

ProjectReady Central LLC
50 Main Street
Suite 1000
White Plains, NY 10606

Prepared for

Order Number

PROJECTREADY CENTRAL LLC SUBSCRIPTION AGREEMENT

THIS MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) IS BY AND BETWEEN PROJECTREADY CENTRAL, LLC (HEREIN REFERRED TO AS “PROJECTREADY”) AND YOU AS CUSTOMER (“CUSTOMER” OR “YOU”) IN CONNECTION WITH THE RIGHT TO ACCESS AND USE THE SERVICES CONTEMPLATED UNDER THE APPLICABLE ORDER FORM (THE “ORDER”) TO WHICH THIS AGREEMENT IS INCORPORATED BY REFERENCE. BY EXECUTING THE ORDER, CLICKING “I AGREE”, ACCESSING OR USING THE SERVICES, OR OTHERWISE SIGNIFYING YOUR ACCEPTANCE OF THE TERMS OF THIS AGREEMENT, YOU REPRESENT AND WARRANT THAT (A) THE INDIVIDUAL SIGNING THE ORDER ON CUSTOMER’S BEHALF IS AUTHORIZED TO ENTER THIS AGREEMENT FOR AND ON BEHALF OF CUSTOMER, AND IS DOING SO, (B) YOU CAN LEGALLY SIGN THE ORDER AND ENTER INTO THIS AGREEMENT AND (C) YOU HAVE READ AND UNDERSTAND AND AGREE THAT YOU AND CUSTOMER SHALL BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROJECTREADY WILL NOT PROVIDE YOU THE RIGHT TO ACCESS AND USE THE SERVICES.

1. CONSTRUCTION. Capitalized terms (whether in the singular or plural) shall have the meanings assigned to them in this Agreement or in the applicable Order, including their exhibits and addenda.

2. SOFTWARE AS A SERVICE.

2.1 Access. Commencing on the Effective Date of this Agreement, ProjectReady shall make available to Customer ProjectReady’s SaaS solution(s) as outlined and in accordance with, the applicable Order and the terms and conditions of this Agreement (the “**Service**”).

2.2 Rights to the Service. Subject to the terms and conditions of the applicable Order and this Agreement, ProjectReady hereby grants Customer a non-exclusive, non-transferable, worldwide right during the Term to access the Service and permit the number of individual users specified in the applicable Order (“**Authorized Users**”) to use the Service (the “**Right to Use**”). Unless otherwise specified, the term “quantity” is as defined in the Order and for which Customer is permitted to access the associated Service.

2.3 Updates. At no charge to Customer, ProjectReady shall publish software updates deemed reasonably necessary to address errors, bugs or other performance issues in the Service (collectively, “**Updates**”). ProjectReady will use reasonable efforts to notify Customer of any Updates or upgrades that it makes to the Service that may impact Customer. Customer must operate the most recent version of the Service offered by ProjectReady and will migrate to updated versions within ninety (90) days of release by ProjectReady. Unless a temporary waiver is requested by Customer and approved by ProjectReady, which approval shall not be unreasonably withheld, if Customer fails to move to the most recent version of the Service by the end of such ninety (90) day period, then ProjectReady shall not be responsible or liable for any damages or other issues that Customer may suffer to the extent that such damages or issues would have been avoided if Customer had moved to the most recent version of the Service.

2.4 Restrictions and Conditions. Customer shall not, directly, indirectly or through its Authorized Users, employees and/or the services of any independent

contractors: (a) copy, modify, adapt, translate, create derivative works or improvements or merge copies of the Service, (b) translate, reverse engineer, de-compile or disassemble the Service, except to the extent that applicable law explicitly prohibits this contractual restriction, (c) attempt to sell, transfer, assign, rent, lend, lease, sublicense or otherwise provide third parties rights to the Service, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service; (d) "frame," "mirror," copy or otherwise enable third parties to use the Service (or any component thereof) as a service bureau or other outsourced service; (e) use the Service in a manner that interferes with, degrades, or disrupts the integrity or performance of any ProjectReady technologies, services, systems or other offerings, including data transmission, storage and backup; (f) use the Service for the purpose of benchmarking or competitive analysis of the Service or developing a product or service that competes with the Service or any other ProjectReady product or service; (g) circumvent or disable any security features associated with Service; (h) use the Service in any manner prohibited by law or (i) attempt to derive or gain access to the source code of the Service, in whole or in part.

2.5 Service Data. ProjectReady shall own all right, title and interest in any data generated or collected through the use of the Service (e.g., how many data repositories does ProjectReady provision, how often permissions are changed in any of these repositories, how often ProjectReady's modules are used and by what role, etc.) excluding any personal information (if any) of Customer (the "**Service Data**"). ProjectReady shall be free to use the Service Data (a) as is necessary or useful to provide the Service; (b) to improve the Service and its business and (c) for any other purpose without restriction, including the disclosure of any such Service Data so long as the Service Data has been anonymized. All Customer data is stored and retained by Customer at all times.

2.6 Delivery of Service and Materials. The Service, and any updates or maintenance releases thereof, shall be made available only on a hosted basis, and will not be delivered in object code or physical media to Customer. The Service, and any deliverables provided under this Agreement will be delivered only through an electronic transfer.

2.7 Overages. If Customer exceeds the agreed upon terms licensed in an applicable Order (or such other metric for pricing as is agreed upon by the parties in the applicable Order), ProjectReady will notify Customer of the excess usage and Customer must within thirty (30) days, either: (a) reduce its usage to conform to the agreed upon scope limitations, or (b) purchase additional usage rights from ProjectReady pursuant to a separate Order. For the

avoidance of doubt, ProjectReady reserves the right to suspend access to the Service to the extent Customer exceeds the scope of its usage rights.

3. INTELLECTUAL PROPERTY RIGHTS.

3.1 Service. Except for the limited right to use expressly granted under the applicable Order and this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel or otherwise, to Customer or any third party, any intellectual property rights or other right, title, or interest in or to the Service or ProjectReady's other products or software. All right, title and interest in and to the Service and any documentation, including all related intellectual property rights, are and will remain with ProjectReady. **Error! Reference source not found.**

3.2 Feedback. Customer hereby grants to ProjectReady a non-exclusive, worldwide, fully paid-up, royalty-free, non-terminable, perpetual, irrevocable right and license to use, disclose, modify, reproduce, license, distribute, commercialize and otherwise freely exploit any feedback, comments, or suggestions with respect to the Service and ProjectReady's other products and services, that Customer provides and all related intellectual property, without restriction of any kind and without any right of accounting.

4. SERVICES.

4.1 Minimum Requirements. The Service supports various third-party services and software (collectively, the "**Third-Party Software**"), but does not include Customer's right to access or use any such Third-Party Software. Customer is solely responsible for obtaining and maintaining its own licenses and other necessary agreements with the licensors or owners (or authorized resellers) of any such Third-Party Software. A current list of the different Third-Party Software supported by the Service is available upon request.

4.2 Additional Services. Additional support services, including custom configuration, consulting, report development, training and system integration, may be separately purchased from ProjectReady under the terms of a separate Order or Statement of Work, substantially in the form of Exhibit A (an "**SOW**"). For clarity, ProjectReady has no obligation to support Customer's own technology, internal infrastructure, provide free training, or provide consulting on customer created content such as views, reports, and configurations or third party technologies and services unless agreed to in writing via an approved sales agreement and or statement of work.

4.3 Template Certification. ProjectReady shall have no obligation to support Customer created templates unless Customer obtains certification from ProjectReady



for the applicable templates. Template certification is available as a separate service from ProjectReady which may be purchased under the terms of an addendum to this Agreement.

4.4 Service Level Agreement. ProjectReady commits to provide 99.5% uptime with respect to the Service during each calendar quarter of the Term, excluding regularly scheduled maintenance times. Regularly scheduled maintenance time does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least two full business days in advance of the maintenance time. Regularly scheduled maintenance time typically is communicated at least a week in advance, scheduled to occur at night on the weekend, and takes less than 10-15 hours each quarter. ProjectReady in its sole discretion may take the Service down for unscheduled maintenance and in that event will attempt to notify customer in advance in accordance with the Notice section set forth below. Such unscheduled maintenance will be counted against the uptime guarantee. Any outages or failure of Service availability due to failures beyond ProjectReady control (such as errors or malfunctions due to the end user's computer systems, local networks or Internet connectivity shall not count as downtime under this SLA. Similarly, ProjectReady shall not be responsible for any services impacted by an outage or error in any Third-Party Software or third-party services, including, without limitation, outages by Microsoft or other cloud hosting providers that may be used by ProjectReady.

4.5 No On-Site or Cloud Services Right to Use. The Right to Use granted under this Agreement does not permit Customer to obtain a copy of the software that ProjectReady uses to operate the Service, or for Customer to access the Service other than as hosted and provided by ProjectReady. Notwithstanding the foregoing, upon request, ProjectReady may consider licensing the Service to a customer for on-premise use under different terms and agreement.

5. CUSTOMER OBLIGATIONS.

5.1 Fees and Payment Terms. In consideration of the Right to Use and the other rights granted herein, Customer

shall pay the amounts specified in the applicable Order (collectively, the “Fees”).

(a) Fees are exclusive of any applicable sales, use, import or export taxes, duties, fees, value-added taxes, tariffs or other amounts attributable to Customer's execution of this Agreement or use of the Service (collectively, “Sales Taxes”). Customer shall be solely responsible for the payment of any Sales Taxes. In the event ProjectReady is required to pay Sales Taxes on Customer's behalf, Customer shall promptly reimburse ProjectReady for all amounts paid.

(b) Except as otherwise provided in the applicable Order, all undisputed amounts shall be paid to ProjectReady within thirty (30) days of receipt of an invoice. Customer must notify ProjectReady of any disputed amounts (with a reasonable description of the issues) within thirty (30) days of the receipt of the applicable invoice. If Customer fails to notify ProjectReady in writing of any disputed amounts within such thirty (30) period, then Customer shall be deemed to have waived its right to dispute any such related amounts. Customer and ProjectReady shall work in good faith to resolve any disputed amounts as quickly as possible.

(c) Undisputed fees not paid when due shall be subject to a late fee equal to one (1%) of the unpaid balance per month or the highest monthly rate permitted by applicable law. ProjectReady further reserves (in addition to any other rights and remedies that it might have) the right to suspend access to the Service while any undisputed amounts remain overdue. Amounts payable to ProjectReady shall continue to accrue interest during any period of suspension and must be paid as a condition precedent to reactivation, which reactivation is at the sole discretion of ProjectReady.

(d) EXCEPT AS OTHERWISE SPECIFIED IN THE APPLICABLE ORDER OR THIS AGREEMENT, (I) FEES ARE BASED ON THE SERVICES PURCHASED AND NOT ACTUAL USAGE, (II) PAYMENT OBLIGATIONS ARE NON-CANCELABLE, (III) FEES PAID ARE NON-REFUNDABLE, AND (IV) THE SCOPE OF THE SUBSCRIPTION CANNOT BE DECREASED DURING THE RELEVANT SUBSCRIPTION TERM.

5.2 Compliance with Laws. The ProjectReady software and Service are of U.S. origin. Customer shall adhere to all applicable state, federal, local and international laws and treaties in all jurisdictions in which Customer uses the Service, including all U.S. and international export control laws and regulations. Customer will not upload any data or information to the Service for which Customer does not have full and

unrestricted rights. Notwithstanding anything to the contrary in this Agreement or any other agreement between the parties, Customer will not upload any data or information that is subject to government regulation, including without limitation, protected health information regulated under the Health Insurance Portability and Accountability Act of 1996 or sensitive financial information regulated under the Gramm-Leach-Bliley Act of 1999.

6. TERM AND TERMINATION.

6.1 Term. Unless otherwise specified in the Order, the initial term of this Agreement will begin on the Order Effective Date of the Initial Order (the “**Effective Date**”) and shall, unless terminated earlier pursuant to an express provision hereof, continue thereafter until the end of the initial Subscription Term (the “**Initial Term**”). Upon expiration of the Initial Term, this Agreement and the Right to Use shall automatically renew for additional periods of one (1) year, or for such shorter period as may result from termination pursuant to an express provision hereof, unless either party provides written notice of its intention not to renew to the other party at least sixty (60) days’ prior to expiration of the then current term (together with the Initial Term, collectively, the “**Term**”).

6.2 Termination.

(a) Either party may terminate this Agreement if the other party materially breaches this Agreement and such breach has not been cured within thirty (30) days after the non-breaching party provides written notice thereof.

(b) ProjectReady may terminate this Agreement if Customer fails to pay any amount when due under the Order and such failure has not been cured more than ten (10) days after ProjectReady provides written notice thereof.

(c) Either party may terminate this Agreement effective immediately, if the other party: (i) is dissolved or liquidated or takes any corporate action for such purpose; (ii) becomes insolvent or is generally unable to pay its debts as they become due; (iii) becomes the subject of any voluntary or involuntary bankruptcy proceeding under any domestic or foreign bankruptcy or insolvency Law; (iv) makes or seeks to make a general assignment for the benefit of its creditors; or (v) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property.

6.3 Effect of Termination. Upon expiration or termination for any reason, Customer shall discontinue all use of the Service, and return any and all software and documentation provided to Customer by ProjectReady. Client will further need to provide evidence of the deletion of ProjectReady if deployed in their environment.

6.4 Survival. Sections 2.5, 3, 5, 6.3, 6.4, 7, 8, 9, 11, 13, 14 and 15 shall survive the expiration or termination of this Agreement for any reason.

7. INDEMNIFICATION.

7.1 Customer. Customer shall indemnify and hold harmless ProjectReady and each of its officers, directors, employees, agents, contractors, subcontractors, suppliers and licensors (collectively “**ProjectReady Indemnitees**”) from and against any and all third-party claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys’ fees and costs) (collectively, “**ProjectReady Claims**”) arising out of or in connection with (a) any actual or alleged violation or breach by Customer or SOW (including its employees and representatives) of any representations or warranties or of the terms and conditions of this Agreement or (b) the negligence or willful misconduct of Customer (including its employees and representatives). If any ProjectReady Claim is made or any action or proceeding is brought against ProjectReady Indemnitees, or any of them, any such ProjectReady Indemnitee may, by notice to Customer, require Customer, at Customer’s expense, to resist such ProjectReady Claim or take over the defense of any such action or proceeding and employ counsel for such purpose. The reimbursement, indemnity and contribution obligations of Customer under this Section 7.1 shall be in addition to any liability that Customer may otherwise have, and shall extend upon the same terms and conditions to each of the ProjectReady Indemnitees.

7.2 ProjectReady. ProjectReady shall indemnify and hold harmless Customer and each of its officers, directors and employees (collectively “**Customer Indemnitees**”) from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys’ fees and costs) arising out of a third-party claim that the Service or any other services or work product under any SOW infringes or misappropriates any U.S. patents issued as of the Effective Date or any copyright or trade secret of any third party (an “**IP Claim**”). ProjectReady shall have no indemnification obligation, and Customer shall indemnify ProjectReady pursuant to this Agreement, for claims of infringement or misappropriation arising from:

(a) the combination of the Service with any content, products, services, hardware or business processes if such infringement would not have occurred but for such combination;

(b) compliance with designs, plans or specifications furnished by or on behalf of Customer as to the Service, if such infringement would not have occurred but for compliance with such designs, plans, or specifications,

(c) use of the Service after ProjectReady’s notice to Customer of such activity’s alleged or actual infringement,

misappropriation or other violation of a third party's rights;

(d) use of the Service by or on behalf of Customer that is outside the purpose, scope or manner of use authorized by this Agreement or in any manner contrary to ProjectReady's instructions, or

(e) a patent or copyright in which Customer or an affiliate or subsidiary of Customer has any direct or indirect interest by license or otherwise.

If any IP Claim is made or any action or proceeding is brought against Customer Indemnitees, or any of them, any such Customer Indemnitee may, by notice to ProjectReady, require ProjectReady, at ProjectReady's expense, to resist such IP Claim or take over the defense of any such action or proceeding and employ counsel for such purpose.

7.3 IP Infringement Remedy. In addition to ProjectReady's obligations under Section 7.2, if an IP Claim is made by a third party against Customer or if ProjectReady believes that a likelihood of such an IP Claim exists, then as ProjectReady, in its sole discretion, shall: (i) secure the right for Customer to continue to use the Service, (2) modify the Service so as to make it non-infringing with no material loss of functionality and while still complying with all relevant terms of the Agreement or (3) provide Customer with a functionally equivalent, non-infringing replacement. If none of these alternatives is commercially feasible in ProjectReady's judgement, then ProjectReady may terminate this Agreement and refund a pro-rata portion (relative to the remaining part of the then current Term) of the fees paid for the infringing Services. ProjectReady's obligations under Section 7.2 and this Section 7.3 shall be Customer's sole remedy, and ProjectReady's sole obligations, in connection with any IP Claim.

7.4 Process. A party seeking indemnification hereunder shall promptly notify in writing the other party of any claim for which defense and indemnification is sought; provided that the failure to promptly notify the indemnifying party will not relieve the indemnifying party under this Section 7 except to the extent that it has materially prejudiced as result of such failure. The party seeking indemnification shall cooperate with the indemnifying party, at the indemnifying party's sole cost and expense. Each party agrees that it will not, without the other's prior written consent, enter into any settlement or compromise of any claim that: (a) results, or creates a likelihood of a result, that in any way diminishes or impairs any right or defense that would otherwise exist absent such settlement or compromise; (b) constitutes or includes an admission of liability, fault, negligence or wrongdoing on the part of the other party or (c) requires the payment of money by the other party, without the other party's prior

written

approval.

Each indemnifying party has the sole right to control the defense of any claim for which it is providing indemnification hereunder with counsel mutually acceptable to the parties. The indemnified party may, at its own expense, participate in the defense of any such claim.

8. WARRANTY/ LIABILITY/EXCLUSION OF CERTAIN DAMAGES.

8.1 Mutual Warranties. Each party represents and warrants to the other that it is duly authorized to execute this Agreement and perform its obligations under this Agreement.

8.2 Disclaimer. THE SERVICE AND ANY OTHER PROJECTREADY SOFTWARE, TRAINING, INSTRUCTION AND SUPPORT OR OTHER SERVICES PROVIDED IN CONNECTION WITH THIS AGREEMENT (COLLECTIVELY, THE "PROJECTREADY MATERIALS") ARE PROVIDED STRICTLY ON AN "AS IS" BASIS. PROJECTREADY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, PROJECTREADY MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE OR ANY OTHER PROJECTREADY MATERIALS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET CUSTOMER'S OR ANY OTHER PERSONS' REQUIREMENTS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

8.3 CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE AND THE OTHER PROJECTREADY MATERIALS MAY BE SUBJECT TO INTERRUPTION, LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF INTERNET APPLICATIONS AND ELECTRONIC COMMUNICATIONS.

8.4 Limitation of Liability. PROJECTREADY'S, ITS SUPPLIERS' AND LICENSORS' TOTAL AGGREGATE LIABILITY RELATING TO, ARISING OUT OF, IN CONNECTION WITH, OR INCIDENTAL TO THIS AGREEMENT, INCLUDING THE SERVICE AND ANY OTHER PROJECTREADY MATERIALS, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNIFICATION OR ANY

OTHER CLAIM SHALL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER AND RECEIVED BY PROJECTREADY FOR THE RIGHT TO USE THE SERVICE HEREUNDER DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE APPLICABLE CLAIM. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT INCREASE OR EXTEND THIS LIMITATION OF LIABILITY. CUSTOMER HEREBY RELEASES PROJECTREADY, ITS SUPPLIERS AND LICENSORS FROM ALL OBLIGATIONS, LIABILITY, CLAIMS OR DEMANDS IN EXCESS OF THIS LIMITATION. The essential purpose of this Section 8.3 is to limit the potential liability of ProjectReady arising out of this Agreement, including the Service and the other ProjectReady Materials, whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

8.5 Exclusion of Certain Damages and Limitations of Types of Liability. EXCEPT FOR A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR A BREACH OF SECTION 2 OR 3, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES, OR LOST PROFITS OR LOST REVENUE ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE SERVICE OR ANY OF THE OTHER PROJECT MATERIALS. THE FOREGOING EXCLUSION AND LIABILITY LIMITATIONS APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF STRICT OR PRODUCT LIABILITY. The essential purpose of this Section 8.4 is to limit the potential liability of the parties arising out of this Agreement, including the Service and the other ProjectReady Materials, whether for breach of contract, negligence, or otherwise. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

9. NOTICES AND REQUESTS. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement shall be provided in accordance with the applicable Order.

10. ADDITIONAL TERMS. ProjectReady shall not be bound by any subsequent terms, conditions or other obligations included in any Customer purchase order, receipt, acceptance, confirmation or other correspondence from Customer unless expressly agreed to in writing by ProjectReady.

11. CONFIDENTIAL INFORMATION.

11.1 Confidential Information. In connection with this Agreement, each party (as the "**Disclosing Party**") may disclose or make available to the other party (as the "**Receiving Party**") Confidential Information. Subject to Section 11.2, "**Confidential Information**" means information in any form or medium (whether oral, written, electronic or other) that: (i) if disclosed in writing or other tangible form or medium, is marked "confidential" or "proprietary"; (ii) if disclosed orally or in other intangible form or medium, is identified by the Disclosing Party or its Representative as confidential or proprietary when disclosed; or (iii) due to the nature of its subject matter or the circumstances surrounding its disclosure, would reasonably be understood to be confidential or proprietary. ProjectReady's Confidential Information, includes, without limitation, all pricing information and the terms of each Order and this Agreement.

11.2 Exclusions and Exceptions. Confidential Information does not include information that the Receiving Party can demonstrate by written or other documentary records: (i) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (ii) was or becomes generally known by the public other than by the Receiving Party's or any of its Representatives' noncompliance with this Agreement; (iii) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (iv) the Receiving Party can demonstrate by written or other documentary records was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

11.3. Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;

(b) except as may be permitted under the terms and conditions of Section 11.4, not disclose or permit access to Confidential Information other than to its employees and representatives who: (i) need to know such Confidential Information in connection with the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the

confidential nature of the Confidential Information and the Receiving Party's obligations under this Section 11; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 11;

(c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care; and

(d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and

(e) ensure its employees' and representatives' compliance with, and be responsible and liable for any of its employees' and representatives' breach of the terms of this 10.

Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 11 with respect to any Confidential Information that constitutes a trade secret under any applicable law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

11.4 Compelled Disclosures. The Receiving Party may disclose Confidential Information pursuant to a valid order issued by a court or government agency or as otherwise required by law, provided that (a) the Receiving Party provides the Disclosing Party with prior written notice of such obligation and the opportunity to oppose such disclosure or obtain a protective order; (b) the Receiving Party only discloses such Confidential Information as is required to comply with such order or law (as advised by competent counsel) and (c) no such disclosure shall otherwise exempt such Confidential Information from being treated as confidential under this Agreement.

11.4 Effective of Rights and Obligations. All rights and obligations under this Section 11 shall remain in effect for a period of five (5) years after the expiration or termination of this Agreement for any reason, except that with respect to Confidential Information that is protectable as a trade secret under applicable law, all rights and obligations under this Section 11 shall remain in full force and effect for so long as such Confidential Information is so protectable as a trade secret.

12. FORCE MAJEURE. The obligations of a party (other than payment) will be suspended by the occurrence

of any event beyond its reasonable control and not caused by its negligence, that renders its performance impossible including, acts of god, war, fire, flood, accident, strike, casualty, power failures, interruption in internet service, governmental acts, orders or restrictions or inability to obtain suitable and sufficient labor and materials (collectively, a "**Force Majeure Event**"). The party affected by a force majeure event shall (a) send written notice thereof to the other party within a reasonable time after the affected party knew or should have known that performance would be delayed or prevented due to the force majeure event and (b) take reasonable steps to limit the duration and effect of any such force majeure event.

13. GOVERNING LAW AND DISPUTE RESOLUTION.

13.1 This Agreement shall be governed by the laws of the State of New York, without regard to its conflict of law principles, and any applicable United States federal law.

13.2 If any controversy, claim or dispute arising out of or relating to this Agreement, including the Service (collectively, a "**Dispute**") is not resolved within thirty (30) days from the date that either party provides the other party with written notice of the existence thereof, then each party shall designate an executive who is authorized to investigate, negotiate and settle the Dispute. The executives shall exercise good faith efforts to settle the Dispute. If the executives do not resolve the Dispute within thirty (30) days (or an extended period if they so agree), then the parties shall resolve the Dispute in accordance with Section 13.3. No court or other action pertaining to a Dispute shall be pursued unless this dispute resolution procedure has been exhausted. Nonetheless, either party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or confidential information without the necessity of posting a bond or other security, or proving actual damages or that monetary damages are not an adequate remedy.

13.3 Any Dispute that is not resolved in accordance with Section 13.2 shall be settled by binding arbitration in accordance with (a) the Commercial Arbitration Rules of the American Arbitration Association if the Customer is located in the United States and (b) the International Commercial Arbitration Rules of the American Arbitration if the Customer is located outside of the United States (collectively, "**AAA**"), and judgment upon the award rendered by the arbitrator may be entered in any court have jurisdiction thereof. Any such arbitration shall be in English and be held in New York, New York.

13.4 Unless otherwise agreed by the parties, the Dispute shall be determined by one arbitrator mutually

agreed upon by the parties, or if the parties cannot so mutually agree, a single arbitrator with significant relevant experience appointed in accordance with the rules of the AAA. The award shall be in writing and include the findings of fact and conclusions of law upon which it is based.

13.5 The parties will be entitled to engage in reasonable discovery, including requests for production of relevant non-privileged documents. The arbitrator may order depositions and interrogatories upon a showing of need. The arbitrator and counsel of record also have the power of subpoena process as provided by law. It is the parties' intent that the discovery proceedings be conducted in as cost-effective manner as possible. The arbitrator shall resolve any deposition or discovery disputes.

13.6 THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHTS TO HAVE ANY DISPUTE TRIED AND ADJUDICATED BY A JUDGE OR A JURY. The arbitration shall be governed by the substantive laws of the State of New York, without regard to conflicts-of-law rules, and by the arbitration law of the Federal Arbitration Act (Title 9, U.S. Code). Judgment upon the award rendered may be entered in any court having jurisdiction.

13.7 The cost and expenses for the arbitration shall initially be shared equally by the parties. The arbitral proceedings and all pleadings and written evidence shall be in the English language. Any written evidence originally in a language other than English shall be submitted in English translation accompanied by the original true or copy thereof. The party prevailing in any Dispute, including any arbitration, shall be entitled, in addition to any other relief that may be granted, to be awarded costs, including its reasonable attorneys' fees and the cost of arbitration. The amount of such costs to be awarded shall be determined by the arbitrator during the arbitration or at post-arbitration proceedings. Except as otherwise required by law, the parties and the arbitrator agree to keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute.

EQUITABLE RELIEF. Notwithstanding the terms of Section 13.2, each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 2, 3 or 11, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement

to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise. In the event that either party institutes any legal suit, action or proceeding against the other party in connection with this Section 14, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court.

14. GENERAL. No joint venture, partnership, employment, agency or exclusive relationship exists between the parties as a result of this Agreement or use of the Service. The failure of either party to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision. No amendment to or modification of this Agreement shall be effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. If any part of this Agreement is found to be illegal, unenforceable, or invalid, Customer's right to use this Agreement and the Right to Use the Service will immediately terminate. This Agreement, together with each Order and any exhibits, comprises the entire agreement between Customer and ProjectReady and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained

