

KDAB (USA) LLC

COMPANY/TEAM ONLINE TRAINING

TERMS AND CONDITIONS

1. SCOPE OF TERMS AND CONDITIONS

These Terms and Conditions govern the relationship between **KDAB (USA), LLC** (“**KDAB**”) and **CLIENT** under the Proposal (collectively, the “**Agreement**”) and are incorporated therein for all purposes. In the event of a discrepancy between the Proposal and these Terms and Conditions, the Proposal, shall control.

2. DEFINITIONS. The following terms shall have the meanings set out below when used in this Agreement:

A. “**Affiliates**” means any entity controlling, controlled by, or under common control with a Party. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or exercise a controlling influence over the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

B. “**Applicable Laws**” means all laws, including any statute, regulation or by-law, treaty, directive, rule, requirement, policy having the force of law, order, judgment, injunction, award or decree of any Government Entity, and the common law, and including any policy, instrument, rule or order of any Stock Exchange or securities commission, which are applicable to the subject Party in connection herewith and are in effect at the subject time.

C. “**CLIENT Materials**” means all **CLIENT** products, data, plans, specifications, reports, designs, documentation, **CLIENT** Confidential Information, **CLIENT** End User Data and any other materials to which the **KDAB** has had direct or indirect access during the course of providing the Services.

D. “**Confidential Information**” shall have the meaning given in Section 8.

E. “**End User**” means employees of **CLIENT** or **CLIENT** Affiliates who are authorized by **CLIENT** to attend **KDAB**’s training courses in accordance with the terms of this Agreement.

F. “**KDAB’s Affiliates**” means the Affiliates of **KDAB**, including the following: Klarälvdalens Datakonsult AB (Sweden), **KDAB** (Deutschland) GmbH & Co KG; **KDAB** (France) SAS; and **KDAB** (UK) Ltd.

G. “**KDAB’s Property**” means the totality of the **KDAB**’s property rights, real, personal and/or intellectual, owned by the **KDAB**, including without limitation, know-how, techniques, technologies, methods, concepts, inventions, patents, copyrights and trademarks, whether or not registered and programs owned by **KDAB** prior to commencing the Services, and used or supplied by **KDAB** in the course of performing the Services, provided that nothing in this definition may be read or construed to limit accretions to **KDAB**’s Property after commencement of Services. “**Order Document**” means the document signed by **CLIENT** and reasonably acceptable to **KDAB** that is used to order Services hereunder. Each Order Document hereby incorporates the terms of this Agreement.

H. “**Personal Information**” means any information or data directly or indirectly relating to any individual, including but not limited to, any customer, director, employee, agent and/or subcontractor of **CLIENT** and/or its Affiliates that when used by itself or in conjunction with any other information or data could directly or indirectly identify such individuals, including without limitation any information defined or deemed to be such pursuant to any applicable law or regulations related to privacy or data protection.

I. “**Proposal**” means the proposal letter including fee estimate and statement of work, which together with these Terms and Conditions constitute the agreement between **KDAB** and **CLIENT** upon approval by the parties.

J. “**Services**” means the provision of **KDAB**’s customized training courses to **CLIENT** as described in an applicable Statement of Work under this Agreement.

K. “**Taxes**” means all taxes, assessments, tariffs, dues, duties, rates, fees, imposts, levies and similar charges of any nature whatsoever, lawfully imposed, levied, assessed or collected by any Taxation Authority, whether based on the importation, delivery, receipt, consumption or use of any products or provision of any services by any Party, the execution of this Agreement or otherwise, together, in each case with all interest, penalties, fines or other additional amounts imposed in respect thereof, including any such amounts which are, or are in the nature of: (a) income taxes (including any taxes based on, measured by or with respect to net income, gross income, income as specially defined, earnings, profits or selected items of income, earnings or profits), windfall profits taxes, gross receipts taxes, branch taxes, minimum taxes, alternative minimum taxes or capital gains taxes; (b) capital taxes, franchise taxes or net worth taxes; (c) property taxes, personal property taxes, municipal taxes or rental taxes (all amounts in (a), (b) and (c) referred to herein as “**Individual Party Taxes**”); and (d) sales taxes, use taxes, value added taxes, goods and services taxes, harmonized sales taxes, export taxes, import taxes or customs duties (all amounts in (d) referred to herein as “**Indirect Taxes**”).

3. ACCEPTANCE

Written acknowledgment, tender of payment or acceptance of performance by **CLIENT** constitutes a complete and exclusive acceptance of all Terms and Conditions herein by **CLIENT**. The Terms and Conditions are expressly limited to those stated herein unless otherwise agreed to in writing signed by **KDAB's** authorized agent or employee. The signature of an agent or employee of **KDAB** on a document presented by **CLIENT** in connection with the delivery of any services, materials, or equipment, shall only constitute acknowledgment that such services, materials, or equipment have been delivered and shall not constitute **KDAB's** assent to any terms different from or in addition to those stated in these terms, notwithstanding anything to the contrary in **CLIENT's** documentation. All documents, articles and materials supplied to **CLIENT** by **KDAB** in connection with these terms will remain the property of **KDAB** and be subject to removal at any time upon **KDAB's** demand.

4. SCOPE OF WORK

A. Deliverable. **KDAB** agrees to provide **CLIENT** with custom online group training services as requested by the **CLIENT** during the Term of this Agreement. The nature, scope and product of the services to be performed in the Agreement (“**Work**”) shall be specified in the Proposal.

B. Quotations. Quotations shall be valid for the period stated in the Proposal. The quotation shall be based solely on the bid documents, including request for bid, drawings, specifications and/or instructions.

C. Time Permitted for Performance. Time shall be as specified in the Proposal as it may be amended by force majeure, change orders and delays in materials, permitting and other circumstances beyond **KDAB's** control.

D. Warranty. **KDAB** warrants that the Work shall be of good quality, performed in accordance with nationally recognized engineering codes and standards and sound industry practices, and shall conform to **KDAB's** Proposal.

5.1 CHANGES TO WORK

A. Specifications. These terms and conditions are subject to change by **KDAB** at any time upon notice to **CLIENT**. All changes by **CLIENT** are subject to written acceptance by **KDAB**. **CLIENT** shall bear any risk of changes in purchase price or delivery schedule resulting from **CLIENT's** changes.

B. Cancellation. Upon written notice to **KDAB**, **CLIENT** may cancel any order, or part of any order. **CLIENT** shall pay a cancellation charge of all costs incurred. In no event shall **CLIENT** cancel orders scheduled for delivery in less than thirty (30) days.

C. Insolvency. **KDAB** may cancel all or part of any order without any further liability to **CLIENT**, its successors or assigns, if the **CLIENT** files for protection under any bankruptcy law, becomes insolvent, is adjudicated bankrupt, has a voluntary or involuntary petition of bankruptcy filed against it, or makes an assignment for the benefit of creditors, or should **KDAB** become insecure with respect to **CLIENT's** ability to perform.

6. CLIENT RESPONSIBILITIES

In addition to payment of compensation, the **CLIENT** shall provide administrative and management tasks, including the following:

A. Information. With reasonable promptness, provide all available information regarding requirements for the Work.

B. Expense. The services described in this Section shall be furnished at no charge to **KDAB**, which shall be entitled to rely upon the accuracy and completeness thereof.

7. FEES AND PAYMENT

A. Compensation. **CLIENT** agrees to pay **KDAB** compensation for services rendered as provided in the Agreement on fixed fee basis, as follows. For Work to be performed for a fixed fee, invoice statements will be based on the fee specified in the Proposal. **KDAB** fees include course fees and materials.

B. Payment. Unless otherwise specified in the Agreement, **KDAB** shall issue a statement to **CLIENT** specifying the work performed. Payment is to be made as required within the time specified in the statement.

D. Taxes. **CLIENT** will be solely responsible for any excise, use, sales or other taxes owed to federal, state, or local taxing authorities in connection with the performance of the Work, other than taxes on income of **KDAB**. **CLIENT** agrees to pay and be responsible for any such taxes and levies imposed or charged. If **CLIENT** is entitled to exemption from such taxes, fees or charges, **CLIENT** shall be solely responsible for obtaining such treatment from taxing authorities.

8. CONFIDENTIAL INFORMATION

A. Confidential Information. Confidential Information shall mean all information, technical or otherwise, written or oral, relating to the Work which is designated as "Confidential" at the time of disclosure and provided that Confidential Information shall not include:

- (1) Information which at the time of the disclosure by the disclosing party is in the public domain;
- (2) Information which, after disclosure by the disclosing party, enters the public domain, except where such entry is the result of the receiving party's breach of this Agreement or other obligation of confidentiality;
- (3) Information which, prior to the disclosure by the disclosing party, was already in the receiving party's possession and not subject to an obligation of confidence with respect to said Confidential Information;
- (4) Information which is obtained by the receiving party from a third party who is lawfully in possession of such information and is not subject to a contractual or fiduciary relationship to the disclosing party with respect to said information provided that said third party does not require the receiving party to agree to refrain from disclosing said information.

B. Obligation. Each Party covenants and agrees to hold all Confidential Information of the other in trust and confidence and agrees not to use or to disclose Confidential Information to any person, firm or corporation, or to use such Confidential Information in any manner other than as provided herein. All intellectual property rights in all materials produced or distributed by **KDAB** are expressly reserved and any unauthorized duplication, publication or distribution is prohibited. The audio/video recording, displaying or transmitting of the Online Group Training by the **CLIENT** is strictly prohibited.

C. Limitation. No immunity or license or right is granted by the release of Confidential Information, by implication or otherwise, with respect to any technology, know-how, patent applications, patent or any claim of patents now or hereafter issued or filed.

D. Remedy. Each Party admits and agrees that the other Party would be irreparably damaged if any **KDAB (USA) LLC**.

provision of this Section is not fulfilled strictly in accordance with its terms and, accordingly, each Party shall be entitled

to a restraint, injunction or injunctions to prevent any breach of this Section by the other Party. The remedies in this Section shall be in addition to, and not in limitation of, any other remedy available at law or in equity or under this Agreement.

9. OWNERSHIP RIGHTS

A. **CLIENT Material.** **CLIENT** shall retain all rights, title and interest in any and all **CLIENT** materials incorporated into training and training materials.

B. **KDAB Material.** **KDAB** shall retain all rights, title and interest in any and all **KDAB** materials including all training aids. No rights, title or interest in any **KDAB** materials are transferred to **CLIENT** by virtue of this agreement. **KDAB** hereby grants to **CLIENT** and its Affiliates a nontransferable license to use **KDAB** materials solely in training under this agreement, provided that all amounts due to **KDAB** are paid.

10. LIABILITY AND INDEMNITY

A. **By KDAB.** **KDAB** agrees to protect, defend, unconditionally indemnify and hold **CLIENT**, its employees, members and officers, free and harmless from and against any liability, losses, claims, liens, demands, damages and causes of action, including without limitation judgments, penalties, interest, court costs and any legal fees incurred by the **CLIENT** in defense of same (including attorneys' fees incurred in enforcing this indemnity), which **CLIENT** may at any time suffer or sustain or become liable for by reason of **KDAB's** gross negligence or wrongful acts of employees or contractors of **KDAB** while performing services hereunder. **CLIENT** agrees to notify **KDAB** immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under this agreement. **KDAB** further agrees to investigate, handle, respond to, provide defense for and defend any claims or suits arising hereunder at its sole expense and agrees to bear all costs and expenses related thereto.

B. **By CLIENT.** **CLIENT** agrees to protect, defend, unconditionally indemnify and hold **KDAB**, its employees, members and officers, free and harmless from and against any and all liability, losses, claims, liens, demands, damages and causes of action of every kind and character, including without limitation judgments, penalties, interest, court costs and any legal fees incurred by the **KDAB** in defense of same (including attorneys' fees incurred in enforcing this indemnity), which **KDAB** may at any time suffer or sustain or become liable for by reason of (i) negligence or wrongful acts of employees or contractors of **CLIENT** while performing services hereunder; (ii) any breach or alleged breach of any representation or warranty by **CLIENT**, (iii) personal injury or death of any person or damage to any property whatsoever not caused by the gross negligence or wrongful acts of employees or contractors of **KDAB**. **KDAB** agrees to notify **CLIENT** immediately upon knowledge of any claim, suit, action or proceeding for which it may be entitled to indemnification under this agreement. **CLIENT** further agrees to investigate, handle, respond to, provide defense for and defend any claims or suits arising hereunder at its sole expense and agrees to bear all costs and expenses related thereto.

C. **Limitation of Liability.** **KDAB WILL NOT BE LIABLE TO CLIENT FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL KDAB'S LIABILITY EXCEED THE AMOUNT RECEIVED AS COMPENSATION.**

D. **Equitable Relief.** **CLIENT** agrees that it would be impossible to measure or calculate monetary damages for breach of these terms and conditions, and accordingly, **CLIENT** agrees that if **CLIENT** breaches any obligations under this Agreement, **KDAB** shall be entitled, without more, to a temporary restraining order and injunction, temporary and permanent, for a breach or anticipated breach of this Agreement. Nothing in this Agreement shall be read or construed to prohibit **KDAB** from pursuing any other remedies at law or in equity for actual or threatened breach of this Agreement.

E. **Force Majeure.** Any loss or damage, or delays in or failure of performance of either party hereto, shall not constitute default hereunder or give rise to any claims for damages if, but only to the extent that, such loss, damage, delay or failure is caused by "Force Majeure". As herein used, the term "Force Majeure" means war, mobilization, revolution, civil commotion, riots, strikes, lockouts, floods, hurricanes, similar storms or other actions of the elements, acts of God or the public enemy, restrictions or restraints imposed by law or by rule, acts or regulation or

order of governmental authorities, whether federal, state or local, and whether civil or military, interruption of production or transportation facilities, and any other cause which is beyond the reasonable control of the party affected and which, by the exercise of reasonable diligence, such party is unable to prevent or relieve. **KDAB** or **CLIENT** may defer delivery for a period equal to the delay caused by such contingency.

11. CLAIMS OF INFRINGEMENT

A. Claims. If **CLIENT** receives a claim that any Work furnished hereunder or part thereof, alone and not in combination with any other product and not prepared to **CLIENT**'s specifications, constitutes an infringement of any patent, copyright, trademark or trade name, **CLIENT** shall notify **KDAB** promptly in writing and give **KDAB** all available information, assistance and exclusive authority to evaluate, defend and settle such claim. **KDAB** shall then, as to any such claim, at its own expense and option: (1) settle such claim; or (2) procure for **CLIENT** the right to use such technology; or (3) replace or modify the technology to avoid infringement; or (4) defend against such claim. If any court of competent jurisdiction holds such technology to constitute infringement, **KDAB** shall pay any costs and damages finally awarded on account of such infringement, and if the use of such product is enjoined, **KDAB** shall take at its option one or more of the actions under (2) or (3) above. **KDAB** also agrees to indemnify **CLIENT** from and against any and all costs, losses, damages and expenses including attorney's fees incurred in defending such actions or proceedings, provided that the obligations of **KDAB** shall not apply to **CLIENT**'s design specifications.

B. Disclaimer. The foregoing states the obligations and exclusive remedies of each Party with respect to any alleged patent or copyright infringement. Nothing herein shall be considered to grant any rights in property in which **KDAB** holds a patent, trademark, service mark or copyright or which constitutes a trade secret of **KDAB**. Sale of any Products or part thereof by **CLIENT** does not confer upon **CLIENT** any license under any patent rights, trade marks or copyrights of **KDAB** except as specified herein.

12. WARRANTY DISCLAIMER

EXCEPT AS EXPRESSLY SET FORTH ABOVE, **KDAB** MAKES NO REPRESENTATIONS, COVENANTS, GUARANTIES OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT OF THE RIGHTS OF THIRD PARTIES, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, OTHER THAN AS EXPRESSLY SET FORTH HEREIN. IN NO CASE SHALL **KDAB** BE LIABLE FOR CONTINGENT, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES.

13.1 INSURANCE

A. BY CLIENT. **CLIENT** shall maintain in force during the term of this Agreement at its sole cost and expense, with insurance companies and in forms acceptable to **KDAB**, insurance policies of the types and in the minimum amounts as follows:

- (1) Worker's Compensation Insurance as provided by Statute and Employer's Liability Insurance.
- (2) Comprehensive General Liability and Property Damage Insurance: Bodily Injury & Property Damage, Contractual Liability, Products and Completed Operations; Owner's and Contractor's Protective; Broad Form Property Damage; Pollution; Premises and Operations.
- (3) Automobile Public Liability and Property Damage Insurance, including owned, hired, rented or non-owned automotive equipment: Bodily Injury & Property Damage, Combined Single Limit Each Occurrence: \$1,000,000.
- (4) Excess Insurance coverage in excess of the limits and terms in (2) through (3) above.

B. BY KDAB. **KDAB** shall maintain in force during the term of this Agreement at its sole cost and expense, with insurance companies and in forms acceptable to **CLIENT**, insurance policies of the types and in the minimum amounts as follows:

(1) Worker's Compensation Insurance as provided by Statute and Employer's Liability Insurance. **KDAB** expressly agrees to comply with all provisions of the Worker's Compensation Laws of the states wherein said work is to be performed; and

(2) Professional services and errors, omissions, or negligent acts for which **KDAB** is legally liable under this Agreement.

C. Certificates of Insurance. Each Party agrees to furnish the other proper Certificates of Insurance evidencing the insurance coverages required herein. All policies required shall provide a minimum of thirty (30) days notice prior to cancellation. **KDAB** shall be named as additional insured under all policies required with the exception of the Worker's Compensation policy. All insurance policies required to be carried hereunder shall contain a waiver of subrogation. Any and all deductibles in the above described insurance policies shall be assumed by, for the account of, and at the sole risk of the owner of the policy.

14.1 ASSIGNMENT

A. No Assignment. The **CLIENT** and **KDAB**, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither **CLIENT** nor **KDAB** shall assign this Agreement without written consent of the other.

B. No Release. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Subcontractors. Nothing contained in this Section 14 shall prevent **KDAB** from employing such independent professional associates and contractors as **KDAB** may deem appropriate to assist in the performance of services hereunder.

D. No Third Party Beneficiaries. Nothing in this Agreement may be read or construed to entitle any person or entity other than the Parties to assert any claim, cause of action or right of any kind under this Agreement. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of **CLIENT** and **KDAB** and not for the benefit of any other party.

15. COMPLIANCE WITH LAWS

The Parties agree to comply with all laws, ordinances, rules, codes, regulations and lawful orders of any federal, state or local governmental authority applicable to performance hereof, including without limitation, those pertaining to social security, safety, health, old age pension and unemployment compensation . The Parties further agree to comply with all applicable laws, ordinances, rules, codes and regulations addressing occupational safety and health, and environmental protection. Each Party shall assume full and complete responsibility for its compliance with this paragraph and shall indemnify and hold the other Party harmless from and against any damages, loss, penalty, fine or claims thereof, including attorney's fees, resulting directly or indirectly from its failure to comply with this paragraph.

16. DEFAULT

A. Events: An event of default exists if any of the following occurs and is continuing beyond any period of time provided for cure:

(1) Payments. A Party fails to pay any sum when due under this Agreement.

(2) Insolvency. A Party is adjudged bankrupt, or if a general assignment is made for the benefit of its creditors, or if a receiver shall be appointed on account of insolvency.

(3) Representations and Warranties. A Party has made any representation or warranty in, or in connection with, this Agreement which when made was false or misleading in any material respect.

(4) **Unauthorized disclosure.** A Party has disclosed confidential information other than as permitted herein.

(5) **Unauthorized Use.** A Party has marketed or sold rights to third parties other than as authorized by this Agreement, including engaging in any activity or entering any agreement which would impair enjoyment of a Party's Proprietary Rights.

(6) **Breach of Agreement.** A Party breaches or fails to comply in any material respect with any provision of this Agreement.

B. **Remedies:** Upon the occurrence of an event of default, a Party may exercise any right, power, or remedy permitted to it by law or at equity, including the remedy of specific performance and of termination of this Agreement. In addition, if a Party reasonably believes that the effect of such default may adversely affect its financial condition, operations or prospects under this Agreement, it may suspend performance of all or any of its obligations hereunder. The non-defaulting Party shall give written notice specifying the claimed particulars of such default or breach. If such default is not remedied within thirty (30) days after submission of such notice, the Party may: (i) for a material breach, terminate this Agreement; (ii) assess interest as provided herein; and/or (iii) enforce the defaulted obligation by any available lawful means. Any indulgence shall not be construed as a waiver of rights under this paragraph either with respect to such default or to similar subsequent defaults.

17. **TERM/TERMINATION**

A. **Term.** The term of this Agreement shall be from the date of execution until completion of the Work unless terminated by either party by giving not less than thirty (30) days written notice, provided that no termination hereof shall affect or impair Work in progress. The Work may be terminated prior to completion by the occurrence of any one or more of the following:

(1) Upon thirty (30) days prior written notice by **CLIENT** of its intention to terminate the Work for its convenience;

(2) Upon either party being adjudged bankrupt, or if a general assignment is made for the benefit of its creditors, or if a receiver shall be appointed on account of insolvency;

(3) Upon default in the performance of the Work, including the payment of any sum due thereunder, and the party fails to correct any such situation within fifteen (15) days following written notice thereof from the other party or such longer period as may be specified in the notice.

B. **Termination.** In the event of termination under this section, **CLIENT** shall not be liable to **KDAB** for any Work performed after the effective date of termination, provided that **CLIENT** shall pay **KDAB** an amount proportionate to the Work satisfactorily performed up to the effective date of termination, and costs of demobilization, securing the Work completed and similar charges or expenses.

C. **Reimbursement.** Neither Party shall be entitled to reimbursement in any amount for any training, advertising, market development, investments, nor other costs expended before the termination of this Agreement, regardless of the reason for, or method of termination of this Agreement.

18.1 **MISCELLANEOUS**

A. **Notices:** All notices pertaining to this Agreement shall be in writing and shall be effective upon receipt and shall be sufficient if delivered by hand, sent by U.S. Mail, postage prepaid, or transmitted electronically, fees prepaid, to the addresses specified by the Parties:

B. **Publicity.** The Parties agree not to make any public announcement of this Agreement without mutual consent, provided each Party may identify the other Party as a client or contractor in their sole discretion.

C. Agency: The Parties are independent contractors and are not, and shall not, represent themselves as principal and agent or joint venturers. **CLIENT** shall act as a principal on its own behalf and is not authorized to act for or obligate **KDAB** in any manner.

D. Headings: The Section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement.

E. Waiver: No waiver of any term herein or modification of this Agreement shall be valid unless set forth in writing and duly executed by all Parties to be effected thereby. No waiver of any breach of any term, covenant, warranty or condition herein shall constitute a waiver of any other or subsequent breach of any term, covenant, warranty or condition hereunder.

F. Severability: The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain such invalid or unenforceable portion or provision.

G. Authorization: Each Party herein represents and warrants that he or it is authorized to enter into the Agreement in the capacity stated and has the power to perform the obligations imposed and set forth herein.

H. Governing Law: THE INTERPRETATION OF THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LOCAL, INTERNAL LAWS OF THE STATE OF TEXAS, UNITED STATES OF AMERICA. THE PARTIES AGREE TO THE NONEXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN HARRIS COUNTY, TEXAS.

I. Dispute Resolution. Any claim, dispute, or controversy arising out of or in connection with or relating to this Agreement or the breach or alleged breach of this Agreement, other than claims of infringement or alleged breaches of any license, shall be resolved through mediation. Both parties agreed to select a mutually agreed-upon mediator to mediate this dispute. Each side will be responsible for its mediation costs. If the mediation is unsuccessful, the parties agree that the dispute shall be decided by binding arbitration under the rules of the American Arbitration Association in a Houston, Harris County, Texas under the Commercial Rules then in effect for that association except as provided in this Agreement. The decision of the arbitrators shall be final and binding on the parties and may be entered and enforced in any court of competent jurisdiction by either party. The prevailing party may be awarded reasonable attorney fees, expert witness costs and expenses, and all other costs and expenses incurred directly or indirectly in connection with the proceedings. Nothing in this Agreement shall be deemed as preventing either Party from seeking injunctive relief (or any other provisional remedy) from the courts as necessary to protect either Party's name, proprietary information, trade secrets, know-how, or any other proprietary right.

J. Entire Agreement: This Agreement, including any Exhibits attached hereto and the documents delivered pursuant hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings, and agreements, either oral or written, between the Parties with respect to the subject matter. Except as otherwise provided herein (including in any Exhibit hereto) no changes, modifications, or additions to this Agreement shall be valid unless the same shall be in writing and signed by all Parties hereto.

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