



MASTER TERMS AND CONDITIONS

PART 1. PURCHASE OF HARDWARE AND ACCESSORIES STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS (COLLECTIVELY, THE "TERMS") SHALL APPLY TO ALL REQUESTS FOR QUOTATIONS, PURCHASE ORDERS, ACKNOWLEDGEMENTS, CONFIRMATIONS OR OTHER PROCUREMENT DOCUMENTS (COLLECTIVELY, "PROCUREMENT DOCUMENTS") SUBMITTED BY YOU ("BUYER") TO 32 TECHNOLOGIES LLC ("32T") IN CONNECTION WITH THE PURCHASE OF ANY PRODUCTS (AS DEFINED BELOW) FROM 32T. THESE TERMS SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS EXPRESSED OR IMPLIED IN ANY AND ALL PROCUREMENT DOCUMENTS. 32T'S ACCEPTANCE OF ANY PURCHASE ORDER RECEIVED FROM BUYER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS. BUYER'S ACCEPTANCE OF DELIVERY OF ANY PRODUCTS, OR PAYMENT OF ANY PART OF THE PURCHASE PRICE, UNDER ANY PURCHASE ORDER PLACED WITH 32T, SHALL CONSTITUTE ITS EXPRESS ASSENT TO THESE TERMS.

- 1. Nonexclusive Relationship.** Buyer shall have a revocable, nontransferable, non-exclusive right and license to use any products purchased by Buyer from 32T (each, a "Product", and collectively, "Products"). Buyer shall have no right of exclusivity in any territory and 32T reserves the right to sell Products in any territory. Buyer shall be prohibited from re-selling or transferring Products without 32T's prior written consent.
- 2. Independent Contractors.** 32T and Buyer are independent contractors acting for their own accounts as seller and buyer, respectively, and no agency, partnership, joint venture, franchiser-franchisee or employer-employee relationship is intended or created by these Terms. Neither party shall have the power, nor hold itself out as able, to obligate, bind or make any commitment or representation, express or implied, on behalf of the other party. Any personnel working for or on behalf of Buyer shall not be considered employees or agents of 32T for any purpose, and Buyer assumes full responsibility for the acts or omissions of such personnel, and shall be solely responsible for their supervision, direction, control, compensation, benefits and taxes.
- 3. Purchase Orders.** All purchase orders issued by Buyer to 32T in respect of Products will be subject to acceptance in writing by 32T and will not be binding on 32T unless and until so accepted by 32T. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment or confirmation that are different from or in addition to those specified in these Terms will not be binding on 32T, even if signed and returned, unless they are expressly set forth in a separate written agreement signed by an authorized officer of each of 32T and Buyer. Buyer may not cancel a purchase order following its receipt by 32T.
- 4. Payment.** All prices and payments for Products sold by 32T to Buyer will be in United States Dollars. Payment terms are, at 32T's sole discretion, (i) either cash in full in advance, or (ii) where open credit (satisfactory to 32T in its sole discretion and subject to a separate agreement between the parties as it relates to the terms of such credit) is established by Buyer, net thirty (30) days from the date of invoice or as otherwise determined by 32T. Buyer hereby authorizes 32T to charge any credit card provided by Buyer for the payment of fees, costs and expenses related to the purchase of Products from 32T, unless Buyer and 32T agree in advance to alternate arrangements. 32T will indicate in its acceptance of any purchase order issued by Buyer, the specific payment terms that are applicable to Buyer in respect of such purchase order. Any amounts not paid when due shall bear interest at the rate equal to the lesser of: (x) one and one-half percent (1½%) per month of such amount beginning on the date the payment was due, and (y) the maximum amount allowed under applicable law. All fees, charges and other payments to be made under these Terms exclude all present and future withholding taxes, charges, fees, duties, levies or other assessments (including, without limitation, income, gross receipts, net proceeds, turnover, sales, use, franchise, excise, value added, license, customs duties, user, transfer or similar taxes imposed by the United States or by any state, municipality, subdivision or governmental authority or by any foreign country or by any other tax authority, in each case to the extent relevant in the given context, and including any interest, penalties or additions to tax attributable to such taxes) (collectively, "Taxes") imposed upon or with respect to or measured by the sale or delivery by 32T to Buyer of any Product pursuant to these Terms. Such Taxes (including



all applicable sales taxes), as applicable, will be the responsibility of and for the account of Buyer. Notwithstanding the foregoing, Buyer will have no obligation to pay any income tax imposed on 32T or any of its affiliates which may arise from the transactions contemplated by these Terms.

5. **Shipment.** All Products will be shipped by 32T or its designee Ex Works (Incoterms 2010) Manufacturer's (as defined in Section 11 below) point of shipment or 32T's warehouse, as applicable, in 32T's sole discretion. Unless otherwise agreed in writing, 32T or its designee will select the carrier, the mode of shipment, the packaging and the extent of any insurance against loss or damage to the Products during shipment, and Buyer will be responsible for paying all shipping, freight, and insurance charges associated with its order. Depending on the availability of Products in stock, 32T may delay delivery or make partial shipments of, and require partial payments for, the quantity of Products specified in an accepted purchase order.
6. **Limited Warranty.** Buyer's sole remedy in the event a Product malfunctions or is otherwise found to be defective shall be those remedies or services as are stipulated in 32T's stated limited warranty as provided by 32T to Buyer. 32T EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything contained herein to the contrary, in no event shall 32T be liable for any special, exemplary, indirect, incidental or consequential damages (including loss of profits, use, data or other economic advantage), however caused, arising out of or otherwise relating to the performance or nonperformance of 32T hereunder, even if Buyer has been advised of the possibility or probability of such damages and even if any exclusive remedies provided for in these Terms fail of their essential purpose, provided that this limitation shall not apply to third party claims for such damages that are subject to an indemnity obligation hereunder. FURTHERMORE, IN NO EVENT SHALL 32T'S CUMULATIVE LIABILITY FOR ALL CLAIMS OF WHATEVER KIND, IN THE AGGREGATE, ARISING UNDER, RELATED TO OR IN CONNECTION WITH THESE TERMS, OR 32T'S PRODUCTS, EXCEED THE SUM OF TEN THOUSAND DOLLARS (\$10,000) OR FIFTY PERCENT (50%) OF THE TOTAL AMOUNT PAID TO 32T BY BUYER PURSUANT TO THESE TERMS, WHICHEVER IS LOWER.
7. **License to Use Software.** Certain software that may be incorporated into or utilized by the Products is licensed to 32T from one or more Manufacturers. To the extent any software is so incorporated or utilized, 32T hereby grants to Buyer and Buyer hereby accepts from 32T, a non-exclusive, fully paid up, royalty-free right and license to use and execute any such software required for the use of the Product; provided, however, nothing in these Terms shall be construed as a sale, assignment or transfer of such software or the Intellectual Property Rights related thereto to Buyer. For purposes of these Terms, "Intellectual Property Rights" shall mean the intangible legal rights or interests evidenced by or embodied in (i) any idea, design, concept, technique, invention, discovery or improvement, regardless of patentability, but including patents, patent applications, trade secrets and know-how, (ii) any work of authorship, regardless of copyright ability, but including copyrights and any moral rights recognized by law, or (iii) any other similar rights, in each case on a worldwide basis.
8. **Technical Support.** Technical support for any Products purchased by Buyer shall be provided by 32T or its agents in accordance with 32T's standard policies and procedures as established or amended by 32T, in its sole discretion, from time to time.
9. **Proprietary Rights.** Buyer acknowledges that 32T owns or licenses and shall continue to own or license all title, interests and rights, including all Intellectual Property Rights, in the data, schematics, layout, designs, specifications, firmware and software for the Products. Buyer may not decompile, disassemble, reverse engineer or modify any Product purchased from 32T, or combine it with, or incorporate it in, other products without the prior written authorization of 32T. Any person that (i) purchases or licenses the Products and resells the Products after incorporating other hardware and/or software into the Products or the Products into other hardware, (ii) combines various components and programs into a functioning system, customized for a particular person's needs, or (iii) acquires or licenses the Products and reuses or incorporates them into new products, which such person then markets, sells or distributes, shall be solely liable for any damages (x) caused by the alteration of such Product or (y) arising from the failure of such Product, as altered, to properly function. For the avoidance of doubt, in no event shall 32T or a Manufacturer be liable for any damages caused by a Product's alteration, or arising from the failure of a Product, as

altered by Buyer or any other person, to properly function.

10. **Trademarks.** No right, title or interest in or to any trademarks (together with any trade names, slogans, labels or designs, "Trademarks") used by any Manufacturer or 32T, nor the goodwill connected thereto, is conveyed by these Terms. Title to and exclusive ownership of all Trademarks shall at all times remain with such Manufacturer or 32T, as applicable. Buyer shall not use any marks that are confusingly similar with a Manufacturer's or 32T's Trademarks, or use any combination marks that include any such Trademarks, without 32T's prior written approval, and shall not take any action inconsistent with such Manufacturer's or 32T's exclusive ownership of its Trademarks. Any and all use of Trademarks by Buyer shall inure to the benefit of the applicable Manufacturer and/or 32T, as applicable.
11. **Indemnification.** Buyer shall defend, indemnify and hold 32T (including its agents) and any manufacturer of a Product (including any manufacturer of cables or accessories manufactured for use with such Product) (each, a "Manufacturer") harmless from and against any and all losses, damages, costs, expenses and fees (including reasonable attorney's fees) resulting from, arising out of or relating to any claim by a third party based on the acts, omissions or misrepresentations of Buyer or its employees, agents or contractors.
12. **Remedies.** Without limiting any of the remedies available to 32T at law or in equity, 32T shall have the right to cancel, or withhold shipment under, any accepted purchase order for which payment has not yet been received, and to require prepayment, or change or limit the credit terms, for any subsequent purchase order, in the event (i) 32T becomes aware of any material adverse change in the financial condition or creditworthiness of Buyer, (ii) Buyer sells a part or all of its business or assets to a third party, (iii) Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iv) Buyer fails to make any payment when due or is otherwise in material breach of any of its obligations to 32T and has not cured such breach within thirty (30) days of receiving a written notice of such breach from 32T.
13. **Termination.** These Terms between 32T and Buyer shall continue until terminated by mutual agreement of the parties or by 32T as follows: 32T may terminate these Terms (i) at any time by giving Buyer sixty (60) days written notice, (ii) immediately if Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iii) whenever Buyer is in material breach of any of its obligations to 32T under these Terms and has not cured its breach within thirty (30) days of receiving a written notice of the breach from 32T. Notwithstanding the foregoing, the parties agree that either party's obligation to pay any and all amounts due and owing by it under these Terms prior to the termination of these Terms and the covenants, agreements and obligations of the parties in Sections 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17 and 18 hereof shall survive the expiration or termination of these Terms.
14. **Compliance with Laws.** Buyer shall, and shall procure that its agents and employees shall at all times, comply with all applicable treaties, laws, statutes, ordinances, rules and regulations (including without limitation, (i) all anti-corruption laws, rules, regulations and decrees, including the United States Foreign Corrupt Practices Act (FCPA), as amended, the U.K. Bribery Act, as amended, and any implementing legislation under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (ii) all laws and regulations relating to export control to the extent applicable to the Product) of any applicable federal, state, local or other governmental agency or authority of the United States or any other country in the performance of its obligations hereunder and/or in the use of a Product. Buyer shall take commercially reasonable action to prevent violations of all such applicable laws, rules and regulations by its agents and employees in connection with the use of a Product, whether intentional or unintentional. In the event such a violation occurs, Buyer shall immediately take commercially reasonable actions upon consultation with 32T to cure such violation promptly. Buyer shall promptly advise 32T in the event Buyer has knowledge or reason to believe that any of Buyer's agents or employees is in non-compliance with any applicable law, rule or regulation.
15. **Assignment.** These Terms, and Buyer's rights and obligations hereunder are personal to Buyer, and Buyer may not assign its rights or delegate its duties hereunder without 32T's prior written consent, to be delivered to Buyer in 32T's sole discretion. Any contrary assignment or



delegation by Buyer shall be null, void and of no effect. 32T may assign all or any part of these Terms, or any of its rights hereunder, to any person. The parties' rights and obligations under these Terms shall be binding upon and inure to the benefit of each party's successors and permitted assigns.

16. **Alternative Dispute Resolution.** Any controversy or claim between the parties arising out of, relating to or in connection with these Terms, or any breach hereof, except for Buyer's failure to make a payment pursuant to Section 4 of these Terms, shall be settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Dispute Resolution Procedures (the "Rules"). Such arbitration shall take place in New York, New York before a panel of three neutral arbitrators selected pursuant to such Rules. The arbitrators' award shall include an allocation of arbitration fees, expenses and compensation, and shall include an award to the prevailing party of its attorney's fees, costs and expenses in connection with the arbitration. Any proceedings ancillary to the arbitration, including without limitation any action or proceeding to enforce the arbitrator's award or judgment entered thereon, shall be brought in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, the courts having exclusive jurisdiction thereof, each party hereby consenting to the exclusive jurisdiction of such courts over it and waiving, to the fullest extent permitted by law, any defense or objection relating to in personam jurisdiction, venue or convenience of the forum. All matters arising in any action to enforce an arbitral award shall be determined in accordance with the law and practice of such forum courts.
17. **Governing Law and Jurisdiction.** These Terms will be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to principles of conflict of laws. The parties specifically exclude the application of the United Nations Convention on the International Sale of Goods. Buyer agrees to submit to jurisdiction and stipulates to proper venue in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, for the adjudication or disposition of any claim, action or dispute arising under or in connection with these Terms that is not amicably settled by the parties.
18. **Entire Terms.** These Terms set forth the entire understanding and agreement of the parties with respect to the purchase and sale of Products, and supersede all prior oral or written agreements, negotiations, discussions, commitments and understandings between the parties as to such subject matter. These Terms may not be waived, amended or modified, in whole or in part, except by a subsequent written agreement signed by an officer of each party. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.
19. **Severability.** If any part of these Terms shall be held invalid or unenforceable, such determination shall not affect the validity or enforceability of any remaining portion, which shall remain in force and effect as if these Terms had been executed with the invalid or unenforceable portion thereof eliminated.

PART 2. SOFTWARE PLATFORM SUBSCRIPTION STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS (COLLECTIVELY, THE "TERMS") SHALL APPLY TO (I) EACH SOLUTION SUBSCRIPTION ("SUBSCRIPTION") PURCHASED BY YOU ("BUYER") FROM 32 TECHNOLOGIES LLC ("32T"), WHICH SUBSCRIPTION ENTITLES BUYER AND BUYER'S AGENTS AND EMPLOYEES TO ACCESS AND USE A SPECIFIC SOLUTION (AS DEFINED BELOW) OWNED OR LICENSED BY 32T, AND (II) ALL RATE SHEETS, INVOICES, PURCHASE ORDERS, ACKNOWLEDGEMENTS, CONFIRMATIONS, OR OTHER PROCUREMENT DOCUMENTS (COLLECTIVELY, "PROCUREMENT DOCUMENTS") RELATED THERETO. THESE TERMS SHALL ALSO APPLY TO ALL CHANGES (AS DEFINED BELOW) AND ALL REQUESTS FOR CHANGES (IN EACH CASE, WHETHER MADE IN WRITING OR ORALLY) SUBMITTED BY BUYER TO 32T IN CONNECTION WITH THE MODIFICATION OF ONE OR MORE EXISTING SUBSCRIPTIONS. THESE TERMS SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS EXPRESSED OR IMPLIED IN ANY PROCUREMENT DOCUMENTS. 32T'S ACCEPTANCE OF ANY REQUESTS FOR ADDITIONAL



SUBSCRIPTIONS RECEIVED FROM BUYER SHALL BE CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS. THE USE BY BUYER, ITS AGENTS OR EMPLOYEES, OF ANY SOLUTION OR SOFTWARE OWNED OR LICENSED BY 32T, OR PAYMENT OF ANY PART OF THE PURCHASE PRICE FOR A SUBSCRIPTION UNDER ANY PURCHASE ORDER PLACED WITH 32T, SHALL CONSTITUTE BUYER'S EXPRESS ASSENT TO THESE TERMS.

1. **Licenses; Nonexclusive Relationship.** Subject to the terms and conditions set forth in these Terms, 32T hereby grants to Buyer and Buyer hereby accepts from 32T, a revocable, transferable (solely to Buyer's agents and employees), non-exclusive, fully paid up, royalty free right and license to access and use 32T's (i) enterprise solution (i.e., the solution resides on Buyer's servers), hosted solution (i.e., the solution is accessible by Buyer via 32T's servers), or desktop solution (i.e., a program is downloaded to Buyer's desktop computer), as applicable and in each case whether owned or licensed by 32T (each, a "Solution", and collectively, "Solutions"), and (ii) all software and firmware associated with or embedded in any hardware that is integrated into a Solution (together with all upgrades, enhancements, modifications or customizations of such software and firmware, the "Software"). Each Subscription shall entitle Buyer to access and use the Solution and the Software for a maximum number of separate assets, units, devices or mechanisms, as provided in the applicable Procurement Documents. Buyer shall have no right of exclusivity to access and use the Solution or the Software in any territory and 32T reserves the right to sell Subscriptions to use the same Solution and Software in any territory, including a territory in which Buyer has purchased or may purchase Subscriptions.
2. **Independent Contractors.** 32T and Buyer are independent contractors acting for their own accounts as seller and buyer, respectively, and no agency, partnership, joint venture, franchiser-franchisee or employer-employee relationship is intended or created by these Terms. Neither party shall have the power, nor hold itself out as able, to obligate, bind or make any commitment or representation, express or implied, on behalf of the other party. Any personnel working for or on behalf of Buyer shall not be considered employees or agents of 32T for any purpose, and Buyer assumes full responsibility for the acts or omissions of such personnel, and shall be solely responsible for their supervision, direction, control, compensation, benefits and taxes.
3. **Purchase Orders.** All purchase orders issued by Buyer to 32T in respect of Subscriptions will be subject to acceptance in writing by 32T and will not be binding on 32T unless and until so accepted by 32T. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment or confirmation that are different from or in addition to those specified in these Terms will not be binding on 32T, even if signed and returned, unless they are expressly set forth in a separate written agreement signed by an authorized officer of each of 32T and Buyer. Buyer may not cancel a purchase order following its receipt by 32T.
4. **Provisioning.** Buyer shall promptly notify 32T, in the manner prescribed by 32T from time to time, of the addition or removal of any asset, unit, device or mechanism that accesses and/or uses a Solution (and/or any related Software) or other change (each, a "Change") in or to a Subscription requested by Buyer. Buyer shall be responsible for all charges incurred from the date a Subscription commences through the date Buyer properly notifies 32T of a Change. In the event Buyer does not properly notify 32T, in the manner prescribed by 32T, of a Change, Buyer shall be responsible for all charges incurred in connection with the applicable Subscription up to and including the business day following the business day Buyer properly notifies 32T of the Change.
5. **Pricing, Fees and Payment.** Buyer shall pay to 32T (or its designee) in advance, with respect to any year (or such other period as Buyer and 32T may establish), the sum of all subscription fees to be incurred pursuant to these Terms for such year (or such other period as agreed), for all Subscriptions, in each case, calculated using the prices set forth in the applicable Procurement Documents. All prices and payments for Subscriptions sold by 32T to Buyer will be in United States Dollars. All amounts to be paid by Buyer shall be paid in full as set forth in the applicable Procurement Documents unless the parties otherwise agree in writing. Buyer hereby authorizes 32T to charge any credit card provided by Buyer for the payment of fees, costs and expenses related to the purchase of Subscriptions from 32T, unless Buyer and 32T agree in advance to alternate arrangements. Any amounts not paid when due shall bear interest at the rate equal to the lesser of: (x) one and one-half percent (1½%) per month of such amount beginning on the date the payment was due, and (y) the maximum amount allowed under applicable law. All fees,



charges and other payments to be made under these Terms exclude all present and future withholding taxes, charges, fees, duties, levies or other assessments (including, without limitation income, gross receipts, net proceeds, turnover, sales, use, franchise, excise, value added, license, customs duties, user, transfer or similar taxes imposed by the United States or by any state, municipality, subdivision or governmental authority therein, or by any foreign country or by any other tax authority, in each case to the extent relevant in the given context, and including any interest, penalties or additions to tax attributable to such taxes) (collectively, "Taxes") imposed upon or with respect to or measured by the sale or delivery by 32T to Buyer of any Subscription or Software pursuant to these Terms. Such Taxes (including all applicable sales taxes), as applicable, will be the responsibility of and for the account of Buyer. Notwithstanding the foregoing, Buyer will have no obligation to pay any income tax imposed on 32T or any of its affiliates which may arise from the transactions contemplated by these Terms.

6. **Deposit.** Prior to receiving access to any Solution owned or licensed by 32T, Buyer shall deposit with 32T funds as set forth in the applicable Procurement Documents, if requested by 32T. Such deposit may be applied by 32T, in its sole discretion, against any amount due to 32T by Buyer if such amount is not paid in full when due.
7. **Delivery.** Any Software delivered to Buyer in connection with a Solution will be delivered by 32T to the location specified by Buyer in the applicable Procurement Documents. Unless otherwise agreed in writing, 32T or its designee will select the manner in which such Software will be delivered, and Buyer will be responsible for paying all shipping, freight and insurance charges, if any, associated with its order.
8. **Technical Support.** Technical support for the Solutions and in respect of any Subscriptions purchased by Buyer shall be provided by 32T or its agents in accordance with 32T's standard policies and procedures as established or amended by 32T, in its sole discretion, from time to time.
9. **Representations and Warranties.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NONE OF 32T OR ANY OF ITS AFFILIATES HAVE MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SOLUTIONS, THE SOFTWARE OR ANY SUBSCRIPTION. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 32T AND ITS AFFILIATES EXPRESSLY DISCLAIM WITH RESPECT TO BUYER AND ITS AGENTS, AND BUYER (ON ITS OWN BEHALF AND ON BEHALF OF ITS AGENTS) HEREBY EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES OF 32T AND ITS AFFILIATES ARISING AT LAW, EQUITY OR OTHERWISE, WITH RESPECT TO, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF THE SOLUTIONS, THE SOFTWARE OR ANY SUBSCRIPTION; AND (D) ANY WARRANTY UNDER ANY THEORY OF LAW OR EQUITY, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY 32T.
10. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL 32T BE LIABLE TO BUYER FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF BUSINESS OR LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT OR MALFUNCTION OF SOFTWARE, OR DAMAGES TO BUSINESS OR REPUTATION, WHETHER FORESEEABLE OR NOT ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY 32T OF ANY ASPECT OF THESE TERMS WHETHER IN CONTRACT OR TORT OR OTHERWISE, AND WHETHER THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In addition, without limiting the generality of the foregoing, Buyer acknowledges and agrees that it shall have no right of recovery for the satisfaction of any cause whatsoever, arising out of or relating to these Terms, against (a) any affiliate of 32T, (b) any licensor of 32T in the provision of the Software or the Subscriptions in any circumstances in which 32T or its affiliates would be obligated to indemnify the licensor, or (c) any officer, director, employee, agent, partner or shareholder of 32T or its affiliates. The aggregate liability of 32T and its affiliates for any claim arising out of, in connection with or relating to these Terms shall be limited to direct damages proven in an amount not to exceed Ten Thousand U.S. Dollars (US\$10,000). Buyer has accepted the limitations of liability set forth in these Terms as



part of the exchange of consideration under these Terms and expressly acknowledges that the prices for the Subscriptions would be higher if 32T were requested to bear additional liability for damages.

11. **Interruptions.** Buyer acknowledges that interruptions of Subscriptions may occur from time to time as the result of, among other things, technical difficulties with the Solutions, the Software or third party networks or communications devices. Buyer acknowledges that such interruptions are difficult to assess as to cause or resulting damages. The parties agree that 32T and its affiliates shall not be liable to Buyer for any losses or damages arising out of any failure or impaired performance of, error, omission, interruption, deletion, defect, delay in operation or transmission, communication failure, theft or destruction or unauthorized access to, alteration of, or use of records, associated with the Software, the Solutions, any component thereof, or any third party networks or communications devices, whether for breach of contract, tortious behavior, negligence or under any other cause of action.
12. **No Liability.** None of 32T or any of its affiliates or agents shall be liable for any act or omission of Buyer, any of its agents or employees, or any other person or entity furnishing services to Buyer, its agents or employees, nor shall 32T or its affiliates or agents be liable for any damages or losses of any kind whatsoever due to any act or omission of Buyer, its agents or employees, or the failure of such services.
13. **Proprietary Rights.** Buyer acknowledges that 32T owns or licenses and shall continue to own or license all title, interests and rights, including all intellectual property rights, in the Solutions and the Software. Nothing in these Terms shall be construed as a sale, assignment or transfer of the Solutions, the Software or any other intellectual property rights of 32T or its licensors to Buyer, provided Buyer shall have a license to access and use the Solutions and the Software as set forth in Section 1 of these Terms. Buyer may not decompile, disassemble, decode, reverse engineer, alter, modify, adapt, or create any derivative works based on the Solutions or any Software, or combine the Software with, or incorporate it in, other products without the prior written authorization of 32T. Buyer shall be solely liable to 32T or its licensor, as applicable, for any and all liabilities and damages associated with (i) copying, reselling or otherwise transferring the Software, including after incorporating other software into the Software, (ii) modifying or combining various Solutions components and programs, or (iii) attempting to sublicense the Software for reuse or incorporation into new products. For the avoidance of doubt, in no event shall 32T be liable for any damages caused by Buyer's alteration of the Software, any modifications made by Buyer to the Solutions, or arising from the failure of the Software, including as altered by Buyer or any other person, to properly function.
14. **Trademarks.** No right, title or interest in or to any trademarks (together with any trade names, slogans, labels or designs, "Trademarks") owned or used by 32T, nor the goodwill connected thereto, is conveyed by these Terms. Title to and exclusive ownership of all Trademarks shall at all times remain with 32T, and any and all use of Trademarks by Buyer shall inure solely to the benefit of 32T. Buyer shall not use any marks that are confusingly similar with 32T's Trademarks, or use any combination marks that include any such Trademarks, without 32T's prior written approval, and shall not take any action inconsistent with 32T's exclusive ownership of the Trademarks. Notwithstanding the foregoing, 32T hereby grants to Buyer and Buyer hereby accepts from 32T a nontransferable (except to Buyer's agents and employees), nonassignable, revocable, nonexclusive right, with the right to sublicense solely to Buyer's agents and employees, to use 32T's end-user logo (and the goodwill associated with 32T's end-user logo) and any other logos or Trademarks specifically approved for use in writing by 32T, in connection with the operation and use of the Solutions and/or any related Software.
15. **Abuse and Fraudulent Use.** Access to a Solution and the Software is furnished subject to the condition that there be no abuse or fraudulent use of such Solution or the Software by Buyer or its agents or employees. Buyer shall not abuse or fraudulently use any Solution or the Software and shall take any and all steps necessary to control and prevent abuse or fraudulent use of such Solution and the Software by its agents and employees. Buyer shall promptly advise 32T in the event Buyer has actual knowledge or reason to believe that any of its agents or employees is abusing or fraudulently using a Solution or the Software in violation of this Section 15. In the event 32T is advised or reasonably believes that Buyer or any of its agents or employees is abusing or

fraudulently using a Solution or the Software as specified in this Section 15, 32T shall have the right to immediately terminate the licenses granted to Buyer hereunder and to terminate Buyer's access to such Solution and any or all of Buyer's Subscriptions, and 32T shall have no liability for such termination of access to such Solution or of Buyer's Subscriptions.

16. **Compliance.** Buyer shall, and shall procure that its agents and employees shall at all times, comply with all applicable treaties, laws, statutes, ordinances, rules and regulations (including without limitation, (i) all anti-corruption laws, rules, regulations and decrees, including the United States Foreign Corrupt Practices Act (FCPA), as amended, the U.K. Bribery Act, as amended, and any implementing legislation under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (ii) all laws and regulations relating to export control to the extent applicable to the Subscriptions) of any applicable federal, state, local or other governmental agency or authority of the United States or any other country in the performance of its obligations hereunder and/or in the use of a Solution and the Software. Buyer shall take commercially reasonable action to prevent violations of all such applicable laws, rules and regulations by its agents and employees in connection with the use of a Solution or the Software, whether intentional or unintentional. In the event such a violation occurs, Buyer shall immediately take commercially reasonable actions upon consultation with 32T to cure such violation promptly. Buyer shall promptly advise 32T in the event Buyer has knowledge or reason to believe that any of Buyer's agents or employees is in non-compliance with any applicable law, rule or regulation. 32T may upon discovery or reasonable suspicion of any such violation discontinue Subscriptions to Buyer.
17. **Indemnification.** Buyer shall defend, indemnify and hold 32T (including its agents) harmless from and against any and all losses, damages, costs, expenses and fees (including reasonable attorney's fees) resulting from, arising out of or relating to any claim by a third party based on the acts, omissions or misrepresentations of Buyer or its employees or agents.
18. **Remedies.** Without limiting any of the remedies available to 32T at law or in equity, 32T shall have the right to cancel, or withhold delivery of Subscriptions in the event (i) 32T becomes aware of any material adverse change in the financial condition or creditworthiness of Buyer, (ii) Buyer sells a part or all of its business or assets to a third party, (iii) Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iv) Buyer fails to make any payment when due or is otherwise in material breach of any of its obligations to 32T and has not cured such breach within thirty (30) days of receiving a written notice of such breach from 32T.
19. **Termination.** These Terms between 32T and Buyer shall continue until terminated by mutual agreement of the parties or by 32T as follows: 32T may terminate these Terms (i) at any time by giving Buyer sixty (60) days written notice, (ii) immediately if Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, (iii) whenever Buyer is in breach of the provisions of Sections 5, 6, 12, 13, 14 and 15 of these Terms, or (iv) whenever Buyer is in material breach of any of its other obligations to 32T under these Terms and has not cured such breach within thirty (30) days of receiving a written notice of the breach from 32T. Notwithstanding the foregoing, the parties agree that Buyer's obligation to pay any and all amounts due and owing by it under these Terms prior to the termination of these Terms and the covenants, agreements and obligations of the parties in Sections 5, 6, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23 and 24 hereof shall survive the expiration or termination of these Terms.
20. **Assignment.** These Terms, and Buyer's rights and obligations hereunder are personal to Buyer, and Buyer may not assign its rights or delegate its duties hereunder without 32T's prior written consent, to be delivered to Buyer in 32T's sole discretion. Any contrary assignment or delegation by Buyer shall be null, void and of no effect. 32T may assign all or any part of these Terms, or any of its rights hereunder, to any person. The parties' rights and obligations under these Terms shall be binding upon and inure to the benefit of each party's successors and permitted assigns.
21. **Alternative Dispute Resolution.** Any controversy or claim between the parties arising out of, relating to or in connection with these Terms, or any breach hereof, except for Buyer's failure to make a payment pursuant to Section 5 of these Terms, shall be settled by final and binding



arbitration administered by the American Arbitration Association under its Commercial Dispute Resolution Procedures (the "Rules"). Such arbitration shall take place in New York, New York before a panel of three neutral arbitrators selected pursuant to such Rules. The arbitrators' award shall include an allocation of arbitration fees, expenses and compensation, and shall include an award to the prevailing party of its attorney's fees, costs and expenses in connection with the arbitration. Any proceedings ancillary to the arbitration, including without limitation any action or proceeding to enforce the arbitrator's award or judgment entered thereon, shall be brought in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, the courts having exclusive jurisdiction thereof, each party hereby consenting to the exclusive jurisdiction of such courts over it and waiving, to the fullest extent permitted by law, any defense or objection relating to in personam jurisdiction, venue or convenience of the forum. All matters arising in any action to enforce an arbitral award shall be determined in accordance with the law and practice of such forum courts.

22. **Governing Law and Jurisdiction.** These Terms will be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to principles of conflict of laws. The parties specifically exclude the application of the United Nations Convention on the International Sale of Goods. Buyer agrees to submit to jurisdiction and stipulates to proper venue in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, for the adjudication or disposition of any claim, action or dispute arising under or in connection with these Terms that is not amicably settled by the parties.
23. **Entire Terms.** These Terms set forth the entire understanding and agreement of the parties with respect to the purchase and sale of Subscriptions and the license of the Solution and the Software to Buyer and supersede all prior oral or written agreements, negotiations, discussions, commitments and understandings between the parties as to such subject matter. These Terms may not be waived, amended or modified, in whole or in part, except by a subsequent written agreement signed by an officer of each party. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.
24. **Severability.** If any part of these Terms shall be held invalid or unenforceable, such determination shall not affect the validity or enforceability of any remaining portion, which shall remain in full force and effect as if these Terms had been executed with the invalid or unenforceable portion thereof eliminated.

PART 3A. PURCHASE OF DATA SERVICES STANDARD TERMS AND CONDITIONS

THE FOLLOWING TERMS AND CONDITIONS (COLLECTIVELY, THE "TERMS") SHALL APPLY TO ALL PURCHASES OF SERVICE (AS DEFINED BELOW), ALL CHANGES (AS DEFINED BELOW) AND ALL REQUESTS FOR CHANGES (IN EACH CASE, WHETHER MADE IN WRITING OR ORALLY) SUBMITTED BY YOU ("BUYER") TO 32 TECHNOLOGIES LLC ("32T") IN CONNECTION WITH THE PURCHASE OR USE, AS APPLICABLE, OF ANY SERVICES FROM 32T. THESE TERMS SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS EXPRESSED OR IMPLIED IN ANY AND ALL PROCUREMENT DOCUMENTS OR CHANGE REQUESTS. 32T'S ACCEPTANCE OF ANY CHANGE REQUEST RECEIVED FROM BUYER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS. BUYER'S ACCEPTANCE OF DELIVERY OF ANY SERVICES, OR PAYMENT OF ANY PART OF THE PURCHASE PRICE, UNDER ANY PURCHASE ORDER PLACED WITH OR ANY CHANGE REQUEST MADE TO 32T, SHALL CONSTITUTE BUYER'S EXPRESS ASSENT TO THESE TERMS.

1. **Nonexclusive Relationship.** Buyer shall have a revocable, nontransferable, non-exclusive right and license to distribute or resell any products purchased by Buyer from 32T pursuant to an Agreement for Purchase of Data Services (each, a "Service", and collectively, "Services"). Buyer shall have no right of exclusivity in any territory and 32T reserves the right to authorize or appoint other parties as buyers or distributors of Services in any territory in which Buyer may sell Services. Furthermore, 32T may prohibit Buyer from selling Services in any territory in which 32T has appointed a third party to be its exclusive distributor of Services in such territory, now or in the

future.

2. **Independent Contractors.** 32T and Buyer are independent contractors acting for their own accounts as seller and buyer, respectively, and no agency, partnership, joint venture, franchiser-franchisee or employer-employee relationship is intended or created by these Terms. Neither party shall have the power, or hold itself out as able, to obligate, bind or make any commitment or representation, express or implied, on behalf of the other party. Any personnel working for or on behalf of Buyer shall not be considered employees or agents of 32T for any purpose, and Buyer assumes full responsibility for the acts or omissions of such personnel, and shall be solely responsible for their supervision, direction, control, compensation, benefits and taxes.
3. **Provisioning.** Buyer shall promptly notify 32T, in the manner prescribed by 32T from time to time, of each Subscriber Communicator addition, address change, suspension or deletion from the applicable underlying network or other change (each, a "Change") in the Service requested by Buyer. Buyer shall be responsible for all charges incurred from the date of any Subscriber addition through the date Buyer properly notifies 32T of such Change. In the event Buyer does not properly notify 32T, in the manner prescribed by 32T, of a Change, Buyer shall be responsible for all charges incurred by that Subscriber through and including the business day following the business day Reseller properly notifies 32T of that Change.
4. **Pricing, Fees and Payment.** Buyer shall pay to 32T (or its designee), with respect to any month (or such other period as the underlying network provider establishes), the sum of all charges incurred pursuant to these Terms for such month (or, to the extent not previously billed, any prior month), for all Subscriber Communicators in each case, calculated using the prices set forth in the Price Plan Addendum. All prices and payments for Services sold by 32T to Buyer will be in United States Dollars. All amounts to be paid by Buyer shall be paid in full as set forth in the Price Plan Addendum unless the parties otherwise agree in writing. Buyer hereby authorizes 32T to charge any credit card provided by Buyer for the payment of fees, costs and expenses related to the purchase of Services from 32T, unless Buyer and 32T agree in advance to alternate arrangements. Any amounts not paid when due shall bear interest at the rate equal to the lesser of: (x) one and one-half percent (1½%) per month of such amount beginning on the date the payment was due, and (y) the maximum amount allowed under applicable law. All fees, charges and other payments to be made under these Terms exclude all present and future withholding taxes, charges, fees, duties, levies or other assessments (including, without limitation income, gross receipts, net proceeds, turnover, sales, use, franchise, excise, value added, license, customs duties, user, transfer or similar taxes imposed by the United States or by any state, municipality, subdivision or governmental authority or by any foreign country or by any other tax authority, in each case to the extent relevant in the given context, and including any interest, penalties or additions to tax attributable to such taxes) (collectively, "Taxes") imposed upon or with respect to or measured by the sale or delivery by 32T to Buyer of any Service pursuant to these Terms. Such Taxes, as applicable, will be the responsibility of and for the account of Buyer. Notwithstanding the foregoing, Buyer will have no obligation to pay any income tax imposed on 32T or any of its affiliates which may arise from the transactions contemplated by these Terms.
5. **Deposit.** Prior to receiving Services in connection with a particular Subscriber Communicator, Buyer shall deposit with 32T funds as set forth in the Price Plan Addendum. Such deposits may be applied by 32T, in its sole discretion, against any amount due to 32T by Buyer if such amount is not paid in full when due.
6. **Technical Support.** Technical support for any Services purchased by Buyer shall be provided by 32T in accordance with its standard policies and procedures as established or amended by 32T, in its sole discretion, from time to time.
7. **Representations and Warranties.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NONE OF 32T OR ANY OF ITS AFFILIATES HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE UNDERLYING NETWORK OR THE SERVICES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 32T AND ITS AFFILIATES EXPRESSLY DISCLAIM WITH RESPECT TO BUYER AND ITS AGENTS AND SUBSCRIBERS, AND BUYER (ON ITS OWN BEHALF AND ON BEHALF OF ITS AGENTS AND SUBSCRIBERS) HEREBY EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES OF 32T AND ITS AFFILIATES ARISING AT LAW, EQUITY OR OTHERWISE, WITH RESPECT TO, INCLUDING, BUT NOT LIMITED TO: (A)



ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF THE UNDERLYING NETWORK OR THE SERVICES; AND (D) ANY WARRANTY UNDER ANY THEORY OF LAW OR EQUITY, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY 32T.

8. **Limitation of Liability.** UNDER NO CIRCUMSTANCES SHALL 32T BE LIABLE TO BUYER FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING LOST PROFITS, LOSS OF BUSINESS OR LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT OR SERVICES, OR DAMAGES TO BUSINESS OR REPUTATION, WHETHER FORESEEABLE OR NOT ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE BY 32T OF ANY ASPECT OF THESE TERMS WHETHER IN CONTRACT OR TORT OR OTHERWISE, AND WHETHER THEY HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In addition, without limiting the generality of the foregoing, Buyer acknowledges and agrees that it shall have no right of recovery for the satisfaction of any cause whatsoever, arising out of or relating to these Terms, against (a) any affiliate of 32T, (b) any supplier of services or equipment used in the provision of the Services in any circumstances in which 32T or its affiliates would be obligated to indemnify the supplier, or (c) any officer, director, employee, agent, partner or shareholder of 32T or its affiliates. The aggregate liability of 32T and its affiliates for any claim arising out of, in connection with or relating to these Terms shall be limited to direct damages proven in an amount not to exceed Ten Thousand U.S. Dollars (US\$10,000). Buyer has accepted the limitations of liability set forth in these Terms as part of the exchange of consideration under these Terms and expressly acknowledges that the prices for the Services would be higher if 32T were requested to bear additional liability for damages.
9. **Interruptions.** Buyer acknowledges that interruptions of Services may occur from time to time as the result of, among other things, (A) placing Subscriber Communicators in locations that preclude a Subscriber Communicator's visibility to the underlying network, and (B) topographical and other conditions. Buyer acknowledges that service interruptions are difficult to assess as to cause or resulting damages. The parties agree that 32T and its affiliates shall not be liable to Buyer, its agents or subscribers for any losses or damages arising out of any failure or impaired performance of, error, omission, interruption, deletion, defect, delay in operation or transmission, communication line failure, theft or destruction or unauthorized access to, alteration of, or use of records, associated with the underlying network or any component thereof, whether for breach of contract, tortious behavior, negligence or under any other cause of action.
10. **No Liability.** None of 32T or any of its affiliates shall be liable for any act or omission of Buyer, any of its agents or any other person or entity furnishing equipment, products or services to Buyer or its agents or subscribers, nor shall 32T or its affiliates be liable for any damages or losses of any kind whatsoever due to any act or omission of Buyer or its agents or subscribers or the failure of such equipment, products or services.
11. **Proprietary Rights.** Buyer acknowledges that 32T owns or licenses and shall continue to own or license all title, interests and rights, including all Intellectual Property Rights, in the data, schematics, layout, designs, specifications, firmware and software for the Services. Buyer may not decompile, disassemble, reverse engineer or modify any Service purchased from 32T, or combine it with, or incorporate it in, other products without the prior written authorization of 32T. Any person that (i) purchases or licenses the Services and resells the Services after incorporating other hardware and/or software into the Services or the Services into other hardware, (ii) combines various components and programs into a functioning system, customized for a particular customer's needs, or (iii) acquires or licenses the Services and reuses or incorporates them into new products, which such person then markets, sells or distributes, shall be solely liable for any damages (x) caused by the alteration of such Service or (y) arising from the failure of such Service, as altered, to properly function. For the avoidance of doubt, in no event shall 32T or any of the underlying network service providers be liable for any damages caused by a Service's alteration, or arising from the failure of a Service, as altered by Buyer or any other person, to properly function.
12. **Trademarks.** No right, title or interest in or to any trademarks (together with any trade names,



slogans, labels or designs, "Trademarks") used by 32T or any of the underlying network service providers, nor the goodwill connected thereto, is conveyed by these Terms. For so long as these Terms apply to Buyer, 32T hereby grants to Buyer a limited, non-exclusive, non-sublicenseable, royalty-free right to utilize, publish and distribute 32T's existing Trademarks in connection with advertising, promotion and sale of the Services through any form or media, provided that all such uses are in strict conformance with 32T's requirements regarding such use, as such requirements are communicated to Buyer in writing from time to time by 32T. 32T may terminate the foregoing right if, in 32T's sole discretion, Buyer's use of such Trademarks does not conform to 32T's requirements. Such requirements shall be in accordance with good business practice and 32T shall not withdraw or limit the right of Buyer to use such Trademarks so long as Buyer is in full compliance with these Terms and is not in arrears with respect to amounts owing to 32T pursuant to any purchase order. Title to and exclusive ownership of all Trademarks shall at all times remain with 32T. Buyer shall not use any marks that are confusingly similar with 32T's Trademarks, or use any combination marks that include any such Trademarks, without 32T's prior written approval, and shall not take any action inconsistent with 32T's exclusive ownership of its Trademarks. Any and all use of Trademarks by Buyer shall inure to the benefit of 32T.

13. **Abuse and Fraudulent Use.** Access to each underlying network is furnished subject to the condition that there be no abuse or fraudulent use of such underlying network by Buyer, its agents or subscribers. Buyer shall not abuse or fraudulently use the underlying network and shall take any and all steps necessary to control and prevent abuse or fraudulent use of the underlying network by its agents or subscribers. Buyer shall promptly advise 32T in the event Buyer has actual knowledge or reason to believe that any of its agents or subscribers is abusing or fraudulently using the underlying network in violation of this Section 13. In the event 32T is advised or reasonably believes that Buyer, any of its agents or subscribers is abusing or fraudulently using the underlying network as specified in this Section 13, 32T shall have the right to immediately terminate Buyer's, Buyer's agent's or subscriber's access to the underlying network for any or all of Buyer's, Buyer's agent's or subscriber's Subscriber Communicators, and 32T shall have no liability for such termination of access to the underlying network.
14. **Electromagnetic Interference.** The parties understand and acknowledge that from time to time one or more resellers, subscribers or subscriber communicators may cause electromagnetic interference, either intentionally or unintentionally, with (i) the operation of the underlying network in such a way as to impair the quality of service provided by the underlying network to its other resellers and subscribers or (ii) the operation of another system or application approved by the FCC or other Governmental Authority. Accordingly, the parties agree that: (A) 32T may upon discovery of, or upon reasonable suspicion of, any such interference or abuse by a reseller, subscriber, other Person or subscriber communicator discontinue Services to the reseller, subscriber, other Person or subscriber communicator that is causing the interference or abuses; and, (B) Buyer shall promptly advise 32T in the event Buyer has knowledge or reason to believe that any of Buyer's agents or subscribers or any Subscriber Communicator is interfering with the operation of the underlying network or any other system or application approved by the FCC or any other Governmental Authority. In the event that a Subscriber Communicator interferes with or impairs the performance of the underlying network or any other application approved by the FCC or any other Governmental Authority, whether intentional or unintentional, Buyer shall immediately take commercially reasonable actions to cure such interference or impairment.
15. **Compliance.** Buyer shall, and shall procure that its agents shall, comply with all applicable laws, rules and regulations of any applicable Governmental Authority in the performance of its obligations hereunder and in the use of the underlying network or any Subscriber Communicator. Buyer shall take commercially reasonable action to prevent violations of all such applicable laws, rules and regulations by its subscribers, agents and employees in connection with the use of the underlying network or any Subscriber Communicators, whether intentional or unintentional. In the event such a violation occurs, Buyer shall immediately take commercially reasonable actions upon consultation with 32T to cure such violation promptly. Buyer shall promptly advise 32T in the event Buyer has knowledge or reason to believe that any of Buyer's agents or subscribers is in non-compliance with any applicable law, rule or regulation. 32T may upon discovery, or reasonable suspicion of, any such violation discontinue Services to such agent or subscriber.
16. **Unusually High Usage.** Should Buyer detect or be advised by 32T of an instance of unusually high



Subscriber Communicator usage or transmissions, Buyer shall promptly investigate any such instance of unusually high Subscriber Communicator usage or transmissions and shall promptly report such findings to 32T for evaluation; provided, that 32T shall have the right to deactivate any such Subscriber Communicator.

17. **Type Approved Modems.** Buyer shall be responsible for ensuring that only type approved modems are incorporated into Subscriber Communicators sold or otherwise distributed by it and that all Subscriber Communicators used by Buyer or its subscribers in connection with the underlying network, and Buyer's or each subscriber's use thereof, at all times meets the regulatory requirements of the FCC and any other applicable Governmental Authorities.
18. **Indemnification.** Buyer shall defend, indemnify and hold 32T harmless from and against any and all losses, damages, costs, expenses and fees (including reasonable attorney's fees) resulting from, arising out of or relating to any claim by a third party based on the acts, omissions or misrepresentations of Buyer or its employees, agents or contractors.
19. **Remedies.** Without limiting any of the remedies available to 32T at law or in equity, 32T shall have the right to cancel, or withhold delivery of Services in the event (i) 32T becomes aware of any material adverse change in the financial condition or creditworthiness of Buyer, (ii) Buyer sells a part or all of its business or assets to a third party, (iii) Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iv) Buyer fails to make any payment when due or is otherwise in material breach of any of its obligations to 32T and has not cured such breach within thirty (30) days of receiving a written notice of such breach from 32T.
20. **Termination.** These Terms between 32T and Buyer shall continue until terminated by mutual agreement of the parties or by 32T as follows: 32T may terminate these Terms (i) at any time by giving Buyer sixty (60) days written notice, (ii) immediately if Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, (iii) whenever Buyer is in breach of the provisions of Sections 4, 5, 10, 11, 12, 13 and 14 of these Terms, or (iv) whenever Buyer is in material breach of any of its other obligations to 32T under these Terms and has not cured its breach within thirty (30) days of receiving a written notice of the breach from 32T. Notwithstanding the foregoing, the parties agree that Buyer's obligation to pay any and all amounts due and owing by it under these Terms prior to the termination of these Terms and the covenants, agreements and obligations of the parties in Sections 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26 and 27 hereof shall survive the expiration or termination of these Terms.
21. **Compliance with Laws.** Buyer shall at all times comply with all applicable treaties, laws, statutes, ordinances or regulations, including without limitation, the laws and regulations relating to export control.
22. **Assignment.** These Terms, and Buyer's rights and obligations hereunder are personal to Buyer, and Buyer may not assign its rights or delegate its duties hereunder without 32T's prior written consent, to be delivered to Buyer in 32T's sole discretion. Any contrary assignment or delegation by Buyer shall be null, void and of no effect. 32T may assign all or any part of these Terms, or any of its rights hereunder, to any person. The parties' rights and obligations under these Terms shall be binding upon and inure to the benefit of each party's successors and permitted assigns.
23. **Alternative Dispute Resolution.** Any controversy or claim between the parties arising out of, relating to or in connection with these Terms, or any breach hereof, except for Buyer's failure to make a payment pursuant to Section 4 of these Terms, shall be settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Dispute Resolution Procedures (the "Rules"). Such arbitration shall take place in New York, New York before a panel of three neutral arbitrators selected pursuant to such Rules. The arbitrators' award shall include an allocation of arbitration fees, expenses and compensation, and shall include an award to the prevailing party of its attorney's fees, costs and expenses in connection with the arbitration. Any proceedings ancillary to the arbitration, including without limitation any action or proceeding to enforce the arbitrator's award or judgment entered thereon, shall be brought in the Supreme Court



of the State of New York, County of New York or the United States District Court for the Southern District of New York, the courts having exclusive jurisdiction thereof, each party hereby consenting to the exclusive jurisdiction of such courts over it and waiving, to the fullest extent permitted by law, any defense or objection relating to in personam jurisdiction, venue or convenience of the forum. All matters arising in any action to enforce an arbitral award shall be determined in accordance with the law and practice of such forum courts.

24. **Governing Law and Jurisdiction.** These Terms will be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to principles of conflict of laws. The parties specifically exclude the application of the United Nations Convention on the International Sale of Goods. Buyer agrees to submit to jurisdiction and stipulates to proper venue in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, for the adjudication or disposition of any claim, action or dispute arising under or in connection with these Terms that is not amicably settled by the parties.
25. **Entire Terms.** These Terms set forth the entire understanding and agreement of the parties with respect to the purchase and sale of Services, and supersede all prior oral or written agreements, negotiations, discussions, commitments and understandings between the parties as to such subject matter. These Terms may not be waived, amended or modified, in whole or in part, except by a subsequent written agreement signed by an officer of each party. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.
26. **Severability.** If any part of these Terms shall be held invalid or unenforceable, such determination shall not affect the validity or enforceability of any remaining portion, which shall remain in force and effect as if these Terms had been executed with the invalid or unenforceable portion thereof eliminated.
27. **Definitions.** Terms not otherwise defined in these Terms shall have the meaning set forth below:
 - "FCC" means the United States Federal Communications Commission or any successor agency thereto.
 - "Governmental Authority" means any federal, state, local or other governmental agency or authority of the United States or any other country.
 - "Subscriber Communicator" means the equipment used by Buyer and Buyer's subscribers to access the underlying network, incorporating, as applicable, (i) a terrestrial wireless communication device (in which a SIM for such underlying network has been installed and to which a number has been assigned to identify a Subscriber Communicator and provide access to an underlying network) and/or (ii) a satellite modem, that has been approved by or on behalf of 32T for use with the underlying network based on the determination that such model or type of terrestrial wireless communication device or modem meets the requirements set forth in the applicable specifications and successfully meets the testing requirements of such underlying network provider.

PART 3B. PURCHASE OF DATA SERVICES NETWORK SERVICE PROVIDER ADDENDUM - ORBC

THE FOLLOWING TERMS AND CONDITIONS ARE REQUIRED BY ORBCOMM (COLLECTIVELY, THE "TERMS") AND SHALL APPLY TO ALL PURCHASES OF SERVICE (AS DEFINED BELOW), ALL CHANGES (AS DEFINED BELOW) AND ALL REQUESTS FOR CHANGES (IN EACH CASE, WHETHER MADE IN WRITING OR ORALLY) SUBMITTED BY YOU ("BUYER") TO 32 TECHNOLOGIES LLC ("32T") IN CONNECTION WITH THE PURCHASE OR USE, AS APPLICABLE, OF ANY SERVICES FROM 32T. THESE TERMS SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS EXPRESSED OR IMPLIED IN ANY AND ALL PROCUREMENT DOCUMENTS OR PROVISIONING REQUESTS. 32T'S ACCEPTANCE OF ANY PROVISIONING REQUEST RECEIVED FROM BUYER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS. BUYER'S ACCEPTANCE OF DELIVERY OF ANY SERVICES, OR PAYMENT OF ANY PART OF THE PURCHASE PRICE, UNDER ANY PURCHASE ORDER PLACED WITH OR ANY PROVISIONING REQUEST MADE TO 32T, SHALL CONSTITUTE BUYER'S EXPRESS ASSENT TO THESE TERMS.

1. Buyer shall not have and shall not acquire any proprietary interest in the Subscriber



Communicator Address, the Number or any other numbers or codes associated with or allocated to a Subscriber Communicator.

2. NONE OF ORBCOMM OR ANY AFFILIATE OF ORBCOMM HAS MADE, OR SHALL BE DEEMED TO HAVE MADE, ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE ORBCOMM SYSTEM, THE ORBCOMM NETWORK, ANY CARRIER NETWORK, THE SERVICES OR THE ORBCOMM SERVICES. EACH OF ORBCOMM AND ITS AFFILIATES EXPRESSLY DISCLAIMS WITH RESPECT TO BUYER AND BUYER EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES OF ORBCOMM AND ITS AFFILIATES ARISING BY LAW OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF THE ORBCOMM SYSTEM, THE ORBCOMM NETWORK, ANY CARRIER NETWORK, THE ORBCOMM SERVICES, THE SERVICES OR ANY OTHER SERVICES PROVIDED BY ORBCOMM OR ITS AFFILIATES USING THE ORBCOMM SYSTEM, THE ORBCOMM NETWORK OR ANY CARRIER NETWORK; AND (D) ANY WARRANTY UNDER ANY THEORY OF LAW, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE, THAT IS NOT CONTAINED IN THE AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY ORBCOMM OR ITS AFFILIATES.
3. Buyer acknowledges and understands that it shall bear all responsibility, risk and cost associated with developing and maintaining its business, and neither ORBCOMM nor its Affiliates shall be liable to Buyer for any costs or damages caused by any failure or impaired performance of the ORBCOMM System, the ORBCOMM Network, any Carrier network or any component thereof.
4. Buyer acknowledges that ORBCOMM shall supply the ORBCOMM Services and/or the Services on a good faith efforts basis and that service failures and interruptions may occur and are difficult to assess as to cause or resulting damages. The parties agree that none of ORBCOMM nor its Affiliates shall be liable to Buyer for any losses or damages of any kind whatsoever arising out of any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, communication line failure, theft or destruction or unauthorized access to, alteration of or use of records associated with the ORBCOMM System, the ORBCOMM Network, any Carrier network, the ORBCOMM Services or the Services, whether for breach of contract, tortious behavior, negligence or under any other cause of action.
5. IN NO EVENT SHALL ORBCOMM OR ITS AFFILIATES HAVE ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY TO BUYER FOR LOSS OF USE, REVENUE OR PROFIT OR ANY OTHER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. In addition, in no event shall any liability of ORBCOMM or its Affiliates exceed the amount of One Thousand U.S. Dollars (US\$1,000.00).
6. Use of the ORBCOMM System, ORBCOMM Network, any Carrier network, the ORBCOMM Services or the Services is authorized by Governmental Authorities only in certain countries, and is permissible only when all Permits have been received from the applicable Governmental Authorities. In addition, use of a Subscriber Communicator is only permissible if it has been specifically approved for use in that country or territory. For information on those countries or territories in which use of the ORBCOMM System or ORBCOMM Network is authorized and whether a Subscriber Communicator has been approved for use in another country or territory, please contact your Summit Communication Services LLC representative.
7. In the event of any conflict between the Terms (as set forth in this Network Service Provider Addendum) and the 32T Purchase of Data Services Standard Terms and Conditions, the Terms (of this Network Service Provider Addendum) shall control.
8. Solely in connection with this addendum, unless defined in the 32T Purchase of Data Services Standard Terms and Conditions or elsewhere in this addendum, the following terms shall be defined as follows:

“Carrier” means any operator of a terrestrial wireless communications network that is a part of the ORBCOMM Network.

“Change” means each Subscriber Communicator addition, address change, suspension or deletion



from the applicable underlying network or other change in the Service requested by Buyer.

"Number" means the ten (10) digit telephone number assigned to identify a Subscriber Communicator and provide access to a Carrier's Services.

"Permits" means any franchise, license, license exemption, consent, approval, authorization, registration, equipment type approval, or import approval; the issuance of which is required by a Governmental Authority with jurisdiction in any country, to facilitate the provision of ORBCOMM Services by Buyer in accordance with this addendum.

"Service" means the use of the ORBCOMM Network as described in this addendum or the 32T Purchase of Data Services Standard Terms and Conditions.

"Subscriber Communicator" means the equipment used by Buyer and Buyer's subscribers to access the underlying network, incorporating, as applicable, (i) a terrestrial wireless communication device (in which a SIM for such underlying network has been installed and to which a Number has been assigned to identify a Subscriber Communicator and provide access to an underlying network) and/or (ii) a satellite modem, that has been approved by or on behalf of 32T for use with the underlying network based on the determination that such model or type of terrestrial wireless communication device or modem meets the requirements set forth in the applicable specifications and successfully meets the testing requirements of such underlying network provider.

"Subscriber Communicator Address" means the unique subscriber communicator address or addresses assigned to a Subscriber Communicator for use within the ORBCOMM System.

"ORBCOMM Network" means the terrestrial wireless communications network(s) operated by the Carrier(s) available for resale by Buyer through 32T or any successors and assigns thereof.

"ORBCOMM Services" means services provided by ORBCOMM using the ORBCOMM System from time to time.

"ORBCOMM System" means the low-Earth orbit satellite-based data communication system operated by ORBCOMM or any successors and assigns thereof.

PART 4. PURCHASE OF SOFTWARE DEVELOPMENT SERVICES

THE FOLLOWING TERMS AND CONDITIONS (COLLECTIVELY, THE "TERMS") SHALL APPLY TO ALL REQUESTS FOR QUOTATIONS, PURCHASE ORDERS, ACKNOWLEDGEMENTS, CONFIRMATIONS OR OTHER PROCUREMENT DOCUMENTS (COLLECTIVELY, "PROCUREMENT DOCUMENTS"), ALL CHANGES (AS DEFINED BELOW) AND ALL REQUESTS FOR CHANGES (IN EACH CASE, WHETHER MADE IN WRITING OR ORALLY) SUBMITTED BY YOU ("BUYER") TO 32 TECHNOLOGIES LLC ("32T") IN CONNECTION WITH THE PURCHASE OR USE, AS APPLICABLE, OF ANY SOFTWARE DEVELOPMENT SERVICES (AS DEFINED BELOW) FROM 32T. THESE TERMS SHALL SUPERSEDE ANY INCONSISTENT OR CONTRADICTORY TERMS OR CONDITIONS EXPRESSED OR IMPLIED IN ANY AND ALL PROCUREMENT DOCUMENTS OR REQUESTS FOR CHANGES. 32T'S ACCEPTANCE OF ANY REQUEST FOR CHANGE RECEIVED FROM BUYER IS CONDITIONED UPON BUYER'S ACCEPTANCE OF THESE TERMS. BUYER'S ACCEPTANCE OF DELIVERY OF ANY SOFTWARE DEVELOPMENT SERVICES, OR PAYMENT OF ANY PART OF THE PURCHASE PRICE, UNDER ANY PROCUREMENT DOCUMENT PLACED WITH OR ANY REQUEST FOR CHANGE MADE TO 32T, SHALL CONSTITUTE BUYER'S EXPRESS ASSENT TO THESE TERMS.

1. **Independent Contractors.** 32T and Buyer are independent contractors acting for their own accounts as seller and buyer, respectively, and no agency, partnership, joint venture, franchiser-franchisee or employer-employee relationship is intended or created by these Terms. Neither party shall have the power, nor hold itself out as able, to obligate, bind or make any commitment or representation, express or implied, on behalf of the other party. Any personnel working for or on behalf of Buyer shall not be considered employees or agents of 32T for any purpose, and Buyer assumes full responsibility for the acts or omissions of such personnel, and shall be solely responsible for their supervision, direction, control, compensation, benefits and taxes.
2. **Software Development Services.** Buyer hereby retains 32T to design and develop, and 32T hereby agrees to design and develop certain software ("Software") in accordance with the project outline and specifications set forth on the statement of work ("SOW") developed jointly by Buyer



and 32T (the “Software Development Services”). The parties shall work together in a joint effort to accomplish the tasks and objectives set forth in the SOW. 32T shall be responsible for delivering and performing only the Software Development Services. Any modifications to the SOW shall be pursuant to the Change Order process set forth below.

3. **Changes.** In the event Buyer desires to make any modifications to the SOW or a related deliverable (“Change”), Buyer shall provide a detailed change order (“Change Order”) to 32T in writing. This may be provided in the form of email, certified letter, or via technologies and/or tools provided by 32T. Following receipt of each Change Order by 32T, if 32T agrees to the Change Order, 32T and Buyer shall agree in writing to an amended SOW incorporating the Change Order. In the event of a conflict between these Terms and a Change Order, these Terms shall govern.
4. **Support and Maintenance.** Any support and maintenance services, updates, versions, or new releases shall be contracted under a separate agreement between Buyer and 32T. Maintenance and support rights or obligations for any third party products or equipment that are used in the Software and are available through the respective vendor(s)/manufacture(s) of such content and equipment shall be assigned by 32T to Buyer. General technical support shall be provided by 32T in accordance with its standard policies and procedures as established or amended by 32T, in its sole discretion, from time to time
5. **Buyer Responsibilities.** Buyer agrees to perform all tasks assigned to Buyer as set forth in these Terms, the SOW, or a Change Order, and to provide all assistance and cooperation to 32T in order to complete timely and efficiently the Software. 32T shall not be deemed in breach of these Terms, the SOW, a Change Order, or any milestone in the event 32T's failure to meet its responsibilities and time schedules is caused by Buyer's failure to meet (or delay in) its responsibilities and time schedules set forth in the SOW, a Change Order, or these Terms. In the event of any such failure or delay by Buyer, (i) all of 32T's time frames, milestones, and/or deadlines shall be extended by a number of days equal to the product of the number of days of Buyer's failure multiplied by two (2); and (ii) Buyer shall continue to make timely payments to 32T as set forth in these Terms, the SOW, and any Change Order(s) as if all time frames, schedules, or deadlines had been completed by 32T as originally agreed. Buyer shall be responsible for making, at its own expense, any changes or additions to Buyer's current systems, software, and hardware that may be required to support operation of the Software. Unless otherwise contracted with 32T or reflected in a Change Order, Buyer shall be responsible for initially populating and then maintaining any databases on the Software as well as providing all content for the Software. Upon the execution of a Change Order specifically asking 32T to assess the Buyer's systems, software and hardware from time to time, 32T will agree to perform this function at normal 32T rates.
6. **Project Managers.** Buyer and 32T shall each assign a project manager (each, a “Project Manager”) for managing the implementation of the Software. The Project Managers shall be responsible for: (i) managing the day-to-day activities under these Terms, (ii) serving as liaisons between the parties, (iii) assigning and scheduling the appropriate personnel to perform all of the required services under these Terms, and (iv) authorizing and executing any and all Change Order(s). Buyer hereby acknowledges and agrees that the Buyer's Project Manager shall have the proper authority and power to execute and perform the duties and responsibilities set forth in this Section. 32T hereby acknowledges and agrees that the 32T's Project Manager shall have the proper authority and power to execute and perform the duties and responsibilities set forth in this Section.
7. **Assignment of Project.** 32T reserves the right, and Buyer hereby agrees, to assign subcontractors to this project to ensure that these Terms are satisfied and to ensure on-time completion of the project.
8. **Marketing.** Buyer hereby grants 32T the right to use the name and service marks of Buyer in its marketing materials or other oral, electronic, or written promotions, which shall include naming Buyer as a client of 32T and a brief scope of services provided. 32T shall not place any logos or links on Buyer's Software unless first approved in writing by Buyer. Either party may elect to issue a press release related to this Agreement. In doing so, any such release shall be approved by the other party and such approval shall not be unreasonably withheld, conditioned or delayed.
9. **Pricing, Fees and Payment.** All prices and payments for Software Development Services sold by 32T to Buyer will be in United States Dollars. Payment terms are, at 32T's sole discretion, (i) either

cash in full in advance, or (ii) where open credit (satisfactory to 32T in its sole discretion and subject to a separate agreement between the parties as it relates to the terms of such credit) is established by Buyer, net thirty (30) days from the date of invoice or as otherwise determined by 32T. Buyer hereby authorizes 32T to charge any credit card provided by Buyer for the payment of fees, costs and expenses related to the purchase of Software Development Services from 32T, unless Buyer and 32T agree in advance to alternate arrangements. 32T will indicate in its acceptance of any purchase order issued by Buyer, the specific payment terms that are applicable to Buyer in respect of such purchase order. Any amounts not paid when due shall bear interest at the rate equal to the lesser of: (x) one and one-half percent (1½%) per month of such amount beginning on the date the payment was due, and (y) the maximum amount allowed under applicable law. All fees, charges and other payments to be made under these Terms exclude all present and future withholding taxes, charges, fees, duties, levies or other assessments (including, without limitation, income, gross receipts, net proceeds, turnover, sales, use, franchise, excise, value added, license, customs duties, user, transfer or similar taxes imposed by the United States or by any state, municipality, subdivision or governmental authority or by any foreign country or by any other tax authority, in each case to the extent relevant in the given context, and including any interest, penalties or additions to tax attributable to such taxes) (collectively, "Taxes") imposed upon or with respect to or measured by the sale or delivery by 32T to Buyer of any Software Development Services pursuant to these Terms. Such Taxes (including all applicable sales taxes), as applicable, will be the responsibility of and for the account of Buyer. Notwithstanding the foregoing, Buyer will have no obligation to pay any income tax imposed on 32T or any of its affiliates which may arise from the transactions contemplated by these Terms.

10. **Delivery.** Any Software delivered to Buyer by 32T in connection with 32T's performance of the Software Development Services will be delivered to the location specified by Buyer in the applicable Procurement Documents. Unless otherwise agreed in writing, 32T or its designee will select the manner in which such Software will be delivered, and Buyer will be responsible for paying all shipping, freight and insurance charges, if any, associated therewith.
11. **Expenses.** Buyer shall reimburse 32T for reasonable out-of-pocket travel expenses (collectively, "Expenses"), including transportation, lodging, mileage, and meals incurred by 32T, or its affiliates, employees or consultants in rendering 32T's Software Development Services. 32T shall obtain Buyer's prior written authorization before incurring any individual expense. All Expenses not paid directly by Buyer shall be paid within fourteen (14) days of receipt of 32T's invoice. All Expense reimbursements shall be made at 32T's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise.
12. **Product Intellectual Property Rights and License.** All materials, including, but not limited to, software, programs, source code and object code, comments to the source or object code, specifications, documents, abstracts and summaries thereof (collectively, the "Products") developed by 32T in connection with the provision of the Software Development Services to Buyer, or jointly by Buyer and 32T, or by 32T pursuant to specifications or instructions provided by Buyer, shall belong exclusively to Buyer. 32T acknowledges that the Products shall be deemed "works made for hire" by 32T for Buyer, and, therefore, shall be the exclusive property of Buyer. To the extent the Products are not deemed "works made for hire" under applicable law, 32T hereby irrevocably assigns and transfers to Buyer all right, title and interest in and to the Products, including, without limitation, all patent, trademark, know-how and copyright interests, and agrees to execute all documents reasonably requested by Buyer for the purpose of applying for and obtaining domestic and foreign patent, trademark and copyright registrations.
13. **Pre-Existing Intellectual Property.** Notwithstanding any provision of these Terms to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by 32T in its business generally, including all associated intellectual property rights (collectively, the "Development Tools"), shall be and remain the sole property of 32T, and Buyer shall have no interest in or claim to the Development Tools, except as necessary to exercise its rights in the Products. In addition, notwithstanding any provision of these Terms to the contrary, 32T shall be free to use any ideas, concepts, or know-how developed or acquired by 32T during the performance of these Terms to the extent obtained and retained by 32T's personnel as impression and general learning. Subject to Buyer's intellectual property rights described in Section 12 above, nothing in these Terms shall be construed to preclude 32T from using the Development Tools for



any proper use, including for or with any, third parties whether for the benefit of 32T or such third party.

14. **Third Party Licenses.** In addition to any other fees set forth in these Terms, Buyer shall be required to purchase any applicable third party licenses for any third party products that are necessary for server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work which 32T deems necessary to purchase on behalf of Buyer to design and develop the Product. In the event any such third party product exceeds \$250.00 per product (or \$3,000.00 in the aggregate), 32T shall obtain Buyer's prior written consent before incorporating such third party product into the Product. 32T shall provide Buyer with a list of all third party products upon launch of the Product.
15. **Third Party Software.** Additionally, in the event Buyer elects to install or seek assistance from 32T in connection with the installation of any third-party software, the following terms shall apply. Buyer represents and warrants that Buyer has the right to use and install the third-party software, and have paid the applicable licensing fees for the third party software, and the third-party software does not and shall not infringe on the intellectual property rights of any other person or entity. Buyer agrees to defend, indemnify and hold harmless 32T and its employees, officers and directors for, from and against any and all claims brought against 32T and its employees, officers and directors by a third-party alleging the software infringes: (i) the third-party's rights; or (ii) a U.S. patent, trademark, copyright or other intellectual property right. Buyer agree that in such an event Buyer shall pay all resulting costs, damages, expenses and reasonable attorneys' fees that a court awards and settlements incurred by 32T in connection with any such claims.
16. **Trademarks.** Buyer unconditionally warrants and guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to 32T and/or its assigns for inclusion in the Product are owned by the Buyer, or that the Buyer has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify and defend 32T, its assigns and its subcontractors from any liability (including attorney's fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by Buyer.
17. **Termination.** These Terms between 32T and Buyer shall continue until terminated by mutual agreement of the parties or by 32T as follows: 32T may terminate these Terms (i) at any time by giving Buyer sixty (60) days written notice, (ii) immediately if Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iii) whenever Buyer is in material breach of any of its obligations to 32T under these Terms and has not cured its breach within thirty (30) days of receiving a written notice of the breach from 32T. Notwithstanding the foregoing, the parties agree that either party's obligation to pay any and all amounts due and owing by it under these Terms prior to the termination of these Terms and the covenants, agreements and obligations of the parties in Sections 5, 8, 9, 11, 12, 13, 16, 17, 18, 19, 20 and 23 hereof shall survive the expiration or termination of these Terms.
18. **Indemnification.** Buyer shall defend, indemnify and hold 32T harmless from and against any and all losses, damages, costs, expenses and fees (including reasonable attorney's fees) resulting from, arising out of or relating to any claim by a third party based on the acts, omissions or misrepresentations of Buyer or its employees, agents or contractors.
19. **Representations and Warranties.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NONE OF 32T OR ANY OF ITS AFFILIATES HAVE MADE OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATIONS OR WARRANTIES WHATSOEVER WITH RESPECT TO THE SOFTWARE, THE PRODUCTS OR THE SOFTWARE DEVELOPMENT SERVICES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, 32T AND ITS AFFILIATES EXPRESSLY DISCLAIM WITH RESPECT TO BUYER AND ITS AGENTS, AND BUYER (ON ITS OWN BEHALF AND ON BEHALF OF ITS AGENTS) HEREBY EXPRESSLY WAIVES, RELEASES AND RENOUNCES ALL WARRANTIES OF 32T AND ITS AFFILIATES ARISING AT LAW, EQUITY OR OTHERWISE, WITH RESPECT TO, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE; (C) ANY WARRANTIES AS TO THE ACCURACY, AVAILABILITY OR CONTENT OF THE SOFTWARE, THE PRODUCTS OR THE SOFTWARE DEVELOPMENT SERVICES; AND (D) ANY WARRANTY



UNDER ANY THEORY OF LAW OR EQUITY, INCLUDING ANY TORT, NEGLIGENCE, STRICT LIABILITY, CONTRACT OR OTHER LEGAL OR EQUITABLE THEORY. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, BUT NOT LIMITED TO, STATEMENTS REGARDING CAPACITY OR SUITABILITY FOR USE THAT IS NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY 32T.

20. **Limited Warranty.** Buyer's sole remedy in the event Software malfunctions or is otherwise found to be defective shall be those remedies or services as are stipulated in 32T's stated limited warranty as provided by 32T to Buyer. 32T EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, SATISFACTORY PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. Notwithstanding anything contained herein to the contrary, in no event shall 32T be liable for any special, exemplary, indirect, incidental or consequential damages (including loss of profits, use, data or other economic advantage), however caused, arising out of or otherwise relating to the performance or nonperformance of 32T hereunder, even if Buyer has been advised of the possibility or probability of such damages and even if any exclusive remedies provided for in these Terms fail of their essential purpose, provided that this limitation shall not apply to third party claims for such damages that are subject to an indemnity obligation hereunder. FURTHERMORE, IN NO EVENT SHALL 32T'S CUMULATIVE LIABILITY FOR ALL CLAIMS OF WHATEVER KIND, IN THE AGGREGATE, ARISING UNDER, RELATED TO OR IN CONNECTION WITH THESE TERMS, OR 32T'S PRODUCTS, EXCEED THE SUM OF TEN THOUSAND DOLLARS (\$10,000) OR FIFTY PERCENT (50%) OF THE TOTAL AMOUNT PAID TO 32T BY BUYER PURSUANT TO THESE TERMS, WHICHEVER IS LOWER.
21. **Compliance with Laws.** Buyer shall, and shall procure that its agents and employees shall at all times, comply with all applicable treaties, laws, statutes, ordinances, rules and regulations (including without limitation, (i) all anti-corruption laws, rules, regulations and decrees, including the United States Foreign Corrupt Practices Act (FCPA), as amended, the U.K. Bribery Act, as amended, and any implementing legislation under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and (ii) all laws and regulations relating to export control to the extent applicable to the Product) of any applicable federal, state, local or other governmental agency or authority of the United States or any other country in the performance of its obligations hereunder and/or in the use of a Product. Buyer shall take commercially reasonable action to prevent violations of all such applicable laws, rules and regulations by its agents and employees in connection with the use of a Product, whether intentional or unintentional. In the event such a violation occurs, Buyer shall immediately take commercially reasonable actions upon consultation with 32T to cure such violation promptly. Buyer shall promptly advise 32T in the event Buyer has knowledge or reason to believe that any of Buyer's agents or employees is in non-compliance with any applicable law, rule or regulation.
22. **Assignment.** These Terms, and Buyer's rights and obligations hereunder are personal to Buyer, and Buyer may not assign its rights or delegate its duties hereunder without 32T's prior written consent, to be delivered to Buyer in 32T's sole discretion. Any contrary assignment or delegation by Buyer shall be null, void and of no effect. 32T may assign all or any part of these Terms, or any of its rights hereunder, to any person. The parties' rights and obligations under these Terms shall be binding upon and inure to the benefit of each party's successors and permitted assigns.
23. **Alternative Dispute Resolution.** Any controversy or claim between the parties arising out of, relating to or in connection with these Terms, or any breach hereof, except for Buyer's failure to make a payment pursuant to Section 4 of these Terms, shall be settled by final and binding arbitration administered by the American Arbitration Association under its Commercial Dispute Resolution Procedures (the "Rules"). Such arbitration shall take place in New York, New York before a panel of three neutral arbitrators selected pursuant to such Rules. The arbitrators' award shall include an allocation of arbitration fees, expenses and compensation, and shall include an award to the prevailing party of its attorney's fees, costs and expenses in connection with the arbitration. Any proceedings ancillary to the arbitration, including without limitation any action or proceeding to enforce the arbitrator's award or judgment entered thereon, shall be brought in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, the courts having exclusive jurisdiction thereof, each party hereby consenting to the exclusive jurisdiction of such courts over it and waiving, to the fullest extent permitted by law, any defense or objection relating to in personam jurisdiction, venue or convenience of the



forum. All matters arising in any action to enforce an arbitral award shall be determined in accordance with the law and practice of such forum courts.

24. **Remedies.** Without limiting any of the remedies available to 32T at law or in equity, 32T shall have the right to cancel, or withhold shipment under, any accepted purchase order for which payment has not yet been received, and to require prepayment, or change or limit the credit terms, for any subsequent purchase order, in the event (i) 32T becomes aware of any material adverse change in the financial condition or creditworthiness of Buyer, (ii) Buyer sells a part or all of its business or assets to a third party, (iii) Buyer ceases to do business, dissolves or becomes insolvent or bankrupt, makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding under bankruptcy or insolvency laws, or (iv) Buyer fails to make any payment when due or is otherwise in material breach of any of its obligations to 32T and has not cured such breach within thirty (30) days of receiving a written notice of such breach from 32T.
25. **Governing Law and Jurisdiction.** These Terms will be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to principles of conflict of laws. The parties specifically exclude the application of the United Nations Convention on the International Sale of Goods. Buyer agrees to submit to jurisdiction and stipulates to proper venue in the Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York, for the adjudication or disposition of any claim, action or dispute arising under or in connection with these Terms that is not amicably settled by the parties.
26. **Entire Terms.** These Terms set forth the entire understanding and agreement of the parties with respect to the purchase and sale of Products, and supersede all prior oral or written agreements, negotiations, discussions, commitments and understandings between the parties as to such subject matter. These Terms may not be waived, amended or modified, in whole or in part, except by a subsequent written agreement signed by an officer of each party. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.
27. **Severability.** If any part of these Terms shall be held invalid or unenforceable, such determination shall not affect the validity or enforceability of any remaining portion, which shall remain in force and effect as if these Terms had been executed with the invalid or unenforceable portion thereof eliminated.

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