



1. SCOPE OF AGREEMENT

This Master Service Agreement (the "Agreement") applies to Client's purchase of IT services ("Services") and products, including, without limitation, software, hardware, equipment, peripherals, and accessories (collectively, the "Products") from Acrisure Cyber Services, LLC (hereinafter "ACS"). Client hereby engages and retains ACS to render Services and/or provide Products, as more particularly set forth in the Business Proposal ("Proposal") previously furnished to Client and/or any other work order ("Work Order") agreed in writing between the parties (all of which are incorporated by reference herein) (collectively, the "Project"). Except as otherwise stated therein, any Proposal or Work Order shall be made a part of, and subject to, the terms contained in this Agreement. However, in the event of any conflict between the terms of this Agreement and any Proposal or Work Order, the terms of the Proposal or Work Order, as applicable, shall prevail over this Agreement.

2. DEFINITIONS AND GENERAL REQUIREMENTS

2.1 System: For the purposes of this Agreement, "System" means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by ACS pursuant to the Project. To avoid a delay or negative impact on ACS's provision of the Services, during the term of the Project, Client agrees to refrain from modifying or moving the System, or installing software on the System, unless ACS expressly authorizes such activity.

2.2 Maintenance; Updates: If patches and other software-related maintenance updates ("Updates") are provided under the Project, ACS will install the Updates only if ACS has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. ACS will not be responsible for any downtime or losses arising from, or related to, the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer's or applicable vendor's instructions.

2.3 Third-Party Service Providers: "Third-Party Service Providers" means services provided by third parties other than ACS and its affiliates in fulfillment of the Project requirements. To the extent that ACS does not own any third-party products, Client's use thereof shall be subject to this Agreement and the Third-Party Service Provider's terms and conditions applicable to such products. ACS shall have no liability whatsoever for the quality, functionality or operability of any

Third-Party products or services, and will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any Third-Party Service Provider.

2.4 Third-Party Support: If, in ACS's sole discretion, a hardware or software issue requires vendor or OEM support, ACS shall advise Client, and, upon Client's prior approval, ACS shall be authorized to contact the vendor or OEM (as applicable) on Client's behalf and pass on the fees and costs incurred to Client in furtherance thereof.

2.5 Contractors: "Contractors" or "subcontractors" means third parties to whom ACS contracts to provide specified services to complete the Project.

2.6 Advice; Instructions: From time to time, ACS may provide Client with specific advice and directions related to its provision of the Services or the maintenance or administration of the System. Client agrees to promptly follow and implement any directions that ACS provides related to the Services which, depending on the situation, may require Client to make additional purchases or investments in the System or the environment in which the System is maintained, at Client's sole cost. ACS will not be responsible for any problems or issues (such as System downtime or security-related issues) caused by Client's failure to promptly follow ACS's advice or directions. If Client's failure to follow or implement ACS's advice renders part or all of the Services economically or technically unreasonable to provide in ACS's sole discretion, then ACS may terminate the Project for cause by providing notice of termination to Client. Any services required to remediate issues caused by Client's failure to follow ACS's advice or directions, or by Client's unauthorized modification of the System, as well as any services required to bring the System up to, or to maintain, the minimum requirements, shall not be covered under the scope of the Project and shall require additional payment(s).

3. TERM AND TERMINATION

This Agreement will begin on the effective date established by the parties (the "Effective Date") and will continue until the Project expires or is terminated pursuant to the terms herein (the "Term"). ACS may: (a) terminate the Services and this Agreement if Client fails to pay any applicable fees due within thirty (30) days of their due date; and/or (b) terminate the Services and this Agreement if Client commits any other breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice of such breach from ACS. If the Agreement is terminated, Client will promptly pay ACS for Services rendered, and expenses incurred, through the termination date.<p>

Client may (a) terminate this Agreement if ACS commits any material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from Client of

such breach; and/or (b) terminate this Agreement for any reason upon thirty (30) days' written notice to ACS. Notwithstanding the foregoing, if the Agreement is terminated by Client without cause, upon thirty (30) days' written notice, such termination shall be deemed effective as of the last day of the calendar month following the passage of such thirty days. For illustration purposes only, if Client terminates the Agreement, without cause, by delivering a thirty-day notice on March 15th of a given year, the termination shall be deemed effective on April 30th of that year.

4. PAYMENT

Client shall pay ACS all fees due upon receipt of an invoice specifying the amounts due ("Fees"). All Fees payable under this Agreement are exclusive of sales, use, excise, and any other applicable transaction taxes, which Client shall pay. If payment is not received within thirty (30) days of its due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) per month from the date due until paid in full. Client shall not have, and hereby waives, any right of set-off against its fees and other sums due to ACS under this Agreement.

5. CONFIDENTIALITY AND NON-DISCLOSURE.

5.1 Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including, without limitation, (i) the terms and conditions of this Agreement and the Project, (ii) any non-public information concerning the Product(s) and/or Service(s) of ACS, as well as any documentation related to such Products and/or Services, and (iii) the intellectual property, business and marketing plans, sales data and forecasts, financial information, product plans, customers and potential customers, employees and contractors, suppliers, subsidiaries and affiliates, technical data, trade secrets, know-how, ideas, research, concepts, designs, software, processes, systems, operations, and proprietary information of either Party.

5.2 Confidential Information of Client shall include any personally identifiable information or protected health information of Client's employees, Client's customers, and Client data. Client acknowledges and agrees that this Agreement does not constitute a Business Associates Agreement ("BAA") as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996 and as amended), and that the requirement for any such agreement in addition to this Agreement may be necessary to provide the Services hereunder. Client shall be solely responsible for the consequences, if any, of moving forward with the Services hereunder without such a BAA and shall be the sole judge of

the necessity for a BAA in addition to this Agreement. Furthermore, Client hereby agrees to defend, indemnify and hold harmless ACS and any affiliated company, and their respective present and former shareholders, members, partners, officers, directors, managers, and employees, and their attorneys and agents, and their predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "Indemnitee"), from, and against, any and all claims, demands, causes of action, actions, judgments, liabilities, losses, costs and expenses, including attorneys' fees and costs, as they occur, brought against, imposed upon, or incurred or suffered by, the Indemnitee, which in any way relate to the failure of Client to comply with the terms and conditions of this Agreement in proper handling of protected health information not caused by ACS's gross negligence or willful misconduct and/or due to the absence of any necessary BAA, or failing to notify ACS of the necessity of same.

5.3 Confidential Information (other than Client data) shall not include any information that:

(i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

5.4 Protection and Non-Disclosure of Confidential Information. The Receiving Party shall:

(i) protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care,

(ii) not use or disclose any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement or otherwise in any manner to the Disclosing Party's detriment, and

(iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement.

5.5 Compelled Disclosure The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law or court order to do so, provided the Receiving Party gives the Disclosing Party reasonable prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the

Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of an action or proceeding in which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable costs and expense of compiling and providing access to such Confidential Information.

5.6 Return or Destruction of Confidential Information Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (a) required by applicable law or (b) it would be unreasonably burdensome to destroy (such as archived computer records). In the event that the return or destruction of Confidential Information is unduly burdensome, or not feasible, the parties shall extend the protections of this Agreement to the retained Confidential Information, and such protections and provisions shall survive the termination of this Agreement.

6. NON-SOLICITATION

Client acknowledges that ACS has incurred substantial recruitment, screening, training, and administrative expenses in hiring and developing its employees and contractors. Accordingly, during the Term of this Agreement, and for a period of three (3) years thereafter, Client shall not solicit, induce, attempt to hire or hire any employee or contractor of ACS (including, but not limited to, Help Desk Technician, Network Engineer, System Administrator, Senior Systems Engineer, Managing Consultant, or IT personnel) or assist in such hiring by another person or business entity, or encourage any such employee or contractor to terminate his or her employment or contractual relationship with ACS. If Client, directly, or indirectly, hires any of ACS's employees or contractors within three (3) years of the end of the Term herein, Client agrees to pay ACS a finder's fee equal to 100% of the annual compensation which Client agrees to pay the employee or consultant, it being understood and agreed that it would be impractical and extremely difficult to ascertain the precise amount of monetary damages that would be caused by a breach of this provision by Client and that such compensation represents a reasonable sum for the losses that ACS would incur due to such breach. Client and ACS further acknowledge and agree that nothing in this paragraph shall limit ACS's rights to obtain injunctive relief or any other damages, including, but not limited to, punitive, consequential or special damages, as may be appropriate in connection with Client's breach of this section.

7. CLIENT DATA OWNERSHIP AND RESPONSIBILITY

Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability,

appropriateness, and intellectual property ownership, or right to use, of any data, information, or proprietary material submitted or furnished by Client to ACS.

8. INTELLECTUAL PROPERTY

ACS retains all intellectual property rights in any property invented or composed in the course of, or incident to, the performance of this Agreement, as well as any software, materials, or methods created prior to, or after, conclusion of the Project. Client acquires no right, title, or interest in any such intellectual property, by virtue of this Agreement, or the Services performed under this Agreement.

8.1. Client may only use the Products in accordance with the terms of this Agreement and the Project. ACS reserves all rights in, and to, the Products not expressly granted in this Agreement. Client may not disassemble or reverse engineer any software Products or decompile or otherwise attempt to derive any software Products' source code from executable code, except to the extent expressly permitted by applicable law, or provide a third-party with the results of any functional evaluation, or benchmarking or performance tests on the Products, without ACS's prior written approval. Except as expressly authorized in this Agreement, Client may not (a) distribute the Products to any third-party (whether by rental, lease, sublicense or other transfer), or (b) operate the Products in an outsourcing of ACS business to process the data of third parties.

8.2. License Agreements:

(a) License. Subject to the terms of this Agreement, ACS grants Client a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other Products provided, and paid for, as part of the Services solely for its own internal use. At all times, all software on the System shall be genuine and licensed, and Client agrees to provide ACS with proof of such licensing upon its request. If ACS reasonably requires Client to implement certain minimum hardware or software requirements ("Minimum Requirements"), Client agrees to do so as an ongoing requirement of ACS providing its Services to Client.

(b) Software Installation or Replication. If ACS is required to install or replicate Client software as part of the Services, Client will independently verify that all such software is properly licensed. Client's act of providing any software to ACS will be deemed Client's affirmative acknowledgement to ACS that Client has a valid license that permits ACS to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor Client's equipment for the installation of unlicensed software unless ACS expressly agrees, in a signed writing, to conduct such monitoring.

(c) Pre-Existing License Agreements. Any software product provided to Client by ACS as a reseller for a third-party, which is licensed to Client under a separate software license agreement with such third-party, will continue to be governed by such third-party license agreement.

(d) EULA. Portions of the Services may require Client to accept the terms of one or more third-party end user license agreements ("EULAs"). If the acceptance of an EULA is required in order to provide the Services to Client, then Client hereby grants ACS permission to accept the EULA on its behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. Client agrees to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs. If, while providing the Services, ACS is required to comply with a third-party EULA and the third-party EULA is modified or amended, ACS reserves the right to modify or amend any affected portion of the Project, as necessary, to comply with the terms of the third-party EULA. Client agrees to hold harmless, and indemnify, ACS and its members, managers, employees, contractors, representatives, and agents, from, and against, Client's violation of any of the terms and conditions included in the subject EULA.

8.3. Third-Party Products. Unless otherwise expressly agreed by ACS in writing, ACS shall have no liability whatsoever for the quality, functionality or operability of any hardware, software, peripherals and accessories purchased through ACS ("Third-Party Products") and will not be held liable as an insurer or guarantor of the performance, uptime, or usefulness of any Third-Party Products. Unless otherwise expressly agreed by ACS in writing, all Third-Party Products are provided "as is" and without any warranty whatsoever as between ACS and Client (including, but not limited, to implied warranties).

9. SOFTWARE HARDWARE & SECURITY

Client understands and agrees that data loss or network failures may occur, whether or not foreseeable. In order to reduce the likelihood of a network failure, Client shall maintain proper security for its computer and information system, including, without limitation, software and hardware updates. Client will adhere to software and hardware updates and maintain specific security standards, policies, and procedures that are recommended by ACS.

10. CLIENT CYBER SECURITY

Unless expressly agreed by ACS pursuant to the terms of the Project or otherwise in writing, it is understood and agreed that ACS will not provide any type of internet security monitoring, cybersecurity monitoring, cyber terrorism monitoring, or monitoring of any other cyber threats for Client. Client acknowledges that cyber threats are constantly evolving, and, as such, Client understands that it is strongly recommended that Client engage the services of a cyber

protection third-party vendor to monitor the cyber controls and cyber activities in the System. Unless expressly agreed by ACS pursuant to the terms of the Project or otherwise in writing, it is understood and agreed that ACS is not providing cyber security under this Agreement.

11. TERRORISM

In no event, including any negligent act or omission on its part, shall ACS, whether under this Agreement or any future Proposal or Work Order, or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including, without limitation, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of, or arose from, any act of terrorism, strike, or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of, or amounting to, an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of, or in connection with, any organization(s), committed for political, religious or ideological purposes including, but not limited to, the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption, or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom.

12. TELEMARKETING & UNSOLICITED EMAILS

In no event, including any negligent act or omission on its part, shall ACS, whether under this Agreement or any future Proposal or Work Order, or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect, or consequential losses or expenses, including, without limitation, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if Client's data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders", "spybots", "spyware", wiretapping, bugging, video cameras or identification tags.

13. EXTRAORDINARY EVENTS

In no event, including any negligent act or omission on its part, shall ACS, whether under this

Agreement or any future Proposal or Work Order, or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect, or consequential losses or expenses, including, without limitation, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of, or arose from, any failure or malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God, national or global pandemic or other physical event.

14. LIMITATION OF LIABILITY

THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. CLIENT ACKNOWLEDGES AND AGREES THAT ACS WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. CLIENT AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, SHAREHOLDERS, PARTNERS, CONTRACTORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASOR PARTIES") AGREE TO THE FULLEST EXTENT PERMITTED BY LAW, AND EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, TO RELEASE ACS AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENTS, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, SHAREHOLDERS, PARTNERS, CONTRACTORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, AND ANY OTHER COMMERCIAL DAMAGES OR LOSSES, OR EXEMPLARY AND PUNITIVE DAMAGES. UNDER NO CIRCUMSTANCES SHALL ACS'S AGGREGATE LIABILITY ARISING FROM, OR RELATING TO, THIS AGREEMENT, EXCEED THE FEES PAID TO ACS UNDER THIS AGREEMENT FOR THE PRIOR TWELVE (12) MONTHS. UNLESS STATED TO THE CONTRARY IN WRITING, ACS SHALL NOT BE LIABLE TO CLIENT FOR ANY DELAY IN DELIVERY OR PERFORMANCE, OR FAILURE TO DELIVER OR PERFORM, WITHIN ANY DEADLINES SET FORTH IN THIS AGREEMENT OR THE TERMS OF THE PROJECT.

15. MUTUAL INDEMNIFICATION AND HOLD HARMLESS

(a) To the fullest extent permitted by law, Client, at its expense, shall indemnify, defend, and hold harmless ACS and its affiliates and each of their respective officers, directors, shareholders, members, managers, partners, employees, contractors, agents, parent companies, subsidiaries,

successors and assigns from, and against, any and all liabilities, losses, suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, but not limited to, court costs and reasonable attorney's fees, arising out of, or relating to: (i) any allegation or claim by an unaffiliated third-party that Client's System or data infringes any copyright, patent, or other intellectual property right, or violates any right to privacy or publicity rights; (ii) any allegation or claim by an unaffiliated third-party that Client has violated any law, rule, regulation or ordinance; (iii) any allegation or claim by an unaffiliated third-party that arises from Client's breach of its representations or warranties contained herein; (iv) any allegation or claim by an unaffiliated third-party that arises from Client's breach of the terms and conditions of this Agreement; and (v) any allegation or claim by an unaffiliated third-party that arises from Client's acts or omissions and/or its alleged violation of any duty of care owed to a third-party, including claims based upon tortious conduct

(b) To the fullest extent permitted by law, ACS, at its expense, shall indemnify, defend, and hold harmless Client and its affiliates and each of their respective officers, directors, shareholders, members, managers, partners, employees, contractors, agents, parent companies, subsidiaries, successors and assigns from, and against, any and all liabilities, losses, suits, actions, legal proceedings, claims, demands, damages, costs and expenses of whatsoever kind or character, including, but not limited to, court costs and reasonable attorney's fees, arising out of, or relating to: (i) any allegation or claim by an unaffiliated third-party that the provision of ACS's Services infringes any copyright, patent, or other intellectual property right, or violates any right to privacy or publicity rights; (ii) any allegation or claim by an unaffiliated third-party that ACS has violated any law, rule, regulation or ordinance; (iii) any allegation or claim by an unaffiliated third-party that arises from ACS's breach of its representations or warranties contained herein; (iv) any allegation or claim by an unaffiliated third-party that arises from ACS's breach of the terms and conditions of this Agreement; and (v) any allegation or claim by an unaffiliated third-party that arises from ACS's acts or omissions and/or its alleged violation of any duty of care owed to a third-party, including claims based upon tortious conduct.

THE PRECEDING INDEMNIFICATION OBLIGATIONS ARE CONDITIONED ON THE INDEMNIFIED PARTY: (I) NOTIFYING THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF SUCH ACTION; (II) REASONABLY COOPERATING AND ASSISTING IN SUCH DEFENSE; AND (III) GIVING SOLE CONTROL OF THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS TO THE INDEMNIFYING PARTY (WITH COUNSEL REASONABLY ACCEPTABLE TO THE INDEMNIFIED PARTY) WITH THE UNDERSTANDING THAT THE INDEMNIFYING PARTY MAY NOT SETTLE ANY CLAIM IN A MANNER THAT ADMITS GUILT OR OTHERWISE PREJUDICES THE INDEMNIFIED PARTY, WITHOUT THE INDEMNIFIED PARTY'S WRITTEN CONSENT.

16. CLIENT INSURANCE

16.1 Commercial Property Insurance. During the Term of this Agreement, Client shall secure at its own cost and expense property insurance with commercially reasonable policy limits for the equipment that is covered under this Agreement. The policy shall include the following coverages:

1. Replacement cost valuation on ACS's equipment.
2. Waiver of coinsurance for the insured property.
3. Insured for "All Risk"/"Special Perils" with an extension of coverage for Flood and Earthquake.

16.2 Cyber Insurance. During the Term of this Agreement, Client shall secure and maintain Cyber Liability Insurance to insure Client's cyber exposure with commercially reasonable policy limits. It is understood and agreed that Client's specific coverage requirements shall be evaluated by a qualified insurance broker or risk manager.

16.2 Mutual Waiver of Subrogation. TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW), EMPLOYER'S, PROFESSIONAL LIABILITY, GENERAL LIABILITY, PROPERTY INSURANCE, COMMERCIAL UMBRELLA/EXCESS, CYBER OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD ACS, ITS CONTRACTORS AND/OR THIRD-PARTY SERVICE PROVIDERS, RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT CLIENT'S INSURANCE POLICIES REFERENCED ABOVE PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THIS AGREEMENT.

17. DISCLAIMERS

The express remedies set forth in this Agreement will constitute Client's exclusive remedies, and ACS's sole obligation and liability, for any claim (a) that a Service or deliverable provided hereunder does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.

UNLESS OTHERWISE AGREED TO IN WRITING BY ACS, IT IS UNDERSTOOD AND AGREED THAT THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." ACS DOES NOT MAKE ANY WARRANTIES, EXPRESSED OR IMPLIED, ARISING FROM COURSE OF DEALING, USAGE OF TRADE, STATUTORY, OR OTHERWISE, AS TO THE SERVICES AND DELIVERABLES PROVIDED HEREUNDER OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

ACS DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CLIENT

REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CLIENT, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

No statement by any ACS employee, contractor, or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any manner whatsoever.

18. SEVERABILITY

If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

19. AMENDMENT

ACS may modify or change the terms of this Agreement at any time. Client's continued use of the Services or purchase of any Products after any changes are made to the terms herein shall constitute Client's consent to such new terms. If Client does not agree to the new terms, Client must notify ACS, in writing, of its objection to the new terms, and ACS shall have the right, in its sole discretion, to then terminate the Services and/or the availability of the Products offered to Client.

20. RELATIONSHIP

The parties are independent contractors and nothing in this Agreement shall be construed to imply or create a joint venture, partnership, principal and agent, employer and employee or other relationship.

21. LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without reference to principles of conflicts of laws. Any suit or action arising under this Agreement shall be brought in a state or federal court located in the State, City, and County of New York, and the parties irrevocably submit to the exclusive jurisdiction of such courts.

22. PREVAILING PARTY

In the event that any action or proceeding is instituted by ACS to enforce its rights under, or with respect to, any provision of this Agreement, ACS shall be entitled to recover its reasonable costs, fees, and expenses incurred in connection with such action or proceeding from Client, including, without limitation, its reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all costs, fees, and expenses of any appeals, provided that ACS is the prevailing party in such action, proceeding, or appeal, as the case may be.

23. WAIVER

Failure by either Party to insist upon strict performance of any provision herein shall not be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default by the other Party.

24. FORCE MAJEURE

In the event either party shall be delayed, hindered, or prevented from the performance of any act required hereunder (other than the obligation to make payments when due) by reasons of strike, lockouts, labor troubles, inability to procure materials or services, failure of power or restrictive government orders, acts of government, judicial orders or decrees, riots, insurrection, war, terrorism, disease, epidemic, pandemic, Acts of God, inclement weather, power failure, communications delays/outages, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software or any other reason or cause beyond that party's reasonable control, then performance of such act shall be excused for the period of such delay.

25. ASSIGNMENT

Client may not assign its rights or obligations under this Agreement without ACS's prior written consent.

26. ENTIRE AGREEMENT

This Agreement, as may be amended, together with any documents expressly referenced in this Agreement, as may be amended, constitutes the entire agreement by and between the parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreement of the parties, whether written or oral, with respect to such subject matter.