

SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“**Agreement**”) (“**SA**”) is entered into as the last date set forth on the signature page hereto (“**Effective Date**”), by and between Providence Consulting Group, Ltd (“**PCG**”), whose principal place of business is located at 964 Falcon Point, Maineville, Ohio 45039 and _____ (“**Customer**”) whose principal place of business is located at _____. PCG and Customer may hereinafter be collectively referred to as the “**Parties**” and each a “**Party**”.

WHEREAS, PCG is in the business of providing (i) professional information technology consulting services related to software design, integration, customization and related services, (“**Consulting Services**”) and/or (ii) subscription services including applications, data groups and features (“**Subscription Services**”)

WHEREAS, Customer wishes to engage PCG to provide certain services and expertise offered by PCG throughout the term of this Agreement; and

WHEREAS, PCG is willing to provide such services subject to the terms and conditions as defined in this Agreement;

NOW THEREFORE, based upon the aforementioned recitals and the promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

1. **DEFINITIONS**. As used in this Agreement, unless expressly indicated otherwise, the following terms shall be defined as follows:

- (a) “**Assumptions**” shall mean a list of prerequisite conditions and presumptions upon which a SOW(s) or Order Form is prepared.
- (b) “**Change Order**” shall mean an amendment to a Statement of Work or SOW which changes the scope of the Services and/or other terms of the SOW.
- (c) “**Customer Project Manager**” shall mean the designated employee of Customer who shall serve as the primary contact on behalf of Customer in the performance of its obligations under this Agreement and any applicable SOW and to coordinate performance hereof with PCG and to assist PCG as required in gathering information, interviewing personnel, procuring services, and conducting other related activities.
- (d) “**Confidential Information**” shall mean the intellectual property belonging to or supplied by a Party in connection with either Party’s performance under this Agreement or otherwise relating to its affairs including, without limitation, the SOWs, the Guidelines, any software, design tools, methodologies, algorithms, and lines of code, a Party’s business plans and procedures, the terms of this Agreement, and other information that (i) may be marked by a Party as “Confidential” “Restricted,” or “Proprietary Information” or other similar marking, (ii) is known by the Parties to be considered confidential and proprietary, or (iii) from all the relevant circumstances, should reasonably be assumed to be confidential and proprietary.
- (e) “**Deliverable**” has the meaning given to it in Section 2(a).
- (f) “**Delivery Date**” shall mean the date from which the Deliverable Warranty Period or Services Warranty Period (each as defined herein below), as the case may be, shall run.
- (g) “**Guidelines**” shall mean the information and instruction furnished by Customer to PCG upon which the Services and any related SOW(s) or Order Forms will be based.
- (h) “**Order Form**” shall mean a PCG estimate, renewal notification or order form in the name of and executed by Customer and accepted by PCG which shall specifies the Subscription Services, and any support services to be provided by PCG subject to the terms of this Agreement.

(i) **“PCG’s Customer Manager”** shall mean the designated employee of PCG who shall serve as the primary contact on behalf of PCG in the performance of the Services and to assist Customer, as required, in all communications with PCG.

(j) **“Representatives”** shall mean, with regard to a Party, such Party’s directors, officers, employees, counsel and representatives.

(k) **“Services”** shall mean Consulting Services and/or Subscription Services.

(l) **“Statement of Work” or “SOW”** shall mean a jointly developed agreement which shall be attached to this Agreement which shall set forth the scope of Services to be delivered.

(m) **“Target Dates”** shall mean the estimated dates of the Services as set forth in the applicable SOW.

(n) **“Third Party Technology”** shall mean software or other technology which is licensed by Customer from parties other than PCG.

(o) **“Warranty Period”** shall mean the time period specified in Sections 8(a) and 8(b).

2. SERVICES.

(a) Subject to the limitations provided herein, from time to time during the Term (defined herein below) of this Agreement, PCG shall provide to Customer the Services. Such Services shall be provided in accordance with certain SOW(s), in the case of Consulting Services, or Order Forms, in the case of Subscription Services, which shall be attached to this Agreement as Exhibit(s). Each SOW shall include, if applicable (i) a description of the Services to be performed, (ii) the deliverables to be provided in connection with the performance of the Services, if any (each, a **“Deliverable”**); (iii) the Target Dates, (iv) to the extent that any Deliverables are provided under the SOW, the Delivery Date, and (v) the fees, costs and expenses payable to PCG.

(b) PCG will use its commercially reasonable efforts to meet the Target Dates; provided, that, Customer agrees that the Target Dates are estimates only and may change as the Services proceed. PCG will determine the methods, details and means of performing the Services subject to the terms and conditions of this Agreement, including related SOW(s) and Order Form(s). Upon any conflict between the terms of this Agreement and any SOW or Order Form, the terms of this Agreement shall govern unless explicitly modified in a SOW or Order Form.

(c) **Changes in Scope.** The Parties acknowledge that any change in the scope of the Services or any changes or delays that are the result of Customer’s actions and/or any third party may adversely affect the Target Dates, the scope of any SOW, Order Form, or the fees due thereunder. During the Term, either Party may initiate a Change Order. No Change Order will be binding upon either Party until it is signed by each Party.

3. TERM/TERMINATION/RENEWAL.

(a) **Consulting Services.** With regard to Consulting Services, the initial term of this Agreement shall commence on the Effective Date noted herein above and shall continue in full force and effect for a period of two (2) years unless earlier terminated as provided hereunder. The Term shall thereafter renew annually unless either Party provides the other Party written notice that it wishes to terminate this Agreement at least ninety (90) days prior to the termination of the then existing Term (the initial term, plus any renewal term(s), the **“Term”**). Customer shall have the right to terminate this Agreement prior to the end of the Term upon ninety (90) days written notice to PCG, provided Customer has paid all amounts due and payable to PCG through the effective date of such termination, and provided further that PCG is immediately released, upon receipt of said written termination, from the duties and obligations of the then-current SOW(s). PCG shall also have the right to immediately terminate this Agreement with written notice upon Customer’s failure to pay PCG the fees owed hereunder. Notwithstanding anything to the contrary in this Section 3(a), (i) a SOW that does not otherwise specify Term/Termination/Renewal provisions may be terminated independently of this Agreement provided that the Party terminating the SOW provides thirty (30) days written notice and otherwise complies with the other obligations of this Section 3, and (ii) a SOW containing specific Term/Termination/Renewal provisions shall control over this Agreement with regard to such Term/Termination/Renewal provisions.

(b) **Subscription Services.** With regard to Subscription Services, the Term/Termination/Renewal provisions applicable to this Agreement are set forth in the [PCG Terms of Service](#).

4. **FEES AND EXPENSES.** In consideration for the Services, Customer agrees to pay PCG on a time and materials basis, in accordance with each respective SOW and/or Order Form, for Services performed by PCG and expenses incurred.

(a) **Service Fees.** Each SOW and/or Order Form will set forth the fees due to PCG for delivery of Services described therein. Additional fees may be due if PCG is required to perform additional Services or incur additional out-of-pocket costs due to (i) changes in scope or a SOW, (ii) invalid Guidelines or Assumptions provided by Customer to PCG, (iii) failure of Customer or a subcontractor of Customer to perform its responsibilities under this Agreement, or (iv) extension of any Target Date. If PCG identifies a requirement for additional Services, it will notify Customer as soon as practicable, and will obtain Customer's written approval in the form of a Change Order before continuing the performance of any additional Services.

(b) **Invoices and Payment.** PCG shall deliver to Customer an invoice on a weekly or bi-weekly basis, unless otherwise specified in a related SOW or Order Form. Customer's payment of the invoiced amount shall be due and payable fifteen (15) days from the invoice date.

(c) **Electronic Payment Requirement.** All payments under this Agreement shall be made electronically via Automated Clearing House (ACH) transfer, wire transfer, or other electronic payment method approved by PCG. Customer shall not tender payment by cash or check unless specifically authorized in writing by PCG.

(d) **Timing of Electronic Payments.** All electronic payments shall be initiated by Customer such that funds are received in PCG's designated account on or before the payment due date. Customer is responsible for ensuring sufficient processing time for the selected electronic payment method.

(e) **Payment Obligation.** Customer's obligation to pay the invoiced charges shall be absolute and PCG reserves the right to assert appropriate liens to ensure payment. Except as expressly provided herein, it is the intention of PCG and Customer that all fees payable by Customer under this Agreement shall be, and continue to be, payable in all events throughout the Term.

(f) **Late Payments.** Any undisputed late payment shall be subject to the costs of collection (including, but not limited to, reasonable attorneys' fees) and shall bear interest at the rate of one and one-half percent (1½%) per month or the maximum rate allowed under law, whichever is lesser, or fraction thereof until paid in full.

(g) **Expenses.** All of PCG anticipated travel and other out-of-pocket expenses will be in conformance with Customer's standard policies regarding travel and expense reimbursement and shall be included in PCG's costs to Customer. PCG will not incur any extraordinary travel expenses without prior written authorization from a Customer Project Manager and travel or other expenses incurred shall be subject to the reasonable review and approval of such Customer Project Manager.

(h) **Sales Taxes and Other Taxes.** All invoices by PCG shall be net of any sales or service tax, VAT, withholding or any other tax of any kind whatsoever imposed by a governmental authority with respect to the Services rendered or expenses incurred hereunder (other than a tax imposed upon the income or profits of PCG and any income tax, social security, unemployment or workers compensation to be withheld or paid with regard to PCG's employees). If PCG is required by law to collect any taxes or fees associated with the Services, PCG shall collect such fees, but in any event, Customer shall remain liable for any such tax whenever such tax is imposed by a governmental authority. To the extent that PCG remits payment for any such taxes and/or fees, Customer shall immediately reimburse PCG for such payments.

(i) **Service Fees Renewals.** The Service Fees in each SOW, Change order and/or Order Form and in this Agreement shall be increased annually, on the anniversary of the Effective Date, by five (5) percent or in accordance with the consumer price index for services as measured by the United States Consumer Price Index entitled "All Services Less Rent of Shelter" or a similar index should such index no longer be published whichever is the lesser.

5. CUSTOMER RESPONSIBILITIES.

(a) Customer recognizes that PCG's performance of the Services and the completion thereof are expressly conditioned upon Customer's timely performance and completion of certain obligations and activities required to be performed by Customer as set forth herein or otherwise in the related SOW(s) and Order Form(s). Customer acknowledges that PCG'S ability to successfully perform the Services in a timely manner is contingent upon PCG'S receipt from Customer of the information, resources and assistance requested. Customer's failure to provide such information, resources and/or assistance may result in a Change Order.

(b) Customer shall facilitate PCG's performance of the Services and shall cooperate fully with PCG pursuant to and in accordance with the terms of this Agreement and related SOW(s) and Order Form(s).

(c) Customer shall ensure adequate resources and facilities are provided to enable PCG to provide the Services. Customer shall also provide PCG with such additional resources, information and assistance PCG may reasonably request.

(d) Customer's failure to comply with its responsibilities hereunder, or under any related SOW(s) or Order Form(s) shall constitute a breach of this Agreement. If Customer fails to cure such breach within five (5) business days following delivery of written notice to Customer from PCG describing such failure, PCG, in addition to any other remedies available to it at law or in equity, may suspend performance of the Services then being performed. In such event, Customer shall be responsible for any and all service fees and expenses incurred by PCG due to the resulting delay.

6. CONSULTING SERVICES COMMUNICATIONS. PCG's Customer Manager shall meet with Customer's Project Manager, as mutually agreed upon, and shall jointly discuss the performance of the relevant SOW. If, as the result of such meeting, or for any other reason, Customer has reason to believe that PCG has deviated in any way from the Services or any other provision(s) of this Agreement, Customer shall promptly inform PCG in writing specifying the details of any such deviation(s).

7. RELIANCE ON DATA SUPPLIED (GUIDELINES) AND ASSUMPTIONS. In connection with the performance of the Services, PCG will rely upon the Guidelines. Customer represents and warrants that the Guidelines are complete and accurate. If any error results from incorrect Guidelines supplied by Customer, Customer shall be responsible for discovering and reporting such error, any and all fees and expenses incurred by PCG due to such error, payment for any additional Services to be performed by PCG due to such error and supplying the Guidelines necessary to correct such error by reprocessing at the earliest possible time. Further, in connection with the performance of the Services, PCG will rely on the Assumptions mutually agreed upon by PCG and Customer and outlined in related SOW(s) and Order Form(s). Customer represents and warrants that the Assumptions are complete and accurate. Customer will indemnify, defend, and hold PCG harmless from any claim or liability whatsoever arising out of such Guidelines and/or Assumptions or any inaccuracy or inadequacy therein.

8. WARRANTY.

(a) Warranties Provided Specifically With Regard to Consulting Services.

(i) Customer shall have a period of thirty (30) days from the Delivery Date to determine whether each Deliverable satisfies the acceptance criteria (the "**Deliverable Warranty Period**"). If Customer detects a material error or defect in the Deliverable during the Deliverable Warranty Period, Customer shall promptly notify PCG in writing, specifying, in detail, the material errors or defects that Customer is claiming. Upon receipt of such notice, PCG's sole obligation and Customer's sole and exclusive remedy will be for PCG to correct such errors or defects

(ii) All Services shall be provided in a professional manner consistent with industry standards. Customer shall have a period of thirty (30) days from the performance of the Services to notify PCG in writing of any material errors or defects in the performance of the Services (the "**Services Warranty Period**"). Customer acknowledges that such Services Warranty Period shall run from the Delivery Date of the Services and not from the completion of each respective SOW. If Customer detects a material error or defect in the performance of Services during the Service Warranty Period, Customer shall promptly notify PCG in writing, specifying, in detail, the material errors or defects that Customer is claiming. Upon receipt

of such notice, PCG's sole obligation and Customers sole and exclusive remedy will be for PCG to re-perform the relevant Services in order to correct such errors or defects.

(iii) If Customer does not timely provide PCG with written notice as provided in this Section 8 during the Deliverable Warranty Period (in the case of any defects in the relevant Deliverable) or during the Services Warranty Period (in the case of any defects in the relevant Services), such Deliverable or Services, as the case may be, shall be deemed to be accepted by Customer and any warranty claim shall have been deemed waived.

(b) Warranty Provided Specifically With Regard to Subscription Services. (This warranty is limited to Subscription Services delivered by PCG) PCG warrants that (i) the Subscription Services will achieve the reasonable functionality described in the Help Documentation or Providers' online resources ("Help Documentation" and "Providers" as defined in the [PCG Terms of Service](#)), and (ii) such functionality of the Services will not be materially decreased during the Term. Customer's sole and exclusive remedy for PCG's breach of this warranty shall be that PCG shall be required to use commercially reasonable efforts to modify the Services to achieve in all material respects the functionality described in the Help Documentation and if PCG and Providers are unable to restore such functionality, Customer shall be entitled to terminate the Agreement and receive a prorated refund of the subscription fees paid under the Agreement for Customer's use of the Subscription Services for the terminated portion of the Term. PCG shall have no obligation with respect to this warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to info@pcgservices.com. The warranty set forth in this section is made to and for the benefit of Customer only. Such warranty shall only apply if the Subscription Services have been utilized in accordance with the Help Documentation, this Agreement, related SOW(s) and applicable law.

(c) General Warranties.

(i) PCG represents and warrants that, except for any Third Party Technology that is included in any of the Deliverables, the intellectual property contributed by PCG in connection with the Services are or will be original and do not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party.

(ii) PCG will take commercially reasonable steps to ensure that the Services will be free of viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code"), except for any Malicious Code contained in Customer-uploaded attachments or otherwise originating from Customer.

(iii) Except for the warranties set forth in this Section 8, the Services and Deliverables are provided "AS IS," without representations or warranties of any kind. **PCG EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE OR COURSE OF DEALING. PCG DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICES AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.**

(iv) **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, NEITHER PARTY SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY PUNITIVE, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING LOST PROFIT OR BUSINESS INTERRUPTION), EVEN IF NOTIFIED IN ADVANCE OF SUCH POSSIBILITY, ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT.**

9. INTELLECTUAL PROPERTY. The following provisions shall apply with respect to Consulting Services and copyrightable works, ideas, discoveries, inventions, applications for patents, and patents:

(a) Except as otherwise provided in this Agreement or SOW(s), upon receipt of final payment from Customer to PCG, PCG hereby assigns, transfers, and otherwise conveys any and all rights, title and interest, including, but not limited to, copyrights, trade secrets, patent rights, and other proprietary rights to the Deliverables developed hereunder, to Customer. At such time, all materials, products, or Deliverables developed hereunder by PCG shall be the property of Customer and all title and interest therein shall vest in Customer. All such materials, products, and Deliverables shall be deemed to be “works made for hire” under the federal copyright laws.

(b) Notwithstanding the foregoing, Customer hereby acknowledges that PCG shall retain all ownership interest in and to its existing intellectual property including, without limitation, PCG’s design tools, methodologies, software, algorithms, or other means by which software is developed, integrated, customized, implemented or tested and any improvements thereto developed during the course of this Agreement. Both Parties further agree that nothing in this Agreement shall prevent PCG from using the general knowledge, experience, and know-how of PCG, whether developed during or prior to this Agreement, to deliver similar services to other customers or to develop certain best practices or non-specific knowledge capital.

(c) If Customer desires that PCG perform the Services using any Third Party Technology then Customer will be responsible for ensuring that PCG has the right to use such Third Party Technology for the purposes set forth in this Agreement and in the applicable SOW and Customer shall execute any third party license agreement required to enable PCG to use such Third Party Technology.

10. CONFIDENTIALITY.

(a) Each Party hereby acknowledges that in connection with performing its obligations under this Agreement, each Party will have access to and may be exposed to Confidential Information belonging to or supplied by the other Party or relating to the other Party’s affairs. Confidential Information does not include information that (i) has entered the public domain through no action or failure to act of a Party receiving such information or any of its Representatives, (ii) prior to disclosure hereunder, was already lawfully in the receiving Party’s possession without any obligation of confidentiality, as evidenced by written records of such receiving Party, (iii) subsequent to disclosure hereunder, is obtained by the receiving Party on a non-confidential basis from a third party who has the right to disclose such information to the receiving Party, (iv) is independently developed by or for the receiving Party without reference to or reliance upon the other Party’s Confidential Information, as evidenced by the written records of the receiving Party; provided that the individual involved in the development had no access to the other Party’s Confidential Information, or (v) is ordered to be or otherwise required to be disclosed by the receiving Party by a court of law or other governmental body; provided, however, that the other Party is notified of such order or requirement and given a reasonable opportunity to intervene, as provided in Section 10(c).

(b) Each Party agrees to: (i) use the other Party’s Confidential Information solely in connection with the performance of its obligations under this Agreement; (ii) use the same degree of care (and in no event less than reasonable care) in protecting the other Party’s Confidential Information that such Party would use to protect its own Confidential Information of a similar nature; (iii) not to copy, publish, show, or disclose the other Party’s Confidential Information to any third parties without such other Party’s prior written consent, and (iv) to return the other Party’s Confidential Information to such other Party in accordance with Section 10(d). A receiving Party may provide the Confidential Information only to its Representatives who: (A) have a substantive need to know such Confidential Information in connection with this Agreement, (B) have been advised of the confidential and proprietary nature of such Confidential Information; and (C) have agreed with the receiving Party in writing to protect from unauthorized disclosure all confidential and proprietary information, of whatever source, to which they have access in the course of their employment or representation. A receiving Party shall be responsible for any breach or violation of this Section 10 by any of its Representatives. A receiving Party may make tangible or electronic copies, notes, summaries or extracts of Confidential Information only as necessary for use as authorized herein. All tangible or electronic copies, notes, summaries or extracts must be marked with the same confidential and proprietary notice as appears on the original.

(c) If a Party receiving the other Party's Confidential Information is required to provide such Confidential Information to any court or government agency pursuant to written court order, subpoena, regulation or process of law, such receiving Party must first provide the other Party with prompt written notice of such requirement and cooperate with such other Party to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, the receiving Party will continue to protect as confidential and proprietary all Confidential Information of the other Party disclosed in response to a written court order, subpoena, regulation or process of law.

(d) A Party receiving Confidential Information from the other Party shall destroy or return to such other Party, at such other Party's sole option, all such Confidential Information, regardless of whether such Confidential Information is in written, graphic or machine-readable form within five (5) business days of the request of the other Party. At the request of the disclosing Party, the receiving Party will furnish a certificate, signed by an officer of the receiving Party, certifying that the foregoing has been done.

(e) The confidentiality provisions of this Agreement shall remain in full force and effect following the expiration or termination of this Agreement for a period of five (5) years, except with regard to trade secret information of a disclosing Party, which shall be held in confidence by the receiving Party for so long as the information remains protected as a trade secret under applicable law.

11. NON-SOLICITATION. During the Term hereof and for a period of one (1) year following the termination or expiration of this Agreement, Customer agrees not to hire, solicit, nor attempt to hire or solicit, the services of any employee or sub-contractor of PCG without prior written consent. For purposes of this Agreement, an employee or subcontractor includes any existing employees or subcontractors or any employee or subcontractor who was employed or retained at any time during the Term of this Agreement. Violation of this provision shall entitle PCG to assert liquidated damages against Customer equal to one hundred fifty percent (150%) of the solicited person's annual compensation and all reasonable legal fees incurred by PCG in enforcing its rights under this Section 11. The rights hereto arising from this Section 11 shall survive the expiration or other termination of this Agreement for a period of one (1) year.

12. INJUNCTIVE RELIEF. The Parties acknowledge that violation by one Party of the provisions contained in Section 9, Section 10, and Section 11 would cause irreparable harm to the other Party for which an adequate remedy at law does not exist. In addition to other relief, it is agreed that temporary and permanent injunctive relief or any appropriate decree of specific performance would be an appropriate remedy to prevent any actual or threatened violation of such provisions or to enforce such provisions according to their terms without the necessity of the non-violating Party showing actual damages or that monetary damages would not afford adequate remedy. Any Party substantially prevailing in an action for equitable relief under this Section 12 shall be entitled to recover its costs of enforcement, including reasonable attorneys' fees.

13. INDEMNIFICATION.

(a) Customer shall indemnify and hold harmless PCG from and against all losses, liabilities, judgments, awards, settlements, damages, and costs (including reasonable legal fees and expenses) to others and all claims, causes of action, and lawsuits of others arising from or attributable to (i) any tax obligation of Customer as set forth under Section 4(f), (ii) any modification to any Deliverables by Customer, (iii) any inaccurate Guidelines, Assumptions, data, information or specifications provided by Customer, (iv) any failure by Customer to obtain any necessary consent to use any Third Party Technology, or (v) any obligation of Customer and/or PCG to respond to third party requests, including subpoenas, relating to Customer's use of the Services.

(b) PCG shall indemnify and hold harmless Customer from and against all losses, liabilities, judgments, awards, settlements, damages, and costs (including reasonable legal fees and expenses) to others and all claims, causes of action, and suits of others ("Claims") arising from or attributable to any claim that the Deliverables or Services infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. Excluded from the above indemnification obligations are Claims arising from (i) use of the Services in violation of this Agreement, SOW(s), Order Form(s), or applicable law, (ii) use of the Services after PCG notifies Customer to discontinue use because of an infringement claim, (iii) modifications of the Services not made by PCG, or (iv) use of the Services in combination with any software, application or service made or provided other than by PCG. If a Claim is brought or threatened, PCG shall, at its sole option and expense, use commercially reasonable efforts either (i) to procure a license that will protect Customer against such Claim without cost to Customer, (ii) to modify or replace all or portions of the Services as needed to avoid infringement, such update or replacement having

substantially similar or better capabilities, or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement and refund to the Customer a pro-rata refund of the applicable fees paid under the Agreement for the terminated portion of the Term. The rights and remedies granted Customer under this section state PCG's entire liability, and Customer's exclusive remedy, with respect to any Claim of infringement of the intellectual property rights of a third party.

(c) PCG shall indemnify and hold harmless Customer from and against all Claims arising from or attributable to PCG's gross negligence or willful misconduct in preventing unauthorized access to confidential Customer data, as determined by a court of competent jurisdiction in connection with a Claim alleging a breach of confidentiality and shall hold Customer harmless from and against liability for losses to the extent based upon such Claims, subject to the limitations in Sections 8 and 18 of this Agreement.

(d) A Party which is claiming a right to be indemnified under this Section 13, shall notify the other Party promptly of any such claims, suits, or proceedings in writing. The indemnifying Party shall then, if requested, defend such action, provided, however, that the indemnifying Party shall have no authority to enter into any settlement without the prior written consent of the indemnified Party. In all events, each Party shall have the right to participate, at its own cost and expense, in the defense of any proceedings with counsel of its own choosing.

14. RETURN OF RECORDS. Upon termination of this Agreement and receipt of PCG of final payment due hereunder, PCG shall, upon request from Customer, delete, destroy or deliver all records, data, memoranda, Confidential Information, and equipment of any nature that are in PCG's possession or under PCG's control and that are Customer's property or relate to Customer's business.

15. RELATIONSHIP OF PARTIES. The Parties understand that PCG is an independent contractor with respect to Customer, and not an employee of Customer. Customer will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of PCG. PCG shall indemnify and hold harmless Customer against all liability and loss in connection with, and shall assume full responsibility for, non-payment of all applicable federal, state, and local taxes or contributions imposed or required under unemployment insurance, social security, and income tax laws, with respect to PCG or its employees engaged in performance of this Agreement.

16. FORCE MAJEURE. Except for a Party's payment obligations hereunder, a Party's nonperformance shall not constitute a breach hereunder to the extent that performance is prevented, delayed, or obstructed by causes beyond that Party's reasonable control, including acts of God (fires, storms, floods, accidents, explosions, epidemics, earthquakes, the elements, quarantine restrictions, etc.), civil or military authority, acts of public enemy, war, terrorism, insurrection, acts of the federal government or any unit of state or local government beyond a Party's control in either sovereign or contractual capacity, strikes, labor disputes, loss or interruption of electrical power or other public utility, freight embargoes or delays in transportation. In the event that performance on the part of the Party shall be delayed or suspended as a result of circumstances beyond its reasonable control, without its fault or negligence, then the period of performance and Term of this Agreement shall be extended to the extent of any such delay and neither Party shall incur any liability to the other Party as a result of such delay or suspension.

17. DISPUTES, CHOICE OF LAW AND VENUE.

(a) The laws of the State of Ohio (without giving effect to its conflicts of laws principles) shall govern all matters relating to this Agreement, including torts.

(b) Except for violations of this Agreement set forth in Section 12 (in which case a Party may submit the relevant matter to the courts set forth in Section 17(d)), if any dispute or claim arises between the Parties out of or relating to this Agreement or breach hereof, then the Parties shall first endeavor to settle the matter through negotiations.

(c) If the Parties cannot reach agreement through negotiations within 30 days after one Party first gives written notice of the dispute or claim to the other Party, the Parties shall hire a mediator from a commercial mediation service to assist in the dispute resolution. The costs of any mediation proceeding, including mediator's fees, administrative fees and fees for jointly required or obtained records or transcripts, will be borne equally by the Parties to the proceeding.

(d) If the Parties cannot reach agreement through mediation (including not reaching agreement on the selection of a mediator and/or on the claims related to the dispute) within 60 days after one Party first gives written notice of the dispute or claim to the other Party, the dispute or claim may only be, at the aggrieved Party's discretion, submitted to a court. The Parties further agree that except for actions seeking injunctive relief (which may be brought in any appropriate jurisdiction), any legal action or proceeding arising out of or relating to this Agreement shall only be brought in a federal or state court located in Cincinnati, Ohio. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section 17(d). Each Party hereby submits to the exclusive jurisdiction of the federal and state courts located in Cincinnati, Ohio for the purpose of all legal actions and proceedings arising out of or relating to this Agreement. Each Party waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section 17(d).

(e) Except as set forth in this Section 17, Section 11, Section 12 and except as otherwise provided by law, neither Party may recover from the other Party any fees, expenses, or costs incurred during any mediation or legal action or proceeding arising out of or relating to this Agreement.

18. LIMITATION OF LIABILITY.

(a) Customer's sole and exclusive remedy for any errors or defects in the Deliverables or Services provided by PCG, as further described in Section 8, shall be for PCG to correct such material errors or defects, as provided in Section 8.

(b) Notwithstanding anything to the contrary herein, under no circumstances shall PCG's total liability under this Agreement exceed aggregate payments made to PCG by Customer pursuant to any specific SOW or Order Form under which such liability has arisen; provided, that should such liability be one relating to the general terms and conditions of this Agreement and not specific to a SOW or Order Form, then under no circumstances shall PCG's total liability under this Agreement exceed aggregate payments made to PCG pursuant to this Agreement during the preceding six (6) months prior to the event from which such liability has arisen.

19. ASSIGNMENT. Neither of the Parties may assign any right or benefit under this Agreement or delegate any obligations or performance under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment or delegation made in violation of this Section 19 shall be void. This Agreement shall bind, benefit, and be enforceable by and against either of the Parties and their respective successors and consented-to assigns. No outside party shall be considered a beneficiary of this Agreement or entitled to any rights under this Agreement. Notwithstanding, if either party is acquired in a sale or merger, the acquired party may assign this Agreement to the acquiring entity and/or affiliates without prior written consent from the other party.

20. SURVIVAL OF PROVISIONS. The provisions of Section 8, Section 9, Section 10, Section 11, Section 12, Section 13 and Section 17 shall survive the termination of this Agreement.

21. GENERAL.

(a) Entire Agreement. This Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof and thereof, and any and all prior discussions, negotiations, representations, commitments, agreements, and understandings related to this Agreement are hereby superseded by and merged into this Agreement. No representations, oral or otherwise, express or implied (including by omission), other than those set forth in this Agreement have been made or relied upon by any Party to this Agreement. Purchase orders and related documents issued or otherwise provided, in connection with this Agreement or an associated SOW, shall only be used for administrative convenience purposes and the terms and conditions in any purchase order or similar document shall not apply nor have any force or effect and shall not amend, supplement or alter any term or condition of this Agreement or any SOW.

(b) Amendment. This Agreement may not be amended or discharged except by a writing signed by duly authorized representatives of PCG and Customer that identifies itself as an amendment.

(c) Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. Should a court of competent jurisdiction find that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

(d) No Waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

(e) Notice. All notices, covenants, or requests desired under this Agreement shall be in writing and shall be delivered in person, sent by certified mail, return receipt requested, or by courier service to the address of the other Party set forth in the introduction of this Agreement or to such other address as such Party shall have designated by proper notice, or with regard to notices from PCG to Customer, pursuant to Section 6 of this Agreement. Notices shall be deemed given when delivered.

(f) Headings. Section headings are for convenience only and shall not be construed as part of the Agreement.

(g) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original document, but all such counterparts together shall constitute only one agreement. The Parties may electronically sign this Agreement.

(h) Authority to Sign Agreement. The individuals signing this Agreement and the Parties on whose behalf such individuals are signing hereby represent and warrant that they are empowered and authorized to sign on behalf of and to bind the Parties for whom they have signed.

(i) References. Unless the context requires otherwise, references herein to Sections, schedules and addenda refer to Sections of, and schedules and addenda attached to, this Agreement.

(j) Electronic Signature. This Agreement may be executed by electronic signature, which shall be considered an original signature for all purposes.

THE PARTIES HEREBY ACKNOWLEDGE that they have read and understand this Agreement, its Schedules, and Addenda, if any, as attached hereto and incorporated by reference, and agree to be bound by all of the provisions, terms, and conditions as specified herein. If Customer is receiving Subscription Services from PCG, Customer acknowledges and agrees it has read, understands and agrees to be bound by the [PCG Terms of Service](#).

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have caused this Agreement to be executed by their duly authorized representatives.

CUSTOMER:

PROVIDENCE CONSULTING GROUP, LTD:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____