



MASTER PRODUCTS AND SERVICES AGREEMENT

PLEASE READ THIS ENTIRE DOCUMENT CAREFULLY AS IT AFFECTS YOUR RIGHTS, RESPONSIBILITIES AND SERVICES RENDERED PURSUANT HERETO:

THIS MASTER PRODUCTS AND SERVICES AGREEMENT (“**Agreement**”) is made and entered into by and between Reflected Networks, Inc., a Delaware corporation (“**RN**”), and _____ (“**Customer**”), a _____ corporation, effective as of _____ (“**Effective Date**”). RN and Customer are sometimes referred to as the “parties” and individually as a “party”. Customer’s use of and access to RN’s Products and/or Services (defined, *infra*) is governed by this Agreement, including RN’s Acceptable Use Policy, Privacy Policy and the terms and conditions contained in any other Appendix/Appendices (including terms related to Service Level) and/or Order Form(s) (all of which are collectively referred to as the “**Agreement**”). This Agreement represents the complete and exclusive agreement between RN and Customer regarding RN’s Products and/or Services and related subject matter and supersedes and replaces any understanding, communication, or agreement, whether written or oral, prior or contemporaneous regarding such Products and/or Services and related subject matter.

1. Definitions.

“**Acceptable Use Policy**” or “**AUP**” – RN’s guidelines for acceptable uses of RN’s Products and/or Services, set forth on the RN Website and updated from time to time.

“**Anti-SPAM Policy**” – RN’s policy on SPAM generated thru the use of RN’s Products and/or Services, set forth on the RN Website and updated from time to time.

“**Appendix/Appendices**” – a set of terms and conditions specific to certain Services rendered by RN which govern Customer’s and/or Customer End Users’ use of Products and/or Services. Any Appendix, when executed by the parties, shall be governed by, and automatically incorporated by reference into this Agreement and shall be subject to its terms and conditions.

“**Commencement Date**” - the date upon which RN provisions an ordered Product and/or Service as more fully described in the relevant Customer Order.

“**Customer Content**” - means all data, software and information, including, without limitation, data text, software, scripts, video, sound, music, graphics and images that are created, uploaded or transferred in connection with the Products and/or Services by Customer or any Customer End User.

“**Customer End User**” means a third party which is an end user of any website and/or product and/or service of Customer.

“**Customer Order**” – shall be used to refer to an Appendix, Order Form and/or Online/Phone Order as mutually agreed by the parties.

“**Flow-Through Provisions**” mean the terms of agreements for products and/or services provided by third parties which are included in the Agreement as required by providers of third party products and/or services on behalf of RN. The Flow-Through Provisions apply only to the relevant products and/or services provided by such third parties. Such products and/or services provided by third parties are part of the Products and/or Services, as applicable, and are subject to the terms and conditions of the Agreement as well as the Flow-Through Provisions.

“**Online/Phone Order**” – any order for Products and/or Services placed by telephone or email to RN which requires only verbal/written consent, and which is thereafter accepted by RN. These orders are limited in scope to on-demand remote hands services and spare parts provided by RN to Customer at Customer’s request.

“**Order Form(s)**” - any mutually executed sales order, schedule or statement of work to this Agreement containing terms and conditions, detailing the Products and/or Services (including upgrade and/or downgrade thereof), the Term, Customer charges, estimated Commencement Date and any other relevant terms and conditions agreed upon by the parties. Any Order Form, when executed by the parties, shall be governed by, and automatically incorporated by reference into this Agreement and shall be subject to its terms and conditions.

“**Privacy Policy**” – means the terms governing the use of information pertaining to Customer which policy is set forth on the RN Website and updated from time to time.

“**Products and/or Services**” - the products and/or services provided by RN (including, without limitation, co-location, bandwidth, managed services including remote hands, computer hardware, and hosting) to Customer as more specifically set forth on a Customer Order.

“**RN Website**” –RN’s company website, published at <http://www.reflected.net> .

“**Service Level**” – a set of terms and performance guarantees which apply to specific Products and/or Services provided by RN to Customer, as set forth on a specific Appendix and/or the RN Website (which may be updated from time to time).

“**Term**” - the period of time in which RN provides Products and/or Services to Customer pursuant to this Agreement including an applicable Customer Order.

2. RN’s Provision of Products and Services. During the Term, provided Customer is not in breach of this Agreement, and further provided that RN has accepted an Appendix, Order Form or Online/Phone Order and Customer has made all payments required pursuant to this Agreement, RN shall, on a non-exclusive basis, use reasonable commercial efforts to provide Services to Customer as may be set forth from time to time on one or more Appendix/Appendices and/or Order Form(s) and/or Online/Phone Order, or such other form as Customer and RN may from time to time agree upon. At a



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minimum, any Appendix or Order Form or Online/Phone Order must include (i) a reasonably detailed description of the Product and/or Service to be performed; (ii) a schedule and (if applicable) completion date; and (iii) a compensation and payment schedule. Each Appendix and/or Order Form and/or Online/Phone Order shall reference and incorporate this Agreement, and the terms and conditions set forth in this Agreement shall automatically govern RN's provision of Products and/or Services under the Appendix and/or Order Form and/or Online/Phone Order. If a term in any Appendix and/or Order Form conflicts with a term in this Agreement, the provisions of this Agreement will prevail unless the respective Appendix and/or Order Form specifically states that the term in the Appendix and/or Order Form will prevail and such Appendix and/or Order Form is executed by both parties. RN's inability or failure to fulfill any ordered Products and/or Services by the estimated availability date or Commencement Date shall not constitute a breach of this Agreement, and RN shall not be liable to Customer or any third party for any damages as a result of RN's inability or failure to deliver the Products and/or Services. RN agrees that in providing its Products and/or performance of its Services hereunder (and pursuant to any applicable Appendix and/or Order Form and/or Online/Phone Order), Customer shall have complete autonomy and control over the intellectual property content of Customer's web sites, software and hardware, and any materials transmitted by Customer (including any Customer's End User) to RN (individually and collectively, "**Customer Works**.") The parties further agree that the fact that this Agreement and any applicable Appendix and/or Order Form and/or Online/Phone Order may contain guidelines and restrictions on the actions of Customer and Customer Works, RN shall not have any obligation to enforce or otherwise police such guidelines and restrictions, except as required by Law (defined, *infra*). RN shall begin and complete the Products and/or Services in accordance with the date(s) and time(s) specified in any applicable Appendix and/or Order Form and/or Online/Phone Order. Customer shall timely make all payments set forth in the Appendix and/or Order Form and/or Online/Phone Order. RN has the right to reject the request for Products and/or Services in its sole discretion. RN may change, discontinue, add, modify, re-price or remove features or functionality from the Products and/or Services upon notice to Customer as set forth herein. If Customer continues to use the Products and/or Services following any such modification, such use will be deemed acceptance of such modification by Customer.

3. **Customer's Use of and Access to Products and/or Services.** Customer may order Products and/or Services through an Appendix executed by both parties, an Order Form submitted by Customer and accepted, in writing (including via e-mail) by RN, or an Online/Phone Order as designated by RN (each, a "**Customer Order**"). RN may accept such Customer Order in its discretion and shall give notice (as specified herein) to Customer of acceptance of such Customer Order. Subject to the terms and conditions of this Agreement, RN grants Customer a non-exclusive, non-transferable, non-sublicensable (except to the extent required to allow Customer End Users to use Customer's products, services and/or web sites), revocable right in the Products and/or Services (as more specifically set forth in an applicable Appendix) solely to: (a) use and access the Products and/or Services for internal purposes; and (b) use the Products and/or Services to create, offer and provide the Customer End Users use of its products, services and/or web sites.

In consideration for its access to Products and/or Services, Customer agrees to do each of the following: (i) pay the fees for Products and/or Services when due; (ii) use reasonable security precautions for providing access to the Products and/or Services by its employees, contractors, Customer End Users or other individuals to whom it provides access; (iii) cooperate with RN's investigation of security problems, interruptions in service, and any actual, alleged or suspected breach of the Agreement; (iv) comply with all license terms or terms of use for any software, content, service or website (including Customer Content) which Customer uses or accesses when using the Products and/or Services; (v) comply with all foreign (including European Union and similar associations) and United States Federal, State and local laws, statutes, ordinances, enactments, orders, rules, regulations and judicial decisions, including those of any governmental agency (including export control laws), and all interpretations of and changes, supplements or replacements to any of the foregoing (individually and collectively, "**Laws**"), including, without limitation, the Digital Millennium Copyright Act and related copyright laws; (vi) be responsible for the use of the Products and/or Services by Customer and Customer End Users and any other person to whom Customer has given access to Customer's products and/or services and/or web site; (vii) prevent unauthorized access or use of the Products and/or Services; (viii) enter into an agreement with each and every Customer End User which shall include the relevant terms of this Agreement and release RN from any and all liability for damages or losses Customer or Customer End Users may incur as a result of using Customer's products, services or web site; and (ix) immediately notify RN of suspected, alleged or known breach of any of the foregoing. Customer may not resell any of the Products and/or Services to any third party without first entering into a written reseller agreement or appendix with RN. Customer may not use the Products and/or Services in any situation where failure or fault of the Products and/or Services could lead to death or serious bodily injury of any person, or to physical or environmental damage.

4. **Term, Termination and Suspension.** This Agreement shall commence as of the Effective Date and shall continue for a period of one (1) year, unless terminated by either party pursuant to this Agreement. Notwithstanding the foregoing, in the event of material breach of this Agreement (including any Customer Order, either (non-breaching) party may terminate this Agreement or any specific Customer Order at any time on thirty (30) days written notice to the breaching party which notice contains a description of the reason for termination in sufficient detail to allow the breaching party to cure such breach. No such termination shall be effective unless the breaching party has failed to remedy the aforementioned breach within thirty (30) days of its receipt of a termination notice. Foregoing time periods shall be reduced to ten (10) days if breach is Customer's payment failure. RN may terminate immediately, with or without notice and/or opportunity to cure if Customer's breach is a violation of Laws, RN's AUP, a breach of Customer's representations and warranties in the Agreement, or if, in RN's reasonable commercial judgment, termination on shorter or contemporaneous notice is necessary to protect RN or its other customers from operational, security, or other risks. Customer agrees termination of the Agreement and/or any applicable Customer Order shall be Customer's sole remedy for any breach of the Agreement or any applicable Customer Order. The Term for each Customer Order shall begin on the Commencement Date of the related Product or Service and shall remain in effect until the expiration of the Term so specified in the Customer Order. Upon the expiration of a Term set forth on a Customer Order, such Customer Order will renew for successive one (1) year periods unless otherwise specified on that Customer Order, or, written notice of non-renewal is provided by either party not less than thirty (30) days from the expiration of the Term of the Customer Order. Any Customer Order with a one (1) month Term shall renew for consecutive one (1) month Terms, unless at least thirty (30) days written notice of non-renewal is provided by either party.

Either party may terminate this Agreement or any Customer Order for cause as of the date specified in a termination notice if the other party: (a) files for bankruptcy; (b) becomes or is declared insolvent; (c) is the subject of any proceedings (not dismissed within thirty (30) days) related to its liquidation, insolvency or the appointment of a receiver or similar officer for that party; (d) makes an assignment for the benefit of all or substantially all of its creditors, (e) takes any corporate action for its winding-up, dissolution or administration; (f) enters into an agreement for the extension or other readjustment of substantially all of its obligations; or (g) recklessly or intentionally makes any material misstatement as to financial condition. RN may terminate this Agreement or any applicable Customer Order as to any affected co-location services if any portion of the datacenter facility in which the



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affected co-location services are located becomes subject to a condemnation proceeding or is condemned, RN's possession is otherwise terminated or abated, or RN cannot provide Customer with the access to the affected datacenter facility as contemplated herein for a period exceeding thirty (30) days.

Expiration or termination of the Agreement or a Customer Order shall not affect another Customer Order in effect, unless parties specifically agree in writing. The Agreement shall govern such Customer Orders until they expire, are terminated or performance has been completed. After the Term of the Agreement expires, the Agreement Term shall be extended, and its terms and conditions will remain in effect with respect to any Customer Order entered into before termination, but only for the Term of such Customer Order. However, no new Customer Order may be entered into under the Agreement after termination of the Agreement without expressly extending the Term of the Agreement. After a Customer Order terminates or expires, terms of the Customer Order (including those of the Agreement) that expressly or by their nature contemplate performance after the Customer Order terminates or expires will survive and continue in full force and effect. For avoidance of doubt, provisions protecting data and/or a party's intellectual property, privacy and Confidential Information, data security, granting perpetual licenses, representations and warranties, indemnification, and provisions setting forth limitations of liability each, by their nature, contemplate performance or observance after the Agreement or Customer Order expires or terminates.

RN may suspend delivery of Products and/or rendering Services to Customer without liability if: (a) RN believes that the Services are being used (or have been or will be used) by Customer in violation of the Agreement or any Law; (b) Customer does not cooperate with RN's investigation of any suspected violation of the Agreement or any Law; (c) RN believes that Products and/or Services provided to Customer have been accessed or manipulated by a third party without Customer's consent or in violation of the Agreement; (d) RN believes that suspension of Products and/or Services is necessary to protect RN's network or other RN customers; (e) a payment for Products and/or Services is overdue; (f) the continued use of Products and/or Services by the Customer may adversely impact the Products and/or Services or the systems or content of any other RN customer, (g) RN believes that the use of Products and/or Services by Customer may subject RN or any third party to liability; or (h) suspension is required by Law. RN will give Customer reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless RN determines, in RN's reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect RN or its other customers from operational, security, or other risk or the suspension is ordered by a court or other judicial body. If RN suspends Customer's right to access or use any portion or all of the Products and/or Services: (a) Customer remains responsible for all fees and charges Customer has incurred through the date of suspension; (b) Customer remains responsible for any applicable Fees for any Products and/or Services to which Customer has continued to have access, as well as applicable data storage fees and charges, and fees and charges for in-process tasks completed after the date of suspension; (c) Customer will not be entitled to any credits under the relevant Service Level terms for any period of suspension; and (d) at RN's sole discretion, RN may terminate Customer's access to Customer Works during a suspension, and RN shall not be liable to Customer (or any Customer End User) for any damages or losses Customer (or any Customer End User) may incur as a result of such suspension.

The deletion of Customer Works is automatic upon termination or expiration of the Agreement or any applicable Customer Order. Consequently, unless RN determines otherwise, Customer will not have access to Customer Works and RN may immediately erase or delete Customer Works from its computer infrastructure after the effective date of termination or expiration of this Agreement or any applicable Customer Order. RN has no obligation to provide any transition services or access to data except as otherwise expressly set forth in a written amendment, signed by both parties.

5. Payment Terms. In consideration for Services, Customer shall pay RN fees, costs, rates and charges as provided in the applicable Customer Order (the "Fees"). In the event that Fees are not specified in a Customer Order, Customer shall pay Fees for relevant Products and/or Services at RN's then-current rates. Upon delivery of a Product or performing of Services or at milestones as set forth in an applicable Customer Order, RN shall invoice Customer for the Fees then due. Fees may consist of non-recurring charges (i.e. installation or setup fees) or recurring charges (i.e. monthly, quarterly or annual fees) as specified in a Customer Order. Any installation or setup fee shall be due and payable prior to the Commencement Date. Any recurring charges shall be invoiced in advance for each applicable period. Fees for partial months may be pro-rated. Any deposit or other pre-payment shall be paid prior to the Commencement Date and applied as a credit to the final recurring charges of the respective Customer Order. Unless otherwise set forth on a particular Customer Order, Fees for Products and/or Services shall remain in effect for one (1) year from the Commencement Date of each specific Customer Order. Thereafter, such Fees shall be subject to change upon sixty (60) days prior written notice to Customer. Except as otherwise set forth in a Customer Order, invoices shall be due and payable thirty (30) days following submission of such invoice by RN. In the event of termination of this Agreement or any applicable Customer Order, Customer is obligated to pay RN for any Services or expenses incurred prior to the effective date of such termination, or for any Services and/or Products pursuant to any non-terminated Customer Order. Except as otherwise set forth in any applicable Customer Order, Customer shall be responsible for any sales, service, value-added, use, excise, consumption and any other taxes and duties (whether international, national, state or local, however designated), now in force or enacted in the future, related to the Products and/or Services and/or Customer Works and web sites. Unless otherwise agreed by the parties in writing, Fees set forth on any Customer Order shall be exclusive of such taxes. Notwithstanding the foregoing, Customer shall have no obligation to pay income taxes of RN. If a withholding tax applies to any fees for Products and/or Services pursuant to this Agreement, Customer may deduct such taxes and pay such taxes to the relevant taxing authority; provided that Customer shall provide RN with an official receipt for such taxes withheld and agrees to notify RN prior to payment, in writing that such withholding tax is required to be paid and Customer shall pay RN any additional amounts to ensure that RN receives the full amount of its invoice. If RN has a legal obligation to pay or collect taxes for which Customer is responsible under this clause, the relevant amount shall be charged to and paid by Customer in addition to the amounts on such invoice, unless Customer provides RN with a valid tax exemption certificate authorized by the appropriate taxing authority. The parties undertake to cooperate, where possible, to minimize the amount of withholding tax due by making advance clearance applications under the relevant double taxation treaties (where applicable) to the relevant tax authority to reduce the rate of withholding tax or exempt entirely this amount if applicable. In any event, Customer shall account for any tax withheld to the tax authorities on a timely basis. Customer's equipment which is utilized by RN in performance of the Services shall not be construed to be fixtures, and Customer is responsible for preparing and filing any necessary return with, and paying any and all taxes separately levied or assessed against Customer's equipment to any governmental, quasi-governmental or tax authorities by the date such payments are due.

All Fees paid to RN for Products and/or Services shall be non-refundable. Service Level credits shall only be available to Customer, if ever, provided Customer does not owe RN any outstanding Fees and is not in breach or default of this Agreement. Such credits shall only be used to offset future charges for Products and/or Services and may not be sold, converted to cash or transferred to any third party, and shall expire on expiration or termination of the relevant Customer Order and/or this Agreement. If Customer wishes to dispute any RN invoice (a "Disputed Invoice"), Customer must submit a good faith claim, in writing, regarding the Disputed Invoice with documentation as may reasonably be required to support the claim within sixty (60) days of



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RN's submission of the invoice. If Customer does not timely submit such a claim, Customer waives all rights to dispute such invoice and/or claim that it does not owe disputed amounts contained in the invoice and/or seek any set-offs or reimbursements or other amounts of any kind based upon or relating to such invoice.

All payments will be in U.S. Dollars. If Customer does not timely pay any invoice(s), Customer will also pay interest on the unpaid amount, from the date due, at the rate of two percent (2%) per month or the highest amount permitted by law, and Customer shall also pay RN any costs of collection (including reasonable attorney's fees). Customer's obligation to pay invoiced amounts is absolute and unconditional and not subject to offset, defense or counterclaim. A breach of payment obligations shall be considered a material breach of the Agreement. RN is permitted to suspend Services and/or delivery of Products until default is cured by payment in full. If default is not cured following invoice, RN may terminate the Agreement by written notice to Customer. Upon termination, RN has no further obligation to delivery Products or render Services. No action, suit or proceeding arising out of this Agreement or any Customer Order or concerning any invoice or other accounting hereunder or to the period of time to which such invoice or accounting relates may be maintained against RN unless commenced within one (1) year after the date such invoice or accounting is delivered to Customer.

6. **Intellectual Property Rights.** The term "RN Works" means any of the following, used directly or indirectly by RN in providing Products and/or performing Services, in any form or media: (a) formulae, algorithms, processes, procedures and methods; (b) designs, ideas, concepts, research, discoveries, inventions (whether or not patentable or reduced to practice) and invention disclosures; (c) know-how, trade secrets and proprietary information and methodologies; (d) technology; (e) computer software (in both object and source code form); (f) databases; (g) expressions, works and factual and other compilations; (h) protocols and specifications; (i) visual, audio and audiovisual works (including art, illustrations, graphics, images, music, sound effects, recordings, lyrics, narration, text, animation, characters, designs and all other audio, visual, audiovisual and textual content); (j) records of each of the foregoing, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports, letters, memoranda and drawings; and (k) any other tangible results of the Products and/or Services. The parties agree that RN Works shall not include any visual, audio and audiovisual works (including art, illustrations, graphics, images, music, sound effects, recordings, lyrics, narration, text, animation, characters, designs and all other audio, visual, audiovisual and textual content) which is created by, licensed by, posted or otherwise provided by Customer, which shall be considered a part of the Customer Works as defined above.

RN and its licensors will retain ownership of all RN Works developed or acquired by RN (whether prior to or after the Effective Date) or independently from the Products and/or Services, together with all related intellectual property rights (whether such rights are registered or unregistered, and wherever in the world those rights may exist). Except as otherwise set forth in an applicable Customer Order, RN shall also own exclusively all RN Works developed, in whole or in part, by or on behalf of RN for Customer pursuant to this Agreement or any applicable Customer Order together with all related intellectual property rights throughout the world ("RN Developed Works"). Customer will and hereby does, without further consideration, assign to RN any and all right, title or interest that Customer may now or hereafter possess in or to the RN Developed Works including any feedback which is received from Customer or any Customer End User. To the fullest extent permissible by applicable law, all copyrightable aspects of the RN Developed Works will be considered "works made for hire" (as that term is used in Section 101 of the U.S. Copyright Act, as amended). Partial or incomplete versions of RN Developed Works or RN Works will be deemed RN Developed Works or RN Works, respectively.

Customer will execute and deliver all documents and provide all testimony requested by RN to register and enforce intellectual property rights in RN Developed Works solely in the name of RN. Customer irrevocably designates and appoints RN as its agent and attorney-in-fact to act for and on its behalf to execute, register and file any applications, and to do all other lawfully permitted acts, to further the registration, prosecution, issuance and enforcements of the intellectual property rights in RN Developed Works with the same legal force and effect as if executed, registered and filed by Customer. Customer will not provide RN: (a) any Customer Works other than those for which Customer has the right to grant rights and licenses, or (b) any Customer Works that would infringe upon any third party's intellectual property or any other rights whatsoever. Customer shall remain solely and completely responsible and liable for all executory and other obligations relating to Customer Works only insofar as they are not assigned to RN pursuant to written agreement.

RN grants to Customer a non-exclusive, revocable, non-transferable, non-assignable license (as set forth in an applicable Customer Order) to such intellectual property rights in RN Works and RN Developed Works that RN embeds in or otherwise provides with any Products and/or Services only to the extent required to use and enjoy such Products and/or Services. The parties acknowledge and agree that the foregoing right and license does not include the right for Customer to: (a) use, copy, modify, develop derivative works, sublicense, distribute, display and perform the RN Works or RN Developed Works other than as specifically set forth in any applicable Customer Order, (b) designate third parties to exercise those rights and licenses on behalf of Customer, (c) sublicense, transfer or assign any such rights, or (d) use RN's trade names, trademarks, service marks, logos or any other trade or source indicia. Any such use is subject to RN's prior written approval in each instance. Customer agrees that it shall not register any Uniform Resource Locator (URL) or world wide web address that contains any of RN's trade names, trademarks, service marks, Product names, Service names, URLs (including common or likely misspellings of same) or URLs that contain any term that is confusingly similar to the foregoing or use any of the foregoing as metatag keywords or purchase same via any other pay-per-click or similar advertising method in connection with any web site. In the event of Customer's violation of the foregoing, Customer agrees to immediately transfer ownership and control of the offending URL to RN upon RN's written request, and Customer further agrees to pay RN five thousand dollars (\$5000) in stipulated liquidated damages for each URL registered in violation of this Agreement.

Customer specifically agrees to these liquidated damages. In agreeing to pay these liquidated damages, Customer acknowledges that this amount is not a penalty, and that the actual damages are uncertain and difficult to ascertain, but that this amount represents the parties' good faith attempt to calculate an appropriate compensation based on anticipated actual damages. If RN is required to engage an attorney or other person to collect any liquidated damages or other amount from Customer, or if RN is seeks assistance of an attorney to pursue injunctive relief against Customer, or if RN is required to file an ICANN Complaint against Customer (or any Customer End User) in order to transfer an offending URL to RN from Customer (or any Customer End User), then Customer further agrees to reimburse RN for all legal fees and costs in order to collect such liquidated damages, or in order to seek injunctive relief from Customer (or any Customer End User), or in order to file and prosecute an ICANN complaint. Customer understands that even a nominal amount of damages may require expenditure of extensive legal fees, costs and other amounts that may well exceed the liquidated damages themselves. Customer agrees to pay all of these fees and costs.



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Customer grants to RN, during the Term, a non-exclusive, worldwide, fully paid-up, royalty-free license to Customer Works and Customer's trademarks, service marks, logos and trade names, but only to the extent required to deliver Products and render Services pursuant to this Agreement (including the right to sublicense to RN's service providers).

Customer shall be solely responsible for data maintenance, integrity, retention, security, and backup of Customer Works. If Customer directly or indirectly broadcasts, transmits or transfers or is otherwise involved in the broadcast, transmission or transfer of any Customer Works (whether in connection with its business or otherwise, whether using RN Products and/or Services or not), then Customer is solely responsible for compliance with any applicable Laws in any and all applicable regions or countries regarding the security, privacy, legality and/or safe handling of such Customer Works.

This Clause will survive expiration or termination of the Agreement or any Customer Order.

7. Covenant Against Disclosure of Confidential Information. Each party ("**Discloser**") may be required to exchange certain Confidential Information (as herein defined) and Trade Secrets (as herein defined) to the other party ("**Recipient**"). "**Trade Secrets**" means information (including but not limited to, confidential business information, processes, financial data, financial plans, product plans, lists of actual or potential customers or suppliers) that: (a) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. "**Confidential Information**" of a party shall mean written information that is given by the Discloser to the Recipient in a manner from or under circumstances in which the Recipient would reasonably understand such material to be confidential, whether or not such material is marked as "proprietary" or "confidential", as well as all other information (whether written or oral) belonging to or pertaining to the Discloser that does not constitute a Trade Secret of the Discloser and that is not generally known by or available to the Discloser's competitors but is generally known only to the Discloser and those of its employees, independent contractors, clients or agents to whom such information must be confided for internal purposes or is otherwise treated as proprietary and confidential by Discloser. Customer agrees that RN's Products and the results and proceeds of RN's Services shall be deemed Trade Secrets and all other RN Works and the results and proceeds of RN's Services generally shall be deemed Confidential Information as are the terms and conditions of the Agreement. Confidential Information may be written, oral, recorded, or on tape, disks or other electronic media. Recipient shall protect and keep confidential all Confidential Information and Trade Secrets disclosed by Discloser using at least the same degree of care as it employs to protect its own confidential information and trade secrets of a similar nature, but not less than a reasonable standard of care, and shall only use or disclose any such Confidential Information or Trade Secrets for the purposes of performing its obligations set forth in this Agreement and/or a Customer Order, except as may be authorized by Discloser in writing. If an officer, director, employee, agent or representative of Recipient has a need to know Confidential Information or Trade Secrets of Discloser ("**Representative**") and Recipient discloses such Confidential Information or Trade Secrets to such Representative, Representative shall be advised that such Confidential Information or Trade Secrets are subject to confidentiality obligations and the Representative shall be subject to confidentiality obligations with terms that are substantially similar to the terms of this Clause. Recipient is responsible for breach of the Agreement by any Representative. Recipient shall not copy or otherwise reproduce, in whole or in part, any Confidential Information or Trade Secrets of Discloser without the prior written authorization of Discloser, except as may be reasonably necessary to fulfill its obligations under this Agreement. Title to the Confidential Information and Trade Secrets of Discloser, and all copies thereof, shall be and remain with Discloser. No right or license is granted by Discloser to Recipient with respect to its Confidential Information or Trade Secrets, except as expressly set forth in this Agreement.

Obligations of confidentiality and limitation on use set forth herein shall survive termination or expiration of the Agreement and any relevant Customer Order for three (3) years following termination or completion of the last outstanding Customer Order under the Agreement, except with respect to Trade Secrets which shall be maintained in confidence for so long as such are Trade Secrets. Upon termination or expiration of the Agreement and any Customer Order, or earlier if requested by Discloser, Recipient shall return all written materials containing any Confidential Information. Recipient shall confirm and destroy copies of any materials or other documents prepared by Recipient containing or reflecting Confidential Information or Trade Secrets.

Confidentiality obligations do not apply to any information which: (i) was previously known to Recipient; (ii) is or becomes publicly available, through no fault of Recipient; (iii) is disclosed to Recipient by a third party having no confidentiality obligation to Discloser; (iv) is independently developed by Recipient, provided that Recipient can demonstrate such development did not involve use of or reference to Confidential Information or Trade Secrets of Discloser; or (v) is required to be disclosed as a matter of law, regulation or order, provided Recipient shall notify Discloser in advance of such disclosure and cooperate in seeking confidential treatment thereof, and Recipient shall redact Confidential Information and Trade Secrets of Discloser that Recipient is not required to disclose.

Recipient acknowledges Confidential Information and Trade Secrets of Discloser are unique property of extreme value to Discloser and Discloser will suffer substantial damages not readily ascertainable or fully compensable in terms of money in event of breach by Recipient or any Representatives of its obligations under this Clause. Recipient agrees that Discloser is entitled (without limitation of other rights or remedies) to obtain an injunction without posting any bond from any court of competent jurisdiction preventing or prohibiting the continuance or recurrence of any breach of the confidentiality provisions contained in this Clause.

8. Representations and Warranties. As of the Effective Date of the Agreement and upon entering into each Customer Order, each party represents and warrants to the other that: (a) it is duly incorporated, validly existing and in good standing under the laws of its state of incorporation; (b) it has all necessary corporate power and authority to enter into the Agreement and any Customer Order; (c) execution, delivery and consummation of transactions contemplated thereby have been authorized by all necessary corporate action and do not violate any judgment, order, or decree; (d) execution, delivery, performance and consummation of transactions contemplated by the Agreement and any Customer Order do not and will not violate any Laws; and (e) this Agreement and any Customer Order, when executed, are the legal, valid and binding obligations of such party.

Customer represents and warrants that: (a) Customer is now and will remain, throughout the Term of Agreement or applicable Customer Order in compliance with all Laws applicable to Customer (directly, or indirectly through RN), and (b) Customer will receive and utilize Products and results and proceeds of Services and perform all obligations to RN in compliance with all Laws, and (c) Customer shall comply with all covenants and conditions of the Agreement and any applicable Customer Order, and (d) no Customer Works, software, data or other information provided directly or indirectly by Customer will contain any virus, trojan horse, self-replicating or other computer instructions that may, without RN's consent: (i) alter, destroy, inhibit or



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discontinue RN's effective use of such information or any RN resource; (ii) erase, destroy, corrupt or modify any data, programs, materials or information used by RN; (iii) store any data, programs, materials or information on RN's computers; or (iv) bypass any internal or external security measure to obtain access to RN's resources or information, and (e) that none of the Customer Works or data provided to RN in connection herewith, nor any part thereof, violates or will violate or infringes or will infringe any trademark, service mark, trade name, contract, agreement, copyright (whether common law or statutory), patent, literary, artistic, dramatic, personal, private, civil or property right or right of privacy or publicity or "moral rights of author" or any other right whatsoever, or slanders, defames or libels any person, firm, corporation or association whatsoever, nor does it contain any content that is obscene or otherwise illegal to distribute within the world, and (f) Customer has obtained authorization from any third party necessary to allow RN to utilize any Customer Works in connection with this Agreement or any applicable Customer Order.

Without limiting the generality of the foregoing, Customer warrants and represents that it shall use reasonable commercial efforts to cause its duly authorized and permitted end-users, licensees, assignees and successors to comply with the foregoing. Customer acknowledges RN has no ability or responsibility to prevent unauthorized use, fraudulent use or any other use of or access to Products and/or Services by third parties. Customer shall be liable for all (whether by a third party or otherwise) use or misuse of Products and/or Services hereunder except to the extent attributable to the gross negligence or willful misconduct of RN, irrespective of whether such use or misuse was unauthorized, fraudulent or otherwise. Claims of unauthorized use, fraudulent use or any other misuse shall not constitute a valid basis for dispute of an invoice. RN shall not be liable for any third party misuse or unauthorized access of Customer Works and/or its web sites.

EXCEPT AS SET FORTH ABOVE OR OTHERWISE REQUIRED BY LAW, CUSTOMER'S USE OF PRODUCTS AND/OR SERVICES IS ENTIRELY AT CUSTOMER'S OWN DISCRETION AND RISK. THE PRODUCTS AND/OR SERVICES ARE FURNISHED BY RN "AS IS" AND WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. RN: (A) EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE; (B) DOES NOT WARRANT THAT THE PRODUCTS AND/OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS, OR THAT THEIR OPERATION WILL BE TIMELY, UNINTERRUPTED, SECURE, OR ERROR-FREE OR THAT ANY DEFECTS WILL BE CORRECTED; AND (C) DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS OR CONDITIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE PRODUCTS AND/OR SERVICES IN TERMS OF ACCURACY, RELIABILITY, TIMELINESS, COMPLETENESS, OR OTHERWISE. CUSTOMER ASSUMES TOTAL RESPONSIBILITY FOR ITS AND CUSTOMER END USERS' USE OF THE PRODUCTS AND/OR SERVICES.

This Clause will survive expiration or termination of this Agreement or any Customer Order.

9. **Indemnification.** RN will indemnify, defend and hold harmless Customer and its parents, subsidiaries, affiliates, licensors, service providers and all of its/their direct and indirect officers, directors, shareholders, managers, members, employees, contractors, agents, successors and assigns (each, a "**Customer Indemnified Person**") from any and all losses, liabilities, damages (including taxes), costs and expenses, including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties (collectively, "**Losses**"), due to, arising from or relating to third party claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding) arising from or relating to: (a) RN's actual or alleged breach of any warranty set forth in this Agreement or any Customer Order; (b) RN's failure to comply with Laws; (c) any direct infringement, violation or misappropriation of the intellectual property rights of any third party by RN (which does not involve Customer Works); or (d) the grossly negligent, willful or reckless acts or omissions of or by RN (individually and collectively "**Customer Indemnified Claim**").

Customer will indemnify, defend and hold harmless RN and its parents, subsidiaries, affiliates, licensors, service providers and all of its/their direct and indirect officers, directors, shareholders, managers, members, employees, contractors, agents, successors and assigns (each a "**RN Indemnified Person**") from any and all Losses due to, arising from or relating to third party claims, demands, actions or threat of action (whether in law, equity or in an alternative proceeding) arising from or relating to: (a) Customer's actual or alleged breach of any warranty or other provision set forth in the Agreement or any Customer Order; (b) actual or alleged infringement, violation or misappropriation of any copyright, patent, trademark, service mark, trade secret or other intellectual property right(s) and/or other right(s) of a third party by Customer; (c) Customer's failure to comply with Laws; (d) grossly negligent, willful or reckless acts or omissions of Customer; or (e) Customer Works, Customer's web site or other materials provided to RN by Customer (or any Customer End User) which actually or allegedly violate any Laws and/or third party right(s) including any right(s) of privacy, publicity or are deemed obscene, libelous, defamatory or disparaging, (f) Customer's (or any Customer End User's) use of Products and/or Services; (g) acts or omissions of any Customer End User; (h) any act or omission occurring under Customer's user ID and password; (i) any product or service sold or advertised in connection with Customer Works and/or a Customer web site; (j) any third party's access or use of Customer Works and/or web site; (k) any violation of RN's AUP (individually and collectively, "**RN Indemnified Claim**"). Customer Indemnified Claim and RN Indemnified Claim may be referred to as an "**Indemnified Claim**". In event of an RN Indemnified claim, RN shall be permitted to select legal counsel to provide a defense to such claim. RN reserves the right, at its expense to participate in defense of any matter subject to indemnification from Customer, but shall have no obligation to do so.

No settlement or compromise that imposes any liability or obligation on any Indemnified Person will be made without the Indemnified Person's prior written consent (not to be unreasonably withheld or delayed). A party entitled to indemnification pursuant to this Agreement shall, with respect to any claim made against such indemnified party for which indemnification is available, notify the other party in writing of the nature of the claim as soon as practicable but not more than ten (10) days after the indemnified party receives notice of the assertion of the claim. (The failure by an indemnified party to give notice as provided, above, shall not relieve the indemnifying party of its obligations hereunder, except to the extent that the failure results in the failure of actual notice and the indemnifying party is damaged as a result of the failure to give notice.) Upon receipt of notice of the assertion of a claim, the indemnifying party shall employ competent counsel and shall assume the defense of the claim. Each party shall cooperate in the defense of any claim for which indemnification is available and shall furnish such records, information, testimony and attend such conferences, discovery proceedings, hearings, trials and appeals as may reasonably be requested by the other party.



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10. **Limited Liability.** EXCEPT AS REQUIRED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, COMPENSATION, REIMBURSEMENT OR DAMAGES IN CONNECTION WITH, ARISING OUT OF, OR RELATING TO, THE USE, OR LOSS OF USE OF, THE PRODUCTS AND/OR SERVICES, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR CONTENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, SUBSEQUENT OR OTHER COMMERCIAL LOSS, OR FOR ANY OTHER REASON OF ANY KIND, WHETHER BASED ON CONTRACT OR TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT AS REQUIRED BY LAW, RN WILL NOT BE LIABLE TO CUSTOMER FOR DAMAGES FOR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY RELATED TO THE PRODUCTS AND/OR SERVICES. IF, NOTWITHSTANDING THE FOREGOING, RN IS FOUND TO BE LIABLE TO CUSTOMER FOR ANY DAMAGE OR LOSS WHICH ARISES UNDER OR IN CONNECTION WITH THE PRODUCTS AND/OR SERVICES, RN'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER SHALL IN NO EVENT EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY THE CUSTOMER FOR THE RELEVANT PRODUCTS AND/OR SERVICES FOR THE SIX MONTHS PRIOR TO THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO RN'S LIABILITY.

THE PARTIES ACKNOWLEDGE THAT THE DISCLAIMER OF WARRANTIES, DISCLAIMER OF CONSEQUENTIAL DAMAGES AND LIMITATIONS OF LIABILITY HEREIN AND IN THE OTHER TERMS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAINED FOR CONSIDERATION BETWEEN THE PARTIES, WITHOUT WHICH RN WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. RN'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THESE LIMITATIONS.

11. **Equipment.** RN is not responsible for loss or damage to Customer's equipment and property (if any) stored or installed in an RN datacenter facility or other RN location. Customer agrees to maintain insurance coverage on such equipment and property stored or installed at an RN datacenter facility or other RN location which covers any type of loss and includes a waiver of subrogation clause. RN shall not be liable for damage to, or loss of any of Customer's equipment resulting from any cause, other than RN's gross negligence or willful misconduct and then only in an amount not to exceed the replacement value of the damaged equipment, not to exceed the limits set forth above. Customer shall have no right or interest in any equipment supplied by RN other than the right to use such equipment during the specified Term while payments are current. Customer shall be liable to RN for any damage to such equipment caused by Customer or Customer's representatives, agents, employees or contractors.

12. **Changes to Agreement.** In the event that RN modifies any terms of this Agreement and/or any applicable Customer Order, RN shall deliver written notice (which may be satisfied by an e-mail) of such modification to Customer. Customer's continued use of the relevant Products and/or Services after the effective date of any such notice constitutes acceptance of such changes. However, Customer will have thirty (30) days within which to object, in writing, to any such modifications. If Customer has reasonable cause to dispute a modification and both parties are unable to agree to new terms (relating to such modifications) within thirty (30) days of the dispute, then RN may elect (within the subsequent seven (7) calendar days) one of the following by providing written notice to Customer: 1) to revert to the prior term(s) of the Agreement and/or Customer Order, as applicable, immediately prior to the relevant modification notice, or 2) to allow Customer to terminate the Agreement and/or applicable Customer Order affected by such modification, without incurring an early termination penalty. However, Customer must exercise such termination right by providing written notice (which notice shall include date of termination) to RN within thirty (30) days of RN's notice of election as set forth above. Customer's failure to timely object and/or terminate, as applicable, in writing shall constitute assent to such modifications.

13. **Remedies.** Remedies contained herein for breach of the Agreement are not exclusive, but are cumulative and pursuit of one shall not be deemed to exclude any and all other remedies which may be pursued at law or in equity. Customer acknowledges RN will be irreparably harmed if Customer breaches (or attempts or threatens to breach) certain terms and conditions hereof which are not remedied or would not be fully-remedied or compensated by monetary damages. If a court of competent jurisdiction finds that Customer has breached (or attempted or threatened to breach) any such obligations, Customer agrees that, without any additional findings of irreparable injury or other conditions to injunctive relief, it will not oppose the entry of an appropriate order compelling performance by Customer and restraining it from any further breaches (or attempted or threatened breaches).

14. **DMCA Compliance, Notice and Takedown Procedures.** If Customer or any Customer End User knows or should have reason to know (based upon a standard of reasonable care) that any Customer Work has been copied or otherwise used in a way that constitutes copyright infringement, Customer agrees to immediately provide RN's designated copyright agent ("DCA") with all of the following information, in writing: (a) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest, (b) a description of the copyrighted work or other intellectual property that has allegedly been infringed, (c) a description of the location of the material claimed to be infringing (relative to any Product or Service provided by RN and/or any web site), (d) the claimant's physical address, telephone number and email address, (e) a statement by the claimant that claimant has a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law, and (f) a statement by the claimant, made under penalty of perjury, that all of the above information contained in claimant's notice is accurate and that claimant is the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf (the foregoing shall collectively be referenced as the "Infringement Notice"). Customer agrees to (and any third party may) send any such Infringement Notice, in writing, to RN's DCA, which presently is: Lawrence G. Walters, Esq., Walters Law Group, 195 W. Pine Ave., Longwood, FL 32750-4104, Fax: (407) 774-6151, E-mail: Notice@DMCANotice.com. Customer agrees not to send any other inquiries, information or correspondence to the DCA. Customer acknowledges that any third party may also submit such Infringement Notice to RN.

Upon receipt of any Infringement Notice (whether from Customer or a third party): (a) RN reserves the right, exercisable at any time, to immediately disable access to or remove such infringing material or activity accessible on or from RN's servers, or any materials claimed to be infringing, or materials which appear, based on facts or circumstances to be infringing, and (b) in connection with the foregoing, RN may also discontinue Products and/or Services which enable such claimed infringement, and (c) RN shall provide written notice to relevant parties relating to the Infringement Notice and



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actions taken based thereon. Customer acknowledges that RN's policy is to terminate the account of repeat copyright infringers, when appropriate, and RN will act expeditiously to remove access to all material that infringes copyright, according to the procedure set forth in 17 U.S.C. §512 of the Digital Millennium Copyright Act ("DMCA"). If any Infringement Notice does not comply with §512 of the DMCA, but does comply with three (3) or more requirements for identifying sites that are infringing according to §512 of the DMCA, RN will attempt to contact or take other reasonable steps to contact the complainant to assist that party to comply with notice requirements.

If Customer (or any third party) reasonably believes that the Infringement Notice is erroneous or false, and/or that allegedly infringing material has been wrongly removed in response to an Infringement Notice as outlined above, Customer agrees to (and any third party may) submit a counter-notification pursuant to Section 512(g)(2) and (3) of the DMCA (a "**Counter Notification**"). A Counter Notification shall be the sole method for Customer (or any third party) to dispute the removal or disabling of material pursuant to an Infringement Notice. Information provided in a Counter Notification shall be accurate and truthful, and Customer will be liable for any misrepresentations (of Customer or any Customer End User) including those which may cause any claims to be brought against RN. Customer agrees to (and any third party may) send any such counter-notification to RN's DCA, and agrees that such Counter Notification shall contain: (a) specific description of the material that was removed or disabled pursuant to the Infringement Notice, (b) a description of the location of the material claimed to be infringing (relative to any Product or Service provided by RN and/or any web site), (c) a statement reflecting the belief that the removal or disabling of the material was erroneous. For convenience, the following format may be used: "I swear, under penalty of perjury, that I have a good faith belief that the referenced material was removed or disabled by the service provider as a result of mistake or misidentification of the material to be removed or disabled" and (d) the claimant's physical address, telephone number, and email address. Customer agrees to (and any third party may) sign and send any such Counter Notification to RN's DCA, which presently is: Lawrence G. Walters, Esq., Walters Law Group, 195 W. Pine Ave., Longwood, FL 32750-4104, Fax: (407) 774-6151. In the alternative, Customer (and any third party) may e-mail the Counter Notification (to Notice@DMCANotice.com) provided such claimant electronically signs the email. Upon receipt of a Counter Notification, RN shall transmit same to the claimant for the original Infringement Notice. Additionally, within ten to fourteen (10-14) days of RN's receipt of the Counter Notification, RN reserves the right to replace or cease disabling access to the disputed material provided that RN or RN's DCA has not received notice from the claimant of the Infringement Notice that such entity has filed a legal action pertaining to the disputed material. RN reserves the right to modify, alter or add to this policy, and Customer agrees to regularly check RN's web site to remain apprised of relevant changes.

15. **Publicity.** Notwithstanding anything herein to the contrary, neither party may release a public statement announcing the Agreement ("**Press Release**") without the prior written consent of the other party.

16. **Governing Law; Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of New York law relating to conflicts of laws. Notwithstanding the foregoing (and the Arbitration Clause set forth below), claims for equitable relief may be brought in any court with proper jurisdiction within the U.S. The UN Convention on International Sale of Goods does not apply to the transactions contemplated by this Agreement. Both parties agree to waive any right to have a jury participate in the resolution of the dispute or claim, whether sounding in contract, tort or otherwise, between any of the parties or any of their respective affiliates arising out of, connected with, related to or incidental to this Agreement to the fullest extent permitted by law.

17. **Benefit and Assignment.** The Agreement is binding upon and shall inure to benefit of parties hereto and their respective successors and assigns; provided that neither party shall assign rights or delegate duties under the Agreement without prior written consent of the other party, which may be withheld in such party's sole discretion. Notwithstanding the foregoing, each party shall have the right to assign this Agreement, upon written notice to the other party, to any entity: (a) with which it merges, (b) by which all or substantially all of its equity or assets is acquired, or (c) which is a wholly owned subsidiary of Customer, or (d) which wholly owns or controls Customer, provided that the assignee entity agrees to be bound, in writing, by the terms and conditions of this Agreement. RN shall have the right to assign its right to receive and pursue payments hereunder. Any assignment or transfer without the required consent will be void and will be considered a material breach of this Agreement. Upon any permitted assignment, the assigning party will remain jointly and severally liable for performance under the Agreement, unless released in writing by the other party.

18. **Notices.** Any notice, demand or request required or permitted to be given under the provisions of the Agreement shall be in writing and deemed to have been duly delivered (a) on date of personal delivery or (b) on date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, or by overnight courier, to addresses first listed above or such other address as a party may request by notice to the other party. Courtesy copies of notices to RN shall be sent to Weston, Garrou & Mooney, 12121 Wilshire Blvd. Suite 525, Los Angeles, CA 90025, Attn: Mark P. Binder.

19. **Captions.** The captions of sections of this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

20. **Independent Contractor.** During the term of this Agreement or any applicable Customer Order, RN shall be an independent contractor of Customer. This Agreement (and any applicable Customer Order) will not be interpreted or construed to create an association, joint venture or partnership between the parties or to impose any partnership obligation or liability upon either party. RN shall not be an employee, partner or joint venturer with Customer. RN shall not be entitled to participate in or receive benefits of any pension, retirement, medical insurance or other employee benefit plan of Customer. RN shall be responsible for, pay and discharge any and all obligations to federal, state or local governments for income or earnings taxes and Customer shall be responsible for, pay and discharge any similar obligations arising out of its receipt of Products and/or Services set forth herein or pursuant to any Customer Order. Neither party will have any right, power or authority to enter into any agreement for or on behalf of, or to assume or incur any obligation or liabilities, express or implied, on behalf of or in the name of, the other party.

21. **Entire Agreement.** The Agreement, any relevant Customer Order constitute the entire agreement among the parties with regard to Products and/or Services to be provided by RN, and supersedes all prior agreements, understandings, inducements or conditions, express or implied, oral or written, relating to the subject matter of the Agreement and cannot be amended except by a written agreement signed by the party against which enforcement is sought. The Agreement and any Customer Order may be executed in any number of counterparts, each shall be deemed an original, all of which together are a single agreement between the parties



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22. No Implied Waivers. The waiver or failure of either party to exercise, in any respect, any right or remedy shall not be deemed a waiver of any further right or remedy herein.

23. Severability. If any provision of the Agreement or any Customer Order is held invalid, illegal or unenforceable, the validity, legality and enforceability of remaining provisions shall not be affected or impaired thereby.

24. No Drafter. Each party acknowledges the Agreement (including any Customer Order) have been the subject of active and complete negotiations, and that this Agreement (and any Customer Order) should not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in its preparation or drafting.

25. Force Majeure. Except for payment obligations hereunder, each party is excused from performance under the Agreement and shall have no liability to the other party for any period if it is prevented from performing any obligations, in whole or part, as a result of material delay caused by the other party or by act of God, war, terrorism, civil disturbance, court order, or natural disaster (each, "**Force Majeure Event**"), but excluding: (a) labor and union-related activities, (b) non-performance of RN personnel (unless such non-performance is due to a Force Majeure Event). The obligations and rights of the party so excused shall be extended on a day-to-day basis for the period of time equal to that of the underlying cause of the delay.

26. Arbitration. If parties are unable to resolve a dispute informally, dispute shall be submitted to final and binding arbitration. Arbitration shall be initiated and conducted according to JAMS Streamlined (for claims under \$250,000) or JAMS Comprehensive (for claims over \$250,000) Arbitration Rules and Procedures, except as modified herein, including Optional Appeal Procedure, at the New York office of JAMS, or its successor ("JAMS") in effect when request for arbitration is made (the "Arbitration Rules"). Parties waive the right to seek punitive damages and arbitrator shall have no authority to award such damages. Arbitrator will provide a detailed written statement of decision, which will be part of the arbitration award and admissible in any judicial proceeding to confirm, correct or vacate the award. If a party refuses to perform any or all obligations under the final arbitration award (following appeal, if applicable) within 30 days of such award being rendered, then the other party may enforce the final award in any court of competent jurisdiction in New York County. The party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, incurred in enforcing the award, to be paid by the party against whom enforcement is ordered. Notwithstanding the foregoing, either party shall be entitled to seek injunctive relief through arbitration and/or in any state and federal courts of the United States. Any dispute or portion, or claim for a particular form of relief (not precluded by a provision of the Agreement), that may not be arbitrated pursuant to applicable state or federal law may be heard only in a court of competent jurisdiction in New York, New York.

NOTICE: YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF MATTERS INVOLVING THIS AGREEMENT DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY NEW YORK LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MAY POSSESS TO HAVE A DISPUTE LITIGATED IN COURT OR JURY TRIAL. YOU ARE ALSO GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER AUTHORITY OF NEW YORK CODE OF CIVIL PROCEDURE. NEVERTHELESS YOUR AGREEMENT TO THIS ARBITRATION IS VOLUNTARY.

27. Attorney's Fees. In the event that any arbitration or legal action becomes necessary to enforce or interpret the terms of this Agreement or a dispute arises based thereupon, the prevailing party shall be entitled, in addition to its court costs, to such reasonable attorneys' fees, expert witness fees and legal expenses as may be fixed by an arbitrator or court of competent jurisdiction.

28. Advice of Counsel. Each party to this Agreement hereby acknowledges that it has read and understands each of the provisions set forth herein; that each party has had the opportunity to consult with counsel of their own choice in connection with the negotiation and preparation of this Agreement, and to have each of the provisions set forth herein fully explained by such counsel; and that this Agreement is entered into freely, voluntarily, and without any duress or undue influence of any nature by, or on behalf of, any person or entity.

29. Survival. Terms of the Agreement and any Customer Order that by their nature should survive termination or expiration will survive, including, without limitation, accrued payment right, confidentiality, representations and warranties, limited liability and indemnifications.

30. Third Parties. Unless otherwise agreed by the parties in writing, RN shall deliver Products and render Services only to Customer, not to any Customer End User or other third party (whether or not Customer provides access such Products and/or Services). There are no third party beneficiaries to this Agreement, meaning that third parties do not have any rights against RN under the Agreement or any applicable Customer Order. As between RN and Customer, Customer shall be fully responsible and liable for any use of Products and/or Services by any third party (including Customer's end-users).



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BY SIGNING BELOW, CUSTOMER AGREES: A) CUSTOMER HAS AGREED TO THIS AGREEMENT (AS AMENDED FROM TIME TO TIME AS PROVIDED HEREIN) IN ITS ENTIRETY, AND B) CUSTOMER HAS READ THIS ENTIRE DOCUMENT CAREFULLY AND FULLY UNDERSTANDS ALL OF THE TERMS AND CONDITIONS CONTAINED HEREIN, AND C) IF CUSTOMER IS AN INDIVIDUAL, THEN THE INDIVIDUAL REPRESENTS AND WARRANTS THAT (S)HE HAS THE LEGAL RIGHT TO ENTER INTO THE AGREEMENT AND IF THE CUSTOMER IS AN ENTITY, THEN THE INDIVIDUAL WHO AGREES TO THIS AGREEMENT REPRESENTS AND WARRANTS THAT (S)HE HAS THE AUTHORITY TO BIND SUCH ENTITY, AND D) THIS AGREEMENT CONSTITUTES A BINDING AND ENFORCEABLE OBLIGATION BETWEEN RN AND CUSTOMER.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their authorized signatories, all as of the Effective Date set forth above.

CUSTOMER

RN

_____ (Legal Name of Customer)

REFLECTED NETWORKS, INC.

Signature: _____

Signature: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Customer Address: _____

Customer Email Address: _____

Customer Fax: _____