



BY EXECUTING A SERVICE ORDER OR STATEMENT OF WORK THAT INCORPORATES THIS AGREEMENT, CUSTOMER AGREES TO FOLLOW AND BE BOUND BY THE TERMS OF THIS KSG SUBSCRIPTION. THE PERSON ENTERING INTO THIS AGREEMENT ON BEHALF OF CUSTOMER CONFIRMS THAT HE OR SHE HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THIS AGREEMENT AND HAS THE AUTHORITY TO BIND CUSTOMER AND ITS RELATED PARTIES HERETO.

## **KERAUNO SERVICES GROUP SUBSCRIPTION TERMS AND CONDITIONS (SOFTWARE AS A SERVICE)**

**These KERAUNO SERVICES GROUP (“KSG”) TERMS AND CONDITIONS** with the Initial Service Order, (the “**Agreement**”), effective as of the Effective Date (defined below), is by and between KSG and Customer (together with KSG, the “**Parties**”).

The Parties agree:

### **Article 1. SERVICES.**

**Section 1.1 Services.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, KSG shall use commercially reasonable efforts to provide to Customer and its Authorized Users the Subscriptions described in the Initial Service Order and this Agreement (collectively, the “**Subscriptions**”) in accordance with these Terms and Conditions which may be updated from time to time (collectively the “**Specifications**”). Additional Subscriptions can be added by the execution of a “**Change Order**”.

**Section 1.2 Hosting Services.** KSG agrees to host, manage, operate and maintain the Service Software for remote electronic access and use by Customer and its Authorized Users (that portion of the Subscriptions, the “**Hosted Services**”) in substantial conformity with the Specifications. KSG may utilize a third party infrastructure provider to perform the Hosted Services.

**Section 1.3 Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the Parties:

- (a) KSG has and will retain sole control over the operation, provision, maintenance and management of the Subscriptions and KSG Materials, including the: (i) KSG Systems; (ii) selection, deployment, modification and replacement of the Service Software; and (iii) performance of Support Services and Service maintenance, upgrades, corrections and repairs; and
- (b) Customer has and will retain sole control over the operation, maintenance and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Subscriptions and KSG Materials by any

Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions or materials provided by any of them to the Subscriptions; (ii) results obtained from any use of the Subscriptions or KSG Materials; and (iii) conclusions, decisions or actions based on such use.

**Section 1.4 Component Services.** In addition to the Subscriptions, KSG offers other services that are complementary to and enhance KSG, including, without limitation, voice services, SMS texting services, e-mail services, dialer services, and chat services (“**Component Services**”). Customer may purchase Component Services from KSG by executing a Service Order for one or more Component Services. The Component Services may be provided by third parties for whom KSG acts as a distributor and, if so, the third party and not KSG will be solely responsible for the Component Services. If Customer contracts for any Component Services, the terms and conditions of this Agreement, as well as additional terms and conditions pertaining specifically to each Component Service that are stated or incorporated by reference in the relevant Addendum and Service Order (“**Component Service Terms**”) apply to and govern Customer’s and its Authorized Users’ use of the Component Services.

**Section 1.5 Service Management.** Each Party shall, throughout the Term, maintain within its organization a service manager to serve as the Party’s primary point of contact for day-to-day communications, consultation and decision-making regarding the Subscriptions. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of the Party under this Agreement. Each Party shall ensure its service manager has the requisite organizational authority, skill, experience and other qualifications to perform in such capacity. If either Party’s service manager ceases

to be employed by the Party or the Party otherwise wishes to replace its service manager, the Party shall promptly name a new service manager by written notice to the other Party.

**Section 1.6 Changes.** KSG reserves the right, in its sole discretion, to make any changes to the Subscriptions and KSG Materials that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of KSG's services to its customers, (ii) the competitive strength of, or market for, KSG's services or (iii) the Subscriptions' cost efficiency or performance; or (b) to comply with applicable Law.

**Section 1.7 Subcontractors.** KSG may from time to time in its discretion engage third parties to perform Subscriptions (each, a "**Subcontractor**").

**Section 1.8 Suspension or Termination of Services.** KSG may, directly or indirectly, and by use of a KSG Disabling Device or any other lawful means, suspend, terminate or otherwise deny Customer's, any Authorized User's or any other Person's access to or use of all or any part of the Subscriptions, Component Services or KSG Materials, without incurring any resulting obligation or liability, if: (a) KSG receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires KSG to do so; or (b) KSG believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the Subscriptions beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Subscriptions; or (iii) this Agreement expires or is terminated. This Section 1.8 does not limit any of KSG's other rights or remedies, whether at law, in equity or under this Agreement.

## **Article 2. AUTHORIZATION AND CUSTOMER RESTRICTIONS.**

**Section 2.1 Authorization.** Subject to and conditioned on Customer's payment of the Fees and compliance and performance in accordance with all other terms and conditions of this Agreement, KSG hereby authorizes Customer to access and use, solely in the Territory and during the Term, the Subscriptions and such KSG Materials as KSG may supply or make available to Customer solely for the Permitted Use by and through Authorized Users in accordance with the Specifications, and the conditions and limitations set

forth in this Agreement and Terms of Use. This authorization is non-exclusive and other than as may be expressly set forth in Section 15.7, non-transferable.

**Section 2.2 Reservation of Rights.** Nothing in this Agreement grants any right, title or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Subscriptions, KSG Materials or Third Party Materials, whether expressly, by implication, estoppel or otherwise. All right, title and interest in and to the Subscriptions, KSG Materials and the Third Party Materials are and will remain with KSG and the respective rights holders in the Third Party Materials.

**Section 2.3 Authorization Limitations and Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Subscriptions or KSG Materials except as expressly permitted by this Agreement and, in the case of Third Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a) copy, modify or create derivative works or improvements of the Subscriptions or KSG Materials;
- (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Subscriptions or KSG Materials to any Person, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;
- (c) reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Subscriptions or KSG Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Subscriptions or KSG Materials or access or use the Subscriptions or KSG Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit or otherwise provide to or through the Subscriptions or KSG Systems, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Subscriptions, KSG Systems

or KSG's provision of Subscriptions to any third party, in whole or in part;

(g) remove, delete, alter or obscure any trademarks, Specifications, Documentation, Terms of Use, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Subscriptions or KSG Materials, including any copy thereof;

(h) access or use the Subscriptions or KSG Materials in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other KSG customer), or that violates any applicable Law;

(i) access or use the Subscriptions or KSG Materials for purposes of competitive analysis of the Subscriptions or KSG Materials, the development, provision or use of a competing software service or product or any other purpose that is to KSG's detriment or commercial disadvantage; or

(j) otherwise access or use the Subscriptions or KSG Materials beyond the scope of the authorization granted under Section 2.1.

### **Article 3. CUSTOMER OBLIGATIONS.**

**Section 3.1 Customer Systems and Cooperation.** Customer shall at all times during the Term:

(a) set up, maintain and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Subscriptions are accessed or used;

(b) provide KSG Personnel with such access to Customer's premises and Customer Systems as is necessary for KSG to perform the Subscriptions in accordance with the availability requirements and Specifications; and

(c) provide all cooperation and assistance as KSG may reasonably request to enable KSG to exercise its rights and perform its obligations under and in connection with this Agreement.

**Section 3.2 Effect of Customer Failure or Delay.** KSG is not responsible or liable for any delay

or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

**Section 3.3 Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by Section 2.3, Customer shall, and shall cause its Authorized Users to, immediately:

(a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Subscriptions and KSG Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and

(b) notify KSG of any such actual or threatened activity.

### **Article 4. HOSTING SERVICES.**

**Section 4.1 Provision of Services.** The Hosted Services will be provided 24 hours per day, seven days per week every day of the year, except for:

(a) Scheduled downtime in accordance with KSG's published schedule;

(b) downtime or degradation of the Hosted Services due to a Force Majeure Event;

(c) any other circumstances beyond KSG's reasonable control, including Customer's or any Authorized User's use of Third Party Materials, misuse of the Subscriptions, or use of the Hosted Services other than in compliance with the express terms of this Agreement and the Specifications; and

(d) any suspension or termination of Customer's or any Authorized Users' access to or use of the Hosted Services as permitted by this Agreement.

**Section 4.2 Service Levels and Credits.** Service levels and credits are governed by the Service Level Agreement.

**Section 4.3 Data Backup.** The Subscriptions do not replace the need for Customer to maintain regular data backups or redundant data archives. The Hosted Services are programmed to perform routine data backups of core data as set out in the Documentation. At Customer's request and for its then current fee, KSG will deliver to Customer its then most current back-ups of Customer Data as and when set

forth in the Documentation. In the event of any loss, destruction, damage or corruption of Customer Data caused by its negligent or willful acts or omissions, KSG will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from KSG's then most current backup of the Customer Data.

## **Article 5. SECURITY.**

**Section 5.1 KSG Systems and Security Obligations.** KSG shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data.

**Section 5.2 Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions and materials provided by or on behalf of Customer or any Authorized User in connection with the Subscriptions; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services ("Customer Systems"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Subscriptions and KSG Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions and actions based on, that access or use.

**Section 5.3 Access and Security.** Customer shall employ all physical, administrative and technical controls, screening and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Hosted Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Hosted Services.

## **Article 6. FEES; PAYMENT TERMS.**

**Section 6.1 Fees.** Customer shall pay KSG the fees set forth in each Service Order (including the Initial Service Order) as modified by any Change Orders ("Fees") in accordance with this Article 6. Customer may also incur charges from third-party service providers that are separate and apart from the amounts charged by KSG. These may include, without limitations, charges resulting from accessing

on-line services, messages or calls to parties who charge for their telephone based services, and purchasing or subscribing to other offers via the internet. Customer agrees that all such charges are Customer's sole responsibility.

**Section 6.2 Service Order Renewal Terms.** Unless otherwise provided in a Service Order, each Service Order will automatically annually renew for additional terms of one (12 months) year unless either Customer or KSG gives the other notice of non-renewal at least thirty (30) days prior to the end of the then current Term by sending notice to [legal@keraunouc.com](mailto:legal@keraunouc.com) of their intent to not renew the term of the Service Order. If customer gives said notice, the Service Order will then continue on a month to month basis and the Monthly Recurring Charges ("MRCs") for the Service(s) identified in the Service Order will automatically increase by 12%.

If customer wishes to disconnect, deactivate, and/or remove any Service(s) identified in the given Service Order upon the expiration of the Service Term of the Service Order, customer must send the written notice at least thirty (30) days, but no more than one hundred eighty (180) days, prior to the end of the then current Term required by this paragraph to [legal@keraunouc.com](mailto:legal@keraunouc.com) and execute a Confirmation of Deactivation form provided by KSG. If Customer fails to provide the written notice and executed Confirmation of Deactivation form required by this paragraph, the Service Term of the Service Order in question will automatically renew for a duration of 12 months for all the Services stated in the given Service Order.

**Section 6.3 Fee Increases.** ~~Nothing in this section shall limit or~~ otherwise reduce Customer's obligation to pay an Early Termination Fee, if applicable. KSG may increase Fees for any contract year following the expiration of any initial or renewal Term of a Service Order by providing written notice to Customer at least 90 calendar days prior to the commencement of that contract year, and the Service Order will be deemed amended accordingly.

**Section 6.4 Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on KSG's income.

**Section 6.5 Charges and Billings.** Within fifteen (15) days of the date on which Customer

executes each Service Order, Customer shall pay KSG all of the non-recurring charges designated on such Service Order as “Non-recurring Charges” (“NRC”).

Customer further agrees to pay KSG all charges associated with the Services and/or Products as stated in each Service Order, including without limitation the “Monthly Recurring Charges” (“MRC”) for each Service or Product. In the event that some, but not all, Products and/or Services associated with a Service Order are installed or activated, Customer agrees to pay KSG the MRCs and Additional Charges associated with those Services that are installed or activated even though the Effective Date for the entire Service Order has not commenced. The MRC for the initial month of each Service shall be prorated from the start of that Service through the end of that calendar month.

**Section 6.6 Payment.** Upon commencement of the entire Service Order, Customer shall pay all Fees within 30 days after the date the invoice is sent to Customer at the email address specified in accordance with Section 15.4. Customer shall make payments to the address or account specified in Initial Service Order or such other address or account as KSG may specify in writing from time to time.

**Section 6.7 Late Payment.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available:

(a) KSG may charge interest on the past due amount at the rate of 1.5% or \$25.00, whichever is greater, per month, calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

(b) Customer shall reimburse KSG for all costs incurred by KSG in collecting any late payments or interest, including attorneys’ fees, court costs and collection agency fees; and

(c) if such failure continues for 30 days following written notice thereof, KSG may suspend performance of the Subscriptions until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

**Section 6.8 No Deductions or Setoffs.** All amounts payable to KSG under this Agreement shall be paid by Customer to KSG in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than service credits issued pursuant to the Service Level Agreement or any

deduction or withholding of tax as may be required by applicable Law).

## **Article 7. INTELLECTUAL PROPERTY RIGHTS.**

**Section 7.1 Services and KSG Materials.** All right, title and interest in and to the Subscriptions and KSG Materials, including all Intellectual Property Rights therein, are and will remain with KSG and the respective rights holders in the Third Party Materials. Customer has no right, license or authorization with respect to any of the Subscriptions or KSG Materials (including Third Party Materials) except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 2.3 All other rights in and to the Subscriptions and KSG Materials (including Third Party Materials) are expressly reserved by KSG and the respective third-party licensors.

**Section 7.2 Customer Data.** As between Customer and KSG, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 7.3.

**Section 7.3 Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to KSG, its Affiliates, its Subcontractors and KSG Personnel as are necessary or useful to perform or improve the Subscriptions; and (b) to KSG as are necessary or useful to enforce this Agreement and exercise its rights and perform its hereunder, (c) to KSG and its Affiliates to analyze the use of the Subscriptions, to improve the Subscriptions, to develop enhancements to the Subscriptions that will facilitate communications for its current and future customers and to create anonymized and aggregated data that is used to analyze communications within and between organizations and individuals in order to create products and services to be offered by KSG and its Affiliates; and (d) to KSG and its Affiliates to create anonymized and aggregated data that may be used for any lawful purpose.

## **Article 8. CONFIDENTIALITY.**

**Section 8.1 Confidential Information.** In connection with this Agreement each Party (as the “Disclosing Party”) may disclose or make available Confidential Information to the other Party (as the “Receiving Party”). Subject to Section 8.2, “Confidential Information” means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade

secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations. Without limiting the foregoing: all KSG Materials and this Agreement are the Confidential Information of KSG.

**Section 8.2 Exclusions.** Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

**Section 8.3 Protection of Confidential Information.** As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted by and subject to its compliance with Section 8.3(e), not disclose or permit access to Confidential Information other than to its Representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 8.3; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 8.3;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure

using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and

(d) ensure its Representatives' compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of this Section Article 8.

(e) **Compelled Disclosures.** If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party shall: (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights under Section 8.3; and (ii) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8.3(e), the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

## **Article 9. TERM AND TERMINATION .**

**Section 9.1 Term.** The term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until six (6) months after the last Service Order Term to expire (the "**Term**").

**Section 9.2 Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

(a) KSG may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and the failure continues more than 30 days after KSG's delivery of written

notice failure to pay; or (ii) breaches any of its obligations under Section 2.3 or Article 8.

(b) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; and

(c) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**Section 9.3 Effect of Expiration or Termination.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

(a) all rights, licenses, consents and authorizations granted by either Party to the other hereunder will immediately terminate;

(b) KSG shall immediately cease all use of any non-anonymized Customer Data or Customer's Confidential Information and (i) at Customer's written request, return to Customer or destroy, all documents and tangible materials containing, reflecting, incorporating or based on non-anonymized Customer Data or Customer's Confidential Information; and (ii) permanently erase all non-anonymized Customer Data and Customer's Confidential Information from all systems KSG directly or indirectly controls;

(c) Customer shall immediately cease all use of any Subscriptions, Component Services or KSG Materials and (i) at KSG's written request return to KSG or destroy all documents and tangible materials containing,

reflecting, incorporating or based on KSG's Confidential Information; and (ii) permanently erase KSG's Confidential Information from all systems Customer directly or indirectly controls;

(d) KSG may disable all Customer and Authorized User access to the Hosted Services and KSG Materials;

(e) if Customer terminates this Agreement pursuant to Section 9.2(b), Customer will be relieved of any obligation to pay any Fees (including Early Termination Fees) attributable to the period after the effective date of the termination and KSG will refund to Customer Fees paid in advance for Subscriptions that KSG has not performed as of the effective date of termination;

(f) if KSG terminates this Agreement pursuant to Section 9.2(a) or Section 9.2(b), or if the Customer Terminates this Agreement or any Service Order at any time prior to the expiration of any Service Term of any Service Order for convenience, all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and any expenses that are reimbursable, on receipt of KSG's invoice. These Early Termination Fees are calculated pursuant to the definition of "Early Termination Fee" set forth in the Definitions. Customer agrees that the amount of the Early Termination Fee is a genuine estimate of KSG's actual damages resulting from an early termination of the Services, and therefore for the sake of efficiency, economy and convenience, the Early Termination Fee set forth herein constitutes liquidated damages, is reasonable, and is not intended as a penalty or to be punitive in nature.

**Section 9.4 Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 2.3, Article 8, Section 9.3, this Section 9.4, Article 10, Section Article 11, Article 12 and Article 14.

**Article 10. REPRESENTATIONS AND WARRANTIES.**

**Section 10.1 Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that:

- (a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of the Party; and
- (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of the Party, enforceable against the Party in accordance with its terms.

**Section 10.2 Additional KSG Representations, Warranties and Covenants.** KSG represents, warrants and covenants to Customer that KSG will perform the Subscriptions using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

**Section 10.3 Additional Customer Representations, Warranties and Covenants.** Customer represents, warrants and covenants to KSG that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by KSG and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

**Section 10.4 DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 12.1, SECTION 12.2 AND SECTION 12.3, ALL KSG SERVICES AND KSG MATERIALS ARE PROVIDED “AS IS” AND KSG HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND KSG SPECIFICALLY DISCLAIMS ALL

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, KSG MAKES NO WARRANTY OF ANY KIND THAT THE KSG SERVICES OR KSG MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER’S OR ANY OTHER PERSON’S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER KSG SERVICES EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

**Article 11. INDEMNIFICATION.**

**Section 11.1 KSG Indemnification.** KSG shall indemnify, defend and hold harmless Customer from and against any and all Losses incurred by Customer arising out of or relating to any claim, suit, action or proceeding (each, an “Action”) by a third party (other than an Affiliate of Customer) to the extent that such Losses arise from any allegation in the Action that Customer’s use of the Subscriptions (excluding Customer Data and Third Party Materials) in compliance with this Agreement (including the Specifications) infringes an Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to or use of the Subscriptions or KSG Materials in combination with any hardware, system, software, network or other materials or service not provided or authorized in the Specifications or otherwise in writing by KSG;
- (b) modification of the Subscriptions or KSG Materials other than: (i) by or on behalf of KSG; or (ii) with KSG’s written approval in accordance with KSG’s written specification;
- (c) failure to timely implement any modifications, upgrades, replacements or



enhancements made available to Customer by or on behalf of KSG; or

(d) act, omission or other matter described in Section 11.2(a), Section 11.2(b), Section 11.2(c) or Section 11.2(d), whether or not the same results in any Action against or Losses by any KSG Indemnitee.

**Section 11.2 Customer Indemnification.**

Customer shall indemnify, defend and hold harmless KSG and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors and assigns (each, a “**KSG Indemnitee**”) from and against any and all Losses incurred by such KSG Indemnitee in connection with any Action by a third party (other than an Affiliate of a KSG Indemnitee) to the extent that such Losses arise out of or relate to any:

(a) Customer Data, including any Processing of Customer Data by or on behalf of KSG in accordance with this Agreement;

(b) any other materials or information (including any documents, data, specifications, software, content or technology) provided by or on behalf of Customer or any Authorized User, including KSG’s compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by KSG;

(c) allegation of facts that, if true, would constitute Customer’s breach of any of its representations, warranties, covenants or obligations under this Agreement; or

(d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.

**Section 11.3 Indemnification Procedure.**

Each Party shall promptly notify the other Party in writing of any Action for which the Party believes it is entitled to be indemnified pursuant to Section 11.1 or Section 11.2, as the case may be. The Party seeking indemnification (the “Indemnitee”) shall cooperate with the other Party (the “Indemnitor”) at the Indemnitor’s sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation of such Action and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor’s sole cost and

expense. The Indemnitee’s failure to perform any obligations under this Section 11.3 will not relieve the Indemnitor of its obligations under this Article 11 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

**Section 11.4 Mitigation.** If any of the Subscriptions or KSG Materials are, or in KSG’s opinion are likely to be, claimed to infringe, misappropriate or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Subscriptions or KSG Materials is enjoined or threatened to be enjoined, KSG may, at its option and sole cost and expense:

(a) obtain the right for Customer to continue to use the Subscriptions and KSG Materials materially as contemplated by this Agreement;

(b) modify or replace the Subscriptions and KSG Materials, in whole or in part, to seek to make the Subscriptions and KSG Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Subscriptions and KSG Materials, as applicable, under this Agreement; or

(c) by written notice to Customer, terminate this Agreement with respect to all or part of the Subscriptions and KSG Materials, and require Customer to immediately cease any use of the Subscriptions and KSG Materials or any specified part or feature thereof.

THIS ARTICLE 11 SETS FORTH CUSTOMER’S SOLE REMEDIES AND KSG’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF (INCLUDING THE KSG SERVICES AND KSG MATERIALS) INFRINGES, MISAPPROPRIATES OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

**Article 12. LIMITATIONS OF LIABILITY.**

**Section 12.1 EXCLUSION OF DAMAGES.** IN NO EVENT WILL KSG OR ANY OF ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT

OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE KSG SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO THE SERVICE LEVEL AGREEMENT; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**Section 12.2 CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF KSG AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO KSG UNDER THIS AGREEMENT DURING THE SIX MONTHS IMMEDIATELY PRIOR TO THE DATE SUCH LIABILITY ARISES. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

### **Article 13. FORCE MAJEURE.**

**Section 13.1 No Breach or Default.** In no event will KSG be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by any circumstances beyond KSG 's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in

effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

**Section 13.2 Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, KSG shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

### **Article 14. DEFINITIONS.**

**Section 14.1 Defined Terms.** The following terms shall have the specified meanings.

**"Access Credentials"** means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Hosted Services.

**"Action"** has the meaning set forth in Section 11.1.

**"Affiliate"** of a party means any entity that such party directly or indirectly controls, is controlled by, or is under common control with. In this context, a party "controls" a corporation or other entity if it or any combination of it and/or its Affiliates owns more than fifty percent (50%) of the voting rights for (i) the board of directors, or (ii) other mechanism of control for such corporation or other entity.

**"Agreement"** has the meaning set forth in the caption.

**"Authorized User"** means each of the individuals authorized to use the Subscriptions pursuant to **Section 2.1** and the other terms and conditions of this Agreement as described in the relevant Service Order.

**"Change Order"** has the meaning set forth in Section 1.1

**"Component Service Terms"** has the meaning set forth in Section 1.4.

**"Component Services"** has the meaning set forth in Section 1.4.

**"Confidential Information"** has the meaning set forth in Section 8.1.

“**Customer Data**” means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Subscriptions or that incorporates or is derived from the Processing of the information, data or content by or through the Subscriptions.

“**Customer Failure**” has the meaning set forth in Section 3.2.

“**Customer Systems**” has the meaning set forth in Section 5.2..

“**Customer**” has the meaning set forth in the caption.

“**Disclosing Party**” has the meaning set forth in Section 8.1.

“**Documentation**” means any manuals, instructions or other documents or materials that KSG provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Subscriptions or KSG Materials, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

“**Early Termination Fee**” means with respect to each existing Service Order, an amount equal to:

- (a) the number of months remaining in the Service Term of the applicable Service Order from the Termination Date through the end of the applicable Service Term, multiplied by the MRCs with respect to each Service that is terminated; plus
- (b) all Charges that are unpaid as of the Termination Date; plus
- (c) all costs and expenses incurred by KSG in disconnecting such Service; plus
- (d) any other amounts required to be paid by Customer pursuant to the applicable Service Order.

“**Effective Date**” shall be the date in which the Subscription or Component Service specified on a Service Order is available for use by the Customer in a production environment (i.e., “goes live”). In the event multiple Subscriptions and/or Component Services are listed on a Service Order, the Effective Date shall be the date in which the final remaining Subscription or Component Service goes live. For further clarification and the avoidance of any doubt, the Effective Date will be the date in which all services specified on a given Service Order are live and ready for Customer use (i.e., not in a development or testing phase).

“**Fees**” means all NRCs, MRCs, Additional Fees and Costs and any and all other amounts payable by Customer pursuant to this Subscription Agreement as more fully defined in Section 6.

“**Force Majeure Event**” has the meaning set forth in Section 13.1.

“**Harmful Code**” means any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data Processed thereby, or (b) prevent Customer or any Authorized User from accessing or using the Subscriptions or KSG Systems as intended by this Agreement. Harmful Code does not include any KSG Disabling Device.

“**Hosted Services**” has the meaning set forth in Section 1.2.

“**Indemnitee**” has the meaning set forth in Section 11.3.

“**Indemnitor**” has the meaning set forth in Section 11.3.

“**Initial Service Order**” has the meaning set forth in the caption.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**KSG Disabling Device**” means any software, hardware or other technology, device or means (including any back door, time bomb, time out, drop dead device, software routine or other disabling device) used by KSG or its designee to disable Customer’s or any Authorized User’s access to or use of the Subscriptions automatically with the passage of time or under the positive control of KSG or its designee.

“**KSG Indemnitee**” has the meaning set forth in Section 11.2.

“**KSG Materials**” means the Service Software, Specifications, Documentation and KSG Systems and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies

and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by KSG or any Subcontractor in connection with the Subscriptions or otherwise comprise or relate to the Subscriptions or KSG Systems. For the avoidance of doubt, KSG Materials include any information, data or other content derived from KSG's monitoring of Customer's access to or use of the Subscriptions, but do not include Customer Data.

**"KSG Personnel"** means all individuals involved in the performance of Subscriptions as employees, agents or independent contractors of KSG or any Subcontractor.

**"KSG Systems"** means the information technology infrastructure used by or on behalf of KSG in performing the Subscriptions, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by KSG or through the use of third-party services.

**"KSG"** has the meaning set forth in the caption.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree or other requirement of any federal, state, local or foreign government or political subdivision thereof, or any arbitrator, court or tribunal of competent jurisdiction.

**"Losses"** means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

**"MRC"** means the monthly recurring charges associated with a Service.

**"NRC"** means the non-recurring charges associated with a Service or a hardware purchase.

**"Permitted Use"** means any use of the Subscriptions by an Authorized User for the benefit of Customer solely in or for Customer's internal business operations.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.

**"Process"** means to take any action or perform any operation or set of operations that the Hosted Services are capable of taking or performing on any

data, information or other content, including to collect, receive, input, upload, download, record, reproduce, store, organize, compile, combine, log, catalog, cross-reference, manage, maintain, copy, adapt, alter, translate or make other derivative works or improvements, process, retrieve, output, consult, use, perform, display, disseminate, transmit, submit, post, transfer, disclose or otherwise provide or make available, or block, erase or destroy. **"Processing"** and **"Processed"** have correlative meanings.

**"Receiving Party"** has the meaning set forth in Section 8.1.

**"Representatives"** means, with respect to a Party, that Party's and its Affiliates' employees, officers, directors, consultants, agents, independent contractors, service providers, sublicensees, subcontractors, and legal advisors.

**"Service Level Agreement"** means the Service Level Agreement as maintained by KSG at the Verge Partner Portal.

**"Service Order Term"** means the term for the Subscriptions or the Component Services specified in the relevant Service Order as the term may be renewed.

**"Service Order"** means the the Initial Service Order and any additional service orders, executed by the Parties for Subscriptions or a service order for Component Services.

**"Service Software"** means the KSG software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that KSG provides to allow remote access to and use of as part of the Subscriptions.

**"Specifications"** has the meaning set forth in Section 1.1.

**"Subcontractor"** has the meaning set forth in Section 1.7.

**"Subscriptions"** has the meaning set forth in Section 1.1.

**"Term"** has the meaning set forth in Section 9.1.

**"Terms of Use"** means the KSG's Terms of Use, a copy of which was available as of the Effective Date at the Verge Partner Portal.

**"Territory"** is specified in the Service Order.

**"Third Party Materials"** means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment or

components of or relating to the Subscriptions that are not proprietary to KSG.

**Section 14.2 Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (a) to sections, exhibits, schedules, attachments and appendices mean the sections of, and exhibits, schedules, attachments and appendices attached to, this Agreement; (g) to an agreement, instrument or other document means the agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof; and (h) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The Parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

## **Article 15. MISCELLANEOUS.**

**Section 15.1 Further Assurances.** Upon a Party’s reasonable request, the other Party shall, at the requesting Party’s sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, necessary to give full effect to this Agreement.

**Section 15.2 Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

**Section 15.3 Public Announcements.** Neither Party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other Party’s trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other Party, which consent

shall not be unreasonably withheld, conditioned or delayed, provided, however, that KSG may, without Customer’s consent, include Customer’s name in its lists of KSG’s current or former customers of KSG in promotional and marketing materials.

**Section 15.4 Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement have binding legal effect only if in writing and addressed to Customer at the address provided in the Initial Service Order and to KSG as follows (or to such other address or such other person that the Party may designate from time to time in accordance with this Section 15.4):

Kerauno Services Group, LLC  
Suite 1750  
151 N. Delaware St.  
Indianapolis, Indiana 46204  
Attention: President

Notices sent in accordance with this Section 15.4 will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by or e-mail, with confirmation of transmission, if sent during the addressee’s normal business hours, and on the next business day, if sent after the addressee’s normal business hours; and (d) on the 3<sup>rd</sup> day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

**Section 15.5 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section 15.6 Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**Section 15.7 Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without KSG’s prior written consent, which consent KSG may give or withhold in its sole discretion. Notwithstanding the foregoing, Customer may assign hti Agreement in connection with the sale of all or substantially its assets or connection with the merger or consolidation of Customer so long as the

acquirer of its assets or the surviving party promptly confirms its assumption of all of Customer's obligations under this Agreement. No delegation or other transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation or transfer in violation of this Section 15.7 is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

**Section 15.8 No Third-party Beneficiaries.**

This Agreement is for the sole benefit of the Parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 15.9 Amendment and Modification; Waiver.**

No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 15.10 Severability.** If any provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the

Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 15.11 Governing Law; Submission to Jurisdiction.**

This Agreement is governed by and construed in accordance with the internal laws of the State of Indiana without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Indiana. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Indiana, in each case located in the city of Indianapolis and County of Marion, and each Party irrevocably submits to the exclusive jurisdiction of those courts in suit, action or proceeding. Service of process, summons, notice or other document by mail to the Party's address set forth in this agreement shall be effective service of process for any suit, action or other proceeding brought in these courts.

**Section 15.12 Waiver of Jury Trial.**

Each Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

**Section 15.13 Equitable Relief.**

Each Party acknowledges and agrees that a breach or threatened breach by the Party of any of its obligations under Section Article 8 or, in the case of Customer, Section 2.3 or Section 3.3, would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.