

MASTER SERVICES AGREEMENT

MIN-13326

Between

Capital One Services, Inc.

And

Minacs Worldwide, Inc.

Dated

February 28, 2005

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*Note: Not all Exhibits are applicable to each Statement of Work.

Schedule B:	MasterCard and Visa Compliance
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This MASTER SERVICES AGREEMENT (the "Agreement"), made and effective as of February 28, 2005 (the "Effective Date"), by and between Capital One Services, Inc. ("Capital One"), a Delaware corporation having offices at 1680 Capital One Drive, McLean, Virginia, and Minacs Worldwide, Inc., a with principal offices at 180 Duncan Mill Road, Toronto, Canada M3B 1Z6, ("Minacs"). References to a "party" mean Capital One or Minacs. References to the "parties" mean Capital One and Minacs.

1. BACKGROUND AND OBJECTIVES

WHEREAS, Minacs represents that it has experience and is engaged in the business of providing customer relationship management and customer care services; and

WHEREAS, Capital One desires that Minacs provide certain call center and customer care services and related back office processes for Capital One to be performed by Minacs at its locations and in the manner specified in mutually agreed written statements of work executed by the parties; and

WHEREAS, Minacs desires to provide such services to Capital One on the terms and conditions hereinafter stated.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the adequacy of which the parties hereby acknowledge, the parties agree as follows:

2. DEFINITIONS

2.1 Certain Definitions.

As used in this Agreement with initial capitalization:

(a) "Accounts" shall mean the consumer credit accounts, business credit accounts or other evidence of indebtedness of a consumer or business that Capital One or any of its Affiliates provide to Minacs for purposes of performing the Services.

(b) "Account Information" shall mean all information, data and documentation relating to the Accounts and to the Services performed with respect to Accounts.

(c) "Affiliate" shall mean, with respect to any entity, any other entity Controlling, Controlled by, or under common Control with, such entity at the time in question.

(i) an Affiliate of either party that ceases to Control, or be Controlled by or under common Control with, shall be deemed to remain an Affiliate of the party for twelve 12 months after the date it ceases to Control, be Controlled by, or be

under common Control of the party.

(ii) the purchaser of all or substantially all the assets of any line of business of Capital One or its Affiliates (as such line of business may be defined by Capital One or its Affiliates, as applicable) which at the time of sale was receiving a portion of the Services shall be deemed to be an Affiliate of Capital One for twelve 12 months after the date of purchase.

(d) "Agreement" shall mean collectively this Master Services Agreement and any Statements of Work, as any of the foregoing may be amended by the parties from time to time in accordance with Section 22.17.

(e) "Applicable Laws" means:

(i) all applicable laws, statutes, regulations, ordinances or subordinate legislation in force from time to time to which the Services or a party is subject;

(ii) the common law as applicable to the parties from time to time;

(iii) all binding court orders, judgements or decrees; and

(iv) all applicable directives, policies, rules or orders that are binding on a party and that are made or given by any government, an agency thereof, or any regulatory body;

each of (i) through (iv) of any country, the European Union, or other national, federal, commonwealth, state, provincial or local jurisdiction or of any exchange or association (including the New York Stock Exchange and the National Association of Securities Dealers) whose regulations are binding on either party, or as applicable, its Affiliates, either as required by the jurisdiction in which the party, or as applicable, its Affiliates, is located or pursuant to a self-regulating mechanism approved by a governmental entity.

(f) "Approved Subcontractors" shall mean those Subcontractors :

(i) identified as approved in a Statement of Work; or

(ii) approved by Capital One in accordance with Section 9.4;

unless and until approval of such Subcontractor is rescinded by Capital One in accordance with Section 9.4(b).

(g) "Approved Capital One Personnel" shall mean those individuals submitted by Capital One to Minacs approved by Minacs to enter a Minacs' facility.

(h) "Business Day" shall mean every day Monday through Friday other than U.S. federal holidays or Canadian statutory holidays. References in this Agreement to "days" that do not specifically refer to Business Days are references to calendar days and, unless otherwise provided, a period of more than seven (7) days

that expires on a day other than a Business Day shall be automatically extended to the next following Business Day.

(i) “Capital One” shall have the meaning provided in the preamble to this Agreement.

(j) “Capital One Assets” means the equipment, software and procedures, toll-free telephone numbers, Capital One Works, Third Party Works licensed by Capital One, Capital One Data accessible through such equipment and software, and other assets owned, leased or licensed by Capital One that Capital One is responsible for providing access to or use of pursuant to a Statement of Work or that Capital One otherwise provides to Minacs (including, with respect to any of the foregoing items, (i) any routines, techniques or instructions provided by Capital One to Minacs relating to such items; and (ii) all cards, magnetic tapes, disks and other computer media, whether permanent or temporary, which are provided to Minacs by Capital One and which contain intangible Capital One Assets).

(k) “Capital One Confidential Information” shall have the meaning provided in Section 14.4(a).

(l) “Capital One Contract Executive” shall have the meaning provided in Section 11.1(a).

(m) “Capital One Data” shall mean all information entered in or otherwise transferred to Software or Equipment by or on behalf of Capital One and information derived from such information, including as stored in or processed through the Equipment or Software.

(n) “Capital One Equipment” shall mean the Equipment owned or leased by Capital One residing at a Minacs’ site.

(o) “Capital One Information” shall mean all information, documentation, software, training material and techniques, in any form, furnished or that is made available directly or indirectly to Minacs by Capital One, its Affiliates or their customers or that is otherwise obtained by Minacs from Capital One, its Affiliates or their customers.

(p) “Capital One SOW Contacts” as used in this Agreement shall mean, collectively, the individuals identified as such in the Statements of Work.

(q) “Capital One Work” shall mean any item or information (including a Work) in which Capital One owns any Intellectual Property Right.

(r) “Commercially Reasonable Efforts” shall mean taking such steps and performing in such a manner as a well managed business would undertake where such business was acting in a determined, prudent and reasonable manner to achieve a particular desired result for its own benefit.

(s) “Confidential Information” shall have the meaning provided in

Section 14.4(a).

(t) "Control" and its derivatives mean with regard to any entity the legal, beneficial or equitable ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock (or other ownership interest if not a stock corporation) of such entity ordinarily having voting rights.

(u) "Corrupt Practice Laws" has the meaning set out in Section 15.2(d)(ii).

(v) "Critical Service Levels" shall mean the Performance Measurements identified as critical in the Statement of Work.

(w) "Customer Data" shall mean all information including Personally Identifiable Information or personal information about or pertaining to Capital One's customers and all other individuals about whom Capital One has collected Personally Identifiable Information or personal information, that is disclosed by Capital One or otherwise obtained by Minacs in the performance of its duties under this Agreement. The term "personal information" information shall mean all information about an identifiable individual as set out in all applicable privacy laws including but not limited to the Personal Information and Electronic Documents Act ('PIPEDA') and GLB Act.

(x) "Developed Works" shall have the meaning provided in Section 7.2(a).

(y) "Dispute Date" shall have the meaning provided in Section 20.1(a)(i).

(z) "Disputing Party" shall have the meaning provided in Section 20.2.

(aa) "Effective Date" shall have the meaning provided in the preamble to this Agreement.

(bb) "Equipment" shall mean the computer and telecommunications equipment (without regard to which entity owns or leases such equipment) used by Minacs and its Approved Subcontractors to provide the Services. Equipment includes the following:

(i) computer equipment, including associated attachments, features, accessories, peripheral devices, and other computer equipment;

(ii) telecommunications equipment, including private branch exchanges, ACDs, CTI equipment, multiplexors, modems, CSUs/DSUs, hubs, bridges, routers, switches and other telecommunications equipment; and

(iii) related services (e.g., maintenance and support services, upgrades, subscription services) provided by third parties (e.g., manufacturer and lessor) in the same or related agreement covering the provision of such Equipment.

- (cc) "FCPA Policy" has the meaning set out in Section 15.2(d)(i).
- (dd) "Force Majeure Event" shall have the meaning provided in Section 19.2(a).
- (ee) "GLB Act" shall mean the Gramm-Leach-Bliley Act, 15 USC §6801 et. seq., the applicable regulations promulgated thereunder and regulatory interpretations thereof (including the Interagency Guidelines Establishing Standards for Safeguarding Customer Information adopted by federal bank regulatory agencies, such as the Office of Thrift Supervision and the Board of Governors of the Federal Reserve System), as amended from time to time.
- (ff) "Including" and its derivatives (such as "include" and "includes") mean including without limitation. This term is as defined, whether or not capitalized in this Agreement.
- (gg) "Integrity Policy" shall have the meaning provided in Section 5.2(d).
- (hh) "Intellectual Property Rights" shall mean, on a worldwide basis, any and all:
- (i) rights associated with works of authorship and literary property, including copyrights, moral rights of an author of a copyrightable work (including any right to be identified as the author of the work or to object to derogatory treatment of the work), and mask-work rights;
 - (ii) trade marks, service marks, logos, trade dress, trade names, whether or not registered, and the goodwill associated therewith;
 - (iii) rights relating to know-how or trade secrets, including ideas, concepts, methods, techniques, inventions (whether or not developed or reduced to practice);
 - (iv) patents, designs, algorithms and other industrial property rights;
 - (v) rights in domain names, universal resource locator addresses, telephone numbers (including toll free numbers), and similar identifiers;
 - (vi) other intellectual and industrial property rights of every kind and nature, however designated, whether arising by operation of law, contract, license or otherwise; and
 - (vii) registrations, initial applications (including intent to use applications), renewals, extensions, continuations, divisions, or reissues thereof now or hereafter in force (including any rights in any of the foregoing).
- (ii) "Losses" shall mean all losses, liabilities, damages and claims, and all related costs and expenses (including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest

and penalties).

(jj) Master Services Agreement" shall mean these Articles 1 through 22 and the preamble, recitals, schedules, and exhibits thereto, but not the Statements of Work executed hereunder.

(kk) "Minacs" shall have the meaning provided in the recitals of this Agreement.

(ll) "Minacs Personnel" shall mean employees of Minacs, its Approved Subcontractors or temporary personnel assigned to perform the Services pursuant to this Agreement.

(mm) "Minacs Project Executive" shall have the meaning provided in Section 5.1.

(nn) "Minacs-Provided Work" shall have the meaning provided in Section 7.1(a).

(oo) "Minacs SOW Contacts" as used in this Master Services Agreement shall mean, collectively, the individuals identified as such in the Statements of Work.

(pp) "Minacs Work" shall mean any item or information (including a Work) in which Minacs or any of its Affiliates owns any Intellectual Property Right.

(qq) "New Services" shall have the meaning as set out in Section 12.5(a)(ii).

(rr) "Newly Developed Works" shall have the meaning provided in Section 7.2(a).

(ss) "Notice of Election" shall have the meaning provide in Section 18.4(a).

(tt) "Office of Thrift Supervision" or "OTS" shall mean the bureau of the U.S. Department of the Treasury that is the primary regulator of all federally chartered thrift institutions, including Capital One, F.S.B.

(uu) "Operational Change Control Procedures" shall have the meaning as set out in Section 9.3(c).

(vv) "OSFI" shall have the meaning provided in Section 22.19(a).

(ww) "Out-of-Pocket Expenses" shall mean reasonable, demonstrable and actual out-of-pocket expenses incurred by Minacs for equipment, materials, supplies or services provided to or for Capital One or its Affiliates as identified in this Agreement, but not including Minacs' overhead costs (or allocations thereof), administrative expenses or other mark-ups. Out-of-Pocket Expenses shall be calculated at Minacs' actual incremental expense and shall be net of all rebates and allowances received by Minacs or its Affiliates. Where Minacs incurs an Out-of-

Pocket Expense with an Affiliate of Minacs, Capital One's prior approval (which may be arbitrarily withheld) shall be obtained and the amount recognized shall be no greater than would have been paid to such Affiliate in an arm's length transaction between unaffiliated entities.

(xx) "Pass-Through Expenses" shall have the meaning as set out in Section 12.3(a).

(yy) "Performance Standards" shall mean, individually and collectively, the quantitative and qualitative performance standards and commitments for the Services, including Service Levels.

(zz) "Personally Identifiable Information" shall mean any information that (i) is defined as "personal information" under the GLB Act or (ii), alone or in combination with other information, relates to a specific, identifiable individual person. Personally Identifiable Information includes individual names, social security numbers, telephone numbers, home address, driver's license number, account number, email address, Internet Protocol (IP) address, and vehicle registration number. Any information that can be associated with Personally Identifiable Information shall also be Personally Identifiable Information. For example, an individual's age alone is not Personally Identifiable Information, but if such age were capable of being associated with one or more specific, identifiable individuals then such age would be deemed Personally Identifiable Information.

(aaa) "PIPEDA" shall mean the Personal Information Protection and Electronic Documents Act.

(bbb) "Pre-Existing Agreements" shall have the meaning provided in Section 22.17(a).

(ccc) "Prohibited Recipient" shall have the meaning provided in Section 15.2(d)(v)(H).

(ddd) "Services" shall have the meaning provided in Section 3.1.

(eee) "Service Levels" shall have the meaning provided in Section 8.1.

(fff) "SOW Effective Date" for any Statement of Work shall mean the date identified as such in that Statement of Work.

(ggg) "SOW Term" for any Statement of Work shall mean the Term of such Statement of Work as defined therein.

(hhh) "Software" shall mean the applications, operating systems, middleware and other computer software (without regard to which entity owns or licenses such software) used by Minacs and its Approved Subcontractors to provide the Services.

(iii) "Statement of Work" or "SOW" shall have the meaning provided in Section 3.1(a).

(jjj) “Subcontractor” shall mean a third party to whom Minacs or any Subcontractor has delegated any of Minacs’ performance obligations under this Agreement.

(kkk) “Term” shall have the meaning provided in Section 4.1.

(lll) “Third-Party Work” shall mean any item or information (including a Work) in which a third party owns any Intellectual Property Right.

(mmm) “Use” shall mean, in the context of Works, to use, copy, maintain, modify, enhance, or distribute.

(nnn) “User” is defined in Section 3.2.

(ooo) “Virus” shall mean (i) program code or programming instruction or set of instructions intentionally designed to disrupt, disable, harm, interfere with or otherwise adversely affect computer programs, data files or operations; or (ii) other code typically described as a virus or by similar terms, including Trojan horse, worm or backdoor.

(ppp) “Work” means any tangible or intangible work, invention, test, research, improvement, specification, document, discovery, process, writing, design, model, drawing, photograph, report, flow chart, diagram, formula, pattern, device, compilation, database or computer program whether or not protectable under Title 17 of the U.S. Code and whether or not patentable or otherwise protectable under Title 35 of the U.S. Code, that are conceived of, prepared, procured, generated or produced, whether or not reduced to practice.

2.2 Inclusion of Affiliates in Definition of Capital One and Minacs.

(a) As used in this Agreement, references to “Capital One” include Affiliates of Capital One in accordance with the following:

(i) A reference includes Affiliates of Capital One where expressly so provided;

(ii) References to Capital One in the following definitions include Affiliates of Capital One (unless expressly provided to the contrary): Capital One Data, Capital One Information, Capital One Confidential Information, and Capital One Works;

(iii) References to grant of rights or the like by Capital One means Capital One will perform the act for itself or cause Affiliates of Capital One to perform the act themselves; references to assets being in the name of Capital One include Affiliates of Capital One; and

(iv) References to the business, operations, policies, procedures and the like of Capital One include Affiliates of Capital One to the extent such items are pertinent to such Affiliates or to the extent Affiliates are receiving the Services.

Subject to the foregoing, references to Capital One shall include Affiliates of Capital One

as Capital One reasonably designates.

(b) As used in this Agreement, references to "Minacs" include Affiliates of Minacs in accordance with the following:

(i) A reference includes Affiliates of Minacs where expressly so provided; and

(ii) Where Services are to be provided outside of the United States and Minacs operates in the relevant country through an Affiliate with respect to the provision of Service in that country, references to Minacs shall include such Affiliate.

3. SERVICES

3.1 Statements of Work and the Services.

(a) Minacs shall perform for Capital One the Services and Capital One shall perform its obligations and responsibilities as set forth in written Statements of Work that the parties may agree from time to time during the Term. As used in this Agreement, "Statement of Work" or "SOW" means a statement of work executed pursuant to this Section 3.1, including as each may be amended from time to time in accordance with Section 22.17. "Services" as used in this Master Services Agreement means, collectively, the services, functions, and responsibilities to be provided by Minacs under this Master Services Agreement and all Statements of Work.

(b) Except to the extent that Schedule A contemplates customization, each Statement of Work shall be in substantially the same form as Schedule A (Form Statement of Work) and shall include a description of the scope of work, Service Levels, charges and other terms that the parties agree are applicable to such Statement of Work (subject to Section 22.18). The Statements of Work shall be sequentially numbered in the order of execution (e.g., SOW 001, SOW 002, etc.), shall be signed by authorized representatives of the parties and, upon execution, shall be deemed incorporated into this Agreement.

(c) The parties shall negotiate in good faith regarding any new Statement of Work that is requested by Capital One. It is the parties' intent that Statement of Work 001 for certain outbound call center and customer care services will be executed concurrently with the execution of this Master Services Agreement.

(d) If any services, functions, or responsibilities are required for the proper performance and provision of the Services or the responsibilities or obligations of Capital One regardless of whether they are specifically described herein, they shall be deemed to be implied by and included within the scope of the Services to be provided by Minacs or the responsibilities or obligations of Capital One as the case may be to the same extent and in the same manner as if specifically described in this Agreement.

(e) Minacs shall take Commercially Reasonable Efforts to cause the Services to evolve and to be modified, enhanced, supplemented and replaced as

necessary for the Services to keep pace with technological advances and advances in the methods of delivering Services, where such advances are at the time pertinent in general use within the customer relationship management and customer care services industries or among Capital One's competitors. Adjustments in Services in accordance with this Section 3.1(e) shall be deemed to be included within the scope of the Services to the same extent and in the same manner as if expressly described in this Agreement.

(f) Each party shall promptly notify the other party of any development or circumstance which may have a material adverse impact on the other party's ability to perform its obligations under this Agreement.

3.2 Users of the Services.

(a) The Services may be used by Capital One and, as directed by Capital One, any one or more Users as set out in the applicable SOW. "Users" shall mean (i) any of Capital One's Affiliates; or (ii) any of those third parties (such as customers, suppliers, and joint venturers, but in no event competitors of Minacs) with whom Capital One or any of its Affiliate has a commercial relationship which is broader than the mere resale of the Services provided hereunder. Services provided to any such Users shall be deemed to be Services provided to Capital One.

(b) Capital One shall (i) remain obligated to perform its commitments (including payment obligations) under this Agreement with respect to any Services provided to Users; and (ii) act as the single point-of-contact with Minacs with respect to Services provided to Users. This Section 3.2 shall not be deemed to create any third-party beneficiary rights for Users.

(c) Capital One shall not disclose Minacs' Confidential Information to a User except to the extent permitted under Section 14.4.

(d) To the extent that Capital One's responsibilities and obligations to the Services extend to the User, Capital One shall cause such Users to comply with the obligations and restrictions applicable to Capital One under this Agreement.

4. TERM

4.1 Term.

Unless terminated earlier or extended in accordance with this Master Services Agreement, the term of this Master Services Agreement (excluding any Statements of Work) shall begin on the Effective Date and shall continue in effect until the later to occur of: (a) the date that is three (3) years after the Effective Date, or (b) the first date upon which there is no Statement of Work in effect (such period, the "Term").

4.2 Extension.

(a) Master Services Agreement. By giving notice to Minacs no less than sixty (60) days notice prior to the then-existing expiration date of this Master Services Agreement, Capital One may extend the Term of this Master Services Agreement for up to one (1) year on the terms and conditions then in effect. Capital One

shall have three (3) such extension options of up to one (1) year each.

(b) Statement of Work. By giving notice to Minacs no less than sixty (60) days notice prior the then existing expiration date of the SOW, Capital One may extend the SOW Term for up to one (1) year based on the Services in effect. Notwithstanding the foregoing, the parties agree to negotiate the fees for Service prior to the sixty [60] days notice period. Capital One shall have three (3) such extension options of up to one (1) year each.

5. MINACS PERSONNEL

5.1 Minacs Project Executive.

Minacs shall designate one (1) individual ("Minacs Project Executive") to (A) serve as the single point of contact and accountability for Minacs for the Agreement; (B) have day-to-day authority for undertaking to ensure the provision of the Services and Capital One's satisfaction; and (C) have authority to direct the Minacs SOW Contacts in support of the foregoing.

5.2 Qualifications, Retention and Replacement of Minacs Personnel.

(a) Subject to Capital One's exercise of any rights under this Agreement to specify the number of personnel performing the Services, Minacs shall assign an adequate number of Minacs Personnel to perform the Services. Minacs Personnel shall be properly educated, trained, and fully qualified for the Services they are to perform.

(b) The parties agree that it is in their best interests to keep the turnover rate of Minacs Personnel assigned to Capital One's account (or otherwise providing the Services) to a reasonably low level. Accordingly, if Capital One believes that Minacs' turnover rate may be excessive and so notifies Minacs, Minacs shall provide data concerning its turnover rate and meet with Capital One to discuss the reasons for, and impact of, the turnover rate. If appropriate, Minacs shall submit to Capital One its proposals for reducing the turnover rate, and the parties shall mutually agree on a program to bring the turnover rate down to an acceptable level. In any event, Minacs shall use Commercially Reasonable Efforts to keep the turnover rate to a reasonably low level. Notwithstanding transfer or turnover of Minacs Personnel, Minacs remains obligated to perform the Services without degradation and in accordance with this Agreement.

(c) While at the other party's premises (or any User's premises), Minacs Personnel or Approved Capital One Personnel as the case may be shall: (i) comply with that party's requests, rules, and regulations regarding personal and professional conduct (including the wearing of an identification badge and adhering to regulations and general safety, dress, behavior, and security practices or procedures generally applicable to such premises; and (ii) otherwise conduct themselves in a businesslike and professional manner.

(d) Minacs shall cause all Minacs Personnel to (i) execute with

Minacs an acknowledgement of Capital One's integrity policy and other similar policies that Capital One may identify to Minacs, including as these policies may be updated from time to time (collectively, the "Integrity Policies") and (ii) comply with the Integrity Policies. Minacs shall maintain records of its compliance with Section 5.2(d)(i) and shall make such records available to Capital One upon request. A breach of an Integrity Policy by any Minacs Personnel shall be deemed a breach by Minacs of its obligation under Section 5.2(d)(ii).

(e) If Capital One determines in good faith that the continued assignment to Capital One's account of one or more of the Minacs Personnel is not in the best interests of Capital One, then Capital One shall give Minacs notice to that effect. After receipt of such notice, Minacs shall have a reasonable period of time (not to exceed five (5) Business Days) in which to investigate the matters stated in such notice, discuss its findings with Capital One and provide to Capital One an action plan to resolve the problems with such person. If, following such period, Capital One acting reasonably requests replacement of such person, Minacs shall replace that person with another person of suitable ability and qualifications. However, where Capital One notifies Minacs that Capital One has determined that the nature of the concern is of such a nature that such Minacs Personnel should be removed immediately (albeit temporarily) from Capital One's account, Minacs shall immediately remove such individual(s) from Capital One's account until such time as Minacs has conducted its investigation of the matter as defined in this Section 5.2(e). In any event, any request by Capital One to remove an individual from Capital One's account shall not be deemed to constitute a termination of such individual's employment by Minacs and in no event shall Capital One be deemed an employer of any such person. This provision shall not operate or be construed to limit Minacs' responsibility for the acts or omissions of Minacs Personnel.

6. RESPONSIBILITY FOR RESOURCES

6.1 Generally.

Except to the extent specifically provided otherwise elsewhere in this Master Services Agreement or in a Statement of Work, Minacs shall be responsible for providing all resources (including facilities, personnel, Equipment and Software) as necessary to provide the Services and shall recover the costs of such resources through the charges identified in this Agreement.

6.2 Capital One Assets.

(a) Capital One hereby grants to Minacs, solely to the extent necessary for, and for the specific purpose of, Minacs' performance of the Services, and subject to applicable restrictions set forth in this Agreement (including any Statement of Work), those rights of access and use of the Capital One Assets that Capital One has (or later obtains) with respect to such items. Except as indicated by the preceding sentence, Capital One retains all right, title, and interest in the Capital One Assets. As between Capital One and Minacs, the Capital One Assets shall be deemed to be the property of Capital One, and shall not become fixtures or realty.

(b) Grant by Capital One to Minacs of rights of access and use pursuant to this Section 6.2 shall be deemed to include, subject to the other provisions of this Agreement, grant of such rights to Approved Subcontractors. Except as otherwise expressly provided in this Agreement, Capital One Assets made available by Capital One to Minacs are made available on an "as is, where is" basis, with no warranties whatsoever. Minacs shall comply with the duties (including use and nondisclosure restrictions) imposed on Capital One by any license, lease, or other agreement with third parties relating to the Capital One Assets to the extent that Capital One provides Minacs with notification of the same, and Minacs shall not seek to modify or otherwise revoke such terms.

(c) Minacs shall use Capital One Assets in a reasonably efficient manner, with reasonable care, and in accordance with the applicable manufacturer's, lessor's, licensor's or other third party's instructions and recommendations as provided to Minacs by Capital One from time to time.

(d) Minacs shall at all times keep the Capital One Assets free and clear of all claims, levies, liens and encumbrances of any kind, and shall immediately give notice to Capital One in writing of any claim, levy, lien or encumbrance or judicial process affecting the Capital One Assets.

(e) Upon any expiration or termination of any Statement of Work or this Master Services Agreement or any cessation of Services hereunder, or earlier to the extent that access to or use of Capital One Assets is no longer necessary for the provision of Services, Minacs shall cease, and shall cause any applicable Affiliates and Subcontractors to cease, all access to and use of the corresponding Capital One Assets, and Minacs shall promptly: (i) return such Capital One Assets (excluding Capital One Equipment) to Capital One at no expense to Capital One (except for those expenses associated with the return of Capital One Data contemplated by Section 21.8(b)) and; (ii) return all Capital One Equipment at Capital One's expense provided such expenses are commercially reasonable. In the event that Capital One commissions a third party to remove Capital One Assets from Minacs' facility, all expenses including, labor, shipping or damages that may be incurred to Minacs property shall be at Capital One's expense, and Minacs shall provide all reasonable cooperation to such third party's in removing Capital One Assets.

(f) Minacs shall take no action (directly or indirectly) pursuant to or by virtue of this Agreement if the effect thereof would be to (i) threaten the operability of the Capital One Assets; or (ii) change the form, substance or usefulness to Capital One of the Capital One Assets, unless directed to do so by Capital One in writing.

(g) Capital One is responsible for obtaining and securing all licenses, sublicenses or consents required for the use of or access to Capital One Assets at its expense.

(h) Client shall ensure that Capital One Assets shall to the extent physically provided to Minacs; (i) be clearly marked or tagged as the property of the Client; and be recorded and inventoried as set forth in the Statement of Work.

7. PROPRIETARY RIGHTS

7.1 Works Provided by Minacs.

(a) Minacs shall not introduce any Minacs Works or Third Party Works licensed by Minacs or any applicable Affiliates or Subcontractors (such Works collectively the "Minacs-Provided Works") in providing the Services without Capital One's approval, which approval Capital One may withhold in its sole reasonable discretion.

(b) As and to the extent necessary for Capital One and the Users to receive and use the Service and perform work as permitted under this Agreement, Minacs hereby grants to Capital One, the Users and their designees (for the sole purpose of providing services to Capital One and the Users) a worldwide, fully-paid up, non-exclusive license to Use for the sole benefit of Capital One such Minacs-Provided Works during the Term.

(c) With respect to Minacs-Provided Works that are not commercially available and that are reasonably necessary for the continuity of Capital One's and the User's operations, Minacs hereby grants to Capital One, the Users and their designees (for the sole purpose of providing services to Capital One and the Users) a perpetual, worldwide, fully paid-up, non-exclusive license to Use in support of Capital One's and the User's business operations such Minacs-Provided Works (including source code, programmer interfaces, available documentation, manuals and other materials necessary for the Use thereof) at the expiration or termination of this Agreement on its then-current terms offered by Minacs to similar entities in similar circumstances. If requested by Capital One, the parties shall mutually agree on applicable terms for Minacs' support of such Minacs-Provided Works after expiration or termination of this Agreement; provided that such terms shall not be more restrictive or require greater consideration than offered by Minacs to similar entities in similar circumstances.

(d) With respect to Minacs-Provided Works that are commercially available and that are reasonably necessary for the continuity of Capital One's and the Users' operations, Minacs shall make such Minacs-Provided Works available on its then-current terms offered by Minacs to similar entities in similar circumstances.

7.2 Rights in Newly Developed Works.

(a) Works developed in connection with this Agreement by Minacs (alone or jointly with others) (collectively "Developed Works") comprise the following: (i) modifications to, or derivative works of, existing Capital One Works; (ii) modifications to, or derivative works of, existing Third Party Works licensed by Capital One; (iii) modifications to, or derivative works of, existing Minacs Works; (iv) modifications to, or derivative works of, existing Third Party Works licensed by Minacs (or any applicable Affiliates of Minacs or Subcontractors); and (v) newly developed Works that do not modify existing Capital One Works, existing Minacs Works or existing Third Party Works (such Works as described in this clause (v) collectively "Newly Developed Works").

(b) Capital One shall have all right, title and interest in and to the

Developed Works referenced in Sections 7.2(a)(i), 7.2(a)(ii), and 7.2(a)(v) (limited to the extent permitted by the terms of any governing third party licenses with respect to the Developed Works referenced in Sections 7.2(a)(ii)), including all copies made from them.

(c) Minacs shall have all rights, title and interest in and to the Developed Works referenced in Sections 7.2(a)(iii) and 7.2(a)(iv) (limited to the extent permitted by the terms of any governing third party licenses with respect to the Developed Works referenced in Sections 7.2(a)(iv)), including all copies made from them; provided, however, that with respect to Developed Works referenced in Sections 7.2(a)(iii) and 7.2(a)(iv), Minacs hereby grants Capital One a worldwide, fully paid-up, exclusive and perpetual license to Use any such Developed Works that incorporate Capital One Information or Capital One Works. The foregoing exclusive license to Capital One shall not prevent Minacs from Using existing Third Party Works or existing Minacs Works incorporated into such Developed Works or from creating substantially similar new Works or modifications to existing Minacs Works or existing Third Party Works as long as Minacs does so (i) independently and without any reference to, use of or disclosure of Capital One Information or Capital One Works; and (ii) without breaching its other obligations under this Agreement.

(d) Developed Works owned by Capital One pursuant to Section 7.2(b) shall be deemed "works made for hire" for Capital One. If and to the extent any such Developed Works are not deemed "works made for hire" by operation of law, Minacs hereby irrevocably assigns, transfers and conveys to Capital One without further consideration all of its right, title and interest in such Developed Works, including all Intellectual Property Rights in such Developed Works. Capital One and its assigns may obtain and hold in their own names all such Intellectual Property Rights in and to such Developed Works. Minacs agrees to execute and to cause its Affiliates, and Subcontractors, and its and their personnel, to execute any documents or take any other actions as may reasonably be necessary, or as Capital One may reasonably request, to perfect Capital One's ownership of any such Developed Works, without additional consideration and regardless of whether during or after the Term.

7.3 Export.

The parties acknowledge that certain items, including computers, electronic components, telecommunications equipment, Software and technical data, which may be provided hereunder, and certain transactions which may be undertaken hereunder, may be subject to export controls under Applicable Laws. Neither party shall export or re-export any such items or any direct product thereof or undertake any transaction in violation of any such Applicable Laws. Without limiting the generally of Section 15.1, to the extent within Minacs' control, Minacs shall be responsible for, and shall coordinate and oversee, compliance with such Applicable Laws in respect of such items exported, re-exported, trans-shipped or imported hereunder. As provided in Section 15.1, Minacs shall reasonably cooperate with Capital One with respect to Capital One's efforts to comply with any such Applicable Laws, including implementing such export control measures as Capital One deems necessary to effect such compliance.

8. PERFORMANCE STANDARDS

8.1 General.

Quantitative performance standards for certain of the Services ("Service Levels") shall be set forth in the Statements of Work under which such Service Levels apply. At all times Minacs' level of performance shall be at least equal to the Service Levels set out therein.

8.2 Failure to Perform.

(a) Each time Minacs fails to meet a Service Level, Minacs shall:

(i) investigate, assemble, and preserve pertinent information with respect to, and report on the causes of, the problem, including performing a root cause analysis of the problem(s);

(ii) advise Capital One, as and to the extent requested by Capital One, of the status of remedial efforts being undertaken with respect to such problem;

(iii) minimize the impact of and correct the problem(s) and begin meeting the Performance Standard; and

(iv) take appropriate preventive measures so that the problem does not recur.

(b) Minacs recognizes that its failure to meet Critical Service Levels (as provided in the Statements of Work) may have a material adverse impact on the business and operations of Capital One and that the damage from Minacs' failure to meet a Critical Service Level may not be susceptible of precise determination. Accordingly, if Minacs fails to meet Critical Service Levels for reasons other than the wrongful actions of Capital One or circumstances that constitute a Force Majeure Event, then in addition to any non-monetary remedies available to Capital One under this Agreement, at law or in equity, Capital One may elect in lieu of pursuing other monetary remedies to recover as its sole and exclusive monetary remedy for such failure to meet Critical Service Levels the Service Level Credits specified in the applicable Statement of Work, as liquidated damages. This Section 8.2(b) shall not limit Capital One's rights with respect to the events upon which Capital One may rely as a basis for Capital One's termination of this Agreement for cause, which are in addition to, and not a substitution for, such provisions.

8.3 Measurement and Monitoring Tools.

Minacs shall utilize the necessary measurement and monitoring tools and procedures required to measure and report Minacs' performance of the Services against the applicable Service Levels. Such measurement and monitoring shall permit reporting at a level of detail sufficient to verify compliance with the Service Levels, and shall be subject to audit by Capital One. Upon Capital One's reasonable request, unless a specific schedule is otherwise agreed to in an applicable SOW, Minacs shall provide

Capital One with information, reports and procedures, for purposes of verifying Service Levels.

8.4 Periodic Reviews.

At Capital One's request, the parties shall review the Service Levels and shall make adjustments to them as appropriate to reflect improved performance capabilities associated with advances in the technology and methods used to perform the Services.

9. PROJECT AND CONTRACT MANAGEMENT

9.1 Reports and Meetings.

(a) Reports. Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of periodic reports to be issued by Minacs to Capital One. Such reports shall be issued at the frequency reasonably requested by Capital One. Minacs shall provide Capital One with suggested formats for such reports for Capital One's review and approval. Additional reports shall be provided by Minacs as set forth in the Statements of Work.

(b) Meetings. Within thirty (30) days after the Effective Date, the parties shall determine an appropriate set of meetings to be held between representatives of Capital One and Minacs. These meetings may take place via audio or video conference, as appropriate. Minacs shall prepare and circulate an agenda sufficiently in advance of each such meeting to give participants an opportunity to prepare for the meeting. Minacs shall incorporate into such agenda items that Capital One desires to discuss. At Capital One's request, Minacs shall prepare and circulate minutes promptly after a meeting, although Capital One shall not be bound thereto and Capital One shall not be obligated to correct or object to any errors therein.

9.2 Procedures.

Minacs shall abide by, and comply with, Capital One's then-current standards, policies and procedures as provided to Minacs from time to time, including such procedures as Capital One may provide with respect to (a) the maintenance of Account Information, (b) the use of Capital One's name, service marks or trademarks, (c) the hiring, training, quality and removal of Minacs Personnel from providing the Services, (d) security and (e) disaster recovery and business continuity. Notwithstanding the foregoing, Minacs acceptance and compliance to such changes shall be subject to the Operational Change Control Procedure.

9.3 Operational Change Control.

(a) The responsibility for establishing the standards and strategic direction of Capital One shall at all times remain with Capital One. Minacs, in performing the Services, shall conform to and shall support such standards and strategic direction.

(b) Minacs shall be responsible for all changes to its infrastructure (including IT environments) and the Minacs operations pertaining to the Services, including changes to programs, manual procedures, network facilities, security and environmental controls and schedules. Minacs shall comply with the following change control requirements:

(i) Prior to using any new Software or new Equipment to provide the Services, Minacs shall have verified that the item is consistent with the standards and strategic direction specified by Capital One, has been properly installed, is operating in accordance with its specifications and is performing its intended functions in a reliable manner. In all circumstances the ability to restore to prior operational capabilities shall be maintained until such new Software or new Equipment is fully operational.

(ii) Minacs shall not make the following changes, including implementing a change in technology, without first obtaining Capital One's approval, which approval Capital One may withhold in its discretion:

(A) a change adversely affecting the function or performance of, or decreasing to any significant degree the resource efficiency of, the Services;

(B) a change increasing Capital One's charges under this Agreement or other costs or fees of Capital One;

(C) a change inconsistent with the IT architecture, standards or strategic direction specified by Capital One; or

(D) a change impacting the way in which Capital One conducts its business or operations, which impact Capital One considers to be adverse;

provided, however, that Minacs may make temporary changes required by an emergency if it has been unable to contact an appropriate Capital One manager to obtain such approval after making reasonable efforts. Minacs shall document and promptly report such emergency changes to Capital One, which changes shall then be subject to Capital One's approval hereunder.

(iii) If applicable to the Services, Minacs shall move programs from development and test environments to production environments in a controlled and documented manner, so that no changes are introduced into the programs during such activity, and with the full capability of restoring to the prior state until the programs have been established as fully operational.

(c) Within thirty (30) days after the first SOW Effective Date, Minacs shall prepare and provide to Capital One for its review and mutual agreement a change control procedure (the "Operational Change Control Procedure") detailing how; [A] Minacs will comply with the requirements set forth in this Section 9.3 and otherwise control changes to Minacs' infrastructure and operations pertaining to the Services; and [B] how Capital One will request changes to the Services. Minacs shall incorporate reasonable comments or suggestions of Capital One and shall finalize the Operational Change Control Procedure within thirty (30) days after receiving Capital One's

comments. The final Operational Change Control Procedure shall be subject to mutual agreement by the parties. The Operational Change Control Procedure shall not be used to amend this Agreement. Changes pertaining to Services shall be amended to this Agreement pursuant to 22.17(c). If there is a conflict between the provisions of this Agreement and the Operational Change Control Procedure, the provisions of this Agreement shall control.

(d) Minacs shall periodically update the Operational Change Control Procedure to reflect changes in the operations or procedures described therein and to reflect the changes required as a result of new Statements of Work. Updates of the Operational Change Control Procedure shall be mutually agreed to by the parties.

9.4 Use of Subcontractors and Other Support.

(a) Except as and to the extent Capital One may agree otherwise in writing, Minacs may delegate its performance obligations under this Agreement only in accordance with the following:

(i) Prior to entering into any agreement (oral or written) to delegate any of its performance obligations to a third party, Minacs shall give Capital One reasonable prior notice (in any event, at least thirty (30) Business Days) specifying the components of the Services affected, the scope of the proposed delegation, and the identity and qualifications of the proposed Subcontractor. Minacs shall perform thorough due diligence on any proposed Subcontractor to ensure compliance with the applicable terms of this Agreement, which due diligence may include site visits, financial research and other investigation required by Capital One. Minacs shall forward to Capital One a description of the scope and material terms (other than financial terms but including any key performance metrics) of the proposed agreement. Minacs' agreements with its Subcontractors shall require of such Subcontractors the same level of risk mitigation as Capital One requires of Minacs in this Agreement, including as provided in Articles 8 (Performance Standards), 10 (Audits; Record Retention), 14 (Confidentiality), 15 (Compliance with Laws), 16 (Certain Representations, Covenants and Warranties), 17 (Insurance) and 18 (Indemnities). Capital One may approve or disapprove of proposed Subcontractors in its discretion. Any such approval shall not be deemed a waiver of any of Capital One's rights or Minacs' obligations under this Agreement.

(ii) Capital One approves Minacs' use of the Subcontractors listed in each Statement of Work as "Approved Subcontractors", but only for the scope of performance therein described.

(b) Capital One may revoke its approval of an Approved Subcontractor and direct Minacs to replace such Approved Subcontractor if: (i) the Subcontractor's performance is materially deficient; (ii) good faith doubts exist concerning the Subcontractor's ability to render future performance because of changes in the Subcontractor's ownership, management, financial condition, or otherwise; (iii) there have been material misrepresentations by or concerning the Subcontractor; or (iv) there has been a change of Control of the Subcontractor. Approval of a Subcontractor that is at the time an Affiliate of Minacs shall be automatically revoked if such Subcontractor ceases to be such an Affiliate.

(c) Minacs shall remain responsible for obligations, services, and functions performed by its Subcontractors (and their Subcontractors) to the same extent as if such obligations, services, and functions were performed by Minacs and for purposes of this Agreement, all work performed by Minacs' Subcontractors (and their Subcontractors) shall be deemed work performed by Minacs' employees. Minacs shall be Capital One's sole point of contact regarding the Services, including with respect to payment. Minacs shall not disclose Capital One Confidential Information to a Subcontractor except to the extent permitted under Section 14.3. Minacs shall perform audit and monitor its Subcontractors' performance to ensure full compliance with all of Minacs' responsibilities under this Agreement.

(d) To the extent Subcontractors, agents, representatives and other entities perform, or otherwise provide support to Minacs related to, the Services, Minacs shall cause such entities to comply with the obligations and restrictions applicable to Minacs under this Agreement.

9.5 Quality Assurance and Improvement Programs.

As part of its total quality management process, Minacs shall provide continuous quality assurance and quality improvement through: (a) the identification and application of proven techniques and tools from other installations within its operations (e.g., "best practices"); and (b) the implementation of concrete programs, practices and measures designed to improve Performance Standards. Such procedures shall include call monitoring, checkpoint reviews, testing, acceptance, and other procedures for Capital One to confirm the quality of Minacs' performance, and shall be made available by Minacs to Capital One as requested by Capital One.

9.6 Coordination of Minacs' Business Development at Capital One.

Minacs shall coordinate all its business development efforts for expansion of the Services and for New Services to Capital One and its Affiliates with, and comply with the rules of engagement provided from time to time by, the Capital One Contract Executive.

10. AUDITS; RECORDS RETENTION

10.1 Audit Rights.

(a) Minacs shall maintain in English a complete audit trail of all financial and non-financial transactions resulting from this Agreement. During the Term and for the period thereafter that Minacs is required to maintain records hereunder, Minacs shall provide to Capital One, its auditors (including internal audit staff and external auditors), inspectors, regulators (including the OTS, the Board of Governors of the Federal Reserve System and OSFI) and other entities as Capital One may from time to time designate upon commercially reasonable notice unless otherwise required to comply with Applicable Law, and at Capital One's expense, access at all reasonable times (and in the case of regulators at any time required by such regulators) to any facility or part of a facility at which either Minacs or any of its Subcontractors is providing the Services, to Minacs Personnel, and to data and records relating to the

Services for the purpose of performing audits and inspections of either Minacs or any of its Subcontractors in order to:

(i) verify the accuracy of charges and invoices;

(ii) verify the integrity of Capital One Data and examine the systems that process, store, support and transmit that data;

(iii) verify compliance with the terms of Section 14.3 (Privacy);

and

(iv) examine Minacs' performance of the Services and conformance to the terms of this Agreement including, to the extent applicable to the Services and to the charges therefore, by performing audits (A) of practices and procedures; (B) of Capital One Assets; (C) of other systems, Equipment and Software, including with respect to the Accounts (e.g., Minacs' work standards and compliance with other requirements relating to the Accounts); (D) of supporting information and calculations regarding compliance with Service Levels; (E) of general controls and security practices and procedures; (F) of disaster recovery and back-up procedures; (G) of Minacs' training and hiring practices (but only to the extent they relate to the individual(s) performing the Services); (H) of Minacs' agents on the Accounts (e.g., remote phone monitoring); and (I) as necessary to enable Capital One to meet, or to confirm that Minacs is meeting, Applicable Laws.

(b) Minacs shall provide to such auditors, inspectors, regulators, and other representatives such assistance as they request, including installing and operating audit software and, as necessary, providing English language interpreters. Minacs shall cooperate fully with Capital One or its designees in connection with audit functions and with regard to examinations by regulatory authorities. Capital One's auditors and other representatives shall comply with Minacs' security requirements provided in advance and in writing to Capital One.

(c) Minacs shall maintain internal audit controls necessary to monitor Minacs' compliance with its obligations under this Agreement. In addition, Minacs shall conduct audits of or pertaining to the Services in such manner and at such times as is consistent with the audit practices of well-managed operations performing services similar to the Services. At a minimum, Minacs shall conduct an audit of its data processing systems used to provide the Services at least annually using an independent auditor who shall be a reputable, accounting firm. The audit shall be performed in accordance with American Institute of Certified Public Accountants' Audit and Accounting Guide or the Canadian Institute of Chartered Accountants Audit and Accounting Handbook, and (ii) ISO 17799 audit standards. If at any time Minacs completes a Statement on Auditing Standards (SAS) Number 70 (or any superseding SAS), Minacs shall supply Capital One with such SAS report.

(d) With respect to any change management adjustment proposed by Minacs, or any equitable adjustment of the charges required under this Master Services Agreement or a Statement of Work (each, an "Adjustment"), if Capital One disputes such Adjustment, in addition to any other rights that Capital One has under this Agreement, Capital One may retain an independent third party at Capital One's

expense (which may include Capital One's external auditors notwithstanding their other relationships with Capital One) to audit Minacs' or any of its Subcontractor's costs associated with such Adjustment. Any such independent third party shall execute a nondisclosure agreement with both parties containing confidentiality and nondisclosure terms substantially similar to those set forth in the Agreement, and such independent third party may not disclose Minacs' or any of its Subcontractor's cost data associated with such Adjustment to Capital One, but may provide sufficient information to Capital One to enable Capital One to assess the validity of such Adjustment. Minacs shall maintain, and shall cause its Subcontractors to maintain, sufficient records to permit such independent third party to conduct such audits, and shall provide such independent third party with reasonable access to its and each of its Subcontractor's records for the purpose of performing such audits. Minacs shall provide its full cooperation and assistance as is reasonably requested by such independent third party.

10.2 Audit Follow-up.

(a) Following an audit or examination, Capital One may conduct, or request its external auditors or examiners to conduct, an exit conference with Minacs to obtain factual concurrence with issues identified in the review.

(b) Minacs and Capital One shall promptly meet to review each audit report after its issuance and to mutually agree upon the appropriate manner, if any, in which to respond to the changes suggested by the audit report. Capital One and Minacs agree to develop operating procedures for the sharing of audit and regulatory findings and reports related to Minacs' operating practices and procedures produced by auditors or regulators of either party.

10.3 Records Retention.

Until the latest of:

- (a) seven (7) years after creation of the record;
- (b) all pending matters relating to this Agreement (e.g., disputes) are closed;
- (c) the information is no longer required to meet Capital One's records retention policy as disclosed by Capital One to Minacs and as such policy may be adjusted from time to time;
- (d) the information is no longer required for either party to comply with Applicable Laws; or
- (e) the information has been returned to Capital One, or upon Capital One's request, has been destroyed by Minacs and certified to Capital One that it has been destroyed.

Minacs shall maintain and provide access upon request to the records, documents and other information required to meet Capital One's audit rights under this Agreement; provided, however, that if Capital One's record retention policy requires a shorter

retention period for a particular record, such shorter period shall control for purposes of this Section 10.3. Before destroying or otherwise disposing of such information, Minacs shall provide Capital One with sixty (60) days prior notice and offer Capital One the opportunity to recover such information or to request Minacs to deliver such information to Capital One, with Capital One paying Minacs' Out-of-Pocket Expenses.

10.4 Overcharges.

(a) If as a result of an audit or otherwise it is determined that Minacs has overcharged Capital One, Minacs shall credit Capital One's account (or, at Capital One's option, pay Capital One directly in accordance with Section 13.1(b)) an amount equal to the overcharge plus interest at the prime rate as shown in the Wall Street Journal calculated from the date the overcharge was paid by Capital One.

(b) If an audit discloses that Minacs' overcharges exceeded five percent (5%) of the aggregate of charges during the period audited, then Minacs shall also reimburse Capital One for the reasonable cost of the audit.

11. CAPITAL ONE RESPONSIBILITIES

11.1 Responsibilities.

In addition to Capital One's responsibilities expressly set forth elsewhere in this Agreement, Capital One shall be responsible for the following:

(a) Capital One shall designate one (1) individual to whom Minacs may address communications concerning this Master Services Agreement (the "Capital One Contract Executive"). The Capital One Contract Executive will coordinate with the Capital One SOW Contacts as needed.

(b) Capital One shall cooperate with Minacs, including by making available management decisions, information, approvals and acceptances, as reasonably requested by Minacs so that Minacs may accomplish its obligations and responsibilities hereunder. The Capital One Contract Executive or such person's designee will be the principal point of contact for obtaining such decisions, information, approvals, and acceptances. Only personnel as expressly so designated by the Capital One Contract Executive will be authorized to make commitments on the part of Capital One that amend this Agreement or commit resources that are subject to an additional charge. To the extent Minacs relies on the apparent authority of others, including Capital One SOW Contacts, it does so at its own risk and without incurring obligation on Capital One's part.

11.2 Savings Clause.

Capital One's failure to perform its responsibilities set forth in this Agreement (other than as provided in Section 21.1(b)) shall not be grounds for termination by Minacs or suspension of all or any portion of the Services. Minacs' nonperformance of its obligations under this Agreement shall be excused if and to the extent (i) such Minacs nonperformance results from Capital One's failure to perform its responsibilities;

and (ii) Minacs provides Capital One with reasonable notice of such nonperformance, and if requested by Capital One, Minacs uses Commercially Reasonable Efforts to perform notwithstanding Capital One's failure to perform (with Capital One being responsible to reimburse Minacs for its additional Out-of-Pocket Expenses for such efforts).

12. CHARGES

12.1 General.

(a) All amounts Minacs may charge for the Services are set forth in this Article 12, Sections 10.3, 11.2(ii), 21.7 and 21.8(c) of this MSA, and the Statements of Work. Minacs shall not have the right to charge, and Capital One shall not be required to pay to Minacs, any amounts for the Services other than or in addition to those payable to Minacs under this Article 12, the sections referenced above or the Statements of Work.

12.2 Incidental Expenses.

Expenses that Minacs incurs in performing the Services (including travel and lodging, document reproduction and shipping, and long-distance telephone) are not separately reimbursable by Capital One, except as expressly agreed otherwise in a Statement of Work or unless, on a case-by-case basis for unusual expenses, Capital One has agreed in advance and in writing to reimburse Minacs for the expense. Minacs shall retain accurate detailed records of any such expenses reimbursed by Capital One, which records must be provided to Capital One for review with any request for reimbursement;

12.3 Pass-Through Expenses.

(a) "Pass-Through Expenses" shall mean third party charges that are to be (i) paid directly by Capital One and (ii) administered by Minacs. All Pass-Through Expenses shall be identified in the relevant SOW. Minacs shall arrange for delivery by third parties to Minacs of invoices for Pass-Through Expenses, and Minacs shall promptly review such invoices and provide Customer with the original invoice together with a statement identifying which charges are proper and valid and should be paid by Capital One.

(b) Minacs shall use Commercially Reasonable Efforts to minimize the amount of Pass-Through Expenses. With respect to services or materials paid for on a Pass-Through Expenses basis, Capital One may:

- (i) obtain such services or materials directly from one or more third parties;
- (ii) designate the third party source for such services or materials;
- (iii) designate the particular services or materials (e.g., equipment

make and model) Minacs shall obtain (although if Minacs demonstrates to Customer that such designation will have an adverse impact on Minacs' ability to meet the Service Levels, such designation shall be subject to Minacs' approval);

(iv) designate the terms for obtaining such services or materials (e.g., purchase or lease and lump sum payment or payment over time);

(v) require Minacs to identify and consider multiple sources for such services or materials or to conduct a competitive procurement; and

(vi) review and approve the applicable Pass-Through Expenses before entering into a contract for particular services or materials.

12.4 Taxes.

The parties' respective responsibilities for taxes arising under or in connection with this Agreement shall be as follows:

(a) Each party shall be responsible for:

(i) any personal property taxes on property it uses, regardless of whether such property is owned or leased;

(ii) franchise and privilege taxes on its business;

(iii) taxes based on its net income or gross receipts; and

(iv) taxes based on the employment or wages of its employees, including FICA, Medicare, unemployment, worker's compensation and other similar taxes.

(b) Minacs shall be responsible for any sales, use, excise, value-added, services, consumption and other taxes and duties payable by Minacs on the goods or services used or consumed by Minacs in providing the Services where the tax is imposed on Minacs' acquisition or use of such goods or services and the amount of tax is measured by Minacs' costs in acquiring such goods or services.

(c) Minacs shall be responsible for any sales, use, excise, value-added, services, consumption or other tax that is assessed on the provision of the Services as a whole, or on any particular Service. If and to the extent such tax is reduced or eliminated during the Term, Minacs shall decrease its charges for the Services to the same extent as its tax burden is reduced or eliminated as a result of the reduction or elimination of such tax.

(d) If a sales, use, excise, value added, services, consumption, or other tax is assessed on the provision of any portion of the Services, the parties shall work together to segregate the payments under this Agreement into three (3) payment streams:

(i) those for taxable Services;

(ii) those for which Minacs functions merely as a payment agent for Capital One in receiving goods, supplies, or services (including leasing and licensing arrangements) that otherwise are non-taxable or have previously been subject to tax; and

(iii) those for other nontaxable Services.

(e) The parties shall cooperate with each other to enable each to more accurately determine its own tax liability and to minimize such liability to the maximum extent legally permissible. Unless Capital One has provided Minacs with tax-exemption, direct pay, or resale certificates, Minacs' invoices shall separately state the amounts of any taxes Minacs is collecting from Capital One, and Minacs shall remit such taxes to the appropriate authorities. Each party shall provide and make available to the other any direct pay or resale certificates, information regarding out-of-state or out-of-country sales or use of equipment, materials, or services, and other exemption certificates or information reasonably requested by the other party.

(f) Minacs shall promptly notify Capital One of, and coordinate with Capital One the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which Capital One is responsible hereunder. In such event, and if the claim arises out of a form or return signed by Minacs, then Minacs may elect to control the response to and settlement of the claim, but Capital One shall at its expense have all rights to participate in the responses and settlements that are appropriate to its potential responsibilities or liabilities. If Minacs fails to notify Capital One or to allow Capital One to participate in responses and settlements of a claim for taxes as provided above, then Capital One shall have no liability to Minacs for any applicable taxes or penalties that result from such claim. If Capital One requests Minacs to challenge the imposition of any tax, Minacs shall do so in a timely manner and Capital One shall reimburse Minacs for the reasonable legal fees and expenses it incurs. Capital One shall be entitled to any tax refunds or rebates granted to the extent such refunds or rebates are of taxes that were paid by Capital One.

12.5 New Services.

(a) If Capital One requests Minacs to perform functions that are materially different from, and in addition to, the Services, the parties' obligations with respect to such functions shall be as follows:

(i) If the performance of the additional functions requested by Capital One would be reflected in a change in the volume of chargeable resource usage for a particular Statement of Work, and the net change in the resources and expenses required to perform the additional functions would not be disproportionately different from the corresponding change in the volume or composition of such chargeable resource usage from performing such additional functions, then such additional functions shall be considered Services under such Statement of Work and the charge, if any, for such additional functions shall be determined pursuant to the Statement of Work and the other provisions of this Article 12.

(ii) If the net change in the resources and expenses required to perform the additional functions would be disproportionately different from the

corresponding change in the volume or composition of chargeable resource usage from performing such additional functions, then the additional functions shall be considered "New Services", and the following shall apply:

(A) Minacs shall quote to Capital One a charge for such New Services that is no more than the charge Minacs provides to customers similar to Capital One for similar services under similar circumstances. Such quote shall be reduced, as applicable, to take into account: (1) resources and expenses of Minacs for then-existing Services that would no longer be required if the additional functions would be performed by Minacs; and (2) efficiencies resulting from Minacs performing other Services hereunder in addition to the New Services.

(B) upon receipt of such quote, Capital One may then elect to have Minacs perform the additional functions as New Services, and the affected Statement of Work shall be adjusted, if appropriate, to reflect such functions and adjustments to the charges or the parties will execute a new Statement of Work for such New Services.

(C) this Agreement, or applicable Statement Of Work as the case may be, will be amended in accordance with 22.17(c) to include the New Services or changes to the Statement of Work prior to Minacs' commencing the New Services or revised Services.

(iii) Capital One may in its discretion elect to solicit and receive bids from, or otherwise enter into agreements with, third parties to perform or to perform itself such additional functions. If Capital One so elects, Minacs shall cooperate with Capital One and the third parties with respect to the provision of such services.

(b) Changes required pursuant to Section 3.1(e), or in the methods of delivering the Services, shall not be deemed to be functions materially different from and in addition to the Services.

13. INVOICING AND PAYMENT

13.1 Invoicing.

(a) Minacs shall invoice Capital One for all amounts due under this Agreement on a monthly or semi-monthly basis (as specified in the applicable Statement of Work) in arrears within thirty (30) days after the end of each month if invoiced on a monthly basis, within twenty (20) days after the end of the billing cycle if invoiced on a semi-monthly basis, or within such shorter period as may be agreed in a Statement of Work (but only with respect to the charges thereunder). Invoices shall be submitted to Capital One at the address identified on the applicable Capital One purchase order for the Services or may be e-mailed to poinvoiceap@capitalone.com. For each charge, the invoice shall cite the specific Section(s) of the Agreement (including the applicable Statement of Work) on which such charge is based. Minacs shall include the calculations utilized to establish the charges. In addition, each invoice issued under this Agreement shall include the following information:

(i) Minacs name, remittance address and shipping address;
 (ii) Invoice number;
 (iii) Capital One purchase order number, if a purchase order has been issued by Capital One;

- (iv) Invoice date;
- (v) Discount terms, if applicable; and
- (vi) Freight charges, if applicable.

(b) If a credit is due Capital One pursuant to this Agreement, Minacs shall provide Capital One with an appropriate credit against amounts then due and owing; if no further payments are due to Minacs, Minacs shall pay such amounts to Capital One within thirty (30) days.

(c) Minacs shall render a single consolidated invoice for each billing cycle's charges under each Statement of Work showing such details as reasonably specified by Capital One, including as necessary to satisfy Capital One's internal accounting and chargeback requirements (such as allocating charges among Service components, locations and departments). The invoice will separately identify credits for amounts previously incurred by Capital One and the amounts of taxes Minacs is proposing to collect. Minacs will include with the invoice the calculations utilized to establish the charges in sufficient detail to enable Capital One to confirm the accuracy thereof.

(d) Each invoice shall be complete as to the charges for such billing cycle. Minacs may not charge Capital One any additional amounts for a billing cycle for which an invoice has been rendered, except where a particular billing cycle's invoice indicates that certain charges are incapable of being determined as of the date of such invoice in which case such charges may be billed on a later invoice, although they shall in no event be billed more than sixty (60) days after the end of the billing cycle in which incurred.

13.2 Payment Due.

(a) Subject to the other provisions of this Article 13, undisputed invoice amounts provided for under Section 13.1 properly submitted in accordance with Section 13.1(a)(i) to 13.1(a)(vi) to Capital One shall be due and payable by Capital One; (i) within sixty (60) days after receipt thereof; (ii) with a two percent (2%) discount if paid by wire within ten (10) days of receipt thereof. An invoice shall be considered received by Capital One; (i) if by mail, no later than five (5) Business Days from date of postmark; or (ii) if by email, no later than one (1) Business Day from date of email. Any amount due under this Agreement for which a time for payment is not otherwise specified shall be due and payable within sixty (60) days after Capital One's receipt of a proper invoice for such amount.

(b) Payments to Minacs by Capital One shall be made by check or

wire transfer only, and no requests for cash payments shall be made by Minacs. All payments to Minacs by Capital One shall be made directly to Minacs, not to third parties (other than to Minacs' account with a reputable bank).

(c) Payments not received within sixty (60) days shall be subject to a late payment fee equal to the prime rate reported in the Wall Street Journal the day the invoice was received.

13.3 Accountability.

Minacs shall maintain complete and accurate records of and supporting documentation for the amounts billable to and payments made by Capital One hereunder in accordance with generally accepted accounting principles applied on a consistent basis. Minacs agrees to provide Capital One with documentation and other information with respect to each invoice as may be reasonably requested by Capital One to verify accuracy and compliance with the provisions of this Agreement.

13.4 Proration.

Except as may be otherwise provided in this Agreement, periodic charges (if any) under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month.

13.5 Deductions.

With respect to any amount to be paid by Capital One hereunder, Capital One may deduct from such amount any amount that Minacs is obligated to pay Capital One hereunder.

13.6 Disputed Charges.

Subject to Section 13.5, Capital One shall pay undisputed charges when such payments are due under this Section 13.6. Capital One: (A) may withhold payment of particular charges that Capital One disputes in good faith without penalty or finance charge, pursuant to Section 20 (DISPUTE RESOLUTION); and (B) shall not be liable for payment of charges for Services performed after termination unless such charges have been agreed to in writing by Capital One.

14. SAFEGUARDING OF DATA; CONFIDENTIALITY

14.1 Capital One Information.

(a) Capital One Information shall be and remain, as between the parties, the property of Capital One. Minacs shall not possess or assert any lien or other right against or to Capital One Information. No Capital One Information, or any part thereof, shall be:

(i) used by Minacs for any purpose other than in connection

with providing the Services;

(ii) sold, assigned, leased or otherwise disposed of to third parties by Minacs; or

(iii) commercially exploited by or on behalf of Minacs.

(b) Upon Capital One's request, the termination or expiration of this Agreement for any reason (including termination for cause) or, with respect to any particular Capital One Information, on such earlier date that the same shall be no longer required by Minacs in order to render the Services hereunder, Capital One Information (including copies thereof) shall be promptly returned to Capital One by Minacs in a form reasonably requested by Capital One or, if Capital One so elects, shall be destroyed by Minacs.

14.2 Safeguarding Capital One Data.

(a) Minacs shall establish and maintain safeguards against the destruction, loss or alteration of Capital One Data in the possession or control of Minacs which are no less rigorous than those maintained by Capital One as of the Effective Date and which are no less rigorous than those maintained by Minacs for its other customers' information of a similar nature. Capital One may establish backup security for Capital One Data and to keep backup Capital One Data and Capital One Data files in its possession if it chooses.

(b) Without limiting the generality of Section 14.2(a):

(i) Minacs shall not attempt to access, or allow access to, any Capital One Data that it is not permitted to access under this Agreement. If such access is attained (or is reasonably suspected), Minacs shall immediately report such incident to Capital One, describe in detail the accessed Capital One Data, and if applicable return to Capital One any copied or removed Capital One Data.

(ii) Minacs shall utilize Commercially Reasonable Efforts, including implementing and maintaining security systems and procedures, and thorough systems security measures, to guard against the unauthorized access, alteration, or destruction of Software and Capital One Data. Such measures shall include the use of Software which: (A) requires all users to enter a user identification and password prior to gaining access to the information systems; (B) controls and tracks the addition and deletion of users; and (C) controls and tracks user access to areas and features of the information systems.

14.3 Privacy Protection.

(a) Customer Data Privacy Protection.

(i) Designate Privacy Person. Minacs shall designate a person in its organization who is responsible for all aspects of privacy and confidentiality required under the terms of this Agreement.

(ii) Minacs shall protect and keep confidential all Customer Data. During the term of the Agreement, Minacs shall collect and use Customer Data only to exercise the rights and perform the obligations for which such Customer Data was disclosed to Minacs, as specifically set forth in or clearly implied by this Agreement. Minacs shall not retain such Customer Data and shall destroy it or return it to Capital One, at Capital One's option (i) during the term of this Agreement if Minacs does not have a specific business purpose under this Agreement to retain it, and (ii) within sixty (60) days after termination of this Agreement; provided, however, that Minacs may retain Customer Data about an individual who has purchased a product or service from Minacs and is thereby a customer of Minacs during this Agreement or at the time of termination of this Agreement.

(iii) Unless prohibited elsewhere in this Agreement, Minacs may redisclose Customer Data (i) to the Affiliates of Capital One; (ii) in the ordinary course of its business to its Affiliates or third party service providers to carry out the specific purposes for which such Customer Data was disclosed to Minacs; or (iii) if such redisclosure is compelled by Applicable Law, in which case Minacs will provide prior notice of such disclosure to Capital One. If Minacs uses Subcontractors to perform the duties assigned to it by this Agreement, Minacs shall have appropriate controls in place to ensure that any Subcontractor used by Minacs meets the objectives of this Section, and shall exercise oversight over each of its Subcontractors to ensure ongoing compliance with the objectives of this Section.

(iv) Minacs represents and warrants that it has, and will continue to have for so long as it retains Customer Data, adequate administrative, technical, and physical safeguards (i) to insure the security and confidentiality of Customer Data, (ii) to protect against any anticipated threats or hazards to the security or integrity of such records, and (iii) to protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any customer. Minacs shall develop, implement and maintain, at Minacs' own expense, a proven system or methodology to audit for compliance with the requirements in the preceding sentence. Minacs shall at all times during the term of the Agreement and for at least two years after termination thereof, keep books and records sufficient to show its compliance with the terms of this Section. In accordance with Section 10.1, Capital One and its representatives may audit the books, records, personnel and operations of Minacs.

(iv) Minacs shall immediately notify Capital One if Minacs discovers there has been a material breach or a serious attempt to breach its security safeguards required by this Section, or if the security of Customer Data has been or may be compromised for any reason. Capital One may take all reasonable and appropriate steps to protect Customer Data in such event, including but not limited to an audit of Minacs' security safeguards required by this Section, and Minacs' security and system log files from workstations and supporting servers containing or facilitating the flow of Customer Data. Minacs shall have a business continuity plan that enables Minacs to take appropriate actions to address incidents of unauthorized access to or misuse of Customer Data. Such plan shall also enable Capital One to expeditiously implement its own response program.

(b) Minacs Personal Information Privacy Protection.

(i) Capital One warrants and represents that it will act in accordance with Schedule C, Minacs Personal Information Protection Schedule.

(ii) Capital One agrees to indemnify and save harmless Minacs from and against any claims, liabilities or costs, including all reasonable external and in-house legal fees, attributable or resulting from its noncompliance with the requirements of this Section 14.3. This indemnification shall survive the termination of this Agreement.

(c) Breach. Breach of this section is a material breach of this Agreement. This section shall survive termination of this Agreement.

14.4 Confidentiality.

(a) Confidential Information. Minacs and Capital One each acknowledge that they may be furnished with, receive or otherwise have access to information of or concerning the other party that such party considers to be confidential, a trade secret or otherwise restricted. "Confidential Information" of a party shall mean all information, in any form, furnished or made available directly or indirectly by the party to the other that is marked confidential, restricted, or with a similar designation and information, whether or not designated "Confidential Information," concerning the operations, affairs and businesses of the furnishing party, and the relations of the party with its customers, employees and service providers. The terms and conditions of this Agreement shall be deemed Confidential Information of each party. Confidential Information of Capital One also shall include, whether or not designated "Confidential Information", (A) Capital One Data; (B) Capital One Works; (B) Customer Data; (C) all information concerning the operations, affairs and businesses of Capital One, the financial affairs of Capital One, and the relations of Capital One with its customers, employees and service providers (including; (1) scripts provided by Capital One for use by Minacs in providing the Services, customer lists, customer information, Account Information and consumer markets); (2) Capital One Assets that are Capital One Works; (3) Account Information; and (4) other information or data stored on magnetic media or otherwise or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by Minacs under this Agreement (collectively, the "Capital One Confidential Information"). Confidential Information of Minacs shall also include, whether or not designated "Confidential Information," Personal Information as defined in Schedule C.

(b) Obligations.

(i) Each party shall use at least the same degree of care as it employs to avoid unauthorized disclosure of its own information, but in any event no less than Commercially Reasonable Efforts, to prevent disclosing to unauthorized parties the Confidential Information of the other party.

(ii) As requested by the furnishing party during the Term, upon expiration or any termination of the Agreement, or completion of either party's obligations under the Agreement, the receiving party shall return or destroy, as the furnishing party may direct, all material in any medium that contains, refers to, or relates to furnishing party, and retain no copies unless otherwise required by law or in

accordance with the Agreement.

(iii) In the event of any actual or suspected misuse, disclosure or loss of, or inability to account for, any Confidential Information of the furnishing party, the receiving party promptly shall: (A) notify the furnishing party upon becoming aware thereof; (B) promptly furnish to the other party full details of the unauthorized possession, use, or knowledge, or attempt thereof, and use reasonable efforts to assist the other party in investigating or preventing the reoccurrence of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information; (C) take such actions as may be necessary or reasonably requested by the furnishing party to minimize the violation; and (D) cooperate in all reasonable respects with the furnishing party to minimize the violation and any damage resulting therefrom.

(iv) Neither party shall commence any legal action or proceeding against a third party with respect of any unauthorized possession, use, or knowledge, or attempt thereof, of Confidential Information by any person or entity which action or proceeding identifies the other party or its Confidential Information without such party's consent.

(v) The parties' obligations respecting Confidential Information (including all Customer Data) shall survive expiration or termination of this Agreement in perpetuity, without limitation.

(c) Exclusions.

(i) Section 14.4(b) shall not apply to any particular information (other than Customer Data) of the furnishing party which the receiving party can demonstrate: (A) was, at the time of disclosure to it, in the public domain; (B) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving party; (C) was lawfully in the possession of the receiving party at the time of disclosure to it without obligation of confidentiality; (D) was received after disclosure to it from a third party who had a lawful right to disclose such information to it without any obligation to restrict its further use or disclosure; or (E) was independently developed by the receiving party without reference to Confidential Information of the furnishing party.

(ii) In addition, a party shall not be considered to have breached its obligations by disclosing Confidential Information of the other party as required to satisfy any legal requirement of a competent government body provided that, promptly upon receiving any such request and to the extent that it may legally do so, such party advises the other party of the request prior to making such disclosure in order that the other party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

(iii) Minacs may disclose Confidential Information of Capital One (including Customer Data) to Affiliates of Capital One; provided, however, that such disclosure is only to the extent and for the duration necessary for Minacs to perform its obligations under the Agreement.

(iv) Minacs may disclose Confidential Information of Capital One (including Customer Data) to Approved Subcontractors and its Affiliates; provided, however, that: (A) such disclosure is only to the extent and for the duration necessary for Minacs to perform its obligations under this Agreement; and (B) prior to any such disclosure the Approved Subcontractor agrees in writing (1) to use and disclose such Confidential Information only to the extent necessary to carry out the specific purposes for which such Confidential Information was disclosed to Minacs; and (2) to comply with the same obligations to which Minacs is subject under this Agreement with respect to Confidential Information (including as provided in this Section 14); provided, however, that the Approved Subcontractor shall not be permitted to make disclosures of Confidential Information to its Subcontractors without Capital One's prior written consent. If Minacs uses Approved Subcontractors to perform its obligations under this Agreement, Minacs shall have appropriate controls in place to ensure that any such Approved Subcontractor meets the requirements of this Section 14 and shall exercise oversight over each such Approved Subcontractor to ensure ongoing compliance with the requirements of this Section 14.

(v) Capital One may disclose Confidential Information of Minacs (including Personal Information, but only to the extent permitted in Schedule C) to its Affiliates or Users if and to the extent necessary for Capital One and its Affiliates or Users to exercise their respective rights or to comply with their respective obligations under this Agreement. Capital One may disclose Confidential Information of Minacs to third party service providers of Capital One and its Affiliates and Users if and to the extent necessary for Capital One and its Affiliates and Users to exercise their respective rights or to comply with their respective obligations under this Agreement. If Capital One discloses Confidential Information of Minacs to a third party, Capital One shall have appropriate controls in place to ensure that any such third party meets the requirements of this Section 14 and shall exercise oversight over each third party to ensure ongoing compliance with the requirements of this Section 14.

(vi) Either party may disclose the terms and conditions of this Agreement to third parties that (A) have expressed a bona fide interest in consummating a significant financing, merger or acquisition transaction between such third parties and the disclosing party; (B) have a reasonable ability (financial and otherwise) to consummate such transaction; and (C) have executed a nondisclosure agreement that: (1) includes within its scope the terms and conditions of the Agreement; (2) limits distribution to those with a need to know in connection with such transaction; and (3) allows use only in connection with the transaction. Each party shall endeavor to delay the disclosure of the terms and conditions of the Agreement until the status of discussions concerning such transaction warrants such disclosure.

(d) Each party's Confidential Information shall remain the property of that party. Nothing contained in this Section 14.3 shall be construed as obligating a party to disclose its Confidential Information to the other party, or as granting to or conferring on a party, expressly or impliedly, any rights or license to the Confidential Information of the other party, and any such obligation or grant shall only be as provided by other provisions of this Agreement.

15. COMPLIANCE WITH LAWS AND POLICIES

15.1 Compliance Generally.

Each party shall perform its obligations in a manner that complies with all Applicable Laws (including identifying and procuring required permits, certificates, approvals and inspections) required of such party or for which such party is responsible hereunder. If a charge of non-compliance with any Applicable Laws occurs, the party so charged shall promptly notify the other party of such charges. Minacs shall reasonably cooperate with Capital One with respect to Capital One's efforts to comply with Applicable Laws, including implementing such commercially reasonable measures as Capital One deems necessary to effect such compliance.

15.2 Compliance with Certain Applicable Laws and Policies.

Without limiting the generality of Section 15.1:

(a) To the extent applicable to the Services, Minacs is and shall continue to be knowledgeable about the anti-money laundering requirements and legal obligations toward combating terrorist financing contained in the Bank Secrecy Act and USA PATRIOT Act and all implementing regulations, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, OSFI's Guideline B-8, Deterring and Detecting Money Laundering and Terrorist Financing and shall perform the Services under this Agreement in compliance with such laws, including the performance of any procedures identified in any Statements of Work. Minacs shall implement effective oversight and monitoring procedures to detect and investigate misuse or misappropriation of Capital One assets, systems, funds, or information by Minacs Personnel or Subcontractors. Minacs shall promptly report any such misuse or misappropriation to Capital One.

(b) Minacs shall comply with all Applicable Laws protecting the confidential material and privacy rights of Capital One, its Affiliates, and/or their customers and consumers, including, PIPEDA, Title V, Subtitle A of the GLB Act and the Economic Espionage Act, 18 USC §1831 et. seq.

(c) Minacs is and shall continue to be knowledgeable about, and shall perform the Services under this Agreement in compliance with, Applicable Laws governing collection of debt and consumer credit reporting, including the Fair Debt Collection Practices Act (FDCPA) (16 USC 1601 et. seq.), the Fair Credit Reporting Act (FCRA) (15 USC 1681 et. seq.), the FACT Act, the Equal Credit Opportunity Act (16 USC 1691 et. seq.), the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. administered by the Federal Communication Commission, the Telephone Sales Rule, 16 C.F.R. § 310.1 et seq. and any state versions of the foregoing; (A) the Competition Act; (B) applicable orders, public notices and decisions of the Canadian Radio-Television and Telecommunications Commission; (C) the Code of Ethics and Standards of Practice, and any similar publications, of the Canadian Marketing Association; (C) provincial legislation governing the collection and use of consumer or credit bureau reports (e.g. Ontario Consumer Reporting Act); (D) provincial legislation governing debt collection (e.g. Ontario Debt Collectors Act); and (E) all provincial consumer protection regulations (e.g. Ontario Consumer Protection Act).

(d) Capital One has chosen Minacs on the basis of Minacs' experience and qualifications, including Minacs' reputation for ethical business conduct. Accordingly, Minacs:

(i) Shall comply with the Capital One Foreign Corrupt Practices Act compliance policy (the "FCPA Policy"), including as it may be amended by Capital One from time to time. Minacs has received, reviewed and understands the FCPA Policy in effect as of the Effective Date.

(ii) Shall comply with the U.S. Foreign Corrupt Practices Act (the "FCPA") and the applicable anti-bribery and anti-corruption laws of the country(ies) in which Minacs will perform this Agreement (collectively the "Corrupt Practices Laws") as if it were subject to the FCPA and subject to the Corrupt Practices Laws.

(iii) Represents and warrants that no provision of this Agreement constitutes a violation of the FCPA Policy or of the FCPA or of the Corrupt Practices Laws.

(iv) Covenants that it will conduct its affairs in such a manner that its performance of the Services and its other obligations under this Agreement will not constitute a violation of the FCPA Policy, the FCPA, or the Corrupt Practices Laws, and further covenants that it will not take any action that might cause Capital One to be in violation of the FCPA or of the Corrupt Practices Laws.

(v) In connection with the transactions contemplated by this Agreement, or in connection with any other business transactions with Capital One or on behalf of Capital One, has not, and will not, make or promise to make any payment or transfer anything of value, directly or indirectly, to:

(A) any officer or employee of a foreign government;

(B) any officer or employee of a public international organization or of any department or agency thereof;

(C) any person who is acting in an official capacity for a foreign government or for a public international agency or for any department or agency thereof;

(D) any member of a foreign legislative body;

(E) any official of a foreign state-owned business enterprise;

(F) any non-U.S. political party;

(G) any candidate for political office outside of the United States; or

(H) any immediate family member or agent of any of the foregoing,

(each of the foregoing, and each of their immediate family members and agents, is

hereafter referred to as a "Prohibited Recipient") for the purpose of:

(I) influencing any act or decision by such Prohibited Recipient in her or his official capacity;

(J) inducing such Prohibited Recipient to do or omit to do any act in violation of such Prohibited Recipient's lawful duty;

(K) securing any improper advantage; or

(L) inducing such Prohibited Recipient to use her or his influence with a foreign government or instrumentality of a foreign government so as to affect or influence, either by action or inaction, any act or decision of such government,

in order to obtain or retain business for any person or entity, or to secure an improper advantage.

(vi) Shall not make or agree to make any loan, gift, donation, or other payment, directly or indirectly, whether in cash or in kind, to or for the benefit of any Prohibited Recipient to secure or retain business for Capital One or anyone else, or to secure an improper advantage and shall immediately advise Janet South at janet.south@capitalone.com orally and in writing should Minacs learn of or have reason to know of any such payment, offer, or agreement to make a payment to a Prohibited Recipient for the purpose of maintaining or securing business for Capital One or anyone else, or to secure an improper advantage.

(vii) At the request of Capital One, shall certify that neither Minacs nor any person acting on behalf of Minacs (including every employee, representative, and agent of Minacs) has made, offered to make, or agreed to make any loan, gift, donation, or other payment, directly or indirectly, whether in cash or in kind, to or for the benefit of any Prohibited Recipient for the purpose of securing or retaining business or to secure an improper advantage.

(viii) Affirms that as of the Effective Date no Prohibited Recipient has any ownership interest, direct or indirect, in Minacs or in the contractual relationship established by this Agreement. If during the Term a Prohibited Recipient acquires an interest in Minacs, Minacs shall immediately disclose such acquisition to Capital One and Capital One may terminate this Agreement immediately upon notice and without any liability to Minacs (other than applicable charges for Services performed prior to the effective date of termination).

(ix) Affirms that as of the Effective Date no employee, officer, or director of Minacs is a Prohibited Recipient. If during the Term a Prohibited Recipient becomes an employee, officer, or director of Minacs or an employee, officer, or director of Minacs becomes a Prohibited Recipient, Minacs shall immediately disclose such circumstance to Capital One and Capital One may terminate this Agreement immediately upon notice and without any liability to Minacs (other than applicable charges for Services performed prior to the effective date of termination).

If Capital One should determine, in good faith, that Minacs has breached any of its

obligations under this Section 15.2(d), or Capital One may terminate this Agreement immediately upon notice and without any liability to Minacs (other than applicable charges for Services performed prior to the effective date of termination).

(e) Minacs, in providing Services, shall:

(i) Employ workers on the basis of their ability to do the job, not on the basis of their personal characteristics. Minacs shall not discriminate against their employees in hiring practices or any other terms or conditions of work on the basis of race, color, nationality, age, religion, maternity or marital status, disability, sexual orientation or political opinion.

(ii) Furnish employees with safe and healthy working conditions, adequate medical facilities, fire exits and safety equipment, well-lit and comfortable workstations and clean restrooms. Minacs shall comply with all Applicable Laws governing occupational health and safety and, in addition to any such legal requirements, shall adequately train its employees to perform their jobs safely.

(iii) Not use child labor. As used in this clause "child" means an individual that is younger than either: (A) 15 years of age or (B) the minimum legal age requirement to work in the applicable location;

(iv) Only employ individuals whose presence is voluntary and not use forced, indentured, involuntary, prison, or uncompensated labor under any circumstances; and

(f) Not use corporal punishment, or other forms of physical coercion, or mental coercion as a form of discipline of employees.

(g) Minacs shall comply with the applicable Visa and MasterCard association rules as they may be amended from time to time. The applicable Visa and MasterCard association rules as of the Effective Date are set forth in Schedule B.

16. CERTAIN REPRESENTATIONS, WARRANTIES AND COVENANTS

16.1 Work Standards.

Minacs represents and covenants that the Services shall be rendered with promptness and diligence and shall be executed in a workmanlike manner, in accordance with the practices and high professional standards used in well-managed operations performing services similar to the Services. Minacs represents and covenants that it shall use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services.

16.2 Maintenance.

Minacs represents, warrants and covenants that it shall maintain the Equipment and Software so that they operate in accordance with their specifications, including

(a) maintaining such Equipment in good operating condition, subject to normal wear and tear; (b) undertaking repairs and preventive maintenance on such Equipment in accordance with the applicable Equipment manufacturer's recommendations; and (c) performing maintenance for such Software in accordance with the applicable Software vendor's documentation and recommendations; provided, however, that the foregoing shall not apply with respect to any Equipment and Software that are Capital One Assets for which Capital One is retaining responsibility for maintenance pursuant to a Statement of Work.

16.3 Efficiency and Cost Effectiveness.

Minacs represents and covenants that it shall use Commercially Reasonable Efforts to use efficiently the resources or services necessary to provide the Services. Minacs represents and covenants that it shall use Commercially Reasonable Efforts to perform the Services in the most cost-effective manner consistent with the required level of quality and performance.

16.4 Technology.

Minacs represents and covenants that it shall provide the Services using technological advances in accordance with in Section 3.1(e) to support Capital One's efforts to maintain competitiveness in the markets in which it competes.

16.5 Non-Infringement.

Each party represents and covenants that it shall perform its responsibilities under this Agreement in a manner that does not infringe, or constitute an infringement or misappropriation of, any Intellectual Property Rights of any third party. Without limiting the generality of Section 16.7(d) below, Minacs further represents and warrants that as of the Effective Date there is no proceeding pending, or, to Minacs' knowledge, threatened, that alleges that any of the Services, Minacs' manner of performing the Services, or Minacs Works infringe, or constitute an infringement or misappropriation of, any Intellectual Property Rights of any third party.

16.6 Software Ownership or Use.

(a) Minacs represents and warrants that it is either the owner of, or authorized to use, and covenants that during the Term it shall be either the owner of, or authorized to use, the Software provided by Minacs or used to perform the Services and any Software developed by Minacs as part of the Services.

(b) Minacs represents and covenants that it will not use to perform the Services any Software that is subject to an open source license agreement except to the extent expressly consented to by Capital One after being provided the applicable license agreement.

16.7 Authorization and Other Contracts.

Each party represents and warrants to the other that:

- (a) It has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement;
- (b) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such party and will not constitute a violation of any judgment, order or decree;
- (c) The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not constitute a material default under any material contract by which it or any of its material assets are bound, or an event that would, with notice or lapse of time or both, constitute such a default; and
- (d) There is no proceeding pending or, to the knowledge of the party, threatened that challenges or may have a material adverse affect on this Agreement or the transactions contemplated by this Agreement.

16.8 Inducements.

Minacs represents and warrants to Capital One that it has not violated any Applicable Laws or regulations or any Capital One policies of which Minacs has been given notice regarding the offering of unlawful inducements in connection with this Agreement. If at any time during the Term, Capital One determines that the foregoing warranty is inaccurate, then, in addition to any other rights Capital One may have at law or in equity, Capital One may terminate this Agreement for cause without affording Minacs an opportunity to cure.

16.9 Viruses.

- (a) Minacs represents and covenants that it shall use Commercially Reasonable Efforts to avoid the coding or introduction of Viruses into the systems used to provide the Services. In the event a Virus is found to have been introduced into the Capital One systems through Minacs failure to provide Commercially Reasonable Efforts, Minacs shall use Commercially Reasonable Efforts at no additional charge to assist Capital One in reducing the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, to assist Capital One to the same extent to mitigate and restore such losses. In the event a Virus is found to have been introduced into the Minacs systems used to provide the Services through Minacs failure to provide Commercially Reasonable Efforts, Minacs shall remedy the effects of the Virus and, if the Virus causes a loss of operational efficiency or loss of data, mitigate and restore such losses. In the event that a Virus is found to have been introduced into the Minacs systems through Capital One and Commercially Reasonable Efforts have been extended by Minacs, Capital One shall use Commercially Reasonable Efforts at no expense to Minacs to assist Minacs in reducing the effects of the Virus and, if the Virus causes a

loss of operational efficiency or loss of data, to assist Minacs to the same extend to mitigate and restore such losses.

16.10 Disabling Code.

Minacs represents and covenants that, without the prior consent of Capital One (which may be arbitrarily withheld), Minacs shall not insert into the systems used to perform the Services (including any systems made available to Minacs by Capital One) any code that would have the effect of disabling or otherwise shutting down all or any portion of the Services. Minacs further represents and covenants that, with respect to any disabling code that may be part of the Software, Minacs shall not invoke such disabling code at any time, including upon expiration or termination of this Agreement for any reason, without Capital One's prior consent.

16.11 Disclaimers.

OTHER THAN AS PROVIDED IN THIS MASTER SERVICES AGREEMENT AND ANY STATEMENTS OF WORK, THERE ARE NO EXPRESS WARRANTIES AND THERE ARE NO IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

17. INSURANCE

17.1 Insurance Coverage.

Minacs represents that as of the Effective Date it has, and agrees that it shall maintain in force during the Term, at least the following insurance coverages:

(a) Worker's Compensation Insurance and other similar social insurance in accordance with the laws of the country, state or territory exercising jurisdiction over the employee with minimum limits required by law.

(b) Employer's Liability Insurance, including coverage for occupational injury, illness and disease, with minimum limits per employee and per event of \$1,000,000.

(c) Commercial General Liability Insurance, including Products Liability, Completed Operations, Premises Operations, Personal Injury, and Contractual and Broad Form Property Damage Liability coverages, on an occurrence basis, with a minimum per occurrence combined single limit of \$1,000,000 and a minimum aggregate combined single limit of \$2,000,000. This coverage shall be endorsed to name Capital One and its Affiliates as additional insureds.

(d) Comprehensive Automotive Liability Insurance covering use of all owned, non-owned and hired automobiles used to perform the Services or on Capital One's property for purposes related to the Services for bodily injury, property damage, uninsured motorist and underinsured motorist liability with a minimum combined single limit per accident of \$1,000,000 or the minimum limit required by law, whichever limit is greater. This coverage shall be endorsed to name Capital One and its Affiliates

as additional insureds.

(e) Commercial Crime Insurance, including blanket coverage for Employee Dishonesty and Computer Fraud, for loss or damage arising out of or in connection with any fraudulent or dishonest acts, including wrongful conversion of (i) Capital One's, or any of its Affiliates or Users', property, (ii) the property of any customers or patrons of such persons or (iii) the property and funds of others in Minacs' possession, care, custody or control, committed by Minacs' employees, agents or Subcontractors, acting alone or in collusion with others, with a minimum limit per event of \$4,000,000. This coverage shall be endorsed to name Capital One and its Affiliates as loss payees.

(f) Professional Liability Insurance for Errors and Omissions covering liability for loss or damage due to an act, error, omission, or negligence, with a minimum limit per event of \$5,000,000.

(g) Excess or Umbrella Liability Insurance with a minimum limit of \$10,000,000 in excess of the insurance coverage described in Sections (b), (c), and (d) above.

(h) Electronic Data Processing Insurance providing coverage for all risks of loss or damage to equipment, data, media and valuable papers that are in the possession, care, custody or control of Minacs pursuant to this Agreement. Such insurance shall include Extra Expense and Business Income coverage and have a minimum limit adequate to cover such risks on a replacement costs basis.

(i) Property Insurance, including Extra Expense and Business Income coverage, for all risks of physical loss or damage to buildings, business personal property or other property that is in the possession, care, custody or control of Minacs pursuant to this Agreement. Such insurance shall have a minimum limit adequate to cover risks on a replacement costs basis.

17.2 Insurance Provisions.

(a) Minacs shall cause its insurers to waive all rights of subrogation against Capital One, and its officers, directors and employees and any insured-versus-insured exclusion regarding Capital One.

(b) The amounts of insurance required above may be satisfied by Minacs purchasing primary coverage in the amounts specified or by Minacs buying a separate excess umbrella liability policy together with lower limit primary underlying coverage. The structure of the coverage is at Minacs' option, so long as the total amount of insurance meets Capital One's requirements.

(c) The insurance coverages under Sections 17.1(a) through 17.1(h) shall be primary, and all coverage shall be non-contributing with respect to any other insurance or self-insurance that may be maintained by Capital One. The insurance coverage under Sections 17.1(a), (b), (c), (d) and (g) shall be written on an occurrence form basis. If any other coverage is written on a claims-made basis, it shall have a retroactive date no earlier than the Effective Date and, notwithstanding the termination

of this Agreement, either directly or through 'tail' coverage shall be maintained for a period of at least two (2) years following completion of the Term, or it shall allow for reporting of claims until the later of two (2) years after the Term or the period of the applicable limitations of actions has expired.

(d) Minacs shall cause its insurers to name Capital One Financial Corporation, the Capital One Financial Corporation Affiliates and their respective directors, officers, employees, agents, successors, and permitted assigns, as Additional Insureds on the insurance coverages under Sections 17.1 (b), (c), (d) and (g).

(e) Minacs shall cause its insurers to issue certificates of insurance evidencing that the coverages and policy endorsements required under this Agreement are maintained in force. Minacs shall require its insurers to provide Capital One not less than thirty (30) days' written notice prior to any adverse modification, cancellation, or non-renewal of the policies. The insurers selected by Minacs shall be of good standing and authorized to conduct business in the jurisdictions in which Services are to be performed. When the policy is issued each such insurer shall have at least an A.M. Best rating of A- IX and replacement coverage shall be sought if the insurer's rating goes below A- VIII.

(f) Minacs shall assure that all Approved Subcontractors maintain insurance coverages as specified in this Article 17 naming Minacs as an additional insured or loss payee where relevant.

(g) In the case of loss or damage or other event that requires notice or other action under the terms of any insurance coverage specified in this Article 17, Minacs shall be solely responsible to take such action. Minacs shall provide Capital One with contemporaneous notice and with such other information as Capital One may request regarding the event.

(h) Minacs' obligation to maintain insurance coverage shall be in addition to, and not in substitution for, Minacs' other obligations hereunder and Minacs' liability to Capital One for any breach of an obligation under this Agreement which is subject to insurance hereunder shall not be limited to the amount of coverage required hereunder.

17.3 Risk of Loss.

Each party shall be responsible for risk of loss of, and damage to, any Equipment, Software or other materials in its possession or under its control unless otherwise set forth herein.

18. INDEMNITIES

18.1 Indemnity by Minacs.

Minacs shall indemnify, defend and hold harmless Capital One and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all Losses and threatened Losses arising from, in connection with,

or based on allegations whenever made of, any of the following:

(a) Any third-party claim of infringement or misappropriation of any Intellectual Property Rights, alleged to have occurred because of systems or other resources provided by Minacs to Capital One, or based upon performance of the Services by Minacs;

(b) Any third-party claim for amounts assessed against Capital One but for which Minacs is responsible pursuant to Section 12.3;

(c) Any claim or action by a Subcontractor of Minacs arising out of Minacs' breach or violation of Minacs' subcontracting arrangements;

(d) Any third party claim arising out of or in connection with Minacs' breach of its obligations under Section 15, including with respect to Applicable Laws governing the collection of debt or consumer credit reporting;

(e) Any claim arising out of or in connection with any fraudulent or dishonest acts committed by Minacs' employees, agents or Subcontractors, acting alone or in collusion with others, including wrongful conversion of (i) Capital One's, or any of its Affiliates or Users', property, (ii) the property of any customers or patrons of such persons and (iii) the property of others in Minacs' possession, care, custody or control;

(f) Any third-party claim arising out of or in connection with Minacs' acts or omissions in performance of the Services; and

(g) Any claim of a debtor for breach of the debtor's Account agreement with Capital One resulting from an act or omission of Minacs.

18.2 Indemnity by Capital One.

Capital One agrees to indemnify, defend and hold harmless Minacs and its Affiliates and their respective officers, directors, employees, agents, successors and assigns from any and all Losses and threatened Losses arising from, in connection with, or based on allegations whenever made, of any third-party claim of infringement or misappropriation of any Intellectual Property Rights, alleged to have occurred because of systems or other resources (including Capital One Assets) provided to Minacs by Capital One; and

18.3 Additional Indemnities.

Each party agrees to indemnify, defend and hold harmless the other, and its Affiliates, officers, directors, employees, agents, successors, and assigns, from any and all Losses and threatened Losses arising from, in connection with, or based on allegations whenever made of, any of the following:

(a) the death or bodily injury of any agent, employee, customer, business invitee, or business visitor or other person caused by the tortious conduct of the indemnifying party;

(b) the damage, loss or destruction of any real or tangible personal property caused by the tortious conduct of the indemnifying party; and

(c) any claim, demand, charge, action, cause of action, or other proceeding resulting from an act or omission of the indemnifying party in its capacity as an employer of a person.

18.4 Indemnification Procedures.

With respect to any claim that is the subject of indemnification under this Article 18, the following procedures shall apply:

(a) Notice. Promptly after receipt by any entity entitled to indemnification under Sections 18.1 through 18.3 of notice of the assertion or the commencement of any action, proceeding or other claim by a third party in respect of which the indemnitee will seek indemnification pursuant to any such Section, the indemnitee shall promptly notify the indemnitor of such claim in writing. No failure to so notify an indemnitor shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages attributable to such failure. Within fifteen (15) days after receipt of notice from the indemnitee relating to any claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, the indemnitor shall notify the indemnitee in writing if the indemnitor acknowledges its indemnification obligation and elects to assume control of the defense and settlement of that claim (a "Notice of Election").

(b) Procedure Following Notice of Election. If the indemnitor delivers a Notice of Election relating to any claim within the required notice period, the indemnitor shall be entitled to have sole control over the defense and settlement of such claim; provided that (i) the indemnitee shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim; and (ii) the indemnitor shall obtain the prior written approval of the indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the indemnitor has delivered a Notice of Election relating to any claim in accordance with the preceding paragraph (and, in fact, diligently defends the claim), the indemnitor shall not be liable to the indemnitee for any legal expenses incurred by the indemnitee in connection with the defense of that claim. In addition, the indemnitor shall not be required to indemnify the indemnitee for any amount paid or payable by the indemnitee in the settlement of any claim for which the indemnitor has delivered a timely Notice of Election if such amount was agreed to without the consent of the indemnitor.

(c) Procedure Where No Notice of Election Is Delivered. If the indemnitor does not deliver a Notice of Election relating to a claim, or otherwise fails to acknowledge its indemnification obligation or to assume the defense of a claim, within the required notice period or fails to diligently defend the claim, the indemnitee may defend the claim in such manner as it may deem appropriate, at the cost, expense, and risk of the indemnitor, including payment of any judgment or award and the costs of settlement or compromise of the claim. The indemnitor shall promptly reimburse the indemnitee for all such costs and expenses, including payment of any judgment or award and the costs of settlement or compromise of the claim. If it is determined that

the indemnitor failed to defend a claim for which it was liable, the indemnitor shall not be entitled to challenge the amount of any settlement or compromise paid by the indemnitee.

18.5 Infringement.

If any Minacs-Provided Works or elements of the Developed Works that Minacs has rights, title and interest in to provide the Services becomes, or in Minacs' reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, in addition to indemnifying Capital One as provided in this Article 18 and to the other rights Capital One may have under this Agreement, Minacs shall:

- (a) promptly secure the right at Minacs' expense to continue using the item, or
- (b) if this cannot be accomplished with Commercially Reasonable Efforts, then at Minacs' expense, replace or modify the item to make it non-infringing or without misappropriation, provided that any such replacement or modification will not degrade the performance or quality of the affected component of the Services, or
- (c) if neither of the foregoing can be accomplished by Minacs with Commercially Reasonable Efforts, and only in such event, then remove the item from the Services, in which case the charges shall be equitably adjusted to reflect such removal (and if in Capital One's reasonable opinion such removal is material to all or any portion of the remaining Services, Capital One may terminate such portion of the affected Services or the entire Agreement, as the case may be, without liability).

18.6 Subrogation.

If an indemnitor shall be obligated to indemnify an indemnitee pursuant to this Article 18, the indemnitor shall, upon fulfillment of its obligations with respect to indemnification, including payment in full of all amounts due pursuant to its indemnification obligations, be subrogated to the rights of the indemnitee with respect to the claims to which such indemnification relates.

19. LIABILITY

19.1 Measure of Damages.

(a) UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY DAMAGES RESULTING FROM LOSS OF USE, DATA OR PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES)

(b) Notwithstanding the foregoing, and without limiting the scope of that which may constitute direct damages under Applicable Law, the following shall be considered direct damages and shall not be considered consequential damages to the

extent they result from a party's breach of its obligations in accordance with this Agreement: (i) costs of recreating or reloading any of Capital One's Data that is lost or damaged; (ii) commercially reasonable costs of implementing a workaround in respect of a failure to provide the Services; (iii) commercially reasonable costs of replacing lost or damaged Equipment and Software and materials with comparable Equipment, Software and materials; (iv) commercially reasonable costs and expenses incurred to correct errors in Software maintenance and enhancements provided as part of the Services, provided that Minacs uses best efforts to correct such errors; (v) commercially reasonable costs and expenses incurred to procure the Services from an alternate source; (vi) commercially reasonable costs and expenses incurred to restore good will with and resolve claims by Capital One's customers; and (vii) commercially reasonable time, overtime, or related expenses incurred by either party or its Affiliates, including overhead allocations for employees, wages and salaries of additional personnel, travel expenses, telecommunication and similar charges incurred due to the breach of its obligations provided that such costs and expenses are provided to the other party in advance of the work being performed.

(c) Each party shall have a duty to mitigate damages for which the other party is responsible.

(d) Neither party shall be liable to the other party for any direct damages arising out of or relating to its performance under this Agreement, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions, in an amount not to exceed the greater of (i) the amounts paid to Minacs under this Agreement in the twelve (12) months preceding the claim, or six million five hundred thousand (6,500,000) dollars USD.

(e) Exclusions. The exclusions of liability set forth in Section 19.1 and Section 19.2 are not applicable to: (i) indemnification claims as set forth in Section 18.1, 18.2 18.3 and Schedule D, Background Checks; (ii) liability resulting from the gross negligence or willful misconduct of a party; (iii) Minacs' liability under Section 14.1, 14.2, 14.3(a), 14.4; and (iv) Capital One's liability under Section 12.1, 12.2, 12.3, 14.3(b), and 14.4.

19.2 Force Majeure.

(a) Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, pestilence, civil disorders, governmental orders under the Defense Production Act, or any other similar cause beyond the reasonable control of such party; provided, however, that the non-performing party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and could not reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means (including, with respect to Minacs, by Minacs meeting its obligations for performing any disaster recovery services to be provided under this Agreement) (each such event, a "Force Majeure Event"). In no event shall the following events, in and of themselves and without a causal relationship with one of the events described above, be deemed Force Majeure Events: the non-availability of voice or data networks for any reason, electricity

or power failures, labor disputes or strikes, transit strikes and any degradation in performance or failure of any piece of Equipment or Software.

(b) For any Force Majeure Event the non-performing party shall be excused from further performance or observance of the obligations so affected for as long as such circumstances prevail and such party continues to use Commercially Reasonable Efforts to recommence performance or observance without delay. The party so delayed in its performance shall immediately notify the party to whom performance is due by telephone (to be confirmed in writing within twenty-four (24) hours of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

(c) If any Force Majeure Event substantially prevents, hinders or delays performance of functions reasonably identified by Capital One as critical for more than three (3) consecutive operating days, then Capital One may exercise any one or more of the following options:

(i) Capital One may procure such Services from an alternate source, and Minacs shall be liable for payment of reasonable start up Services from the alternate source;

(ii) Capital One may terminate the affected Statement of Work(s) without liability as of a date specified by Capital One in a notice of termination to Minacs and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; and

(iii) Minacs shall not have the right to any additional payments from Capital One as a result of any Force Majeure Event.

20. DISPUTE RESOLUTION

Any dispute between the parties arising out of or relating to this Agreement, including with respect to the interpretation of any provision of this Agreement and with respect to the performance by Minacs or Capital One, shall be resolved as provided in this Article 20.

20.1 Informal/Formal Dispute Resolution.

(a) The parties initially shall attempt to resolve their dispute informally, in accordance with the following:

(i) Upon the notice by a party to the other party of a dispute (“Dispute Date”), each party shall appoint a designated representative who does not devote substantially all of his or her time to performance under this Agreement, whose task it will be to meet for the purpose of endeavoring to resolve such dispute.

(ii) The designated representatives shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. The representatives shall

discuss the problem and attempt to resolve the dispute without the necessity of any formal proceeding.

(iii) During the course of discussion, all reasonable requests made by a party to the other for non-legally privileged information reasonably related to this Agreement shall be honored in order that a party may be fully advised of the other's position.

(iv) The specific format for the discussions shall be left to the discretion of the designated representatives.

(b) Formal proceedings for the resolution of a dispute may be commenced by either party upon the earlier to occur of any of the following:

(i) the representatives designated in Section 20.1(a) mutually conclude that amicable resolution through continued negotiation of the matter does not appear likely;

(ii) thirty (30) days after the Dispute Date (this period shall be deemed to run notwithstanding any claim that the process described in this Section 20.1 was not followed or completed); or

(iii) commencement of litigation is permissible pursuant to Section 20.3.

20.2 Arbitration.

If either party elects to commence formal dispute resolution pursuant to Section 20.1(b)(i) or Section 20.1(b)(ii), then such dispute must be submitted to mandatory and binding arbitration by the electing party (the "Disputing Party") pursuant to the following conditions :

(a) the place of arbitration will be Toronto, Ontario.

(b) the governing law, both substantive and procedural, will be that of Ontario.

(c) the language of the arbitration proceedings will be English.

(d) the arbitration will be conducted under the rules and procedures in the Ontario *International Commercial Arbitration Act, 1990* and the *UNCITRAL Model Law on International Commercial Arbitration* (the "Model Law") attached as a Schedule hereto.

(e) the arbitration may be commenced by either party giving written notice (as provided in this MSA) to the other party of its wish to submit the issue to arbitration and requiring the other party's participation in the appointment of an arbitrator under this Agreement

(f) there will be one arbitrator chosen by and acceptable to the

parties, who is qualified by education and training to pass upon the particular matter to be decided. If the parties hereto cannot agree on a suitable arbitrator within fifteen (15) days of the notice specified in section (e) above, then either party may apply to the court to appoint one pursuant to Article 11 of the *Model Law*.

(g) the arbitration award will be final and binding between the parties hereto and recognized and enforced and there will be no recourse against the award except as provided for by Article 34 of the Model Law.

20.3 Litigation.

(a) Notwithstanding Section 20.2, a party may also initiate litigation in the courts only if such action is necessary to avoid the expiration of an applicable limitations period or to preserve a superior position with respect to creditors (other than a party), or a party makes a good faith determination that a breach of the Agreement by the other party is such that an interim or interlocutory injunctive relief is necessary in order to avoid irreparable harm, including but not limited to the matters as follow:

(i) Each of the parties acknowledges that the other party would be irreparably injured and damages at law would not be adequate compensation for such injury if any of the provisions of Articles 7, 10, 14, and 15 or of Section 21.8 were not performed in accordance with their specific terms or were otherwise breached. Accordingly, in addition to all other remedies, the party seeking to enforce such provisions against the breaching party shall be entitled to seek and obtain injunctive relief, without posting bond, and the breaching party shall not oppose the entry of an appropriate order restraining any such breach of its obligations under such provisions, compelling performance by such party of its obligations under such provisions, or restraining such party from any further breaches (or attempted or threatened breaches) of its obligations under such provisions.

(ii) Minacs acknowledges that if Minacs breaches Minacs' obligations in Section 20.4, Capital One would be irreparably injured and damages at law would not be adequate compensation for such injury. Accordingly, in addition to all other remedies, Capital One shall be entitled to seek and obtain injunctive relief, without posting security, and Minacs shall not oppose the entry of an appropriate order restraining any such breach by Minacs, compelling performance by Minacs of its obligations, or restraining Minacs from any further breaches (or attempted or threatened breaches) of its obligations under such provision.

(iii) For all permitted litigation which may arise with respect to this Agreement, the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction and venue (and waive any claim of *forum non conveniens* and any objections as to venue) of the Ontario Superior Court of Justice, in connection with any action, suit or proceeding arising out of or relating to this Agreement. For the purposes of enforcement of a court order or orders arising out of the aforementioned litigation or the Arbitral award, the parties further consent to the jurisdiction of any provincial, state or federal court (as the case may be) located within a district that encompasses assets or receivables of a party against which a judgment has been rendered for the enforcement of such judgment or award against the assets of such party. To the extent permitted by

law, each party waives personal service of any originating or non-originating court process and agrees that the service thereof may be made by certified or registered mail directed to such party at such party's address provided for purposes of notices hereunder.

(b) TO THE EXTENT AVAILABLE FOR LITIGATION PERMITTED HEREIN, THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING DIRECTLY OR INDIRECTLY OUT OF, RELATED TO, OR IN ANY WAY CONNECTED WITH, THE PERFORMANCE OR BREACH OF THIS AGREEMENT, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED AMONG THEM. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court (including, without limitation, contract claims, tort claims, breach of duty claims, and all other common law and statutory claims). THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THE WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT, AND RELATED DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. In the event of permissible litigation, this Agreement may be filed as a consent to a trial by the judge alone.

20.4 Continued Performance.

Except as otherwise directed by the other party, each party shall continue performing its obligations under this Agreement while a dispute is being resolved except to the extent the issue in dispute precludes performance (dispute over payment shall not be deemed to preclude performance), and without limiting either party's right to terminate this Agreement as provided in Article 21.

20.5 Governing Law.

This Agreement will be governed by the laws of the Province of Ontario, and the laws of Canada applicable therein, without regard to its conflict of laws principles.

21. TERMINATION

21.1 Termination for Cause.

(a) If Minacs:

(i) commits a material breach of this Agreement that is capable of being cured within thirty (30) days after notice of breach from Capital One to Minacs, and is not cured in such thirty (30) day period;

(ii) commits a material breach of this Agreement that is not capable of being cured within thirty (30) days after notice of breach from Capital One to Minacs but is capable of being cured within sixty (60) days after such notice and fails to (A) proceed promptly and diligently to correct the breach, (B) develop within thirty (30) days after such notice a complete plan for curing the breach, and (C) actually cure the

breach within sixty (60) days after such notice;

(iii) commits a material breach of this Agreement that is not subject to cure with due diligence within sixty (60) days after notice of breach from Capital One to Minacs;

(iv) commits numerous breaches of its duties or obligations (whether or not individually material) which collectively constitute a material breach of this Agreement;

(v) breaches its obligations under Section 14.3;

(vi) commits fraud or willful misconduct, is grossly negligent, or misappropriates (A) Capital One's, or any of its Affiliates or the Users', property, (B) the property or assets of any customers or patrons of such persons and (C) the property and funds of others in Minacs' possession, care, custody or control; or

(vii) fails to materially comply with an Applicable Law or fails to comply with an Applicable Law that has a material effect on Minacs' ability to provide the Services;

then Capital One may, by giving notice to Minacs, terminate this Agreement, in whole or in part, without liability as of a date specified in the notice of termination. Any termination by Capital One for breach shall be without prejudice as to Capital One's other rights resulting therefrom.

(b) If Capital One

(i) fails to pay Minacs when due undisputed charges totaling at least one (1) month's portion of such charges under a Statement of Work and fails to make such payment within thirty (30) days after notice from Minacs of the failure to make such payment, Minacs may by giving notice to Capital One terminate the Statement of Work as of a date specified in the notice of termination which is at least thirty (30) days thereafter and Capital One shall immediately make restitution of all outstanding and undisputed payment amounts, regardless of the number of days outstanding.

(ii) commits a material breach of this Agreement, save for 21.1(b)(i), that is not cured within ninety (90) days after notice of such breach from Minacs to Capital One;

(iii) commits fraud or willful misconduct related to the provision of Services hereunder, is grossly negligent in relation to the provision of Services hereunder, or misappropriates Minacs', or any of its Affiliates or Subcontractor's property;

then Minacs may, by giving notice to Capital One, terminate this Agreement, in whole or in part, without liability as of a date specified in the notice of termination. Any termination by Minacs for breach shall be without prejudice as to Minacs' other rights resulting therefrom.

21.2 Termination for Convenience.

Capital One may terminate this Agreement, in whole or in part, for convenience and without cause at any time by giving Minacs ninety (90) days advance notice designating the termination date or as otherwise set out in the Statement of Work. In such event Capital One shall be; (a) responsible for adherence to the ramp-down schedule set out in the applicable SOW(s); and (b) liable to pay to Minacs only the charges for the terminated Services performed up to the date of termination unless otherwise set out in the applicable SOW(s). If a purported termination for cause by Capital One under Section 21.1 is ultimately determined not to have been properly a termination for cause, then such termination by Capital One shall instead be deemed to be a termination for convenience under this Section 21.2.

21.3 Termination Upon Change of Control of Minacs.

If (a) another entity, directly or indirectly, in a single transaction or series of related transactions, acquires either Control of Minacs or all or substantially all of the assets of Minacs, or (b) Minacs is merged with or into another entity, then Capital One may terminate this Agreement, in whole or in part and without liability.

21.4 Termination for Non-Compliance with Regulatory Changes.

Capital One may terminate this Agreement, in whole or in part and without liability, upon written notice to Minacs in the event that a change in Applicable Law, either (a) requires a material change in the Services or manner in which the Services are then provided; or (b) creates a political, economic or legal climate in which the risk allocations and other protections of this Agreement no longer satisfy Capital One's internal objectives regarding the same. Notwithstanding the foregoing, Capital One shall be responsible for adherence to the ramp-down schedule set out in the Applicable Statement of Work or any commitments for early termination, if any.

21.5 Termination Due To Minacs' Financial Circumstances.

(a) Either party may provide written notice to the other party to terminate this Agreement in whole or in part and without liability as of the date specified in such notice of termination if the other party (i) files a petition in bankruptcy; (ii) has an involuntary petition in bankruptcy filed against it which is not challenged within twenty (20) days and dismissed within sixty (60) days; (iii) becomes insolvent, (iv) makes a general assignment for the benefit of creditors; (v) admits in writing its inability to pay its debts as they mature; (vi) has a receiver appointed for its assets; (vi) has any significant portion of its assets attached; or (vii) experiences a material negative change in its net assets (i.e., total assets minus total liabilities).

(b) If:

(i) either Moody's Investors Service, Standard & Poors, or Dun & Bradstreet lower Minacs' credit rating from the rating as of the Effective Date by more than two (2) steps; or

(ii) Capital One otherwise has reasonable cause to doubt Minacs' financial ability to perform its obligations, and within ten (10) Business Days after Capital One's request Minacs has not provided adequate written assurance that Minacs will be able to perform its obligations in a timely fashion in accordance with the Agreement,

then Capital One may by giving written notice to Minacs, terminate this Agreement in whole or in part and without liability as of the date specified in such notice of termination. Minacs shall notify Capital One as soon as possible if one of the circumstances in Section (a) or (b) above occurs or is likely to occur.

21.6 Termination Adjustments.

If Capital One chooses to terminate this Agreement in part, the charges payable under the affected Statement(s) of Work will be equitably reduced to reflect those Services that are terminated.

21.7 Extension of Termination/Expiration Effective Date.

Capital One may extend the effective date of termination/expiration one or more times as it elects in its discretion, provided that the total of all such extensions shall not exceed one hundred eighty (180) days after the original effective date of such termination/expiration. For any notice or notices of such extensions provided to Minacs less than thirty (30) days before the then-scheduled date of termination/expiration, Capital One shall also reimburse Minacs for additional Out-of-Pocket Expenses caused by such notices.

21.8 Termination/Expiration Assistance.

(a) Beginning three (3) months prior to expiration of each Statement of Work and this Agreement, or on such earlier date as Capital One may request, or beginning upon a notice of termination (including notice of termination based upon default by Capital One) or of non-renewal of a Statement of Work or this Agreement or notice of reduction or removal of any of the Services, and continuing through the effective date of expiration or, if applicable, of termination of such Statement of Work or this Agreement (as such effective date may be extended pursuant to Section 21.7) or reduction or removal of Services, Minacs shall provide to Capital One, or at Capital One's request to Capital One's designee, the reasonable termination/expiration assistance requested by Capital One to allow the affected Services to continue without interruption or adverse effect and to facilitate the orderly transfer of such Services to Capital One or its designee (including a competitor of Minacs) ("Termination/Expiration Assistance"). Termination/Expiration Assistance shall include the following to the extent identified as applicable in the affected Statement of Work:

(b) Minacs shall assist Capital One, or at Capital One's request in accordance with the confidentiality provision set forth herein, Capital One's designee, in converting all Capital One data files (including imaging, stored and historical files) from

Minacs' systems and formats to appropriate transfer format(s). In the event that such transfer formats differ between Minacs and the designee, such commercially reasonable costs associated with the transfer shall be the responsibility of Capital One upon its prior written approval.

(i) If Capital One is entitled pursuant to this Agreement to a sublicense or other right to Use any Works owned or licensed by Minacs, Minacs shall provide such sublicense or other right.

(ii) Such other assistance as may be specified in the Statement(s) of Work for the corresponding Services.

(c) For up to nine (9) months following the effective date of termination expiration, or reduction or removal of Services under a Statement of Work or this Agreement, at Capital One's request Minacs shall continue to provide Termination/Expiration Assistance. Actions by Minacs under this Section 21.8(c) shall be subject to the other provisions of this Agreement. Charges for such activities by Minacs shall be at market-competitive rates.

22. GENERAL

22.1 Binding Nature and Assignment.

This Agreement shall be binding on the parties hereto and their respective successors and assigns. Neither party may, or shall have the power to, assign its rights under this Agreement or subject to Section 9.4, delegate its obligations hereunder, without the prior consent of the other, except that Capital One acting reasonably may assign its rights and delegate its obligations under this Agreement without the approval of Minacs to: (a) an entity which acquires all or substantially all of the assets of Capital One; (b) to any Affiliate, or (c) to the successor in a merger, acquisition or liquidation of Capital One; provided, however, that in no event shall such assignment relieve Capital One of its obligations under this Agreement. Subject to the foregoing, any assignment by operation of law, order of any court, or pursuant to any plan of merger, consolidation or liquidation, shall be deemed an assignment for which prior consent is required and any assignment made without any such consent shall be void and of no effect as between the parties.

22.2 Mutually Negotiated.

The terms and conditions of this Agreement (including any perceived ambiguity herein) shall not be construed in favor of, or against, either party by reason of the extent to which any party or its professional advisors participated in the preparation of the original or any further drafts of this Agreement.

22.3 Notices.

All notices, requests, demands and determinations under this Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given:

- (i) when delivered personally (against a signed receipt),
- (ii) on the designated day of delivery (other than a weekend or US Federal government holiday) after being timely given to an express overnight courier with a reliable system for tracking delivery,
- (iii) on the next Business Day when sent by confirmed facsimile with a copy sent by another means specified in this Section 22.3,

and addressed as follows:

In the case of Capital One:

Capital One Service, Inc.
Attn: Ryan Scouller
M.S. 93006-0100
5650 Yonge Street
North York, ON M2M 4G3
Canada.

With copies to:

Capital One Services, Inc.
Attn: Mr. Wylie Schwieder
M.S. 12073-0200
15000 Capital One Drive
Richmond, Virginia 23238
U.S.A
Fax: 804-284-3564

Capital One Services, Inc.
ATTN: Corporate Counsel
Shahin Rezai, Esq.
M.S. 19050-1204
1680 Capital One Drive
McLean, VA 22102
Fax: 703-720-2221

Capital One Services, Inc.
ATTN: Contract Management Services
M.S. 12017-0358
140 East Shore Drive
Glen Allen, Virginia 23059
Fax: 804-290-6907

In the case of Minacs:

Minacs Worldwide Inc.
Att: Director, Client Contracts
180 Duncan Mill Road

Toronto, ON M3B 1Z6
Fax. 416 380 3829
Email: legalnotices@minacs.com

Either party may from time to time change its address or designee for notification purposes by giving the other prior notice of the new address or designee and the date upon which it will become effective.

22.4 Counterparts.

This Agreement may be executed in several counterparts, each of which shall be considered an original but all of which taken together shall constitute but one and the same agreement.

22.5 Rules of Interpretation.

(a) Terms other than those defined within this Agreement shall be given their plain English meaning, and those terms, acronyms and phrases known in the information technology, debt collections and recovery industries (as applicable) and other applicable business contexts shall be interpreted in accordance with their generally known meanings in those industries or other business contexts.

(b) Unless the context otherwise requires, words importing the singular include the plural and vice-versa, and words importing gender include both genders. Unless the context otherwise requires to “persons” includes individual natural persons and juridical legal entities.

(c) References to articles, sections, and paragraphs shall be references to sections and paragraphs of this Agreement, unless otherwise specifically stated.

(d) The section headings in this Agreement are intended to be for reference purposes only and shall not enter into the interpretation or construction of this Agreement or be construed to modify or restrict any of the terms or provisions of this Agreement.

(e) Where there is similar, but not identical, construction of phrases, sentences, or clauses of this Agreement no implication is made that a “negative pregnant” is intended and they shall each be construed separately, in accordance with their plain meaning.

(f) References to money or dollar amounts shall mean US Dollars unless specified otherwise.

(g) References to days, months and years shall mean calendar days, months and years unless specified otherwise.

22.6 Relationship of Parties.

In furnishing the Services Minacs is acting as an independent contractor, and

Minacs has the sole right and obligation to supervise, manage, contract, direct, procure, perform or cause to be performed, all work to be performed by Minacs under this Agreement. No contract of agency and no joint venture is intended to be created hereby. Minacs is not an agent of Capital One and has no authority to represent Capital One as to any matters, except as expressly authorized in this Agreement. None of Minacs' employees shall be deemed employees of Capital One and Minacs shall be responsible for reporting and payment of all wages, unemployment, social security and other payroll taxes, including contributions from them when required by law. Capital One does not and shall not be deemed to have actual, potential, or any other control over Minacs or its employees.

22.7 Non-Exclusivity.

This Agreement is non-exclusive and shall not be deemed to be a requirements contract. Capital One shall be free without obligation to Minacs to perform itself, or acquire from third parties, services similar or identical to the Services provided hereunder.

22.8 Severability.

If any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held invalid by a competent authority, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect.

22.9 Consents and Approval.

Except where expressly provided as being in the discretion of a party, where approval, acceptance, consent, or similar action by either party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a party under this Agreement shall not relieve the other party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent. Capital One's representatives may not be fully familiar with, or necessarily insist at all times on the full and complete performance with, the terms of the Agreement.

22.10 Waiver of Default; Cumulative Remedies.

(a) A delay or omission by either party to exercise any right or power under this Agreement shall not be construed to be a waiver thereof. A waiver by either of the parties of (i) any right, (ii) any of the covenants to be performed by the other, or (iii) any breach of the Agreement shall not be construed to be a waiver of any right, obligation or succeeding breach thereof. Such a waiver shall be valid only if granted in writing and signed by an authorized representative of the party against which such waiver or discharge is sought to be enforced.

(b) Except as otherwise expressly provided herein, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law or in equity.

22.11 Survival.

Any provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement shall survive termination or expiration of this Agreement and continue in full force and effect.

22.12 Public Disclosures.

(a) All media releases, public announcements and public disclosures by either party relating to this Agreement or the subject matter of this Agreement, including promotional or marketing material (but not including announcements intended solely for internal distribution or disclosures to the extent required to meet legal or regulatory requirements beyond the reasonable control of the disclosing party) shall be coordinated with and approved by the other party prior to release.

(b) If a party determines that disclosure is required to meet legal or regulatory requirements it shall promptly inform the other party and coordinate such disclosure with the other party. The disclosing party shall limit disclosure to that which is necessary and shall give due consideration to comments the other party and its counsel may provide regarding the nature of the disclosure.

22.13 Service Marks.

The parties shall not use the name, service marks, or trademarks of the other party. Minacs' use of scripts, form letters and other communications to third parties, are subject to Capital One's prior consent (which may be arbitrarily withheld and if granted revoked).

22.14 Third Party Beneficiaries.

Except as provided in Article 18, this Agreement is entered into solely between, and may be enforced only by, Capital One and Minacs, and this Agreement shall not be deemed to create any rights in third parties, including suppliers and customers of a party, or to create any obligations of a party to any such third parties.

22.15 Non-solicitation of Employees.

From the Effective Date until six (6) months after termination of this Agreement neither party shall directly or indirectly solicit or seek to procure (other than by general advertising), without the prior consent of the other party, (i) in the case of Capital One, the employment of Minacs' employees engaged in the provision of the Services during the period they are so engaged and for six (6) months thereafter, and (ii) in the case of Minacs, Capital One's employees engaged in the performance of Capital One's

obligations hereunder or the receipt of Services hereunder during the period they are so engaged and for six (6) months thereafter.

22.16 Covenant of Good Faith.

Each party, in its respective dealings with the other party under or in connection with this Agreement, shall act in good faith and in a reasonable manner.

22.17 Entire Agreement; Amendment.

(a) This Agreement, including any Schedules and Exhibits referenced herein and attached hereto, and any Statements of Work executed hereunder, each of which is hereby incorporated into this Agreement for all purposes, constitutes the entire agreement between the parties with respect to the subject matter contained in this Agreement and supersedes all prior correspondence, discussions, agreements, and understandings entered into between the parties, whether written or oral, with respect to such subject matter (the "Pre-Existing Agreement(s)"). Confidential Information (as defined in the Pre-Existing Agreement) disclosed by one party to the other prior to the Effective Date that was protected under the terms of the Pre-Existing Agreement at the time of such disclosure shall be deemed the Confidential Information of the disclosing party under this Agreement.

(b) The rights and responsibilities of the parties, and any claims arising, on and after the Effective Date shall be defined solely by this Agreement; the rights and responsibilities of the parties and any claims arising prior to the Effective Date shall be defined solely by the Pre-Existing Agreement(s).

(c) No change to this Agreement (including any Statement of Work) shall be valid unless in writing and signed by authorized representatives of both parties. In addition, each such change must be submitted to Capital One legal for review and approval. Any such change for which such approval has not been obtained shall be voidable at Capital One's election.

22.18 Order of Precedence.

(a) If there is a conflict between the provisions of these Articles 1 through 22, the Schedules attached hereto, any Exhibits to those Schedules, then (i) the provisions of these Articles 1 through 22 shall take precedence over the Schedules attached hereto; and (ii) any Exhibits to those Schedules and the Schedules attached hereto shall take precedence over the Exhibits to those Schedules. For the purposes of the foregoing an omission (whether deliberate or inadvertent) shall not by itself be construed as giving rise to any conflict.

(b) Notwithstanding the provisions of Section 22.18(a), if there is a conflict between the provisions of this Master Services Agreement and the provisions of a Statement of Work, the provisions of this Master Services Agreement shall take precedence over the provisions of the Statement of Work.

(c) Notwithstanding the provisions of Sections 22.18(a) and

22.18(b), any provision contained in a Statement of Work which expressly and specifically states that it shall be interpreted as taking precedence over the terms of this Master Services Agreement with respect to the provision of Services in a specified jurisdiction shall, for the purposes of that Statement of Work only, be interpreted to take precedence over the terms of the Master Services Agreement if, and to the extent; (i) such provision contained in the Statement of Work specifically references the provision of the Master Services Agreement it modifies; and (ii) such interpretation does not prejudice the rights of Capital One with respect to any other Statement of Work.

22.19 OSFI

(a) The Office of the Superintendent of Financial Institutions (“OSFI”) has the authority to exercise the contract rights of Capital One relating to audit and monitoring rights.

(b) The OSFI is authorized to access and make copies of any internal audit reports, subject to the OSFI agreeing to sign a confidentiality agreement.

(c) Minacs will exercise reasonable best efforts to seek the consent of external auditors for release to OSFI of any findings that address the Services being performed for Capital One, subject to OSFI agreeing to sign a confidentiality agreement.

(d) Capital One and Minacs shall maintain a disaster recovery plan in the event of an unforeseen emergency impacting the delivery of Services, which may be revised from time to time upon mutual agreement of the parties.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be signed and delivered by its duly authorized officer, all as of the Effective Date.

Minacs Worldwide, Inc.

By: _____

Name: _____

Title: _____

Capital One Services, Inc.

By: _____

Name: _____

Title: _____

Minacs Worldwide, Inc.

By: _____

Name: _____

Title: _____

Capital One Services, Inc.

By: _____

Name: _____

Title: _____

SCHEDULE B

MASTERCARD AND VISA COMPLIANCE

1. MASTERCARD COMPLIANCE

(a) Minacs understands and shall comply throughout the Term with the Rules of MasterCard International, Inc. ("MasterCard") (such rules the "MasterCard Rules") that are applicable to the Services, as such MasterCard Rules may be amended from time to time.

(b) Within five (5) days after the Effective Date, Minacs shall take the steps necessary to successfully obtain Mastercard's Site Data Protection ("SDP") certification. Minacs shall maintain this certification throughout the Term.

2. VISA COMPLIANCE

(a) Minacs understands and shall comply throughout the Term with the Visa USA., Inc. ("Visa") Operating Regulations (such regulations the "Visa Rules") that are applicable to the Services, as such Visa Rules may be amended from time to time.

(b) Within five (5) days after the Effective Date, Minacs shall take the steps necessary to successfully obtain Visa's Cardholder Information Security Program ("CISP") certification. Minacs shall maintain this certification throughout the Term.

(c) Minacs shall notify Capital One of any change in the registration information (e.g., principals, address, DBA Name) or relationship regarding: (a) an Independent Sales Organization ("ISO"); (b) a Third Party Servicer; or (c) an Independent Contractor (as such capitalized terms are defined in the Visa Rules) within two (2) Business Days of such change.

3. GENERAL

(a) Minacs shall promptly provide Capital One with the current address of each Minacs location at which Minacs performs any Services or portion thereof.

(b) Minacs shall not charge Capital One for any of its costs associated with any audit conducted by either MasterCard or Visa.

SCHEDULE C
PERSONAL INFORMATION PROTECTION

1. PURPOSE

Minacs shall provide to Capital One, the following Minacs' Personal Information for the sole purpose of creating system logon IDs that grant Minacs Personnel access to Capital One's computer systems in order to provide the Services to Capital One:

- (i) First name and last name;
- (ii) Home Telephone number;
- (iii) Home address including street name, city, province, country and postal code;
- (iv) Date of birth; and
- (v) Social Insurance Number

2. DEFINITIONS

Terms used within this Schedule C with initial capital letters shall have the respective meanings set forth herein or the Agreement.

2.1 **“Personal Information”** shall mean any information: (i) related to any identified or identifiable Minacs Personnel; and (ii) any other additional information of Minacs Personnel deemed as personal information under the applicable personal data protection laws, collected or created by Capital One as a result of the Agreement.

3. COLLECTION, USE AND DISCLOSURE

3.1 Capital One shall comply with the written instructions provided by Minacs to Capital One regarding protecting, collecting, disclosing, storing, transferring and otherwise processing Personal Information.

3.2 Capital One shall only collect Personal Information through an authorized Minacs designate.

3.3 Capital One may process and use the Personal Information only to perform its obligations solely for the purpose set out in Section 1 and may disclose Personal Information only to Capital One employees that have a need to know such Personal Information for the performance of such obligations and who are bound by confidentiality obligations not less restrictive than those contained in the Agreement.

3.4 Capital One may not disclose the Personal Information to any other third party, subject however to PIPEDA exceptions, even for their preservation, nor transfer the Personal Information to any third party, unless Capital One obtains the prior written approval of Minacs, or as otherwise may be required by law, in which case Capital One shall promptly notify Minacs of such requirement. Personal Information disclosed to a third party as a result of a PIPEDA exception shall be subject to the terms and conditions governing Confidential Information set forth in the Agreement. Moreover, Capital One shall advise Minacs of such disclosure in writing at privacy@minacs.com.

3.5 In the event Capital One receives a request for access to Personal Information regarding Minacs Personnel from a third party, Capital One must; (i) promptly advise the person

to make the request to Minacs; and (ii) provide the name or title and contact information of the Minacs designate.

3.6 Capital One shall inform Minacs immediately in writing at privacy@minacs.com if it becomes aware of any unauthorized use or disclosure of Personal Information by itself or others.

4. CORRECTION

4.1 In the event that Minacs is required to correct any Personal Information previously disclosed to the Capital One, Capital One shall correct the Personal Information within five (5) business days of receiving a written direction from Minacs.

4.2 In the event that Capital One receives a request for correction of Personal Information from a person other than Minacs, Capital One shall act in accordance with Section 3.5.

5. PROTECTION

5.1 Capital One shall use the same degree of care, but never less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication of the Personal Information, as it uses to protect its own information of similar nature, and shall implement any technical and organizational measures to protect Personal Information which are required by Applicable Law.

5.2 Capital One shall not copy or reproduce any Personal Information without the express written permission of Minacs, except as technically necessary in connection with the fulfillment of the purposes set forth in Section 1 of this Schedule C or its performance under the Agreement (e.g., duplication of data stocks as backup protection against loss of data).

5.3 Capital One warrants and represents to have in place commercially reasonable technical and organizational measures to protect Personal Information against; (a) accidental or unlawful destruction or loss; (b) unauthorized disclosure or access, in particular where processing involves the transmission of Personal Information over a network; (c) alteration, and (d) all other unlawful forms of processing; to ensure that; (i) unauthorized persons shall not have access to the data processing equipment used to process the Personal Information; (ii) any persons it authorizes to have access to the Personal Information shall respect and maintain the confidentiality and security of the Personal Information; and (iii) the measures and procedures that it uses shall be sufficient to comply with Applicable Law.

6. RETENTION AND DISPOSITION

6.1 Capital One shall not during the term of the Agreement, retain Personal Information unless Capital One has a specific business purpose to retain it, which purpose is set forth in or clearly implied by the Agreement.

6.2 Upon request by Minacs, Capital One shall deliver to Minacs any Personal Information in its possession and destroy any copies of Personal Information in Capital One's files, unless otherwise required under operation of law.

6.3 Capital One shall within thirty (30) days after termination of the Agreement, destroy all Personal Information or return it to Minacs or Minacs' designate, at Minacs option and Minacs' expense, unless otherwise required by Applicable Law.

7. GENERAL PROVISIONS

7.1 Minacs may, at any reasonable time and on reasonable notice to Capital One, inspect any Personal Information in the possession of Capital One or any of Capital One's information management policies or practices relevant to its management of Personal Information or its compliance with this Schedule and Capital One must permit, and provide reasonable assistance to, any such inspection. Any information or materials obtained by or provided to Capital One pursuant to this Section 7 shall at all times remain Capital One Confidential Information and be subject to the terms and conditions governing Capital One Confidential Information set forth in the Agreement.

7.2 Capital One shall

7.2.1 inform Minacs promptly in writing if Capital One is of the opinion that any instruction from Minacs violates the applicable personal data protection laws and/or regulations;

7.2.2 when collecting, disclosing, using, storing, transferring and otherwise processing Personal Information, adhere to all applicable export and personal data laws, regulations and rules; and

7.2.3 comply with such new requirement as soon as reasonably possible if a legal requirement or a Minacs' policy requirement mandates that a new requirement be effective immediately.

7.3 Notwithstanding the foregoing, nothing in this Schedule shall be construed as an exclusion of any laws, regulations or rules pertaining to protection of Personal Information or export regulations that must be observed by Capital One.

7.4 The obligation of Capital One in this Schedule shall survive the termination of the Agreement to the extent any Personal Information remains in its possession following termination.

**SCHEDULE D
BACKGROUND CHECKS**

1. As of the date hereof, all Minacs Personnel performing Services for Capital One shall undergo a criminal background check (the "Criminal Background Check") prior to providing any Services set forth in the Agreement, which Criminal Background Check (a) shall be based on the individual's social security number or social insurance number; (b) shall be national in scope, but performed on a state-by-state basis or province-by-province basis, and (c) shall cover the seven (7) years immediately prior to the date of the Criminal Background Check. The Criminal Background Check shall be conducted by a vendor approved in writing by Capital One. Any costs associated with the Criminal Background Check shall be the sole responsibility of Minacs. For Canadian citizens who are Minacs Personnel, use of the social insurance number is optional. In the event any Personnel who are also Canadian citizens object to providing their social insurance number, Minacs may use any other suitable personal information that can effectively establish identity to be used for the required background check.

2. Minacs hereby represents and warrants that the following Minacs Personnel shall not be permitted to perform Services for Capital One:

- (a) Any individual who refuses to submit to a Criminal Background Check; or
- (b) Any individual whose Criminal Background Check generates a criminal record reflecting convictions for crimes of dishonesty, or breach of trust including, but not limited to, theft, forgery and credit card misuse unless and until such information is proven to be incorrect or the conviction occurred in Juvenile Court; or under the Youth Criminal Justice Act (2002, c. 1), as the case may be.
- (c) Any individual whose Criminal Background Check generates a criminal record reflecting any felony conviction, unless and until such information is proven to be incorrect.

3. Minacs shall indemnify, defend and hold harmless Capital One, its Affiliates and their respective officers, directors, employees, successors and assigns, from and against any Losses arising out of, related to or incurred as a result of (a) any failure of Minacs to perform its obligations under this Schedule D; (b) any breach or inaccuracy of the representations and warranties made in this Schedule D; and (c) the negligence or willful misconduct of Minacs in the performance of its obligations under this Schedule.