

## ELIPSE AGENCY MASTER CLIENT AGREEMENT

These terms and provisions constitute a Master Client Services Agreement (the "Agreement") made between ElipseAgency, LLC., and Client ("Client") as defined in an applicable Authorization Form, invoice, or Purchase Order for products or services (collectively referred to as "Authorization Form"). This Agreement is current as of June 1, 2017. This Agreement shall be considered binding on both Client and EA once Client executes, completes, authorizes, or pays an applicable Authorization Form.

WHEREAS, EA's and Client's desire to enter into this Agreement to provide for, among other things, the performance of certain services by EA for Client and the sale or licensure of products to Client by EA.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and intending to be legally bound hereby, each of EA and Client agrees as follows:

### 1. PERFORMANCE OF SERVICES

1.1. Performance of Services. EA will provide Client with certain services as mutually agreed by EA and Client, and any incidental services, functions or responsibilities not specifically described in this Agreement or Authorization Form, but that are required for the proper performance of such described services, functions and responsibilities (collectively, the "Services"). EA shall complete performance of the Services in compliance with this Agreement, Authorization Form, and all applicable laws, rules, regulations and court orders.

1.2. Reports. EA shall provide oral or written reports on the progress of the Services as may be reasonably requested from time to time by Client. In addition, EA shall also review with Client, as reasonably requested, documents, files, software, programming code, and other materials and media that are developed as part of Services ("Developed Materials") in their present form at the time of the request. EA reserves the right to withhold any and all Developed Materials, or request the return or destruction of Developed Materials previously provided to Client, due to non-payment or other reasons, as further defined in this Agreement.

1.3. EA Personnel. The persons assigned by EA to perform the Services shall have appropriate technical and professional skills to enable them to perform the Services and shall perform their duties in a professional manner, consistent with generally accepted industry standards. While at Client's facilities, all persons assigned by EA to perform the Services shall observe and follow Client's reasonable work rules, policies and standards as the same are communicated to EA. EA shall perform the Services either at Client's or EA's facilities and that of EA's personnel, as appropriate and as agreed to by the parties.

### 2. PROPRIETARY RIGHTS

2.1 Client Ownership of Deliverables. During the course of Services or provision of Products, EA may develop materials and media, for Client's use and retention, defined in Section 1.2 as "Developed Materials." These Developed Materials may include graphics, written copy, images, software code, data, documents, and other media. Developed Materials is herein further defined as such materials created by EA exclusively and specifically for Client, to which EA releases in writing any claim of ownership or rights of use, outside of Services to Client. Generally, Developed Materials shall include materials which have been created and fundamentally rely upon use of Client's Proprietary Materials (as defined in this Agreement) to function and exist. This includes such items as Client's website front-end, as served to visitors, documentation created by EA personnel covering Client's project and Services provided, and other materials which are expressly created solely for use by Client. Developed Materials shall not include such materials and items as have previously been created by EA, or created for use by others, and not exclusively by Client. Even if materials have been created, modified, enhanced, or otherwise changed during the course of the performance of Services to Client, such



materials shall not be deemed to have been developed 1) fundamentally relying upon Client's Proprietary Materials or 2) exclusively for use and ownership by Client.

**2.2 Delivery of Developed Materials.** Client understands that ownership of Developed Materials is transferred by EA to Client in accordance with this Agreement. This process is termed the "Delivery" of Developed Materials. EA reserves the right to withhold the Delivery of Developed Materials if Client is in breach of this Agreement or Authorization Form, including, but not limited to non-payment of fees by Client to EA. Following the fulfillment of this Agreement and full payment, as requested by EA, EA shall Deliver Developed Materials to Client, by providing written notice of transfer of ownership, together with any associated copyright and other intellectual property rights. Following Delivery, Developed Materials shall be the sole and exclusive property of Client and shall be treated as if they were works made for hire by EA for the Client. Following Delivery, EA irrevocably assigns, transfers and conveys to Client all right, title and interest in and to such Developed Materials, together with any associated copyright and other intellectual property rights.

**2.3 Client Proprietary Materials.** Client's Proprietary Materials are hereby understood to encompass materials and media provided by Client to EA for the purpose of EA's performance of Services, over which Client holds a claim of ownership, trademark, copyright, or other intellectual or proprietary rights, including such items as web domains, marketing materials, and other assets, items, and intellectual property. EA waives any claim to ownership of Client Proprietary Materials, and shall promptly return to Client or destroy any and all Client Proprietary Materials upon Client's written request. In addition, EA may purchase or acquire materials and intellectual property on Client's behalf, such as web domains, security certificates, and other types of certification. EA may elect to transfer these materials to Client, reclassifying them as Client Proprietary Materials, following the full reimbursement and repayment to EA of all expenses and costs associated with acquiring these materials. EA reserves the right to withhold the transfer of materials acquired by EA with the intent of transferring to Client as Client Proprietary Materials, if Client breaches this Agreement or Authorization Form, including but not limited to instances of Client's failure to make full payment to EA for Services.

**2.4 EA Proprietary Materials.** During the performance of Services by EA for the Client, EA may develop, modify, extend, alter, or otherwise make use of software components, intellectual property, and other proprietary assets and technologies, which do not constitute Developed Materials, as defined above, as they do not depend fundamentally on Client's Proprietary Materials to function or exist and/or were not created or modified by EA exclusively to provide proprietary ownership of said materials by Client. These materials shall be collectively known as "EA Proprietary Materials." Client and EA acknowledge that EA retains sole and exclusive ownership over EA Proprietary Materials. Use of EA Proprietary Materials during EA's Service to the Client, in conjunction or combination with Developed Materials or Client Proprietary Materials, or in any other way by Client is fully dependent on EA's authorization of such use. EA reserves the right to authorize or deny authorization of any such use, for any reason, with or without good cause, at any time, unless otherwise agreed in writing by EA. EA reserves the right to issue or deny the Client a license to use said EA Proprietary Components, without charge or for a fee.

**2.5 Third Party Components.** During the performance of Service, usage of EA Proprietary Materials, or creation of Developed Materials, EA may make use of intellectual property, technologies, services, components, or other materials owned, licensed, or operated by a third party ("Third-Party Components"). In such cases, Client agrees to be duly bound by the provisions and terms of use of said Third-Party Components. In the event that the provisions or terms of this Agreement, whether in part or in full, are found to be in conflict with the provisions of terms of any agreements governing the licensing, usage, or ownership of said Third-Party Components, it shall be in EA's sole discretion to determine which provisions and/or agreements shall prevail. At such time, EA may elect to convey or add certain terms and provisions to this Agreement and other agreements with Client, to bind Client to the same terms and provisions to which EA is bound by an applicable third-party, during the usage of Third-Party Components.

**2.6 Provision of Products.** EA may provide, sell, and/or license Products to Client. These Products may exist as tangible or intangible items, such as system software, software-as-a-service (SaaS) subscriptions, web hosting, and data storage. These Products may be owned in part or in full by EA, and/or by a third-party with which EA has a separate



agreement or license. In all such instances, the provisions and terms of use of these products will be governed by separate licensing or purchase agreements other than this Master Agreement. If said agreements, whether in part or in full, are found to be in conflict with this Master Agreement, whether in part or in full, it shall be in EA's sole discretion to determine which provisions of each agreement shall prevail. Client recognizes that the provision, sale, or licensing of products by EA to Client does not constitute the delivery of any Developed Materials or Client Proprietary Components. Client waives any claims to ownership or control over any and all Products provided by EA, along with any claims of proprietary interest or control over said Products.

### **3. COMPENSATION**

3.1. Fees Overview. EA generally charges fees and receives payments under four types of fee structures 1) fees related to time and materials while performing Services 2) fees related to licensing or subscribing to the use of EA Proprietary Materials or Products 3) fees for the provision of certain Services or Products 4) fees tied to percentage commissions, royalties, or other types of metrics related to Services or Products provided. The applicable Authorization Form for Services will outline the specific fee structure for the Services provided as outlined in the Authorization Form. EA will inform the Client of different fees and fee structures for different types of Services and materials provided to Client, for which there may be provided additional Authorization Forms. However, Authorization Forms may not be provided in each instance, provided that Client has otherwise been notified of the fees and fee structure, by other means.

3.2. Time-Based Fees. Unless otherwise specified, and/or as agreed through Authorization Form or other agreement, EA's Services will carry fees based on the time spent during their performance. Following the execution of this Agreement through Authorization Form or by other means, as described in this Agreement, Client agrees to be subject to time-based and other fees charged by EA, as part of the Services provided by EA and the standard fees charged for such Services by EA as reasonably determined by EA. Client reserves the right to request reports of time spent on Services and associated fees at any time, to which EA shall provide the requested report of time and fees within a reasonable timeframe. Ultimately, it shall be Client's responsibility to request updates or reports of time usage and associated fees. While EA will strive to keep client informed, through such measures as making time records available online when possible, and through regular invoicing, EA is not responsible for Client's failure to stay abreast of time expenditure by EA and accrued fees. Client understands that excessive requests for time reporting may be subject to time-based fees for their preparation by EA. Client is responsible for requesting in writing budgeting parameters or imposing Service limits to act as guidelines for EA in limiting the time spent on the performance of Services. If such requests are made by Client, EA shall make a reasonable effort to ensure Services are not performed beyond the requested limits or guidelines. If no such requests or guidelines are provided by Client, it shall be at EA's discretion to perform Services in an amount and of a nature as EA's deems appropriate and necessary on Client's behalf, in accordance with generally-accepted EA standards and EA company policy. Client understands that the accrual of time-based fees for Services performed in no way represents any guarantee or warranty of specific-results, deliverables, or Developed Materials from EA. EA shall be responsible for ensuring reasonable ethical standards and guidelines for EA Personnel and service-providers, to ensure accurate and precise time reporting, and help prevent and remedy potential conflicts of interest in time-based billing.

3.3. Flat Fees. As agreed through Authorization Form or other agreements, EA's Services and Products may carry fixed fees based on licensing, sale, usage, or performance by EA. Client shall be made aware of these fees prior to being charged for them, whether by written instrument or other means. Following the execution of this Agreement through Authorization Form or by other means, Client agrees to be subject to any such fees contained therein, under the terms and provisions specific in this Agreement and any other agreements between Client and EA governing said fees.

3.4. Other Fees and Fee Structures. As agreed through this Agreement, Authorization Form or other agreements, EA's Services and Products may carry fees and fee structures other than those outlined in Sections 3.1, 3.2, and 3.3 of this Agreement. Client shall be made aware of these fees and/or fee structures prior to being charged for them, whether by written instrument or other means. Following the execution of this Agreement through Authorization Form or by other means, Client agrees to be subject to any such fees and/or fee structures contained therein, under the terms and



provisions specific in this Agreement and any other agreements between Client and EA governing said fees and/or fee structures.

3.5. Expenses. Client shall pre-pay or reimburse EA for all pre-approved expenses, including but not limited to Third-Party Component costs, travel and living expenses, and other costs incurred by EA during the performance of Services or provision of Products. Any such expenses shall be reasonably incurred and properly documented by EA and EA's personnel. EA shall make Client aware of any expenses prior to incurring them for Client's approval. Following said approval, Client shall be obligated to make payment to EA as would govern other fees according to the provisions of this Agreement.

3.6. Payment. Client recognizes that timely and full payment is necessary for EA to operate as a business and provide Services and Products. Client recognizes that failure to make full payment in the manner outlined in this Agreement may cause damage to EA beyond the amount of payment due or the fees for Services and Products. As a condition of Service or Product provision, Client shall provide EA with valid information for making electronic payments to EA, as well as authorizing EA to make electronic withdrawals as outlined in this Agreement and any applicable Authorization Form. Client shall provide EA with valid bank account information, a valid credit card account, and/or other information, as requested by EA, which shall be used to make payment. EA shall charge Client for Services and Products in amounts and on a schedule as described in this Agreement and/or applicable Authorization Form. Client is responsible for ensuring that the bank accounts or lines of credit debited by EA include sufficient balances for full payment at the time of said charges. EA is not responsible for any charges, fees, or penalties that may result due to requests for electronic withdrawals from Client's accounts. In the event that EA is charge penalties or fees as a result of Client's failure to provide accurate payment information, or carry a sufficient balance, Client agrees to cover in full any such fees or expenses incurred by EA. In the event that Client fails to make payment in full to EA at the time of each withdrawal, Client agrees to do everything in its power to make payment as quickly as possible, by any means necessary. EA reserves the right to immediately stop Services, reclaim Products, and withhold the transfer of any Deliverables to Client if payment conditions are not met as set forth herein, as well as reclaim any previously provided Deliverables, as well as revoke any previously provided licenses for the use of EA's Proprietary Components or Products. Additionally, EA reserves the right to assess a late fee equal to 13%, or at the highest rate of interest allowed by law, of the total outstanding payment, compounded every two weeks, until payment is made by Client.

#### **4. REPRESENTATIONS AND COVENANTS**

4.1. Title and Non-Infringement. EA reasonably represents that, excluding and other than Third Party Components and EA Proprietary Components, (1) it is and will be the sole author of all works created and/or employed by EA in preparing any and all Deliverables and all such Deliverables will be original, other than Third Party Components and EA Proprietary Components; (2) it has and will have full right to assign or grant the ownership rights in the Deliverables to the Client pursuant to this Agreement; (3) the Deliverables have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) the Deliverables do not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights of any third party, and do not and will not constitute a misappropriation of any trade secrets of any third party, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against EA (or, insofar as EA is aware, any entity from which EA has obtained such rights).

4.2. Quality of Services and Products. EA represents and covenants to Client that the Services performed and Products provided hereunder shall be of professional quality, consistent with generally accepted industry standards and expectations for work of a similar nature.

4.3. EA Employees, Consultants and Agents. EA represents and covenants to Client that all Services to be performed by EA under this Agreement shall be performed by employees, subcontractors, or other agents under contractual agreement with EA. Each individual or entity performing Services on behalf of EA ("EA Agent") shall have agreed in writing with EA to: (i) keep all confidential and proprietary information and materials of EA and its clients



(including Client and its Clients) strictly confidential; and (ii) assign to EA all of such EA Agent's right, title and interest in and to all inventions, original works of authorship, developments, concepts, improvements and trade secrets and other intellectual property rights which are conceived, developed or reduced to practice by such employee or consultant during his, her or its relationship with EA, including all copyrights and other associated intellectual property rights therein and appurtenant thereto.

4.4. Protection of Rights. EA shall cooperate with the Client in its efforts to obtain available protection for the Deliverables under foreign laws and to secure such certifications, registrations, or licenses as may be appropriate for the better protection of the same in any foreign country.

## 5. INDEMNIFICATION; LIMITATION OF LIABILITY

5.1. Indemnification. During the term of this Agreement, each party (the "Indemnifying Party") shall indemnify the other party and its directors, officers, employees and agents (each, an "Indemnified Party") from any suits, claims, costs, damages, judgments and reasonable attorneys' fees resulting from any breach of the Indemnifying Party's representations and warranties hereunder.

5.2. Additional Provisions for Indemnification. The Indemnified Party shall provide the Indemnifying Party with prompt written notice of any claim, demand or action for which the Indemnified Party is seeking or may seek indemnification hereunder. The Indemnifying Party shall keep the Indemnified Party fully informed concerning the status of any litigation, negotiations or settlements of any such claim, demand or action. The Indemnified Party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing.

5.3. OTHER THAN WITH RESPECT TO INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE, NEITHER PARTY TO THIS AGREEMENT NOR THEIR AFFILIATED COMPANIES, NOR THE OFFICERS, AGENTS AND EMPLOYEES OF ANY OF THE FOREGOING, SHALL BE LIABLE TO ANY OTHER PARTY HERETO IN ANY ACTION OR CLAIM FOR CONSEQUENTIAL OR SPECIAL DAMAGES, LOSS OF PROFITS, LOSS OF OPPORTUNITY, LOSS OF PRODUCT OR LOSS OF USE, WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED ON CONTRACT TORT (INCLUDING SOLE, CONCURRENT OR OTHER NEGLIGENCE AND STRICT LIABILITY), STATUTE OR OTHERWISE. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THE PROVISIONS OF THESE TERMS ARE WAIVED.

## 6. CONFIDENTIAL INFORMATION

6.1. Confidentiality Agreement. For the purposes of this Agreement, "Confidential Information" means all trade secrets and confidential and proprietary information relating to the Parties, individually or jointly, including, without limitation: (a) supplier and customer lists, supplier and customer-specific information, user lists, vendor lists and content provider lists; (b) planning data and selling and marketing strategies; (c) product and process designs, formulas, processes, plans, drawings, concepts, techniques, systems, strategies, software programs and works of authorship; (d) manufacturing and operating methods; (e) research and development data and materials, including those related to the research and development of products, materials or manufacturing and other processes; (f) financial and accounting information, financial and accounting records, pricing information, projects, budgets, projections and forecasts; (g) all industrial and intellectual property rights, including, without limitation, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, databases, algorithms, computer programs and other software, know-how, trade secrets, proprietary processes and formulae, inventions, trade dress, logos, design and all documentation and media constituting, describing or relating to the above; and (h) other information with respect to the Parties, which is or should reasonably be understood to be confidential or proprietary and which, if divulged to the Parties' competitors, would impair Parties' abilities to compete in the marketplace.



6.2. Protecting Confidential Information. EA and Client mutually agree at all times on and after the date hereof to preserve and protect the confidentiality of the Confidential Information and all its physical forms, whether disclosed to each party before or after this Agreement is executed. In addition, EA and Client mutually agree not to (a) disclose or disseminate Confidential Information to anyone, including employees, consultants or other affiliates who lack a need to know and (b) use Confidential Information for said party's or any third party's benefit.

6.3. Exclusions. The foregoing obligations will not apply to any information that either party can establish to have (a) become known to said party from a source other than the other party, (b) been given to either party by a third party who is not obligated to maintain confidentiality, (c) been developed by either party prior to executing this agreement, or (d) been disclosed under operation of law, except that said party will notify the other party prior to such disclosure, disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

6.4. Return of Confidential Information. Each party shall not take, use or permit to be used any notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation or other materials of any nature relating to any matter within the scope of the business of said party or concerning any of its dealings or affairs otherwise than for the benefit of the other party. Each party shall not use or permit to be used any such notes, memoranda, reports, lists, records, drawings, sketches, specifications, software programs, data, documentation or other materials, it being agreed that all of the foregoing shall be and remain the sole and exclusive property of the other party and that immediately upon request by the other party, said party shall deliver all of the foregoing, and all copies thereof, to the other party at its main office.

6.5. Employees & Consultants. Each party hereby represents and warrants to the other party that each employee, consultant and other affiliate of said party having access to Confidential Information is subject to a confidentiality agreement that is no less protective of the confidentiality of the Confidential Information than as provided herein.

## **7. TERM AND TERMINATION; SURVIVAL**

7.1. Term. The term of this Agreement shall commence on the Effective Date of this Agreement, applicable Authorization Form, or other agreement as determined by EA, and shall continue unless terminated as set forth in this Agreement.

7.2. Survival. The provisions of this Agreement necessary to interpret the respective rights and obligations of the parties hereunder, shall survive the termination of this Agreement. In addition, Client shall remain obligated to timely pay EA any amounts due hereunder for Services performed, Products provided, and expenses incurred.

## **8. MISCELLANEOUS PROVISIONS**

8.1. Independent Contractor. In making and performing Services or providing Products, EA shall be deemed to be acting as an independent contractor of Client and shall not be deemed an agent, legal representative, joint venturer or partner of Client. Neither party is authorized to bind the other to any obligation, affirmation or commitment with respect to any other person or entity, unless expressly authorized in writing by the counterparty.

8.2. Non-Poaching. Client expressly agrees not to engage in work of any kind with EA's clients, employees, vendors, contractors, customers, and other associates, including but not limited to prospective clients and sales leads, through which Counterparty receives primary knowledge of and contact with through EA or Services and Products provided by EA to Client (collectively "EA's Associates") without the express written consent of EA. Client agrees not to hire, contract, solicit, or otherwise contact EA's Associates without EA's written permission. Furthermore, Client is prohibited from being hired, working with, contracting with, or purchasing services or products of any kind from any of EA's Associates without EA's express written permission. Even following the completion of EA's services to Client, the



provisions of this section will survive for perpetuity and be binding upon Client, as well as Client's heirs, successors, and assigns.

8.3. Assignment; Binding Effect. EA may assign, delegate, subcontract or transfer this Agreement, or any of EA's duties and obligations hereunder, without the prior written consent of Client. Client may assign, delegate or transfer all of its rights under this Agreement to an affiliate of Client or to any person or entity who purchases all or substantially all of the business or assets of Client to which this Agreement relates, provided that such affiliate, person or entity agrees in advance and in writing to be bound by the terms, conditions and provisions of this Agreement, applicable Authorization Form, and other agreements between EA and Client. Subject to the foregoing, all of the terms, conditions and provisions of this Agreement shall be binding upon and shall inure to the benefit of each party's successors and permitted assigns. Any assignment, delegation, or transfer in violation of this provision shall be void and without legal effect.

8.4. Rights in Acquisition, Bankruptcy, and Succession. The provisions, terms, and obligations of Client to EA under this Agreement, applicable Authorization Form, and other agreements between Client and EA may not be terminated, voided, or otherwise nullified through Client's acquisition by a third-party, or bankruptcy. Similarly, Client agrees that the terms, provisions, and obligations of this Agreement are inure to the benefit of creditors. Both Parties agree that the provisions of this Agreement are equally binding on both Parties' heirs, successors, and assigns. Bankruptcy, transfer of ownership, acquisition, or any other Succession events change Client's obligations of payment or EA's obligations of Service.

8.5. Third Party Beneficiaries. Except as expressly stated herein, nothing in this Agreement shall confer any rights upon any person other than the parties hereto and their respective successors and permitted assigns.

8.6. Use of Client's Name. Client agrees that EA may reasonably use the name and description of Services, along with any trademarks or logos of Client in sales, marketing or promotional materials or presentations, or on EA's website except as relating to the confidentiality and non-disclosure provisions of Section 6.

8.7. Legal Fees and Arbitration. In the event of any disputes arising from this Agreement, applicable Authorization Form, or other agreements between EA and Client, Client agrees that it shall be in EA's discretion as to whether such disputes shall be settled through litigation or the use of an impartial and accredited arbitration association or board. EA and Client agree that in the event of a dispute arising under or related in any way to this Agreement, the non-prevailing party shall pay all costs and expenses, including reasonable attorneys' fees, that may arise or accrue from enforcing this Agreement, obtaining an interpretation of any provision of this Agreement, or in pursuing any remedy provided by applicable law whether such remedy is pursued or interpretation is sought by mediation, arbitration, the filing of a lawsuit, an appeal, and/or otherwise.

8.8. Governing Law and Jurisdiction. This Agreement and all disputes between the parties concerning the subject matter hereof or thereof, shall be governed by and interpreted in accordance with the Laws of the Commonwealth of Massachusetts, without giving effect to its principles governing conflicts of law. Client and EA agree that Jurisdiction of any litigation arising out of the terms of this Agreement, applicable Authorization Form, and other agreements between EA and Client shall be in the Circuit Court of Suffolk County, Massachusetts, or a jurisdiction of EA's choosing.

8.9. Equitable Relief. Each party agrees that either party's violation of the provisions of this Agreement, applicable Authorization Form, or other agreements between EA and Client may cause immediate and irreparable harm to the other party for which money damages may not constitute an adequate remedy at law. Therefore, the parties agree that, in the event either party breaches or threatens to breach said provisions or covenants, the other party shall have the right to seek, in a court of competent jurisdiction (as specified in Section 8.8), an injunction to restrain said breach or threatened breach, without posting any bond or other security.

8.10. Notices. All notices provided for or permitted under this Agreement shall be deemed effective upon receipt, and shall be in writing and either (a) delivered personally, (b) sent by commercial overnight courier with written



verification of receipt, (c) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the party to be notified, at the address for such party set forth below, or at such other address of such party specified in the opening paragraph of this Agreement, or (d) sent by electronic transfer or facsimile transmission.

8.11. Entire Agreement; Amendment. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and thereof, except with the respect of the provisions of Section 8.12. This Agreement supersedes all prior or contemporaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the parties hereto with respect to the subject matter hereof, whether written or oral, except with the respect of the provisions of Section 8.12. This Agreement may be amended, modified or supplemented only by a written instrument duly executed by an authorized representative of each of the parties.

8.12. Conflict with this Agreement. EA and Client represent and warrant that neither Client, EA nor any of EA's or Client's directors, officers, employees or agents is under any pre-existing obligation with any other person or entity in conflict or in any way inconsistent with the provisions of this Agreement.. In the event that there is a conflict between this Agreement and applicable Authorization Form, or any other agreement, in part or in full, between Client and EA, it shall be under EA's full-discretion to determine which instrument will control.

8.13. Severability. Any provision of this Agreement that is determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this Agreement, or affecting the validity or enforceability of such provision in any other jurisdiction. If a court of competent jurisdiction, according to Section 8.8, declares any provision of this Agreement to be invalid or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope, duration, or area of the provision, to delete specific words or phrases, or to replace the provision with a provision that is valid and enforceable and that comes closest to expressing the original intention of the parties, and this Agreement shall be enforceable as so modified.

8.14. Non-Waiver. No term or provision of this Agreement will be considered waived by either party, and no breach consented to by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom it is asserted. No consent to or waiver of a breach of this Agreement by either party, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this Agreement by such party.

8.15. Execution and Delivery. This Agreement shall be deemed executed by both parties when one of Client's duly authorized representatives has executed a corresponding Authorization Form, makes payment of an invoice, purchase order, or otherwise authorizes or completes any written instrument, whether through physical or electronic means, acknowledging entry into this Agreement. Said Authorization Form shall constitute the execution of This Agreement by both Parties. Said Authorization Form, once executed by either party, may be delivered to the parties by facsimile or electronic transmission of a copy thereof bearing the signature of either party.

