

Master Service Agreement

This Master Services Agreement (hereinafter "Agreement") is entered into by and between Moruga, Inc., with its principal offices at 28150 N. Alma School Pkwy, Ste 103-468, Scottsdale, AZ 85262 (hereinafter "Service Provider"), and _____ (COMPANY LEGAL NAME), located at _____ (STREET ADDRESS, CITY, STATE ZIP) (hereinafter "Client"), and is made effective as of _____ (hereinafter "Effective Date"). For purposes of this Agreement, Client and Service Provider may be referred to individually as a "Party" and jointly as the "Parties."

Definitions. The following terms have the meanings set forth below.

"Agreement" means: (i) the online order that you submit or accept for the Services, (ii) any other written order (either in electronic or paper form) provided to you by Service Provider for signature that describes the type or types of services you are purchasing, and that is signed by you, either manually or electronically, and (iii) your use or provisioning of the Services.

"Business Day" means 8:00 a.m. - 5:00 p.m. Monday through Friday, United States Arizona time, excluding federal public holidays in the United States.

"Confidential Information" means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) unpublished prices and other terms of service, audit and security reports, product development plans, nonpublic information of the parties relating to its business activities or financial affairs, data center designs (including non-graphic information you may observe on a tour of a data center), server configuration designs, and other proprietary information or technology, and (ii) information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

"Customer Data" means all data, records, files, input materials, reports, forms and other such items that are received, stored, or transmitted using the Services.

"Hosted System" means a combination of hardware, software and networking elements that comprise an information technology system owned by Service Provider.

"Service Level Agreement" means (i) a guaranty or guaranties identified as a "Service Level Guaranty" or "Service Level Guaranties" in Appendix A.

"Services" means the software and services described in the Agreement and or the attached Appendix A.

"Support" means (i) the availability of live assistance twenty-four hours per day, seven days per week, year round by Service Provider employees with training and experience relative to the Services and (ii) any additional level of assistance offered by Service Provider for the specific Services ordered by you.

WHEREAS Service Provider is in the business of providing Carrier Services and Professional Services supporting Carrier products and services, Hosted Systems, IT infrastructure services (LAN/WAN, server migrations, disaster recovery, business continuity, system review and refresh/update, system design, delivery and installation), and managed services (partial or complete management of IT systems including vendor management) and information technology management and consulting services (hereinafter the "Services").

WHEREAS Client desires to engage Service Provider to provide the Services for and on behalf of Client.

NOW THEREFORE, the Parties do hereby agree as follows:

- 1. Term of Agreement.** Unless otherwise terminated as set forth herein, this Agreement shall remain in force for an initial term of _____ year(s) beginning on the Effective Date (hereinafter "Initial Term"). This Agreement will automatically renew for subsequent one-year terms (each a "Renewal Term") immediately following the end of the Initial Term and each subsequent

Renewal Term unless either Party gives the other Party sixty (60) days' prior written notice before the end of the Initial Term or any then current Renewal Term of their intent not to renew this Agreement. The Initial Term and any Renewal Terms shall be the "Term" of this Agreement.

- a. **Termination for Cause.** This Agreement may be terminated for cause by either Party upon thirty (30) days' written notice if the other Party:
- i. Fails to fulfill in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice from the other Party.
 - ii. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice from the other Party; and
 - iii. Terminates or suspends its business operations unless it is succeeded by a permitted assignee under the terms of this Agreement.
 - iv. Client's failure to pay for services as set forth per terms contained here in and/or all applicable Addenda, Appendices and/or Work Orders or Statement of Work; or Client(s) failure to perform any other obligation under this agreement within thirty (30) days after notice of nonpayment/nonperformance.
 - v. Acceptance of any order is subject to credit approval and acceptance of order by Service Provider. If Client's credit becomes unsatisfactory to the Service Provider, Service Provider reserves the right to terminate upon thirty (30) days' notice to Buyer and without liability to Client.
 - vi. **Termination.** Service Provider may terminate the Agreement for breach on written notice.
 - a. Service Provider shall have the right to terminate this Agreement and/or suspend its services upon thirty (30) days' prior written notice to Client if any Service Provider invoice remains unpaid after the invoice due date. Such nonpayment shall be deemed a material breach of this Agreement justifying such suspension and/or termination Service Provider agrees to perform services up to the effective date of termination and Client agrees to pay Service Provider for services for the period of original term or any extension or renewal term. Any such suspension or termination shall allow Service Provider to retain legal title to and possession of all Products, Services or other Deliverables performed during the period that remains unpaid and shall not relieve Client from paying all past due fees plus interest. In the event of collection enforcement, Client shall be liable for any costs associated with such collection, including but not limited to, legal costs, attorneys' fees, court costs and collection agency fees.
 - b. If you are an individual and you were not at least 18 years old and old and did not have the legal right or capacity to enter into the Agreement at the time you submitted the order.
 - c. If client fails to comply with the laws governing the United States of America or the jurisdiction client's organization resides in and utilizes the Hosted Systems in the execution of these acts.
- b. **Termination Liability.** If the contract is terminated prior to full term for any reason provided herein, the client will be liable for termination liability equal to the remaining months on the term, times the agreed upon monthly rates, times a rate of 85%, due and payable upon final invoice receipt from Service Provider.
- c. **Actions upon Termination or Expiration.** Upon any termination or expiration of this Agreement for any reason other than Client's breach thereof, Service Provider will, upon written request from Client, assist Client in the orderly transition of services, including timely transfer to another service provider designated by Client. Client agrees to pay Service Provider the actual time and material costs of rendering such assistance. See Appendix A for service rates.
- d. **Export Matters.** Client represents and warrants that Client is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Service Provider is legally prohibited to provide the Services. Client will not provide administrative access to the Service to any person (including any natural person or government or private entity) that is located in or is a national any country that is embargoed or highly restricted under United States export regulations.

2. Services, Fees, and Payment.

a. **Services.** During the Term of this Agreement, and if Client remains in material compliance with its obligations hereunder, Service Provider shall provide information technology monitoring services Hosted Systems for and on behalf of Client. The scope of the Services is set forth in Appendix A to this Agreement.

b. **Exclusions.** This Agreement covers only those services and equipment set forth in Appendix A. It is expressly understood that any and all products and services requested by Client that fall outside of the Services as set forth in Appendix A to the Agreement are considered out of scope and will be considered "Projects," and all such Projects shall be quoted and billed separately from the Services. The provision of equipment and/or services not listed in Appendix A at the signing of this Agreement, if agreed to by Service Provider, shall result in an adjustment to the Service Fees. Specific exclusions are:

i. Any parts, equipment, and/or software not covered by vendor/manufacturer warranty or support within the Client environment.

WARRANTIES – Service Provider warrants that all goods sold are free of any security interest and will make available to Client all transferable warranties made to Service Provider by the manufacturer of the goods.

SERVICE PROVIDER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES, AND SPECIFICALLY MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE. UNLESS OTHERWISE AGREED IN WRITING BY AN AUTHORISED REPRESENTATIVE OF SERVICE PROVIDER, PRODUCTS SOLD HEREUNDER ARE NOT INTENDED FOR USE IN OR IN CONNECTION WITH A NUCLEAR FACILITY

ii. The cost of any parts, equipment, or shipping charges of any kind within the Client environment.

iii. The cost of providing any software, licensing, or software renewal or upgrades, including any vendor-required upgrade or renewal fees of any kind within the Client environment.

iv. The cost of any reasonably necessary third-party vendor or manufacturer support or incident fees of any kind within the Client environment.

v. The cost to bring Client's environment up to minimum standards required for proper implementation and performance of the Services.

vi. Any hardware and/or software failure due to acts of God, building modifications, power failures or other adverse environmental conditions or factors beyond the direct control of Service Provider.

vii. Service and repair made necessary by the alteration or modification of equipment or the Client environment other than that authorized or performed by Service Provider, including alterations, software installations or modifications of equipment made by Client's employees or any other third party.

viii. Maintenance of application software packages, whether acquired from Service Provider or any other source unless explicitly set forth in Appendix A to this Agreement.

ix. Programming services, including any modification of software code, and application software maintenance unless explicitly set forth in Appendix A to this Agreement.

x. Training services of any kind.

c. **Service Fees.** Client shall pay Service Provider per month for the Services as outlined in *Fee Schedule* per Appendix A. All Service Fees will be billed to the client on the fifteenth (15th) of every month for the following month's Services and payable Net 15. Client shall be invoiced for the first month's service fee upon execution of the Agreement. All Service

Fees set forth in Appendix A Fee Schedule are due and payable fifteen (15) days from invoice date and any other charges incurred hereunder are due and payable within fifteen (15) days from the date of Service Provider's invoice. Any payment not made when due shall bear interest at the rate of the lower of one- and one-half percent (1½%) per month or the highest

rate allowed by Law. All payments hereunder must be made in U.S. dollars by check delivered to Service Provider's designated address for payment or via automated clearinghouse (ACH) pursuant to instructions provided by the Service Provider. Client will notify Service Provider in writing of any disputed amount within thirty (30) days of Client's receipt of all invoices and pay all undisputed amounts in a timely fashion. All amounts not timely and appropriately disputed shall be deemed final. Charges for partial months shall be prorated.

- d. **Other Services.** Any services requested by Client that are outside of the defined fees within Appendix A shall first be reviewed and agreed upon by both Parties. Work that is mutually agreed to be delivered upon shall be invoiced weekly, payable Net 15.
 - e. **Price Increase.** The pricing, as dictated by the Master Service Agreement and/or all applicable Addenda, Appendices and/or Work Orders or Statement of Work may be adjusted on an annual basis, effective on the first day of each contract year beginning by three (3) percent annually. Client hereby agrees and acknowledges that all third party and/or VAR pricing is dictated by the end user provider and is subject to changes beyond the Service Providers control.
 - f. **Proration.** For the month in which this Agreement becomes effective or terminates, there shall be an appropriate proration of services, products and/or fees based on the number of days that the Agreement is in effect during service start and/or termination month, respectively.
 - g. **Down Payment.** As evidence of good faith Client agrees Service Provider may request a down payment of fifty (50) percent on all VAR, Project Labor and/or Hardware or Software purchases. The down payment shall be invoiced to Client per invoicing terms agreed to herein. Client agrees that contracted services and/or equipment services per additional addendums and/or agreements between parties will not start execution until down payment has been paid in full by Client. Final amounts due will be invoiced on completion project (labor) and/or shipment of product (VAR, Equipment and/or Software).
 - h. **Taxes.** It is understood and agreed by the Client that any Federal, State and/or Local Taxes applicable to the Services shall be added to each invoice submitted under this Agreement. Client shall pay any such taxes unless a valid tax exemption certificate is furnished to Service Provider for each state or municipality wherein the Services are rendered.
3. **Hours of Service.** Services outlined herein will be provided to the Client by Service Provider through remote means as outlined in Appendix A. All services qualifying under these conditions, as well as Services that fall outside this scope but agreed to by the Parties will fall under the provisions of Appendix A. Hardware costs of any kind are not covered under the terms of this Agreement and, if requested, will be quoted and billed separate from the Service Fees.
- a. **Support and Escalation.** Service Provider will respond to Client-initiated trouble tickets in accordance with the terms and provisions set forth in Appendix A to this Agreement. Server and Network trouble tickets must be opened by Client's designated contact person only - sent by email to Service Provider's help desk, or by telephone if email is unavailable. Each call will be assigned a number for tracking purposes. The escalation process for resolution of any trouble ticket is set forth in Appendix A.
 - b. **Limitation of Liability.** In no event shall either party be held liable for indirect, special, incidental or consequential damages arising out of the performance of the Service or any other reasonably related action or inaction of either party reasonably related to this Agreement, including but not limited to, loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment, or other costs. Any liability shall be limited to the actual amount paid by Client to Service Provider in the six (6) month period immediately preceding the action or inaction for which damages are proved. With respect to Client, the forgoing limitation will be in addition to Client's obligation to pay for Services as provided in this Agreement.



- c. **Limitation of Liability on Equipment.** Client's remedies under this agreement are subject to any limitations contained in the manufacturer's terms and conditions to Service Provider, a copy of which shall be furnished upon written request. Service providers maximum and sole liability for equipment or services of clients with equipment governed under this agreement shall be limited to either repair or replacement of the goods or refund of the purchase price; all at Service Providers option, and in no case shall Service Provider be liable for incidental or consequential damage. In addition, claims for shortages, other than loss in transit, must be made in writing no more than five (5) days after receipt of shipment. Under no circumstances shall Service Provider be responsible for equipment governed under this agreement that is damaged because of Client or Client's employees, agents, representatives, or assignees negligent or intentional misuse of equipment

4. **Support for Services.** For Service Provider to provide the Services, Client agrees to the following terms and conditions.

- a. **Hardware/System Support.** In order for Service Provider to provide the Services and support the hardware and systems specified in Appendix A, all Client hardware must be either: i) covered under a currently active vendor support or maintenance contract; or ii) be of recent manufacture so that replacement parts are readily available. Additionally, to be eligible for support under the Services, all Client software must be genuine, currently licensed, and vendor-supported under a standard license agreement. Should any hardware, system, or software fail to meet these requirements, those items will be excluded from eligibility for Services under this Agreement. Should third party vendor support charges be required in order to resolve any issues related to the provision of the Services, these actual costs will be passed on to the Client after first receiving the Client's authorization to incur them.
- b. **Virus Recovery for Current, Licensed Antivirus Protected Systems.** All Client hardware and systems must be protected with a commercial anti-virus program to be eligible for Services under the terms and conditions of this Agreement. Damages caused by, and recovery from, any virus infection not detected and quarantined by the latest antivirus definitions for the anti-virus program are covered under the terms of this Agreement. This service is limited to those systems protected with a currently licensed, vendor-supported antivirus solution and any non-protected system is not covered.
- c. **Monitoring Services.** Provided that Client cooperates in gaining the necessary access, Service Provider will provide ongoing monitoring of all critical devices as set forth in Appendix A. Service Provider will provide quarterly evaluations and/or reports (hereinafter "Reports") to Client providing information regarding the performance of Client systems. Additionally, the Reports will document any critical alerts, scans and event resolutions completed during each reporting period. Should a problem be discovered during monitoring, Service Provider shall make every attempt to rectify the condition in a timely manner through remote means. Service Provider will provide access to ticketing system or weekly reports for client's review.
- d. **Carrier Services Portal.** Moruga shall maintain system for client inventory, order, repair, circuit details, contractual related documents, order details, and other related information to maintain services on behalf of Client.
- e. **Client Environment.** For Clients existing computer hardware and software environment (hereinafter "Client Environment") to qualify for the services, Client must ensure that:
 - i. All servers with Microsoft Windows operating systems must be running Windows 2012 Server or later and have all the latest Microsoft Service Packs and critical updates for that operating system installed. Service Provider can bring patch levels and validate virus definition files updates during onboarding, if necessary, to bring the client environment up to baseline standards regarding security patch and standard patch levels for various hardware components of the infrastructure.
 - ii. All desktop PCs and Notebooks/Laptops with Microsoft Windows operating systems must be running Windows 8 or later and have all the latest Microsoft Service Packs and critical updates for that operating system installed.
 - iii. All Server and desktop application software must be genuine, currently licensed and vendor supported.

- iv. The Client Environment must have a currently licensed, up-to-date, and vendor-supported server-based antivirus solution protecting all servers, desktops, notebooks/laptops, and email.
- v. The Client Environment must have a currently licensed, Vendor-Supported Server-based Backup Solution.
- vi. The Client Environment must have a currently licensed, vendor-supported hardware firewall between the Client's internal network and any external network, including the Internet.
- vii. Any wireless data traffic in the Client Environment must be secured with a minimum of 128bit data encryption.
- viii. Cost to bring Client's Environment up to these minimum standards are not included in this Agreement.

5. Access to Data

- a. Client will not have access to your data stored on the Services during a suspension or following termination.
- b. Client shall have the option to create a snapshot or backup of your Hosted Servers or Databases, respectively; however, it is Client's responsibility to ensure that hosted data is available to the Client in alternate locations.

6. Access to Your Customer Data or Use of the Services.

- a. Service Provider is not responsible to Client for unauthorized access to client's data or the unauthorized use of the Services unless the unauthorized access or use results from Service Providers failure to meet its security obligations stated in the Agreement. Client is responsible for the use of the Services by any employee of Client, any person authorized to use the Services, any person to whom Client has given access to the Services, and any person who gains access to Clients data or the Services as a result of Clients failure to use reasonable security precautions, even if such use was not authorized by Client.

7. Disclaimers.

- a. Service Provide does not promise that the Services will be uninterrupted, error-free, or completely secure. Client acknowledges that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Customer Data, Confidential Information, and property. Service Provider has no obligation to provide security other than as stated in this Agreement or applicable Order. Service Provider disclaims all warranties not expressly stated in the Agreement, including the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. Client is solely responsible for the suitability of the service chosen, including the suitability as it relates to Client Customer Data and the security of Hosted System. The Services are provided AS IS, subject to any applicable Service Level Agreement (as described in Section 5 above). Any voluntary services Service Provider may perform for at Clients request and without any additional charge are provided AS IS, including any services that are deemed Unsupported.
- b. Some of the Services are designed to help Client comply with various regulatory requirements that may be applicable to Client. However, Client is responsible for understanding the legal and regulatory requirements applicable to use of the Services, and for selecting and using those Services in a manner that complies with the applicable requirements.
- c. Client is solely responsible for determining the suitability of the Services for your use in light of any applicable regulations such as HIPAA, GLB, and in compliance with the EU Data Privacy requirements or other applicable data privacy laws and regulations.

8. Software.

- a. All software that Service Provider provides for use is subject to the terms of this Agreement, including software that Service Provider may authorize Client to install on devices located outside of Service Provider datacenter. Client



may not use any software provided after the expiration or termination of this Agreement, or the service for which it was provided, and may not copy the software unless expressly permitted by the Agreement. Client may not remove, modify, or obscure any copyright, trademark or other proprietary rights notices that appear on any software provided. Unless permitted by the terms of an open source software license, Client may not reverse engineer, decompile or disassemble any software provided except and to the extent that Client is expressly permitted by applicable law to do this, and then following at least ten (10) days advance written notice to Service Provider. Any additional restrictions which may apply to software utilized in the performance of the Services will be specified in the applicable agreement including but not limited to any appendices of Master Service Agreement.

- b. In the event Service Provider distributes any open source software as part of the Services (including for example Linux based software, OpenStack software, and software licensed under the Apache, GPL, MIT or other open source licenses) then such Open Source Software is subject to the terms of the applicable open source license. There are no warranties provided with respect to any Open Source Software and all implied warranties are disclaimed. In the event of any conflict between the terms herein and the applicable open source license with respect to any Open Source Software, the terms of the applicable open source license shall control.
- c. In addition to the terms of our Agreement, Clients use of any Microsoft® software is governed by: (i) Microsoft's license terms, for client or redistributable software, (ii) Microsoft's license terms for use of Microsoft software on Service Provider Hosted Systems under the license mobility program, and (iii) any use restrictions on use of the Microsoft software as indicated in Client's agreement, such as a limitation on the number of users (a "SAL" license).

9. **Miscellaneous.**

- a. **Modifications.** This Agreement may be amended at any time and from time to time, but any such amendment must be in writing and signed by each Party to be bound.
- b. **Undefined Terms.** Terms that are not specifically defined in this Agreement are used as set forth in the Arizona Uniform Commercial Code.
- c. **Joint Drafting and Neutral Construction.** This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against any particular Party based on a contention that the Agreement was drafted by one of the Parties. This Agreement shall be construed and interpreted in a neutral manner.
- d. **Validity of Agreement.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected or invalidated.
- e. **Time of the Essence.** The Parties understand and agree that time is of the essence in carrying out their respective obligations under this Agreement.
- f. **Entire Agreement.** This Agreement, including all Exhibits, Appendices, and Attachments, constitutes the entire agreement of the Parties relating to the rights granted and obligations assumed herein. After the execution of this Agreement, all prior written or oral agreements between the Parties are of no force. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the Parties to be charged.
- g. **Venue and Applicable Law.** This Agreement shall be governed, construed, and interpreted in accordance with the laws of the State of Arizona (without respect to principles of conflicts of law), and the Parties hereby submit to the jurisdiction of and venue in the State of Arizona in any legal proceeding necessary to interpret or enforce this Agreement or any part of this Agreement.
- h. **Fees and Costs.** In any action brought under this Agreement, the prevailing party shall be entitled to recover its actual costs and attorney fees and all other litigation costs, including expert witness fees, and all actual attorney fees and litigation costs incurred in connection with the enforcement of a judgment arising from such action or proceeding. The provisions of the preceding sentence shall be severable from the provisions of this Agreement

and shall survive the entry of any such judgment. The Parties submit to jurisdiction and venue in the State of Arizona in any legal proceeding arising regarding this Agreement.

- i. **Independent Contractor Status.** Service Provider is an independent contractor under this Agreement, and nothing herein shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the power or authority to bind or obligate the other Party in any manner to any third party.
- j. **Publicity.** Service Provider may use the name and identity of Client as a named client in promotion, marketing, and similar materials. In the event either Party desires to issue a press release, case study, white paper, editorial, video, or other similar media-related material (collectively "Media Material"), or the media reports upon work performed under any Schedule or the services rendered under this Agreement, both Service Provider and Client shall be mentioned in connection with such event and Service Provider shall receive recognition for its services. Notwithstanding the above, the use of a Party's name, trademark, or logo in connection with this paragraph shall be subject to the prior written approval of such Party. Both Parties further agree not to discuss the contents of this Agreement or pricing under this Agreement, any Schedule with any third party without the prior written consent of the other.
- k. **Non-Solicitation.** Both Parties have invested resources in the hiring, education, development, and training of its employees. Accordingly, both parties agree that during the term of this Agreement, and for a period of twelve (12) months following the termination of this Agreement, either party will not directly or indirectly: (i) hire or employ any employees or staff; (ii) hire or employ any former employee unless such former employee has not been employed for at least six (6) months; (iii) make an offer to or solicit any of employees to terminate their employment; or (iv) solicit or receive any services from any of employees, excluding the services such employees are rendering to Client pursuant to this Agreement. Client agrees that a breach of this provision may result in damages that are difficult to ascertain precisely. Accordingly, in the event of a breach of this provision, either party may have the right to: (i) apply for an injunction or other provisional remedy; and (ii) receive fixed monetary damages for violation of this non-solicitation provision in the amount equal to the annual salary either party was paying to such employee(s) before a violation of this provision was discovered by either party.
- l. **Confidentiality.** During the term of this Agreement, and for (12) months after the termination of this Agreement or any Schedule or other attachment, each Party agrees to retain in confidence all information transmitted to it by the other Party pursuant to this Agreement that the disclosing Party identifies in writing as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"). The Parties will not make use of such Confidential Information except pursuant to the terms and during the existence of this Agreement. Neither Party will disclose to any third person any Confidential Information without the express written consent of the other Party. Each Party shall notify the other Party within 24 hours of any material unauthorized breach of this provision which may become known to such Party, and shall use all reasonable efforts to assist the other Party on investigating, preventing or litigating such occurrences. Confidential Information does not include information that is: (i) already in the possession of the receiving Party or is known by the receiving Party at the time of receiving the same without breach of any duty owed to the disclosing Party; (ii) publicly known through no wrongful act of the receiving Party; (iii) rightfully received from a third party, provided the receiving Party complies with any restrictions imposed by any such third party; (iv) disclosed by the receiving Party pursuant to a requirement of a court order, governmental agency or other applicable law or regulation or disclosed in connection with any dispute resolution under this Agreement; or (v) developed by the receiving party independently from the activities pursuant to this Agreement.
- m. **Force Majeure.** Service Provider shall not be responsible for any failure to render Services due to circumstances beyond Service Provider's control including, but not limited to, terrorism, war, natural disasters, failure of third party Service Provider's (including network access providers) acts of God, etc.
- n. **Read and Understood.** Each Party acknowledges that they have read and understood the terms and conditions of this Agreement. Each Party further acknowledges that they have had the opportunity to consult with counsel of their choosing and have either done so or freely elected not to do so.

- o. **Notices.** Any notice or communication required or permitted to be given hereunder (i) shall be made in writing, (ii) may be delivered by hand, mailed by registered or certified mail, return receipt requested, postage prepaid, or sent by recognized overnight courier maintaining proof of delivery (e.g., FedEx or UPS), (iii) shall be sent to the address of the receiving party indicated initial paragraph of this Agreement (page 1), or at such other address as may hereafter be furnished in writing by either party hereto to the other, and (iv) shall be deemed to have been given as of the date it is actually delivered, or upon which delivery is refused, whichever is earlier.

- p. **Coverage Requirements.** Client shall keep in force and effect at all times during the Term: (a) Worker's Compensation Insurance with minimum limits required by Law; (b) Commercial General Liability Insurance with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate; (c) Commercial Crime Insurance with a minimum limit per event of twenty five thousand dollars (\$25,000); (d) 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 Client pursuant to this Agreement; and (e) Property Insurance, including Extra Expense and Business Income coverage, for all risks of physical loss of or damage to the Client Area, business personal property or other property that is in the possession, care, custody or control of Client (such insurance shall have a minimum limit adequate to cover risks on a replacement costs basis).

- q. **Indemnification.** Both Parties releases and will indemnify each other, its affiliates, members, officers, directors, employees, agents, representatives and customers (collectively, the "Each Companies Parties") harmless from and against any and all costs, liabilities, judgments, actions, losses and expenses (including, but not limited to, reasonable attorneys' fees) arising out of any threatened or actual claim, suit, action, arbitration or proceeding made or brought against either party; Indemnified Party arising out of or relating to: (a) the actual or alleged breach of this Agreement or applicable Laws by any of the Customer Parties; (b) the actual or alleged negligence or willful misconduct by any of the either party; (c) either parties responsibilities under this Agreement, regarding Equipment or property, either parties' materials, Client's business, and/or the actions (or failure to act) of a either parties User (collectively, a "Covered Claim"). The foregoing indemnity includes, without limitation, claims of infringement of any trademark, copyright, patent, trade secrets or nonproprietary rights (including, without limitation, defamation, libel, violation of privacy or publicity), or any injury to or death of any person or damage to any property occurring upon the applicable Area. Both parties are responsible and liable for all acts or omissions of either party, and all such acts or omissions will be attributed to both parties for all purposes under this Agreement (to the same extent as if either party had committed the act or omission). In the event of a Covered Claim, a Service Provider Indemnified Party may select its own counsel to participate in the defense of such claim and either party shall not settle a Covered Claim in a manner that imposes any penalty, liability or limitation on any Service Provider Indemnified Party.

- r. **Assignment.** Client may not assign, sell, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Service Provider. For purposes of the foregoing, an assignment will include, without limitation, a change in control of the Client.

- s. **Ownership.** Service Provider shall retain ownership and title of software and equipment. If Client defaults on payment and/or any software or equipment specific terms contained herein Client agrees that Service Provider has the right to take legal possession of any or all items. Claims by Service Provider shall be made in writing and/or digital transmission (email) to the Client after the initial event giving rise to claim. If Client fails to cure the claim within seven (7) calendar days of initial notice of default Client agrees Service Provider has the right to termination all software and/or services without any further notice. Furthermore, if initial claim continues to be uncured five (5) calendar days after termination of services Client hereby grants express permission to Service Provider to enter the Client premise and/or premise where Service Provider equipment is contained. If equipment is located on a secure premise, Client agrees to comply and assist Service Provider in retrieval of all equipment within timelines listed above. Client agrees all costs, expenses, including attorney's fees, incurred by Service provider in exercising any of its rights or remedies hereunder or enforcing any terms, conditions or provisions hereof are the responsibility of the Client.

- t. **Intellectual Property Rights.** Client shall retain all title, interest in and to any intellectual property rights with respect to Client content and environment per Appendices' contained herein and/or as amended supplemented



or modified and agreed to in writing from time to time by either Party

- u. **IP Addresses.** Upon expiration or termination of the Agreement, Client must discontinue use of the Services and relinquish use of the IP addresses and server names assigned to by Service Provider in connection with Services, including pointing the DNS for domain name(s) away from Service Provider Services. You agree that Service Provider may, as it determines necessary, make modifications to DNS records and zones on Service Provider managed or operated DNS servers and services.
- v. **Domain Name Registration Services.** If Client registers, renews, or transfers a domain name through Service Provider. Service Provider will submit the request to Company's and/or Clients domain name services provider (the "Registrar") on behalf of Client. Service Provider's sole responsibility is to submit the request to the Registrar. Service Provider is not responsible for any errors, omissions, or failures of the Registrar. Clients use of domain name services is subject to the Registrar's applicable legal terms and conditions. Client is responsible for closing any account with any prior reseller of or registrar for the requested domain name, and responsible for responding to any inquiries sent to Client by the Registrar
- w. **Unsupported Configuration Elements or Services.** If Client requests of Service Provider to implement a configuration element (hardware or software) or other service in a manner that is not customary at Service Provider, or that is in "end of life" or "end of support" status, Company reserves the right to designate the element or service as "unsupported," "non-standard," "best efforts," "reasonable endeavor," "one-off," "EOL," "end of support," or with like term in the Order (referred to in this Section as an "Unsupported Service"). Service Provider makes no representation or warranty whatsoever regarding any Unsupported Service, and Client agrees that Service Provider will not be liable for any loss or damage arising from the provision of the Unsupported Service. The Service Level Agreement will not apply to the Unsupported Service, or any other aspect of the Services that is adversely affected by the Unsupported Service. Client acknowledges that Unsupported Services may not interoperate with Service Provider's other services.
- w. **Services Provided by Third Parties.** Service Provider personnel may from time to time recommend third party software or other products and services for your consideration and may also make available to you third party products or services, including availability of third party applications through deployment or implementation tools. SERVICE PROVIDER MAKES NO REPRESENTATION OR WARRANTIES WHATSOEVER REGARDING PRODUCTS AND SERVICES THAT ARE NOT PURCHASED FROM SERVICE PROVIDER. Client's use of any such third-party products and services is governed by the terms of your agreement with the provider of those products and services.

10. **Signatures.** IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

Moruga Inc:

Signature

Date

Printed Name and Title

Client:

Signature

Date

Printed Name and Title

