THESE STANDARD TERMS AND CONDITIONS shall apply to any Agreement (as defined below) by and between Counterpoint Software, Inc. and Client (as defined below).

ARTICLE I: TERMS AND CONDITIONS

Section 1.01 – Agreement: The AGREEMENT executed by Counterpoint Software, Inc. and Client (as defined thereunder) shall apply and such Agreement shall incorporate and include these STANDARD TERMS AND CONDITIONS as incorporated therein by reference. For purposes of this Agreement, the term "Agreement" shall include the Agreement and these STANDARD TERMS AND CONDITIONS.

ARTICLE II: DEFINITIONS

Section 2.01 – Definitions: The definitions set forth in the Agreement shall apply. The following definitions shall also apply:

(1) Acceptance Date: The term "Acceptance Date" for each Deliverable shall mean the date the Deliverable is accepted in full by Client in accordance with Section 5.04 of the Agreement.

(2) Access: The term "Access" and variants thereof (including but not limited to, the terms "access," "accessing," and "accessible") shall mean to store data in, retrieve data from, or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.

(3) Administrative Panels: The term "Administrative Panels" shall mean that certain function or applet that allows text editing to the Software via Remote Access by non-programmers.

(4) Agreement: The term "Agreement" shall mean that certain Agreement signed by Licensor and Client.

(5) Associate: The term "Associate" shall mean an employee of Licensor or an independent contractor hired by Licensor.

(6) Authorized Person: The term "Authorized Person" shall mean Client and employees of Client who agree in writing to maintain the Confidentiality of the Confidential Information; and persons or organizations who are authorized in writing by Licensor to receive Confidential Information and who agree in writing to maintain the confidentiality of Confidential Information.

(7) Cancellation Notice: The term "Cancellation Notice" shall mean that written notice from one party to the other party seeking to cancel the Agreement because of breach by such other party.

(8) Confidential Information: The term "Confidential Information" shall mean all information disclosed by the Disclosing Party to the Receiving Party that is identified by the Disclosing Party as confidential at the time such information comes into the possession or knowledge of the Receiving Party and that is not: (i) already known to the Receiving Party; (ii) in the public domain; (iii) conveyed to the Receiving Party by a third party who is not subject to restrictions to the disclosure or use of such information; (iv) released by the Disclosing Party without restriction; (v) independently developed by the Receiving Party; and (vi) required by court order to be released by the Receiving Party. For purposes of this definition, all information concerning the Agreement, Customization Documents and Licensor Technology shall be deemed Confidential Information of Licensor

(9) Consulting Services: The term "Consulting Services" shall mean those certain additional consulting, implementation, configuration, support, training, strategy, prototyping, or other tasks and ad-hoc services provided to Client by Licensor pursuant to a Work Order signed by both parties hereto.

(10) Client: The "Client" shall mean the party that signs on behalf of Client under the Agreement.

(11) Client Legend: The term "Client Legend" shall mean a logo, written disclaimer, and written notice, in printed or electronic form, that credits operation of the Software to

Client, including (without limitation) terms and condition of use.

(12) Client Materials: The term "Client Materials" shall mean any and all Technology or information developed solely by Client and used in connection with the Software.

(13) Client Website: The term "Client Website" shall mean the Website operated by Client.

(14) Defect: The term "Defect" shall mean programming and design errors that substantially impair the performance, utility, and functionality of the Software as represented in the Documentation.

(15) Defect Notice: The term "Defect Notice" shall mean that certain written notice from Client to Licensor identifying Defects.

(16) Deliverables: The term "Deliverables" shall mean those certain deliverables developed by Licensor and provided to Client in connection with the Customization Services.

(17) Delivery Date: The term "Delivery Date" shall mean the date the Deliverables are delivered to Client or the date the Documentation is delivered to Client, as the case may be.

(18) Design: The term "Design" shall mean those certain tasks for designing the Deliverables including (without limitation) module architecture, inputs and outputs, code acronyms, file descriptions, screen descriptions, formats, layouts, data elements, frames, windows, applets, video, graphic designs, audio-visual components, password Customization and protection rules, telecommunications requirements, glossaries, and manual procedures.

(19) Licensor: The term "Licensor" shall mean Counterpoint Software, Inc. as signed on behalf of Licensor under the Agreement.

(20) Licensor Link: The term "Licensor Link" shall mean an electronic text, graphic, or icon link to retrieve or associate the Licensor System or Licensor's web site, and a logo, written disclaimer, and written notice, in printed or electronic form, that credits all rights, title, and interests to the Software to Licensor, as specified by Licensor, including

(without limitation) the following statement: "Web Site designed by Counterpoint Software, Inc. © All Rights Reserved".

(21) Licensor System: The term "Licensor System" shall mean computer systems and communications equipment owned or leased by Licensor and used for developing and hosting the Software.

(22) Licensor Technology: The term "Licensor Technology" shall mean any and all proprietary Technology of Licensor developed by or on behalf of Licensor, whether exclusively or jointly with Client or a third party, regardless of the source of funding for such Customization, including (without limitation) any source code or executable code in connection therewith.

(23) Customization Documents: The term "Customization Documents" shall mean the Functional Requirements List, Design, Customization Plan, and all written materials and documents developed in connection with performing the Services.

(24) Customization Plan: The term "Customization Plan" shall mean a schedule of tasks derived from the Functional Requirements Lists and Design, including (without limitation) developing, implementing, and delivering executable code and scripts for the Deliverables.

(25) Customization Services: The term "Customization Services" shall mean those certain Customization and testing services performed by Licensor pursuant to Articles IV and V of the Agreement.

(26) Documentation: The term "Documentation" shall mean that certain web page displays and user help screens as visible in the Software to the End-User.

(27) Domain Name: The term "Domain Name" shall mean that certain alphanumeric name by which a web site is known on the Internet.

(28) Disclosing Party: The term "Disclosing Party" shall mean the party to the Agreement who discloses Confidential Information to the other party to the Agreement.

(29) <u>Effective Date</u>: The term "Effective Date" shall mean the date the Agreement is signed by both Licensor and Client, whichever is later.

(30) <u>Fee</u>: The term "Fee" shall mean the Fee defined in the Agreement.

(31) <u>Functional Requirements List</u>: The term "Functional Requirements List" shall mean that certain document specifying and describing the desirable functional specifications, functional requirements, performance functions, and processing specifications for the Deliverables as set forth in the Agreement.

(32) <u>Hosting Services</u>: The term "Hosting Services" shall mean those certain hosting and transition services performed by Licensor to host and provide Client access to the Software pursuant to Article VI of the Agreement.

(33) <u>Implement</u>: The term "implement" and variants thereof (including but not limited to, the terms "implementation," "implementing," and "implemented") shall mean to assemble, configure, load and make operational for user access and use.

(34) <u>Implementation Date</u>: The term "Implementation Date" shall mean the date that Licensor implements the Deliverables on the Licensor System.

(35) <u>Link</u>: The term "Link" shall mean that certain text, icon or graphics in a Web Page (visible or transparent) that upon selection links or associates such Web Page to an off-screen or third-party document, text, image, sound, video or Web Page.

(36) <u>Marketing Materials</u>: The term "Marketing Materials" shall mean Software advertising and promotional materials including (without limitation) pamphlets, brochures, booklets, tradeshow displays and materials, pricing information, Documentation, End-User Agreements, Software licensing proposals to Members, capability statements and other documents approved by Licensor in writing for promoting the Software (as determined exclusively by Licensor).

(37) <u>Marketing Report</u>: The term "Marketing Report" shall mean a written statement developed by Client reporting the activities of Client in marketing and promoting the Software during a calendar month including (without limitation) names, addresses, and telephone numbers of all Members contacted including (without limitations) recipients of Marketing Materials from Client as well as copies of all communications between Members and Clients, and copies of all advertisements sponsored by Agent.

(38) <u>Nonpayment Notice</u>: The term "Nonpayment Notice" shall mean that written notice from Licensor to Client alleging nonpayment under the Agreement and seeking to cancel the Agreement unless payment is rendered as provided hereunder.

(39) <u>Password</u>: The term "Password" shall mean that certain password and user name assigned to Client for accessing the Functional Requirements List, Design, Customization Plan, Administrative Panels, and the Software on the Internet.

(40) <u>Platform</u>: The term "Platform" shall mean the executable code for that certain Licensor software application used by Licensor to develop the Software.

(41) <u>Product</u>: The term "Product" shall mean the Software and Documentation.

(42) <u>Provider</u>: The term "Provider" shall mean a third party subcontractor selected and engaged by Licensor to provide hosting services for the Software as set forth under the Software Host Agreement.

(43) <u>Receiving Party</u>: The term "Receiving Party" shall mean the party to the Agreement who receives Confidential Information from the other party to the Agreement.

(44) <u>Registration Company</u>: The term "Registration Company" shall mean an entity that administers the valid registration and maintenance of Domain Names.

(45) <u>Remote Access</u>: The term "Remote Access" shall mean remote telecommunications access to the Software by Authorized Persons.

(46) <u>Services</u>: The term "Services" shall mean Customization Services, Hosting Services,

Consulting Services, and any other services provided by Licensor to Client under the Agreement.

(47) Software: The term "Software" shall mean the executable code for the Platform and the Deliverables developed pursuant to the Agreement and provided to Client, as described in the Customization Documents, including any and all web sites, enhancements, updates, upgrades, or modifications in connection thereto.

(48) Software Host Agreement: The term "Software Host Agreement" shall mean that certain software hosting agreement between Licensor and Provider for hosting the Software.

(49) Technology: The term "Technology" shall mean (i) evaluation, technical, scientific, engineering, marketing, financial and business documents, reports, plans, studies, diagrams, or flow charts; (ii) all forms and types of scientific, technical, economic, or engineering information; and (iii) patterns, plans, compilations, program devices, formulas, designs, prototypes, methodologies, techniques, ideas, solutions, concepts, processes, procedures, programs, codes, scripts, adaptations, derivative works, computers, hardware, networks, products, machines, compositions of matter, articles of manufacture, computer software, source code, executable code, software libraries, documentation, databases, database designs, data models, screen displays, images, graphics, audiovisual works and sound recordings, whether tangible or intangible, and whether stored, compiled, or memorialized (without limitation) physically, electronically, graphically, photographically, or in writing.

(50) Technology Notice: The term "Technology Notice" shall mean that certain notice of Third Party Technology hardware and software requirements for implementation and use of the Software (excluding the Tools), recommended by Licensor for acquisition by Client, as set forth in the Agreement.

(51) Term: The term "Term" shall mean a period of time commencing on the Effective Date and continuing for the period of time defined in the Agreement or until the Agreement is

terminated or canceled as provided hereunder (whichever is earlier).

(52) Termination Notice: The term "Termination Notice" shall mean that written notice from Client to Licensor seeking to terminate the Agreement.

(53) Test Period: The term "Test Period" for each Deliverable shall mean a period of time commencing on the Delivery Date for such Deliverable and continuing until the Acceptance Date for such Deliverable.

(54) Third Party Technology: The term "Third Party Technology" shall mean any third-party Technology provided or made available by Vendor or Client in connection with the Software or Services.

(55) Tools: The term "Tools" shall mean any Technology developed, provided or made available by Licensor as used, incorporated, or accessible via the Software or Services, including (without limitation) the Licensor Technology, any Microsoft® platform or Windows® 2000 Server.

(56) Unauthorized Access: The term "Unauthorized Access" shall mean any Access to the Product except for the exclusive purpose of using the Software in accordance with the Documentation, evaluating and modifying the performance, utility, and functions of the Software, and training employees of Client in the use of the Software.

(57) Unauthorized Users: The term "Unauthorized Users" shall mean any individual who Accesses the Product except for: (1) Authorized Persons and End-Users authorized by Client to Access the Product for the exclusive purposes of using the Software in accordance with the Documentation, evaluating or modifying the performance, utility, and functions of the Software, and training employees of Client in the use of the Software and (2) Authorized Persons who are authorized in writing by Licensor to Access the Product.

(58) Vendor: The term "Vendor" shall mean the individual or entity that licenses the Third Party Technology.

(59) Work Order: The term "Work Order" shall mean those certain Work Orders signed by Licensor and Client, the form of which is attached hereto as Exhibit A and incorporated herein by this reference.

ARTICLE III: SCOPE OF SERVICES

Section 3.01 – Customization Services: During the Term, Licensor shall render Customization Services to Client in accordance with the terms and conditions of Articles IV and V of the Agreement.

Section 3.02 – Hosting Services: During the Term, Licensor shall provide Hosting Services to Client in accordance with the terms and conditions of Article VI of the Agreement.

Section 3.03 – Consulting Services: During the Term, Client shall have the right to request Consulting Services from Licensor by submitting a Work Order to Licensor. Upon Licensor acceptance of a Work Order, Licensor shall provide Client with Consulting Services concerning the Software. All Consulting Services provided by Licensor pursuant to a Work Order shall be subject to the discretion of Licensor. The Consulting Services shall be deemed accepted upon performance.

Section 3.04 – Personnel: Licensor shall designate qualified employees of Licensor to perform the Services who are experienced in electronic commerce business applications and technical programming. Licensor may engage qualified independent contractors to perform the Services who are experienced in electronic commerce business applications and technical programming. The personnel assigned to perform the Services shall be determined solely by Licensor.

Section 3.05 – Cooperation: Licensor and Client hereby acknowledge that successful performance of the Services shall require Client to cooperate with Licensor in good faith and to provide information as may be requested from time to time. Client hereby agrees to provide such good faith cooperation and information. Client shall disclose to Licensor the Client Materials necessary to assist Licensor to develop the Software (as determined by Licensor).

Section 3.06 – Access: Client hereby authorizes Licensor to Access the personnel, facilities, computers, software and data of Client for purposes of performing the Agreement.

Section 3.07 – Facilities: The Services shall be performed at the office facilities of Licensor, unless otherwise required (as determined in the reasonable discretion of Licensor).

Section 3.08 – Schedule: The Services shall be performed during the hours of 9:00 a.m. through 5:00 p.m., Pacific Time, Monday through Friday (excluding holidays), unless otherwise required (as determined in the reasonable discretion of Licensor).

ARTICLE IV: CUSTOMIZATION

Section 4.01 – Functional Requirements List: The Functional Requirements List is hereby accepted and approved by Client.

Section 4.02 – Design: Based upon the Functional Requirements List, a Design shall be developed for the Deliverables as follows:

(1) Recommended Design: Licensor shall develop a recommended Design based upon the Functional Requirements List. Licensor shall provide Client access to the recommended Design on the Licensor System via a secure login on the Internet using the Password within a reasonable time after Client receipt of the final Functional Requirements List.

(2) Review - Recommended Design: Client shall review the recommended Design in consultation with Licensor within ten (10) days of receiving the recommended Design. The recommended Design shall be deemed accepted by Client and approved within ten (10) days after Client receipt of the recommended Design, unless Licensor receives written notice from Client specifying changes to the recommended Design within such ten (10) day period ("Design Change Request").

(3) Review – Design Change Request: Licensor shall review the Design Change Request and shall accept or reject each change requested in the Design Change Request. Licensor shall use changes accepted by Licensor in developing a revised Design.

(4) Revised Design: Licensor shall submit to Client the revised final Design within a reasonable time after Licensor receipt of the Design Change Request. Such revised final Design shall be deemed accepted and approved by Client upon receipt.

(5) Modification Rights: All modifications to the final Design shall be subject to the prior written approval of Licensor and Client.

Section 4.03 – Customization Plan: Licensor shall develop a Customization Plan specifying a schedule of tasks for the Deliverables derived from the Functional Requirements Lists and Design. Licensor shall provide Client access to the Customization Plan on the Licensor System via a secure login on the Internet using the Password within a reasonable time after Client receipt of the final Design. The Customization Plan shall be accepted by Client upon receipt.

Section 4.04 – Coding: Based upon the Functional Requirements List, Design, and Customization Plan, Licensor shall develop source code and executable code for the Deliverables, which shall enable the Deliverables to perform the functions defined in the Functional Requirements List for such Deliverables. Licensor shall complete Customization of the source code and executable code within a reasonable time after Client's receipt of the Customization Plan.

Section 4.05 – Documentation: Licensor shall develop Documentation for the Software. Licensor shall deliver the Documentation to Client on the Delivery Date. The Documentation shall be deemed accepted by Client on the Delivery Date.

ARTICLE V   TESTING AND IMPLEMENTATION

Section 5.01 – Beta Test License: Licensor hereby grants Client a nonexclusive and nontransferable license to use the Software on the Licensor System via Remote Access for the Test Period, for the sole purpose of testing the Software for compliance with the Functional Requirements List for such Software.

Section 5.02 – Implementation: Licensor shall Implement the Software on the Licensor System on the Implementation Date. Upon completing implementation of the Software, Licensor shall demonstrate the Software to Client. Upon completing demonstration of the Software, the Software shall be deemed implemented on the Licensor System and delivered to Client on the Delivery Date.

Section 5.03 – Testing: Client shall test the Software on the Licensor System via Remote Access for the Test Period pursuant to Section 4.01 to identify discrepancies between the actual performance of the Software and the functionality of the Software as represented in the Functional Requirements List for such Software.

Section 5.04 – Acceptance: The Software shall be deemed accepted in full by Client thirty (30) days after the Delivery Date, unless Defect Notice is received by Client on or before such thirtieth (30th) day. Upon receipt of such Defect Notice from Client, Licensor shall review the asserted Defect to determine if the Defect is valid. If, in the reasonable professional judgment of Licensor, such Defect is valid, Licensor shall correct the Defect and resubmit the Software to Client for acceptance by Client in accordance with the procedures set forth in this Section. If, in the reasonable professional judgment of Licensor, such Defect is not valid, Licensor shall submit to Client a written explanation of the reasons why such asserted Defect is not valid. The written explanation of Licensor set forth herein shall be deemed accepted by Client within ten (10) days after Client's receipt of the written explanation. The failure of the parties to agree on the validity of the rejection of the Software shall be deemed a dispute and shall be resolved in accordance with the Agreement. Upon receipt of Defect Notice from Client by Licensor as set forth above, the Software shall be deemed accepted by Client except as to the Defect specified in the Defect Notice.

ARTICLE VI: LICENSE

Section 6.01 – Grant of License: Upon the Acceptance Date and during the Term, Licensor hereby grants Client a nonexclusive and nontransferable license to use the Software via Remote Access subject to the terms and conditions of the Agreement. Client hereby grants Licensor an unrestricted, unlimited, worldwide and perpetual license to use the Client Materials in performing Services under the Agreement.

Section 6.02 – Authorized Use: Client shall prevent Unauthorized Users from Accessing the Product. Client shall prevent Unauthorized Access to the Product. Client shall promptly inform Licensor of any and all Unauthorized Access and Unauthorized Users of which Client has knowledge or suspicion.

Section 6.03 – Risk of Loss: Client shall assume risk of loss to the Product as of the Delivery Date.

ARTICLE VII: HOSTING

Section 7.01 – Hosting: During the Term, Licensor shall engage Provider to host the Software on the Licensor System to provide Client access to the Software via the Internet as set forth in the Software Host Agreement.

Section 7.02 – Back-Up: Licensor shall engage Provider to perform routine backup of all files stored on the Licensor System.

Section 7.03 – Third Party Technology: Client hereby acknowledges and agrees that Third Party Technology is required to implement and use the Software. Licensor shall identify in the Technology Notice all Third Party Technology required to implement and use the Software. Licensor shall have no obligation to supply, provide, or deliver to Client the Third Party Technology or otherwise participate in the acquisition of Third Party Technology by Client. Client shall be solely responsible for acquiring, maintaining, integrating, and updating all Third Party Technology necessary to implement and use the Software, including all costs, fees, and expenses in connection therewith. Client shall be responsible for obtaining all necessary licenses, authorizations, and rights for Client to acquire and use the Third Party Technology and for Licensor to use, modify, and distribute the Third Party Technology in connection with the Software and Services.

Section 7.04 – Domain Name Registration: Client hereby acknowledges and agrees that Client shall be responsible for registering a Domain Name(s) for the Software with a Registration Company. Licensor shall use the Domain Name specified by Client to host the Domain Name and the Software on the Licensor System, as requested by Client.

Section 7.05 – ISP Accounts: The Services provided to Client by Licensor do not include Internet Service Provider (ISP) accounts. Client hereby acknowledges and agrees that Licensor shall have no obligation to provide Client access to the Internet. Client shall be solely responsible for acquiring, purchasing, installing, configuring, maintaining, updating, and implementing the computer system for accessing the Internet, including (without limitation) computer software, Internet access software, computer hardware and telecommunication equipment and all fees, costs, and expenses in connection therewith.

Section 7.06 – Login: During the Term, Client shall have access to the Customization Documents, Administrative Panels, and the Software as it is being developed on the Licensor System via a secure login on the internet using the Password.

Section 7.07 – Password: Licensor shall assign Client a Password within ten (10) days after the Effective Date. Client hereby accepts responsibility for, and shall be liable for maintaining the confidentiality of the Password and all access to the Software in connection with the Password.

Section 7.08 – Tools: Client hereby acknowledges and agrees that Tools are required to implement and use the Software. Licensor represents and warrants that Licensor shall supply, provide, or deliver to Client the Tools necessary to use and maintain the Software. During the Term, Licensor shall be solely responsible for acquiring, maintaining, integrating, and updating all Tools necessary to implement and use the Software, including all costs, fees, and expenses in connection therewith. During the Term, Licensor shall be responsible for obtaining all necessary licenses, authorizations, and rights for Client to acquire and use the Tools. Notwithstanding anything to the contrary, Licensor shall not be responsible for acquiring, implementing, or maintaining the Third Party Technology.

Section 7.09 – Service Level: The Customization Documents, Administrative Panels, and the Software shall be made available to Client on the Licensor System twenty four (24) hours a day, seven (7) days a week, less downtime that is attributable to: (i) scheduled network, hardware, or service maintenance; (ii) the acts or omissions of Client or Client's employees, agents, contractors, or vendors gaining access to the Design, Customization Plan, or Software by means of Client's Password; or (iii) a failure of the Internet and/or public switched telephone network (collectively, the "Excusable Downtime").

Section 7.10 – Acknowledgement: Client hereby acknowledges that the Hosting Services shall be provided by and through Provider under the Software Host Agreement. Client hereby releases, indemnifies and holds harmless Licensor for the performance of Provider under the Software Host Agreement.

Section 7.11 – Disaster Recovery: Licensor shall engage Provider to provide disaster recovery support. Licensor shall monitor and administer disaster recovery by Provider, including testing of restored Client data and Software files in such event.

Section 7.12 – Security: Licensor shall administer security procedures as provided by Provider, including SSL Certificate management and payment, and establishing and managing firewalls.

ARTICLE VIII: PAYMENTS AND FEES

Section 8.01 – Fees: Client shall pay the Fee as set forth in the Agreement.

Section 8.02 – Consulting Services: The Consulting Services shall be performed by Licensor at the time and material rates of Licensor as set forth in the Work Order.

Section 8.03 – Direct Cost: Client shall pay all direct costs incurred by Licensor in connection with performing Consulting Services under the Agreement. Direct costs shall include (without limitation) postage, freight, telephone, travel, per diem, material and reproduction costs.

Section 8.04 – Invoicing and Payment: Licensor shall invoice Client for fees for the Consulting Services and all related direct costs incurred by Licensor in accordance with the Work Order (as the case may be). Client shall pay any such invoice in full within thirty (30) days of receipt.

Section 8.05 – Taxes: Client shall pay any and all applicable taxes incurred in connection with Consulting Services performed under the Agreement including (without limitation) any applicable sales or use taxes and any applicable personal property taxes (excluding income taxes assessed against Licensor).

Section 8.06 – Late Fee: Any amount which is not paid by Client when due shall be increased by a late charge equal to 1½% of such unpaid amount for each month (18% per annum) in which such amount is due and not paid. Late fees shall not be compounded.

ARTICLE IX: TERMINATION

Section 9.01 – Termination Limitations: The Agreement shall only be terminated or canceled as provided under this Article IX.

Section 9.02 – Term: The Agreement shall be valid for the Term.

Section 9.03 – Termination: Client may terminate the Agreement for convenience after the Anniversary Date by providing One-Hundred Days (180) days Termination Notice to Licensor.

Section 9.04 – Cancellation: If a party violates its obligations under the Agreement, the other party may cancel the Agreement by sending Cancellation Notice describing the noncompliance to the non-complying party. Upon receiving Cancellation Notice describing the noncompliance, the non-complying party shall have Ninety (90) days from the date of such notice to cure any such noncompliance. If such noncompliance is not cured within the required Ninety (90) day period, the party providing Cancellation Notice shall have the right to cancel the Agreement as of the Ninety-first (91st) day after the date of the Cancellation Notice.

Section 9.05 – Winding Up: Upon termination or cancellation, Licensor shall be entitled to compensation for unbilled expenses of winding up the project, plus unbilled hours worked in performing the Services, at the prevailing time and material rates of Licensor when the work was performed, up to the date of written Termination Notice or Cancellation Notice.

Section 9.06 – Nonpayment: Notwithstanding any provision to the contrary, Client failure to pay an invoice when due shall be sufficient cause for cancellation of the Agreement by Licensor as provided hereunder. Licensor shall exercise such right of cancellation by submitting Nonpayment Notice to Client. Upon receipt of Nonpayment Notice, Client shall have twenty (20) days to cure the Nonpayment. If Client fails to cure the nonpayment within such twenty (20) days, Licensor shall have the right to cancel the Agreement as of the date established by Licensor in the Nonpayment Notice.

Section 9.07 –Return of Materials: Upon termination or cancellation of the Agreement, Client shall immediately return to Licensor all property owned by Licensor in the possession or control of Client, including (without limitation) the Customization Documents, Licensor Technology, Product, and all materials incidental thereto, and Client shall destroy all backup copies of the Product. Client shall provide Licensor a certificate of compliance with this Section 9.07 signed by an authorized representative of Client. Following termination or cancellation of the Agreement, and upon request by Client, Licensor shall deliver the Client Materials to Client. This Section 9.07 shall survive termination and cancellation of the Agreement.

Section 9.08 – Refund: Upon termination or cancellation of the Agreement, Client shall not be entitled to a refund of any sums paid to Licensor hereunder in anticipation of services, including (but not limited to) all fees and expenses rendered to Licensor by Client hereunder. Termination or cancellation of the Agreement shall not relieve Client from any payment obligation under this Agreement. All payment obligations under the Agreement shall survive termination or cancellation of the Agreement.

ARTICLE X: INTELLECTUAL PROPERTY

Section 10.01 – Ownership: Client hereby agrees that the Customization Documents, Licensor Technology, Product, and all materials incidental thereto ("Property") shall be the sole and exclusive property of Licensor, and that Licensor shall own all of the rights, titles, and interest to such Property, including (but not limited to) any and all patents, copyrights, trademarks, service marks and trade secrets in connection therewith. The Property shall not be deemed a "work made for hire" under the U.S. Copyright Act, 17 U.S.C. §101, et seq. Client hereby assigns, transfers, and conveys to Licensor any and all rights, title, and interest that Client may have or accrue in the Property including (but not limited to) any and all patents, copyrights, and trade secrets in connection therewith.

Section 10.02 – Client Ownership: Licensor hereby agrees that the Client Materials shall be the sole and exclusive property of Client, subject to any third party rights, and that Client shall own all of the rights, titles, and interest to the Client Materials, including (but not limited to) any and all patents, copyrights, and trade secrets in connection therewith.

Section 10.03 – Licensed Technology: Licensor grants Client a non-exclusive and non-transferable license to use the Tools in connection with the Software. Client shall comply with all terms and conditions applicable to the Tools as set forth by Licensor or Vendor.

Section 10.04 – Third Party Technology: Client hereby acknowledges and agrees that Licensor grants no license with respect to Third Party Technology. Client shall comply with all terms and conditions applicable to the Third Party Technology as set forth by Vendor.

Section 10.05 – Confidential Information: Each party shall maintain Confidential Information in strict confidence. Neither party shall disclose Confidential Information, except to Authorized Persons. Neither party shall duplicate, use or disclose Confidential Information of the other party except as otherwise permitted under the Agreement.

Section 10.06 – Trade Secret: Client hereby acknowledges and agrees that the Confidential Information for Licensor derives independent economic value (actual or potential) from not being generally known to other persons who can obtain economic value from its disclosure or use and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; is

the subject of reasonable efforts by Licensor under the circumstances to maintain its secrecy; and is a trade secret as defined under applicable State Statutes.

Section 10.07 – Licenses: The execution of the Agreement or the disclosure of Confidential Information hereunder shall not be construed as the grant of a license to Client to use the Confidential Information to develop proprietary products.

Section 10.08 – Reverse Engineering: Client shall not reverse engineer the Software and shall not allow the Software to be reversed engineered.

Section 10.09 – Modifications: Client shall not use the Product or any materials incidental thereto to develop computer software without the prior written consent of Licensor. If the Product is modified, such modifications shall be the sole and exclusive property of Licensor and Licensor shall own any and all of the rights, title and interest in and to such modifications and any resulting Technology or computer software, including (but not limited to) any and all copyrights, patents and trade secrets in connection therewith.

Section 10.10 – Trademarks: Client shall have the right to create or adopt any trademarks, service marks, or trade names for use of the Product by Members and End-Users.

Section 10.11 – Link: Licensor may maintain on the Software the Licensor Link. In the event the Software is hosted by Client or a third party host, Client hereby acknowledges and agrees that Client shall maintain the Licensor Link, as provided under the Agreement. Notwithstanding anything to the contrary, Client may at all times maintain a Client Legend.

Section 10.12 – Cooperation: Client shall cooperate with Licensor and provide Licensor reasonable assistance in securing, maintaining, and enforcing any rights, title, and interests of Licensor in and to the Property.

Section 10.13 – No Contest: Client shall not contest or aid in contesting the ownership or validity of the copyrights, trademarks, service marks and trade secrets of Licensor.

Section 10.14 – Non-compete: Client hereby acknowledges and agrees that Client will receive Confidential Information and trade secrets of Licensor during the Term. Client acknowledges that Licensor has a legitimate business interest in placing reasonable limits on the use of such information.

Accordingly, during the Term and for a two-year period following the Term, Client shall not:

(1)   engage in any activities (directly or indirectly) in competition with Licensor; or

(2)   induce or solicit (directly or indirectly) any Associate to leave the employment of Licensor or engage the services of an Associate; or

(3)   use the Property (directly or indirectly) to develop, promote, advertise, market, or provide any software similar to or competitive with the Software.

Section 10.15 – Continuation: The terms and provisions of this Article X shall survive termination and cancellation of the Agreement.

ARTICLE XI: LICENSOR WARRANTY

Section 11.01 – Service Warranty: The Services to be provided by Licensor hereunder shall be performed in a timely and professional manner by qualified software support personnel familiar with the Software and shall conform to the standards generally observed in the industry for similar services at the time such Services are rendered. Client's sole remedy in the event of a breach of this Section 11.01 shall be re-performance of the Services.

Section 11.02 – Performance Warranty: Licensor represents and warrants that the Software shall perform substantially as represented in the Documentation. Client's sole remedy in the event of a breach of this Section 11.02 shall be repair or modification of the Software.

SECTION 11.03 – WARRANTY LIMITATION: THE SERVICE WARRANTY IN SECTION 12.01 AND PERFORMANCE WARRANTY IN SECTION 11.02 ARE IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. LICENSOR HEREBY DISCLAIMS AND CLIENT HEREBY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.

Section 11.04 – Third Party Technology Disclaimer: Licensor makes no representations or warranties with respect to the Third Party Technology. Licensor shall not be responsible for the Software in connection with Third Party Technology.

Section 11.05 – Express Warranties: Client hereby acknowledges and agrees that Licensor (including officers, employees, agents, directors and independent contractors of Licensor) has not made or granted any express warranties concerning the Product and Services except the warranties set forth in Sections 11.01 and 11.02.

Section 11.06 – Indemnification: If final judgment is entered against Client for claims that the Product violates trade secrets, trademark, copyright or patent rights of a third party, Licensor shall perform one or more of the following actions (as determined in the exclusive discretion of Licensor) within one year of the date judgment in favor of such third party's claim is rendered by a court of competent jurisdiction:

(1)   Replacement: Replace the Product with a non-infringing software product of substantially equivalent functional and performance capability;

(2)   Modification: Modify the Product to avoid the infringement without substantially eliminating the functional and performance capabilities of the Product;

(3)   Obtain Agreement: Obtain a license for use of the Product from the third party claiming infringement for use of the Product.

Licensor shall have the right to participate, and Client shall permit and authorize Licensor to participate, in the defense of any such claim or action through legal counsel. The foregoing remedy does not apply, and Licensor shall have no obligation in connection with or relating to, any third party infringement claim in connection with or attributable to (i) modification of the Product by Client, Member or End-User; (ii) failure to use the Product in accordance with the Documentation by Client, Member or End-User; (iii) failure to use the most current release or version of the Product by Client, Member or End-User; (iv) combination, interface, operation or use of the Product with Third Party Technology by Client, Member or End-User; and (v) misuse of the Product by Client, Member or End-User. The remedies set forth herein shall be the sole and exclusive remedies

of Client under the Agreement for any and all claims of indemnification relating to infringement.

Section 11.07 – Limitation of Damages: Licensor shall not be liable to Client under the Agreement or in connection with the Product for any lost profits, consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, and regardless of whether Licensor has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. Notwithstanding any provision to the contrary, the liability of Licensor for any reason and for any cause of action whatsoever in connection with the Agreement and the Product shall be limited to the amount of money received by Licensor from Client under the Agreement. This Section 11.07 shall survive termination and cancellation of the Agreement.

Section 11.08 – Force Majeure: Licensor shall not be liable for any failure to perform its obligations under the Agreement because of circumstances beyond the reasonable control of Licensor, which such circumstances shall include (without limitation) natural disaster, terrorism, riot, sabotage, labor disputes, war, any acts or omissions of any government or governmental authority, declarations of government, transportation delays, power failure, computer failure, telecommunications failure, subcontractor failure and any other events reasonably beyond the control of Licensor.

ARTICLE XII: CLIENT WARRANTY

Section 12.01 - Misrepresentation: Client shall not misrepresent the Software. Client shall not misstate any fact in describing the capabilities and functions of the Software, and shall not fail to state a fact concerning the Software which is material to the evaluation of the Software. Client shall not make any statements inconsistent with the Marketing Materials. This Section 12.01 shall survive the Term, as well as termination and cancellation of the Agreement.

Section 12.02 - Best Efforts: Client shall promote and market the Software on the best efforts basis. Client hereby represents and warrants that the services to be performed by Client hereunder shall be performed by qualified personnel and in accordance with the restrictions of the Agreement.

Section 12.03 – Client Warranty: Client hereby represents and warrants that Client has obtained all

necessary authorizations, permissions, and licenses to provide Licensor the Client Materials. Client hereby represents and warrants that Client has obtained all authorizations, permissions or licenses from third parties to permit Licensor to perform the Services and that use by Licensor of any Third Party Technology made available by Client shall not infringe upon or violate any patent, copyright, trade secrets or trademark rights of any third party or violate any laws.

Section 12.04 – Indemnification: Client shall defend, indemnify and hold Licensor and its officers, directors, employees, and agents harmless from and against any and all claims, actions, liability, expenses, costs, or losses arising from (i) modification of the Product by Client, Member or End-User; (ii) combination, interface, operation or use of the Product with Third Party Technology; (iii) misuse of the Product by Client, Member or End-User; (iv) the acts (or any failure to act) of Client, Vendor, or Software host provider hereunder; and (v) any breach by Client of the obligations of Client hereunder. This Section 12.04 shall survive termination and cancellation of the Agreement.

Section 12.05 – Professional Standards: In marketing the Software and performing the obligations of Client hereunder, Client shall observe the professional standards and ethics of Vendor, demonstrate respect for Contacts personnel and conduct all communications in a professional and businesslike fashion. Client breach of this Section 12.05 (as determined in the exclusive discretion of Vendor) shall be cause for cancellation of the Agreement by Vendor and claim for damages.

ARTICLE XIII: MISCELLANEOUS

Section 13.01 – Assignments: All assignments of rights under the Agreement by Client without the prior written consent of Licensor shall be void.

Section 13.02 – Public Announcements: All public announcements of the relationship of Licensor and Client under the Agreement shall be subject to the prior approval of Client and Licensor.

Section 13.03 – Entire Agreement: The Agreement contains the entire understanding of the parties and supersedes previous verbal and written communications, proposals and agreements between the parties concerning the subject matter hereof.

Section 13.04 – Amendments and Modifications: Except as provided herein, alterations, modifications

or amendments of a provision of the Agreement shall not be binding unless such alteration, modification or amendment is in writing and signed by Licensor and Client.

Section 13.05 – Severability: If a provision of the Agreement is rendered invalid, void or unlawful, the remaining provisions shall remain in full force and effect.

Section 13.06 – Captions: The headings and captions of the Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of the Agreement, or any particular section, paragraph, or provision.

Section 13.07 – Counterparts: The Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 13.08 – Governing Law: The Agreement shall be governed by the laws of the State of Delaware without regard to any rules of conflict or choice of laws, which require the application of laws of another jurisdiction, and venue shall be Wilmington, Delaware.

Section 13.09 – Notice: Notices shall be in writing. Notices shall be deemed delivered when delivered by Certified or Registered Mail – Return Receipt Requested, by commercial express delivery service or by hand to the address set forth for Licensor or to the address set forth for Client in the Agreement. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt and in the case of commercial express delivery by electronic or written delivery confirmation.

Section 13.10 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 13.11 – Waiver: Waiver of breach of the Agreement shall not constitute waiver of another breach. Failing to enforce a provision of the Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of the Agreement shall not be binding unless such waiver is in writing and signed by the waiving party.

Section 13.12 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party shall maintain its separate identity.

Section 13.13 – Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association in Willmington, Delaware. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Three Qualified Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure.

Section 13.14 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other party under the Agreement are true, correct and accurate as of the Effective Date to the best of their knowledge.

Section 13.15 – Litigation Expense: In the event of litigation or arbitration arising out of the Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

Section 13.16 – Equitable Remedies: The parties hereby acknowledge that in certain cases damages at law may be an inadequate remedy. In addition to all other remedies that may be available at law or equity, each party shall have the right of specific performance, injunction or other equitable remedy in the event of a breach or threatened breach of the Agreement.

Work Order No. _____

to the Software Agreement ("Agreement")
by and between
Counterpoint Software, Inc. ("Licensor")
and
Client

This WORK ORDER is made as of the Work Date by and between Licensor and Client, as follows:

(1)   Scope of Work: Licensor and Client hereby agree to provide the following Consulting Services as set forth hereunder:

(2)   Fees: The Consulting Services shall be performed on a time and material basis as follows:

(3)   Payment Schedule: Payment of the consulting fees shall be due and payable in accordance with the following payment schedule:

(4)   Client Responsibilities: Client shall perform the tasks and provide the following items as a condition precedent to the obligations of Licensor hereunder:

(5)   Terms: Any capitalized term not defined hereunder shall have the meaning as set forth in the Agreement.

(6)   Agreement: The Agreement is hereby incorporated herein by this reference and made a part hereof.

(7)   Work Date: The term "Work Date" for this Work Order shall mean the date this Work Order is signed by Licensor and Client, whichever is later.

(8)   Additional Terms: The following additional terms shall apply:

LICENSOR: CLIENT:
Counterpoint Software, Inc.   Name:

By:_____   By:_____

Print Name:_____   Print Name:_____

Title:_____   Title:_____

Date:_____   Date:_____

Address: _____   Address:_____