

DEVELOPMENT AND HOSTING AGREEMENT

This Development and Hosting Agreement is made and effective as of September 1, 2003, ("**Effective Date**"), by and between Charles Schwab & Co., Inc. ("**Schwab**") and Wall Street on Demand, Inc. ("**Contractor**"). When used herein the term "**Agreement**" is meant to include, collectively, the body of this Development and Hosting Agreement and any and all Exhibits and other documents attached hereto.

Recitals

A. Schwab desires to engage Contractor to develop a database of information regarding Investment Advisors who desire to sell their businesses or purchase the businesses of other Investment Advisors, all as more particularly described in the attached Work Orders. The database will be made available to Schwab and its authorized users through a Web site accessible over the Internet (the "**Web Site**"). Contractor has represented that it has the necessary programming, development, and hosting skills necessary to create such a database and Web Site.

B. In creating and providing the database and Web Site, Contractor may provide Schwab with certain pre-existing software that Contractor has developed (the "**Licensed Software**"), as more particularly described in Exhibit B. Some or all of such Licensed Software may be hosted solely on Contractor's servers. Schwab shall not be entitled to possession of the source or object code for such items of License Software, except as expressly described herein.

B. Schwab desires to license the Licensed Software and obtain from Contractor the Development and other professional services described herein, including, but not limited to, support and maintenance, customization, implementation, and training services (collectively, the "**Services**"), all as more particularly described herein. The Services to be provided by Contractor are set forth in this Agreement and such Work Orders (as defined below) as the parties may mutually agree upon.

Agreement

In consideration of the foregoing Recitals (which are incorporated herein) and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Term.

1.1 Initial and Renewal Terms for Support and Services. This Agreement shall commence as of the Effective Date and shall remain in effect for two (2) years thereafter, unless earlier terminated as provided herein (the "**Initial Term**"). Upon the expiration of the Initial Term, Schwab may, at its option, extend this Agreement for up to five (5) additional consecutive one (1) year terms (each a "**Renewal Term**") by providing written notice to Contractor at least thirty (30) days prior to the expiration of the pending term; provided that if Schwab does not exercise its option to extend at the end of the Initial Term, or any Renewal Term, the remaining option(s) shall automatically lapse. The Initial Term and any Renewal Terms are referred to herein collectively as the "**Term**." Contractor shall provide Schwab with at least sixty (60) days prior written notice of

the end of the Initial Term and each Renewal Term. Such notice shall identify any fee increase applicable to the Renewal Term that is about to commence.

1.2 Work Orders; License. The commencement and termination dates for Work Orders shall be as provided in each Work Order. Termination or expiration of the Term (except for termination for breach by Schwab of Sections 3 (Licensed Software), 13 (Intellectual Property), or 14 (Confidentiality)), shall not effect the license granted in Section 3 (Licensed Software). Such license shall continue in perpetuity. The "Term" referred to herein relates solely to the provision of Services hereunder and not to the term of the license granted in Sections 3 (Licensed Software) which is perpetual.

2. Identification of Parties.

2.1 Contractor; No Subcontracting. Contractor shall perform the obligations described in this Agreement or in the Work Orders itself and through its direct wholly-owned subsidiaries, provided such subsidiaries are disclosed in writing to Schwab. All references to Contractor in this Agreement shall be deemed to include all such subsidiaries. Contractor may not assign, delegate or subcontract this Agreement nor any of its rights, duties or obligations under this Agreement without Schwab's prior express written consent. Any purported assignment or delegation not consented to by Schwab shall be void at Schwab's option and shall constitute a material breach of this Agreement. Contractor acknowledges that Schwab has entered this Agreement in reliance on Contractor's ability and agreement to personally perform its obligations hereunder. In the event Schwab consents to any subcontracting, Contractor shall, on request by Schwab, provide Schwab with a copy of each subcontractor agreement. Notwithstanding any Schwab consent to any subcontracting, (i) Contractor shall remain responsible for any and all performance required under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform, all work required hereunder, and no subcontract shall bind or purport to bind Schwab; and (ii) such consent shall be subject to Schwab's right under Section 6.6 (Contractor Staff Approval) to approve or disapprove any personnel assigned to provide work hereunder.

2.2 Schwab. The rights and obligations of Schwab may be, in whole or in part, exercised or fulfilled by its parent and their respective affiliates, joint ventures, and subsidiaries. Schwab reserves the right to assign its rights and obligations hereunder, as it deems appropriate.

2.3 Parties. Contractor and Schwab may be referred to in this Agreement individually as a "Party" and together as the "Parties."

2.4 Representatives. "Contractor Representative" or "Schwab Representative" means the person(s) designated as such in a Work Order, or such other person as may be subsequently designated by Contractor or by Schwab, respectively, in writing as its representative for purposes of a Work Order. All instructions, approvals, submissions, notices, or any other communications or transactions which must be made to or by one Party to the other pursuant to this Agreement must be made through each Party's Representative, and as otherwise provided in Section 27.4 (Notices).

3. Licensed Software.

3.1 License Grant. Subject to the terms and conditions of this Agreement, Contractor grants to Schwab during the Term a world-wide, non-exclusive license to use the Licensed Software and Documentation (as defined below) for its business activities. For purposes of this Agreement, the term "**Documentation**" shall mean all of Contractor's training course materials, system specifications and technical manuals, and all other user instructions regarding the capabilities, operation, and use of the Licensed Software, including, but not limited to, online help screens contained in the Licensed Software. The Licensed Software shall not in any way be disassembled, decompiled or reverse engineered, nor shall any attempt to do same be undertaken or knowingly permitted by Schwab, except to the extent permitted by applicable law. Notwithstanding the foregoing, certain items of Licensed Software will be hosted solely on Contractor's servers ("Hosted Software"). All such Hosted Software shall be identified as such on Exhibit B. Contractor shall provide Schwab with access to and use of the Hosted Software as described herein, but Schwab shall not be entitled to receive object or source code for such software (except as provided in Section 4).

4. **Self Escrow of Source Materials.**

4.1 Self Escrow. Contractor shall deposit with Schwab the Source Code (as defined below) for the Licensed Software. In addition, Contractor shall also deposit with Schwab the Source Code for any modifications, updates, enhancements, corrections, patches, improvements, and new releases of Licensed Software that are made available to Schwab under this Agreement within thirty (30) days of their general availability. Except as provided in Section 4.2 (Source Code Release Conditions), Schwab shall hold the Source Code in strict confidence and not use it for any purpose unless one of the conditions described in Section 4.2 has occurred which would permit Schwab to use the Source Code to provide its own support and maintenance. The parties acknowledge that as a result of the passage of time alone, the deposited Source Code may be susceptible to loss of quality ("Natural Degeneration"). For the purpose of reducing the risk of Natural Degeneration, Contractor shall deliver to Schwab a new copy of all deposited Source Code every two (2) years during the Term. In the event the Source Code or any part of it is inadvertently destroyed or corrupted, Schwab has the right to request a replacement copy of the Source Code from Contractor. Contractor shall deliver the replacement copy of the Source Code within thirty (30) days of receipt of Schwab's written request. Schwab will pay Contractor's reasonable costs incurred in providing the replacement copy.

4.2 Source Code Release Conditions. Upon the occurrence of one of the following events (collectively referred to as "Release Conditions"), Schwab shall have the right to immediately begin using the Source Code for its own support and maintenance, at no charge to Schwab: (1) the insolvency of Contractor; (2) the making of a general assignment by Contractor for the benefit of its creditors or a filing of a voluntary or involuntary petition in bankruptcy by or against Contractor that is not dismissed within thirty (30) days of the filing thereof; (3) in the event Contractor ceases to maintain and support the Licensed Software as required hereunder for reasons other than Schwab's failure to pay for, or election not to receive, Contractor's maintenance and support services, and no other qualified entity has assumed the obligation to maintain and support the Licensed Software; or (4) termination of this Agreement for breach by Contractor.

4.3 Schwab's Right to Verify Source Code. Regardless of whether one of the conditions described in Section 4.2 (Source Code Release Conditions) occurs, Schwab shall have

the right to verify the relevance, completeness, currency, accuracy, and functionality of the Source Code by, among other things, compiling the Source Code and performing test runs for comparison with Licensed Software.

4.4 License of Source Code. Upon the occurrence of a Release Condition identified in Section 4.2 (Source Code Release Conditions), Schwab shall have a perpetual licensed to use the Licensed Software Source Code to perform its own support and maintenance, alter or modify the Source Code, and/or obtain the benefits sought under this Agreement. Nothing herein relieves Contractor of its obligation to provide support as provided in this Agreement. Should use of the Source Code as provided in this Section involve the use or practice of any patent, copyright, trade secret, trademark or other proprietary information in which Contractor has an interest, Contractor, its assignee, or successors, agree not to assert a claim for patent, copyright, trade secret, trademark or other proprietary information infringement against Schwab provided use of Licensed Software and Source Code is in accordance with this Agreement. The license granted hereunder shall survive any termination of this Agreement resulting from a Release Condition or other breach by Contractor.

4.5 Possession and Use of Source Code. Except as provided in this Section, Source Code obtained by Schwab under the provisions of this Agreement shall remain subject to every license restriction, proprietary rights protection, and other Schwab obligation specified in this Agreement provided, however, Schwab may make such Source Code available to third parties as needed to assist it in making authorized use of the Licensed Software. In no event shall Schwab be permitted to grant access to the Source Code to a direct competitor of Contractor. Except as provided herein, Schwab shall not be permitted to sell or transfer its rights in the Source Code to any other party. The Source Code shall be treated as Confidential Information of Contractor and subject to the protections set forth herein for such information. When Source Code is not in use, Schwab agrees to keep such Source Code in a locked, secure place.

4.6 Source Code – Defined. For purposes of this Agreement, “Source Code” shall mean the source code of software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load and operate the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.

5. **Continuous Product Support.** If Contractor assigns this Agreement, is acquired, or is otherwise controlled by another individual or entity (collectively referred to as a “**Successor Event**”) and subsequent to the Successor Event, the Licensed Software is not supported to at least the same level that Contractor supported the Licensed Software because, for example, Contractor’s assignee chooses to support other products with similar functions, Schwab, at its sole option, may elect to transfer the License, without cost or penalty, to another similar product (“**Replacement Product**”) within Contractor’s assignee’s or successor’s product offering. The assignee or successor, by taking benefit (including acceptance of any payment under this Agreement) ratifies this Agreement. All terms and conditions of this Agreement shall continue in full force and effect

for the Replacement Product. In addition, the following terms and conditions shall apply if Schwab elects to transfer this License to a Replacement Product:

A. Any prepaid maintenance and support shall transfer in full force and effect for the balance of the Replacement Product's maintenance and support term (or equivalent service) at no additional cost. If the prepaid moneys are greater than the Replacement's Product's maintenance and support fee for the same term, the credit balance will be applied to future maintenance and support fees or returned to Schwab, at its option;

B. Any and all software offered separately, and needed to match the original Licensed Software's level of functionality, shall be supplied by Contractor's assignee or successor without additional cost or penalty, and shall not affect the calculation of any maintenance and support fees;

C. Schwab shall receive reasonable training, for purposes of learning the Replacement Product. Training shall be provided at no cost;

D. All License terms and conditions shall remain as granted herein with no additional fees imposed on Schwab; and

E. The definition of Licensed Software shall then mean the Replacement Product.

For purposes of this Section, the term "controlled" shall mean the legal right to elect a majority of the directors of a corporation or similar officers of any other entity or to determine an entity's general management policies through contract or otherwise.

6. Services and Deliverables.

6.1 Work Orders. During the Term of this Agreement, Contractor shall perform the "Services," have the obligations to Schwab, produce the "Deliverables," achieve the "Milestones," and retain the responsibilities described in the applicable Work Order(s) that make reference to this Agreement. The terms "Services," "Deliverables" and "Milestones" have the meanings set forth in such Work Orders. Work Orders that make reference to this Agreement, whether attached at the time of execution hereof, or subsequent thereto, shall become valid and enforceable when executed by the Parties. All Work Orders shall be sequentially numbered and attached to Exhibit A when executed.

6.2 Hosting Services; Transition In-House. The Services to be provided by Contractor hereunder shall include the hosting services ("Hosting Services") set forth in Exhibit D relating to the Web Site. At any time during the Term, Schwab may, in its sole discretion, elect to discontinue the Hosting Services and host the Web Site and Licensed Software itself or through one of its agents. In such a case, Contractor shall provide Schwab with reasonable assistance in transitioning hosting to an alternate provider. Contractor shall be paid for such services at the rates set forth in Exhibit C or as otherwise mutually agreed by the Parties. Upon transition of hosting to an alternate provider, Schwab's obligation to pay the fees set forth in Exhibit B for Hosting Services shall terminate.

6.3 Time. Time is of the essence with regard to Contractor's performance of the Services.

6.4 Change Orders. Schwab may desire to have Contractor make significant custom modifications to the Services that were not contemplated by the parties when the Work Order was created. If so, Schwab will submit a written change order to Contractor describing such changes in appropriate detail (a "Change Order"). If a Change Order does not require Contractor to incur any additional material costs or expenses, then it will make such modification within ten (10) business days of its receipt of Schwab's Change Order. If a Change Order does require that Contractor incur additional material costs or expenses, then Contractor in good faith will provide Schwab with a written, high level, non-binding assessment of such costs and expenses and the time required to perform the modifications required by the Change Order, within ten (10) business days of its receipt of Schwab's Change Order. Schwab will notify Contractor in writing within ten (10) days after receipt of the Change Order response from Contractor as to whether Schwab wishes Contractor to implement such Change Order based on such response. Schwab will compensate Contractor for implementation of a Change Order in accordance with the terms and conditions of the relevant Change Order and Contractor's statement, as provided prior to Contractor's implementation of the Change Order, if any.

6.5 Schwab Cooperation. Schwab acknowledges that Contractor's ability to perform the Services will require Schwab to perform certain tasks, which shall be mutually agreed upon and set forth in the applicable Work Order(s). Schwab hereby agrees to perform its obligations in accordance with such requirements in a commercially reasonable manner. Furthermore, the parties acknowledge that Schwab's failure to perform its material obligations may adversely affect Contractor's ability to meet its performance obligations hereunder and the parties hereby agree to negotiate in good faith to arrive at an equitable adjustment to the terms of this Agreement to compensate Contractor for such additional effort and costs directly caused by Schwab's delay or failure to perform.

6.6 Contractor Staff Approval. Schwab shall have the right to disapprove of any member of Contractor's project staff assigned to perform under this Agreement. Should Schwab be dissatisfied with the performance, competence, responsiveness, capabilities, cooperativeness, or fitness for a particular task of any staff assigned by Contractor to perform services under this Agreement, Schwab may request the replacement of that staff. The replacement request shall be in writing and upon receipt of the request, Contractor shall make reasonable efforts to furnish a qualified replacement within fifteen (15) business days. In the event Contractor should ever need to remove any staff from performing services under this Agreement, Contractor shall provide Schwab with adequate notice, except in circumstances in which such notice is not possible, and shall work with Schwab on a mutually agreeable transition plan so as to provide an acceptable replacement and ensure project continuity. Such transitioning to replacement personnel shall be at no additional cost to Schwab. Contractor agrees that all project staff assigned to perform under this Agreement must have experience with performing the tasks to which they will be assigned under this Agreement. In the event that, as a result of the actions or inaction of Contractor project staff, additional work is required to perform this Agreement, Contractor shall perform all such work at no additional charge to Schwab. In addition, Contractor represents and warrants that it will, to the maximum extent possible, take all necessary steps to assure continuity over time of the membership of the group constituting Contractor's project staff. Contractor shall promptly fill any staff vacancy

with personnel having qualifications at least equivalent to those of the project staff member(s) being replaced.

6.7 Compliance with Applicable Laws; Security Requirements. Contractor shall not place or permit to be placed on, or allow to be accessible from any Service or Deliverable any material that violates any foreign, international, federal, state or local law or regulation, or the IP (as defined in Section 13.1) rights of any third parties. Contractor shall comply with all applicable laws, regulations, and rules that may be in effect during the Term of this Agreement as they concern the subject matter of this Agreement, including, but not limited to, securing and maintaining all appropriate visas, work permits, business licenses, and other documentation and clearances necessary for the performance of the Services and development of the Deliverables.

6.8 Cooperation in Regulatory Compliance. Contractor shall reasonably cooperate with Schwab with regard to regulatory compliance matters relating to the Services. Such cooperation shall include, but is not limited to, responding in good faith to reasonable requests to change or modify this Agreement as set forth in Section 27.6 (Entire Agreement) as it relates to Schwab's regulatory compliance. Additionally, on request by Schwab, Contractor shall submit to Schwab all, or any portion of, Custom IP and/or Contractor IP (each as defined in Section 13 (Intellectual Property)) for Schwab's review for regulatory compliance and shall not make the material publicly available until such time as Schwab has provided its written authorization.

6.9 Affirmative Action. Contractor agrees, in connection with the performance of its obligations under this Agreement, not to discriminate against any employee or applicant for employment because of race, sex, religion, color, national origin, disability or status as a covered veteran. Unless exempted, Section 202, paragraphs 1 through 7 of Executive Order 11246, as amended, and the affirmative action clauses as set forth in 41 C.F.R. § 60-741.4, 41 C.F.R. § 60-250.4 and 41 C.F.R. § 61-250.10 (requiring the annual reporting of covered veterans) are incorporated herein by reference.

6.10 Contractor Access to Schwab Facilities; Conduct of Contractor Personnel. Contractor, its employees and agents, will be granted access to Schwab facilities subject to compliance with Schwab's standard administrative and security requirements and policies, for the purpose of performing the Services. Access to Schwab facilities shall be restricted to normal Schwab business hours. Access to Schwab facilities outside normal business hours must be approved in advance by Schwab's program manager, which approval will not be unreasonably withheld. Contractor shall have no tenancy, or any other property or other rights in Schwab Facilities. While present at Schwab facilities, Contractor's personnel shall be accompanied by Schwab personnel, unless otherwise specified prior to such event by Schwab's program manager or his or her designee. All Contractor personnel shall carry and produce when requested a valid Contractor identification card. Contractor shall not in any way physically alter or improve any Schwab facility without the prior written approval of Schwab in its sole and absolute discretion. While at any Schwab facility, Contractor's personnel, contractors, and subcontractors shall (1) comply with Schwab's requests, rules, policies, and regulations regarding personal and professional conduct (including without limitation, the wearing of a particular uniform, identification badge, or personal protective equipment and adhering to regulations and general safety practices or procedures) and (2) otherwise conduct themselves in a professional and businesslike manner.

6.11 Damage to Schwab Facilities. Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to Schwab facilities, including, without limitation, Schwab's buildings, grounds, equipment, and furniture, caused by Contractor or employees or agents of Contractor. Such repairs shall be made promptly after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence. If Contractor fails to make timely repairs, Schwab may make any necessary repairs. All costs incurred by Schwab, as determined by Schwab, for such repairs shall be repaid by Contractor by cash payment upon demand, or without limitation of Schwab's other rights and remedies provided by law or under this Agreement, Schwab may deduct such costs from any amounts due to Contractor from Schwab under this Agreement.

7. **Acceptance Testing.**

7.1 Acceptance Criteria. The Licensed Software, Services, and Deliverables may be subject to acceptance testing by Schwab, in its sole discretion, to verify that they satisfy the acceptance criteria mutually agreed to by the Parties (the "**Acceptance Criteria**"), as developed in accordance with the applicable Work Orders. Such Acceptance Criteria shall be based, at a minimum, on conformance of the Licensed Software, Services, and Deliverables to the specifications set forth in the Work Order and the requirements of this Agreement, and, to the extent not inconsistent with the foregoing, the Documentation (collectively, the "**Specifications**"). In the event the Parties fail to agree upon Acceptance Criteria, the acceptability of the Licensed Software, Services, and Deliverables shall be based solely on Schwab's reasonable satisfaction therewith.

7.2 Acceptance Testing by Schwab; Termination. When Contractor notifies Schwab that it has completed a Service, Deliverable, or a Milestone (if the Work Order provides for Milestones) or that the Licensed Software, or some portion thereof, is available for its use, Schwab may, in its sole discretion, elect to test or evaluate the related Licensed Software, Services, and/or Deliverables to determine whether they comply in all material respects with the Acceptance Criteria. Upon completion of review and testing, Schwab shall promptly notify Contractor whether it has accepted such Licensed Software, Services, and/or Deliverables ("**Accept**"), or whether it has identified discrepancies with the Acceptance Criteria ("**Reject**"). Schwab may Accept or Reject an item of Licensed Software, Service, and/or Deliverable in its sole discretion. If Schwab Rejects an item of Licensed Software, Service, and/or Deliverable, Schwab shall provide a written list of items that must be corrected. On receipt of Schwab's notice, Contractor shall promptly commence, at no additional charge to Schwab, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Licensed Software, Services, and/or Deliverables as will permit them to be ready for retesting and review, but in no event shall such corrective measures exceed twenty (20) days. The testing and evaluation process shall resume, as set forth above. If Schwab Accepts the Licensed Software, Service, and/or Deliverables, it shall issue a written "**Acceptance Notice**". The date of such Acceptance Notice shall be deemed the "**Acceptance Date**." If Schwab determines that the Licensed Software, Services, and/or Deliverables, as revised, still do not comply in all material respects with the Acceptance Criteria, Schwab may either (1) afford Contractor the opportunity to repeat the correction and modification process as set forth above, or (2) depending on the nature and extent of the failure in Schwab's sole judgment, terminate the relevant Work Order(s) or this Agreement in accordance with Section 26 (Termination) as a non-curable default with respect to (i) the Work Order(s) relating to the

Licensed Software, Service(s), and/or Deliverables(s) that is (are) not performing or conforming as required herein, or (ii) this entire Agreement if the failure materially affects the function or desirability of the Licensed Software, Services, and/or Deliverables to Schwab as a whole. The foregoing correction and modification procedure shall be repeated until the Licensed Software, Service, and/or Deliverables pass the applicable Acceptance Criteria, or Schwab elects one of the termination options described above.

7.3 Remedy for Failed Acceptance. In the event of a termination under this Section 7 (Acceptance Testing), Contractor shall pay to Schwab, within ten (10) business days of written notice of termination all sums paid to Contractor by Schwab under this Agreement for the Licensed Software, Services, and/or Deliverables as to which the termination applies, or all fees paid hereunder if the entire Agreement is terminated. If Contractor fully performs by making complete reimbursement to Schwab as provided herein, the reimbursement remedy under this Section shall be Schwab's sole remedy and shall preclude any other remedy available under this Agreement or at law or in equity for failure of acceptance testing.

8. Support Services. Contractor shall provide the support services described in this Section and the applicable Work Orders (collectively, the "**Support Services**"). Except for specially requested on-site support, there shall be no additional charge to Schwab for the Support Services.

8.1 Support Responsibilities. In addition to any warranty obligations of Contractor hereunder, Contractor shall:

A. Correct any failure of the Licensed Software, Services, and Deliverables to perform in accordance with the Specifications (as defined in Section 7.1), including without limitation, defect repair, programming corrections, and remedial programming, and provide such services and repairs required to maintain the Licensed Software, Services, and Deliverables so that they operate properly and in accordance with the Specifications.

B. Provide unlimited telephone support twenty-four (24) hours a day, seven (7) days a week.

C. Respond to urgent issues within fifteen minutes of Schwab's call for assistance to Contractor and initiate work on such issues within one (2) hours thereafter, regardless of time of day or day of week. Urgent issues include issues involving substantial failure of the Licensed Software, Services, or Deliverables or those which, in Schwab's reasonable judgment, are critical to its operations. Contractor shall initiate work on non-urgent issues, within four (4) hours from receipt of a telephonic service request.

D. In the event Contractor fails to achieve the required support service levels under Section 8.1(C), Contractor shall issue to Schwab a credit in the amount of five hundred (500) dollars for each (i) additional fifteen minutes, in the case of call response time; and (ii) additional hour, in the case of repair initiation time. Contractor acknowledges and agrees that the credits assessed pursuant to this Section shall be payable to Schwab upon demand and may, at Schwab's option, be set off against any monies due to Contractor under this Agreement and are reasonable under the circumstances existing as of the date this Agreement is entered into.

8.2 Contractor's Changes and Upgrades. Contractor may from time to time make material enhancements and changes to the Licensed Software. In the event of such enhancements or changes, (i) the new version of the Licensed Software will include at least the functionality, level or quality of services that Schwab previously received and shall continue to comply with all of the requirements of this Agreement, and (ii) Schwab shall be provided, at least sixty (60) days in advance of any such changes, written notice and a demonstration of such changes. If such advanced demonstration reveals material adverse effects on functionality or operation of the Licensed Software, including, but not limited to, a failure to comply with the requirements of this Agreement, or compatibility with Schwab's business or regulatory requirements, including without limitation hardware, software or browser configurations, then Schwab may in its sole discretion reject such changes and remain on the current version of the Licensed Software for the remainder of the Term and continue to receive support and maintenance services as required hereunder. During the Term, Schwab shall receive access to all new versions, releases, updates, enhancements of the Licensed Software at no additional charge.

8.3 Support Not to be Withheld. Support under this Agreement will not be withheld due to any unrelated dispute arising under this Agreement, another agreement between the parties, or any other unrelated dispute between the parties.

9. **Training.** Contractor shall provide the training set forth in the applicable Work Orders at no additional charge to Schwab. In addition, Schwab may participate, at no additional charge, in any training seminars that may be held, at Contractor's discretion, for the benefit of all licensees.

10. **Price and Payments.**

10.1 Services. The fees for the Services and Deliverables are set forth in each Work Order. Unless provided otherwise in the Work Order, Contractor's rates for the Services shall be as set forth in Exhibit C.

10.2 Licensed Software; Hosting; Support. The license and support fees for the Licensed Software and fees for Hosting Services are set forth in Exhibit B.

10.3 Fees During Renewal Terms. Contractor's fees hereunder, including license and professional service fees, shall be fixed during the Initial Term. Thereafter, Contractor may increase such fees for a Renewal Term by providing notice to Schwab at least sixty (60) days prior to the commencement of such Term. Any such increase shall not exceed the lesser of: (i) four percent (4%) of the fees charged during the preceding term; or (ii) Contractor's then current generally applicable rates, less fifteen percent (15%).

10.4 Responsibility for Costs. Except for any Reimbursable Expenses specified in a Work Order, Contractor shall be responsible for all costs and expenses incidental to the performance of Services and the provision of access to the Licensed Software, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor, and all other of Contractor's costs of doing business. Contractor shall supply copies of third parties' invoices and other reasonable supporting documentation in substantiation of such costs, as Schwab may request. No payments will be made

for services rendered or expenses incurred by Contractor other than the Services or Deliverables unless such services are approved in advance in writing by Schwab, and Contractor supplies such documentation as Schwab may require in substantiation of such costs, *e.g.*, copies of third-party invoices.

10.5 Payment Terms. Except as may otherwise be provided in an Exhibit or Work Order, Schwab shall pay fees due hereunder within thirty (30) days after Schwab receives Contractor's invoice, except to the extent such invoices are the subject of a dispute between the parties. Schwab shall pay a late payment fee at the rate of one and one-half percent (1.5%) per month for any undisputed payments which are more than thirty (30) days past due.

10.6 Invoices. Invoices must be submitted to the Schwab Representative or such other person as may be designated by Schwab. Schwab will provide Contractor with a Purchase Order or contract control number ("Order Number") for invoicing under this Agreement. Contractor agrees that it will provide the Order Number on each invoice and that no invoice will be considered validly submitted under this Agreement without such Order Number. Whenever a Purchase Order is issued by Schwab as provided herein, the Parties agree that any such issuance is for convenience of the issuer and the terms and conditions of any such Purchase Order are superseded by this Agreement.

10.7 All Fees Stated. Except as provided in this Section 10 or in the event of an amendment to this Agreement, there are no other fees or charges to be paid by Schwab for the Licensed Software, Services, and Deliverables to be provided hereunder.

10.8 Payment Does Not Imply Acceptance. The making of any payment or payments by Schwab, or the receipt thereof by Contractor, shall in no way affect the responsibility of Contractor to furnish the Licensed Software, Services, and Deliverables in accordance with this Agreement, and shall not imply acceptance by Schwab of such items or the waiver of any warranties or requirements of this Agreement.

11. **Independent Contractor.**

11.1 Employment Related Claims. Contractor acknowledges that it is at all times acting as an independent contractor under this Agreement and not as an agent, employee, or partner of Schwab. Contractor agrees to be solely responsible for all matters relating to compensation of its employees, subcontractors, agents, partners or consultants including but not limited to compliance with laws governing workers' compensation, Social Security, provident fund, retrenchment, lay-off or termination compensation, withholding and payment of any and all federal, state and local personal income taxes, disability/death insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits. At Contractor's expense as described herein, Contractor agrees to defend, indemnify, and hold harmless Schwab, its officers, agents, employees, members, subsidiaries, joint venture partners, affiliates, and successors in interest from and against any claim, demand, action, proceeding, threatened or actual, judgment, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of Contractor's or Schwab's alleged failure to pay, when due, all such taxes and obligations (collectively referred to for

purposes of this Section as "**Employment Claim(s)**"). Contractor shall pay to Schwab any expenses or charges relating to or arising from any such Employment Claim(s) as they are incurred by Schwab.

11.2 **No Eligibility for Benefits.** Neither Contractor nor its employees or agents shall be eligible to enroll for and/or receive benefits under any Schwab employee benefit plan maintained by Schwab including without limitation any employee pension benefit plan within the meaning of Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), any employee welfare benefit plan within the meaning of Section 3(1) of ERISA, or any stock option or stock purchase plan

11.3 **Common-Law Employees.** The foregoing shall apply to Contractor and Contractor's employees and agents even if Contractor or any Contractor's employee or agent is subsequently reclassified by any court or governmental agency as a common-law employee for periods during which services were performed under this Agreement.

12. **Representations and Warranties.**

12.1 **Contractor's Warranties.** Contractor represents and warrants as follows:

(a) **Authority.** Contractor has the full power to enter into and perform this Agreement and to make the grant of rights contained herein, and Contractor's performance of this Agreement does not violate or conflict with any agreement to which Contractor is a party;

(b) **Performance of Services.** The Services will be performed and the Deliverables developed in accordance at the highest level of service that Contractor delivers to its other customers and in accordance with generally accepted professional standards for similar services in effect at the time of such performance. Without limiting the foregoing, Contractor will provide prompt and professional responses to all Schwab requests and will fulfill the service levels set forth in the applicable Work Order;

(c) **Conformance to Specifications.** All Licensed Software, Services, and Deliverables shall conform to the Specifications (as defined in Section 7.1) for the greater of (i) one (1) year from Acceptance or (ii) the Term of this Agreement. Contractor shall institute quality controls, including suitable testing procedures if any, to ensure that the Licensed Software, Services and Deliverables comply with the Specifications and service levels set forth in the applicable Work Order(s) and in a manner consistent with the highest applicable industry standards;

(d) **Quiet Enjoyment.** Upon delivery of each item of Custom IP, and at all times thereafter, Schwab shall have marketable title to such Custom IP, free and clear of all liens and encumbrances;

(e) **Non-Infringement.** The Licensed Software, Services and the Deliverables shall not infringe upon or violate any IP (as defined in Section 13.1) rights or any other rights of any nature of any third party, or contain defamatory or indecent matter;

(f) **Viruses and Disabling Mechanisms.** Contractor shall use commercially reasonable measures to screen any software or hardware provided or made available

by it to Schwab hereunder to avoid introducing any virus or other computer software routine or hardware components that are designed (i) to permit unauthorized access or use by third parties to the software installed on Schwab's equipment, (ii) to disable or damage hardware or damage, erase or delay access to software or data installed or to be installed on Schwab's equipment, or (iii) to perform any other similar actions. Contractor shall not insert into any software used by it hereunder or delivered as part of the Deliverables, any code or other device that would have the effect of disabling, damaging, erasing, delaying or otherwise shutting down all or any portion of the Licensed Software, Services or the hardware, software or data used in performing the Services or any of the Deliverables. Contractor shall not invoke such code or other device at any time, including upon expiration or termination of this Agreement for any reason;

(g) Compliance with Privacy Policy, Laws, and Regulations.

Contractor acknowledges that:

- i. Customer Information (as defined in Section 14.4 (Customer Information)) is subject to Schwab's Privacy Policy as it may be amended from time-to-time;
- ii. Customer Information is subject to the confidentiality/non-disclosure requirements set forth in Section 14 (Confidentiality) and the security requirements set forth in Section 16 (Security);
- iii. Schwab is a financial institution and, with respect to Customer Information, Schwab and Contractor are subject to the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1138) ("GLB Act") and its implementing regulations (e.g., Securities and Exchange Commission Regulation S-P) as they may be amended from time-to-time (collectively, the "GLB Law"); and
- iv. With respect to Customer Information, Schwab and Contractor may also be subject to other federal and state privacy, confidentiality, consumer protection, advertising, electronic mail and data security laws and regulations, whether in effect now or in the future ("Other Privacy Laws").

Accordingly, Contractor represents and warrants that at all times during and after the Term it shall use, handle, collect, maintain, and safeguard Customer Information in accordance with (i) applicable provisions of Schwab's Privacy Policy; (ii) Sections 14 (Confidentiality), 16 (Security); (iii) the GLB Law; and (iv) Other Privacy Laws. Contractor acknowledges that it alone is responsible for understanding and complying with its obligations under the GLB Law and Other Privacy Laws.

12.2 Original Work Product. The Custom IP shall be the original work of Contractor, and any persons involved in the development of the Custom IP or the Contractor IP have executed (or prior to any such involvement, shall execute) a written agreement with Contractor in which such persons (i) assign to Contractor all right, title and interest in and to the Custom IP and Contractor IP, including all IP rights therein, in order that Contractor may fully

grant the rights to Schwab as provided herein and (ii) agree to be bound by confidentiality and non-disclosure obligations no less restrictive than those set forth in this Agreement. Contractor further represents and warrants that no individuals or companies will perform any services related to the Deliverable until such agreements have been executed.

12.3 Remedies For Breach of Warranty by Contractor. If Contractor is unable to promptly repair or replace the Licensed Software, Deliverable, or re-perform the Services, to make them comply with the Warranties, then, without limiting any obligation or liability Contractor may have with respect to the nonconforming Licensed Software, Service, or Deliverable, and without limiting any rights and remedies Schwab may otherwise have at law, in equity or under this Agreement, upon Schwab's request, Contractor shall promptly refund all amounts paid by Schwab for the nonconforming Licensed Software, Services, or Deliverable.

12.4 Schwab's Warranty. Schwab represents and warrants that, at all times during the Term, Schwab shall have the full power to enter into and perform this Agreement and to make the grant of rights contained herein, and Schwab's performance of this Agreement shall not violate or conflict with any agreement to which Schwab is a party.

12.5 Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, OR TITLE/NON- INFRINGEMENT AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED.

13. **Intellectual Property.**

13.1 "IP" – Defined. "IP" shall mean all concepts, inventions (whether or not protected under patent laws), works of authorship, information fixed in any tangible medium of expression (whether or not protected under copyright laws), Moral Rights, mask works, trademarks, trade names, trade dress, trade secrets, publicity rights, names, likenesses, know-how, ideas (whether or not protected under trade secret laws), and all other subject matter protected under patent (or which is not patented, but is subject matter that is protected under patent law), copyright, , mask work, trademark, trade secret, or other laws, whether existing now or in the future, whether statutory or common law, in any jurisdiction in the world, for all media now known or later developed, including without limitation all new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business. "Moral Rights" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

13.2 Custom IP. "Custom IP" shall mean IP made, conceived, or developed by Contractor on behalf of Schwab in creating the Deliverable(s) or performing the Services. Custom IP does not include any of the following: (i) Contractor IP; (ii) Schwab IP; or (iii) Third Party IP. Contractor acknowledges and agrees that Schwab shall be the sole and exclusive owner of all rights in the Custom IP. Contractor hereby unconditionally and irrevocably conveys, transfers, delivers,

and assigns and agrees to unconditionally and irrevocably convey, transfer deliver, and assign to Schwab, and Schwab accepts and agrees to accept, Contractor's entire right, title, and interest worldwide in and to such works, free from any liens and encumbrances, including all patents, copyrights, trade secrets, and other proprietary rights therein, effective immediately upon the authorship, conception, creation, discovery or development thereof, together with all federal, state, and provincial registrations, applications for registration and all renewals and extensions thereof (including, without limitation, any continuations, continuations-in-part, divisionals, reissues, substitutions and reexaminations), all goodwill associated therewith, and all benefits, privileges, causes of action and remedies relating to any of the foregoing, whether before or hereafter accrued (including, without limitation, the exclusive rights to apply for and maintain all such registrations, renewals and extensions; to sue for all past, present and future infringements or other violations of any rights relating thereto; and to settle and retain proceeds from any such actions).

13.3 Confirmation of Schwab's Ownership of Custom IP. Contractor further agrees to execute, or cause to be executed by its employees, agents, or subcontractors, whatever assignments of IP rights and ancillary and confirmatory documents that may be required or appropriate so that title to any Custom IP shall be clearly and exclusively held by Schwab or any nominee thereof. Contractor shall deliver to Schwab the Source Code (as defined below) for the Custom IP incorporated in each Deliverable at the time of completion of such Deliverable. In the event Schwab is unable for any reason to secure Contractor's signature to any document Schwab requests Contractor to execute under this Section, Contractor hereby irrevocably designates and appoints Schwab and Schwab's duly designated authorized officers and agents as Contractor's agents and attorneys-in-fact to act for and in Contractor's behalf and instead of Contractor to execute such document and to file such application and to do all other lawfully permitted acts with the same legal force and effect as if executed by Contractor.

13.4 License; Waiver of Rights. To the extent, if any, that any Custom IP or IP rights therein are not assignable or that, notwithstanding Section 13.3, Contractor for any reason retains any right, title or interest in and to any Custom IP or any IP rights therein, Contractor (a) unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against Schwab with respect to such rights; (b) agrees, at Schwab's request and expense, to consent to and join in any action to enforce such rights; and (c) hereby grants to Schwab a perpetual, irrevocable, fully paid-up, royalty-free, transferable, sublicensable (through multiple levels of sublicensees), exclusive, worldwide right and license under its IP rights to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, sell, offer to sell, import and otherwise use and exploit (and have others exercise such rights on behalf of Schwab) all or any portion of such Custom IP. The license granted herein shall commence on the Effective Date, and provided the fees for the applicable Deliverable(s) are made as set forth herein, shall continue in perpetuity and without regard to the Term of this Agreement. Contractor hereby waives and quitclaims to Schwab any and all claims, of any nature whatsoever, which Contractor now or may hereafter have for infringement of any Custom IP or IP rights therein assigned hereunder to Schwab.

13.5 Contractor IP. "Contractor IP" shall mean IP made, conceived, or developed by Contractor, or that has been assigned to Contractor pursuant to the terms of this Agreement, prior to performance or independent of the Services and contained in, comprising, or otherwise necessary to use and/or maintain the Deliverables or Services. Contractor shall identify

all Contractor IP, if any, in each applicable Work Order. Contractor IP that is not specifically identified in a Work Order shall be considered Custom IP and owned by Schwab. Except as limited in Section 3.1, Contractor hereby grants to Schwab a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license under its IP rights, to use, reproduce, distribute, display and perform (whether publicly or otherwise), prepare derivative works of and otherwise modify, make, import and otherwise use and exploit (and have others exercise such rights on behalf of Schwab) all or any portion of the Contractor IP incorporated into the Deliverables and/or Services for use in connection with Schwab's business (including without limitation its distribution of products or provision of services to third parties). The license granted herein shall commence on the Effective Date, and provided the fees for the applicable Deliverable(s) are made as set forth herein, shall continue in perpetuity and without regard to the Term of this Agreement.

13.6 Schwab IP. "**Schwab IP**" shall mean any IP provided by Schwab or its agents to Contractor for incorporation into the Deliverable(s) or use in connection with the Services, including, but not limited to, any data, images, programming, computer code, photographs, illustrations, graphics, audio clips, video clips, or text. Except as may otherwise be provided in a Work Order, Contractor shall only use the Schwab IP in the form provided by Schwab and solely in connection with this Agreement. Schwab hereby grants to Contractor, solely for the performance of the Services and creation of the Deliverables a non-exclusive, non-transferable, non-sublicensable right to access, operate, and use the Schwab IP. Upon expiration of this Agreement or termination of this Agreement for any reason, (i) the rights granted to Contractor, its agents and subcontractors in this Section shall immediately revert to Schwab, and (ii) Contractor shall (a) deliver to Schwab, at no cost to Schwab, a current copy of all of the Schwab IP in the form in use as of the date of such expiration or termination and (b) completely destroy or erase all other copies of the Schwab IP in Contractor's or its agents' or subcontractors' possession in any form, including but not limited to electronic, hard copy or other memory device, and at Schwab's request, have its officers certify in writing that it has so destroyed or erased all copies of the Schwab IP and that it shall not make any use of the Schwab IP.

13.7 Third Party IP. "**Third Party IP**" shall mean IP licensed, made, conceived, or developed by a third party and used by Contractor in creating the Deliverable(s) or performing the Services. The provisions of this Section 13.7 shall apply only in the extent any Third Party IP is delivered to Schwab as part of a Deliverable (as opposed to Third Party IP used in connection with the Hosted Software). Contractor shall identify all Third Party IP, if any, in each applicable Work Order. Such identification shall include, at a minimum, the following information: (a) the nature of the Third Party IP; (b) the owner of the Third Party IP; (c) Contractor's authority to include the Third Party IP in the Deliverables or Services; and (d) any restrictions or royalty terms applicable to the use of the Third Party IP in the Deliverables or Services. Contractor represents and warrants that the Deliverables, including, without limitation, the Third Party IP, do not include any "open source," "free software," or "freeware" of any kind or any IP that is subject to licensing terms requiring disclosure of source code under any circumstances. All software a Party licenses from a third party vendor will be and remain the property of such third party or such third party's licensors. Unless provided otherwise in a Work Order, Contractor shall obtain, at Contractor's sole cost and expense, an irrevocable, fully paid-up, royalty-free, perpetual, worldwide, non-exclusive license for Schwab and Schwab's agents and assigns, to use the Third Party IP incorporated into the Deliverables and/or Services. In the event Schwab provides Contractor with access to or use of

software licensed by Schwab from third parties, Contractor shall be responsible for (i) complying with all applicable third party license agreements; (ii) indemnifying, defending, and holding Schwab and its directors, officers, agents, employees, members, subsidiaries and successors in interest harmless from any breach by Contractor of such license agreements; and (iii) treating all such software as Confidential Information of Schwab.

13.8 Residual Knowledge. Nothing in this Agreement shall be construed to restrict either Party from developing or distributing products or performing services that do not infringe upon any IP rights of the other Party, using intangible residual know-how or concepts (as distinguished from the tangible implementation of such know-how and concepts) retained in the mind of such Party's employees, provided that such Party or its employees shall not directly reference, incorporate or otherwise use in such products or services any Confidential Information or IP rights (or any tangible embodiment thereof) of the other Party or otherwise infringe in any manner upon that Party's IP rights; it being understood that any use by either Party of any ideas, know-how, technical information, processes, practices or systems that are in the public domain (not through any wrongful action or wrongful failure to act of such Party), including items generally known in the information technology and securities industries, shall not constitute any such infringement.

13.9 Reservation of Rights. Except as provided herein, each Party reserves all rights in its IP and nothing contained herein shall be construed as granting the other Party any ownership interest in its IP. Each Party shall include, maintain, reproduce and perpetuate all notices or markings on all copies of all tangible media comprising each Party's IP or Confidential Information in the manner in which such notices or markings appear on such tangible media or in the manner in which either Party may reasonably request.

13.10 Waiver of Moral Rights. Contractor hereby forever waives and agrees never to assert against Schwab, its successors or licensees any and all Moral Rights (as defined in Section 13.1) Contractor may have in the Custom IP and Contractor IP, and any elements thereof, created, performed, contributed, improved or prepared by Contractor pursuant to this Agreement, and any results or proceeds therefrom, even after expiration or termination of this Agreement, to the extent permitted by the applicable laws. The foregoing waiver of Moral Rights in the Contractor IP shall be limited to Schwab's use of the Contractor IP as permitted hereunder.

14. **Confidentiality.**

14.1 Definition of Confidential Information. Each Party agrees that all information supplied by one Party and its affiliates and agents (collectively, the "Disclosing Party") to the other ("Receiving Party") including, without limitation, (i) source and object code, prices, trade secrets, mask works, databases, hardware, software, designs and techniques, programs, engine protocols, models, displays and manuals, and the selection, coordination, and arrangement of the contents of such materials and (ii) any unpublished information concerning research activities and plans, customers, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, strategic plans, Customer Information (as defined below), and unpublished financial information, including information concerning revenues, profits and profit margins will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed intentionally or unintentionally or marked as

“confidential” or “proprietary” (“**Confidential Information**”), provided, however, that IP assigned to Schwab pursuant to this Agreement shall be Confidential Information of Schwab.

14.2 Exclusions. Confidential Information will not include any information or material, or any element thereof, whether or not such information or material is Confidential Information for the purposes of this Agreement, to the extent any such information or material, or any element thereof:

- (a) has previously become or is generally known, unless it has become generally known through a breach of this Agreement or a similar confidentiality or non-disclosure agreement;
- (b) was already rightfully known to the Receiving Party prior to being disclosed by or obtained from the Disclosing Party as evidenced by written records kept in the ordinary course of business of or by proof of actual use by the Receiving Party;
- (c) has been or is hereafter rightfully received by the Receiving Party from a third person (other than the Disclosing Party) without restriction or disclosure and without breach of a duty of confidentiality to the Disclosing Party; or
- (d) has been independently developed by the Receiving Party without access to Confidential Information of the Disclosing Party.

It will be presumed that any Confidential Information in a Receiving Party's possession is not within exceptions (b), (c) or (d) above, and the burden will be upon the Receiving Party to prove otherwise by records and documentation.

14.3 Treatment of Confidential Information. Each Party recognizes the importance of the other's Confidential Information. In particular, each Party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither Party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section 14 and elsewhere in this Agreement. Accordingly, each Party agrees as follows:

- (a) The Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of this Agreement. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance;
- (b) The Receiving Party may disclose or provide access to its responsible employees who have a need to know and may make copies of

Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder;

- (c) The Receiving Party currently has, and in the future will maintain in effect and enforce, rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this Agreement, including without limitation written instruction to and agreements with employees and agents who are bound by an obligation of confidentiality no less stringent than set forth in this Agreement to ensure that such employees and agents protect the confidentiality of Confidential Information. The Receiving Party expressly will instruct its employees and agents not to disclose Confidential Information to third parties, including without limitation customers, subcontractors or consultants, without the Disclosing Party's prior written consent; and
- (d) The Receiving Party will notify the Disclosing Party immediately of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information.

14.4 Customer Information. As between Schwab and Contractor, Customer Information (as defined below) is and will remain the sole and exclusive property of Schwab and, as applicable, its third party institutional investment advisors ("**Investment Advisors**") and third party plan administrators ("**Plan Administrators**"). "**Customer Information**" means all disclosed data information however collected or received, including without limitation, through "cookies," Web bugs or non-electronic means pertaining to or identifiable to Schwab's customer(s) or prospective customer(s), Investment Advisors, and Plan Administrators (collectively, "**Schwab Customers**"), including without limitation, (i) name, address, email address, passwords, account numbers, personal financial information, personal preferences; demographic data; marketing data; data about securities transactions; credit data, or any other identification data; (ii) any information that reflects use of or interactions with a Schwab Service (as defined below), including its Web sites, including but not limited to, information concerning computer search paths, any profiles created or general usage data; or (iii) any data otherwise submitted in the process of registering for a Schwab Service, including its Web sites and any data submitted during the course of using a Schwab Service, including its Web sites. "**Schwab Service**" means any service, including without limitation, any financial, banking, or brokerage service, that Schwab makes available to its customers, prospects and/or users through Web sites, desktops, email, wireless devices, or from any other communications channel or other medium developed, owned, licensed, operated, hosted, or otherwise controlled by or on behalf of Schwab, its parent or their respective affiliates, subsidiaries or joint ventures. This Agreement shall not be construed as granting any ownership rights in Contractor to Customer Information.

14.5 Treatment of Customer Information. Without limiting any other warranty or obligation specified in this Agreement, and in particular the confidentiality provisions of Section 14, during the Term and thereafter in perpetuity, Contractor will not gather, store, log, archive, use or otherwise retain any Customer Information in any manner and will not disclose, distribute, sell, share, rent or otherwise transfer any Customer Information to any third party, except as expressly

provided in this Agreement or as Contractor may be expressly directed in advance in writing by Schwab. Contractor represents, covenants, and warrants that Contractor will use Customer Information only in compliance with (i) this Agreement, (ii) Schwab's then current privacy policies and (iii) all applicable laws (including but not limited to applicable policies and laws related to spamming, privacy, and consumer protection). Contractor hereby agrees to indemnify and hold harmless Schwab and its directors, officers, agents, employees, members, subsidiaries and successors in interest against any damages, losses, liabilities, settlements and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim, proceeding, whether threatened or actual, demand, judgment, or action that arises from an alleged violation of the foregoing. Notwithstanding Section 18.1 (Contractor's Indemnity), the indemnity provided in this Section shall govern in the event of an alleged violation of the foregoing.

14.6 Retention of Customer Information. Contractor will not retain any Customer Information for any period longer than necessary for Contractor to fulfill its obligations under this Agreement. As soon as Contractor no longer needs to retain such Customer Information in order to perform its duties under this Agreement, Contractor will promptly return or destroy or erase all originals and copies of such Customer Information.

14.7 Compelled Disclosures. To the extent required by applicable law or by lawful order or requirement of a court or governmental authority having competent jurisdiction over the Receiving Party, the Receiving Party may disclose Confidential Information, including Customer Information, in accordance with such law or order or requirement, subject to the following conditions: As soon as possible after becoming aware of such law, order or requirement and prior to disclosing Confidential Information, including Customer Information, pursuant thereto, the Receiving Party will so notify the Disclosing Party in writing and, if possible, the Receiving Party will provide the Disclosing Party notice not less than five (5) business days prior to the required disclosure. The Receiving Party will use reasonable efforts not to release Confidential Information, including Customer Information, pending the outcome of any measures taken by the Disclosing Party to contest, otherwise oppose or seek to limit such disclosure by the Receiving Party and any subsequent disclosure or use of Confidential Information, including Customer Information, that may result from such disclosure. The Receiving Party will cooperate with and provide assistance to the Disclosing Party regarding such measures. Notwithstanding any such compelled disclosure by the Receiving Party, such compelled disclosure will not otherwise affect the Receiving Party's obligations hereunder with respect to Confidential Information, including Customer Information, so disclosed.

14.8 Return of Confidential and Customer Information. On Schwab's written request or upon expiration or termination of this Agreement for any reason, the Contractor will promptly:

- (a) return or destroy, at Schwab's option, all originals and copies of all documents and materials it has received containing Schwab's Confidential Information, including Customer Information; and
- (b) deliver or destroy, at Schwab's option, all originals and copies of all summaries, records, descriptions, modifications, negatives, drawings, adoptions and other documents or materials, whether in writing or in

machine-readable form, prepared by Contractor, prepared under its direction, or at its request from the documents and materials referred to in subparagraph (a), and provide a notarized written statement to Schwab certifying that all documents and materials referred to in subparagraphs (a) and (b) have been delivered to Schwab or destroyed, as requested by Schwab.

14.9 Solicitation of Schwab Customers. During the Term and thereafter in perpetuity, Contractor agrees not to use the Customer Information, whether directly or indirectly, to target or solicit Schwab Customers or those of its parent and their subsidiaries, affiliates and joint ventures, as such, on behalf of itself or any third party, including but not limited to, on behalf of entities that provide brokerage, banking, or financial services in direct competition with Schwab or commit any other act or assist others to commit any other act which might injure the business of Schwab. Contractor agrees that it will not use or sell to others lists containing information obtained in connection with this Agreement about any Schwab Customers. Nothing contained herein shall preclude Contractor from providing services to any Schwab Customer who independently contacts Contractor, who is responding to a general solicitation of Contractor, or is contacted by Contractor based on information independently derived by Contractor.

14.10 Non-Exclusive Equitable Remedy. Each Party acknowledges and agrees that due to the unique nature of Confidential Information, including Customer Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach or threatened breach may allow a Party or third parties to unfairly compete with the other Party resulting in irreparable harm to such Party, and therefore, that upon any such breach or any threat thereof, each Party will be entitled to appropriate equitable and injunctive relief from a court of competent jurisdiction without the necessity of proving actual loss, in addition to whatever remedies either of them might have at law or equity before an arbitrator in accordance with the arbitration provision of this Agreement. Any breach of this Section 14 will constitute a material breach of this Agreement and be grounds for immediate termination of this Agreement in the exclusive discretion of the non-breaching Party.

15. Communication Systems and Access to Information. During the Term, Contractor may receive access to Schwab's computers and electronic communications systems ("Systems"), including but not limited to voicemail, email, customer databases, and internet and intranet systems. Such Systems are intended for legitimate business use related to Schwab's business. Contractor acknowledges that Contractor does not have any expectation of privacy as between Contractor and Schwab in the use of or access to Schwab's Systems and that all communications made with such Systems or equipment by or on behalf of Contractor are subject to Schwab's scrutiny, use and disclosure, in Schwab's discretion. Schwab reserves the right, for business purposes, to monitor, review, audit, intercept, access, archive and/or disclose materials sent over, received by or from, or stored in any of its electronic Systems. This includes, without limitation, email communications sent by users across the internet and intranet from and to any domain name owned or operated by Schwab. This also includes, without limitation, any electronic communication System that has been used to access any of Schwab's Systems. Contractor further agrees that Contractor will use all appropriate security, such as, for example, encryption and passwords, to protect Schwab's Confidential Information from unauthorized disclosure (internally or externally) and that the use of such security does not give rise to any privacy rights in the

communication as between Contractor and Schwab. Schwab reserves the right to override any security passwords to obtain access to voicemail, email, computer (and software or other applications) and/or computer disks on Schwab's Systems. Contractor also acknowledges that Schwab reserves the right, for any business purposes, to search all work areas (for example, offices, cubicles, desks, drawers, cabinets, computers, computer disks and files) and all personal items brought onto Schwab property or used to access Schwab Information or Systems.

16. Security.

16.1 In General. Contractor will maintain and enforce safety and physical security procedures with respect to its access and maintenance of Customer Information that are (a) at least equal to industry standards for such types of locations, (b) in accordance with reasonable Schwab security requirements and (c) which provide reasonably appropriate technical and organizational safeguards against accidental or unlawful destruction, loss, alteration or unauthorized disclosure or access of Customer Information and all other data owned by Schwab and accessible by Contractor under this Agreement. Without limiting the generality of the foregoing, Contractor will take all reasonable measures to secure and defend its location and equipment against "hackers" and others who may seek, without authorization, to modify or access Contractor systems or the information found therein without the consent of Schwab. Contractor will periodically test its systems for potential areas where security could be breached. Contractor will report to Schwab immediately any breaches of security or unauthorized access to Contractor's systems that Contractor detects or becomes aware of. Contractor will use diligent efforts to remedy such breach of security or unauthorized access in a timely manner.

16.2 Storage of Customer Information. All Customer Information must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction. In addition to the general standards set forth above, Contractor will maintain an adequate level of physical security controls over its facility including, but not limited to, appropriate alarm systems, fire suppression, access controls (including off-hour controls) which may include visitor access procedures, security guard force, video surveillance, and staff egress searches. Further, Contractor will maintain an adequate level of data security controls, including, but not limited to, logical access controls including user sign-on identification and authentication, data access controls (e.g., password protection of your applications, data files and libraries), accountability tracking, anti-virus software, secured printers, restricted download to disk capability and provision for system backup.

16.3 Security Audits. During the Term, Schwab or its third party designee may, but is not obligated to, perform audits of Contractor's environment, including unannounced penetration and security tests, as it relates to the receipt, maintenance, use or retention of Customer Information or other Schwab owned data. Any of Schwab's regulators shall have the same right upon request. Contractor agrees to comply with all reasonable recommendations that result from such inspections, tests, and audits within reasonable timeframes.

17. Announcements; Publicity. During the Term and at all times after the termination or expiration of this Agreement, Contractor shall not make any media release or other public announcement relating to or referring to this Agreement without Schwab's prior written consent. Contractor shall acquire no right to use, and shall not use, without Schwab's prior written consent,

the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials, of Schwab, its related or subsidiary companies, parent, employees, directors, shareholders, assigns, successors or licensees: (a) in any advertising, publicity, press release, client list, presentation or promotion; (b) to express or to imply any endorsement of Contractor or Contractor's services; or (c) in any manner other than expressly in accordance with this Agreement.

18. Indemnification.

18.1 Contractor's Indemnity. At Contractor's expense as provided herein, Contractor agrees to defend, indemnify, and hold harmless Schwab and its directors, officers, agents, employees, members, subsidiaries and successors in interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees and experts' costs as provided herein arising out of any alleged act or failure to act by Contractor or its directors, officers, agents, or employees, including, without limitation, negligent or willful misconduct, alleged to (1) infringe the IP (as defined in Section 13.1) rights of a third person, (2) cause any injury to any person or persons or damage to tangible or intangible property, (3) breach the provisions of Section 14 (Confidentiality), or (4) breach any of the warranties, agreements, representations or obligations of Contractor under this Agreement (collectively referred to for purposes of this Section 18.1 as "**Claim(s)**") by paying all amounts that a court finally awards or that Contractor agrees to in settlement of any Claim(s) as well as any and all reasonable expenses or charges as they are incurred by Schwab or any other party indemnified under this Section 18.1 in cooperating in the defense of any Claim(s). To qualify for such defense and payment, Schwab must: (i) give Contractor prompt written notice of such Claim; and (ii) allow Contractor to control, and fully cooperate with Contractor in, the defense and all related negotiations. Notwithstanding the foregoing, Contractor shall have no indemnity obligation for IP infringement claims arising from (i) specifications provided by Schwab; (ii) use of the Custom IP or Contractor IP in combination with software and/or hardware that is not approved or provided by Contractor; or (iii) Schwab's failure to implement an update or enhancement to the Custom IP and/or Contractor IP, provided Contractor provides Schwab with notice that implementing the update or enhancement would avoid the infringement.

18.2 Schwab's Indemnity. At Schwab's expense as described herein, Schwab agrees to defend, indemnify, and hold harmless Contractor and its directors, officers, agents, employees, members, subsidiaries and successors in interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, attorneys' fees as provided herein arising out of any alleged act or failure to act by Schwab or its directors, officers, agents or employees, including, without limitation, negligent or willful misconduct, alleged to (1) infringe the IP (as defined in Section 13.1) rights of a third person or (2) cause any injury to any person or persons or damage to tangible or intangible property (collectively referred to for purposes of this Section 18.2 as "**Claim(s)**") by paying all amounts that the court finally awards, or that Schwab agrees to in settlement of any Claim(s), as well as any and all expenses or charges as they are incurred by Contractor in cooperating in the defense of any Claim(s). To qualify for such defense and payment, Contractor must: (i) give Schwab prompt written notice of such Claim; and (ii) allow Schwab to control, and fully cooperate with Schwab in, the defense and all related negotiations.

18.3 Additional Remedy. If any Licensed Software, Deliverable, or Service hereunder becomes the subject of an infringement claim under Section 18.1 (Contractor's Indemnity), or in Schwab's opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys' fees as required above in Section 18.1, Contractor shall, at its option and in its sole discretion, either (a) immediately replace or modify the Licensed Software or Deliverable or otherwise perform the Services, providing not less than the functionalities specified herein or in the applicable Work Order to make it non-infringing or cure any claimed misuse of another's IP (as defined in Section 13.1) rights or (b) immediately procure for Schwab the right to continue using the Licensed Software, Deliverable, or Services pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by Contractor. If Contractor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the claim, Contractor shall refund to Schwab all sums paid by Schwab hereunder for the applicable Licensed Software, Deliverable, or Services.

19. Limitation of Liability. EXCEPT FOR THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT AND FOR BREACH OF SECTIONS 13 (INTELLECTUAL PROPERTY), 14 (CONFIDENTIALITY), AND 17 (ANNOUNCEMENTS; PUBLICITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUE, DATA, OR USE, OR COST OF COVER INCURRED BY THE OTHER PARTY ARISING OUT OF THIS AGREEMENT. EXCEPT FOR THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT AND FOR BREACH OF SECTIONS 13 (INTELLECTUAL PROPERTY), 14 (CONFIDENTIALITY), AND 17 (ANNOUNCEMENTS; PUBLICITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY DAMAGES, WHETHER IN CONTRACT OR TORT, IN EXCESS OF THE GREATER OF (I) THREE TIMES THE TOTAL FEES PAID HEREUNDER OR (II) \$500,000.

20. Insurance.

20.1 Required Insurance Coverages. Contractor shall obtain, pay for, and maintain in full force and effect during the Term insurance as follows:

A. Workers' compensation and employers' liability insurance with limits to conform with the greater of the amount required by California law or one million dollars (\$1,000,000) each accident, including occupational disease coverage;

B. Commercial general liability insurance with limits not less than three million dollars (\$3,000,000) combined single limit for bodily injury, death, and property damage, including personal injury, contractual liability, independent contractors, broad-form property damage, and products and completed operations coverage;

C. Commercial automobile liability insurance with limits not less than one million dollars (\$1,000,000) each occurrence combined single limit of liability for bodily injury, death, and property damage, including owned and non-owned and hired automobile coverages, as applicable; and

D. Professional liability insurance (Errors and Omissions) with limits not less than three million dollars (\$3,000,000) annual aggregate for all claims each policy year for computer programming and electronic data processing services.

20.2 Claims Made Coverages. To the extent any insurance coverage required under this Section is purchased on a "claims-made" basis, such insurance shall cover all prior acts of Contractor during the Term, and such insurance shall be continuously maintained until at least three (3) years beyond the expiration or termination of the Term, or Contractor shall purchase "tail" coverage, effective upon termination of any such policy or upon termination or expiration of the Term, to provide coverage for at least one (1) year from the occurrence of either such event.

20.3 Certificates Of Insurance. Certificates of Insurance evidencing all coverages described in this Section shall be furnished to Schwab prior to the Effective Date.

20.4 Cancellation Or Lapse Of Insurance. Contractor shall give thirty (30) days' prior written notice to Schwab of cancellation, non-renewal, or material change in coverage, scope, or amount of any policy. Should Contractor fail to keep in effect at all times the insurance coverages required under this Section 20, Schwab may, in addition to and cumulative with any other remedies available at law, equity, or hereunder withhold payments to Contractor required under this Agreement in an amount sufficient to procure the insurance required herein.

21. **Withhold Remedy.** In addition to, and cumulative to all other remedies in law, at equity and provided under this Agreement, in the event Contractor is in material default of its duties or obligations under this Agreement and it fails to cure the default within fifteen (15) days after receipt of written notice of default from Schwab, Schwab may, without waiving any other rights under this Agreement, elect to withhold from the payments due to Contractor under this Agreement during the period beginning with the 16th day after Contractor's receipt of notice of default, and ending on the date that the default has been cured to the reasonable satisfaction of Schwab, an amount that is in proportion to the magnitude of the default or the service that Contractor is not providing, as determined in Schwab's reasonable discretion. Upon curing of the default by Contractor, Schwab will cause the withheld payments to be paid to Contractor, without interest. In the event it is finally determined that Schwab has withheld a payment in bad faith, such payment shall promptly be paid to Contractor, plus interest as provided in Section 10.5 (Payment Terms).

22. **Bankruptcy and Liquidation.** In the event Contractor shall: (1) make an assignment for the benefit of creditors, or petition or apply to any tribunal for the appointment of a custodian, receiver, or trustee for all or a substantial part of its assets; (2) commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction whether now or hereafter in effect; (3) have had any such petition or application filed or any such proceeding commenced against it in which an order for relief is entered or an adjudication or appointment is made, and which remains undismissed for a period of sixty (60) days or more; (4) take any corporate action indicating its consent to, approval of, or acquiescence in any such petition, application, proceeding, or order for relief or the appointment of a custodian, receiver, or trustee for all or substantial part of its assets; or (5) permit any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more causing Contractor or any third party, including, without limitation, a trustee in

bankruptcy, to be empowered under state or federal law to reject this Agreement or any agreement supplementary hereto, Schwab shall have the following rights:

A. In the event of a rejection of this Agreement or any agreement supplementary hereto, Schwab shall be permitted to retain and use any back-up or archival copies of the Licensed Software under this Agreement for the purpose of enabling it to mitigate damages caused to Schwab because of the rejection of this Agreement;

B. In the event of a rejection of this Agreement or any agreement supplementary hereto, Schwab may elect to retain its rights under this Agreement or any agreement supplementary hereto as provided in Section 365(n) of the Bankruptcy Code. Upon written request of Schwab to, as applicable, Contractor or the bankruptcy trustee or receiver, Contractor or such bankruptcy trustee or receiver shall not interfere with the rights of Schwab as Schwab as provided in this Agreement or in any agreement supplementary hereto to obtain the Source Material(s) from the bankruptcy trustee or from a third-party escrow agent and shall, if requested, cause a copy of such Source Material(s) to be available to Schwab; and

C. In the event of a rejection of this Agreement or any agreement supplementary hereto, Schwab may retain its rights under this Agreement or any agreement supplementary hereto as provided in section 365(n) of the Bankruptcy Code without prejudice to any of its rights under section 503(b) of the Bankruptcy Code.

23. **Mediation; Arbitration.** Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "**Dispute**"), if not resolved informally through negotiation between the parties, will be submitted to non-binding mediation. Either Contractor or Schwab may initiate mediation or arbitration by serving or mailing a written notice to the other. The parties will mutually determine who the mediator will be from a list of mediators obtained from the American Arbitration Association office located in San Francisco, California ("**AAA**"). If the parties are unable to agree on the mediator, the mediator will be selected by the AAA. If any Dispute is not resolved through mediation, it will be resolved by final and binding arbitration conducted in accordance with and subject to the Commercial Arbitration Rules of the AAA then applicable. One arbitrator will be selected by the parties' mutual agreement or, failing that, by the AAA, and the arbitrator will allow such discovery as is appropriate, consistent with the purposes of arbitration in accomplishing fair, speedy and cost effective resolution of disputes. The arbitrator will reference the rules of evidence of the Federal Rules of Civil Procedure then in effect in setting the scope of discovery, except that no requests for admissions will be permitted and interrogatories will be limited to identifying (a) persons with knowledge of relevant facts and (b) expert witnesses and their opinions and the bases therefor. Judgment upon the award rendered in any such arbitration may be entered in any court having jurisdiction thereof. Any negotiation, mediation or arbitration conducted pursuant to this Section will take place in San Francisco, California. Other than those matters involving injunctive relief or any action necessary to enforce the award of the arbitrator, the parties agree that the provisions of this Section are a complete defense to any suit, action or other proceeding instituted in any court or before any administrative tribunal with respect to any jurisdiction or venue in any Dispute. Nothing in this Section prevents the parties from exercising their right to terminate this Agreement or a Work Order in accordance with Section 26

(Termination). Any award entered by the arbitrator(s) shall be final and judgment thereon may be entered in any court having jurisdiction. The prevailing Party shall be entitled to recovery of costs, fees (including reasonable attorney's fees) and/or taxes paid or incurred in obtaining the award. Furthermore, any costs, fees or taxes involved in enforcing the award shall be fully assessed against and paid by the Party resisting enforcement of the award. Contractor acknowledges that under this Section, Contractor is waiving its right to a jury trial.

24. **Records.** Contractor shall retain all documents, notes, records, and all other documentation with regard to the Services for seven (7) years after expiration or termination of this Agreement. At all reasonable times during the Term of this Agreement and such subsequent seven (7) year period, Schwab or its duly authorized representative shall have access to such documents, notes and records for purposes of auditing and verifying the costs of such services or for any other reasonable purpose, upon five (5) days written notice, during Contractor's business hours.

25. **Non-Solicitation.** During the Term of this Agreement and continuing through the first anniversary of the termination of this Agreement, neither Party shall actively solicit any technical employee of the other Party who has performed any material work for the hiring Party under this Agreement, and with whom the hiring Party has had direct contact under this Agreement, without the other Party's written consent. Notwithstanding the foregoing, neither Party shall be precluded from (i) hiring an employee of the other Party who independently approaches the Party, or (ii) conducting general recruiting activities, such as participation in job fairs or publishing advertisements in publications or on Web sites for general circulation. In the event of a violation of this provision, the hiring Party's sole and exclusive obligation, and the other Party's sole and exclusive remedy, shall be a one-time payment in the amount of twenty-five percent (25%) of the employee's first year base salary.

26. **Termination.**

26.1 **Bankruptcy.** This Agreement shall terminate automatically upon the bankruptcy or insolvency of either Party, the sale or change of control of the business of Contractor, or the death or incapacity of Contractor (if Contractor is an individual).

26.2 **Material Breach.** If either Party materially defaults in the performance of any of its obligations under this Agreement, which default (a) if of a non-monetary nature, is not substantially cured within thirty (30) days after written notice is given to the defaulting Party specifying the default, or (b) if of a monetary nature and there is no dispute about the invoice or the work or the expense with respect to which an invoice has been issued, is not cured within twenty (20) days after notice is given to the defaulting Party specifying the default, the Party not in default may, by giving written notice thereof to the defaulting Party, terminate the Work Order or Agreement with respect to which there is a default, as of a date specified in such notice of termination. For the purpose of this Section, material breach of this Agreement shall include, but not be limited to, the destruction of Schwab property, breach of Sections 14 (Confidentiality), 17 (Announcements; Publicity), and 13 (Intellectual Property) or dishonesty or theft, or failure to perform the Services as set forth in the applicable Work Order or this Agreement. In the event of any breach by Contractor of its material obligations hereunder, Schwab's obligation to make any payments yet to be made under such Work Order shall be terminated. Termination of such

payment obligations shall be in addition to any other rights or remedies that Schwab may have in the event of any such breach or alleged breach.

26.3 Termination for Convenience. At any time after twelve (12) months from the Effective Date, Schwab may terminate (i) this Agreement immediately upon sixty (60) days written notice or (ii) any Work Order immediately upon fourteen (14) days written notice to Contractor without reason, penalty or breach of this Agreement, notwithstanding that the Contractor is in compliance with all delivery, performance or payment requirements. In the event of any such termination, Contractor shall be compensated for any Services rendered prior to notice to Contractor, but any compensation allocated to Services that were yet to be rendered with regard to any canceled aspect of the Services shall then be eliminated, and the amounts owed shall be reduced accordingly.

26.4 Effect of Termination. Upon termination of this Agreement or of a Work Order, unless otherwise specified by Schwab in writing:

- (a) Contractor shall cease to perform the Services under the applicable Work Order(s), and Schwab will pay to Contractor all sums due to Contractor for Services performed and Accepted (as provided in Section 7.2 (Acceptance Testing)) and authorized expenses incurred through the effective date of such expiration or termination (prorated as appropriate).
- (b) Expiration or termination of this Agreement for any reason will not release either Party from any liabilities or obligations set forth in this Agreement which (i) the parties have expressly agreed in writing will survive any such expiration or termination or (ii) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.
- (c) In the case of termination of the Agreement, all Work Orders that have not been completed shall be deemed canceled as of the effective date of such termination.
- (d) Contractor will cooperate with Schwab and take all reasonably requested steps to assist Schwab in making an orderly transition of the Services back to Schwab or its designees.

26.5 Survival. Sections 10 (Price And Payments), 11 (Independent Contractor), 12.1 (Contractor's Warranties), 13 (Intellectual Property), 14 (Confidentiality), 17 (Announcements; Publicity), 18 (Indemnification), 19 (Limitation of Liability), 20.2 (Claims Made Coverages), 22 (Bankruptcy and Liquidation), 23 (Mediation; Arbitration), 24 (Records), 25 (Non-Solicitation), 26.4 (Effect of Termination), 26.5 (Survival), and 27 (Miscellaneous) shall survive any termination or expiration of this Agreement.

27. Miscellaneous.

27.1 Force Majeure. Neither Party will be deemed to be in default hereunder for failure to perform any of its non-monetary obligations under this Agreement for any period not to exceed thirty (30) days, provided such failure results from acts or omissions of the other Party or third parties, natural disasters, riots, war, civil disorder, court order or any other causes beyond that Party's reasonable control and which it could not have prevented by reasonable precautions or could not have remedied by the exercise of reasonable efforts. If the suspension of performance of the Services continues for more than fourteen (14) days, Schwab may terminate this Agreement or the relevant Work Order effective immediately, without any liability to Contractor, except for the payment of past Services, to the extent that such Services are Accepted.

27.2 Limited Background Check. Contractor agrees that Schwab has the right to require Contractor to submit to and hereby authorizes Schwab to conduct a reference, fingerprint or other criminal background investigation with respect to regulatory and other legal considerations of Schwab or its affiliates, provided, however, that nothing in this Section shall be construed as an obligation or duty to perform such an investigation. Contractor also acknowledges and agrees that at Schwab's request, Contractor shall require the same of any of its employees or contractors who perform services related to the performance of Contractor's obligations under this Agreement.

27.3 NYSE Rule 351. Contractor acknowledges and agrees that (i) Schwab is obligated to report certain criminal activities and civil and regulatory sanctions and events ("Reportable Events") relating to its independent contractors and temporary workers under NYSE Rule 351; (ii) it has reviewed and understands the requirements of Rule 351; (iii) it will immediately report to Schwab in writing any Reportable Event of Contractor's employees, temporary workers, or contractors that is subject to the provisions of Rule 351; and, in the event any such activity is reported, (iv) reasonably assist Schwab in fulfilling its reporting obligations under Rule 351.

27.4 Notices. All notices under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by a nationally recognized courier service or mailed by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses set forth herein. All notices under this Agreement that are addressed as provided in this Section, (a) if delivered personally or by a nationally recognized courier service, will be deemed given upon delivery, or (b) if delivered by mail in the manner described above, will be deemed given on the fifth business day after the day it is deposited in a regular depository of the United States mail. Either Party may change its address or designee for notification purposes by giving notice to the other of the new address or designee and the date upon which such change will become effective.

27.5 Exhibits, Work Orders and Addenda. All Exhibits, Work Orders, and Addenda that are referenced herein and appended hereto, or are signed by the parties on or after the date of this Agreement, are hereby incorporated by reference. If a conflict arises between the body of this Agreement and an Exhibit, Schedule, or other attachment hereto, except with regard to an amendment, the body of this Agreement shall control.

27.6 Entire Agreement. This Agreement contains all of the covenants and agreements between the parties with respect to the rendering of the Services and any other matter hereunder, and supersedes any and all prior negotiations, representations and agreements, whether

written or oral, between the parties with respect to the rendering of such Services and any other matter hereunder. Each Party acknowledges that no representations, inducements, promises or agreements, orally or otherwise have been made by any Party. No other agreement, statement or promise not contained in this Agreement, and no changes or modifications to this Agreement, shall be effective unless it is in writing and signed by both parties. In particular, no shrink-wrap, click-wrap, or other terms and conditions or agreements ("**Additional Terms**") provided with any products or software hereunder shall be binding on Schwab, even if use of such products and software requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force or effect and shall be deemed rejected by Schwab in their entirety.

27.7 Legal Fees. If any dispute arises between the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the prevailing Party in such proceeding will be entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

27.8 Waivers. All waivers hereunder must be made in writing by a duly authorized representative of the Party against whom the waiver is to operate, and failure at any time to require the other Party's performance of any obligation under this Agreement shall not affect the right subsequently to require performance of that obligation.

27.9 Governing Law. The interpretation and enforcement of this Agreement shall be governed by the law of the State of California applicable to contracts entirely entered into and performed in California by California residents.

27.10 Severability. If any provision of this Agreement or the application thereof to any persons or circumstances is, to any extent, held invalid or unenforceable by a court of competent jurisdiction or if the Securities and Exchange Commission or Federal Trade Commission impose any obligations on either Party that cause any provision of this Agreement to be invalid,, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable will not be affected thereby to the extent the benefits conferred upon the Parties by this Agreement remain substantially unimpaired, and each provision of this Agreement will be valid and enforceable to the extent permitted by law. If severability of the provision(s) would materially change the benefits of this Agreement to either Party, the Parties shall modify such provision(s) to obtain legal, enforceable and valid provision and provide benefits to the Parties that most nearly effects the Parties' intent in entering into this Agreement.

27.11 Agreement Drafted By All Parties. This Agreement is the result of arm's length negotiations between the Parties and shall be construed to have been drafted by all Parties such that any ambiguities in this Agreement shall not be construed against either Party.

27.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and will become effective and binding upon the parties as of the Effective Date at such time as all the signatories hereto have signed a counterpart of this Agreement.

27.13 Exhibits Attached. The following Exhibits are attached hereto and incorporated herein:

Exhibit A	Work Orders
Exhibit B	Licensed Software; Fees
Exhibit C	Contractor Professional Service Rates
Exhibit D	Hosting Services

IN WITNESS WHEREOF, the Parties duly authorized representatives have executed this Agreement to become effective as of the Effective Date.

WALL STREET ON DEMAND, INC.

CHARLES SCHWAB & CO., INC.

By: James Tanner
Name: James Tanner
Title: President

By: Bh Grist
Name: BARNABY GRIST
Title: VP

EXHIBIT D

Hosting Services

This Exhibit describes the Hosting Services to be achieved by Contractor regarding the Web Site:

1. **Definitions.** Except as provided in this Exhibit, capitalized terms shall have the meanings set forth in the body of the Agreement. The following terms, when used in this Exhibit, shall have the following meanings:

1.1 "Available" means the Web Site shall: (i) be available for access and use over the Internet; and (ii) provide the functionality and content required under the Agreement.

1.2 "Hosting Provider" shall be Wall Street On Demand. Contractor shall ensure the Hosting Provider complies with the terms of the Agreement, including the requirements of this Exhibit. Contractor shall be jointly and severally liable for any breach by Hosting Provider of the Agreement, including the requirements of this Exhibit.

1.3 "Critical Hours" means 5:00 a.m. to 11:59 p.m ET, Sunday through Saturday.

1.4 "Server" shall mean the server on which the Web Site will be hosted.

2. **General Hosting Obligations.** In addition to the other obligations set forth in the Agreement and this Exhibit, Contractor shall do the following:

(a) House the Web Site on a Server owned and maintained by Contractor or the Hosting Provider.

(b) Allow access to the Web Site over the Internet and provide secure and confidential storage of all information transmitted to and from the Web Site.

(c) Supply hardware, security protocols, software and communications support structure to facilitate connection to the Internet in accordance with the requirements set forth herein.

(d) Maintain a back-up server, at a geographically different site from where the Server is located, to ensure continuous service in the event of disaster.

(e) Review security notifications and alerts relevant to the hosting platform (e.g., vendor notifications of bugs, attacks, patches), and apply as appropriate to maintain the highest level of defense.

(f) Contractor shall provide adequate firewall protection in order to secure Customer Information and other Confidential Information of Schwab and users of the Web Site from unauthorized access by third parties.

(g) In the event that during the Term Contractor desires to transition to a new Hosting Provider, Contractor shall provide Schwab with at least sixty (60) days prior notice of the transition. Contractor shall reasonably cooperate with Schwab in evaluating the security and performance of the proposed hosting service. Schwab shall have thirty (30) days from receipt of notice of the transition to reasonably object to the new Hosting Provider. In the event of such objection, the parties shall negotiate in good faith regarding alternate Hosting Providers. If the parties are unable to reach agreement within thirty (30) days of receipt by Contractor of the objection, Schwab may elect to terminate this Agreement without further obligation.

3. **Service Monitoring & Management.** Contractor will perform continuous monitoring and management of the Web Site to optimize availability of service. Included within the scope of this section is the proactive monitoring of the Server and all service components of Contractor's firewall for trouble on a 7 day by 24 hour basis, and the expedient restoration of components when failures occur within the time period set forth in Section 9 (Service Outages). Contractor shall maintain redundancy in all key components such that service outages are less likely to occur due to individual component failures.

Contractor will monitor "heartbeat" signals of all servers, routers and leased lines, and HTTP availability of the Server, by proactive probing at 30-second intervals 24 hours a day using an automated tool. If a facility does not respond to a ping-like stimulus, it shall be immediately checked again. When Contractor receives a "down" signal, or otherwise has knowledge of a failure in the Server or the application software and/or hardware, Contractor personnel will:

- (a) Confirm (or disconfirm) the outage by a direct check of the facility;
- (b) If confirmed, take such action as may restore the service in one hour or less, or, if determined to be a telephone company problem, open a trouble ticket with the telephone company carrier;
- (c) Notify Schwab by telephone or pager according to mutually agreed upon procedures that an outage has occurred, providing such details as may be available, including the Contractor trouble ticket number, if appropriate, and time of outage;
- (d) Work the problems until resolution, escalating to management or to engineering as required;
- (e) Notify Schwab of final resolution, along with any pertinent findings or action taken, and requests concurrence to close the trouble ticket.

4. **Backups.** Contractor shall provide for both the regular back-up of standard file systems relating to the Server and Web Site, and the timely restoral of such data on request by Schwab due to a site failure. In particular, Contractor shall:

- (a) Perform weekly full back-ups;
- (b) Perform daily incremental back-ups;

(c) Send back-up media to secured, off-site storage facilities with a thirty (30) day rotation of media;

(d) Retain one back-up tape per month for one year;

(e) Fulfill restoral requests as directed by Schwab due to site failures. Restoral will be performed within the interval of two (2) to four (4) hours dependent on the urgency of the request, and the agreed upon location of the desired backup media.

(f) If the hosting server or location is expected to be un-Available for more than twenty-four (24) hours, Contractor shall immediately transfer appropriate back-up data and re-establish all hosting operations in an appropriately functioning secondary server or location.

5. Service Levels.

5.1 Availability and Download Time During Critical Hours. The Web Site shall be Available at least 99.5% of the time during Critical Hours each month of the Term. During that same period, the average download time for each page of the Web Site, including all content contained therein, shall be within the lesser of (a) 0.5 seconds of the weekly Keynote Business 40 Internet Performance Index or (b) two seconds. In the event the Keynote Business 40 Internet Performance Index is discontinued, a successor index (such as average download times for all other customers of Contractor) may be mutually agreed upon by the parties.

5.2 Availability and Download Time During Non-Critical Hours. The Web Site shall be Available at least 97% of the time during non-Critical Hours each month of the Term. During that same period, the average download time for each page of the Web Site, including all content contained therein, shall be within the lesser of (a) 0.8 seconds of the weekly Keynote Business 40 Internet Performance Index or (b) three seconds. In the event the Keynote Business 40 Internet Performance Index is discontinued, a successor index (such as average download times for all other customers of Contractor) may be mutually agreed upon by the parties.

5.3 Simultaneous Visitors. The Web Site shall be capable of supporting 100 simultaneous users while still achieving the Service Levels set forth above.

6. Service Level Reporting. Contractor shall be responsible for monitoring Service Level performance and shall provide Schwab with monthly reports showing Service Level performance during the reporting period.

7. Failure to Achieve Service Levels. Failure to achieve any of the Service Levels set forth in Section 5 of this Exhibit shall constitute a "Service Level Failure." Contractor shall not be responsible for any Service Level Failure caused by Schwab or its agents. Contractor shall promptly notify Schwab of any Service Level Failure. The following credits (calculated as a percentage of the monthly fees due hereunder) shall be issued to Schwab for each Service Level Failure:

Service Level Failure	Performance	Credit
Download time during Critical Hours	0.5-0.6 second average	10%

(in excess of required levels)	response 0.6-0.7 second average response >0.7 second average response	20% 30%
Download time during Non-Critical Hours (in excess of required levels)	>1 second average response	30%
Availability during Critical Hours	98-99.4% availability 95-97.9% availability <95% availability	10% 20% 40%
Availability during Non-Critical Hours	93-96.9% availability <93% availability	20% 40%

In the event Contractor fails to achieve the required Service Levels set forth in Section 5 of this Exhibit twice in any ten day period, Schwab may, in its sole discretion, terminate this Agreement without further obligation. The credits and termination right provided in this Exhibit are in addition to and cumulative of any other remedies Schwab may have under this Agreement, at law, or in equity.

8. **Corrective Action Plan.** Notwithstanding Contractor's obligation to continue to perform as required under the Agreement and this Exhibit and Schwab's remedies set forth herein, in the event of a Service Level Failure, Contractor shall promptly investigate the root causes of such Service Level Failure and shall provide to Schwab (within five (5) days after knowledge of such Service Level Failure) an analysis of such root causes and a proposed corrective action plan for Schwab's review, comment and approval (the "Corrective Action Plan"). The Corrective Action Plan shall include, at a minimum: (i) a commitment by Contractor to Schwab to devote the appropriate time, skilled personnel, systems support and equipment, and/or resources to remedy, and prevent any further occurrences of, the Service Level Failure; (ii) a strategy for developing any programming/software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, the Service Level Failure; and (ii) time frames for implementation of the Corrective Action Plan. There shall be no additional charge (other than those fees set forth in the Agreement) for Contractor's implementation of such Corrective Action Plan in the time frames and manner set forth in the Corrective Action Plan.

9. **Service Outages.**

9.1 **Scheduled.** Contractor shall notify Schwab of scheduled outages at least twenty-four (24) hours in advance, and such outages shall last no longer than one hour and shall be scheduled between the hours of 1:00 a.m. and 5:00 a.m., Eastern Time. Contractor may request extensions of scheduled down time above one (1) hour and such approval by Schwab, which may not be unreasonably withheld or delayed. Scheduled and unscheduled outages (as described below) are not excluded from the Availability service levels set forth above (i.e., an outage, regardless of its cause, except due to the actions of Schwab and its agents, shall not relieve Contractor of its obligation to achieve the service levels set forth herein).

9.2 **Unscheduled.** Unscheduled outages are caused by loss of connectivity to the Internet, or by failure of a Contractor service. In cases where a destination is not available, or

unacceptable service is reported, Contractor will attempt to determine the source of the problem and report its findings to Schwab.

9.3 Corrective Action. Immediately upon notice of un-Availability, Contractor personnel shall:

- (a) Confirm (or disconfirm) the outage by a direct check of the facility;
- (b) If confirmed, take such action as may restore the service in one hour or less, or, if determined to be a telecommunications company problem, open a trouble ticket with the telecommunications company carrier;
- (c) Notify the person designated by Schwab by telephone or voicemail according to predefined procedures that an outage has occurred, providing such details as may be available, including the trouble ticket number if appropriate and time of outage;
- (d) Work the problems until resolution, escalating to management or to engineering as required;
- (e) Promptly notify Schwab of final resolution, along with any pertinent findings or action taken.

10. **Security Breaches.** In the event of an attack or threatened or suspected breach of security against the Web Site and/or Server, Contractor will take whatever reasonable steps that are necessary to halt such action, including taking the Web Site down. Down time due to external attacks shall not count against Availability requirement set forth above. Contractor will immediately contact the person designated by Schwab to discuss what measure to take. However, if time is critical, action may be required before the contact can be reached. Contractor's actions will include, as appropriate:

- (a) Confirm the threat;
- (b) Deny access from the source of the attack;
- (c) Investigate the extent of the damage, if any;
- (d) Back-up the affected systems and those suspected to be affected;
- (e) Strengthen defenses everywhere, not just the suspected path that the attacker used;
- (f) Contact the ISP where the threat or attack originated and/or law enforcement to work with Contractor's security team;
- (g) Produce an Incident Report within 24 hours detailing Contractor's findings; and

(h) Re-instate the denial of access after a set time period, but continue to monitor traffic from that source until risk of further attacks is deemed to be minimized.

StealerX