

## MASTER SERVICES AGREEMENT

This Master Services Agreement ("**Master Agreement**") is entered into between Lanyon Solutions, Inc. ("**Lanyon**") and the Client identified in the applicable Order Form, and effective as of the Effective Date as listed on the applicable Order Form

### 1 DEFINITIONS

"**Agreement**" means collectively the Master Agreement, Order Forms, statements of work, and other attachments and exhibits attached thereto.

"**Confidential Information**" is defined in Section 8.

"**Content**" means the information, documents, software, products and services contained or made available to Client in the course of using the OnDemand Services.

"**Developed Materials**" means modifications to the Products or custom work or content developed by or on behalf of Lanyon pursuant to a Professional Services engagement hereunder.

"**Documentation**" means the user instructions, release notes, manuals and on-line help files as updated by Lanyon from time to time, in the form generally made available by Lanyon, regarding the use of the OnDemand Services.

"**Error**" means a material failure of the OnDemand Service to conform to its functional specifications described in the Documentation, which is reported by Client and replicable by Lanyon.

"**License Metrics**" means the limitation on the usage of OnDemand Services as designated and/or defined in the applicable Order Form by a term such as the number of properties, reports and the like.

"**OnDemand Services**" means the software as a service and other services identified in the Order Form and associated Support.

"**Order Form**" is defined in Section 2.2.

"**Products**" means collectively software programs (including any associated materials or intellectual property, as well as any updates, improvements, modifications, or changes, and Documentation), Content, Developed Materials and all toolkits and any other programs provided by Lanyon hereunder, training materials, tutorials and related documentation provided by Lanyon in connection with the performance of Services.

"**Professional Services**" means data conversion, data mapping, implementation, site planning, configuration, integration and deployment of the OnDemand Services, custom development, customizations, training, project management and other consulting services.

"**Services**" means collectively OnDemand Services and Professional Services.

"**Support**" is defined in Section 3.1.7.

"**Term**" is defined in Section 10.2.

### 2 PURPOSE AND SCOPE

**2.1 Purpose.** This Master Agreement establishes the general terms and conditions to which the parties have agreed with respect to the provision of Services by Lanyon to Client. Additional terms for the license of a specific Service are set forth in the Order Form. The parties acknowledge receipt of and agree to be bound by the terms and conditions of this Agreement. All pre-printed or standard terms of any Client purchase order or other business processing document shall have no effect.

**2.2 Incorporation of Order Forms.** "**Order Form**" means the document(s), regardless of actual name, executed by the parties which incorporates by reference the terms of this Master Agreement, and describes order-specific information, such as description of Services ordered, License Metrics, fees, and milestones. At any time after execution of the initial Order Form, Client may license additional Services or otherwise expand the scope of Services granted under an Order Form, upon Lanyon's receipt and acceptance of a new Order Form specifying the foregoing.

**2.3 Order of Precedence.** To the extent any terms and conditions of this Master Agreement conflict with the terms and conditions of an Order Form, the terms and conditions of the Master Agreement shall control, except where the Order Form expressly states the intent to supersede a specific portion of the Master Agreement.

### 3 SERVICES

#### 3.1 OnDemand Services.

**3.1.1 Grant of Use.** Subject to the provisions contained in this Agreement, including without limitation the restrictions set forth in Section 4 and timely payment of the applicable fees, Lanyon hereby grants Client for the Term a non-transferable, non-exclusive license, without the right to grant sublicenses to access and use the OnDemand Services solely for the internal business purposes of Client. Client acknowledges that Lanyon has no delivery obligation and will not ship copies of the Products to Client as part of the OnDemand Services. Client agrees that it does not acquire under the Agreement any license to use the Products in excess of the scope

and/or duration of the OnDemand Services.

**3.1.2 Changes.** Access is limited to the version of the Products in Lanyon's production environment. Lanyon regularly updates the OnDemand Services and reserves the right to add and/or substitute functionally equivalent features in the event of product unavailability, end-of-life, or changes to software requirements.

**3.1.3 Environment.** Lanyon will provide Client online access to and use of the OnDemand Service via the Internet by use of a Lanyon-approved Client-provided browser. The Service will be hosted on a server that is maintained by Lanyon or its designated third party supplier or data center. Client is solely responsible for obtaining and maintaining at its own expense, all equipment needed to access the OnDemand Services, including but not limited to Internet access and adequate bandwidth.

**3.1.4 Data.** Data, including, but not limited to, hotel information, program information, contact information, and other related data, may be provided by Client in order to facilitate their use of the OnDemand Services. In some cases this data is provided directly to Lanyon by Client, through manual entry or electronic interfaces, where it is stored in a secure environment according to Lanyon's Privacy Policy. Client has the right to request and review Lanyon's Privacy Policy at any time. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of the data it submits to the Services. In other cases, data may be sourced by Lanyon directly from a hotel property, a corporate/agency or from a third party source. Client agrees that Lanyon has the rights and ability to use this data and the Client's data to provide the OnDemand Services. These rights also include the distribution and provision of data to be shared as aggregated data with other Lanyon customers. Benchmarking, research, and/or analytical materials prepared by Lanyon containing any of this data will be based on historical, aggregated data presented on an anonymous basis in compliance with applicable law. In the event the data held by Lanyon contains proprietary, hotel-specific or corporate program specific rate data, Lanyon agrees that such data will not be distributed to any customers without specifically aggregating and making anonymous the data, so that customer-specific rates and bids are secured. Client grants to Lanyon a perpetual, non-cancelable, worldwide, non-exclusive right to utilize any data that arises from the use of the Services by Client whether disclosed on or prior to the Effective Date for any legitimate business purpose, including the right to sublicense such data to third parties, subject to all legal restrictions regarding the use and disclosure of such information.

**3.1.5 Acceptable Use.** Client acknowledges and agrees that Lanyon does not monitor or police the content of communications or data of Client or its users transmitted through the Services, and that Lanyon shall not be responsible for the content of any such communications or transmissions. Client shall use the Services exclusively for authorized and legal purposes, consistent with all applicable laws and regulations and Lanyon's policies, including, but not limited to, Lanyon's Privacy Policy. Client is solely responsible (a) for making sure that the disclosure and use of data, content and information provided to Lanyon does not violate any applicable law or infringe upon the intellectual property rights of any third party and (b) for the appropriate use of any reports and other materials prepared by Lanyon in a manner that will not violate any applicable law or infringe upon the intellectual property rights of any third party. Client agrees not to post or upload any content or data which (a) is libelous, defamatory, obscene, pornographic, abusive, harassing or threatening; (b) violates the rights of others, such as data which infringes on any intellectual property rights or violates any right of privacy or publicity; or (c) otherwise violates any applicable law. Lanyon may remove any violating content posted or transmitted through the OnDemand Services, without notice to Client. Lanyon may suspend or terminate any user's access to the OnDemand Services upon notice in the event that Lanyon reasonably determines that such user has violated the terms and conditions of this Agreement.

**3.1.6 Security.** Client will not: (a) breach or attempt to breach the security of the OnDemand Services or any network, servers, data, computers or other hardware relating to or used in connection with the OnDemand Services, or any third party that is hosting or interfacing with any part of the OnDemand Services; or (b) use or distribute through the OnDemand Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the OnDemand Services or the operations or assets of any other customer of Lanyon or any third party. Client will comply with the user authentication requirements for use of the OnDemand Services. Client is solely responsible for monitoring its authorized users' access to and use of the OnDemand Services. Lanyon has no obligation to verify the identity of any

person who gains access to the OnDemand Services by means of an access ID. Any failure by any authorized user to comply with the Agreement shall be deemed to be a material breach by Client, and Lanyon shall not be liable for any damages incurred by Client or any third party resulting from such breach. Client must immediately take all necessary steps, including providing notice to Lanyon, to effect the termination of an access ID for any unauthorized user if there is any compromise in the security of that access ID or if unauthorized use is suspected or has occurred.

**3.1.7 Support.** Support services provided by Lanyon as part of OnDemand Services include (i) technical support and workarounds so that the OnDemand Services operate in material conformance with the Documentation, and (ii) the provision of updates thereto, if and when available, all of which are provided under Lanyon Support policies (as may be amended by Lanyon from time to time) in effect at the time the Support services are provided ("**Support**"). For the avoidance of doubt, Support excludes Professional Services. Updates may include bug fixes, patches, Error corrections, minor and major releases, non-new platform changes, or modifications or revisions that enhance existing performance. Updates exclude new products, modules or functionality for which Lanyon generally charges a separate fee.

Lanyon is under no obligation to provide Support with respect to: (i) OnDemand Services that have been altered or modified by anyone other than Lanyon or its licensors; (ii) OnDemand Services used other than in accordance with the Documentation; (iii) discrepancies that do not significantly impair or affect the operation of the Service; (iv) Developed Materials, (v) errors or malfunction caused by Client's failure to comply with the minimum system requirement documentation as provided by Lanyon or by Client's use of non-conforming data, or (vi) errors and malfunction caused by any systems or programs not supplied by Lanyon.

For the avoidance of doubt, updates to the OnDemand Services are subsequent releases to the standard Lanyon products, excluding Developed Materials or customizations. Lanyon reserves the right to charge Client for any reintegration work required to make Developed Materials compatible with future versions/releases.

It is Client's responsibility to ensure that all appropriate users receive initial training services sufficient to enable Client to effectively use the OnDemand Services, as applicable. Failure to do so could result in additional fees if service requests are deemed excessive as a result of insufficient training, at Lanyon's discretion.

## **3.2 Professional Services.**

**3.2.1 Work Authorizations/Statements of Work/Change Orders.** Lanyon will perform the mutually agreed upon Professional Services for Client described in one or more work orders, work authorizations or statements of work or Order Forms (collectively "**SOW**") as the parties may agree to in writing from time to time. Each SOW, once executed by the authorized representatives of the parties, shall become a part of the Agreement. Either party may propose a change order to add to, reduce or change the work ordered in the SOW. Each change order shall specify the change(s) to the Professional Services or deliverables, and the effect on the time of performance and on the fees owed to Lanyon, due to the change. Once executed by both parties, a change order shall become a part of the SOW.

**3.2.2 Ownership and Limited License.** All intellectual property rights in the results of the Professional Services including (without limitation) all deliverables, Developed Materials, documentation, training materials, customizations and all intellectual property embodied herein shall vest solely and absolutely in Lanyon or its licensors. Lanyon grants Client, subject to timely payment of applicable fees and charges, and subject to the license restrictions set forth in Sections 4.1 and 4.2 hereof, a personal, nonexclusive, non-transferable license to, for the Term, use the deliverables and Developed Materials provided under Professional Services solely in connection with its use of the OnDemand Services.

**3.2.3 THE DELIVERABLES AND DEVELOPED MATERIALS ARE NOT SUBJECT TO THE SUPPORT PLAN FOR THE ONDEMAND SERVICES.** Support for the Developed Materials, if available, may be obtained from Lanyon subject to payment of applicable fees.

## **4 GENERAL TERMS**

**4.1 Use Rights and Restrictions.** Client shall use the Services only for the internal business purposes of Client. Client shall not itself, or through any affiliate, employee, consultant, contractor, agent or other third party: (i) sell, resell, distribute, host, lease, rent, license or sublicense, in whole or in part, the Services; (ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Products or Services, in whole or in part, for

competitive purposes or otherwise; (iii) allow access to, provide, divulge or make available the Services to any user other than Client's employees and individual contractors who have a need to such access and who shall be bound by nondisclosure obligations that are at least as restrictive as the terms of this Agreement; (iv) write or develop any derivative works based upon the Services; (v) modify, adapt, translate or otherwise make any changes to the Services or any part thereof; (vi) use the Services to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (vii) disclose or publish, without Lanyon's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (viii) otherwise use or copy the same except as expressly permitted herein.

**4.2 License Metrics.** Client's right to use the OnDemand Services is limited by the number of License Metrics licensed. License Metrics provided in the initial Order Form represent minimum amounts that Client has committed to for the Term. There shall be no fee adjustments or refunds for any decreases in usage or License Metrics during the Term.

**4.3 Cooperation.** Client shall provide Lanyon with good faith cooperation and access to such information, facilities, personnel and equipment as may be reasonably required by Lanyon in order to provide the Services, including, but not limited to, providing security access, information, and software interfaces to Client's applications, and Client personnel, as may be reasonably requested by Lanyon from time to time. Client acknowledges and agrees that Lanyon's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Services. Lanyon shall be entitled to rely on all decisions and approvals of Client. Client will follow the instructions and reasonable policies established by Lanyon from time to time and communicated to Client.

**4.4 Compliance.** During the term of the Agreement and for a period of one year following its termination, Lanyon shall have the right to verify Client's full compliance with the terms and requirements of the Agreement. If such verification process reveals any noncompliance, Client shall reimburse Lanyon for the reasonable costs and expenses of such verification process incurred by Lanyon (including but not limited to reasonable attorneys' fees), and Client shall promptly cure any such noncompliance; provided, however, that the obligations under this Section do not constitute a waiver of Lanyon's termination rights and do not affect Lanyon's right to payment for Services and interest fees related to usage in excess of the License Metrics.

## **5 FEES, TAXES & PAYMENTS**

**5.1 General.** Fees and payment terms are specified in the applicable Order Form. All fees are in United States Dollars and exclude taxes. Client shall be responsible for payment of all taxes (excluding those on Lanyon's net income) relating to the provision of the Services. Except as otherwise expressly specified in the Order Form, all recurring fees payment obligations start from the execution of the Order Form. Lanyon may increase recurring fees at any time upon 60 days prior written notice provided that such increase is no greater than the Annual Price Cap as defined in the applicable SOW. Notwithstanding anything contained herein to the contrary, any Professional Services fees will not be subject to the Annual Price Cap. Unless otherwise specified in the Order Form, payment of all fees is due 30 days after the invoice date. Interest accrues on past due balances at the lesser of 1½% per month or the highest rate allowed by law. Failure to make timely payments shall be a material breach of the Agreement and Lanyon will be entitled to suspend any or all of its performance obligations hereunder in accordance with the provisions of Section 10.4 and/or to modify the payment terms, and to request full payment before any additional performance is rendered by Lanyon. Client shall reimburse Lanyon for expenses incurred, including interest and reasonable attorney fees, in collecting amounts due Lanyon hereunder that are not under good faith dispute by Client. Amounts paid or payable for OnDemand Services are not contingent upon the performance of any Professional Services. Client agrees that its licenses hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written comments made by Lanyon regarding future functionality or features.

**5.2 Additional Services Fees.** Client shall pay Lanyon for the Services and/or License Metrics added by Client after the date of the initial Order Form at Lanyon's then prevailing prices. Additional License Metrics must be licensed in the event actual License Metrics exceed the licensed quantity.

**5.3 Professional Services.** An estimated total annual amount for Professional Services is stated in the Order Form or SOW, and that amount is solely a good-faith estimate for Client's budgeting and Lanyon's resource scheduling purposes and not a guarantee that the work will be completed for that amount. Professional Services purchased must be used within, and prices quoted are valid for a period of one year

following the effective date of the Order Form. Hours that are not used or have expired are non-refundable.

**5.4 Travel and Lodging Expenses.** Lanyon's reasonable travel and lodging expenses incurred by Lanyon in the performance of Services on Client's site will be billed separately at actual cost.

**6 DISCLAIMERS.** THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. LANYON, ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY LAW, ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, (I) ANY WARRANTY THAT SERVICES ARE FREE OF ERRORS, OR WILL OPERATE WITHOUT INTERRUPTION OR THAT ALL ERRORS WILL BE CORRECTED, (II) ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND FREEDOM FROM VIRUSES OR ANY OTHER MALICIOUS CODE. CLIENT ACKNOWLEDGES THAT USE OF OR CONNECTION TO THE INTERNET PROVIDES THE OPPORTUNITY FOR UNAUTHORIZED THIRD PARTIES TO CIRCUMVENT SECURITY PRECAUTIONS AND ILLEGALLY GAIN ACCESS TO THE SERVICES AND CLIENT DATA. ACCORDINGLY, LANYON CANNOT AND DOES NOT GUARANTEE THE PRIVACY, SECURITY OR AUTHENTICITY OF ANY INFORMATION SO TRANSMITTED OVER OR STORED IN ANY SYSTEM CONNECTED TO THE INTERNET. IN ORDER TO PROTECT CLIENT'S DATA, LANYON MAY SUSPEND CLIENT'S USE OF THE SERVICES IMMEDIATELY, WITHOUT PRIOR NOTICE, PENDING AN INVESTIGATION, IF ANY BREACH OF SECURITY IS SUSPECTED. CLIENT ACKNOWLEDGES THAT THE SERVICES AVAILABILITY MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. LANYON IS NOT RESPONSIBLE OR DEEMED TO BE IN DEFAULT FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS, OR UNAVAILABILITY RELATED TO CLIENT'S APPLICATIONS, CLIENT DATA, OR CLIENT'S EQUIPMENT, OR THE ACTS OR OMISSIONS OF ANY USER OF THE SERVICES.

#### **7 OWNERSHIP; INTELLECTUAL PROPERTY**

**7.1 Ownership and Proprietary Rights.** The Products and all equipment, infrastructure, websites and other materials provided by Lanyon in the performance of Services will at all times remain the exclusive, sole and absolute property of Lanyon or its licensors. Client does not acquire any right, title, or interest in or to such Products and equipment and materials except the limited and temporary right to use them as necessary for Client's use of the Services. All rights, title and interest in or to any copyright, trademark, service mark, trade secret, patents, and other proprietary right relating to the Products and Services and the related logos, product names, etc. are reserved and all rights not expressly granted are reserved by Lanyon and such third parties. Client may not obscure, alter or remove any copyright, patent, trademark, service mark or proprietary rights notices on any Products or other materials. Client shall not take any action that jeopardizes Lanyon's intellectual property rights in the Products, nor assume or acquire any right in the Products except the limited-use rights specified in this Agreement. All rights not expressly licensed to Client by Lanyon are reserved exclusively to Lanyon.

**7.2** Client recognizes that Lanyon is in the business of providing computer and information technology services and may perform services and provide the Products to other persons using those hotels created by Client in the Products and, accordingly, subject to Lanyon's confidentiality obligations pursuant this Agreement, Lanyon retains the right and nothing shall prevent Lanyon from using any ideas, concepts, methods, processes, know-how, organization, techniques or software developed by Lanyon or hotels created in the Products in providing services to any third person.

**7.3 Lanyon Indemnity.** Lanyon shall defend Client in any suit or cause of action, and indemnify and hold Client harmless against any damages payable to any third party in any such suit or cause of action, alleging that a Product as used in accordance with this Agreement infringes the U.S. patent or copyright of any third party. If a Product is held or believed to infringe on a U.S. patent or copyright of a third party, Lanyon may, in its sole discretion, (a) modify the Product to be non-infringing, (b) obtain for Client a license to continue using the affected Product, or (c) if neither (a) nor (b) are practical in Lanyon's sole judgment, terminate the affected Product and return to Client the unused portion of any fees paid for the affected Service. The foregoing obligations of Lanyon do not apply (i) to the extent that the allegedly infringing Product or portions or components thereof or modifications thereto result from any change made by Client or any third party for the Client, (ii) if the infringement claim could have been avoided by using an unaltered current version of the Product which was provided by

Lanyon, (iii) to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Lanyon, or any material from a third party portal or other external source that is accessible to Client within or from the OnDemand Service (e.g., a third party Web page accessed via a hyperlink), or (iv) to the extent that an infringement claim is based upon the combination of any material with any products or services not provided by Lanyon, or (v) to the extent that an infringement claim is caused by the provision by Client to Lanyon of materials, designs, know-how, software or other intellectual property with instructions to Lanyon to use the same in connection with the OnDemand Service.

**7.4 Client Indemnity.** Client shall indemnify and hold Lanyon harmless from and against any action, suit or proceeding for infringement and/or misappropriation of intellectual property rights that arises or results from (i) any of the exclusions set forth in Section 7.3 above, (ii) any Client or Client user data or content, and (iii) any breach of Sections 3.1.5 and/or 3.1.6 Further and to the extent allowed by statute or law, Client shall indemnify and hold Lanyon harmless from and against any third party claim, action, suit or proceeding arising from any breach of Section 11.2 by Client or end-user, including any violations of the U.S. State Department or U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") statutory requirements.

**7.5** The indemnification obligations set forth in Sections 7.3 and 7.4 are subject to the following requirements: the indemnified party shall (i) take all reasonable steps to mitigate any potential damages which may result; (ii) promptly notify the other party of any and all such suits and causes of action; (iii) the indemnifying party controls any negotiations or defense of such suits and causes of action, and the indemnified party assists as reasonably required by the indemnifying party.

**8 NONDISCLOSURE.** All Confidential Information (as defined below) disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information, but in no case less than reasonable care. The receiving party will limit access to Confidential Information to its affiliates, employees and authorized representatives with a need to know and will instruct them to keep such information confidential. Lanyon may disclose Client's Confidential Information on a need to know basis to its subcontractors who are providing all or part of the Services. Lanyon may use Client's Confidential Information solely for purposes of Lanyon's performance of its obligations hereunder, except that Lanyon may use Client's Confidential Information for purposes other than the provision of Services only in an aggregated, anonymized form, such that Client is not identified. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, and (b) as required to respond to any summons or subpoena or in connection with any litigation, provided the receiving party gives the disclosing party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the disclosing party's cost, if the disclosing party wishes to contest the disclosure. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, Lanyon may retain information for regulatory purposes or in back-up files, provided that Lanyon's confidentiality obligations hereunder continue to apply. For purposes of this Section, "**Confidential Information**" shall mean information designated as confidential in writing or information which ought to be in good faith considered confidential and proprietary to the disclosing party. Confidential Information of Lanyon and/or its licensors includes but is not limited to the terms and conditions (but not the existence) of the Agreement, all trade secrets, software, source code, object code, specifications, documentation, business plans, customer lists and customer-related information, financial information, auditors reports of any nature, proposals, as well as results of testing and benchmarking of the Services, product roadmap, data and other information of Lanyon and its licensors relating to or embodied in the Services. Information shall not be considered Confidential Information to the extent, but only to the extent, that the receiving party can establish that such information (i) is or becomes generally known or available to the public through no fault of the receiving party; (ii) was in the receiving party's possession before receipt from the disclosing party; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by one party without reference to any Confidential Information of the other. The obligations of Lanyon set forth in this Section 8 shall not apply to any suggestions and feedback for product or service improvement, correction, or modification provided by Client in connection with any present or future Lanyon product or service, and, accordingly, neither Lanyon nor any of its clients or business partners shall have any obligation or liability to Client with respect to any use or disclosure of such information.

**9** **LIMITATION OF LIABILITY.** Notwithstanding anything to the contrary contained in this Agreement, Lanyon's total liability for any and all damages shall not exceed the fee paid by Client for the initial twelve (12) month period pursuant to a particular SOW. The foregoing limitation shall not apply to Lanyon's indemnity obligation set forth in Section 7.3 of the Agreement. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LANYON AND ITS LICENSORS AND SUPPLIERS WILL NOT BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION, INACCURATE INFORMATION OR LOSS OF INFORMATION OR COST OF COVER) THAT THE CLIENT MAY INCUR OR EXPERIENCE IN CONNECTION WITH THE AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10** **TERM AND TERMINATION**

**10.1 Master Agreement Term.** The term of this Master Agreement shall commence on the Effective Date and shall continue in full force and effect until the expiration or termination of all Order Forms, unless otherwise terminated earlier as provided hereunder.

**10.2 OnDemand Services Term.** The initial term of each of the OnDemand Services is specified in the Order Form ("**Initial Term**") and shall automatically renew for the same length as the Initial Term unless either party gives written notice 45 days prior to the end of the Initial Term or any renewal Term of its intention to terminate the Services described in the applicable Order Form. The Initial Term and renewal terms are referred to as the "**Term**".

**10.3 Termination.** Either party may terminate the Agreement immediately upon written notice at any time if: (i) the other party commits a non-remediable material breach of the Agreement, or if the other party fails to cure any remediable material breach or provide a written plan of cure acceptable to the non-breaching party within 30 days of being notified in writing of such breach, except for breach of Section 5 which shall have a ten (10) day cure period; or (ii) the other party ceases business operations; or (iii) the other party becomes insolvent, generally stops paying its debts as they become due or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against the other (and not dismissed within 90 days after commencement of one of the foregoing events). If Lanyon terminates this Agreement for Client's non-payment, Client agrees to pay to Lanyon the remaining value of the then-current initial or renewal term (that Client acknowledges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty) equal to the aggregate yearly (or monthly as the case may be) recurring fees (as set forth in the Order Form) that will become due during the canceled portion of such Initial or renewal term. Where a party has rights to terminate, the non-breaching party may at its discretion either terminate the entire Agreement or the applicable Order Form or SOW. Order Forms and SOWs that are not terminated shall continue in full force and effect under the terms of this Agreement.

**10.4 Suspension.** Lanyon will be entitled to suspend any or all Services upon 10 days written notice to Client in the event Client is in breach of this Agreement. Further, Lanyon may suspend Client's access and use of the OnDemand Services if, and so long as, in Lanyon's sole judgment, there is a security risk created by Client that may interfere with the proper continued provision of the OnDemand Services or the operation of Lanyon's network or systems. Lanyon may impose an additional charge to reinstate service following such suspension.

**10.5** Upon Client's request made within 30 days after the effective date of termination, Lanyon will, provided Client is not in breach of any of its obligations under the Agreement and upon Client's payment of the applicable fees, make available to Client for download a file of Client Data in comma separated value (.csv) format along with attachments in their native format. After such 30-day period, Lanyon shall have no obligation to maintain or provide any Client data and shall thereafter, unless legally prohibited, delete all Client data in its systems or otherwise in its possession or under its control.

**10.6 Survival.** Sections 1, 2, 4.4, 5, 6, 7, 7.5, 8, 9, 10, and 11 shall survive termination of this Agreement.

## **11** **MISCELLANEOUS**

**11.1 Force Majeure.** Any party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of an act of God, war, utility or communication failures, or other cause beyond the party's reasonable control. Both parties will use reasonable efforts to mitigate the effect of a force majeure event.

**11.2 OFAC.** Client represents and warrants that it is not and will not provide the OnDemand Services to any entity incorporated in or resident in a country subject to economic or trade sanctions by the U.S. State Department and/or OFAC or are listed as a "Specially

Designated National," a "Specially Designated Global Terrorist," a "Blocked Person," or similar designation under the OFAC sanctions regime. Any breach of this Section shall be deemed a material breach of this Agreement and Lanyon may immediately terminate this Agreement.

**11.3 Non-Hire.** During the term of this Master Agreement and for the twelve (12) months thereafter, neither Client nor Lanyon shall knowingly solicit or hire for employment or as a consultant, any employee or former employee of the other party who has been actively involved in the subject matter of this Agreement.

**11.4 Waiver.** The failure of either party at any time to enforce any right or remedy available to it under this Agreement with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

**11.5 Headings.** The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

**11.6 Severability.** If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Client and Lanyon shall be construed and enforced accordingly.

**11.7 Assignment.** Lanyon may assign the Agreement to an affiliate, a successor in connection with a merger, acquisition or consolidation, or to the purchaser in connection with the sale of all or substantially all of its assets. Client may not assign the Agreement or any of the rights or obligations under the Agreement, without the prior written consent of Lanyon. Any purported assignment or transfer in violation of this Section 11.7 will be void.

**11.8 Relationship of the Parties.** The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of the Agreement, is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.

**11.9 Governing Law.** This Agreement is governed by the laws of the State of Texas without giving effect to its conflict of law provisions. Any dispute shall be litigated in the state or federal courts located in the State of Texas to whose exclusive jurisdiction the parties hereby consent. For purposes of establishing jurisdiction in Texas under this Agreement, each party hereby waives, to the fullest extent permitted by applicable law, any claim that: (i) it is not personally subject to the jurisdiction of such court; (ii) it is immune from any legal process with respect to it or its property; and (iii) any such suit, action or proceeding is brought in an inconvenient forum. The Uniform Computer Information Transactions Act does not apply to this Agreement or orders placed under it.

**11.10 Entire Agreement; Counterparts.** This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes and overrides all prior agreements on the same subject matter, and shall govern all disclosures and exchanges of Confidential Information made by the parties previously hereto. This Agreement shall not be modified except by a writing signed by Lanyon and Client. The language of this Agreement is English, and only the English-language version shall be deemed to represent the Agreement's terms. This Agreement and any SOW may be signed in any number of counterparts all of which together shall constitute one and the same document. A signed copy of this Agreement or any SOW transmitted via facsimile, email or other electronic means shall constitute an originally signed Agreement or SOW, as applicable, and, when together with all other required signed copies of this same Agreement or SOW, as applicable, shall constitute one and the same instrument.

**11.11 Use of Agents.** Lanyon may designate any agent or subcontractor to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence shall relieve Lanyon from responsibility for performance of its duties under the terms of this Agreement.

**11.12 Publicity.** Client agrees that Lanyon may identify Client as a recipient of Services and use its logo in sales presentations, marketing materials and press releases.

**11.13 Notices.** Any notice required or permitted under this Agreement or required by law must be in writing and must be (i) delivered in person, (ii) delivered by electronic mail to the address listed on the applicable Order Form, (iii) sent by first class registered mail, or air mail, as appropriate, or (iv) sent by an internationally recognized overnight air courier, in each case properly posted and fully prepaid to the contact person set forth in the Order Form. Notices shall be considered to have been given at the time of actual delivery in person, two (2) business days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service, provided in each case that delivery in fact is effected. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this Section.