

## Master Subscription and Services Agreement

This Master Subscription and Services Agreement (this “Agreement”) is entered into by and between zPaper, Inc., (“zPaper”), a Georgia corporation, having its principal place of business at 1000 Holcomb Woods Parkway #280, Roswell, GA 30076 and the Customer named on zPaper’s Order Form (“Customer”). By executing zPaper’s order form (the “Order”), Customer and zPaper acknowledge and agree that the relationship between the parties, and Customer’s use of any and all zPaper solutions and services (the “Services”), shall be governed by 1) the terms of the Order; 2) this Agreement and any applicable addenda, the terms of which are incorporated into the Order by reference; and 3) any professional services Statement of Work (“SOW”) described in the Order or subsequently executed by the parties. The parties agree as follows:

### 1. SERVICES.

**1.1. zPaper Obligations.** zPaper will use commercially reasonable efforts to provide to Customer the products and services set forth in the applicable Order referencing this Agreement and as further described in the user documentation provided by zPaper to Customer for such Services (“Documentation”). Subject to Customer's compliance with this Agreement and the applicable Order, zPaper grants Customer, through its authorized Users, a limited, non-exclusive, non-transferable, non-assignable (except as set forth in Section 10.1 below) right to access and use the Services during the term set forth in the applicable Order (“Order Term”). User(s) means an employee or any third party (which is not a competitor of zPaper) that has been authorized by Customer to use a Service solely for Customer’s internal business purposes. Customer may engage zPaper to provide additional services pursuant to an SOW executed by both parties and describing the scope of the services and the related fees and expenses. Each SOW will be subject to the terms of this Agreement.

**1.2. Customer Obligations.** Except as may be specifically set forth in an Order, Customer agrees that it will not use the Services: (i) for the benefit of anyone but Customer, (ii) for any illegal or unlawful purpose and/or to conduct any illegal activity, (iii) to sell, resell, license, sublicense, distribute, make available, rent or lease any Services, or include any Services in a service bureau or outsourcing offering, (iv) to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (v) to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (vi) to permit direct or indirect access to, or use of, any Service in a way that circumvents a contractual usage limit, (vii) frame or mirror any part of any Service(s), other than framing on Customer’s own intranets or otherwise for Customer’s own internal business purposes or as permitted in the Documentation, (viii) access any Service in order to build a competitive product or service or to benchmark with a non-zPaper product or service, (ix) to send or store any virus, worm, time bomb, Trojan horse or other harmful or malicious code, file, script, agent or programs; or (x) to interfere with or disrupt the integrity or performance of the Services. Any use of the Services in breach of this Agreement or Order, by Customer or its Users that breaches a law, this Section or threatens the security, integrity or availability of the zPaper services, may result in corrective action by zPaper, including, but not limited to, assessment of additional charges and/or immediate suspension of the Services. In such circumstances, zPaper will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

**1.3. Maintenance.** zPaper will maintain and support the Services in accordance with the terms and conditions set forth in zPaper’s standard maintenance policy (“Maintenance”). zPaper will use commercially reasonable efforts to provide Maintenance for as long as the applicable Order is in effect. As a part of the Maintenance, zPaper will provide to Customer, updates and upgrades, as they become available, at no additional cost, as more specifically set forth in the Maintenance policy.

#### **1.4. Additional Terms and Conditions.**

**Content:** Notwithstanding any terms set forth in this Agreement, Customer acknowledges and agrees that zPaper is not responsible for any submitted, created or referenced content stored or transmitted by the services. Furthermore, should Customer delete any of the Customer Data (as defined below) from zPaper's servers, such deletion is likely permanent. Although zPaper may attempt to restore deleted Customer Data upon request, a) zPaper will be under no obligation to attempt to restore Customer Data, b) zPaper offers no guaranty that a restore will be available, possible or successful, and c) zPaper may charge Customer a fee for any restore attempt whether or not such attempt is successful. Customer is advised to maintain local backup copies of all content stored on zPaper's servers.

**Data Fields:** Notwithstanding any terms to the contrary set forth in this Agreement, Customer acknowledges and agrees that other than those data fields common to every application of the zPaper's services, Customer shall have sole responsibility for additions, deletions and any other changes to Customer's data model. Should Customer modify, delete or make any changes to the Services (including without limitation any and all services required to implement the Services, or Customer Data stored on zPaper's servers, zPaper will have no responsibility for the consequences of such action by Customer. During the time required to repair or restore such modifications or deletions, zPaper will continue to bill Customer for the Services and Customer will not be relieved of its payment obligation to zPaper. If Customer requires zPaper's assistance to repair or restore such modified or deleted work or Customer Data, such assistance shall be considered outside the scope of ordinary customer support and zPaper will bill Customer at its standard rate for such additional services (plus applicable charges for employee overtime, expedited service, holidays, etc.). zPaper will endeavor to schedule repair or restoration of damage caused by Customer within a commercially reasonable time after obtaining Customer's approval of the proposed repair methodology, schedule and cost, subject to the availability of zPaper's required personnel. Any delay caused by the unavailability of zPaper's personnel due to previous commitments to other customers shall not constitute a breach of zPaper's obligation hereunder, and zPaper will have no obligation to reassign such employees in order to expedite repairs to Customer's installation.

**Noncompliant faxes and other transmissions:** All faxes must be transmitted in "black and white" format. Outgoing color images and text may not render properly on the recipient's screen or printer. Documents containing high pixel density images, multiple images, or large areas of "dark space" may result in delays, transmission errors or diminished system performance.

**Delivery Time Restrictions:** Customer shall be solely responsible for ensuring that it is legal to send a fax to each and every recipient of faxes generated by Customer, including specifically at the time each such fax is actually delivered. zPaper has no ability to guaranty a specific delivery time for any particular fax or within a particular geographic region, and makes no such guaranty. Customer is solely responsible for determining whether any particular fax recipient is covered by any applicable delivery time legal restrictions; all faxes sent by Customer to such recipients are sent at the Customer's sole and exclusive risk.

**Outbound:** All outgoing faxes may be sent to phone numbers in the US and Canada. Unless otherwise specified in a Service Order, Customer may not send faxes to phone numbers outside the US and Canada. If Customer transmits faxes to phone numbers outside the US and Canada, additional fees will apply.

**Incoming:** All incoming faxes must be received by a local zPaper phone line. If incoming faxes are sent to a zPaper owned or controlled toll number (such as 800, 888, etc.), additional fees will apply.

## **2. FEES, INVOICING, PAYMENT AND TAXES.**

**2.1. Fees.** As set forth in the Applicable Order, (a) on the Managed Package Installation Date zPaper will invoice Customer for any license fees and Environments and Infrastructure fees, and (b) on the date of Productive Use, zPaper will invoice Customer for any page or view plans (“Fees”). The price per unit rate of such Fees will not increase or decrease during the initial Order Term. “Environments and Infrastructure” includes, but is not limited to fax lines, hosting environments, environments support and Salesforce Gateway access. All Fee changes will be made prospectively and any Services that have been pre-purchased will not be affected by the change in Fees. Unless otherwise agreed to by the parties or as set forth on an Order, all Fees for any renewal periods will be based upon zPaper’s then-prevailing rates. zPaper will provide Customer with at least sixty (60) days advance notice of any price increases. zPaper will invoice Customer as set forth in the applicable Order. All invoices are payable in U.S. dollars unless otherwise set forth in the applicable Order.

**2.2. Payment.** Each invoice will be due upon receipt by Customer, except for any amounts in dispute by Customer. Customer agrees to notify zPaper within fifteen (15) days after receipt of an invoice if there are any disputed amounts. The Parties will endeavor in good faith to resolve any dispute within fifteen (15) days of the date of notice of such dispute. All amounts past due in excess of fifteen (15) days will be charged a penalty fee of 1.5% of the outstanding balance per month.

**2.3. Taxes.** The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “Taxes”). Customer is responsible for paying all Taxes associated with its purchases under this Agreement and any Order. If zPaper has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, zPaper will invoice Customer and Customer will pay that amount unless Customer provides zPaper with a valid tax exemption certificate authorized by the appropriate taxing authority. zPaper is solely responsible for taxes assessable against zPaper based on its income, property and employees.

**2.4. Suspension of Service and Acceleration.** If any amount owing by Customer under this or any other Agreement with zPaper is 30 or more days overdue (or 10 or more days overdue in the case of amounts Customer has authorized zPaper to charge to a credit card), zPaper may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend any and all services until such amounts are paid in full.

**2.5. Online Payments.** Customer agrees that it will not require to submit invoices (i) via a customer or third party procurement to pay online portal or (ii) with any electronic data interchange (“EDI”).

## **3. INTELLECTUAL PROPERTY RIGHTS.**

**3.1. zPaper Rights.** Except for the limited right to access and use the Services under this Agreement and the applicable Order, Customer acknowledges and agrees that, as between the parties, zPaper (or its licensors) have and will retain any and all rights, title, and interest in the Services, any software utilized to perform the zPaper services, the Documentation (collectively, the zPaper Products) and all derivative works made by any person or entity in or to the zPaper Products, including, but not limited to, patents, copyrights, trademarks, trade secrets and other intellectual property and proprietary rights (collective the “Intellectual Property Rights”) associated with the zPaper Products. Customer will not assert or cause any other party (including, without limitation, any User) to assert any right, title, or interest in or to the zPaper Products or other portion of zPaper’s Intellectual Property Rights. Customer grants zPaper a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into its software or services, any suggestions, enhancement requests,

recommendations or other feedback provided by Customer, including its Users, relating to zPaper's software, services or business operations.

**3.2. Customer Rights.** Except for the limited right to use the Customer Data solely as necessary to provide the Services to Customer under this Agreement and the applicable Order, zPaper acknowledges and agrees that, as between the parties, Customer or its clients have and will retain all rights, title, and interest in the Customer Data and all derivative works made by any person or entity in or to the Customer Data, as defined below, including, but not limited to all Intellectual Property Rights associated with the Customer Data. zPaper will not assert or cause any other party to assert any right, title, or interest in or to the Customer Data or other portion of Customer's Intellectual Property Rights.

**3.3. Restrictions.** Customer agrees not to reverse engineer, decompile, decrypt, disassemble or create derivative works based on the Software or any Services to the extent such restriction is permitted by law. Any attempt to do so, or to cause or allow others to do so, is a violation of the rights of zPaper and its licensors.

**3.4. Customer Data.** All information provided by Customer or a third party acting on Customer's behalf ("Customer Data"), whether stored online and/or offline remains the sole property of Customer. If Customer deletes any of its Customer Data from the Services, Customer acknowledges that such deletion is likely permanent. Customer Data may be transmitted outside Salesforce and to that extent, Salesforce is not responsible for the privacy, security or integrity of such Customer Data.

#### **4. WARRANTY; DISCLAIMER.**

**4.1. Warranty.** zPaper warrants that: (i) it has the skill, expertise, experience, resources and appropriately qualified personnel to perform the Services in accordance with this Agreement and the relevant Order and/or SOW; (ii) the Services will be performed in a professional and workmanlike manner, in accordance with generally accepted industry standards for similar services; and (iii) zPaper is the exclusive owner and/or legal holder of the zPaper Products and has the right to perform the Services and to grant Customer the licenses and rights in respect thereof as provided herein and the relevant Order and/or SOW.

**4.2. Disclaimer:** EXCEPT AS SET FORTH IN THIS SECTION, ZPAPER DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **5. INDEMNIFICATION.**

**5.1. Indemnification by zPaper.** zPaper will defend Customer, its affiliates and their respective shareholders, directors, officers, employees and agents (collectively, the "Customer Indemnified Parties"), from any third party claim, and indemnify and hold harmless the Customer Indemnified Parties from all resulting losses, costs, expenses or liabilities (including but not limited to, reasonable attorney fees and awarded damages) with respect to any such third party claim to the extent alleging that: (i) the zPaper Products, when used as authorized hereunder, infringes or violates such third party's copyright, trade secret or patent, (ii) gross negligence or intentionally wrongful acts on the part of zPaper, and/or (iii) that zPaper's collection, retention, use or mis-use of any Client Content violates this Agreement or any applicable law. zPaper will have no obligation under this Section 5.1(i) for any claim arising from (x) any modification of the zPaper Products by a party other than zPaper, (y) Customer's product or service offerings, or (z) the combination of the zPaper Products with any materials, information, technology, equipment or systems not provided or approved by zPaper (each of x, y, and z a "Customer Indemnity Responsibility"). Customer acknowledges and agrees that the obligations of zPaper under this Section 5.1(i) will serve as Customer's sole and exclusive remedy for any claim of infringement or misappropriation of intellectual property rights arising under this Agreement.

**5.2. Indemnification by Customer.** Customer will defend zPaper, its affiliates and their respective shareholders, directors, officers, employees and agents (collectively, the "zPaper Indemnified Parties"), from

any third party claim, and indemnify and hold harmless the zPaper Indemnified Parties from all resulting losses, costs, expenses or liabilities (including but not limited to, reasonable attorney fees and awarded damages) with respect to any third party claim to the extent alleging: (i) gross negligence or intentionally wrongful acts by Customer; (ii) any Customer Indemnity Responsibility; and/or (iii) claims arising out of a Customer's use of the zPaper Products (excluding claims that are subject to zPaper's indemnity under Section 5.1(i), including, without limitation, Customer Data, user comments and uploaded content or information. zPaper acknowledges and agrees that the obligations of Customer under this Section 5.2(ii) will serve as zPaper's sole and exclusive remedy for any claim of infringement or misappropriation of intellectual property rights arising under this Agreement.

**5.3. Conditions.** A party's obligation to indemnify the other for a claim pursuant to this Section 5 is contingent upon the following conditions: (a) the indemnified party must notify the indemnifying party in writing of the claim promptly following receipt of written notice; (b) the indemnified party must allow the indemnifying party to control the defense and settlement of the claim, and (c) the indemnified party must provide reasonable information, assistance, and authority (at the indemnifying party's sole expense) reasonably necessary or useful for the indemnifying party's handling and defense of the claims. The indemnified party may, at its sole option and expense, participate in such defense and settlement with counsel of its own choosing. Neither party may settle any claim in a manner which creates or admits liability on the part of the other party without the express written consent of the other party, which consent will not be unreasonably withheld or delayed.

## **6. LIMITATION OF LIABILITY.**

**6.1. Exclusion of Certain Liabilities.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS, LOSS OF USE OR DATA OR INTERRUPTION OF BUSINESS, WHETHER SUCH ALLEGED DAMAGES ARE LABELED IN TORT, CONTRACT OR INDEMNITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE AVOIDANCE OF DOUBT, THE PARTIES AGREE THAT ANY AMOUNTS PAYABLE TO A THIRD PARTY IN CONNECTION WITH A CLAIM FOR INDEMNITY UNDER SECTION 5 MAY INCLUDE CONSEQUENTIAL DAMAGES AWARDED TO SUCH THIRD PARTY, WHICH WILL, AS BETWEEN THE PARTIES, REPRESENT A CLAIM FOR DIRECT DAMAGES TO WHICH THE ABOVE EXCLUSION OF CONSEQUENTIAL DAMAGES WILL NOT APPLY.

**6.2. Limitation of Liability.** To the maximum extent permitted by law, each party's total liability for all claims for actual damages made under this Agreement for whatever cause will in no event exceed an amount equal to the aggregate of all fees actually paid by Customer to zPaper under this Agreement during the twelve (12) month period preceding the time that the claim is made.

## **7. CONFIDENTIALITY.**

**7.1. "Confidential Information"** means any non-public business or technical information disclosed by the disclosing party to the receiving party, either directly or indirectly, under this Agreement that receiving party knows or reasonably should know is confidential to the disclosing party. Confidential Information may also include third party confidential information. Confidential Information will not include any information which (i) was publicly known prior to the time of disclosure by the disclosing party; (ii) becomes publicly known after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party, as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; or (v) is

independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

**7.2. Non-use and Nondisclosure.** Each party agrees that it will take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party will take at least those measures that it takes to protect its own most confidential information. Each party agrees (i) not to use any Confidential Information of the other party for any purpose except to perform its obligations or exercise its rights under this Agreement and (ii) not to disclose any Confidential Information of the other party to third parties or to such party's employee's, officers, agents, contractors or other representatives ("Personnel"), except to those Personnel of the receiving party who are required to have such Confidential Information in order to perform works in connection with this Agreement and are subject to confidentiality obligations consistent with those of this Agreement. Nothing in this Section 7 precludes either party from disclosing the other party's Confidential Information as required by law or a legal process, provided that such party (a) gives the other party prior written notice sufficient to permit the other party to contest the disclosure or seek a protective order (or other confidential treatment) and (b) reasonably cooperates with the other party in limiting the disclosure.

**7.3. Permitted Disclosures.** A party may disclose information concerning this Agreement and the transactions contemplated hereby, including providing a copy of this Agreement, to any or all of the following: (a) potential acquirers, merger partners, investors and their personnel, attorneys, auditors and investment bankers, solely in connection with the due diligence review of such party by persons and provided that the disclosures are made in confidence, (b) the party's outside accounting firm, or (c) the party's outside legal counsel. A party may also disclose this Agreement in any litigation or legal action concerning this Agreement.

## **8. PROTECTED HEALTH INFORMATION; BUSINESS ASSOCIATE ADDENDUM.**

**8.1. Definitions.** The parties agree that the following terms, when used in this Agreement, will have the following meanings, provided that the terms set forth below will be deemed to be modified to reflect any changes made to such terms from time to time as defined by HIPAA and the HIPAA Regulations:

- a. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
- c. "Covered Entity" means a health plan, a health care clearinghouse, or a health care provider (as each of those terms is defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations.
- d. "Individually Identifiable Health Information" means information that is a subset of health information, including demographic information collected from an individual, and is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- e. "Protected Health Information" or "PHI" means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, and records described at 20 U.S.C. § 1232g(a)(4)(B)(iv).

**8.2. Business Associate Addendum – Covered Entity.** If, on the Order, the parties have indicated that the Customer is a “Covered Entity”, such indication will mean:

- a. Customer is a Covered Entity (or because of its business relationship with a Covered Entity is subject to the same or similar legal requirements) which possesses Individually Identifiable Health Information that is protected under HIPAA and the HIPAA Regulations, and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations;
- b. zPaper may receive such information from Customer, or create and receive such information on behalf of Customer, in order to perform certain of the Services; and
- c. Customer wishes to ensure that zPaper will appropriately safeguard Individually Identifiable Health Information;

The Parties agree that the attached Business Associate Addendum (“BAA”) will be considered part of this Agreement, unless:

- (i) The Parties have previously executed a separate agreement covering substantially the same subject matter as the BAA, in which case the prior agreement will control;
- (ii) The Parties subsequently execute a separate agreement covering substantially the same subject matter as the BAA, in which case the later agreement will control and the BAA will have no further force or effect; or
- (iii) The Customer is not in fact a Covered Entity or is determined by a court of competent jurisdiction not to be a Covered Entity, or is not otherwise subject to such laws or regulations requiring that Customer implement the same safeguards as a Covered Entity, in which case the BAA will not apply to this Agreement, retroactive to the Contract Effective Date.

**8.3. Business Associate Addendum – Not Covered Entity.** If, upon the Order, the parties have indicated that the Customer is not a “Covered Entity”, and subsequent to the Effective Date of this Agreement, Customer determines that it is in fact a Covered Entity or, because of its business relationship with a Covered Entity is subject to the same or similar legal requirements as a Covered Entity, then Customer will immediately provide zPaper with written notice of such determination. Effective upon actual receipt of such notice by zPaper, the BAA will become part of this Agreement. Similarly, should zPaper reasonably determine that Customer is (or may be) a Covered Entity, or is (or may be) subject to the same or similar legal requirements as a Covered Entity, then zPaper will immediately provide Customer with written notice of such determination. Effective upon actual receipt of such notice by Customer, the BAA will become part of this Agreement.

## **9. TERM AND TERMINATION.**

**9.1. Term.** The term of this Agreement will commence on the date on which the zPaper Managed Package is initially and successfully installed in Customer’s Salesforce instance (“Managed Package Installation Date”) and will end on the last day of the month one (1) year after the zPaper solution is available for Productive Use, as defined below (“Initial Term”). Thereafter, this Agreement will automatically renew for successive renewal terms of one (1) year each. Either party may terminate this Agreement after the Initial Term by serving written notice of its intention at least sixty (60) days prior to the date of next such renewal period. The term of an Order will be as set forth in such Order. Any Orders in effect at the time of termination of this Agreement will continue and will be subject to the terms of this Agreement until such Order terminates according to its terms or Section 9.2. “Productive Use” means the date when the Services are first available for Customer to use to process live data.

**9.2. Termination.** Either party may terminate this Agreement and any Orders upon written notice in the event (i) the other party has materially breached this Agreement and failed to cure such breach within thirty (30)

calendar days from receipt of written notice specifying such breach (except that the cure period for non-payment is ten (10) days), or (ii) the other party ceases to conduct business in the ordinary course, appoints a receiver, makes a general assignment for the benefit of its creditors, or is adjudicated bankrupt by a court of competent jurisdiction.

**9.3. Effect of Termination.** Upon termination or expiration of this Agreement, (a) all rights granted will immediately terminate, (b) zPaper will cease providing the Services or any other services under this Agreement, (c) Customer's license rights will cease, (d) each party will erase, destroy or, if requested in writing and at the other party's expense, return to the other party any of the other party's Confidential Information in its possession, custody or control that is not Customer Data; provided, however, zPaper will have no obligation to erase any Confidential Information which has been included in zPaper backups of data but will continue to delete such backups in accordance with its standard record retention policy, and (e) zPaper will, at Customer's written request, (i) erase or destroy Customer Data at no charge to Customer, or (ii) return Customer Data as a part of a professional services engagement, the scope of which will be determined by the return methodology and the services needed for that methodology (the "Return Services") and the number of pages to be returned (the "Returned Pages"), to be invoiced by zPaper at the then-prevailing rates for the Return Services and Returned Pages and paid in advance by Customer. If return or destruction is not feasible, zPaper shall inform Customer of the reason it is not feasible and shall continue to extend the protections of this Section to such information and limit further use and disclosure of such Confidential Information to those purposes that make the return or destruction of such Confidential Information infeasible. To the extent that zPaper is required by law to maintain copies of Confidential Information, Customer Data, or records related to disclosure or handling of Confidential Information, zPaper shall be under no obligation to destroy such information. Furthermore, zPaper shall be permitted to retain such information, as zPaper reasonably determines necessary to demonstrate to Customer or any regulatory authority zPaper's compliance with this Agreement or any applicable law or regulation. At such time as zPaper's basis for retaining such information ceases to exist, zPaper shall destroy such information as set forth above. The provisions that by their nature continue and survive, including those of Sections 1.2, 2.2, 3, 4, 5, 6, 7, 8, 9.3, 9.4 and 10 and all payment obligations incurred prior to expiration or termination will survive. All fees paid under this Agreement will be non-refundable. In the event of a termination by zPaper pursuant to Section 9.2, Customer will remain liable to zPaper for the fees for until the Order End Date, set forth in the Order, notwithstanding any such suspension or termination.

**9.4. Additional Remedies.** Termination will not relieve either party from any liability arising from any breach of this Agreement. Neither party will be liable to the other for damages of any kind solely as a result of terminating this Agreement in accordance with its terms. Furthermore, termination of this Agreement by a party will be without prejudice to any other right or remedy of a party under this Agreement or applicable law.

## **10. GENERAL**

**10.1. Assignment.** Customer may not transfer or assign its rights under this Agreement, or delegate any duties hereunder, without the prior written consent of zPaper. Any attempted assignments or delegations by Customer without the prior written consent of zPaper will be null and void.

**10.2. Waiver and Amendment.** No modification, amendment or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, will operate as a waiver of any such right, power or remedy.

**10.3. Governing Law.** This Agreement will be governed by the laws of the State of Georgia, USA, excluding the conflict of laws provisions. Each party consents to the exclusive jurisdiction of the state and federal courts located in Fulton County, Georgia for any dispute arising out of or relating to this Agreement.



**10.4. Notices.** All notices, demands or consents required or permitted under this Agreement will be in writing. Notice will be considered delivered and effective when (a) personally delivered; (b) two (2) days following transmission if sent by facsimile with confirmation of receipt; (c) one (1) day after posting when sent by reputable private overnight carrier; (d) five (5) days after posting when sent by certified United States mail or (e) one (1) day after sending via email; provided that any notice sent via email must be followed by a written notice in accordance with one of the other methods of notification. Notice will be sent to the parties at the following addresses or at such other address as will be given by either party to the other in writing:

For Customer:

zPaper shall address notices to the person identified as the “Key Contact” on the Order, using the email address or facsimile number indicated for that person, unless otherwise noted in the “Special Terms and Notes” section of the Order.

For zPaper:

Attn: Legal  
1000 Holcomb Bridge Pkwy, Suite 280  
Roswell, GA 30076  
Fax: (855) 343-3801  
legal@zpaper.com

**10.5. Independent Contractors.** The parties are independent contractors. Except as expressly agreed by the parties, neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

**10.6. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the economic effect of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.

**10.7. Injunctive Relief.** Notwithstanding any other provision of this Agreement, any violation by either party of the other party’s intellectual property or proprietary right will cause irreparable damage for which recovery of money damages would be inadequate, and that the aggrieved party will therefore be entitled to seek timely injunctive relief to protect such party’s rights, in addition to any and all remedies available at law, without the need to post bond.

**10.8. Complete Agreement.** This Agreement, together with all Orders and SOWs, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior or contemporaneous agreement with respect to this subject matter. In the event of a conflict between this Agreement and an Order or SOW, such conflict will be governed in the following order: 1) the terms of the Order; 2) this Agreement and any applicable addenda, the terms of which are incorporated into the Order by reference; and 3) any professional services SOW.

**10.9. Counterparts.** This Agreement may be executed in two (2) or more counterparts or duplicate originals, all of which will be regarded as one and the same instrument, and which will be the official and governing version in the interpretation of this Agreement.

**10.10. Force Majeure.** Except with respect to payment and confidentiality obligations, neither party will be liable to the other for any failure of performance under this Agreement due to: acts of God; acts of the public enemy; strikes, lockouts, or other industrial disturbances; fires, floods, storms, droughts, or weather conditions; war, riots or terrorist acts; legal interferences; or, without limitation by enumeration, any other cause beyond the

reasonable control of a party. If any event of force majeure continues for more than thirty (30) consecutive days, either party may terminate this Agreement upon written notice to the other party.

**10.11. Attorneys' Fees.** In the event any proceeding or lawsuit is brought by either party in connection with this Agreement, the prevailing party in such proceeding will be entitled to receive its costs, expert witness fees and reasonable attorneys' fees, including costs and fees on appeal.

**10.12. Publicity.** In any and all marketing or advertising materials, in press releases and other public statements, zPaper may publicly identify Customer as a customer of zPaper or as a user of zPaper's Services.

**10.13. Changes to Service.** From time to time, zPaper may change or alter the Services and modify these terms or add any additional terms that apply to a Service to, for example, reflect changes to the law or changes to the Services. zPaper will post notice any modifications to these terms on its web site (<http://www.zpaper.com>) and will not be required to provide actual notice to Customer of such changes. Changes will not apply retroactively, and changes affecting the term of this Agreement, renewal or non-renewal notice periods, or the price of any Services, will not apply during any Order Term in effect at the time of such change, but will instead take effect immediately upon any subsequent renewal of this Agreement. However, changes addressing new functions or features for a Service or changes made for legal reasons will be effective immediately.

**10.14. Consent.** Customer's execution of the Order will evidence Customer's consent to the terms of this Agreement. Customer's use of zPaper's zPaper Services, including any use by Customer's Personnel for the benefit of Customer or on Customer's behalf, will constitute a further ratification of this Agreement by Customer.

**EXHIBIT A**  
**BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (the “Addendum”) is attached to and made a part of the Master Subscription and Services Agreement between Customer and zPaper (“Agreement”) and is effective as of the Effective Date of the Agreement. Any terms not defined in this Addendum will have the meanings set forth in the Agreement

- A. Customer has engaged zPaper to perform Services as more specifically set forth in the Agreement; and
- B. Customer possesses Individually Identifiable Health Information that is protected under HIPAA and the HIPAA Regulations (all as defined below), and is permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations; and
- C. zPaper may receive such information from Customer, or create and receive such information on behalf of Customer, in order to perform certain of the Services; and
- D. Customer wishes to ensure that zPaper will appropriately safeguard Individually Identifiable Health Information.

Customer and zPaper agree as follows:

1. **Definitions.** The parties agree that the following terms, when used in this Addendum, will have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations.
  - a. “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104- 191.
  - b. “*HIPAA Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
  - c. “*Covered Entity*” means a health plan (as defined by HIPAA and the HIPAA Regulations), a health care clearinghouse (as defined by HIPAA and the HIPAA Regulations), a health care provider (as defined by HIPAA and the HIPAA Regulations) who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Regulations. For purposes of this Addendum, a Covered Entity shall also include a Business Associate of a Covered Entity (as such terms are defined in this Addendum), who, because of a business relationship with a Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA and the HIPAA Regulations and therefore is subject to the same or similar legal requirements to safeguard that information.
  - d. “*Business Associate*” means, with respect to a Covered Entity, a person who:

(1) on behalf of such Covered Entity or of an organized health care arrangement (as defined under the HIPAA Regulations) in which Covered Entity participates, but other than in the capacity of a member of the workforce of such Covered Entity or arrangement, performs, or assists in the performance of:

- a) a function or activity involving the use or disclosure of Individually Identifiable Health Information, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
- b) any other function or activity regulated by the HIPAA Regulations; or

(2) provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, Data Aggregation, management, administration, accreditation, or financial services to or for such Covered Entity, or to or for an organized health care arrangement in which Covered Entity participates, where the provision of the service involves the disclosure of Individually Identifiable Health Information from such Covered Entity or arrangement, or from another Business Associate of such Covered Entity or arrangement, to the person.

e. “*Individually Identifiable Health Information*” means information that is a subset of health information, including demographic information collected from an individual; and

- (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

a) that identifies the individual; or

b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

f. “*Protected Health Information*” or “*PHI*” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, and records described at 20 U.S.C. § 1232g(a)(4)(B)(iv).

g. “*Data Aggregation*” means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

- h. “*HITECH*” means the Health Information Technology for Economic and Clinical Health Act of 2009.
- i. “*Breach*” has the meaning ascribed to this term in Section 13400(1) of HITECH and any regulations promulgated thereunder.
- j. “*Unsecured Protected Health Information*” has the meaning ascribed to this term in Section 13402(h) of HITECH and any regulations or other guidance issued thereunder.

2. **Status of Parties.** zPaper hereby acknowledges and agrees that Customer is a Covered Entity or, because of Customer's business relationship with a Covered Entity, is in possession of Individually Identifiable Health Information that is protected under HIPAA and the HIPAA Regulations and therefore is subject to the same or similar legal requirements to safeguard that information, and that zPaper is a Business Associate of Customer.

3. **Permitted Uses and Disclosures.**

a. *Performance of Services.* zPaper may use and disclose PHI received from, or created or received on behalf of, Customer (i) in connection with the performance of the services provided in the Agreement if such use or disclosure of Protected Health Information would not violate HIPAA or the HIPAA Regulations if done by Covered Entity or (ii) if such use or disclosure is expressly permitted under Section 3.b. or 3.c. of this Addendum.

b. *Proper Management and Administration.* zPaper may use PHI received by zPaper in its capacity as Business Associate of Customer for the proper management and administration of zPaper in connection with the performance of the Services and as permitted by this Addendum. zPaper may disclose Customer's PHI for such proper management and administration of zPaper only with the prior consent of Customer. Any such disclosure of PHI shall only be made if zPaper obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and (2) zPaper will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

c. *Required by Law.* Subject to Section 4.b of this Addendum, zPaper may use or disclose PHI as required by law.

4. **Nondisclosure.**

a. *As Provided In Addendum.* zPaper shall not use or further disclose Customer's PHI except as permitted or required by this Addendum.

- b. *Disclosures Required By Law.* zPaper shall not, without the prior written consent of Customer, disclose any PHI on the basis that such disclosure is required by law without notifying Customer so that Customer shall have an opportunity to object to the disclosure and to seek appropriate relief. If Customer objects to such disclosure, zPaper shall refrain from disclosing the PHI until Customer has exhausted all alternatives for relief. zPaper shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Customer with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.
- c. *Additional Restrictions.* If Customer notifies zPaper that Customer has agreed to be bound by additional restrictions on the uses or disclosures of Customer's PHI pursuant to HIPAA or the HIPAA Regulations, zPaper shall be bound by such additional restrictions and shall not disclose Customer's PHI in violation of such additional restrictions.

5. **Safeguards, Reporting, Mitigation and Enforcement.**

- a. *Safeguards.* To the extent that Customer's PHI in any form, has been conveyed to or by zPaper outside of Customer's premises or control, zPaper shall use any and all appropriate safeguards to prevent use or disclosure of Customer's PHI otherwise than as provided by this Addendum. zPaper shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Customer's PHI that it creates, receives, maintains, or transmits on behalf of Customer. Without limiting the generality of the foregoing, zPaper shall comply with the security standards set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316.
- b. *zPaper's Agents.* zPaper shall ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by zPaper on behalf of, Customer agree in writing to be bound by the same restrictions and conditions that apply to zPaper with respect to such PHI. zPaper shall be permitted to select and provide IRS Form 1099 independent contractors as workers or subcontractors to satisfy the Agreement or in the operation of its business, without obtaining individual written consent of Customer.
- c. *Reporting.* zPaper shall report to Customer as soon as practicable of zPaper becoming aware of any use or disclosure of Customer's PHI in violation of this Addendum or applicable law.
- d. *Mitigation.* zPaper shall have commercially reasonable procedures in place to mitigate, to the maximum extent practicable as solely defined at zPaper's sole and absolute discretion, any deleterious effect from any use or disclosure of Customer's PHI in violation of this Addendum or applicable law.

- e. *Notification of Breach.* zPaper shall notify Customer of any Breach involving Unsecured Protected Health Information maintained, used or disclosed by zPaper on Customer's behalf without unreasonable delay but in no event more than fourteen (14) days after zPaper's discovery of the Breach. zPaper's notification to Customer shall include the identity of each individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been accessed, acquired or disclosed in connection with the Breach, and, if known, the specific data elements disclosed for each individual. zPaper shall reasonably cooperate with Customer in investigating and mitigating the harmful effects of any Breach. zPaper shall assume responsibility for preparing and sending Breach notification letters to individuals without unreasonable delay but in no event more than sixty (60) days after zPaper's discovery of the Breach; provided, however, that the content of any notification shall be subject to the prior written approval of Customer. zPaper shall pay or reimburse Customer for all expenses incurred in connection with (i) providing any notification or publication regarding a Breach that may be required by HITECH or other applicable law or, (ii) the provision of credit monitoring for individuals affected by a Breach, to the extent required by HITECH or other applicable law.
- f. *Sanctions.* zPaper shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses Customer's PHI in violation of this Addendum or applicable law.
- g. *Customer's Rights of Access and Inspection.* Upon a reasonable determination by Customer that zPaper has breached this Addendum, Customer may inspect zPaper's facilities, systems, books and records to monitor compliance with this Addendum. zPaper reserves the right to impose reasonable restrictions upon any such inspections in order to minimize disruption of its business operations or to protect its trade secrets or other confidential data, and furthermore reserves the right to impose reasonable fees upon Customer to compensate zPaper for its expenses incurred in connection with any such inspection. The fact that Customer inspects, or fails to inspect, or has the right to inspect, zPaper's facilities, systems and procedures does not relieve zPaper of its responsibility to comply with this Addendum, nor does Customer's (1) failure to detect or (2) detection of, but failure to notify zPaper or require zPaper's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Customer's enforcement or termination rights under this Addendum. The parties' respective rights and obligations under this Section 5 shall survive termination of the Agreement.
- h. *United States Department of Health and Human Services.* zPaper shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by zPaper on behalf of, Customer available to the Secretary of the United States Department of Health and Human Services ("HHS") for purposes of determining Customer's compliance with HIPAA and the HIPAA regulations; provided, however, that zPaper shall immediately notify Customer upon receipt by zPaper of any such request for access by the Secretary of HHS, and shall provide Customer with a copy thereof. Upon request by the Customer and upon payment by Customer of zPaper's reasonable expenses in connection therewith, zPaper shall provide Customer with a copy of all materials disclosed to HHS. The parties' respective rights and obligations under this Section 5.h shall survive termination of the Agreement.

- i. *Acknowledgment of Application of HITECH.* zPaper acknowledges and agrees that the requirements of HITECH that relate to privacy or security are applicable to zPaper in the same manner that such requirements are applicable to Customer. All such requirements are incorporated by reference into this Addendum.

## 6. **Obligation to Provide Access, Amendment and Accounting of PHI.**

To the extent that Customer's PHI may be in the possession of zPaper, zPaper shall provide for:

- a. *Access to PHI.* zPaper shall make available to Customer such information as Customer may reasonably require to fulfill Customer's obligations to provide access to, and copies of, PHI in accordance with HIPAA, the HIPAA Regulations and HITECH.
- b. *Amendment of PHI.* zPaper shall make available to Customer such information as Customer may require to fulfill Customer's obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, zPaper shall, as directed by Customer, incorporate any amendments to Customer's PHI into copies of such information maintained by zPaper.
- c. *Accounting of Disclosures of PHI.* zPaper shall make available to Customer such information as Customer may reasonably require to fulfill Customer's obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA, the HIPAA Regulations and HITECH. In addition, zPaper shall maintain a record of all disclosures of PHI received from, or created or received by zPaper on behalf of, Customer, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the basis for such disclosure. zPaper shall make this record available to Customer upon Customer's reasonable request. In the event of an unauthorized disclosure of PHI, zPaper's obligation to report the identity of the recipient shall be limited to that information reasonably ascertainable by zPaper.
- d. *Forwarding Requests From Individual.* In the event that any individual requests access to, amendment of, or accounting of PHI directly from zPaper, zPaper shall within five (5) business days forward such request to Customer. Customer shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Customer would cause Customer or zPaper to violate HIPAA or the HIPAA Regulations, zPaper shall instead respond to the individual's request as required by such law and notify Customer of such response as soon as practicable.
- e. *Reimbursement of Expenses.* zPaper reserves the right to impose reasonable fees upon Customer to compensate zPaper for its expenses incurred in connection with these Access, Amendment and Accounting obligations.

## 7. **Material Breach, Enforcement and Termination.**

- a. *Term.* This Addendum shall continue in effect until the Agreement is terminated pursuant to its terms, or if earlier, until such time as this Addendum becomes inapplicable pursuant to Paragraph 9 below.
- b. *Remedies.* If Customer reasonably determines that zPaper has breached or violated a material term of this Addendum, Customer may, at its option, pursue any and all of the following remedies:



- (1) exercise any of its rights of access and inspection under Section 5.g of this Addendum; or
  - (2) provide zPaper with a notice to cure the breach within thirty (30) days. If the breach is not cured or otherwise resolved within such time period, Customer may terminate this Addendum and the Agreement.
- c. *Reporting to United States Department of Health and Human Services.* In the event either party becomes aware of any pattern of activity or practice of the other party that constitutes a material breach of the other party's obligations under this Addendum, the non-breaching party shall provide the breaching party with a notice to cure the breach within thirty (30) days. If the breach is not cured within such time period, the non-breaching party may terminate this Addendum and the Agreement; provided, however, if termination is not feasible, the non-breach party shall report the breach to the Secretary of HHS, and the breaching party shall not have or make any claim(s), whether at law, in equity, or under this Addendum, against the non-breaching party with respect to such report(s).
- d. *Return or Destruction of Records.* Upon termination of the Agreement for any reason, zPaper shall destroy all PHI received from, or created or received by zPaper on behalf of, Customer that zPaper still maintains in any form, and shall retain no copies of such PHI, provided, however, zPaper will have no obligation to erase any PHI which has been included in zPaper backups of data but will continue to delete such backups in accordance with its standard record retention policy. zPaper shall certify to Customer that the PHI has been destroyed. If destruction is not feasible, zPaper shall inform Customer of the reason it is not feasible and shall continue to extend the protections of this Addendum to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. To the extent that zPaper is required by law to maintain copies of PHI, or records related to disclosure or handling of PHI, zPaper shall be under no obligation to destroy such data. Furthermore, zPaper shall be permitted to retain such data, including PHI, as zPaper reasonably determines necessary to demonstrate to Customer or any regulatory authority zPaper's compliance with this Addendum or any applicable law or regulation. At such time as zPaper's basis for retaining such data ceases to exist, zPaper shall destroy said data as otherwise provided herein.

## 8. **Miscellaneous Terms.**

- a. *State Law.* Nothing in this Addendum shall be construed to require zPaper to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- b. *Amendment.* Customer and zPaper agree that amendment of this Addendum may be required to ensure that Customer and zPaper comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. In the event that such legal changes impose new, or more restrictive, obligations upon Customer or zPaper, Customer and zPaper agree that this Addendum shall incorporate such legal changes automatically upon their effective date, without the necessity of formal amendment. The purpose of this paragraph is to ensure that Customer and zPaper remain in full compliance with all applicable state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI.

- c. *No Third Party Beneficiaries.* Nothing express or implied in this Addendum is intended or shall be deemed to confer upon any person other than Customer and zPaper, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- d. *Ambiguities.* The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA and the HIPAA Regulations.
- e. *Saving clause.* If any term, condition or covenant of this Addendum is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Addendum shall be binding on the parties.

9. **Inapplicability.**

This Addendum shall not be considered part of the Agreement, if:

- a. Customer and zPaper have previously executed a separate agreement covering substantially the same subject matter as this Addendum, in which case the prior agreement shall control;
- b. Customer and zPaper subsequently execute a separate agreement covering substantially the same subject matter as this Addendum, in which case the later agreement shall control and this Addendum shall have no further force or effect; or
- c. The Customer is not in fact a Covered Entity or is determined by a court of competent jurisdiction not to be a Covered Entity, or is not otherwise subject to such laws or regulations requiring that Customer implement the same safeguards as a Covered Entity, in which case this Addendum shall not apply to the Agreement, retroactive to the Effective Date of the Agreement.