

IMPORTANT-READ CAREFULLY: THIS MASTER SERVICES AGREEMENT (THIS “**MSA**”) IS BINDING AND ENFORCEABLE BETWEEN YOU (“**CUSTOMER**”) AND EXACTTARGET, INC., A DELAWARE CORPORATION HAVING ITS PRINCIPAL PLACE OF BUSINESS AT 20 NORTH MERIDIAN STREET, SUITE 200, INDIANAPOLIS, INDIANA 46204, FOR ITSELF AND ITS AFFILIATES (“**EXACTTARGET**”). “**YOU**” REFERS TO THE ENTITY OR ORGANIZATION USING THE PLATFORM, PRODUCTS, AND/OR SERVICES DESCRIBED IN THIS MSA. BY SIGNING AN ORDER FORM TO USE THE PLATFORM AND/OR PRODUCTS AND/OR TO RECEIVE SERVICES, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY THIS MSA. YOU SHALL INFORM ALL USERS OF THE PRODUCTS OF THE TERMS AND CONDITIONS OF THIS MSA.

This MSA includes the General Terms and Conditions set forth on the following pages and all terms and conditions set forth in all Product Addenda specific to the Products purchased as part of Your subscription. Product Addenda, as well as the most current version of this MSA, are available for review at www.exacttarget.com/legal/. The parties’ complete agreement with respect to the subject matter set forth in the Order Forms executed by the parties during the Term includes this MSA (including all applicable Product Addenda) and all such Order Forms, all of which shall be hereinafter referenced as the “**Agreement**”. You expressly agree that the terms and conditions of this MSA shall govern all Products and Services provided to You during the Term and are a material part of ExactTarget’s agreement to provide such Products and Services, whether or not the same is made express at the time of provision.

ExactTarget hereby agrees to make the Products and/or Services described in each Addendum hereto available to You, and You agree to purchase such Products and/or Services from ExactTarget, subject to the terms and conditions of the Agreement.

This MSA was last updated on March 4, 2013. It is effective between You and ExactTarget as of the date of You accepting this MSA.

GENERAL TERMS AND CONDITIONS

1. DEFINITIONS

“**Affiliate**” shall mean, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, where “control” (or variants of it) shall mean the ability (whether directly or indirectly) to direct the affairs of another by means of ownership, contract or otherwise.

“**Applicable Law**” shall mean any international, federal, state, or local statute, regulation, or ordinance, expressly including without limitation those relating to individual privacy or the distribution of email and other one-to-one digital messages.

“**Confidential Information**” shall have the meaning set forth in [Section 6](#).

“**Data**” shall mean all data and other information uploaded by Customer to the Platform or to a Product.

“**Malicious Code**” shall mean viruses, worms, time bombs, Trojan horses and other harmful or destructive code, files, scripts, agents or programs.

“**Order Form**” shall mean the ordering documents for Customer’s purchases of Products or Services from ExactTarget that are executed by the parties from time to time, which shall be governed by the terms of this MSA.

“**Platform**” shall mean ExactTarget’s cross-channel interactive marketing platform.

“**Product**” shall mean a specific feature (e.g., Email, Mobile, Social, or Sites) purchased as part of Customer’s subscription to the Platform.

“**Services**” shall mean the implementation, integration, consulting, and/or similar services described in a Statement of Work and provided by ExactTarget employees and subcontractors in support of Customer’s use of the Platform or a Product.

“**Start Date**” shall mean the date on which ExactTarget shall make the Platform, or a Product, available to Customer as set forth in an applicable Order Form.

“**Statement of Work**” or “**SOW**” shall mean the document describing the scope and schedule of Services, if any, to be performed by ExactTarget for Customer. An SOW may be a stand-alone document or incorporated into an Order Form and shall be governed by the terms of this MSA.

“**Subscription Term**” shall mean the subscription period set forth on an applicable Order Form.

“**Term**” shall have the meaning set forth in Section 10.1.

2. ORDERS BY CUSTOMER AFFILIATES. This MSA enables Customer, on behalf of itself or one or more of its Affiliates, and/or any of its Affiliates, on their own behalf, to execute Order Forms or SOWs with ExactTarget under the terms hereof. Each Order Form and/or SOW executed by a Customer Affiliate constitutes an independent contract between ExactTarget and the Customer Affiliate executing the Order Form and/or SOW (a “**Participating Affiliate**”). Customer agrees that execution of an Order Form or SOW by a Participating Affiliate shall represent such Participating Affiliate’s independent acceptance of, and agreement to be bound by, the terms and conditions of this MSA.

3. USE OF THE PLATFORM

3.1 ExactTarget Responsibilities. ExactTarget shall: (a) make the Platform available to Customer in a manner that is consistent with generally accepted industry standards; (b) use commercially reasonable efforts to ensure that the Platform performs in material compliance with any documentation or user guides provided to Customer; (c) provide standard support to Customer at no additional charge (a description of which can be found at <http://www.exacttarget.com/ClientSuccess>); and (d) use commercially reasonable efforts to make the Platform available 24 hours a day, seven days a week, except for: (i) planned downtime (for which ExactTarget shall make good faith efforts to give at least five business days’ notice and which ExactTarget shall schedule to the extent reasonably practicable during the weekend hours from 10:00 p.m. ET Friday to 4:00 a.m. ET Saturday); or (ii) any unavailability caused by a Force Majeure Event.

3.2 Customer Responsibilities. Customer is responsible for all activities that occur in Customer’s account(s). Customer shall: (a) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Data; (b) prevent unauthorized access to, or use of, the Platform, and notify ExactTarget promptly of any such unauthorized access or use of which Customer or any of its Affiliates become aware; (c) ensure that a user login is only used by one person (a single login shared by multiple persons is not permitted); (d) maintain the security of its users’ account names and passwords; and (e) comply with Applicable Law with respect to Data and when using the Platform.

3.3 Use Guidelines. Customer shall not, and shall not permit any third party to: (a) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform available to any third party except as permitted by this MSA; (b) send via, upload to, or store within the Platform any Malicious Code; (c) interfere with or disrupt the integrity or performance of the Platform or any parties' or third party's data contained therein; or (d) attempt to gain unauthorized access to the Platform or its related systems or networks.

4. FEES & PAYMENT

4.1 Fees and Expenses. Customer shall be obligated to pay all fees specified in all Order Forms and/or SOWs executed under this MSA. Customer shall reimburse ExactTarget for all reasonable, pre-approved travel and out-of-pocket expenses incurred in connection with ExactTarget's performance of Services.

4.2 Overdue Payments. Customer's failure to timely pay any fees and expenses that are not the subject of a good faith dispute of which Customer notifies ExactTarget in a detailed writing ("**Undisputed Fees**") shall constitute a material breach of the Agreement. If any amounts for which Customer is responsible are overdue, then ExactTarget may provide Customer with written notice of the same (a "**Late Notice**"). If Customer fails to pay all overdue amounts within 10 business days after Customer's receipt of the Late Notice, then ExactTarget may, in addition to any of its other rights or remedies, suspend access to the Platform and/or Products and/or its provision of Services until all overdue amounts are paid in full. If Customer fails to pay all overdue amounts within 30 days after Customer's receipt of the Late Notice, then ExactTarget: (a) may terminate the Agreement, including all outstanding Order Forms and SOWs; (b) shall be entitled to recover from Customer (i) interest on all overdue amounts at the lower of a rate of 1.5% per month or the maximum rate permitted by law ("**Interest**"); and (ii) all fees and costs (including reasonable attorneys' fees, court costs and collection agency fees) incurred in seeking collection of such overdue amounts ("**Collection Costs**").

4.3 Taxes. Unless otherwise stated, ExactTarget's fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder, excluding taxes based on ExactTarget's net income or property. If ExactTarget has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer, unless Customer provides ExactTarget with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. PROPRIETARY RIGHTS

5.1 Restrictions. Customer shall not, and shall not permit any third party to: (a) modify, copy or create derivative works based on the Platform or Products; (b) frame or mirror any content forming part of the Platform or Products, other than on Customer's own intranets or otherwise for its own internal business purposes; (c) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code of the Platform or Products; or (d) access the Platform or Products in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Platform or Products.

5.2 ExactTarget's Intellectual Property. Subject to the limited rights expressly granted hereunder, ExactTarget reserves all rights, title, and interest in and to the Platform, the Products, and the Services, including all related patent, copyright, trademark and other intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein. In addition, ExactTarget shall own all rights, title, and interest, including all intellectual property rights, in and to any improvements to the Platform or Products, including without limitation those relating to any new

programs, upgrades, modifications, refinements, or enhancements (collectively, “**Improvements**”) developed by or for ExactTarget in connection with providing the Platform or Products to Customer, even when such Improvements result from Customer’s request. To the extent, if any, that ownership in such Improvements does not automatically vest in ExactTarget by virtue of the Agreement or otherwise, Customer hereby transfers and assigns to ExactTarget all rights, title, and interest that Customer may have in and to such Improvements.

5.3 Customer’s Intellectual Property. As between ExactTarget and Customer, Customer exclusively owns all rights, title and interest in and to all Data. In addition, all content created by, or by ExactTarget for, Customer during performance of the Services, including without limitation email templates, newsletters, distribution lists, links, images, graphs and photos (the “**Work Product**”), shall be the sole and exclusive property of Customer. ExactTarget agrees that it will not use the same Work Product created for Customer under this Agreement for another ExactTarget customer; provided, however, that nothing in the preceding sentence shall be interpreted to preclude ExactTarget from using the same functionality, format, code, design, concepts, workflows, integrations or other ideas represented in the Work Product. For all other deliverables described in a Statement of Work which are not deemed Work Product, ExactTarget hereby grants Customer a worldwide, non-exclusive, non-transferable, royalty-free license to use such other deliverables during an applicable Subscription Term.

5.4 Publicity; Trademarks. Neither party may issue press releases or any other public announcement of any kind relating to the Agreement without the other party’s prior written consent. Notwithstanding the foregoing, during an applicable Subscription Term, either party may include the names, trademarks and other logos of the other party (collectively the “**Marks**”) in lists (including on its website) of customers or vendors in accordance with the other party’s standard usage guidelines relating to its Marks. In addition, ExactTarget may use the Customer’s Marks in connection with its authorized provision of the Platform and solely to the extent Customer has uploaded or incorporated such Marks into the form of communication to be delivered, and has initiated the distribution of the same, through its use of the Platform. Except as set forth herein, neither party may use the Marks of the other party without its prior written consent.

6. CONFIDENTIALITY

6.1 Definition of Confidential Information. “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”) that (a) if disclosed orally is designated as confidential at the time of disclosure, (b) if disclosed in writing is marked as “Confidential” and/or “Proprietary”, or (c) reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall include, without limitation, the terms and conditions of the Agreement (including pricing and other terms reflected in all Order Forms and SOWs), the Data, business and marketing plans, technology and technical information, financial information, business strategies, practices, procedures, methodologies, know-how, product designs, and business processes. Confidential Information (except for Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party by the Receiving Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by the Receiving Party without use of the Confidential Information of the Disclosing Party; or (iv) is rightfully received from a third party not known by the Receiving Party to be subject to an obligation owed to the Disclosing Party.

6.2 Confidentiality. The Receiving Party shall use practices consistent with generally accepted industry standards to protect the security of Confidential Information it receives from the Disclosing Party and to prevent the disclosure or use any such Confidential Information for any purpose other than to fulfill the purpose of the Agreement. Notwithstanding the foregoing: (a) the Receiving Party may disclose such Confidential Information to its employees and

contractors, as well as those of its Affiliates, who have a need to know such information for purposes relating to the Agreement, and hereby certifies that prior to disclosure it will cause such employees and contractors to agree to be bound by terms and conditions of confidentiality substantially similar to those in this MSA; and (b) each party may disclose the existence and terms of the Agreement: (i) in confidence, to a potential purchaser of or successor to any portion of such party's business; (ii) to its attorneys, accountants and other advisors having a need to know the same; and (iii) if necessary to enforce its rights under the Agreement, provided that the Receiving Party uses reasonable efforts to limit such disclosure and to obtain confidential treatment of, or a protective order governing, the terms of the Agreement.

6.3 Compelled Disclosure. If the Receiving Party is requested to, or subject to a legal obligation to, disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with notice of the same as early as reasonably practical (if legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek immediate injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate. Customer acknowledges that ExactTarget is unable to guarantee absolute security of Data or Confidential Information and that ExactTarget has no liability to Customer for any unauthorized access or use of such Data or Information by a third party, or the corruption, deletion, destruction or loss of any such Data or Information, unless ExactTarget's security practices are below generally accepted industry standards.

6.5 Survival. Notwithstanding the expiration or termination of this MSA for any reason, the obligations of confidentiality and non-use set forth in this Section shall extend for a period of five years after such expiration or termination, except with respect to either party's trade secrets or to audit reports and findings belonging to ExactTarget's third party datacenters, all of which shall be held in confidence indefinitely.

7. WARRANTIES & DISCLAIMERS

7.1 Mutual Warranties. Each party represents and warrants that: it has the legal power to enter into the Agreement; the signatory hereto has the authority to bind the applicable organization; and when executed and delivered, the Agreement will constitute the legal, valid, and binding obligation of each party, enforceable in accordance with its terms.

7.2 ExactTarget Warranties. ExactTarget represents and warrants that: (a) the functionality of the Platform will not be materially decreased during the Term; (b) it will utilize software and other security means designed to prevent the Platform from containing or transmitting Malicious Code; (c) it owns or otherwise has sufficient rights in the Platform and Products to grant to Customer the rights to use the Platform and Products granted herein; and (d) the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

7.3 Customer Warranties. Customer represents and warrants that: (a) the Data does not and will not infringe on any copyright, patent, trade secret or other proprietary right held by any third party and was not and will not be gathered or used by Customer in a manner that violates Applicable Law; (b) it will not use the Platform or any Product in a manner that violates Applicable Law; and (c) it will not upload to or send through the Platform or any Product any social security numbers, passport numbers, financial account numbers, or credit card information (as contemplated by the Payment Card Industry Data Security Standards).

7.4 Disclaimer. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXACTTARGET EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, REPRESENTATIONS, AND GUARANTEES WITH RESPECT TO THE SERVICES, PLATFORM AND PRODUCTS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXACTTARGET DOES NOT WARRANT THE PERFORMANCE OR RESULTS CUSTOMER MAY OBTAIN BY RECEIVING THE SERVICES OR USING THE PLATFORM OR ANY PRODUCT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, INCLUDING, WITHOUT LIMITATION, STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE OR PERFORMANCE OF THE PLATFORM OR ANY PRODUCT, NOT CONTAINED IN THIS AGREEMENT SHALL BE DEEMED TO BE A WARRANTY BY EXACTTARGET.

8. INDEMNIFICATION

8.1 By ExactTarget. ExactTarget shall defend, indemnify and hold Customer, its Affiliates, and their respective officers, directors, agents and employees, harmless against any loss, damage or costs (including reasonable attorneys' fees) ("**Losses**") incurred in connection with any claim, demand, suit or proceeding ("**Claim**") made or brought against Customer by a third party relating to: (a) ExactTarget's violation of Applicable Law in (i) providing the Services or (ii) making the Platform and/or Products available to Customer; (b) negligent acts or omissions of ExactTarget resulting in a breach of the confidentiality obligations set forth in Section 6; and/or (c) Customer's use of the Platform or any Product in a manner permitted by the Agreement that infringes the intellectual property rights of such third party; provided, however, that ExactTarget shall have no such indemnification obligation if the Claim relates (i) to a third-party Product made available through the Platform or (ii) to use of the Platform or an ExactTarget Product in combination with Data, Marks, software, data products, processes, or materials not provided by ExactTarget and the infringement would not have occurred but for the combination.

8.2 By Customer. Customer shall defend, indemnify, and hold ExactTarget, its Affiliates, and their respective officers, directors, agents and employees, harmless against any Loss incurred in connection with any Claim made or brought against ExactTarget by a third party alleging that: (a) Customer has used the Platform or any Product in a way that violates Applicable Law or the Agreement; and (b) Data, and/or any materials provided to ExactTarget necessary to perform the Services, infringe upon or violate the intellectual property, privacy, or other rights of a third party.

8.3 Procedure. As an express condition to the indemnifying party's obligation under this Section 8, the party seeking indemnification must: (a) promptly notify the indemnifying party in writing of the applicable Claim for which indemnification is sought; provided, however, that any delay in notification shall not relieve the indemnifying party of its obligations hereunder except to the extent that the delay materially impairs its ability to defend the applicable Claim or perform its indemnification obligations hereunder; and (b) provide the indemnifying party with all non-monetary assistance, information and authority reasonably required for the indemnifying party to defend and settle such Claim. The indemnifying party may select counsel of its choice to defend the Claim and direct the course of any litigation or other disputed proceedings concerning the Claim. The indemnified party may select its own counsel and direct its own defense of a Claim if it chooses to do so, but it must bear the costs of its own counsel and any activities in any disputed proceeding conducted by counsel of its choosing. The indemnifying party may settle any Claim, with the consent of the indemnified party, such consent not to be unreasonably withheld, conditioned or delayed.

9. LIABILITY LIMITATIONS

9.1 LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, IN NO EVENT SHALL EITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AGGREGATE SUMS PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL CUSTOMER'S LIABILITY TO EXACTTARGET BE LESS THAN THE SUM OF ALL OUTSTANDING FEES AND EXPENSES OWED BY CUSTOMER OR ANY CUSTOMER AFFILIATE PLUS ALL INTEREST AND COLLECTION COSTS ASSOCIATED THEREWITH. NOTWITHSTANDING THE FOREGOING, CUSTOMER'S EXCLUSIVE REMEDY, AND EXACTTARGET'S ENTIRE LIABILITY, FOR ANY BREACH OF THE WARRANTIES IN SECTION 7.2(D) IS LIMITED TO RE-PERFORMANCE OF THE SERVICES. IF EXACTTARGET IS UNABLE TO RE-PERFORM THE SERVICES AS WARRANTED WITHIN 30 DAYS OF RECEIPT OF WRITTEN NOTICE OF BREACH, CUSTOMER SHALL BE ENTITLED TO RECOVER THE FEES PAID TO EXACTTARGET FOR THE DEFICIENT SERVICES.

9.2 EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES OF ANY KIND OR NATURE HOWEVER CAUSED (INCLUDING BUT NOT LIMITED TO LOST PROFITS AND LOSS OF GOODWILL), WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. TERM & TERMINATION

10.1 Term of MSA. This MSA commences on the Effective Date and continues until the termination or expiration of all Subscription Terms specified in all Order Forms and/or of the terms specified in all SOWs (the "Term").

10.2 Term of Subscriptions. Subscriptions to the Platform or a Product commence on the Start Date and continue for the Subscription Term specified in the applicable Order Form. Unless otherwise set forth in an Order Form, subscriptions shall automatically renew for additional periods of one year for the fees set forth in the applicable Order Form unless either party gives the other notice of non-renewal at least 30 days prior to the end of the then-current Subscription Term.

10.3 Termination for Cause; Surviving Provisions. Either party may terminate the Agreement for cause upon 30 days' written notice of a material breach to the other party if such breach remains uncured at the expiration of such period. Upon any termination for cause by Customer, ExactTarget shall refund to Customer any prepaid fees covering the remainder of the Subscription Term after the effective date of termination. Notwithstanding the foregoing, termination for cause by Customer shall not relieve Customer of the obligation to pay any fees accrued or payable to ExactTarget prior to the effective date of termination.

10.4 Surviving Provisions. Section 1 and Sections 4 through 11 shall survive any termination or expiration of this Agreement, regardless of the cause of termination.

11. GENERAL PROVISIONS

11.1 Relationship of the Parties; Third Party Beneficiaries. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Unless otherwise provided in an Addendum, there are no third-party beneficiaries to the Agreement.

11.2 Force Majeure. Neither party is responsible for delays or failures to perform its responsibilities under the Agreement due to causes beyond its reasonable control, including but not limited to acts of God, acts of government, flood, fire, earthquakes, tornadoes, civil unrest, acts of terror, strikes or other labor problems, computer, telecommunications, internet service provider or hosting facility failures or delays involving hardware, software or power systems, Malicious Code, denial of service attacks, and inability to obtain energy (each a “**Force Majeure Event**”); provided, however, that it will resume performance as soon as reasonably practicable.

11.3 Notices. Any notice, request, approval or written consent required under the Agreement shall be sufficiently given if in writing and delivered in person or mailed (certified or registered mail, return receipt requested) by one party to the other at the address set forth on the first page hereof or to such other address as the recipient may subsequently furnish in writing to the sender. Notices to ExactTarget shall be addressed to the attention of its General Counsel. Notices to Customer shall be addressed to Customer’s signatory of this MSA unless otherwise designated in writing. Notice shall be effective upon receipt.

11.4 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

11.5 Severability. Any provision of the Agreement which is prohibited and unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without (a) invalidating the remaining provisions hereof if the essential provisions of the Agreement for each party remain valid, binding, and enforceable, or (b) affecting the validity or enforceability of such provisions in any other jurisdiction.

11.6 Assignment. Neither party may assign the Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, either party may assign the Agreement in its entirety (including all Order Forms and SOWs), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to affect an assignment in breach of this Section shall be void. Subject to the foregoing, the Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

11.7 Governing Law; Venue; JURY TRIAL WAIVER. The Agreement, and all claims arising out of or relating to its subject matter, shall be exclusively governed by and construed under the internal laws of the State of Indiana, without regard to its conflicts of laws rules. Each party consents to the exclusive jurisdiction of the state and federal courts located in Marion County (Indianapolis), Indiana to adjudicate any claim arising out of or relating to the Agreement or its subject matter. EACH PARTY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER.

11.8 Attorneys’ Fees. If either party hereto files a legal proceeding arising out of or relating to the Agreement or its subject matter, the prevailing party (as adjudged by a court or other fact finder) shall be entitled to an award of all costs and expenses incurred in connection with such proceeding, including but not limited to reasonable attorneys’ fees and expert witness fees.

11.9 Entire Agreement. The Agreement, as defined herein, constitutes the entire agreement between the parties with respect to the subject matter set forth in the Order Forms and SOWs executed by the parties during the Term, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its

subject matter. No modification, amendment, or waiver of any provision of the Agreement shall be effective unless in writing and signed by both parties hereto. To the extent of any conflict or inconsistency between the provisions in the body of this MSA and any Addendum, Exhibit, Order Form, or SOW, the terms of this MSA shall prevail unless expressly stated otherwise in such Addendum, Exhibit, Order Form, or SOW. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation (excluding Order Forms and SOWs) shall be incorporated into or form any part of the Agreement, and all such terms or conditions shall be null and void. The language used in this MSA shall be deemed to be language chosen by both parties hereto to express their mutual intent, and no rule of strict construction against either party shall apply to rights granted herein or to any term of condition of this MSA. In the event of any asserted ambiguous term or condition herein, the parties agree that the principle that ambiguities shall be construed against the drafter shall not be employed. Each party represents and warrants that, in deciding to execute the Agreement, it has not relied and should not rely on any understandings, representations, inducements, warranties or promises, whether written or oral and/or whether express or implied, regarding the Agreement, the matters referenced in the Agreement or any other matters not referenced in the Agreement. Each party represents and warrants that it did not enter the Agreement based on any representation or omission of any other party or its agents, and that any term not present in the Agreement was not material to its decision to enter into the Agreement.

11.10 Counterparts. This MSA may be executed in counterparts, which taken together shall form one legal instrument. Delivery of an executed counterpart signature page of this MSA by facsimile, email, or other electronic transmission shall be effective as delivery of a manually executed counterpart of this MSA.