MASTER SOLUTIONS AGREEMENT

Each Statement of Work (SOW) and/or quotation issued by Hinton is an offer to sell Products and/or Services (herein defined) to purchaser ("Customer") and includes, is governed by, and Customer agrees to be bound by, this Master Solutions Agreement. Hinton's SOW and/or quotation and this Master Solutions Agreement shall be deemed accepted by Customer upon Hinton's receipt of a purchase order or a signed SOW. Acceptance of Hinton's SOW and/or quotation and this Master Solutions Agreement is expressly limited to the terms contained in Hinton's SOW and/or quotation and this Master Solutions Agreement. Hinton rejects any terms and conditions contained in Customer's forms that are additional to or different from those set forth in Hinton' SOW and/or quotation or in this Master Solutions Agreement

Customer and Hinton are sometimes referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties**."

1. DEFINITIONS

As used in this Agreement:

"**Agreement**" means this Master Solutions Agreement and all Statements of Work, schedules and attachments otherwise made a part of this Agreement.

"**Confidential Information**" means any non-public information furnished by Discloser to Recipient (both defined herein) during the term of this Agreement, including, without limitation, pricing, processes, financial data, statistics, software, systems or equipment, programs, research, strategic plans, operating data, or related information of each of the parties and/or its or their customers and suppliers, concerning business activities of said entities. This Agreement is the Confidential Information of Hinton. All other Confidential Information must be clearly designated as "Confidential." Information provided orally will be considered confidential only if a written memorandum of such information clearly designated as marked "Confidential" is delivered to Recipient within thirty (30) days of the Disclosure. As to any particular Confidential Information, "**Discloser**" means the Party disclosing the Confidential Information and the "**Recipient**" means the Party receiving the Confidential Information.

"**Content**" means information, software, Customer Data and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Customer or any of its Users create, install, upload or transfer in or through the Hosting Environment.

"**Customer Components**" means the hardware, software, other products, and other Content including, without limitation, those specified in a SOW as being provided by Customer.

"**Customer Data**" means all data and information about Customer's business(es), customer's employees, operations, facilities, products, markets, assets or finances that Hinton obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in any Hosting Environment.

"**Disclosure**" means the release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

"**Hosting Environment**" means Hinton's application hosting environment for the delivery of Services, consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in any Statement of Work.

"**PCR**" means a project change request (change order) signed by both Parties authorizing a change in the scope of the Services.

"**Required Consents**" means any consents, licenses, or approvals required to give Hinton, or any person or entity acting for Hinton under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Hinton, or owners of such Customer Components and Content.

"**Services**" means the information technology services to be delivered by Hinton under this Agreement as specified in any Statement of Work and does not include Third Party Services.

"**Statement of Work**" or "**SOW**" shall have the meaning ascribed to it in Section 2.1.

"Third Party Services" means the information technology services to be delivered by a third party under this Agreement as specified in any Statement of Work.

"**User**" means any entity or individual that receives or uses the Services, or the results or products of the Services, through Customer.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Statement of Work, unless the language or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW, and shall apply only with respect to such SOW.

2. GENERAL

2.1. **Agreement Structure**. This Agreement contains general contractual terms for all Services. The specific Services, applicable pricing and payment terms, service level agreement, if any, and other transaction-specific provisions will be agreed upon through statements of work to this Agreement (each a "**Statement of Work**" or "**SOW**"). Each SOW shall be signed by both Parties and will be deemed to incorporate all of the provisions of this Agreement by reference.

2.2. **Order of Precedence.** In the event of any inconsistencies between the terms of this Agreement and the terms of any Statement of Work, the terms of this Agreement shall control. The Parties may specify in the applicable SOW that a particular provision of the SOW is to supersede a provision of this Agreement, in which case the superseding SOW provisions shall be applicable only to such SOW and shall be effective for such SOW only if such provision expressly references the applicable Section of this Agreement that is to be modified and clearly states that such provision supersedes the conflicting or inconsistent provision in this Agreement.

3. PRODUCTS AND SERVICES

3.1. **Scope of Services.** Subject to the terms and conditions in this Agreement and the applicable SOW, Hinton will use commercially reasonable efforts to perform the Services described in the applicable Statements of Work.

3.2. **Designated Contact Persons.** Each Party shall designate an individual who will be a primary point of contact for that Party and will have the authority to act and make decisions for that Party in all aspects of the Services, including PCRs. Customer shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by Hinton. Either Party may change its designated contact person by notice to the other Party.

3.3. **Changes.** In the event Customer wishes to add additional programs, applications or data sources, systems servers, network devices of any kind, requests an expansion in the scope of the Services, or increases the network load in the Hosting Environment managed by Hinton, then Customer shall present its request for such alterations of its network to Hinton for scoping. No alterations will be permitted under this Agreement without a signed PCR.

3.4. **Resale of Products.** The sale of Products (as defined in Exhibit A) is governed by the terms and conditions in Exhibit A.

4. FEES AND PAYMENT TERMS

4.1. **Charges.** Customer shall pay to Hinton all charges for services, hardware or software at the rates and charges set forth on the applicable SOW or Customer quotation. The base monthly charge (if any) shall be billed prospectively on the 1st day of the month prior to the month in which the services are to be provided. Additional charges for services, hardware or software as the case may be, shall be billed on the first day of the month following the month in which the charges are incurred or become billable.

4.2. **Reimbursable Expenses.** Except as may otherwise be stated in the applicable SOW, Customer agrees to reimburse Hinton all reasonable and customary out-of-pocket expenses, including, but not limited to, airfare, rental car, mileage, tolls, and lodging expenses, incurred by Hinton in connection with the performance of services. Meal expenses shall be billed at Hinton' then-current per-diem amount. Reimbursable expenses shall be invoiced monthly.

4.3. **Invoices.** All invoices shall be due and payable within thirty (30) days after the invoice date. Customer agrees to pay a late payment charge at the rate of one and one-half percent (1.5%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. Hinton may apply any payment received to any delinquent amount outstanding.

4.4. **Taxes.** The amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Customer shall pay all taxes levied and duties assessed by any authority based upon this Agreement, excluding any taxes based upon Hinton' income. This provision shall not apply to any taxes for which Customer is exempt and for which Customer has furnished Hinton with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. INFORMATION SECURITY

5.1. **Security Measures.** Hinton will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Customer Data stored by Hinton in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data stored by Hinton in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Customer Data as stored by Hinton in the Hosting Environment.

5.2. **Notification and Prevention Obligations.** Upon becoming aware, Hinton shall promptly notify Customer of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Customer Data. This notification will state in reasonable detail the Customer Data at risk. Hinton agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Hinton further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Customer to address the breach. Hinton shall not be responsible or liable for any security breach caused by Customer.

6. OTHER CUSTOMER RESPONSIBILITIES

6.1. **Acceptable Use.** Customer is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Customer agrees, and will ensure its Users agree, to act responsibly and not use the Hinton Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. Hinton has the right to investigate potential violations of this Section. If Hinton determines that a breach has occurred, then Hinton may, in its sole discretion: (a) restrict Customer's and Users' access to the Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, Hinton will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Hinton of any event or circumstance related to this Agreement, Customer's or any User's use of the Services, or Content of which Customer becomes aware, that could lead to a claim or demand against Hinton, and Customer will provide all relevant information relating to such event or circumstance to Hinton at Hinton' request. Hinton agrees to allow Customer complete and unrestricted access at all times to Customer's software applications, devices, equipment hardware, and all Services-related license files so that Customer can audit its Users' compliance with the terms of this Agreement.

6.2. **Content.** Customer is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services. Customer agrees not to access the Hosting Environment by any means other than through the interface that is provided by Hinton for use in accessing the Hosting Environment.

6.3. **Required Consents.** Customer shall obtain and keep in effect all Required Consents necessary for Hinton to perform all of its obligations as set forth in this Agreement. Upon request, Customer will provide to Hinton evidence of any Required Consent. Hinton will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Hinton any Required Consents. Hinton will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Hinton. Hinton agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.

6.4. **Software.** Customer authorizes Hinton to determine whether or not software specified in any SOW is currently in place, operational and maintained and supported at the level required for Hinton to perform the Services required under this Agreement. Customer grants Hinton, at no charge, the right to use any Customer-owned or developed application software systems required by Hinton to provide the Services specified in any SOW to Customer.

6.5. **Capacity Planning.** Customer is solely responsible for determining whether the Services, Hosting Environment, and related Content meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment and services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

6.6. **Customer Components.** Customer is solely responsible for the selection, operation and maintenance of all Customer Components.

6.7. **Security.** Customer shall (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Hinton' ability to access or administer its network or provide the Services.

6.8. **Encryption.** Customer shall encrypt at the application level Confidential Information, Customer Data, and all data that is considered sensitive data or that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

7. CONFIDENTIAL INFORMATION

7.1. **Restrictions on Use; Non-Disclosure.** Recipient agrees that it will use the same care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not: (a) use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers, agents and consultants who (i) have a need to know to further the purpose of this Agreement; and (ii) are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

7.2. **Exceptions.** The obligations set forth in Section 7.1 shall not apply to Confidential Information that: (a) before the time of its Disclosure was already in the lawful possession of the Recipient; or (b) at the time of its Disclosure to Recipient is available to the general public or after Disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the Discloser and without any breach of this Agreement.

7.3. **Disclosures Required by Law.** If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

7.4. **Disposal of Confidential Information.** Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Hinton will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-supplied media, however, Hinton may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Hinton in order to discharge its obligations under this Section shall be at Customer's expense.

7.5. **Remedies.** The Parties acknowledge and agree that a breach of this Agreement by either Party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Recipient, and in addition to any other remedies available to it, to seek to obtain a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

7.6. **Duration.** The obligations set forth in this Section 7 shall apply during the term of this Agreement and for a period of one (1) year thereafter.

8. OWNERSHIP RIGHTS

8.1. **Services.** Hinton retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Customer agrees not to disclose such information to any third party without Hinton' prior permission.

8.2. **Content.** Hinton acknowledges and agrees that all Content, including copyrights, trademarks, database rights and other intellectual property contained in such Content are owned or licensed by Customer. Customer grants Hinton a license to store, record, transmit and display the Content solely to perform Hinton' obligations under this Agreement.

9. REPRESENTATIONS AND WARRANTIES

9.1. **By Each Party.** Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Customer Data and its provision or use of the Services; and c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

9.2. **By Customer.** Customer represents and warrants to Hinton that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Hinton the rights that Customer purports to grant in this Agreement; (b) Hinton' possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (c) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

9.3. **By Hinton.** Hinton represents and warrants to Customer that:

9.3.1. Industry Standards. The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Hinton according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Customer if not rejected in a reasonably detailed writing within five (5) days of submission to Customer, or as otherwise identified in the applicable Statement of Work. In the event the Services provided by Hinton are not in conformance with this warranty, Customer must provide written notice to Hinton within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, Hinton will use commercially reasonable efforts to take the steps necessary to correct the deficiency at no charge to Customer. This is Customer's sole and exclusive remedy for breach of this warranty.

9.3.2. Service Levels. The Services will meet the technical standards of performance or service levels, if any, set forth in the applicable SOW. Customer's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable SOW.

Customer shall not make any representations or warranties on behalf of Hinton to any third party. Customer shall be solely responsible and liable for any representations or warranties that Customer makes to any third party regarding Hinton, the Hosted Environment, the Services, or any other aspect of this Agreement. Hinton makes no representations or warranties with regard to the Third Party Services and passes through to Customer the terms and conditions for the services delivered by a third party.

9.4. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF HINTON IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF HINTON. CUSTOMER IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH HINTON CANNOT BE HELD LIABLE.

10. INDEMNIFICATION

10.1. Indemnification by Hinton. Subject to the terms and conditions in this Agreement**,** Hinton will, at its cost, (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Hinton of any of it representations and warranties under Section 9.1; (b) real property damage or personal injury, including death, solely and directly caused by Hinton' employees or contractors in the course of performance under this Agreement; (c) any breach by Hinton of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Hinton; (d) any uncured breach by Hinton of its obligations under Section 5; and (e) any allegation that Customer's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents issued in the United States as of the Effective Date, or misappropriates any of such third party's trade secrets (each an "**IP Claim**"); and (ii) Hinton shall pay any final award of damages (or settlement amount approved by Hinton in writing and) paid to the third party that brought any such Claim.

10.2. Indemnification by Customer. Customer will indemnify, defend and hold harmless Hinton and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Hinton or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of it representations and warranties under Section 9; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; (d) any breach by Customer of its obligations under Section 6.1, Section 6.3, or Section 6.8; (e) any breach by Customer of Section 13.2; and (f) any claim that Hinton' possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

10.3. **Procedure.** A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 10. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including without limitation, any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

10.4. **Mitigation for IP Claims**. At any time after notice of an IP Claim, or if Hinton believes there is a basis for an IP Claim, Hinton has the right, at Hinton' sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Hinton believes would not be subject to the IP Claim. If Hinton deems (a) or (b) not feasible or not commercially reasonable, Hinton has the right to terminate the applicable SOW. In the event of any such termination, Hinton will refund to Customer the unused portion of any amounts paid by Customer for the affected Service. In addition, upon any such termination, Customer shall cease the use of the applicable Service.

10.5. **Limitations as to IP Claims**. Notwithstanding anything to the contrary, Hinton shall have no obligations or liability under Section 10.1 if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Hinton, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to comply with Hinton' direction to cease any activity that in Hinton' reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Hinton Service, or that does not reference a feature of function of a Hinton Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Hinton.

10.6. **Sole Remedy**. THE TERMS IN THIS SECTION 10 (INDEMNIFICATION) SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND HINTON' SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, HINTON SHALL NOT HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FOR THIRD PARTY CLAIMS.

11. LIMITATION OF LIABILITY

11.1. Limit on Types of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL (AND HINTON' SUPPLIERS AND LICENSORS WILL NOT) BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY CLAIMING THROUGH A PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST OR DAMAGED DATA, INVESTMENTS MADE, AND LOSS OF BUSINESS OPPORTUNITY OR INTERRUPTION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY SOW FAILS OF ITS ESSENTIAL PURPOSE.

11.2. Limit on the Amount of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HINTON' TOTAL CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CUSTOMER TO HINTON DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SOW.

11.3. Non-Managed Systems. Hinton shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement. Hinton shall not be liable for the actions or inactions of Customer's employees, agents or contractors.

11.4. Applicability. The terms in this Section 11 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 11 shall apply to not limit liability for such acts and omissions but will apply for all other acts and omissions.

11.5. Allocation of Risk. EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CUSTOMER FOR THE SERVICES WOULD HAVE BEEN HIGHER.

12. TERM AND TERMINATION

12.1. Term

12.1.1. This Agreement. This Agreement shall commence on the Effective Date and remain in effect until terminated by either party as provided in this Section 12.

12.1.2. Statement of Work. The term of each SOW shall be as specified in that Statement of Work.

12.2. Termination for Convenience. Either Party may terminate this Agreement for convenience at any time upon written notice to the other Party. If there are any pending Statements of Work, termination shall be effective upon the expiration or termination of the last Statement of Work. If there are no pending Statements of Work, termination shall be effective upon receipt of the written notice.

12.3. Termination for Breach. Either Party may terminate this Agreement or any individual SOW in accordance with subsection 12.3.1 or subsection 12.3.2:

12.3.1. Cure. If the other Party breaches any material provision of this Agreement or any SOW and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.

12.3.2. No Opportunity to Cure. If: (a) the other Party breaches any representation or warranty in this Agreement, subject to the limitation set forth in Section 9.3.2; (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.

12.4. Termination for Financial Insecurity. Either Party may terminate this Agreement and all SOWs upon written notice if the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization. Termination shall be effective upon receipt of the written notice.

12.5. Final Payment. Within thirty (30) days after any termination of this Agreement or individual SOW, Hinton will submit to Customer a final itemized invoice for all fees and expense due and owing by Customer. Customer shall pay the invoice in accordance with Section 4.3.

12.6. Effects of Termination. Upon termination of this Agreement or an individual SOW and payment by Customer of all invoices including the final invoice described in Section 12.5, Hinton will, to the extent applicable:

(a) Exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Customer;

(b) Disclose to Customer all relevant information regarding the equipment, software and third-party vendor services required to perform the Services;

(c) Make reasonable efforts to effect a transfer or assignment of relevant licenses or agreement(s) for software or any third-party services utilized exclusively to provide the Services to Customer;

(d) At Customer's option, either provide Customer with a full backup of the Customer Data (including the encryption keys necessary to decrypt such media if such media is encrypted) or destroy such full backup; and

(e) Expire all backup catalog references to Customer Data.

Any additional transition services requested by Customer shall be provided by Hinton on a time and material basis.

12.7. **Survival.** Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, Sections 8 (Ownership Rights); 9 (Representations and Warranties); 10 (Indemnification); and 11 (Limitation of Liability) shall survive any termination of this Agreement.

13. MISCELLANEOUS

13.1. **Force Majeure.** Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

13.2. **Export Compliance.** Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Hinton.

13.3. **Insurance.** Each Party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability, cyber liability insurance, and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each Party is solely responsible for insuring its personal property wherever located and each Party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite Party.

13.4. **Waiver.** The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights and the obligations of the Party with respect to such future performance and shall continue in full force and effect.

13.5. **Agreement Binding On Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of the respective Parties. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company.

13.6. **Governing Law and Jurisdiction.** The validity, construction and interpretation of this Agreement and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Pennsylvania, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in the Middle District of Pennsylvania or state courts located in Cumberland County, Pennsylvania and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

13.7. Relationship of Parties. The Parties hereto are independent contractors, and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, Hinton may, from time to time, request that the Customer execute such instruments and documents appointing Hinton an agent of the Customer for a specific limited purpose. An officer of Customer shall, in a timely manner, execute and deliver to Hinton or the third party requiring the same, such instruments designating Hinton as Customer's agent to the extent required by Hinton to manage and perform to Services provided by it under this Agreement.

13.8. Subcontractors. Hinton may engage subcontractors to perform services under any SOW. Except as provided herein, Hinton shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.

13.9. Severability. In the event that any of the provisions of this Agreement are declared or held by a court of competent jurisdiction invalid, illegal or unenforceable, the unaffected portions of this Agreement shall be unimpaired and remain in full force and effect. In the event of such a ruling, the Parties shall negotiate in good faith a substitute for the provision declared invalid, illegal or unenforceable.

13.10. Notices. Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given if hand delivered or sent by first-class certified or overnight delivery mail, postage prepaid at the addresses indicated on the first page of this Agreement. A Party may change its address for notices by sending a change of address notice using this notice procedure.

13.11. Errors. Neither Party shall be held accountable nor incur any additional costs due to discrepancies, errors, omissions in documentation or other information supplied by the other Party.

13.12. Active Negotiations. Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.

13.13. Captions. The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

13.14. Amendments. No waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed by the Party to be charged.

13.15. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.

13.16. Publicity. Nothing contained in this Agreement shall be interpreted so as to permit Hinton or Customer to publicize its business relationship with the other Party or the nature of the Services performed for Customer, without the other Party's prior written consent.

13.17. No Solicitation of Employees. Each Party agrees that during the term of this Agreement, and for a period of two years after the termination or expiration of this Agreement, it will not solicit, offer employment to, hire or otherwise retain, without the other Party's prior written consent, any person employed then by the other Party if such person became known to the soliciting Party through the relationship established pursuant to this Agreement. Recognizing that compensatory monetary damages resulting from a breach of this section would be difficult to prove, the parties agree such breach will render the breaching party liable to the other party for liquidated damages, and not as a penalty, the amount of $30,000 for each breach of this section.

13.18. No Third Party Beneficiaries. Except as provided in Section 10 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

13.19. Entire Agreement. This Agreement, including all SOWs and all schedules, attachments and/or other documents incorporated by reference constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.

EXHIBIT A:
TERMS SPECIFIC TO PRODUCT SALES ONLY

This Exhibit A: Terms Specific to Product Sales Only ("Exhibit A") applies to any order for software, hardware, or Services Sold by Part Number ("Products") made by Customer, for its own internal use and not for resale, pursuant to a quotation issued by Hinton ("Quotation"). As used in this Exhibit A, the term "Services Sold by Part Number" refers to services, which although ordered from Hinton, are procured from and supplied by a third party (i.e., Hinton does not directly perform or control the work) and are therefore considered Product. Any such orders shall be subject to the terms and conditions of this Exhibit A.

1. Product Returns and Warranty Assistance.

(a) Customer acknowledges that Hinton is reselling all Products purchased by Customer and that Products are manufactured and/or delivered by a third party.

(b) To the extent available, Hinton shall pass through to Customer the manufacturer's warranties for each Product and agrees to facilitate the manufacturer's return policies. In no event will Hinton provide return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

(c) Customer acknowledges that the terms and conditions governing the use of Products shall be solely between Customer and the manufacturer of such Products.

2. Product Use and Product Warranty Disclaimer. Customer will not use the Products for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. Customer agrees that Hinton is not liable for any claim or damage arising from such use.

HINTON MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE PRODUCTS. HINTON DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

3. Shipment and Risk of Loss for Product Sales. All shipments of Products to Customer will be FOB point of shipment. Insurance coverage, freight charges, transportation costs, and all other expenses applicable to shipment to Customer's identified point of delivery will be the responsibility of Customer. Risk of loss will pass to Customer upon delivery of the Products to the common carrier (regardless of who pays such common carrier).

4. Permitting Compliance for Product Sales. Customer will obtain all licenses, permits, and approvals required by any governmental agency, foreign or domestic, having jurisdiction over the transaction.

5. Price and Payment. The prices set forth in any Quotation are exclusive of all taxes, duties, licenses, and tariffs, payment of which shall be Customer's obligation. Prices quoted are firm for twenty (20) days unless otherwise specified in the Quotation. Payment is due upon receipt of invoice. In the event Customer chooses to finance its purchase using a third party, Customer remains liable for payment to Hinton until Hinton receives complete payment from such third party.

6. **Export.** Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer covenants that it will not, either directly or indirectly, sell, (re)export (including, without limitation, any deemed (re)export as defined by applicable law), transfer, divert, or otherwise dispose of any Product , or related software or technology, to: (i) any country or region of a country (or nationals thereof) subject to antiterrorism controls, or a U.S. embargo, (ii) any destination prohibited (without a valid export license or other authorization) by the laws or regulations of the United States, or (iii) any person, entity, vessel, or aircraft identified on the Consolidated Screening List, a downloadable file of which is accessible at http://export.gov/ecr/eg_main_023148.asp (or utilize any such person, entity, vessel, or aircraft in connection with the activities listed above), without obtaining prior authorization from the competent government authorities, as required by the above-mentioned laws and regulations. Customer certifies, represents and warrants that no Product shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. Notwithstanding any sale of Products by Hinton, Customer acknowledges that it is not relying on Hinton for any advice or counseling on export control requirements. Customer agrees to indemnify, to the fullest extent permitted by law, Hinton from and against any fines, penalties and reasonable attorney fees that may arise as a result of Customer's breach of this Section.

7. **Cancelation.** The purchase of Products may be canceled by Customer only upon written approval of Hinton and upon terms that indemnify Hinton against all losses related to such cancelation.

8. **Limitation of Liability. NO MONETARY RECOVERY IS AVAILABLE FROM HINTON FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WILL HINTON' LIABILITY TO CUSTOMER EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT THAT IS THE BASIS FOR THE PARTICULAR CLAIM. HINTON WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT, OR IN ANY WAY CONNECTED TO THIS EXHIBIT A, EVEN IF HINTON HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE.**