



## DIGITAL MASTER SERVICES AGREEMENT

This Digital Master Services Agreement (“Agreement”) by and between Iron Mountain Information Management, Inc., having principal offices at 745 Atlantic Avenue, Boston, Massachusetts, 02111 (“Iron Mountain”) and the customer identified below (“Customer”). Iron Mountain and Customer may be collectively referred to as “Parties” and/or individually as “Party.”

BY SIGNING THE INITIAL APPLICABLE SCHEDULE, CUSTOMER AGREES THAT THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SUBJECT MATTER HEREOF, AND SUPERSEDES ALL PROPOSALS OR PRIOR OR CONTEMPORANEOUS AGREEMENTS, ORAL OR WRITTEN INCLUDING BUT NOT LIMITED TO ANY TERMS CONTAINED IN CUSTOMER’S PURCHASE ORDER.

In consideration of the promises and covenants contained herein the Parties agree to the following:

### 1. Definitions.

“Agent” means the software that will enable Customer’s data to be transmitted to and retrieved from Iron Mountain’s servers for the Service(s) described in the applicable Schedule(s).

“Authorized Contact(s)” means named individuals trained in the use of Services designation by Customer as having security authorization to contact Iron Mountain’s Customer Support Department to report problems and seek assistance in the use of the Services.

“Customer” means the legal entity specified on the Schedule(s), which shall include any subsidiary, division and/or affiliate in which Customer has a fifty (50%) percent or greater equity interest and/or control of a majority of the voting rights.

“Documentation” means the applicable installation guides, service descriptions, technical specifications, on-line help files, and user manuals for the Services provided by Iron Mountain.

“Equipment” means any hardware device(s) described in the applicable Schedule(s).

“Gigabyte” and/or “GB” mean one thousand and twenty-four (1,024) Megabytes.

“Major Enhancement(s)” means any modification or addition that provides utility and/or efficiency alterations to the Agent. Iron Mountain, in its sole discretion, shall designate Major Enhancements by indicating a change in the second digit of the software release number {e.g. the first Major Enhancement 1.0.0 shall be designated 1.1.0}. Major Enhancements are provided to Customer, free of charge, so long as Customer has not lapsed in payment of the Fees due hereunder.

“Minor Enhancement(s)” means any modification or addition that provides error corrections to the Agent. Iron Mountain, in its sole discretion, shall designate Minor Enhancements by indicating a change in the third digit of the software release number {e.g. the first Minor Enhancement 1.0.0 shall be designated 1.0.1}. Minor Enhancements are provided to Customer, free of charge, so long as Customer has not lapsed in payment of the Fees due hereunder.

“Module(s)” means a dependant software program that works with the Agent but provides separate and optional functionality {e.g. Email Optimizer 1.0.0 is a module sold with 1.0.0}, described

herein, which Iron Mountain may offer to Customer for an additional charge as reflected in a schedule.

“New Release(s)” means a stand-alone software program, which provides new functionality and/or interoperability to the Agent. Iron Mountain shall designate a New Release by indicating a change in the first digit of the software release number {e.g. the first New Release to 1.0.0 shall be designated 2.0.0} New Releases are provided to Customer, free of charge, so long as such Customer has not lapsed in payment of the Fees due hereunder. Iron Mountain will continue to maintain and support the immediate prior release of the software for at least one year after the New Release is made generally available.

“Personal Data” means, generally, information relating to an identified or identifiable natural person, as defined by applicable privacy or data protections laws. Examples include address, credit card number, bank statements, criminal record, etc.

“Professional Services” means installation and/or training services performed by Iron Mountain’s personnel and/or agents for the benefit of Customer.

“Protected Data” means the data under protection by the Service as selected by Customer at any time. Protected Data may include Personal Data.

“Protected Device(s)” means personal computer(s) (“PC”) and Apple Macintosh computer(s) (“Mac”) licensed to use the Service to store and protect data.

“Protected Server(s)” means any server designated by Customer under this Agreement as being assigned to the Service.

“Service(s)” means collectively or individually, the applicable subscription or managed services and/or Professional Services as further described in the Schedule(s) and any Updates and/or Upgrades necessary to provide Services as further described herein.

“Updates” and/or “Upgrades” means collectively all error correction(s), Minor Enhancement(s), Major Enhancement(s) and New Releases; however, it specifically excludes all Module(s).

### 2. License Grant & Restrictions.

2.1 In General. The Agent, Equipment and Documentation are licensed, not sold, to Customer by Iron Mountain for use only under the terms of this Agreement. Iron Mountain retains all right, title and interest to the Agent, Equipment and Documentation, and reserves all rights not expressly granted to Customer. Effective upon delivery, Customer will bear the risk of and shall be responsible for any loss, theft or destruction of or damage to the Equipment, except for normal wear and tear. The Equipment shall remain the property of Iron Mountain and will not



become a fixture or realty and shall be returned to Iron Mountain within thirty (30) days following the expiration or termination of this Agreement.

**2.2 License Grant.** Iron Mountain hereby grants to Customer and Customer accepts, a nonexclusive, non-transferable license for the term of this Agreement to: (i) install the Agent in object code/executable form on the quantity and type of Customer's Protected Devices and/or Protected Servers equal to the number and type of Agents and/or Gigabytes, ordered by Customer in the applicable Schedule(s); (ii) use said Agent(s) only for Customer's internal business needs; (iii) use the Documentation to support the use of the Services; and (iv) make a commercially reasonable number of copies of the Agent in object-code/executable form only, for nonproductive backup purposes; provided, however, that Customer reproduces and includes all of Iron Mountain's copyright notices and proprietary legends on each such copy. At no time shall Customer sublicense, sell, rent, lease transfer distribute or otherwise commercially exploit or make the Agent or Services available to any third-party. Customer and all of its users for whom licenses are purchased hereunder shall be bound by and comply with this Agreement, and Customer is solely responsible for all activities of its users and for the accuracy, integrity, legality, reliability, and appropriateness of all Protected Data.

**2.3 Restrictions.** Customer specifically agrees to limit its use of the Agent, Equipment, Documentation and/or Services as expressly authorized in this Agreement. Notwithstanding the foregoing, Customer specifically agrees not to (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Agent or any portion thereof; (ii) modify, port, translate, localize or create derivative works of the Agent; (iii) use the Agent or Equipment to knowingly (a) infringe on the intellectual property rights of any third-party or any rights of publicity or privacy; (b) violate any law, statute, ordinance or regulation (including but not limited to the laws and regulations governing export/import control, unfair competition, anti-discrimination and/or false advertising); (c) vault defamatory, trade libelous, unlawfully threatening, or unlawfully harassing data; (d) vault obscene, pornographic or indecent data in violation of applicable law; or (e) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (iv) use the Agent or Equipment in any application that may involve risks of death, personal injury, property damage or environmental damage, or in any life support applications, devices or systems; (v) use the Service in violation of any applicable laws, wherever such use occurs, and not use or require Iron Mountain or its service providers to use any Protected Data obtained via the Services for any unlawful purpose; (vi) use the number per type of licenses in excess of the Agents allocated to Customer as specified in the applicable Schedule(s); (vii) gain or attempt to gain unpermitted access by any means to any Iron Mountain computer system, network, or database, and/or (viii) file copyright or patent applications that include the Agent or any portion thereof.

**2.4 Password Protection.** Customer shall be responsible for protecting and safeguarding any keys, certificates, passwords, access codes, user IDs or other login information (collectively, "Passwords") provided to Customer for the purpose of accessing and using the Service(s). In the event that Customer makes such Passwords available to any third-party, Customer shall be liable for all actions taken by such third-party in connection with the Services. Customer shall not disclose or make available Customer's Passwords other than to Customer's authorized employees and shall use all commercially

reasonable efforts to prevent unauthorized access to, or use of, the Services, and will notify Iron Mountain promptly of any such unauthorized use.

**2.5 Termination of License and Suspension of Services.** Iron Mountain may terminate and/or suspend Customer's license and/or suspend, terminate or limit any of Customer's use of the Service(s) without liability, with or without notice, based on Iron Mountain's reasonable belief that: (i) the Service(s) is being used by Customer in violation of any applicable federal, state, or local law, ordinance or regulation; (ii) the Service(s) are being used in breach of Sections 2.3 and/or 2.4 above or otherwise in a potentially harmful or unlawful manner; (iii) the use of the Service(s) adversely affects Iron Mountain's equipment, security network infrastructure or its service to others; (iv) a court or other governmental authority having jurisdiction issues an order prohibiting Iron Mountain from furnishing the Service(s) to Customer; or (v) Customer fails to pay undisputed charges for Service(s) after being given notice; provided storage Fees will continue to accrue for Customer's Protected Data notwithstanding any suspension and Customer will remain liable for all Fees. In the event Services are suspended, Iron Mountain will use commercially reasonable efforts to inform Customer and will work with Customer to resolve such issues and re-instate the Services.

### **3. Maintenance and Support Services.**

**3.1 Error Correction.** Iron Mountain shall use commercially reasonable efforts to correct verifiable and reproducible errors when properly reported to Iron Mountain. The error correction(s), when completed, may be provided in the form of a "temporary fix," which shall consist of sufficient programming and operating instructions to implement such error correction(s).

**3.2 Customer and Technical Support.** Iron Mountain shall maintain a customer service hotline for the Authorized Contact(s) to report problems and seek assistance in the use of the Service and/or Agent. Iron Mountain shall maintain an email response system that permits Customer to report problems and seek assistance in use of the Service(s) and/or Agent via email.

### **4. Prices and Payment.**

**4.1 Prices.** Prices for Services, Equipment, and/or Professional Services shall be the prices set forth in the applicable Schedule(s) ("Fees"). No refunds shall be made except as provided in Section 6.1 or Section 6.2 under "Warranties". Customer shall be liable for payment of all taxes (including but not limited to all taxes, assessments, duties, tariffs, imposts, permits sales, use, excise, import, export, value-added, or other similar tax, duty or fee) that are levied upon and related to the performance of obligations or exercise of its rights under this Agreement. Iron Mountain may be required to collect and remit taxes from Customer, unless Customer provides Iron Mountain with a valid tax exemption certificate. Iron Mountain will invoice Customer for all such taxes based upon this Agreement or on Services and/or Equipment provided hereunder. In no event will either Party be responsible for any taxes levied against the other Party's net income.

**4.2 Payment.** All invoices shall be due and payable in US Dollars within thirty (30) calendar days after invoice date. Invoicing shall occur via email. Iron Mountain may impose late charges on overdue payments at a rate equal to the lesser of one and a half percent (1.5%) per month or the highest rate permitted by law, calculated from the date payment was due until the date payment is made and all expenses incurred in collection, including reasonable attorneys' fees. Iron



Mountain may decline to make any shipments or provide Services if, in Iron Mountain's reasonable opinion, circumstances exist which raise doubt as to Customer's ability or willingness to pay as provided herein. Upon default by Customer, Iron Mountain shall have all other rights and remedies as may be provided by law.

5. Intellectual Property & Protections. Iron Mountain or its suppliers or licensors are the sole and exclusive owner(s) of all right, title, and interest in and to the Agent, Equipment, Services, Documentation and all copies thereof including all derivations, modifications and enhancements thereto (including but not limited to ownership of all intellectual property rights). Iron Mountain and/or its licensors and suppliers shall have a perpetual, royalty-free, irrevocable, world-wide license to use and incorporate into the Agent, Equipment, Services, and/or Documentation any suggestions, ideas, modification requests, feedback or other recommendations related to the Agent, Equipment, Services, and/or Documentation, and shall own all right title and interest in and to the embodiments of same in the Agent, Equipment, Services, and/or Documentation. This Agreement does not provide Customer with title to or any ownership rights or interest in the Agent, Equipment, Services or Documentation, but only a right of limited use as expressly set forth in this Agreement. Customer agrees to inform Iron Mountain immediately of any infringement or other improper action with respect to Iron Mountain's intellectual property as stated herein, or the intellectual property rights therein of Iron Mountain's suppliers that comes to Customer's attention.

## 6. Warranties.

6.1 Agent Warranty. Iron Mountain warrants to Customer that the Agent will substantially conform to the Documentation for ninety (90) calendar days from its initial date of shipment ("Agent Warranty"). Iron Mountain does not warrant that the Software will be error-free in all circumstances. Customer will provide prompt written notice of any non-conformity. Customer's exclusive remedy and Iron Mountain's exclusive obligation with respect to a material breach of this Agent Warranty will be for Iron Mountain to use commercially reasonable efforts to repair or replace such Agent so as to make such Agent substantially conforming to the applicable Documentation. If Iron Mountain cannot repair or replace the non-conforming Agent under this Agent Warranty in a commercially feasible way and the non-conformance has been reported in writing during the applicable warranty period, Iron Mountain will refund or credit, at Iron Mountain's option, the portion of previously paid Fees allocable to the remaining term for such non-conforming Agent upon return of same to Iron Mountain. Iron Mountain will have no obligation with respect to any failure of the Agent to perform as warranted under this section if such failure results from: (a) improper use, (b) unauthorized changes, repairs, or modifications to the Agent, or (c) force majeure events set forth in Section 12.3

6.2 Professional Services Warranty. Iron Mountain warrants that all Professional Services shall be performed in a professional and workmanlike manner, consistent with then-current industry standards ("Professional Services Warranty"). Customer's sole remedy for a breach of the Professional Services Warranty shall be, at Iron Mountain's option, either to (i) re-perform such professional services and/or training, or (ii) provide Customer a refund for the allegedly defective Professional Services. Such remedy shall only be available if Customer notifies Iron Mountain in writing within thirty (30) calendar days of the completion of such Professional Services.

## 6.3 Warranty Exclusions & Exclusive Remedy. EXCEPT

FOR THE WARRANTIES SET FORTH IN THIS SECTION 6, IRON MOUNTAIN MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED. IRON MOUNTAIN DISCLAIMS ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE PROVISIONS SET FORTH IN SECTION 6 STATE IRON MOUNTAIN'S ENTIRE RESPONSIBILITY AND CUSTOMER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY AND ALL BREACH OF WARRANTY.

### 6.4 Ownership Warranty.

6.4.1 Customer warrants that it (i) shall conform with the privacy statement set forth in Section 12.9, "Data Protection"; and (ii) is the owner or legal custodian of the Protected Data transmitted to Iron Mountain pursuant to the terms of this Agreement and that it has full authority to vault and transmit said Protected Data, and direct its disposition according to the terms of this Agreement. Customer shall reimburse Iron Mountain for any expenses reasonably incurred by Iron Mountain (including reasonable attorneys' fees) by reason of Iron Mountain's complying with the instructions of Customer in the event of a dispute concerning the ownership, custody or disposition of the Protected Data stored by Customer with Iron Mountain. Customer hereby authorizes Iron Mountain to use Protected Data to perform the Services pursuant to this Agreement.

6.4.2 In the event that Iron Mountain needs to access the Protected Data to respond to any technical problems, queries, or requests from Customer, Customer shall ensure that both Customer and Iron Mountain are permitted to do so. In such events all such access will be logged by Iron Mountain.

### 7. Limitation of Liability; Exclusion of Consequential Damages.

7.1 LIMITATION OF LIABILITY. IRON MOUNTAIN (INCLUDING ANYONE FOR WHOM IRON MOUNTAIN IS LEGALLY LIABLE) SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT CUSTOMER SUFFERS OR CLAIMS TO HAVE SUFFERED (INCLUDING WITHOUT LIMITATION ANY LOSS OR DAMAGE TO THE PROTECTED DATA) UNLESS SUCH LOSS OR DAMAGE IS CAUSED BY IRON MOUNTAIN'S NEGLIGENCE. THE PARTIES AGREE THAT IRON MOUNTAIN ASSUMES NO LIABILITY WHATSOEVER FOR PROTECTED DATA THAT IS MODIFIED OR DELETED BY CUSTOMER (where the Services described in the applicable Schedule allows for such functionality.)

IF IRON MOUNTAIN IS FOUND LIABLE, THE AMOUNT OF IRON MOUNTAIN'S MAXIMUM LIABILITY FOR ANY AND ALL LOSS AND/OR DAMAGE (IN CONTRACT, TORT, OR OTHERWISE) FOR ANY REASON ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNT OF ALL FEES PAID TO IRON MOUNTAIN FOR THE SERVICE WITHIN THE PRIOR SIX (6) MONTHS FROM WHICH SUCH CLAIM ARISES IF THE PROTECTED DATA TRANSMITTED IS INSURED BY CUSTOMER, THE CUSTOMER SHALL CAUSE ITS INSURERS OF SUCH PROTECTED DATA TO WAIVE ANY RIGHT OF SUBROGATION AGAINST IRON MOUNTAIN.

7.2 EXCLUSION OF CONSEQUENTIAL DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE AND/OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER COMMERCIAL DAMAGES OR LOSSES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH



PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR DAMAGES. THE FOREGOING SHALL NOT APPLY TO CUSTOMER'S BREACH OF SECTION 2.

7.3 ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES STATED HEREIN SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. BOTH PARTIES HEREUNDER SPECIFICALLY ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY ARE REFLECTED IN THE PRICING.

7.4 Shipping Media. Iron Mountain may transport Protected Data on media with a common carrier. Customer agrees that the terms of this Agreement apply only to the Protected Data in Iron Mountain's possession in the performance of the Services. Data shall only be deemed to be in Iron Mountain's possession when it is in an Iron Mountain facility, in an Iron Mountain vehicle, or in the custody of an Iron Mountain employee or employees of Iron Mountain's subcontractors. Protected Data in the custody of third-party "common carrier" overnight delivery services, such as Federal Express and UPS, is not in Iron Mountain's possession, and Iron Mountain shall have no liability for loss, damage or destruction that occurs while Protected Data is in the custody of such common carrier(s).

7.5 Customer Environment. Iron Mountain shall bear no liability to Customer or any third-party resulting from Customer's decision not to implement any reasonable change to Customer's technical environment that supports the Agent, Equipment and/or Service that may be advised by Iron Mountain in writing; and Customer shall hold Iron Mountain harmless from and against any suit or proceeding (including reasonable attorneys' fees) brought against Iron Mountain arising directly from such a failure to provide the necessary access and/or support for Iron Mountain to implement any such change. Further, Customer agrees to inform Iron Mountain of any Customer system change that may reasonably be expected to affect Iron Mountain's ability to provide the Service.

7.6 Risk Allocation. Customer acknowledges and agrees that the allocation of risk contained in this Section 7 is reflected in the Service Fees and is also recognition of the fact that, among other things, it is not within Iron Mountain's control how and for what purpose the results of the Services are used by Customer.

#### 8. Intellectual Property Indemnification.

8.1 If a third-party claims that the original, unaltered, unmodified Agent infringes any U.S. patent, copyright or trade secret, Iron Mountain will (as long as Customer is not in material default under this Agreement) indemnify, defend and hold Customer harmless against such claim at Iron Mountain's expense and pay all damages that a court finally awards, provided that Customer promptly notifies Iron Mountain in writing of the claim, allows Iron Mountain to control the defense or any related settlement negotiations and cooperates with Iron Mountain in the defense of any claim, provided that Iron Mountain will not effect any settlement unless such settlement provides Customer with a full release. If such a claim is made or appears possible, Iron Mountain may, at its option, secure for Customer the right to continue to use the software, modify or replace the Agent so it is non-infringing, or, if neither of the foregoing options is available, in Iron Mountain's reasonable judgment, require Customer to return the Agent for a refund or credit,

at Iron Mountain's sole option, equal to the portion of previously paid Fees allocable to the remaining term. However, Iron Mountain has no obligation for any claim based on a modified version of the Agent or the combination, operation, or use of the Agent and/or Iron Mountain's software with any software, product, data, or apparatus not provided by Iron Mountain. THIS PARAGRAPH STATES IRON MOUNTAIN'S ENTIRE OBLIGATION TO CUSTOMER AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIMS OF INFRINGEMENT.

8.2 Customer will defend and indemnify Iron Mountain against all damages and losses (including reasonable legal fees) arising from a third-party claim alleging that Customer's (including any user using the Services through Customer's account) use of the Services (as opposed to the Service itself) is used to download or share electronic media in violation of such third-party's intellectual property rights in such electronic media or has otherwise harmed the third-party. Iron Mountain shall provide Customer prompt notice in writing of any such claim or action. Customer shall have sole control of the defense and all related settlement negotiations and Iron Mountain shall provide the assistance, information and authority necessary to perform the above. Reasonable, documented, out-of-pocket expenses incurred by Iron Mountain in providing such assistance will be reimbursed by Customer. Iron Mountain shall be entitled to participate in the defense with its own counsel at its own expense.

#### 9. Term & Termination.

9.1 Term. This Agreement shall be in effect as of the date of Customer's signature on the initial applicable Schedule, and shall remain in effect for so long as any Schedule is in effect. The Initial Term and subsequent renewal period(s) of each Schedule will constitute the "Term".

9.2 Termination for Material Breach. This Agreement and/or its related Schedules may be terminated by either Party upon thirty (30) calendar days written notice for a material breach by the other Party, unless such other Party cures the breach within the thirty (30) day notification period. Customer agrees upon any termination to promptly return any Equipment and to destroy the Agent, together with all copies in any form. Termination of this Agreement or any Schedules does not relieve Customer of any outstanding payments due or any liability arising prior to termination.

9.3 Termination for Convenience. Customer may terminate any applicable Schedule(s) for convenience after the Initial Term by providing not less than thirty (30) calendar days advance written notice to Iron Mountain per Section 12.2, "Notices". If any Schedule is so terminated, Customer shall be responsible for all Fees incurred during the Initial Term and any subsequent Term(s) up and until the date of termination. Customer acknowledges and agrees that all prepaid Fees are non-refundable, regardless of a termination that occurs according to this Section.

9.4 Termination for Changes to Applicable Law. This Agreement and/or any Schedules may be terminated by either Party if the continued relationship, the provision of the services, and/or the transactions hereunder would violate any applicable law (whether such law is existing at the time of this Agreement or thereafter modified or enacted) or result in material costs or liabilities to the terminating Party that were not anticipated as part of the Agreement.

9.5 Effect of Termination. Upon termination of any Service hereunder, Customer shall return or destroy the applicable Agent, and



any other software or materials licensed to Customer for such Service hereunder.

10. Confidentiality. "Confidential Information" means any proprietary, confidential and/or trade secret information of the Party disclosing such information relating to, among other things, the Agent, Equipment, technology, specifications, manufacturing methods, know-how, business or marketing plans, business relationships, and the terms of this Agreement and/or Schedule(s). Confidential Information shall not include information that: (i) was in the public domain when disclosed; (ii) becomes public domain after disclosure, other than as a result of the violation of this Agreement; (iii) was in the receiving Party's possession when disclosed and was not acquired directly or indirectly from the disclosing Party; (iv) is shown by written evidence to have been developed by the receiving Party independently after disclosure without benefit of the Confidential Information; or (v) was received after disclosure from a third-party who did not require it to be held in confidence and who did not acquire it directly or indirectly from the disclosing Party. Confidential Information shall be used only in the manner contemplated by this Agreement and/or Schedule(s) and shall not be intentionally disclosed to third-parties without the disclosing Party's written consent. The receiving Party will use at least the same degree of care to safeguard Confidential Information that it uses to protect its own confidential and proprietary information, but in no event less than reasonable care under the circumstances.

11. Subpoena. Iron Mountain is authorized to comply with any subpoena or similar order related to the data in its possession, provided that Iron Mountain notifies Customer promptly upon receipt thereof, unless such notice is prohibited by law. Customer shall pay Iron Mountain's applicable charges as set forth in a Schedule(s) for such compliance, which may include copying data onto CD, DVD or other media. Iron Mountain will cooperate with Customer's efforts to quash or limit any subpoena, at Customer's expense.

## 12. General Provisions.

12.1 Entire Agreement; Integration. This Agreement and all Schedule(s) and Exhibits hereto represent the entire agreement between the Parties on the subject matter hereof and supersede all prior discussions, agreements and understandings of every kind and nature between the Parties. No modification of this Agreement shall be effective unless in writing and signed by both Parties. All additional or conflicting terms and conditions presented with or in any communication, including but not limited to Customer's purchase order ("P.O."), except with respect to price, quantity and location specified in a P.O., are hereby rejected and shall be deemed *null and void*.

12.2 Notices. All notices relating to this Agreement shall be in writing and shall be delivered (i) by overnight courier or hand, (ii) postage prepaid certified or registered first-class mail with return receipt requested, (iii) electronic transmission or (iv) facsimile. Notices shall be sent to the address of the other Party set forth on the signature page of this Agreement or to such other address as either Party may specify in accordance with this Section, and shall be deemed given upon personal delivery, five (5) calendar days after deposit in the mail, or upon acknowledgment or receipt of electronic transmission.

12.3 Force Majeure. Neither Party shall be liable for any failure or delay in performing services or any other obligation under this Agreement, nor for any damages suffered by the other or an end

user by reason of such failure or delay, which is, indirectly or directly, caused by an event beyond such Party's foreseeable control including but not limited to strikes, riots, natural catastrophes, terrorist acts, governmental intervention, or other acts of God, or any other causes beyond such Party's reasonable control.

12.4 Relationship with Third Parties. No Customer, end user or other person or entity not a Party to this Agreement shall be considered a third-party beneficiary of this Agreement.

12.5 Severability & Survival. The illegality or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any legal and enforceable provisions hereof. The following provisions shall survive any termination of this Agreement: Sections 2, "License Grant & Restrictions"; 4, "Prices & Payment"; 5, "Intellectual Property & Protections"; 7, "Limitation of Liability; Exclusion of Consequential Damages"; 8, "Intellectual Property Indemnification"; 9.5, "Effects of Termination"; 10, "Confidentiality"; and 12, "General Provisions."

12.6 Assignment. This Agreement may not be assigned by either Party (other than to an affiliate which shall assume the obligations of its assignor by written instrument) without the written consent of the other Party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Customer may not assign this Agreement to a direct competitor of Iron Mountain. This Agreement binds the Parties, their respective participating subsidiaries, affiliates, successors and permitted assigns.

12.7 Applicable Law. This Agreement and all resulting claims and/or counterclaims shall be governed, construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts, USA, without reference and/or regard to its conflicts of laws principles. Each Party hereby submits to the exclusive jurisdiction of the courts of Massachusetts and hereby waives any objections to venue with respect to actions brought in such courts.

12.8 Export Restrictions. Customer agrees and certifies that software, products, services, and/or all related technical information and materials that Customer receives from Iron Mountain will not be exported or re-exported outside of the United States ("U.S.") except as authorized and permitted by the laws and regulations of the U.S., and export or re-export contrary to U.S. laws is prohibited. Customer agrees to comply, at its own expense, with any and all foreign governmental requirements relating to Customer's exports from the U.S., importation and use outside of the U.S., and/or re-exports from abroad of such products, services, and/or all technical information and materials. Customer will indemnify, defend, and hold harmless Iron Mountain from and against any claim, loss, liability, or damage suffered by Iron Mountain related to Customer's breach of this provision. Customer also agrees that Iron Mountain may withhold provision of software, products, services, and/or technical information and materials under this Agreement if Iron Mountain believes, in good faith, that Customer has breached this provision.

12.9 Data Protection. The Parties acknowledge that Agent, Equipment or Services may be used to process information regulated by privacy or data protection laws. CUSTOMER EXPRESSLY AGREES THAT IRON MOUNTAIN DOES NOT CREATE, OPERATE, CONTROL, OWN OR ENDORSE ANY DATA, INFORMATION, OR THIRD-PARTY PRODUCT PROCESSED BY OR USED IN CONJUNCTION WITH THE AGENT, EQUIPMENT, OR SERVICES PROVIDED HEREUNDER. Iron Mountain shall act only on the instructions of Customer in processing any Personal Data. Customer



hereby instructs Iron Mountain to take such steps in the processing of Personal Data as are reasonably necessary to the performance of Iron Mountain's obligations under this Agreement, and agrees that such instructions constitute its full and complete instructions as to the means by which Personal Data shall be processed by Iron Mountain. To the extent that any privacy or data protection laws impose an obligation upon Iron Mountain to comply with an individual's request for access to or correction of their Personal Data, Customer agrees that it shall satisfy such obligations.

Iron Mountain agrees that it shall forward any such individual requests that it receives to Customer and reasonably assist Customer, at Customer's expense, in their satisfaction. Iron Mountain agrees that it shall:

- a) not use Personal Data save for the purposes of delivering the Agent, Equipment or Services as instructed by this Agreement;
- b) upon termination of this Agreement, return Personal Data to the Customer or destroy such Personal Data in accordance with Customer's written instructions;
- c) implement security measures reasonably designed to safeguard Personal Data against unauthorized access, loss, destruction, damage or disclosure; and
- d) provide reasonable support to Customer in complying with any legally mandated request or demand made by any court or governmental authority responsible for enforcing privacy or data protection laws.

12.10 Affiliates. Certain lines of service may be performed by an affiliate of Iron Mountain. In such event, such affiliate will

perform such service as a subcontractor to Iron Mountain. The subcontracting entity may invoice Customer directly, but Iron Mountain will remain liable for all services performed for Customer.

12.11 Government End-User Notice. The Agent is a "Commercial Item," as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (i) only as Commercial Items and (ii) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein.

12.12 Waiver. Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein shall not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

12.13 Headings. All headings used herein are for convenience of reference only and shall not in any way affect the interpretation thereof.

{End of Terms and Conditions.}