

CLLOUDKNOX PLATFORM SERVICES AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE CLOUDKNOX PRODUCTS (DEFINED BELOW). BY DOWNLOADING, INSTALLING OR USING THE CLOUDKNOX PRODUCTS, YOU INDICATE YOUR ACCEPTANCE OF AND AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT DOWNLOAD, INSTALL OR USE THE CLOUDKNOX PRODUCTS.

This CloudKnox Platform Services Agreement (“**Agreement**”) is made and entered into as of date of the last signature below (“**Effective Date**”), by and between CloudKnox Security, Inc., a Delaware corporation (“**CloudKnox**”), and you, the customer (“**Customer**”).

CloudKnox has developed and hosts the Subscription Services (as defined below), which are accessed and used by CloudKnox’s customers.

Customer desires to access and use the Subscription Services, and CloudKnox is willing to permit Customer to access and use the Subscription Services, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS

1.1 “**Authorized User**” means an employee or contractor of Customer that has (i) been assigned a unique username-password combination to access and use the Subscription Services, and (ii) registered online to access and use the Subscription Services.

1.2 “**Customer Data**” means Customer’s proprietary data and information input into, accessed and/or stored by the Subscription Services.

1.3 “**Fees**” means the fees described in **Exhibit A**.

1.4 “**Intellectual Property Rights**” means patent rights (including, without limitation, patent applications and disclosures), copyrights, trade secrets, moral rights, know-how, and any other intellectual property rights recognized in any country or jurisdiction in the world.

1.5 “**Privacy Policy**” means the policy governing use of personally identifiable information, as posted on CloudKnox’s website or otherwise provided to Customer.

1.6 “**Software**” means any CloudKnox or third-party software used by CloudKnox to provide the Subscription Services.

1.7 “**Subscription Services**” means the information security monitoring services provided by CloudKnox.

1.8 “**Term**” means the term of this Agreement as defined in **Section 9.1**.

2. SUBSCRIPTION SERVICES

2.1 Subscription Services. Subject to Customer’s compliance with the terms and conditions of this Agreement, commencing on the launch date

set forth in the Project Plan and continuing throughout the remainder of the Term, CloudKnox will provide the Subscription Services in accordance with and subject to the service level agreement set forth in **Exhibit B** (the “**Service Level Agreement**”). Customer may access and use the Subscription Services solely for its internal business purposes and, if applicable, such access and use is expressly limited to the number of Authorized Users for which Customer has paid Fees in accordance with **Exhibit A**.

2.2 Restrictions. Customer shall not attempt to interfere with or disrupt the Subscription Services or the Software or attempt to gain access to any systems or networks that connect thereto (except as required to access and use the Subscription Services). Customer shall not allow access to or use of the Subscription Services by anyone other than Authorized Users. Customer shall not: (a) copy, reverse engineer, modify, disassemble or distribute any portion of the Subscription Services or Software; (b) rent, lease, or provide access to the Subscription Services on a time-share or service bureau basis; or (c) transfer any of its rights hereunder (except as specified in **Section 13.8**).

2.3 Acceptable Use Policies and Exclusivity. Customer acknowledges and agrees that CloudKnox does not monitor or police communications or data transmitted through the Subscription Services and that CloudKnox shall not be responsible for the content of any such communications or transmissions. Customer shall use the Subscription Services exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others.

2.4 Privacy Policy, Data Maintenance and Backup Procedures. CloudKnox shall follow its Privacy Policy in regards to Customer Data. In the event of any loss or corruption of Customer Data, CloudKnox shall use its commercially reasonable efforts to restore the lost or corrupted Customer Data from the latest backup of such Customer Data maintained by CloudKnox in accordance the Service Level Agreement. CloudKnox shall not be responsible for any loss, destruction, alteration, unauthorized disclosure or corruption of Customer Data caused by any third party. COMPANY’S EFFORTS TO RESTORE LOST OR CORRUPTED CUSTOMER DATA PURSUANT TO THIS **SECTION 2.4** SHALL CONSTITUTE COMPANY’S SOLE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF ANY LOSS OR CORRUPTION OF CUSTOMER DATA.

3. **NEW SERVICES**. If Customer requests CloudKnox to perform any services that are different from or in addition to the Implementation Services and Subscription Services set forth herein (“**New Services**”), and CloudKnox is willing to provide such different or additional services, then CloudKnox shall provide a written quote to Customer listing the fees for such requested New Services (“**New Service Fees**”). If Customer accepts such quote in writing within fifteen (15) days: (a) CloudKnox shall perform the New Services; (b) the Fees shall be adjusted to reflect the New Service Fees; and (c) such New Services shall be deemed

Implementation Services and/or Subscription Services under this Agreement, as appropriate.

4. CUSTOMER OBLIGATIONS

4.1 Cooperation and Assistance. As a condition to CloudKnox's obligations hereunder, Customer shall at all times: (a) provide CloudKnox with good faith cooperation and access to such information, facilities, and equipment as may be reasonably required by CloudKnox in order to provide the Implementation Services and Subscription Services, including, but not limited to, providing Customer Data, security access, information, and software interfaces to Customer's business applications; (b) provide such personnel assistance as may be reasonably requested by CloudKnox from time to time; and (c) carry out in a timely manner all other Customer responsibilities set forth in this Agreement. In the event of any delay in Customer's performance of any of the obligations set forth in (a), (b) or (c), or any other delays caused by Customer, CloudKnox may adjust the milestones and launch date set forth in the Project Plan as reasonably necessary to account for such delays.

4.2 Marketing Support. Customer shall comply with reasonable requests of CloudKnox to support public relations efforts pertaining to the Subscription Services, which efforts may include: (a) a press release highlighting Customer's purchase or use of the Subscription Services (including any return on investment attained through the Subscription Services); (b) participation in targeted press and analyst interviews highlighting benefits of implementing the Subscription Services; and (c) participation in customer case studies developed by CloudKnox and used on the CloudKnox web site and other collateral. Customer grants to CloudKnox a non-exclusive, non-transferable (except as permitted under **Section 13.8**), limited right to use the Customer name, trademarks, and logos (collectively, the "**Customer Marks**") in the production of marketing materials, provided that such use is in accordance with Customer's trademark and logo use guidelines that Customer provides to CloudKnox. CloudKnox will use its commercially reasonable efforts to cooperate with Customer in monitoring use of the Customer Marks. All goodwill developed from such use shall be solely for the benefit of Customer.

4.3 Enforcement. Customer shall ensure that all Authorized Users comply with the terms and conditions of this Agreement, including, without limitation, with Customer's obligations set forth in **Sections 2.2 and 2.3**. Customer shall promptly notify CloudKnox of any suspected or alleged violation of the terms and conditions of this Agreement and shall cooperate with CloudKnox with respect to: (a) investigation by CloudKnox of any suspected or alleged violation of this Agreement and (b) any action by CloudKnox to enforce the terms and conditions of this Agreement. CloudKnox may suspend or terminate any Authorized User's access to the Subscription Services upon notice to Customer in the event that CloudKnox reasonably determines that such Authorized User has violated the terms and conditions of this Agreement. Customer shall be liable for any violation of the terms and conditions of this Agreement by any Authorized User.

4.4 Telecommunications and Internet Services. Customer acknowledges and agrees that Customer's and its Authorized Users' use of the Subscription Services is dependent upon access to telecommunications and Internet services. Customer shall be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access

and use the Subscription Services, including, without limitation, any and all costs, fees, expenses, and taxes of any kind related to the foregoing. CloudKnox shall not be responsible for any loss or corruption of data, lost communications, or any other loss or damage of any kind arising from any such telecommunications and Internet services.

5. FEES; EXPENSES; TAXES

5.1 Fees. In consideration for CloudKnox providing the Implementation Services and Subscription Services, Customer shall pay to CloudKnox the Fees, in accordance with the terms set forth in **Exhibit A**.

5.2 Invoices; Payment; Late Payment. CloudKnox shall invoice Customer monthly as of the last day of each month for all Fees, Expenses and applicable Taxes (as defined in **Section 5.4**) and including any related interest and/or penalties), due in that month. Each invoice is due and payable thirty (30) days following the invoice date. If CloudKnox has not received payment within five (5) days after the due date, interest shall accrue on past due amounts at the rate of one and one half percent (1.5%) per month, but in no event greater than the highest rate of interest allowed by law, calculated from the date such amount was due until the date that payment is received by CloudKnox. Customer shall reimburse CloudKnox for the reasonable costs of collection, including reasonable fees and expenses of attorneys.

5.3 Taxes. All amounts and fees stated or referred to in this Agreement are exclusive of taxes, duties, levies, tariffs, and other governmental charges (including, without limitation, VAT) (collectively, "**Taxes**"). Customer shall be responsible for payment of all Taxes and any related interest and/or penalties resulting from any payments made hereunder, other than any taxes based on CloudKnox's net income.

6. OWNERSHIP

6.1 Intellectual Property. As between CloudKnox and Customer, the Subscription Services and Software (and all copies of the Software), and all Intellectual Property Rights therein or relating thereto, are and shall remain the exclusive property of CloudKnox or its licensors. As between CloudKnox and Customer, the Customer Data, and all Intellectual Property Rights therein, are and shall remain the exclusive property of Customer. Notwithstanding anything to the contrary, the parties acknowledge and agree that CloudKnox may monitor, collect, use and store data regarding Customer's use of the Subscription Services or components thereof, including Customer Data (collectively, the "**Usage Data**"). Customer hereby grants CloudKnox an irrevocable, non-exclusive, royalty-free, worldwide, perpetual license to the Usage Data for any legal business purpose, including, but not limited to, enhancing the Services and their respective components and creating new features thereof; however any Usage Data may only be shared with third parties in anonymous and aggregate form that cannot identify Customer.

6.2 Feedback. To the extent Customer provides any suggestions, recommendation or other feedback to CloudKnox with respect to the Subscription Services, Customer hereby grants to CloudKnox a non-exclusive, worldwide, perpetual, irrevocable, royalty-free, sub-licensable, transferable license to use, copy, modify, create derivative works based upon and otherwise exploit any such feedback and the Intellectual Property Rights therein.

7. CONFIDENTIALITY

7.1 Definition. By virtue of this Agreement, the parties may have access to each other's Confidential Information. "**Confidential Information**," as used in this Agreement, means any written, machine-reproducible and/or visual materials that are clearly labeled as proprietary, confidential, or with words of similar meaning, and all information that is orally or visually disclosed, if not so marked, if it is identified as proprietary or confidential at the time of its disclosure or in a writing provided within thirty (30) days after disclosure, and any information of any nature described in this Agreement as confidential. CloudKnox Confidential Information includes, without limitation, the Subscription Services and any Software whether in source or executable code, documentation, nonpublic financial information, pricing, business plans, techniques, methods, processes, and the results of any performance tests of the Subscription Services or the Software. Customer Data is the Confidential Information of Customer. The terms and conditions of this Agreement shall be deemed the Confidential Information of both parties and neither party shall disclose such information except to such party's advisors, accountants, attorneys, investors (and prospective investors), and prospective acquirers as have a reasonable need to know such information, provided that any such third parties shall, before they may access such information, either (a) execute a binding agreement to keep such information confidential or (b) be subject to a professional obligation to maintain the confidentiality of such information.

7.2 Exclusions. Confidential Information shall not include information that: (a) is or becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party's lawful possession prior to the disclosure; (c) is rightfully disclosed to the receiving party by a third party without restriction on disclosure; or (d) is independently developed by the receiving party, which independent development can be shown by written evidence.

7.3 Use and Nondisclosure. During the Term and for a period of five (5) years after expiration or termination of this Agreement, neither party shall make the other's Confidential Information available to any third party or use the other's Confidential Information for any purposes other than exercising its rights and performing its obligations under this Agreement. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement, but in no event will either party use less effort to protect the Confidential Information of the other party than it uses to protect its own Confidential Information of like importance. Each party will ensure that any agents or subcontractors that are permitted to access any of the other's Confidential Information are legally bound to comply with the obligations set forth herein. Notwithstanding the foregoing, Confidential Information may be disclosed as required by any governmental agency, provided that before disclosing such information the disclosing party must provide the non-disclosing party with sufficient advance notice of the agency's request for the information to enable the non-disclosing party to exercise any rights it may have to challenge or limit the agency's authority to receive such Confidential Information.

8. WARRANTY

8.1 Warranty for Subscription Services. CloudKnox warrants that the Subscription Services will meet the requirements set forth in the Service Level Agreement. CloudKnox's sole and exclusive remedy for any breach of the warranty set forth in this Section 8.1 will be as set forth in the Service Level Agreement.

8.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN **SECTION 8.1**, COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT, THE IMPLEMENTATION SERVICES OR THE SUBSCRIPTION SERVICES. WITHOUT LIMITING THE FOREGOING, EXCEPT AS EXPRESSLY PROVIDED IN **SECTION 8.1**, COMPANY DISCLAIMS ANY WARRANTY THAT THE SUBSCRIPTION SERVICES WILL BE ERROR FREE OR UNINTERRUPTED OR THAT ALL ERRORS WILL BE CORRECTED. COMPANY FURTHER DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE SUBSCRIPTION SERVICES AS TO MERCHANTABILITY, ACCURACY OF ANY INFORMATION PROVIDED, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. COMPANY FURTHER DISCLAIMS ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM COMPANY OR ELSEWHERE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence on the Effective Date and shall continue for the period of one (1) year thereafter (the "**Initial Term**"), unless terminated earlier as provided in this Agreement. This Agreement shall automatically renew for subsequent one-year periods, unless either party notifies the other in writing of its intent not to renew at least ninety (90) days prior to the end of the then-current term. The Initial Term and renewal periods are collectively the "**Term**".

9.2 Termination for Cause. Either party may terminate this Agreement upon written notice if the other party materially breaches this Agreement and fails to correct the breach within thirty (30) days following written notice specifying the breach; provided that the cure period for any default with respect to payment shall be five (5) business days.

9.3 Termination for Insolvency. Subject to Title 11 of the United States Code, if Customer becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency, or for the appointment of a receiver or similar officer for it, or makes an assignment for the benefit of any creditor, then CloudKnox may terminate this Agreement upon thirty (30) days' written notice.

9.4 Rights and Obligations Upon Expiration or Termination. Upon expiration or termination of this Agreement, Customer's and Authorized Users' right to access and use the Subscription Services shall immediately terminate, Customer and its Authorized Users shall immediately cease all use of the Subscription Services, and each party shall return and make no further use of any Confidential Information, materials, or other items (and all copies thereof) belonging to the other party. **CloudKnox may destroy or otherwise dispose of any Customer Data in its possession unless CloudKnox receives, no later than ten (10) days after the effective date of the expiration or termination of this Agreement, a written request for the delivery to Customer of the then-most recent back-up of the Customer Data. CloudKnox will use commercially reasonable efforts to deliver the**

back-up to Customer within thirty (30) days of its receipt of such a written request. Customer shall pay all reasonable expenses incurred by CloudKnox in returning Customer Data to Customer. Also upon expiration or termination of this Agreement, CloudKnox shall cease use of the Customer Marks (as defined in **Section 4.2**); provided, however, that (a) CloudKnox shall have a reasonable time to remove the Customer Marks from promotional materials, (b) CloudKnox shall be entitled to exhaust materials printed during the Term that include the Customer Marks, and (c) CloudKnox shall not be required to remove any such printed materials from circulation.

9.5 Survival. The rights and obligations of CloudKnox and Customer contained in **Sections 5** (Fees, Expenses and Taxes), **6** (Ownership), **7** (Confidentiality), **9.4** (Rights and Obligations Upon Expiration or Termination), **9.5** (Survival), **10** (Indemnification), **11** (Limitation of Liability), **12** (Acknowledgement), and **13** (General) shall survive any expiration or termination of this Agreement.

10. INDEMNIFICATION

10.1 Indemnification by Customer. Customer shall defend (or settle), indemnify and hold harmless CloudKnox, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with any third-party claim that: (i) a third party has suffered injury, damage or loss resulting from Customer's or an Authorized User's use of the Subscription Services (other than any claim for which CloudKnox is responsible under **Section 10.2**); or (ii) Customer or any Authorized User has used the Subscription Services in a manner that violates **Sections 2.2** or **2.3** of this Agreement. Customer's obligations under this **Section 10.1** are contingent upon: (a) CloudKnox providing Customer with prompt written notice of such claim; (b) CloudKnox providing reasonable cooperation to Customer, at Customer's expense, in the defense and settlement of such claim; and (c) Customer having sole authority to defend or settle such claim.

10.2 Indemnification by CloudKnox. CloudKnox shall defend (or settle) any suit or action brought against Customer to the extent that it is based upon a claim that the Subscription Services infringe or misappropriate the Intellectual Property Rights of any third party, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are awarded against Customer. CloudKnox's obligations under this **Section 10.2** are contingent upon: (a) Customer providing CloudKnox with prompt written notice of such claim; (b) Customer providing reasonable cooperation to CloudKnox, at CloudKnox's expense, in the defense and settlement of such claim; and (c) CloudKnox having sole authority to defend or settle such claim. In the event that CloudKnox's right to provide the Subscription Services is enjoined or in CloudKnox's reasonable opinion is likely to be enjoined, CloudKnox may obtain the right to continue providing the Subscription Services, replace or modify the Subscription Services so that they become non-infringing, or, if such remedies are not reasonably available, terminate this Agreement without liability to Customer. THE FOREGOING STATES THE ENTIRE OBLIGATION OF COMPANY AND ITS LICENSORS WITH RESPECT TO ANY ALLEGED OR ACTUAL INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS BY THE SUBSCRIPTION SERVICES. CloudKnox shall have no liability under this **Section 10.2** to the extent that any third-party claims described herein are based on use of the Subscription Services in a manner that violates this Agreement or the instructions given to Customer by CloudKnox.

11. LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY ARISING FROM A BREACH OF **SECTIONS 2.2** OR **2.3** OR **SECTION 7**, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF INCOME, DATA, PROFITS, REVENUE OR BUSINESS INTERRUPTION, OR COST OF SUBSTITUTE SERVICES, OR OTHER ECONOMIC LOSS, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ANY CLAIM FOR RECOVERY IS BASED ON THEORIES OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE.

NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS AGREEMENT, IN NO EVENT SHALL CLOUDKNOX'S AGGREGATE LIABILITY TO CUSTOMER AND ANY THIRD PARTY IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S ACCESS TO AND USE OF THE SUBSCRIPTION SERVICES EXCEED THE TOTAL MONTHLY SUBSCRIPTION FEES PAID BY CUSTOMER IN THE TWELVE MONTH PERIOD PRECEDING THE CLAIM OR ACTION, REGARDLESS OF THE FORM OR THEORY OF THE CLAIM OR ACTION.

12. ACKNOWLEDGEMENT. The parties acknowledge that the limitations and exclusions contained in **Section 11** and elsewhere in this Agreement have been the subject of negotiation between the parties and represent the parties' agreement based upon the perceived level of risk associated with their respective obligations under this Agreement, and the payments made hereunder. Without limiting the generality of the foregoing, the parties acknowledge and agree that (a) the provisions hereof that limit liability, disclaim warranties or exclude consequential damages or other damages or remedies shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach hereunder, and (b) all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause an exclusive remedy to fail of its essential purpose.

13. GENERAL

13.1 Governing Law. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the laws of the State of California, without regard to its conflict of law provisions. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in the Northern District of California. CloudKnox and Customer hereby agree to submit to the jurisdiction of, and agree that venue is proper in, those courts in any such legal action or proceeding.

13.2 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

13.3 Notices. All notices, including notices of address change, required to be sent hereunder shall be in writing and shall be sent to the addresses set forth in the signature line of this Agreement or delivered in person. The notices shall be deemed to have been given upon: (a) the date actually delivered in person; (b) the day after the date sent by

overnight courier; or (c) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email.

13.4 Severability. In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

13.5 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of events beyond the reasonable control of such party, which may include without limitation denial-of-service attacks, strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages (each a "**Force Majeure Event**"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations effected by the Force Majeure Event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance.

13.6 Compliance with Laws. Each party agrees to comply with all applicable laws and regulations with respect to its activities hereunder, including, but not limited to, any export laws and regulations of the United States.

13.7 Relationship Between the Parties. Nothing in this Agreement shall be construed to create a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or to incur obligations on the other's behalf without such other party's prior written consent.

13.8 Assignment/Successors. Neither party may assign or transfer this Agreement, in whole or in part, without the other party's written consent except in the event of a Change of Control (as defined below). Any attempted assignment or transfer in violation of this Section will be null and void. "**Change of Control**" means, with respect to a party: (a) the direct or indirect acquisition of either (i) the majority of voting stock of such party or (ii) all or substantially all of the assets of such party, by another entity in a single transaction or a series of transactions; or (b) the merger of such party with another entity. Subject to the foregoing restrictions, this Agreement shall inure to the benefit of the successors and permitted assigns of the parties.

13.9 Entire Agreement. This Agreement together with the exhibits hereto constitutes the complete and exclusive agreement between the parties concerning its subject matter and supersedes all prior or contemporaneous agreements or understandings, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party.

13.10 Non-Exclusive Remedies. Except as set forth in **Sections 2.4 and 10.2** and in the Service Level Agreement, the exercise by either party of any remedy under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.

13.11 Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin

the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.

13.12 No Third-Party Beneficiaries. This Agreement is intended for the sole and exclusive benefit of the signatories and is not intended to benefit any third party. Only the parties to this Agreement may enforce it.

13.13 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument.

13.14 Headings. The headings in this Agreement are for the convenience of reference only and have no legal effect.

