Recipient agrees that such Confidential Information will be kept confidential; provided, however, that (i) any such Confidential Information may be disclosed to Recipient's officers, employees, personnel and representative who need to know such Confidential Information for, if Recipient is TPG, the purpose of performing Services (it being understood that such officers, employees, personnel and representatives shall be informed of the confidential and proprietary nature of such Confidential Information and shall be directed to use such Confidential Information as provided above and not to use or disclose such Confidential Information to any person or entity except as provided herein), or, if Recipient is Company, for Company's use of the Services and Deliverables as permitted under this Agreement, and (ii) any disclosure of such Confidential Information may be made as agreed to by the Discloser in advance, and in writing. Furthermore, Recipient shall not copy, reproduce, sell or otherwise transfer or convey any Confidential Information to any third party, except (x) as required by law and then only after first giving Discloser advance notice such that Discloser may, if it elects, seek a protective order; or (y) for Company as Recipient, to the extent required by Company's use of the Services and Deliverables as permitted under this Agreement. All documents, memoranda, graphs,

charts, programs, notes and other writings and documents whatsoever prepared by TPG and based on Confidential Information of Company shall remain subject to the confidentiality provisions hereinabove. Recipient acknowledges that disclosure of the Confidential Information of Discloser may give rise to an irreparable injury to Discloser inadequately compensable in damages. Accordingly, Discloser may seek (without the posting of any bond or other security) injunctive relief against the breach of the foregoing undertaking of confidentiality and nondisclosure, in addition to any other legal remedies which may be available. Recipient consents to the obtaining of such injunctive relief and in any proceeding upon a motion for such injunctive relief, Recipient's ability to answer in damages shall not be interposed as a defense to the granting of such injunctive relief. Notwithstanding any of the foregoing provisions of this Section 6, Confidential Information shall not include information that: (a) is now or subsequently becomes generally available to the public through no fault or breach on the part of Recipient; (b) Recipient can demonstrate to have had rightfully in its possession prior to disclosure to Recipient by Discloser; (c) is independently developed by Recipient without the use of any Confidential Information of Discloser; or (d) Recipient rightfully obtains from a third party who has the right to transfer or disclose it to Recipient without limitation.

## **7. Warranty**

TPG WARRANTS THAT THE SERVICES PROVIDED WILL BE SUBSTANTIALLY AS EXPRESSLY DESCRIBED IN THE SOW. TPG DOES NOT GUARANTEE THAT THE USE OF ANY DELIVERABLE PROVIDED TO COMPANY BY TPG IN THE PERFORMANCE OF SERVICES WILL BE ERROR FREE AND IN THE FORM DELIVERED AND WITHOUT MODIFICATION, DO NOT INFRINGE NOR WILL COMPANY'S USE IN COMPLIANCE WITH SECTION 12(c) OF SUCH DELIVERABLES WITHOUT MODIFICATION, INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. COMPANY MUST NOTIFY TPG IN WRITING OR BY EMAIL OF ANY CLAIM FOR BREACH OF THE FOREGOING WARRANTY WITHIN 60 DAYS OF TPG'S COMPLETION OF THE PARTICULAR DELIVERABLES FOR SUCH SERVICES. COMPANY'S SOLE REMEDY FOR BREACH OF THE AFORESAID WARRANTY SHALL BE TPG'S RE-PERFORMANCE OF THE NON-COMPLIANT SERVICES. NOTWITHSTANDING THE FOREGOING, TPG SPECIFICALLY DISCLAIMS ALL EXPRESS WARRANTIES (OTHER THAN AS EXPRESSLY PROVIDED IN THE APPLICABLE SOW), OR IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE AND THE WARRANTY OF MERCHANTABILITY, WITH RESPECT TO ANY SERVICES.

## **8. Notices**

All notices which either party hereto is required to give the other party shall be mailed, postage prepaid, by registered or certified mail, or by traceable express services (e.g., Federal Express, Airborne). Notices shall be sent to:

TPG:                   The Paciello Group, LLC.  
                          17757 US Highway 19  
                          Clearwater, Florida 33764  
                          Attn: General Counsel

Company: \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_  
                          \_\_\_\_\_

or to such other address as either party may designate from time to time by written notice to the other party.

## **9. Indemnification**

- (a) *By TPG.* Subject to Section 10, TPG agrees to indemnify and hold harmless Company, its officers, directors, employees, sub-contractors, agents, representatives, successors and assigns ("Company Indemnified Parties") against and in respect of any loss, cost, damage, expense, or liability (together, "Loss") by reason of tangible personal property damage or personal injury caused by the negligent or willful acts or omissions of TPG in its performance under this Agreement, including without limitation, reasonable attorney's fees, suffered by any Company Indemnified Party as a direct result of any third party claims, actions or demands arising from the negligent or willful acts or omissions of TPG in performing Services rendered to Company under this Agreement.
- (b) *By Company.* Subject to Section 10, Company agrees to indemnify and hold harmless TPG, its officers, directors, employees, sub-contractors, agents, representatives, successors and assigns ("TPG Indemnified Parties") against and in respect of any Loss by reason of a third party claim brought against TPG arising from Company's use of the Services, provided, however, that Company shall have no indemnification obligation under this Section 9(b) or otherwise under this Agreement for any Loss by reason of such third party claim to the extent TPG has an indemnification obligation therefor under Section 9(a).

## **10. Limitation of Liability**

WITH THE EXCEPTION OF BREACH OF SECTION 6 CONFIDENTIALITY, SECTION 16, EMPLOYEE DISCRIMINATION AND/OR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 4, INDEPENDENT CONTRACTOR, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR LOSS OF PROFITS, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, EXCEPT FOR TPG'S OBLIGATIONS SET FORTH IN SECTIONS 7, 16 AND/OR THE INDEMNIFICATION OBLIGATIONS UNDER SECTION 4, THE LIABILITY OF EITHER PARTY TO THE OTHER PARTY FOR ANY REASON AND UPON ANY CAUSE OF ACTION WHATSOEVER, INCLUDING THE LIABILITY OF TPG FOR ANY PROPERTY DAMAGE, IN EXCESS OF ANY RECOVERY UNDER ANY INSURANCE POLICY UNDER WHICH A CLAIM IS PAID, SHALL NEVER EXCEED THE AMOUNT RECEIVED BY TPG FROM COMPANY UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO SUCH CLAIM. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

## **11. Insurance**

TPG shall, without further cost to Company, carry insurance as follows and provide evidence of such insurance whenever requested by Company:

- (a) Comprehensive or commercial general liability and property damage insurance with minimum limits of \$1 million per occurrence and \$2 million in the aggregate, and with respect thereto, umbrella policy or excess liability coverage endorsement or policy, in an amount of not less than \$2 million;

- (b) **Workers' Compensation in accordance with all federal and state statutory requirements and Employer's Liability in an amount of not less than \$1 million per accident for bodily injury and \$1 million per employee/aggregate for disease;**
- (c) **Professional Errors & Omissions Liability insurance covering liability incurred as a result of any error or omission in performing professional services with a limit of not less than \$1 million each claim; and**
- (d) Commercial Automobile Liability insurance in an amount of not less than \$1 million per occurrence combined single limit covering bodily injury (including death) and property damage for all owned, hired and non-owned vehicles used by TPG.

Company shall be named as additional insured as its interest may appear under the commercial general liability policy of insurance. It is expressly understood and agreed that Company does not in any way represent that the above specified limits of liability or policy forms are sufficient or adequate to protect TPG's interests or liabilities.

## 12. Intellectual Property

- (a) *Results.* TPG agrees that all data, calculations, interpretations, opinions and recommendations regarding the Services ("Results"), and all copyrights in Results, consistent with a "work made for hire" under 17 U.S.C. 101, are owned by Company, and, upon payment of any amounts owed to TPG under Section 2 with respect to same, are hereby assigned by TPG to Company. Company will have the right to use the Results of the Services in any manner deemed appropriate to Company's business interests, and as required by legal and business obligations, such as, without limitation, to provide any submissions to government regulatory agencies, or to satisfy other requirements of any government agency. Consistent with the Results being Confidential Information under Section 6, TPG agrees not to publish or otherwise disclose the Results or other information concerning the Services, without the express written consent of Company, which may be withheld or granted in Company's sole discretion.
- (b) *Inventions.* TPG will disclose promptly and fully in writing to an authorized representative of Company all information, discoveries, works of authorship, designs, software, and inventions, whether or not patentable, conceived or reduced to practice by TPG as a result of the Services ("Inventions"); *provided* that the term "Inventions" shall not include any Results (which Results shall be owned under Section 12(a) by Company). All Inventions will be the property of TPG subject to (i) as applicable, the license under Section 12(c) to Company to use the Inventions; and (ii) TPG remaining bound by its obligations under Section 6 with respect to any Confidential Information of Company.
- (c) *Retention of Rights.* Company agrees that nothing in this Agreement shall be deemed to prohibit or limit TPG's use, now or at any time, of ideas, concepts, know-how, methods, techniques, skill, knowledge and experience, in any way whatsoever, that are used or developed in the performance of Services under this Agreement or any SOW, except to the extent such use is prohibited by Section 6, CONFIDENTIALITY. TPG retains all right, title, and interest in all modifications, enhancements, customizations, source code, acquired or developed during the performance of the Services under this Agreement or any SOW (excluding any Results), provided, however, that TPG shall not have any right to use with any of the foregoing, other than in performance of this Agreement, any Confidential Information. TPG hereby grants to Company a world-wide, non-exclusive, non-transferable (except as provided below), royalty-free, perpetual, worldwide license to use all deliverables provided to Company as part of performance of Services ("Deliverables"), such use solely for Company's internal uses. TPG shall have, at its sole cost and expense, the sole right to apply for, in its own name, patents, copyrights or other statutory or common law protections, worldwide, for any Deliverable or any portion thereof other than Results

(it being understood that TPG has no right to use Results other than as expressly provided in Section 12(a) or, solely for the benefit of Company, in performance of Services). Company shall have the right to transfer without TPG's consent, the above license, to its successor in connection with a sale of all or substantially all of the assets, including this Agreement, or of all, substantially all, or a controlling interest in, the equity or capital stock, as applicable, of Company, to its successor, whether by acquisition, sale or merger.

- (d) *Services Nonexclusive.* Subject to TPG's obligations under Section 6, this Agreement and SOWs hereto and the Services to be performed thereunder are not exclusive and TPG reserves the right to provide similar consulting services and its personnel to others.

### **13. Force Majeure**

Neither party shall be in default by reason of any failure in performance of this Agreement in accordance with its terms if such a failure arises out of causes beyond the control and without the fault or negligence of such party. Such causes may include, but are not restricted to, acts of God or of a public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform must be beyond the control and without fault or negligence by the party failing to perform.

### **14. Employee Solicitation**

Each party agrees that it shall not solicit or offer employment to any of the other party's personnel for a period of twelve months after the completion of all then outstanding SOWs. Notwithstanding the foregoing, if an employee of a party responds to a general recruiting advertisement placed in a newspaper or magazine of general circulation or generally on the internet not targeting any employee of the other party, such conduct shall not be deemed to violate this Section 14.

### **15. Assignment, Waiver and Severability**

**This Agreement shall not be assigned, sublicensed or in any other manner transferred to any other person or entity by either party without the prior written consent of the other party. Such consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that, in the case of an assignment or transfer by a party by operation of law, whether pursuant to a merger, consolidation, sale of all or substantially all of assignor's assets (including this Agreement), such consent by the other party shall not be required if the successor in interest to the assigning party assumes in writing all of the assigning party's duties and obligations under this Agreement.**

No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of such provision or any other provisions hereof and no waiver shall be effective unless made in writing. In the event that any provision of this Agreement shall be determined to be illegal or otherwise unenforceable, such provision shall be severed and the balance of the Agreement shall continue in full force and effect; provided, however, that either party may terminate this Agreement if any material provision of this Agreement is determined to be illegal or otherwise unenforceable by giving 20 days written notice to the other party within 30 days after such determination.

### **16. Employee Discrimination**

TPG shall comply with all applicable federal, state and local laws, regulations and ordinances concerning labor, employment, and employment discrimination, including without limitation laws relating to the protection of disabled individuals (collectively, the "Laws"). TPG shall indemnify and hold Company harmless from and against any and all claims, damages, liabilities, losses and expenses, however caused, which are brought by TPG's employees, personnel or agents and which arise from the violation or claimed violation of the Laws.

#### **17. Release of Information**

Each party agrees not to, without the prior written approval of either party, make any news release, public announcement, denial, or confirmation with respect to any part of this Agreement, or any portion of the Services, including, without limitation, any advertisement, publication or news release. Any materials developed for Company or containing Company-related information may not be used in a promotional or demonstrative capacity by TPG without the prior written consent of Company.

#### **18. Governing Law**

This Agreement shall be governed by the Federal laws of the United States.

#### **19. Survival**

All representations, warranties, covenants and obligations of a respective party made in this Agreement shall survive any termination or expiration of this Agreement to the extent necessary to give effect to such provision. Notwithstanding, any claim arising under this Agreement must be brought within one year after any termination or expiration of this Agreement.

#### **20. Entire Agreement; Amendment; Counterparts**

This Agreement, including the underlying GSA Schedule Contract, Schedule Pricelist, Purchase Order(s) and each SOW executed by both parties, sets forth the entire agreement between Company and TPG, and supersedes any and all prior agreements and understandings with respect to the subject matter hereof. Notwithstanding anything to the contrary, whether issuing or executing a purchase order, by accepting Services or Deliverables, or otherwise, Company agrees to be bound by and accept the terms and conditions contained in this Agreement. No additions, conditions, amendment, alterations, or modifications by Company or any other person, whether oral or contained in any other document submitted by Company to TPG will be binding upon TPG regardless of TPG's failure to object or TPG's provision of Services, unless and until executed in writing by both parties. This Agreement may be executed in multiple counterparts, each of which shall be effective upon delivery and, thereafter, shall be deemed to be an original, and all of which shall be taken as one and the same instrument with the same effect as if each party had signed on the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereto and may be attached to another part of this Agreement identical in form hereto and having attached to it one or more additional signature pages. This Agreement may be transmitted by facsimile or by electronic mail in portable document format ("pdf") and signatures appearing on faxed instruments and/or electronic mail instruments shall be treated as original signatures. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement, but the failure to so deliver shall not affect the validity, enforceability or binding effect hereof.