

MASTER SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT (the “Agreement”) is incorporated in, and is an integral part of, the Client Services Agreement (CSA) between Client and TriCore. Client and TriCore may be referred to herein individually as a Party and together as the Parties. The purpose of this Agreement is to set forth the terms and conditions under which TriCore will provide to Client certain Services (as are hereinafter defined), including access to services and systems of which TriCore is an authorized reseller.

RECITALS

WHEREAS, Client desires to subscribe to certain Services that are offered by TriCore, which are more fully described in the Client Services Agreement in which this Agreement is incorporated by reference and of which it is a part, and are defined below ; and

WHEREAS, in the course of providing the desired Services to Client, TriCore may find it useful or necessary to grant to Client access to certain software and systems, which may be proprietary to TriCore or may be provided to TriCore by third parties; and

WHEREAS, TriCore agrees to provide the Services to Client in accordance with the terms and conditions set forth herein; and

WHEREAS, TriCore’s agreement to provide the Services is conditioned upon Client’s agreement to acceptance of the terms of use of each and every system and software application to which it is granted access by TriCore;

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and warranties hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENTS

1. Definitions

1.1 “Agreement” means collectively, this Master Subscription Agreement, together with each Order Schedule and all attachments, exhibits, schedules, policies, and instructions incorporated by reference thereto.

1.2 “Business Day” means any day on which TriCore is regularly open for business and the Federal Depository is open for business.

1.3 “Client” means the Client identified as such in a CSA, and any affiliate or subsidiary of Client and any other person or entity for which TriCore is providing Services pursuant to the attached Order Form.

1.4 “Client Data” means information submitted by, or entered by Users including, but not limited to, business information, bank account information, tax information, accounting information, employee information, attachments, content, transactions and reports.

1.5 “Confidential Information” means any and all information disclosed by either party (the “Disclosing Party”) to the other (the “Receiving Party”), which is marked “confidential” or “proprietary” or which should reasonably be understood by the Receiving Party to be confidential or proprietary, including, but not limited to, the terms and conditions of this Agreement, and any information that relates to business plans, services, marketing or finances, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software

(including source and object code), hardware configuration, computer programs, and algorithms of the Disclosing Party.

1.6 "Documentation" means the written instructions and User Guides, including any updates thereto, relating to the use of the Services

1.7 "Intellectual Property" means any intellectual property or proprietary rights, including but not limited to software (including source and object code), content, copyright rights copyright, moral rights, trademarks (including logos, slogans, trade names, service marks), patent rights (including patent applications and disclosures), know-how, rights of priority, and trade secret rights, recognized in any country or jurisdiction in the world.

1.8 "Services" means, inclusively, (i) all of the services described in the Client Services Agreement and the Order Form attached hereto, and (ii) the provision of access to online Internet applications and platforms, and (iii) all other services performed by TriCore by request from Client or pursuant to a separate Order Form.

1.9 "System" means the software and hardware used to provide the Services to Client over the Internet, including application software, Web and/or other Internet servers, any associated offline components, and all updates thereto.

1.10 "User" and "Users" means individuals who are authorized by Client to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Client (or by TriCore at Company's request). Users may include but are not limited to Client's employees, consultants, contractors and agents; or third parties with which Client transacts business.

2. Services

2.1 License. Subject to the terms and conditions of the applicable Order Form, TriCore grants Client a non-exclusive, non-transferable, non-sub-licensable right to have Users access and use the Services solely for Client's internal business purposes. Client agrees that Client's purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by TriCore regarding future functionality or features. Notwithstanding the provision by TriCore of the Services, Client acknowledges that (i) Client, and not TriCore, remains solely responsible for all decisions affecting its employees; (ii) Client remains responsible for the manner in which it uses the Services, including the manner in which it interprets and acts upon any human resources guidance provided by TriCore and (iii) Client will use the Services only for its intended purpose and will maintain its internal systems infrastructure as required by TriCore in order to effectively provide the Services.

2.2 Subscription. Prior to accessing any Services, Users must (i) be designated as a User by Client under its paid subscription, and (ii) accept and comply with all applicable "click through" or similar licenses required to be accepted by Users when first seeking to access particular Services. User subscriptions are solely applicable to named Users and cannot be shared or used by more than one User, but may be transferred to new Users from Users who have terminated an employment or contracting relationship with Client or who otherwise no longer require ongoing use of the Services.

2.3 Restrictions. Client will not, and will not allow any third party to (a) modify, copy, or otherwise reproduce the System in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code form or structure of the software used in the System; (c) provide,

lease or lend the Services or System to any third party except as expressly authorized hereunder; (d) remove any proprietary notices or labels displayed on the System; (e) modify or create a derivative work of any part of the System; (f) use the Services or System for any unlawful purpose; or (g) create Internet "links" to or from the System, or "frame" or "mirror" any of the content which forms part of the System.

2.4 Third-Party Providers. Certain third-party providers offer products and services related to the Services, including implementation, customization and other consulting services related to Client's use of the Services and applications (both offline and online) that work in conjunction with the Services, such as by exchanging data with the Services or by offering additional functionality within the user interface of the Services. TriCore does not warrant any such third-party providers, any of their products or services or the compatibility of such products or services with the Services and Systems. Any exchange of data or other interaction between Client and a third-party provider, and any purchase by Client of any product or service offered by such third-party provider, is solely between Client and such third-party provider.

2.5 Use of the Services. Client shall (i) be responsible for each User's compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Client Data and of the means by which Client acquired Client's Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify TriCore of any such unauthorized access or use as soon as practicable, but in any case not later than twenty-four (24) hours after becoming aware of such unauthorized access or use, and (iv) use the Services only in accordance with the Documentation and applicable laws and government regulations. Client shall not (a) make the Services available to anyone other than properly authorized Users who are not in breach of any obligations imposed upon Users under this Agreement, (b) sell, resell, rent, license or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit malicious code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services, Systems or other related systems or networks.

2.6 Compliance with Laws. Client acknowledges that the Services are designed to assist Client in complying with applicable law and governmental regulations, but that Client, and not TriCore, shall be solely responsible for (i) compliance with all laws and governmental regulations applicable to its business and (ii) any use Client may make of TriCore's Services (including any reports and worksheets produced in connection therewith) to assist it in complying with such laws and governmental regulations. Client acknowledges that, in making the Services available, TriCore is not acting as an investment advisor, broker-dealer, insurance agent or intermediary or a financial or benefit planner.

3. Fees, Duration and Payment

3.1 Fees. TriCore's current fee schedule is set forth on the applicable Order Form signed by the Client. TriCore reserves the right to change fees or to institute new fees at any time after the Initial Subscription Period except for Consulting Services fees as described more fully in the Order Form. Client will be notified in advance of the effective date of changes in fees or new fees via electronic mail. Such changes or new fees will become effective upon the later of Client's next billing cycle or 30 days from

the date of notice. Client may terminate its subscription to any particular Service for which TriCore's fees are increased (but not to any other Service) by providing TriCore with written notice of its election to terminate that subscription at least three (3) business days before the new fee goes into effect.

3.2 Duration of User Subscriptions. Unless otherwise stated in the applicable Order Form: (a) all initial User subscriptions will begin and continue for the initial Subscription Period set forth in the applicable Order Form (the "Initial Subscription Period"); (b) any additional User subscriptions added after the beginning of a Subscription Period, but before commencement of the next Subscription Period, will continue for the duration of that Subscription Period; (c) after the end of the Initial Subscription Period and each Subscription Period thereafter, all current User subscriptions will automatically renew for additional Subscription Period(s) of three (3) years at the TriCore list price in effect at the date of renewal and subject to the then current version of this Master Subscription Agreement on the date of renewal, unless either party gives the other party notice of non-renewal at least 30 days prior to the end of the relevant Subscription Period.

3.3 Payment. Subscription fees for the TriCore HCMS Tier 1, as defined in Exhibit A to the Order Form, are included in the fees specified in the Order Form for payroll processing services, which fees are invoiced and payable with each pay period. Unless otherwise specified in a written agreement between the Parties, all fees are payable by direct debit to Client's bank account at least 24 hours prior to each pay date. Subscription fees for TriCore HCMS Tier 2, whether expressed in the Order Form as Per Employee per Month or otherwise, will be invoiced on the same frequency as the payroll applicable to the covered employees and will be added to the amounts invoiced for payroll services. Fees for services other than payroll services and HCMS subscriptions will be invoiced on the frequency indicated in the Order Form and may be added to an invoice for payroll services or billed separately. In either case, however, payment of the invoice will be made by direct debit to the Client's bank account at the time of presentation of the invoice.

3.4 Termination for Non-payment. In the event that funds are unavailable from Client's account upon presentation of an invoice, and Client fails to make sufficient funds available within 24 hours of notice given by TriCore of the insufficiency, in addition to any of its other rights or remedies, TriCore reserves the right to immediately terminate this Agreement and Client's access to the Services and to void the Order Form.

3.5 Late Payments. Any late payments will accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

3.6 Taxes. The fees and expenses payable by Client are net amounts payable per the Order Form or hereunder, exclusive of all sales, use, withholding, excise, value added, and ad valorem taxes incurred by Client or imposed on TriCore in the performance of this Agreement or otherwise due as a result of this Agreement or the Client Services Agreement. Client will pay any and all such taxes and duties, customs fees and similar charges, whether directly to the appropriate taxing authority or by reimbursing TriCore for payments it makes on Client's behalf. The foregoing does not apply to taxes based solely on TriCore's income or its license to do business in any state or locality.

3.7 Billing and Contact Information. Client is responsible for providing TriCore with complete, current and accurate billing and contact information at all times. Failure to notify TriCore of a change in billing or contact information will not excuse Client from any obligations or requirements for timely payment of amounts due to TriCore.

4. Property Rights

4.1 Ownership. The Systems and Services licensed to Client hereunder shall at all times remain the sole, exclusive, and absolute property of TriCore, TriCore's licensors, or any third parties who have authorized TriCore to use or resell the Systems and Services. Client acknowledges that the Systems and Services are protected by United States copyright laws, by the common law, or by laws of other nations. Any rights not expressly granted are reserved by TriCore and its licensors. Client receives no rights to any Systems or Services, any materials relating thereto, or any modifications, enhancements, customizations, updates, revisions or derivative works thereof, or any results of consulting services, whether made pursuant to this Agreement or a separate statement of work. Client acknowledges that no aspects of any of the Services are provided on a work-for-hire basis.

4.2 Feedback. Client may submit comments, information, questions, data, ideas, description of processes, or other information to TriCore ("Feedback"). For any and all Feedback, Client grants to TriCore a non-exclusive, worldwide, perpetual, irrevocable and sub-licensable license, under all Intellectual Property rights covering or embodied by the Feedback, to use, exploit, reproduce, advertise, publish, incorporate, distribute, disclose, perform, translate, modify and otherwise create derivative works and compilations from any Feedback for any lawful purpose. Client represents that it holds all intellectual or proprietary rights necessary to grant to TriCore and /or its licensors such license, and that the Feedback will not violate the personal, proprietary or Intellectual Property rights of any third party.

5. Confidentiality and Security

5.1 Confidential Information. Each Party hereby agrees that it will not use or disclose any Confidential Information received from the other Party other than as expressly permitted under the terms of this Agreement or as expressly authorized in writing by the other Party. Each Party will use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own Confidential Information of like nature, but in no circumstances less than reasonable care. Neither Party will disclose the other Party's Confidential Information to any person or entity other than its officers, principals, employees and subcontractors who need access to such Confidential Information in order to effect the intent of the Agreement and who are bound by confidentiality obligations no less restrictive than those in this Agreement. Client acknowledges that the Documentation and all information relating to the functionality, programming and structure of any programming included in the Services constitute TriCore's Confidential Information, which are also the valuable trade secrets of TriCore. TriCore acknowledges that the Client Data constitutes Confidential Information of the Client, which is also part of the valuable trade secrets of Company.

5.2 Exceptions. The restrictions set forth in Section 5.1 will not apply to any Confidential Information that the Receiving Party can demonstrate (a) was known to it prior to its disclosure by the Disclosing Party; (b) is or becomes publicly known through no wrongful act of the Receiving Party; (c) has been rightfully received from a third party authorized to make such disclosure without restriction; (d) is independently developed by the Receiving Party; (e) has been approved for release by the Disclosing

Party's prior written authorization; or (f) is required to be disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

5.3 Injunctive Relief. The Parties agree that a breach of Section 5.1 may cause irreparable damage which money cannot satisfactorily remedy and therefore, the Parties agree that in addition to any other remedies available at law or hereunder, the Disclosing Party will be entitled to seek injunctive relief for any threatened or actual disclosure by the Receiving Party.

5.4 Security. TriCore uses commercially reasonable practices, including encryption and firewalls, to ensure that Client Data is disclosed only to Client and Client's authorized Users. However, Client acknowledges that the Internet is an open system and TriCore cannot and does not warrant or guarantee that third parties cannot or will not intercept or modify Client Data. TriCore is not responsible for Client's access to the Internet, for any interception or interruption of any communications through the Internet, or for changes to or losses of data through the Internet. Client acknowledges that TriCore does not review the accuracy or completeness of any information submitted by Client or its Users through the Site. Client agrees to take commercially reasonable precautions to maintain the privacy of usernames and passwords for any of the Services. In order to protect Client's data, TriCore may suspend Client's or Client's Users' use of the Systems or Services via the Internet immediately without notice, pending an investigation, if any breach of security is suspected.

5.5 Passwords. As part of the registration process, Client will select User passwords for accounts. Client is responsible for maintaining the confidentiality of User passwords, and Client agrees that TriCore has no liability with regard to the use of such passwords by third parties. Client agrees to notify TriCore immediately if Client has any reason to believe that the security of Client's account or any User passwords has been compromised.

5.6 Client Data. Without limiting the above, TriCore will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Client Data. TriCore will not (a) modify Client Data, (b) disclose Client Data except as compelled by law in accordance with Section 5.2 Subsection (f) or as expressly permitted in writing by Client, or (c) access Client Data except to provide the Services or prevent or address service or technical problems, or at Client's request in connection with support matters.

6. Availability

6.1 Systems. TriCore, its licensors and providers, use commercially reasonable efforts to maintain availability of the System used to provide the Services 24 hours per day, 365 days per week, subject, however to scheduled downtime for maintenance and to unscheduled interruptions that are beyond TriCore's control. TriCore does not guarantee uninterrupted availability of the System. Normal software or hardware maintenance and upgrades are scheduled for nights and weekends and are designed to cause a minimum amount of interruption to Services and System availability. Client will be notified of scheduled interruptions in advance. In the event that an unscheduled interruption occurs, TriCore will use commercially reasonable efforts to resolve the problem and return the System to availability as soon as practicable. During scheduled and unscheduled interruptions, Client may be unable to transmit and receive data through the System. In the event that assistance from Client is needed to restore the System to working order, Client agrees to not unreasonably refuse such assistance.

6.2 Suspension of Services. From time to time, it may become necessary for TriCore to suspend or modify provision of the Services and/or to suspend or limit Client's access to the System for administrative or other purposes. In such events, TriCore will incur no liability to Client or Client's employees for any inconvenience, loss of productivity, or any other claim.

7. Implementation and Support Services

7.1 Implementation. Upon execution and delivery of the Order Form, Client will pay a nonrefundable deposit TriCore equal to 50% of the implementation fees set forth in the Order Form. Some of the Services may require the Parties to prepare an Implementation Project Plan. In the event the Order Form calls for the preparation of a Project Plan, TriCore will provide Client with professional services as set forth in the Project Plan signed by both parties and will provide Client with qualified personnel to perform the services set forth in the Project Plan. Client agrees to: (i) provide qualified personnel to work with TriCore personnel to complete the Project Plan; (ii) supply any and all information requested by TriCore in order to complete the Project Plan and at such times designated by TriCore; and (iii) review and accept or reject such deliverables set forth in any Project Plan within ten (10) business days of delivery. Each deliverable shall be deemed accepted unless rejected by Client in writing within ten (10) business days following delivery. Client will notify TriCore in writing of any changes to the Project Plan. Client acknowledges that any changes to the scope of services may require changes to fees and completion dates, which shall be agreed to in writing by both parties. If any delays are caused by Client's untimely performance or by events beyond the reasonable control of TriCore, the Project Plan shall be extended by any such delay and TriCore shall not incur any liability to Client as a result of any such delay. Client acknowledges that time is of the essence and that any delays caused by Client may require TriCore to perform additional setup work and that additional fees associated with such setup work may be charged to Client.

7.2 Technical Support. TRICORE will provide standard support to Client, including all direct inquiries for support via e-mail, phone, fax, web meetings, and all other direct interaction with the Client during normal working days and hours (Monday through Friday 9:00AM – 5:00PM ET) except for recognized holidays. Standard and emergency support services shall be provided outside of normal working days and hours on a scheduled basis. Standard Support will be provided directly to no more than three designated Client contacts. Client acknowledges that Standard Support will be provided solely to the Client Contacts designated by Client, or their replacements.

7.3 Consulting Services. Any consulting services, training or other requirements not expressly stated in this Agreement or in a separate statement of work signed by the Parties are outside the scope of this Agreement and will be provided, if at all, for additional fees. Fees for such items are payable as specified in the applicable Order Form and will be paid upon receipt of invoice. For the purposes of computing daily rates, TriCore's standard workday is 8 hours. Changes in any statement of work will be effective only if a change request is signed by the Parties. If a Services implementation is delayed by Client and is not completed more than 6 months from the Effective Date of the applicable Order Form, a twenty-five percent 25% additional charge will apply for the consulting services involved.

8. Term and Termination

8.1 Term. This Agreement commences on the Effective Date of the first Order Form and will terminate when (a) all Subscription Periods and any renewals thereof entered into pursuant to this Agreement have expired or been terminated, or (b) this Agreement is otherwise terminated as provided for herein.

8.2 Termination for Cause. Either Party may terminate this Agreement and the affected Order Form for cause upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of the 30 day notice period. Either Party may upon 30 days written notice terminate this Agreement and the Order Form if the other Party commits an act of bankruptcy or becomes the subject of any Bankruptcy Act proceeding or becomes insolvent, or if any substantial part of its property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, or it suffers a material adverse change in its financial condition. In addition, TriCore may terminate this Agreement immediately for any failure of Client to pay any fees due to TriCore.

8.3 Effect of Termination. Termination will not relieve Client of the obligation to pay any fees due or payable to TriCore prior to the effective date of termination, including payroll processing fees, quarterly and annual fees, implementation fees, training fees, User subscription fees, consulting services fees, or any other fees or payments that Client has committed to under the Agreement. Sections 4, 8.4, 8.5, 9.5, 9.6, 10, 11, 12, and 13 will survive any termination or expiration of the Agreement. Sections 5.1-5.3 will survive for 5 years after termination of the Agreement.

8.4 Return of Materials. All Confidential Information, together with any other designs, drawings, formulas or other data, financial information, business plans, literature, and sales aids of every kind provided by either Party to the other will remain the property of the Disclosing Party. No later than thirty (30) days after termination, each Party will prepare all such items in its possession for shipment to the other at the Disclosing Party's expense. The Receiving Party will not make or retain any copies of any Confidential Information.

8.5 Return of Client Data. In the event of any termination of the applicable Order Form or this Agreement, Company Data, along with attachments in their native format, will be made available to Client either from TriCore or its provider or licensor, or through a third party offsite storage provider for up to thirty (30) days after termination. Reasonable storage charges may apply. After such 30-day period, TriCore will have no obligation, except as may be required by law, to maintain or provide Client any Client Data and will thereafter, unless legally prohibited, delete all Client Data in its possession or under its control.

9. Representations and Warranties

9.1 Authority. Each Party represents to the other that it is a valid legal entity and is in good standing or validly existing under the laws of the state of its organization and residence. Each Party represents that it has all the requisite legal power and authority to execute, deliver and perform its obligations under the Agreement; that the execution, delivery and performance of the Agreement has been duly

authorized; that the Agreement is enforceable in accordance with its terms; that no approval, authorization or consent of any governmental or regulatory authorities is required to be obtained or made in order for it to enter into and perform its obligations under the Agreement.

9.2 Warranty. TriCore warrants that: (i) the Services shall be provided to Client in accordance with the terms of this Agreement; (ii) TriCore will perform the Services in a good, professional, and diligent manner using personnel with the level of skill commensurate with the Services to be performed; (iii) TriCore will comply with all laws applicable to its business. Client acknowledges that effective delivery of the Services is dependent upon the accuracy of the information and representation provided by Client. TriCore shall be entitled to rely solely on the representations, authorizations, and information provided by Client.

9.3 Links to Third Party Sites. TriCore may provide links to third party Internet Sites. Links to and from a TriCore site to other third party sites do not constitute an endorsement by TriCore of such third party sites or the acceptance of responsibility for the content on such sites.

9.4 Notices and Correction of Errors. Client will notify TriCore in writing of any Errors. TriCore will use commercially reasonable efforts, at its own expense, to determine if there is an Error, and to correct or remedy Errors within 30 days of such notice. Client will provide reasonably appropriate assistance to TriCore in reproducing and validating the presence of Errors. Client will make reasonably appropriate adjustments to mitigate adverse effects of any Error until TriCore corrects or remedies such Error. Nothing herein shall be construed to obligate TriCore to correct any Errors that it cannot reproduce.

9.5 DISCLAIMER OF ALL OTHER WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TRICORE DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SERVICES, SYSTEM, AND DOCUMENTATION, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW, REPRESENTATION, STATEMENTS OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, IMPLIED FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. CLIENT ACKNOWLEDGES AND AGREES THAT NEITHER TRICORE NOR ANY SYSTEM, SERVICES, DOCUMENTATION, DATA, OR MATERIALS PROVIDED BY TRICORE WILL BE CONSTRUED AS PROVIDING REGULATORY, COMPLIANCE, RISK MANAGEMENT, ACCOUNTING, TAXATION, FINANCIAL, INVESTMENT, LEGAL OR OTHER ADVICE TO CLIENT, USERS, OR ANY THIRD PARTY. EACH PARTY WILL BE SOLELY AND INDIVIDUALLY RESPONSIBLE TO COMPLY WITH ALL LAWS AND REGULATIONS RELATING TO ITS RESPECTIVE BUSINESS OPERATIONS.

9.6 Remedies. For any breach of the warranties contained in Section 9.2 above, Client's exclusive remedy, and TriCore's entire liability, shall be (i) in the case of an Error in the Services, the correction of Errors that cause breach of the warranty, or if TriCore is unable to make the Services operate as warranted, Client shall be entitled to terminate this Agreement; and (ii) in the case of a breach of warranty with respect to the consulting services, the re-performance of the consulting services, or if TriCore is unable to perform the consulting services as warranted, Client shall be entitled to recover the fees paid to TriCore for the nonconforming consulting services.

10. Indemnification

10.1 Indemnification by TriCore. TriCore agrees to indemnify Client against any losses or damages finally awarded against Client and incurred in connection with a third party claim alleging that the Client's use of the unaltered Services or System infringes or misappropriates any U.S. patent, copyright, or trade secret of such third party, provided that Client (a) provides prompt written notice of such claim to TriCore, (b) grants TriCore the sole right to defend such claim, and (c) provides to TriCore all

reasonable assistance. In the event of a claim or threatened claim under this Section by a third party, TriCore may, including but not limited to, at its sole option, (i) revise the Services and/or System so that they are no longer infringing, (ii) obtain the right for Client to continue using the Services and System, or (iii) terminate the Agreement upon 10 days' notice. THIS SECTION 10.1 REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF TRICORE AND THE EXCLUSIVE REMEDY OF CLIENT FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.

10.2 Indemnification by Client. Subject to the Agreement, Client will defend, indemnify and hold TriCore harmless against any loss or damage incurred in connection with claims made or brought against TriCore by a third party alleging that the collection and use of Client Data infringes the rights of a third party; provided, that TriCore (a) provides prompt written notice of such claim to Client, (b) grants Client the sole right to defend such claim, and (c) provides to Client all reasonable assistance.

11. Limitation of Liability

11.1 LIMITED TO ACTUAL DAMAGES. EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 10, THE NON-EMPLOYMENT OBLIGATIONS IN SECTION 12, AND THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5.1, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, NOR SHALL THE AGGREGATE LIABILITY OF ONE PARTY TO THE OTHER FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (AND WHETHER IN CONTRACT OR IN TORT) EXCEED \$100,000, EXCLUSIVE OF ANY AMOUNTS DUE AND UNPAID TO TRICORE UNDER THIS AGREEMENT.

11.2 No Liability for Tax Services. Client acknowledges that payroll tax filing and payment services (the "Tax Services"), while included in the Services, are actually provided by the Payroll Tax People LLC and not by TriCore. Client agrees that TriCore assumes and incurs no liability in connection with the Tax Services and that all such liability is accepted, assumed and borne exclusively by the Payroll Tax People LLC as per a separate written agreement between the Client and the Payroll Tax People LLC.

12. Non-Employment

12.1 Employees. During the term of this Agreement, and for a period of two years thereafter, Client will not hire or seek to hire, or hire the services of, any employee or former employee of TriCore unless (i) such employee's employment by TriCore has been terminated for at least 2 years, or (ii) TriCore has given its written consent. For purposes of this Section 12, "Client" includes every subsidiary, affiliate, and parent, and every 5% or more shareholder of Client or Client's subsidiary, affiliate or parent. Liquidated damages for each violation of this Section 12 shall be set at not less than \$75,000.

12.2 Independent Contractors. During the term of this Agreement, and for a period of two years thereafter, Client will not, without TriCore's written consent, hire or seek to hire the services of any independent contractor of TriCore to perform any services of the same nature as the Services provided by TriCore pursuant to this Agreement.

13. General and Miscellaneous Provisions

13.1 Notices. Except as otherwise specified in the Agreement, all notices under the Agreement will be in writing and will be delivered or sent by (a) first class U.S. mail, registered or certified, return receipt requested, postage pre-paid; (b) U.S. express mail, or national express courier with a tracking system, or (c) via e-mail with automated read receipt functionality enabled to the address and main contact as specified in the Order Form. Notices will be deemed given on the day actually received by the Party to whom the notice is addressed.

13.2 Relationship of the Parties. The relationship between TriCore and Client is that of independent contractors. Neither Party has any authority to act on behalf of the other Party or to bind it, and in no event will the Parties be construed to be partners, employer-employee, or agents of each other.

13.3 Governing Law. The validity, construction and interpretation of this Agreement will be governed by the internal laws of the State of New Jersey, excluding its conflict of law's provisions. Any controversy, claim or action arising out of, concerning and/or relating to this Agreement will be resolved by a court of competent jurisdiction and venue located in the State of New Jersey.

13.4 Assignment. This Agreement may not be assigned by either one of the Parties by operation of law or otherwise, without the prior written consent of the other Party, which consent will not be unreasonably withheld; provided, however, that (i) such consent is not required in connection with the assignment of the Agreement to its affiliate or pursuant to a merger, acquisition, corporate reorganization or sale of all or substantially all of the assigning party's assets, and (ii) in no event may Client assign this Agreement to an actual, indirect or potential competitor of TriCore, or to any party with which TriCore is involved in a dispute, without the express prior written permission of TriCore. Any assignment made in violation of this Section 13.4 shall be null and void ab initio.

13.5 Force Majeure. Notwithstanding any provision contained in the Agreement, neither Party will be liable to the other to the extent fulfillment or performance of any terms or provisions of the Agreement are delayed or prevented by revolution or other civil disorders; wars; strikes; labor disputes; electrical equipment or availability failure; fires; floods; acts of God; government action; or, without limiting the foregoing, any other causes not within its control and which, by the exercise of reasonable diligence, it is unable to prevent. This clause will not apply to the payment of any sums due under the Agreement by either Party to the other. In the event either Party suffers an ongoing force majeure event that prevents its satisfying its obligations this Agreement for more than thirty (30) consecutive days, the other party may terminate upon three (3) days prior written notice.

13.6 Compliance with Laws. Each Party will be responsible for compliance with all applicable laws and government regulations in the process of marketing, delivering, and/or using the Services.

13.7 Public Announcements. Neither Party will make any public announcement using the name or logo of the other Party, or use the other Party's name or logo in any publicly available materials, without the other Party's written permission, which permission shall not be unreasonably withheld.

13.8 Headings, Construction and Severability. Headings in the Agreement are for reference purposes only and will not affect the interpretation or meaning of the Agreement. If any provision of the Agreement is held by an arbitrator or a court of competent jurisdiction to be contrary to law, then the remaining provisions of the Agreement will remain in full force and effect. No delay or omission by either Party to exercise any right or power it has under this Agreement will be construed as a waiver of

such right or power. A waiver by either Party of any breach by the other Party will not be construed to be a waiver of any succeeding breach or any other covenant by the other Party. All waivers must be in writing and signed by the Party waiving its rights. This Agreement shall be construed within its fair meaning and no inference shall be drawn against the drafting Party in interpreting this Agreement. All references to “day” or “days” shall mean calendar day or calendar days, unless there is specific reference to the contrary.

13.9 Legal Expenses. In the event that any dispute arising from this Agreement is pursued by litigation, the substantially prevailing Party in any such dispute shall, in addition to recovering all costs of suit or litigation (including all fees and costs paid to expert witnesses), be entitled to an award of reasonable attorneys’ fees and expenses.

13.10 Amendments. This Agreement, including any exhibits and schedules, may be supplemented, amended or modified only by mutual written agreement of the Parties. No supplement, amendment, or modification to this Agreement shall be binding unless it is in writing and signed by an authorized representative of both Client and TriCore. Any amendment of this Agreement must be signed by both Parties in the same manner as provided in 13.9 herein.

13.11 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the Parties and their respective heirs, successors, representatives, and assigns.

13.12 Definitions. Terms and phrases that are defined in any part of this Agreement shall have the defined meanings wherever used throughout the Agreement. The terms “hereunder” and “herein” and similar terms used in this Agreement shall refer to this Agreement in its entirety and not merely to the section, paragraph, or subparagraph in which the term is used.

13.13 Further Acts. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts and things reasonably necessary in connection with the performances of their obligations hereunder and to carry out the intent of the Parties hereto.

13.14 Entire Agreement. These Terms and Conditions are hereby incorporated by reference for purposes of the Agreement between the Parties. This Agreement, taken together with the Client Services Agreement, constitutes the entire agreement between TriCore and Client with respect to the subject matter hereof. The Agreement supersedes all prior negotiations, agreements, and undertakings between the Parties with respect to such subject matter. Additional Order Forms may be added to the Agreement by reference to this Agreement, provided that each such Order Form is signed by both parties. No term or condition contained in Client’s purchase order or similar document will apply and/or control unless specifically agreed to by TriCore in writing and signed by TriCore, even if TriCore has accepted the order set forth in such purchase order, and all such terms or conditions are otherwise hereby expressly rejected by TriCore.