

Web site terms and conditions of sale

Terms and Conditions of Sale

PLEASE READ THIS DOCUMENT CAREFULLY. IT CONTAINS VERY IMPORTANT INFORMATION REGARDING YOUR RIGHTS AND OBLIGATIONS, INCLUDING LIMITATIONS AND EXCLUSIONS THAT MIGHT APPLY TO YOU. YOUR CONTINUED USE OF THIS SITE WILL INDICATE YOUR TO BE BOUND BY THE TERMS AND CONDITIONS SET FORTH BELOW. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS, PROMPTLY EXIT THIS SITE.

These terms and conditions apply to the purchase and sale of products and services through Exchange Collective, a California Corporation (referred to as the “site”). By placing an order for such products and services, you agree to be bound by and accept these terms and conditions. If you do not agree to these terms and conditions, you should not obtain products or services from this site. These terms and conditions are subject to change by Exchange Collective (referred to as “us” or “we”) without prior written notice at any time, in our sole discretion. The latest version of the terms and conditions will be posted on this site, and you should review these terms and conditions prior to purchasing any product and services that are available through this site. These terms and conditions are an integral part of the Site Terms of Use that apply generally to the use of our site.

1. Order Acceptance and Cancellation

Your receipt of an electronic or other form of order confirmation does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. We reserve the right at any time after receipt of your order to accept, decline, or limit your order for any reason, whether or not your credit card has been charged. If your credit card has been charged and your order is canceled you will receive a prompt refund credit to your account. We reserve the right at any time after receipt of your order, without prior notice to you, to supply less than the quantity you ordered of any item.

Once an order has been placed, it cannot be cancelled unless the shipment is unavoidably delayed. In this case, we will do our best to cancel the order if requested.

We are a reseller to end user customers and do not accept orders from dealers, exporters, wholesalers, or other customers who intend to resell the products and services which are offered on our site. We make every effort to maintain the availability of our site. However, should we experience technical difficulties, we are not responsible for orders that are not processed or accepted.

2. Payment Terms and Sales Taxes

Terms of payment are within our sole discretion and, unless otherwise agreed by us in writing, payment must

be received by us prior to our acceptance of an order.

We accept VISA, MasterCard, American Express, and Discover credit cards for all purchases. You represent and warrant that: (i) the credit card information you supply to us is true, correct and complete; (ii) charges incurred by you will be honored by your credit card company; and (iii) you will pay charges incurred by you at the posted prices, including all applicable taxes, if any.

All payments must be in United States dollars. Current billing address and phone information must be included with every order. You agree to pay interest on all past-due sums at the highest rate allowed by law. We retain a security interest in the products and all proceeds thereof until the full purchase price therefore (including taxes and additional charges) has been paid.

Charges for shipping and handling will be made in accordance with our then-current shipping policies, as described below.

3. Changes in Products and Pricing

We are constantly updating and revising our offerings of products and services, and we may discontinue products and services at any time without notice. To the extent that we provide information on availability of products or services, you should not rely on such information, and we will not be liable for any lack of availability of products or services that you may order through our site.

All pricing for the products and services available on our site is subject to change. For all of our prices and products, we reserve the right to make adjustments due to changing market conditions, product discontinuation, manufacturer price changes, errors in advertisements and other extenuating circumstances.

4. Shipping Policy

Currently, Shipping is provided by the Fulfillment Partner using (UPS) and ships Ground delivery only or similar. Please check the individual product page for specific delivery options and updated carriers. All deliveries are insured and guaranteed against loss, theft and damage. All shipping prices are quoted in United States dollars. No C.O.D. orders can be accepted.

Please note the posted shipping time frame is listed on the individual product page and may vary from item to item. The posted shipping time frame is contingent upon credit card approval and may be delayed should we experience difficulties in obtaining authorization.

There may be occasional delays beyond the posted order processing time. If the delay is more than seven business days, we will send you an e-mail message notifying you of the delay. If the delay will be less than seven business days, we will ship the product as soon as it is received. If your product is on backorder for more than 10 business days, we will send you an e-mail message asking if you want to cancel the order. If you do not advise us that you would like to cancel the order, we will keep the order active and continue to send you

inquiries every 10 business days until the order is cancelled or delivery occurs.

These shipping terms are accepted by you by placing an order with us.

5. Advertising Disclaimer and Trademarks

The descriptions of products and services that are posted on our site are the representations of our suppliers. We are not responsible for the accuracy of such descriptions, nor are we responsible for typographical, pricing, product information, advertising or shipping errors.

In the event a product or service is listed at an incorrect price or with incorrect information due to typographical error or error in pricing or product information received from our suppliers, we shall have the right to refuse or cancel any orders placed for products or services listed at the incorrect price. We shall have the right to refuse or cancel any such orders whether or not the order has been confirmed and your credit card charged. If your credit card has already been charged for the purchase and your order is cancelled, we will immediately issue a credit to your credit card account in the amount of the charge.

All trademarks and registered trademarks relating to products and services available through our site are the sole property of their respective owners. Photographs or images are courtesy of the respective manufacturers.

6. Disclaimer and Limitation of Liability

Our responsibility for defects relating to the products and services available on our site is limited to the procedures described in our return policy set forth below.

ALL PRODUCTS AND SERVICES AVAILABLE ON THIS SITE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE WARRANT OF NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, WE MAKE NO WARRANTY THAT THE PRODUCTS AND SERVICES AVAILABLE ON THIS SITE WILL MEET YOUR REQUIREMENTS; THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE PRODUCTS OR SERVICES WILL BE EFFECTIVE, ACCURATE OR RELIABLE; OR THE QUALITY OF ANY PRODUCTS OR SERVICES WILL MEET YOUR EXPECTATIONS. SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO YOUR PURCHASE OF PRODUCTS AND SERVICES. WE DO NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING ANY LIABILITY FOR PRODUCTS AND SERVICES THAT ARE NOT AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE. IN NO EVENT SHALL WE OR OUR PARENT, SUBSIDIARIES, AFFILIATED COMPANIES, AGENTS, SHAREHOLDERS, EMPLOYEES, OR OFFICERS (COLLECTIVELY, OUR "AFFILIATES") HAVE ANY OBLIGATIONS OR LIABILITIES TO YOU OR ANY OTHER PERSON FOR LOSS OF PROFITS, FOR LOSS OF BUSINESS OR USE, OR FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT (INCLUDING

NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION, EVEN IF WE OR OUR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, ARISING OUT OR IN CONNECTION WITH THE SALE, DELIVERY, USE, REPAIR OR PERFORMANCE OF THE PRODUCTS AVAILABLE THROUGH THIS SITE. NONE OF OUR EMPLOYEES OR REPRESENTATIVES ARE AUTHORIZED TO MODIFY THIS LIMITATION. OUR SOLE AND ENTIRE MAXIMUM LIABILITY (AND THE LIABILITY OF ANY OF THE PROVIDERS OF PRODUCTS AND SERVICES AVAILABLE ON OUR SITE), FOR ANY REASON, AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE ACTUAL AMOUNT PAID BY YOU FOR THE PRODUCTS AND SERVICES YOU HAVE ORDERED THROUGH OUR SITE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO YOUR PURCHASE OF PRODUCTS AND SERVICES.

7. Warranty and Return Policy

Most of the products and services available through our site are covered under the manufacturer's warranty, which is detailed in the product's description. If applicable, manufacturer's warranties apply from the date of shipment. You understand that we do not operate or control the products or services offered by the manufacturers participating on our site, and you agree that under no circumstances will we be liable for any damages arising out of the failure of any manufacturer to fulfill its obligations to you under any warranty, repair, customer support or similar policies covering products and services that you may purchase through our site.

While we do not offer any warranties with respect to the products and services available through our site, we are committed to working with you to ensure that every product under warranty performs to the manufacturer's specifications. We offer a 30-day return policy on selected items based on the manufacturer's return policies. To return products, you must call 855-762-7625 or e-mail our Returns Department at hello@exchangecollective.com to obtain a Return Merchandise Authorization (RMA) number before shipping your product. NO returns of any type will be accepted without an RMA number. For faster service, please have the following information on hand when calling for an RMA number: customer name, invoice or order number, SKU number, and nature of the problem.

To expedite the processing of your refund or credit, we ask that products be returned within 30 days of the date that we issue the RMA. All returned products MUST be 100% complete, contain ALL original boxes and packing materials, have original UPC codes on the manufacturer boxes, and contain all manuals, blank warranty and registration cards, CD(s), diskette(s), and other accessories and documentation provided by the manufacturer. You are responsible for shipping charges on returned items; we will match your shipping method on your replacement or exchange item(s). You must insure the shipment or accept the risk of loss or damage during shipment. We strongly recommend that you fully insure your return shipment against loss or damage and that you use a carrier that can provide you with proof of delivery for your protection.

If your order arrives in a damaged condition, save the merchandise AND the original box and packing it

arrived in, and notify us immediately to arrange for a carrier inspection and a pick up of the damaged merchandise.

DEFECTIVE returns can be returned directly to us within 30 days from the invoice date for, at our discretion, credit, replacement, exchange or repair. Manufacturer restrictions do apply. Any item that is missing the UPC can ONLY be replaced with the same item. After 30 days, all manufacturers' warranties apply and you should contact the appropriate warrant service provider identified in the product description.

NON-DEFECTIVE returns can be accepted directly by us within 30 days from the invoice date for, at our discretion, credit or exchange. All NON-DEFECTIVE returns are subject to a 15% restocking fee. You may return software for credit or exchange only if the sealed package containing the diskette(s) or CD(s) is unopened.

Some manufacturers do not accept returns of certain items for exchange, replacement or credit FOR ANY REASON, and you should check the information provided with the description of the particular product. DEFECTIVE merchandise can be returned for REPAIR only to the manufacturer directly or to any authorized service center in your area. See the description of the particular product for warranty information as provided by the manufacturer.

Questions regarding our warranty and return policies should be addressed via e-mail to [e-mail address of manufacturer] or by regular mail to [name of company], [address of company], Attention: Merchandising. These policies set forth your sole and exclusive rights with respect to return of products and services that you may purchase through our site.

8. Safe Shopping Guarantee

Your browser and our secure server encrypt confidential information during transmission, ensuring that transactions stay private and protected. We guarantee the safety of your credit card information in the following manner: if any unauthorized use of your credit card occurs as a result of your credit card purchase on our site, simply notify your credit card provider in accordance with its reporting rules and procedures.

9. Privacy and Customer Information

We are committed to protecting your privacy. To make your shopping experience more convenient, we gather information about you. We maintain the privacy of your information using security technologies and adhere to policies that prevent unauthorized use of your personal information. See our Privacy Policy.

At any time you may update your customer account information by following the instructions posted elsewhere on this site. Here you may update your name, password, billing address, shipping address, e-mail address, telephone number, and credit card information.

10. Service and Support

All requests for technical service and support with respect to the products and services available through our site should be made directly to the manufacturer in accordance with their terms and conditions as set forth in the manual and relating information accompanying their products. Should you have any other questions or concerns, you should contact us by e-mail at or by mail at or by phone. We will do our best to help you; however, we cannot guarantee that every problem will be resolved to your satisfaction.

Except as explicitly noted on this site, the services available through this site are offered by Exchange Collective, a California corporation, located at 815 Sloan Terrace, Santa Maria, Ca, 93455. Our telephone number is 855-762-7625. If you are a California resident, you may have this same information e-mailed to you by sending a letter to the foregoing address with your e-mail address and a request for this information. The Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs may be contacted in writing at 815 Sloan Terrace, Santa Maria, Ca, 93455, Unit of the Division of Consumer Services of the Department of Consumer Affairs, or by telephone at 855-762-7625 of Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs.

11. Force Majeure

In addition to any excuse provided by applicable law, we shall be excused from liability for non-delivery or delay in delivery of products and service available through our site arising from any event beyond our reasonable control, whether or not foreseeable by either party, including but not limited to, labor disturbance, war, fire, accident, adverse weather, inability to secure transportation, governmental act or regulation, and other causes or events beyond our reasonable control, whether or not similar to those which are enumerated above.

12. Entire Agreement and Other Documents

These terms and conditions constitute the entire agreement and understanding between us concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties with respect thereto. These terms and conditions may NOT be altered, supplemented, or amended by the use of any other document(s). Any attempt to alter, supplement or amend this document or to enter an order for products or services which are subject to additional or altered terms and conditions shall be null and void, unless otherwise agreed to in a written agreement signed by you and us. To the extent that anything in or associated with this site is in conflict or inconsistent with these terms and conditions, these terms and conditions shall take precedence. . In its sole discretion, Company may modify these Terms and Conditions by posting the revised version on this Site and you agree that each visit by you to this Site is a new transaction governed by the terms of use linked on this Site at that time.

13. Governing Law and Statute of Limitations

This site (excluding linked site) is controlled by us from our offices within the State of California, United States of America. It can be accessed from all 50 states, as well as from other countries around the world. As each of these places has laws that may differ from those of California, by accessing this site both of us agree that the statutes and laws of the State of California, without regard to the conflicts of laws principles thereof, will apply to all matters relating to the use of this site and the purchase of products and services available through this

site. Each of us agrees and hereby submits to the exclusive personal jurisdiction and venue of the Superior Court of San Luis Obispo County, California with respect to such matters.

Any cause of action brought by you against us or our Affiliates must be instituted within one year after the cause of action arises or be deemed forever waived and barred.

14. No Unlawful or Prohibited Purpose

No Unlawful or Prohibited Purpose. As a condition of your use of this Site, you warrant to Company that you will not use the Site for any purpose that is unlawful or prohibited by these Terms and Conditions.

15. Severability

In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.

16. Arbitration

In the event of any dispute between the parties arising out of this Agreement, the dispute shall be resolved in San Luis Obispo County by arbitration under the Commercial rules of the American Arbitration Association by an arbitrator agreed upon in writing by the parties. In the event the parties cannot agree upon the choice of an arbitrator, each party shall appoint one individual representative and the two party representatives shall, between themselves, chose an arbitrator.

17. Attorney's Fees

In the event of any dispute between the parties arising out of this Agreement, the Company shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorney's fees and costs.

18. Representations

We make no representation that the products and services available through our site are appropriate or available for use in locations outside of the United States, and accessing them from territories where such products and services are illegal is prohibited. Those who choose to access this site from other locations do so on their own initiative and are responsible for compliance with local laws.

FULFILLMENT BRAND COMPUTER SOFTWARE LICENSE AGREEMENT

RECITALS

A. Licensor develops and markets computer software applications to increase point of sale services at the retail level, including Exchange Collective App, also known as EXC App (the "Software"), which is more particularly described in the user manuals and other written materials created by Licensor to describe the functionality and use of the Software (the "Documentation"); and

B. Licensee desires to acquire a license to use for its internal business purposes only, and Licensor desires to grant Licensee the license.

THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1. “Authorized Platform” means an operating system used for mobile devices manufactured by Apple incorporated (“IOS”), on which Licensee is authorized to use the Software pursuant to this Agreement.

1.2. “Authorized Site” means a location at which Licensee is authorized to use the Software. A list of the Authorized Sites is set forth in Exhibit A, attached to this Agreement and incorporated by this reference.

1.3. “Documentation” means all user manuals and other written material created by Licensor to describe the functionality or assist in the use of the Software. A list of the Documentation provided with the Software is set forth in Exhibit D.

1.4. “Licensee” means any fulfillment brand and includes any employee, or contractor of Licensee, provided that the employee, or contractor is using the Software in the performance of his or her duties as an employee, or contractor of Licensee.

1.5. “License Fee” means the fee to be paid by Licensee to Licensor as consideration for the license granted under this Agreement and the right to use the Software and the Documentation. The License Fee is set forth in Exhibit B, attached to this Agreement and incorporated by this reference.

1.6. “Licensor” means Exchange Collective, a California Corporation.

1.7. “Software” means the computer program or programs marketed and sold as EXC in object code form only, and the Documentation. Software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version of the Software that constitutes a separate product because of differences in function or features.

1.8. “Technical Support Schedule” means the description of the technical support and maintenance provided by Licensor in connection with Licensee’s use of the Software, and a schedule of the fees charged by Licensor for such support and maintenance. The Technical Support Schedule and Manual is set forth in Exhibit C, attached to this Agreement and incorporated by this reference.

2. GRANT OF LICENSE.

2.1. **Grant.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a nonexclusive, royalty-bearing, nontransferable license in the Software, to use and reproduce the Software exclusively for internal business use on the Authorized Platform *or* Authorized Platforms and at the Authorized Site *or* Authorized Site, and to use the Documentation solely in connection with Licensee's use of the Software.

2.2. **License Restrictions.** Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software, Documentation, or any related materials to Licensee or any third party. Licensee shall reproduce, install, and render the Software operational only on the Authorized Platform *or* Authorized Platform at the Authorized Site *or* Authorized Sites. Licensee shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees, consultants, or contractors. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

3. LICENSE USAGE & CONSIDERATION.

3.1. **License Usage & Consideration.** In consideration for Licensee promise to uphold this Agreement, Licensor grants to Licensee access and use of the Software.

3.2. **Taxes.** In addition to other amounts payable under this Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

4. LICENSOR'S OBLIGATIONS.

4.1. **Deliverables.** Upon execution of this Agreement, Licensor shall deliver the Software to Licensee in a format appropriate for the Authorized Platform *or* Authorized Platform at the Authorized Site *or* Authorized Sites, together with the Documentation.

4.2. **Support and Maintenance.** Licensor shall provide Licensee with technical support in connection with Licensee's use of the Software according to the Technical Support Schedule attached as Exhibit C to this Agreement. Upon the execution of this Agreement, and on each anniversary of its execution, Licensee shall pay Licensor the annual support and maintenance fee set forth in the Technical Support Schedule. Licensor shall provide Licensee with all modifications, bug fixes, and updates for the Software as part of this support and maintenance obligation. However, Licensor has no obligation to provide Licensee with subsequent product releases.

5. TERM AND TERMINATION.

5.1. **Term.** This Agreement, and the license granted under this Agreement, becomes effective on the date set forth in Section 10.11, below. Unless sooner terminated as set forth in Sections 5.2 and 5.3, below, the Agreement shall continue in effect until the expiration of Licensor's rights in the Software.

5.2. **Termination for Convenience.** Licensee may terminate the Agreement at any time and from time to time on thirty (30) days' prior written notice to Licensor. This Termination of Convenience paragraph does not apply for annual prepaid subscriptions.

5.3. **Termination for Cause.** Either party, as applicable, shall have the right, in addition, and without prejudice to any other rights or remedies, to terminate this Agreement as follows:

5.3.1. by Licensor, upon fifteen (15) days' written notice, if Licensee fails to pay the amounts due to Licensor pursuant to this Agreement;

5.3.2. by Licensor, upon fifteen (15) days' written notice, if there is a change in control of Licensee, whether by sale of assets, stock, or otherwise;

5.3.3. by either party for any material breach of this Agreement, other than failure to make payments under Section 3, that is not cured within ten (10) days of receipt by the party in default of a notice specifying the breach and requiring its cure; or

5.3.4. by either party, immediately upon written notice, if: (a) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (b) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days; or (c) the other party is adjudged bankrupt.

5.4. **Rights on Termination.** Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. On termination all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination. Sections 2.1, 6, 7, and 8 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

6. WARRANTIES, DISCLAIMER, AND LIMITATIONS.

6.1. **Warranties.** Licensor hereby warrants to Licensee that: (a) Licensor is the owner of the Software and the Documentation or has the right to grant to Licensee the license to use the Software and Documentation in the

manner and for the purposes set forth in this Agreement without violating any rights of a third party; and (b) the media containing the Software will be free from defects for a period of thirty (30) days from the date of delivery to Licensee, provided that this warranty does not cover defects in the media due to Licensee's misuse of the Software media or an accident subsequent to delivery to Licensee.

6.2. Disclaimer. THE WARRANTIES SET FORTH IN SECTION 6.1, ABOVE, ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (a) ANY WARRANTY THAT THE SOFTWARE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

6.3. Remedies on Breach of Warranty. In the event of any breach of the warranty set forth in Section 6.1, Licensee's exclusive remedy shall be for Licensor to promptly replace defective Software media; if Licensor is unable to replace the media within thirty (30) days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement, at which time Licensor will refund any and all license or other fees paid by Licensee pursuant to this Agreement.

6.4. Limitation of Liability. LICENSOR IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF LICENSOR OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT.

6.5. Limitations Period. No action arising out of or in connection with this Agreement or the transactions contemplated by the Agreement may be brought by Licensee against Licensor more than one (1) year after the action accrues.

7. INDEMNITY.

7.1. Licensee Indemnity. Licensee is responsible and indemnifies and holds Licensor harmless for any and all losses, liability, or damages arising out of, or incurred in connection with, Licensee's use or reproduction of the Software pursuant to this Agreement.

8. CONFIDENTIALITY.

8.1. Confidentiality. Licensee acknowledges that the Software and Documentation, and all information relating to the business and operations of the Licensor that Licensee learns or has learned during or prior to the term of this Agreement, may be the valuable, confidential, and proprietary information of the Licensor. During the period this Agreement is in effect, and at all times afterwards, Licensee, and its employees,

contractors, consultants, and agents, will: (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor.

8.2. Limitations on Confidentiality Restrictions. Section 8.1 does not apply to any information that: (a) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order therefor); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this agreement.

8.3. Injunctive Relief for Breach. Licensor and Licensee acknowledge that any breach of Section 8.1 by a receiving party will irreparably harm the disclosing party. Accordingly, in the event of a breach, the disclosing party is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

9. INTENTIONALLY DELETED

10. GENERAL.

10.1. Assignment. Licensee may not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this Agreement without Licensor's prior written consent, which will not be unreasonably withheld. This Agreement shall be binding upon the successors and assigns of the parties to this Agreement.

10.2. Entire Agreement. This Agreement, along with the Exhibits attached and referenced in this Agreement, constitutes the final and complete understanding between the parties, and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the parties with respect to the subject matter contained in this Agreement.

10.3. Waiver. This Agreement may not be modified or amended except in a writing signed by an authorized officer of each party. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

10.4. Notices. Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective when received, and shall be sufficient if given in writing, hand-delivered, sent by facsimile with confirmation of receipt, sent by First Class Mail, return receipt requested (for all types of correspondence), postage prepaid, or sent by overnight courier service and addressed as follows:

10.5. **Publicity.** Without the prior written consent of the other party, neither party shall disclose the terms and conditions of this Agreement, except disclosure may be made as is reasonably necessary to the disclosing party's bankers, attorneys, or accountants or except as may be required by law.

10.6. **Independent Contractor.** Nothing in this Agreement shall be deemed to create an employer-employee, principal-agent, or joint venture relationship. Neither party shall have the authority to enter into any contracts on behalf of the other party.

10.7. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard for conflict of law.

10.8. **Severability.** In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.

10.9. **Arbitration.** In the event of any dispute between the parties arising out of this Agreement, the dispute shall be resolved in San Luis Obispo County by arbitration under the Commercial rules of the American Arbitration Association by an arbitrator agreed upon in writing by the parties. In the event the parties cannot agree upon the choice of an arbitrator, each party shall appoint one individual representative and the two party representatives shall, between themselves, chose an arbitrator.

10.10. **Attorney's Fees.** In the event of any dispute between the parties arising out of this Agreement, the Licensor party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorney's fees and costs.

Fulfillment services agreement

This Fulfillment Services Agreement (the "Agreement") dated as of [date], by and between Exchange Collective, a California corporation located at 815 Sloan Terrace Santa Maria, CA, 93455 (the "EXC") and Fulfillment Brand, Manufacturer, Wholesaler [name of corporation], a [name of state] corporation (collectively "FB").

Witnesseth

WHEREAS, EXC has created proprietary software that assists FB marketing to brick and mortar type retail stores. EXC software provides FB a portal to upload inventory and products to their platform. Such product and inventory uploaded will be displayed on EXC and available for consumers for purchase at all EXC authorized retail stores. EXC shall provide support and training to FB at an as needed basis.

WHEREAS, FB is a provider of various services to the direct response industry, including, but not limited to,

order entry; data processing; customer service; pick, pack, and ship; order fulfillment; warehousing and storage; and returns processing, and FB will provide some or all of these services to the EXC as more particularly described herein (the “Services”); and

WHEREAS, the EXC desires that FB provide Services in connection with the operation of its direct response business and FB desires to provide such Services to the EXC.

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Appointment

The EXC hereby appoints FB as a provider of Services in connection with the terms and conditions set forth in this Agreement.

2. Services

During the Term and subject to the terms hereof, FB shall provide to the EXC the Services as set forth and more fully described in Exhibit A hereto.

Fulfiller Brands (“FB”) shall upload and maintain current inventory of product through the Exchange Collective App (“EXC”). Once a product is ordered through EXC, FB will immediately receive notification from EXC. The EXC order notification will provide FB with all the essential requirements to fulfill the order such as a sku, color, size, and customer’s contact information for shipping. FB shall procure such order and mail the product within in two business day thereof. EXC is obligated to provide payment to FB’s financial account at a minimum of three (3) times per month.

4. Financial Payment Model

In consideration for performance of the Services during the Term (as defined hereinafter), the EXC will pay to FB the following fees and charges as provided for in Exhibit B.

5. Inventory & Orders

Merchandise inventory and orders shall be handled and processed as follows:

(a) In order for FB to procure an EXC order, EXC shall provide the requisite information needed to place such order. If EXC fails to provide FB with the requisite information to procure an order, than FB shall notify EXC within twenty-four (24) hours of any information that is outstanding.

(b) FB shall ship all EXC orders within two business calendar days from receipt of order. If FB cannot ship order within the allotted time listed above than FB shall notify EXC within twenty-four (24) hours.

(c) At a minimum of once per day, FB shall accurately upload and update any and all available inventory to the EXC software.

(d) EXC acknowledges and the FB agrees that the FB shall be solely responsible for selecting, purchasing,

paying for, and arranging for the shipment of Merchandise to customer.

(e) In the event that items shipped by FB to customers are damaged or lost in shipment, FB Center agrees to notify the EXC, store damaged and returned Merchandise pending inspection by the carrier, and file tracers for the lost shipments and claims for damaged and lost shipments which originated from FB.

Warranty and Return Policy

Most of the products and services available through our site are covered under the FB's warranty, which is detailed in the product's description. If applicable, FB's warranties apply from the date of shipment. EXC does not operate or control the products or services offered by the FB participating on our site, and FB agrees that under no circumstances will EXC be liable for any damages arising out of the failure of FB to fulfill its obligations under any warranty, repair, customer support or similar policies covering products and services that may be purchased through our site.

EXC does not offer any warranties with respect to the products and services available through our site. EXC does offer a 30-day return policy on selected items based on FB return policies. Additionally, EXC does provide product support through their Return Department division ("Return"). To return products, consumers must call [designation of telephone number] or e-mail our Returns Department at [e-mail address of Returns Department] to obtain a Return Merchandise Authorization (RMA) number before shipping their product. NO returns of any type will be accepted without an RMA number. EXC's Return will collect the following information when a consumer requests a RMA number: customer name, invoice or order number, SKU number, and nature of the problem.

To expedite the processing of a refund or credit, we ask that products be returned within 30 days of the date that EXC issues a RMA. All returned products MUST be 100% complete, contain ALL original boxes and packing materials, have original UPC codes on the manufacturer boxes, and contain all manuals, blank warranty and registration cards, CD(s), diskette(s), and other accessories and documentation provided by the manufacturer. Consumers are responsible for shipping charges on returned items. You must insure the shipment or accept the risk of loss or damage during shipment. EXC recommends to the customer to fully insure return shipment against loss or damage and that customer use a carrier that can provide FB with proof of delivery for your protection.

If consumer's order arrives in a damaged condition, consumer must save the merchandise AND the original box and packing it arrived in, and notify EXC immediately to arrange for a carrier inspection and a pick up of the damaged merchandise.

6. Force Majeure

Neither FB nor the EXC shall be liable for any delay or failure in performance under this Agreement or interruption of service resulting, directly or indirectly, from acts of God, civil or military authority, act of public enemies, war, accidents, fire, explosions, earthquakes, floods, the elements, strikes, or any similar cause beyond the reasonable control of such party (a "Force Majeure"), so long as, following the cessation of such cause, such party uses its reasonable efforts to resume its performance hereunder. If FB is unable to perform the Services due to a Force Majeure, then FB may out-source Services on a temporary basis pursuant Section 4 hereof.

7. Representations and Warranties

(a) FB and the EXC

FB and the EXC each hereby individually represent and warrant that: (i) it has the full authority and legal right to carry out the terms of this Agreement; (ii) the terms of this Agreement will not violate the terms of any agreement, contract, or other instrument to which it is a party and no consent or authorization of any other person, firm, or corporation is a condition precedent to this Agreement; (iii) it has taken all action necessary to authorize the execution and delivery of this Agreement; and (iv) this Agreement is a legal, valid, and binding obligation of FB and the EXC, as the case may be, enforceable in accordance with its terms, except as limited by bankruptcy and other laws of general application relating to or affecting the enforcement of creditors' rights.

(b) Fulfillment Center

FB hereby warrants and represents that:

(i) to its knowledge, FB is in compliance in all material respects with all applicable laws relating to employment and employment practices, terms and conditions of employment, wages and hours, and occupational safety and health and is not engaged in any unfair labor practice within the meaning of any applicable law; there is no unfair labor practice, charge, or complaint or any other matter against or involving FB pending or, to the knowledge of the Fulfillment Center, threatened before any labor relations board (or equivalent agency having jurisdiction), any court of law or any arbitration board; there is no labor strike, dispute, slowdown, or stoppage actually pending or, to its knowledge, threatened against Fulfillment Center; and FB has not experienced any organized work stoppage or other labor difficulty; and

(ii) there are no disputes with underwriters under Fulfillment Center's insurance policies; each such policy is valid and enforceable in accordance with its terms and is in full force and effect; there exists no Default by FB under any such policy, and there has been no misrepresentation or inaccuracy in any application therefor, which Default, misrepresentation, or inaccuracy would give the insurer the right to terminate such policy, binder, or fidelity bond or to refuse to pay a claim thereunder; and FB has received no notice of cancellation or nonrenewal of any such policy.

(c) The EXC

The EXC hereby warrants and represents that:

(i) it has, to the best of its knowledge, and will use its best efforts to continue to have for the Term of this Agreement, all necessary authority from all of the corporations, partnerships, and individuals whose products are offered for sale in any of the EXC's catalogs, to use their trademarks, service marks, and other intellectual property for the purposes of conducting the EXC's business. The EXC's business as conducted or as currently proposed to be conducted does not and will not, to the best of the EXC's knowledge, cause the EXC to infringe or violate any patents, trademarks, service marks, trade names, copyrights, licenses, trade secrets, or other intellectual property rights of any other person or entity.

8. Compliance with Laws

The EXC and FB shall comply with all laws, rules, and regulations, whether local, state, or federal, applicable to the sale of Merchandise and to the providing of Services, but only to the extent such laws, rules and regulations are applicable to it, including without limitation the applicable postal regulations and the Federal Trade Commission Rules on Mail Order Merchandise.

9. Confidentiality

(a) In the course of its performance of this Agreement, it is anticipated that FB and the EXC will come into possession of certain proprietary information belonging to the other, including but not limited to (i) in the case of the EXC, marketing records, merchandising records, customer records, and mailing lists and (ii) in the case of Fulfillment Center, its financial condition, cost structures, allocation and pass through procedures, staffing levels, systems information, and general business plans (all such information relating to the EXC or FB being “Confidential Information” and the party to whom such Confidential Information relates being the “Proprietary Party”). FB and the EXC agree that each will not, during the Term hereof or thereafter, willfully or through gross negligence divulge, furnish, disclose, or make accessible to any third party any of the other’s Confidential Information unless otherwise instructed by the Proprietary Party in writing; provided, however, that Confidential Information shall not include any information which (i) at the time of disclosure by the other party or thereafter is generally available to and known by the public other than as a result of its disclosure by such party, (ii) was available to the other party on a nonconfidential basis from a source other than the Proprietary Party, provided that such source is not bound by a confidentiality agreement, or contractual or fiduciary obligation with the Proprietary Party, or (iii) has been independently acquired or developed by the other party without violating any obligations under this Agreement, or of any other agreement between the EXC and FB or by which either party is bound for the benefit of the other party.

(b) FB agrees that the EXC’s mailing list will not be made available for use by Fulfillment Center, its affiliates, or anyone else without the EXC’s specific prior written permission for each occurrence of such use

IN WITNESS WHEREOF, the EXC has executed this Agreement effective the date first above written and FB has executed and accepted this Agreement effective the same date.

COMPUTER SOFTWARE LICENSE RETAIL AGREEMENT

RECITALS

A. Licensor develops and markets computer software applications to increase point of sale services at the retail level, including Exchange Collective App, also known as EXC App (the “Software”), which is more particularly described in the user manuals and other written materials created by Licensor to describe the functionality and use of the Software (the “Documentation”); and

B. Licensee desires to acquire a license to use for its internal business purposes only, and Licensor desires to grant Licensee the license.

THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS.

1.1. “Authorized Platform” means an operating system used for mobile devices manufactured by Apple incorporated (“IOS”), on which Licensee is authorized to use the Software pursuant to this Agreement.

1.2. “Authorized Site” means a location at which Licensee is authorized to use the Software. A list of the Authorized Sites is set forth in Exhibit A, attached to this Agreement and incorporated by this reference.

1.3. “Documentation” means all user manuals and other written material created by Licensor to describe the functionality or assist in the use of the Software. A list of the Documentation provided with the Software is set forth in Exhibit D.

1.4. “Licensee” means _____*[name of licensee and type of entity]* and includes any employee, or contractor of Licensee, provided that the employee, or contractor is using the Software in the performance of his or her duties as an employee, or contractor of Licensee.

1.5. “License Fee” means the fee to be paid by Licensee to Licensor as consideration for the license granted under this Agreement and the right to use the Software and the Documentation. The License Fee is set forth in Exhibit B, attached to this Agreement and incorporated by this reference.

1.6. “Licensor” means Exchange Collective, a Delaware Corporation.

1.7. “Software” means the computer program or programs marketed and sold as EXC in object code form only, and the Documentation. Software includes any updates, modification, bug fixes, updates, enhancements, or other modifications. It does not include any version of the Software that constitutes a separate product because of differences in function or features.

1.8. “Technical Support Schedule” means the description of the technical support and maintenance provided by Licensor in connection with Licensee’s use of the Software, and a schedule of the fees charged by Licensor for such support and maintenance. The Technical Support Schedule and Manual is set forth in Exhibit C, attached to this Agreement and incorporated by this reference.

2. GRANT OF LICENSE.

2.1. **Grant.** Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a nonexclusive, royalty-bearing, nontransferable license in the Software, to use and reproduce the Software exclusively for internal business use on the Authorized Platform *or* Authorized Platforms and at the

Authorized Site *or* Authorized Site, and to use the Documentation solely in connection with Licensee's use of the Software.

2.2. License Restrictions. Except as specifically granted in this Agreement, Licensor owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software, Documentation, or any related materials to Licensee or any third party. Licensee shall reproduce, install, and render the Software operational only on the Authorized Platform *or* Authorized Platform at the Authorized Site *or* Authorized Sites. Licensee shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees, consultants, or contractors. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

3. LICENSE FEES.

3.1. License Fees. In consideration for the License granted to Licensee under this Agreement, Licensee shall pay Licensor a License Fee, as set forth on the License Fee Schedule, attached as Exhibit B to this Agreement. All amounts not paid within ten (10) days of the date on which payment is due *or* the date shown on the License Fee Schedule shall bear interest at the lesser of ten percent (10%) per month or the highest amount allowed by law.

3.2. Taxes. In addition to other amounts payable under this Agreement, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

4. LICENSOR'S OBLIGATIONS.

4.1. Deliverables. Upon execution of this Agreement, Licensor shall deliver the Software to Licensee in a format appropriate for the Authorized Platform *or* Authorized Platform at the Authorized Site *or* Authorized Sites, together with the Documentation.

4.2. Support and Maintenance. Licensor shall provide Licensee with technical support in connection with Licensee's use of the Software according to the Technical Support Schedule attached as Exhibit C to this Agreement. Upon the execution of this Agreement, and on each anniversary of its execution, Licensee shall pay Licensor the annual support and maintenance fee set forth in the Technical Support Schedule. Licensor shall provide Licensee with all modifications, bug fixes, and updates for the Software as part of this support and maintenance obligation. However, Licensor has no obligation to provide Licensee with subsequent product releases.

5. TERM AND TERMINATION.

5.1. **Term.** This Agreement, and the license granted under this Agreement, becomes effective on the date set forth in Section 10.11, below. Unless sooner terminated as set forth in Sections 5.2 and 5.3, below, the Agreement shall continue in effect until the expiration of Licensor's rights in the Software.

5.2. **Termination for Convenience.** Licensee may terminate the Agreement at any time and from time to time on thirty (30) days' prior written notice to Licensor. This Termination of Convenience paragraph does not apply for annual prepaid subscriptions.

5.3. **Termination for Cause.** Either party, as applicable, shall have the right, in addition, and without prejudice to any other rights or remedies, to terminate this Agreement as follows:

5.3.1. by Licensor, upon fifteen (15) days' written notice, if Licensee fails to pay the amounts due to Licensor or is in breach of this Agreement;

5.3.2. by Licensor, upon fifteen (15) days' written notice, if there is a change in control of Licensee, whether by sale of assets, stock, or otherwise;

5.3.3. by either party for any material breach of this Agreement, other than failure to make payments under Section 3, that is not cured within ten (10) days of receipt by the party in default of a notice specifying the breach and requiring its cure; or

5.3.4. by either party, immediately upon written notice, if: (a) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors, to a receiver, or to a trustee in bankruptcy; (b) a proceeding is commenced by or against the other party for relief under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days; or (c) the other party is adjudged bankrupt.

5.4. **Rights on Termination.** Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. On termination all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination. Sections 2.1, 6, 7, and 8 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

6. WARRANTIES, DISCLAIMER, AND LIMITATIONS.

6.1. **Warranties.** Licensor hereby warrants to Licensee that: (a) Licensor is the owner of the Software and the Documentation or has the right to grant to Licensee the license to use the Software and Documentation in the

manner and for the purposes set forth in this Agreement without violating any rights of a third party; and (b) the media containing the Software will be free from defects for a period of thirty (30) days from the date of delivery to Licensee, provided that this warranty does not cover defects in the media due to Licensee's misuse of the Software media or an accident subsequent to delivery to Licensee.

6.2. Disclaimer. THE WARRANTIES SET FORTH IN SECTION 6.1, ABOVE, ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION: (a) ANY WARRANTY THAT THE SOFTWARE IS ERROR-FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

6.3. Remedies on Breach of Warranty. In the event of any breach of the warranty set forth in Section 6.1, Licensee's exclusive remedy shall be for Licensor to promptly replace defective Software media; if Licensor is unable to replace the media within thirty (30) days of notification by Licensee of a defect, Licensee's sole remedy is to terminate this Agreement, at which time Licensor will refund any and all license or other fees paid by Licensee pursuant to this Agreement.

6.4. Limitation of Liability. LICENSOR IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY LICENSEE OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF LICENSOR OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. LICENSOR'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY LICENSEE TO LICENSOR UNDER THIS AGREEMENT.

6.5. Limitations Period. No action arising out of or in connection with this Agreement or the transactions contemplated by the Agreement may be brought by Licensee against Licensor more than one (1) year after the action accrues.

7. INDEMNITY.

7.1. Licensee Indemnity. Licensee is responsible and indemnifies and holds Licensor harmless for any and all losses, liability, or damages arising out of, or incurred in connection with, Licensee's use or reproduction of the Software pursuant to this Agreement.

8. CONFIDENTIALITY.

8.1. Confidentiality. Licensee acknowledges that the Software and Documentation, and all information relating to the business and operations of the Licensor that Licensee learns or has learned during or prior to the term of this Agreement, may be the valuable, confidential, and proprietary information of the Licensor. During the period this Agreement is in effect, and at all times afterwards, Licensee, and its employees,

contractors, consultants, and agents, will: (a) safeguard the confidential information with the same degree of care that it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Licensor.

8.2. Limitations on Confidentiality Restrictions. Section 8.1 does not apply to any information that: (a) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order therefor); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this agreement.

8.3. Injunctive Relief for Breach. Licensor and Licensee acknowledge that any breach of Section 8.1 by a receiving party will irreparably harm the disclosing party. Accordingly, in the event of a breach, the disclosing party is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

9. INTENTIONALLY DELETED

10. GENERAL.

10.1. Assignment. Licensee may not assign, sublicense, or transfer Licensee's rights or delegate its obligations under this Agreement without Licensor's prior written consent, which will not be unreasonably withheld. This Agreement shall be binding upon the successors and assigns of the parties to this Agreement.

10.2. Entire Agreement. This Agreement, along with the Exhibits attached and referenced in this Agreement, constitutes the final and complete understanding between the parties, and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the parties with respect to the subject matter contained in this Agreement.

10.3. Waiver. This Agreement may not be modified or amended except in a writing signed by an authorized officer of each party. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

10.4. Notices. Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective when received, and shall be sufficient if given in writing, hand-delivered, sent by facsimile with confirmation of receipt, sent by First Class Mail, return receipt requested (for all types of correspondence), postage prepaid, or sent by overnight courier service and addressed as follows:

10.5. **Publicity.** Without the prior written consent of the other party, neither party shall disclose the terms and conditions of this Agreement, except disclosure may be made as is reasonably necessary to the disclosing party's bankers, attorneys, or accountants or except as may be required by law.

10.6. **Independent Contractor.** Nothing in this Agreement shall be deemed to create an employer-employee, principal-agent, or joint venture relationship. Neither party shall have the authority to enter into any contracts on behalf of the other party.

10.7. **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard for conflict of law.

10.8. **Severability.** In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.

10.9. **Arbitration.** In the event of any dispute between the parties arising out of this Agreement, the dispute shall be resolved in San Luis Obispo County by arbitration under the Commercial rules of the American Arbitration Association by an arbitrator agreed upon in writing by the parties. In the event the parties cannot agree upon the choice of an arbitrator, each party shall appoint one individual representative and the two party representatives shall, between themselves, chose an arbitrator.

10.10. **Attorney's Fees.** In the event of any dispute between the parties arising out of this Agreement, the Licensor party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorney's fees and costs.