



MASTER SERVICE AGREEMENT

THIS MASTER SERVICE AGREEMENT (“**Agreement**”) is made and entered into the first day referenced in an executed Order (defined below) (the “**Effective Date**”) between Client and eSecurity Solutions, LLC, a California limited liability company (“**eSecurity Solutions**”). Client and eSecurity Solutions may each be referred to herein as a “**Party**” or collectively as the “**Parties**.”

This Agreement sets forth the general terms and conditions pursuant to which eSecurity Solutions will provide Services to Client. The terms and conditions of this Agreement shall apply to all Orders (defined below) with Effective Dates (defined below) and supersede any different or additional terms on Client’s purchase orders or other documents. Orders issued by Client to eSecurity Solutions are solely for the purpose of specifying Services to be performed pursuant to the Order, requesting delivery dates, identifying quantities and the amount of all Fees associated with the Order. All Orders placed with eSecurity Solutions shall be subject to acceptance by eSecurity Solutions, and thereafter shall be incorporated into this Agreement by reference. Once accepted, Client’s Orders are non-cancellable by Client and delivery dates may be changed only upon eSecurity Solutions’ written consent. Unless otherwise set forth in the Order, eSecurity Solutions shall coordinate its standard 40-hour work week for its professionals to take place within Client’s normal business hours.

This Agreement and Orders, as well as any written amendments, completely and exclusively state the agreement of the Parties regarding the subject matter described. This Agreement supersedes all prior proposals, agreements or other communications between the Parties, oral or written, regarding such subject matter. In the event of any inconsistency between an Order and the Agreement, the latter shall prevail. This Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of eSecurity Solutions and Client by their duly authorized representatives.

STANDARD TERMS AND CONDITIONS

1.0 DEFINITIONS. In addition to terms defined later in this Agreement, the terms below are defined as follows:

1.1 “Affiliate(s)” means any majority owned subsidiary or other entity which a Party controls or is controlled by, or which is under common control with a Party.

1.2 “Fees” means the fees for Services, as set forth in the applicable Order(s) to this Agreement.

1.3 “Intellectual Property” means copyrights, patents, trade secrets and other intellectual and industrial property rights (excepting trade mark and related rights), and all applications and registrations relating thereto.

1.4 “Order(s)” means those orders referencing this Agreement, as accepted in writing by eSecurity Solutions and setting forth the particular Services under this Agreement.

1.5 “Representatives” means a person’s or entity’s employees, agents and consultants, including without limitation, counsel, accountants and advisors.

1.6 “Services” means the services, which eSecurity Solutions provides to Client, as set forth in an Order and SOW under this Agreement.

1.7 “SOW” means a statement of work or description of services referenced in an Order.

1.8 “Work Product” means all ideas, discoveries, inventions, materials, data, databases, software, designs, reports, communications, deliverables, or other work that is conceived, reduced to practice, made or developed solely or jointly by or for eSecurity Solutions in connection with eSecurity Solutions’ performance of any Services (whether or not patentable or copyrightable).

2.0 RESTRICTIONS ON SERVICES.

2.1 General. Client agrees not to: (i) rent, lease, or loan the Services, or any part thereof, or provide the Services to others on its own behalf or on a third party’s

behalf; (ii) permit third parties to benefit from the use of the Services via timesharing, service bureau arrangements, or otherwise; or (iii) download, export, or re-export any software or technical data received hereunder, regardless of the manner in which received, without all required United States and foreign government licenses.

2.2 Unauthorized Access. Client shall not, and shall not request that any third party, modify, reverse engineer or attempt to gain unauthorized access to any portion of the Services. Client shall, by commercially reasonable means, prevent unauthorized disclosure, publication, display or use of the Services. Client will promptly notify eSecurity Solutions of any known or suspected misuse of any Services.

2.3 Software Access. To the extent eSecurity Solutions provides its express, written consent for Client to access any software owned or licensed by eSecurity Solutions, the following will apply: (i) access shall be subject to restrictions established by eSecurity Solutions from time to time for purposes of supporting such access and for security purposes; (ii) access is provided to Client solely for purposes of receiving the Services and shall not be used by Client for any other purpose; (iii) eSecurity Solutions reserves the right to monitor and record data and information in connection with provision of the access to the extent eSecurity Solutions deems necessary for maintaining performance standards and system security; and (iv) Client will not receive (and Client hereby expressly disclaims) any ownership, rights, or licenses greater than those set forth in this Section.

3.0 PURCHASE TERMS.

3.1 Fees and Payment. Standard payment terms for Services are 100% of the fee payment before project start and net 30 terms for any other Services billings unless, unless other payment terms have been mutually agreed. eSecurity Solutions may change the Fees for unquoted services at any time after eSecurity Solutions' written notice of such. All payments shall be made in U.S. Dollars.

(a) If timely payment is not received, eSecurity Solutions reserves the right, in addition to any other rights it may have, to: (i) suspend the Services until such payment is made in full; (ii) charge interest on the amount past due at the lesser of 1.5% per month or the maximum allowed by law; and (iii) invoice Client for all costs of collection including, but not limited to, reasonable attorneys' fees.

3.2 Taxes. Excluding eSecurity Solutions' own payroll and income taxes, Client shall pay amounts equal to any taxes, shipping, insurance, duties or other amounts, including without limitation, national, state, and local sales, use, withholding and VAT taxes, however designated, which are levied or based on such payments or arise as a consequence of the transactions under this Agreement. If Client is claiming tax exempt status, Client shall provide eSecurity Solutions with tax-exemption certificates prior to the initiation of the applicable Services.

4.0 OBLIGATIONS.

4.1 Client Obligations.

(a) Client shall be solely responsible for providing, maintaining and ensuring the compatibility of any hardware, software, electrical or other physical requirements necessary for Client or any third parties to access or use the Services or utilize any Work Product, including, without limitation, any computer hardware, software, telecommunications equipment, internet access or other equipment, programs or services. Client is responsible for all maintenance, support and licensing agreements with third party vendors, unless expressly set forth in this Agreement, an Order, or an SOW. Further, Client shall be responsible for the application, operation, maintenance and support of its systems, hardware and software including, but not limited to, the implementation of appropriate procedures, training and safeguards, performing routine backups, and keeping backup information in a safe and separate location. eSecurity Solutions shall not be required to support altered, damaged or modified software, or software which is not the most current version or not previously approved by eSecurity Solutions in writing as a eSecurity Solutions supported version.

(b) Client must provide eSecurity Solutions with access to and permission to use its information, internal resources, and facilities as requested by eSecurity Solutions to provide the Services.

(c) Client may provide eSecurity Solutions with certain content to be included in the Work Product. Client understands and agrees that it is solely responsible for obtaining the necessary licenses, registrations, rights and permissions to use such content, including, without limitation, all Intellectual Property rights, rights of publicity or privacy and any other similar rights. Client hereby grants

eSecurity Solutions a non-exclusive, sublicensable, perpetual, fully-paid, irrevocable, worldwide right and license to use, reproduce, modify, edit, adapt, translate, create derivative works upon, publish, publicly display, publicly perform, distribute, transmit and otherwise make such content available in any form, medium or technology now known or later developed as part of the Work Product.

4.2 Non-Solicitation. Neither Client nor eSecurity Solutions will recruit any personnel from each other during the Term of this Agreement or for at least two (2) years after termination or expiration of this Agreement, unless agreed in writing. If Client hires any eSecurity Solutions personnel during the aforementioned period, and prior written authorization has not been obtained, Client shall pay a conversion fee equal to forty percent (40%) of the then current annual salary of each eSecurity Solutions personnel converted in contradiction of this Section. Such conversion fees shall be invoiced to client and due to eSecurity Solutions as set forth in **Section 3.1.**

4.3 eSecurity Solutions Obligations. eSecurity Solutions will use commercially reasonable efforts to implement appropriate internal operational measures, safeguards and procedures with respect to its performance of any Services hereunder, to ensure the protection of Client's data and networks, and to otherwise prevent unauthorized access to and disclosure of Confidential Information and unauthorized access to the Client's computer network.

4.4 Independent Contractor Relationship. Client shall conduct business in its own name and shall not represent itself as an employee, partner, or agent of eSecurity Solutions. The relationship of eSecurity Solutions and Client established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (i) give either Party the power to direct and control the behavior or day-to-day activities of the other; (ii) constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint undertaking; or (iii) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

4.5 Subcontracting. eSecurity Solutions reserves the right to employ agents and subcontractors to assist eSecurity Solutions when providing any part of the Services. Any reference to eSecurity Solutions' personnel in this Agreement includes agents and subcontractor staff. eSecurity Solutions will remain

liable to Client with respect to any Services provided, subject to the other provisions of this Agreement. Where Client requires eSecurity Solutions to contract the services of a subcontractor specified by Client, Client will be responsible for the work to be performed by such subcontractor. eSecurity Solutions' agreement to integrate the work to be performed by such subcontractor for the purposes of this Agreement is on the basis that eSecurity Solutions will not be responsible for, or liable to Client or to any other third party for the work performed by, or any acts, omissions, or defaults of, such subcontractor(s), or eSecurity Solutions' reliance thereon. In such circumstances, Client will be responsible and liable for, and will indemnify and hold harmless eSecurity Solutions against and from, all claims, demands, proceedings, damages, losses, costs and expenses (including reasonable Attorneys' Fees and Costs), made against, suffered or incurred by eSecurity Solutions, directly or indirectly as a result of or in connection with the work performed by any such subcontractor.

5.0 INTELLECTUAL PROPERTY.

5.1 Work Product. All Work Product shall be, and remain, the sole property of eSecurity Solutions, including all Intellectual Property. If by operation of law or otherwise any Work Product is not exclusively owned in its entirety by eSecurity Solutions immediately upon the creation thereof or at any point thereafter, then Client hereby assigns to eSecurity Solutions the ownership of such Work Product. Client shall, both during and after the Term, execute any such documents, or take any other action, to effectuate such assignment of the Work Product as eSecurity Solutions may, from time to time, request, at eSecurity Solutions' expense, to ensure that all right title and interest in and to the Work Product resides with eSecurity Solutions.

5.2 Intellectual Property Rights. Except for the limited rights granted to Client under this Agreement to the Work Product, all right, title and interest in and to the Services and the Work Product, including without limitation all concepts, methods, processes, software, text, graphics, images, designs, databases, data, inventions and any improvements, enhancements, modifications, and derivative works thereto, and all Intellectual Property therein, are and at all times shall remain, the sole and exclusive property of eSecurity Solutions and its suppliers ("**eSecurity Property**"). All rights not expressly granted to Client are retained by eSecurity Solutions and its suppliers. Where eSecurity Solutions' rights to any portion of the eSecurity Solutions Property arise under an agreement

with a third-party supplier, such supplier shall have the benefit of eSecurity Solutions' rights set forth in this Agreement, and may enforce such rights directly against Client.

6.0 CONFIDENTIALITY.

6.1 Definitions. In connection with this Agreement, each Party ("**Recipient**") may be exposed to or acquire Confidential Information of the other Party ("**Discloser**") or third parties to whom Discloser has a duty of confidentiality. "**Confidential Information**" means non-public information in any form and regardless of the method of acquisition that the Discloser designates as confidential to Recipient or which, due to the nature of such information and/or under the circumstances surrounding disclosure, ought to be treated as confidential by the Recipient. Confidential Information shall not include information that is: (i) in or becomes part of the public domain (other than by disclosure by Recipient in violation of this Agreement); (ii) previously known to Recipient without an obligation of confidentiality; (iii) independently developed by Recipient without use of Discloser's Confidential Information; or (iv) rightfully obtained by Recipient from third parties without an obligation of confidentiality. For purposes of clarity and without limitation, all Services and Work Product shall be considered the Confidential Information of eSecurity Solutions and its suppliers. Upon Discloser's written request, Recipient shall either return or destroy the Confidential Information and any copies or extracts thereof.

6.2 Restrictions on Use. Recipient shall hold Discloser's Confidential Information in confidence using commercially reasonable efforts and shall not disclose any such Confidential Information to any third party, other than to its Representatives and its Affiliates and their Representatives who need to know such information and who are bound by restrictions regarding disclosure and use of such information comparable to, and no less restrictive than, those set forth herein. Recipient shall not use Discloser's Confidential Information for any purpose other than to carry out the terms of this Agreement. Recipient shall take the same degree of care that it uses to protect its own confidential information of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Discloser's Confidential Information. Recipient shall promptly notify Discloser of any breach of this Agreement of which it becomes aware, and in any event, shall be responsible for any breach of this

Agreement by any of its Affiliates, Representatives or Affiliates' Representatives.

6.3 Exceptions. Recipient may disclose Discloser's Confidential Information: (i) to the extent required by applicable law or regulation; (ii) pursuant to a subpoena or order of a court or regulatory, self-regulatory or legislative body of competent jurisdiction; (iii) in connection with any regulatory report, audit or inquiry; or (iv) where requested by a regulator with jurisdiction over Recipient. In the event of such a requirement or request, Recipient shall give the Discloser prompt written notice of such requirement or request prior to such disclosure and reasonable assistance (at Discloser's expense) in obtaining an order protecting the information from public disclosure. eSecurity Solutions and Client agree that the terms and conditions of this Agreement shall be treated as Confidential Information.

7.0 LIMITED WARRANTIES.

7.1 By eSecurity Solutions. eSecurity Solutions represents that: (i) the Services will be performed in a workmanlike and professional manner by individuals who have skill and experience commensurate with the requirements of the Services; (ii) it is duly organized, validly existing and in good standing under the laws of its state of domicile; (iii) it has the power and authority to execute and perform under this Agreement; and (iv) this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

7.2 By Client. Client represents that: (i) the information provided to eSecurity Solutions for completing the Services is and will be accurate and complete in all material respects; (ii) it is duly organized, validly existing and in good standing under the laws of its state of domicile; (iii) it has the power and authority to execute and perform under this Agreement; and (iv) this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms.

7.3 WARRANTY EXCLUSIONS. ESECURITY SOLUTIONS IS BEING ENGAGED ONLY TO PROVIDE THE SERVICES SET FORTH IN THIS AGREEMENT AND IN ORDERS AGREED BY THE PARTIES IN WRITING, INCLUDING ANY AGREED WORK PRODUCT. THE FOREGOING LIMITED WARRANTIES DO NOT APPLY TO MODIFICATIONS TO THE SERVICES OR WORK PRODUCT. ESECURITY SOLUTIONS SHALL NOT BE LIABLE FOR ANY LOSS OF DATA AND SHALL NOT BE RESPONSIBLE FOR RESTORING ANY

LOST DATA OR SOFTWARE EXCEPT AS SPECIFICALLY DESCRIBED IN THE APPLICABLE ORDER. THE LIMITED WARRANTIES DO NOT APPLY TO ANY THIRD-PARTY PRODUCTS OR SERVICES, HOWEVER, AND TO THE EXTENT PERMITTED, ESECURITY SOLUTIONS WILL PASS THROUGH ANY WARRANTIES FROM SUPPLIERS OF PRODUCTS OR SERVICES. WITH THE EXCEPTION OF THE FOREGOING LIMITED WARRANTIES, ESECURITY SOLUTIONS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICES OR WORK PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE AND NON-INFRINGEMENT.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ESECURITY SOLUTIONS MAKES NO WARRANTY THAT THE SERVICES AND ANY WORK PRODUCT WILL MEET CLIENT'S REQUIREMENTS, THAT THE RESULTS OBTAINED FROM THE USE OF THE FOREGOING WILL BE SATISFACTORY, ACCURATE OR RELIABLE, OR THAT THE SERVICES OR WORK PRODUCT WILL MEET CLIENT'S EXPECTATIONS. THE REPRESENTATIVES OF ESECURITY SOLUTIONS HAVE NO AUTHORITY TO GIVE ANY WARRANTIES ON BEHALF OF ESECURITY SOLUTIONS. CLIENT IS SOLELY RESPONSIBLE FOR THE SCOPE, GOALS AND OVERALL DIRECTION OF THE SERVICES, AS WELL AS THE IMPLEMENTATION OF ANY COURSE OF ACTION BASED ON SUCH SERVICES.

8.0 INDEMNIFICATION OBLIGATIONS.

8.1 Infringement. eSecurity Solutions shall defend at its own expense any third-party claim, suit or proceeding brought against Client insofar as it is based on a claim that eSecurity Solutions Work Product infringes a valid United States patent. eSecurity Solutions shall pay all damages, costs and expenses finally awarded to third parties as a result of a final judgment against Client or settlement of such claim negotiated by eSecurity Solutions, but shall not be responsible for any compromise made without its written consent. To qualify for such defense and payment, the Client must: (i) give eSecurity Solutions prompt written notice of any such claim; and (ii) allow eSecurity Solutions to control, and fully cooperate with eSecurity Solutions in, the defense and all related settlement negotiations. Upon notice of an alleged

infringement, or if, in eSecurity Solutions' opinion, such a claim is likely, eSecurity Solutions shall have the right, at its option, to obtain the right for the Client to continue to use the applicable Work Product, substitute other work with similar capabilities and/or performance, or modify Work Product so that it is no longer infringing. In the event that none of the above options are commercially practicable in eSecurity Solutions' sole discretion, eSecurity Solutions may terminate this Agreement and all accompanying licenses. In the event of such termination, Client may, as its sole and exclusive remedy, obtain a refund from eSecurity Solutions of any prepaid Fees paid for the Work Product, pro-rated over a period of five (5) years. eSecurity Solutions shall not be responsible for any claim of infringement that arises from: (i) unauthorized modifications to Work Product; (ii) use of Work Product in a manner or in combination with products not provided or approved in writing by eSecurity Solutions; or (iii) any use of Work Product not in accordance with this Agreement or the applicable Order. THE FOREGOING STATES CLIENT'S EXCLUSIVE RIGHTS AND REMEDIES WITH RESPECT TO ANY INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS.

8.2 Indemnity. eSecurity Solutions and Client (each an "**Indemnitor**") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, and agents (collectively, "**Indemnitees**," respectively for each of eSecurity Solutions and Client), for, from and against any and all third party (the modifier third party applying to all of the following listed categories) losses, damages, liabilities, deficiencies, claims, actions, causes of action, judgments, settlements, assessments, demands, interest, awards, penalties, fines, costs, or expenses, including, without limitation, reasonable Attorneys' Fees and Costs (as defined below) that are incurred by Indemnitee or awarded against Indemnitee (collectively, "**Losses**") that an Indemnitee may incur or be subject to as a result of or arising out of: (i) the Indemnitor making any representation, warranty, or other statement on behalf of the other Party that is not specifically authorized in writing; (ii) the Indemnitor's failure to comply with applicable law or regulation; or (iii) any claims by Client's (as Indemnitor) customers against eSecurity Solutions except to the extent arising directly from eSecurity Solutions' gross negligence or willful misconduct. The Indemnitor shall pay all damages, costs and expenses finally awarded to third parties as a result of a final judgment against an Indemnitee or settlement of such claim negotiated by the Indemnitor, but shall not be responsible for any compromise made without its written consent. To qualify for such defense and payment, the Indemnitee must: (i) give the

Indemnitor prompt written notice of any such claim; and (ii) allow Indemnitor to control, and fully cooperate with Indemnitor in, the defense and all related settlement negotiations.

9.0 LIMITATION OF LIABILITY.

EXCEPT IN THE CASE OF EACH PARTY'S INDEMNIFICATION OBLIGATIONS OR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, OR FOR CLIENT'S BREACH OF SECTION 2.0 (RESTRICTIONS ON SERVICES), IN NO EVENT (I) SHALL EITHER PARTY'S LIABILITY TO THE OTHER EXCEED THE AGGREGATE AMOUNTS PAID BY CLIENT TO ESECURITY SOLUTIONS IN THE SIXTY (60) DAYS PRECEDING ANY CLAIM, AND THE EXISTENCE OF MORE THAN ONE CLAIM OR CAUSE OF ACTION WILL NOT ENLARGE THE FOREGOING LIMIT; OR (II) SHALL EITHER PARTY BE LIABLE FOR ANY LOST PROFITS OR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY, WHETHER IN TORT OR CONTRACT, EVEN IF SUCH PARTY IS AWARE OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

10.0 TERM AND TERMINATION.

10.1 Term. This Agreement shall begin on the Effective Date and shall remain in full force and effect until such time as it is terminated pursuant to this Section (the "**Term**").

10.2 Termination without Cause. Either Party may terminate this Agreement or any Order at any time without cause upon ninety (90) days prior written notice to the other Party. Termination of one Order shall not terminate any other Order.

10.3 Termination with Cause. Either Party may terminate this Agreement:

(a) Upon thirty (30) days written notice of a material breach of this Agreement if such breach is not cured within such thirty (30) day period;

(b) Immediately after giving written notice upon the commencement by or against the other Party of any proceeding under any bankruptcy or similar law providing relief to the Party as debtor; or

(c) If either Party terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.

10.4 Survival. In the event of termination of this Agreement for any reason, this Section and the Signature Page, **Section 1.0** (*Definitions*), **Section 2.1(iii)** (*Restrictions on Services*), **Section 3.0** (*Purchase Terms*), **Section 4.1(c)** (*Client Obligations*), **Section 4.2** (*Non-Solicitation*) **Section 4.4** (*Independent Contractor Relationship*), **Section 4.5** (*Subcontracting*), **Section 5.0** (*Intellectual Property*), **Section 6.0** (*Confidentiality*), **Section 7.0** (*Limited Warranties*), **Section 8.0** (*Indemnification Obligations*), **Section 9.0** (*Limitation of Liability*) and **Section 11.0** (*Miscellaneous*) shall survive.

10.5 Effect of Termination. Termination of this Agreement with cause shall automatically terminate all Orders under this Agreement, but termination of this Agreement without cause shall not terminate any Order then in effect unless such Order is also specifically so terminated. Upon termination by either Party of this Agreement or a specific Order, Client shall pay eSecurity Solutions for all amounts due under the terms of this Agreement or such Order for the remainder of the Term. Termination shall not preclude the non-breaching Party from pursuing any and all remedies available to it at law or equity.

11.0 MISCELLANEOUS.

11.1 Assignment. Client may not assign this Agreement without the prior written approval of eSecurity Solutions. For the purposes of this Section, a change in the persons or entities that control fifty percent (50%) or more of the equity securities or voting interest of Client shall be considered an assignment. eSecurity Solutions may assign this Agreement, in whole or in part, to (i) an Affiliate of eSecurity Solutions, or (ii) pursuant to a change in control of eSecurity Solutions, a reorganization of eSecurity Solutions, or a transfer or sale of any business unit, line of business, product line, or substantial portion of its assets related to this Agreement.

11.2 Waivers. The waiver by either Party of a breach of any provision shall be in writing and shall in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

11.3 No Third-Party Beneficiaries. Except for eSecurity Solutions' suppliers, the terms and provisions of this Agreement are intended solely for the

benefit of each Party hereto and their respective successors and assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.

11.4 Disputes.

(a) This Agreement shall be governed in all respects by the laws of the State of California, without regard to its choice of law rules. Both Parties consent to the exclusive jurisdiction of the courts in the State of California, County of Orange in the event of any dispute relating to this Agreement. No legal action regardless of the form, relating in any matter to this Agreement may be brought by either Party more than one (1) year after recognition of the event giving rise to the cause of action with the exception of non-payment hereunder, breach of the confidentiality obligations, or actions for breach of eSecurity Solutions' intellectual property rights.

(b) If a dispute arises between the Parties relating to this Agreement that cannot be resolved informally, each Party involved in such dispute (each, a "**Disputing Party**" and, collectively, the "**Disputing Parties**") agrees to comply with the procedures set forth in this Section ("**Dispute Resolution Procedures**"). The Dispute Resolution Procedures will be invoked by a Party, before such Party pursues any other available remedy, by such Party giving written notice to the other Party. Following receipt of such notice, the Disputing Parties shall, for a period of thirty (30) days after the dispute first arises, attempt in good faith to negotiate a resolution of the dispute (the "**Initial Negotiation**"). The Initial Negotiation will include no less than two (2) in-person meetings among authorized representatives of each Disputing Party, each of whom shall have authority from the respective boards of directors of the Disputing Parties to settle the matter. If the dispute is not resolved during the Initial Negotiation, the Disputing Parties shall, for an additional period of thirty (30) days after the end of the Initial Negotiation period, continue to attempt in good faith to negotiate a resolution of the dispute (the "**Extended Negotiation**"). The Extended Negotiation will include no less than two in-person meetings between the President and/or Chief Executive Officer of Client and the President and/or Chief Executive Officer of eSecurity Solutions, each of whom shall have authority from the respective boards of directors of the Disputing Parties to settle the matter. If the Disputing Parties cannot reach agreement pursuant the informal Dispute Resolution Procedures set forth in this Section, the Disputing Parties may proceed with such remedies as they may be entitled and deem

appropriate. Each of the Parties agrees that notice as provided herein shall constitute sufficient service of process and the Parties further waive any argument that such service is insufficient. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROVISIONS OF THIS SECTION.

(c) The Parties acknowledge and agree that a remedy at law for any breach or attempted breach of the provisions of **Section 4.2** (*Non-Solicitation*), **Section 5.0** (*Intellectual Property*) and **Section 6.0** (*Confidentiality*) may be inadequate, and therefore, either Party is entitled to specific performance and injunctive or other equitable relief in the event of any such breach or attempted breach, in addition to any other rights or remedies available to either Party at law or in equity. Each Party waives any requirement: (i) for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief; and (ii) for proving actual damages. For clarification, a Party does not have to follow the Dispute Resolution Procedures in the event this Subsection is applicable.

(d) The prevailing Party in any mediation, arbitration or other legal action between the Parties relating to this Agreement will be entitled to an award of its reasonable Attorneys' Fees and Costs incurred in connection with such action, as determined by a judge and not a jury. "**Attorneys' Fees and Costs**" means: (i) fees and out-of-pocket costs of a Party and a Party's attorneys, as applicable, including costs of such Party's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (ii) costs and fees of expert witnesses, including appraisers; and (iii) investigatory fees.

11.5 Severability. In the event that any provision of this Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such provision shall be changed and interpreted so as to best accomplish the objectives within the limits of applicable law or if necessary to maintain the validity of the remaining terms, removed from the Agreement.

11.6 Force Majeure. Neither Party shall be liable for any delay or failure to perform arising from any cause beyond their reasonable control, except for the

payment of money, to the extent that performance is rendered impossible by strike, fire, flood, wars, sabotage, civil unrest, governmental acts, or any other reason where failure to perform is beyond the reasonable control of and is not caused by the negligence of the nonperforming Party.

11.7 Notices. All notices given pursuant to this Agreement shall be in writing and effective: (i) upon receipt if hand delivered; (ii) on the next business day after being sent by email or facsimile; (iii) on the third business day following deposit with the postal service.

11.8 Records and Inspection. eSecurity Solutions shall have the right, during normal business hours and with reasonable advanced notice, to inspect Client's premises and/or audit Client's network for the purpose of verifying Client's compliance with its obligations under this Agreement.

11.9 Neutral Construction. The Parties agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. The Parties further agree that this Agreement will be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party on the grounds that the Party drafted or was more responsible for drafting the provision(s).

11.10 Other Definitional Provisions. Where specific language is used to clarify by example a general statement contained herein (such as by using the word "including"), such specific language will not modify, limit or restrict in any manner the construction of the general statement to which it relates. The headings and sections herein are for reference purposes only and do not in themselves convey any rights or create any responsibilities not specifically designated within the sections. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever required by the context, any pronoun used in this Agreement will include the corresponding masculine, feminine or neuter forms. The words "include" and "including," and other words of similar import when used herein, will not be terms of limitation but rather will be followed in each case by the words "without limitation." The word "if" and other words of similar import when used herein will in each case be read as being followed by the phrase "and only if." The words "herein," "hereto" and "hereby," and other words of similar import in this Agreement, will in each case to refer to this Agreement as a whole and not to any particular Section or other subdivision of this

Agreement. Any reference herein to "dollars" or "\$" shall mean United States dollars. All references herein to sections and exhibits will be construed to refer to sections of, and exhibits to, this Agreement. The words "as of the date of this Agreement" and words of similar import will in each case refer to the date upon which this Agreement was first signed by all parties hereto. The term "or" will mean "and/or." Where Party's consent (the "**Consenting Party**") is required under this Agreement, the Consenting Party may withhold or grant consent in its sole, absolute and uncontrolled discretion unless the applicable provision of this Agreement specifically provides otherwise.