
Software as a Service Agreement

These Master Software as a Service Agreement Terms shall apply to any agreements (each, an “Agreement”) between Yard Management Solutions LLC or one of its’ Affiliates and Customer that references these Master Software as a Service Agreement Terms and incorporates them by reference. By entering into an Agreement, Order Form or SOW with Yard Management Solutions LLC, Customer acknowledges it has read and agreed to these Master Software as a Service Agreement Terms. Each Agreement that incorporates by reference these Master Software as a Service Agreement Terms shall be a separate and independent agreement from any other Agreement that incorporates by reference these Master Software as a Service Agreement Terms. In the event of any inconsistency between these Master Software as a Service Agreement Terms and the terms and conditions of any Agreement, the terms and conditions of the Agreement shall govern to the extent of that inconsistency.

The Customer and the Provider are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

WHEREAS, Customer desires to utilize the specified yard management software provider in accordance with the terms and subject to the conditions of this Agreement.

WHEREAS, Provider desires to provide the specified yard management software service for Customer in accordance with the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises, covenants and provisions set forth herein, the Parties agree as follows:

1. Provisioning of Services

1. Provider and Customer shall enter into one or more Service Schedules in the form of **Exhibit A** (each a “**Schedule**” and collectively, the “**Schedules**”). In the event of any conflict between the terms of this Agreement and the terms of any Schedule, the terms of the Agreement shall prevail unless the parties specify in the applicable Schedule that a particular provision of the Schedule is to supersede a particular provision of this Agreement.

2. Definitions



1. **Components.** "Components" means the individual modules or products that make up the System. From time to time, new Components or features may be introduced to the System, and those Components or features may be restricted to specific Editions.
2. **Customer Data.** "Customer Data" means any of Customer's information, documents, or electronic files that are provided to Provider hereunder.
3. **Documentation.** "Documentation" means documentation provided by Customer.
4. **Error.** "Error" means any reproducible material failure of the System to function in accordance with its Documentation.
5. **Maintenance Windows.** "Maintenance Windows" means collectively, standard maintenance and emergency maintenance. Provider will notify Customer at least 7 days in advance of the start of the standard maintenance window. Emergency maintenance will occur as needed.
6. **System.** "System" means the software service for which Customer has paid, including any updates relating thereto that may be provided hereunder or thereunder, and any derivative works of the foregoing. A System is made up of individual Components.
7. **Service Administrator.** "Service Administrator" means the person(s) that Customer designate(s) to purchase on behalf of Customer usage of the Service, authorize Users under the Agreement, create accounts for additional Users and otherwise administer Customer's use of System.
8. **(h) Support.** "Support" means the ongoing services by Provider to support the System as defined in Section 4 below.
9. **Update.** "Update" means any patch, bug fix, release, version, modification or successor to the System.
10. **User.** "User" means a named individual to whom Customer has granted access to use the System on Customer's behalf, regardless of whether or not the User actually accesses the Software. Users may be Customer's employees, consultants, contractors or agents.
11. **Edition.** "Edition" means the named configuration of the System that has been licensed to the Customer. An Edition defines what Components, features, limits, and/or usage restrictions are placed on the System licensed to the Customer. From time to time, new Components or features will be introduced to the System, and those Components or features may

be restricted to specific Editions. New named Editions may also be introduced from time to time.

12. **Effective Date.** “Effective Date” is the date on which the Customer’s subscription to the licensed Edition of the System starts. The beginning of the contract term.

3. Use Rights

1. **Use Rights.** During the term and subject to the terms of this Agreement, Provider hereby grants to Customer a site specific, nonexclusive, nontransferable, nonsublicensable right to permit Customer's Users to use the licensed Edition of the System for Customer's business purposes. The use right in the preceding sentence is limited to use by the number of Users as outlined in this document. Said use rights are nontransferable, except in the event of a voluntary transfer of substantially all assets by Customer to a transferee, which executes Provider form of agreement agreeing to be bound by all of the terms and conditions of this Agreement. All rights in and to the System not expressly granted herein are reserved to Provider.
2. **License and Use Restrictions.** Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the System; (ii) modify, create derivative works based upon, or translate the System; (iii) license, sell, rent, lease, transfer, grant any rights in or otherwise commercially exploit the System in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder. You acknowledge and agree that Provider shall own all right, title and interest in and to all intellectual property rights (including all derivatives or improvements thereof) in the System and any suggestions, enhancement requests, feedback, recommendations or other information provided by Customer or any of Customer's Users relating to the System.
3. **System Administrator; User Access.** Customer shall designate one or two System Administrators. System Administrators shall be responsible for managing User access, including adding and subtracting Users. The System Administrator shall ensure that multiple Users do not share a password or user name. Customer acknowledges and agrees that it is prohibited from sharing passwords and/or user names with unauthorized users.

4. **Customer Data.** Customer owns all right, title and interest in the Customer Data. Customer hereby grants to Provider, a nonexclusive, nontransferable, nonsublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for purposes of Customer's use of the System. Provider shall not use the Customer Data except to improve the System and as necessary to perform its obligations hereunder.
5. **No Sensitive Data; Customer Responsibilities.** Customer acknowledges that the System is not intended for use with protected health information under HIPAA, credit card numbers, financial account numbers, or other similarly sensitive personal information, and that Customer assumes all risk arising from use of any such sensitive information with the System, including the risk of any inadvertent disclosure or unauthorized access thereto. Customer is responsible for ensuring that Customer and Customer's Users' use of the System is in compliance with all applicable laws and governmental regulations and Customer acknowledges that Customer assumes all risk arising from any such use that is not compliant with applicable laws and regulations.
6. **Security.** Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the System, and for its Users' compliance with the terms of this Agreement. Provider will act as though any electronic communications it receives under Customer's user names have been sent by Customer. Customer will immediately notify Provider if it becomes aware of any loss or theft or unauthorized use of any of Customer's passwords or user names. Provider has the right at any time to terminate or suspend access to any User or to Customer if Provider believes in good faith that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the System or Provider's network.
7. **No Agency.** Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.
8. **Provider is a Non-Party.** All transactions concluded through Use of the Software or by Customer shall be between the Customer and the other parties to that transaction pursuant to the terms and conditions agreed upon by the Customer and those parties. Provider shall not be a party to any transaction or contract concluded through Use of the Software.

4. Support

1. **Professional Services.** Provider shall perform all Professional Services that Provider agrees to provide in an Agreement for the fees specified therein and in a professional and workmanlike manner by personnel having a level of skill commensurate with their responsibilities.
2. **Updates.** Provider shall deliver Updates to the System that apply to the Customer's currently licensed Edition at no additional charge. From time to time, new Components or features may be released that are applied selectively to different Editions of the System. Only those Updates that apply to the Customer's currently licensed Edition will be delivered automatically to the Customer.
3. **Support Procedures.** Provider shall provide general support to the Customer for the Customer's currently licensed Edition.
4. **Error Correction.** Provider shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Provider's normal business hours. Customer shall provide such access, information, and support as Provider may reasonably require in the process of resolving any Error. This paragraph is Customer's sole and exclusive remedy for Errors.
5. **Support Exclusions.** The following occurrences are outside the scope of the Yard Management Solutions Support Package and will incur support fees at the then going rate. This includes errors or need for support that are created in whole or in part by: the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the System or its operating environment; any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Provider's firewall) ; Customers use of the System other than in accordance with the System's documentation; or a Force Majeure Event.
6. **System Expansions, Additions and Alterations.** Additional system expansions, additions and alterations beyond the scope of this agreement are available as separate bid items.
7. **Go Live Date.** The go live date is the date that the customer has the system available for use.
8. **Limitation of Remedies.** Correction of Errors as defined in this Agreement are Customer's sole remedies for any Errors in the System.

5. Financial Terms

1. **Fees.** In return for the products, services and use rights provided by Provider to Customer hereunder, Customer shall pay to Provider the fees in the amount set forth. All dollar amounts refer to U.S. dollars.
2. **Payment Terms.** Payments to Yard Management Solutions for services rendered will be due in advance on the 1st of each month for the term of this agreement. Monthly SAAS payments begin on the earlier of the Go-Live Date or 30 days from the date the system is delivered to Customer ready for use. If Customer is delinquent in payment in excess of 30 days from the due date of any portion of an invoice, Yard Management Solutions LLC may, in addition to any other remedies it may have, including termination, suspend access to the System and/or provision of all services to Customer. Customer agrees that the monthly SAAS fees described in the schedules reflect a discounted rate of ten percent (10%) for on time payments. Payments received more than 5 days beyond the due date are not available for the discount.
3. **Taxes.** All Fees payable to Provider are exclusive of any taxes, assessments or duties that may be assessed upon the Software, Services, Hardware or any Subscription under the Agreement.

6. Term and Termination

1. **Term.** The term of this Agreement commences on the Effective Date hereof and then will continue until the Three-year anniversary of the Effective Date and will automatically renew for additional terms of one year each unless either party gives the other party written notice of its intention not to renew at least 30 days in advance of the then current term.
2. **Termination for Cause.** Either party can terminate this Agreement for cause upon written notice to the other party:
 1. If the other party has committed any other material breach of its obligations under this Agreement and has failed to cure such breach within 30 days of written notice by the non-breaching party specifying in reasonable detail the nature of the breach (or, if such breach is not reasonably curable within 30 days, has failed to begin and continue to work diligently and in good faith to cure such breach); or upon the institution of bankruptcy or state law insolvency proceedings against the other party, if such proceedings are not dismissed within 30 days of commencement.

2. If Customer fails to pay provider as agreed and such delinquent amounts remain unpaid for more than 30 days from the day, the amount was due.
3. Provider may terminate this agreement immediately upon any breach by Customer of Section 3.2 above;
3. **Effect of Termination.** Upon and after expiration or termination of the Agreement, all licenses to the Content granted by Provider under the Agreement and Customer's right to receive updates to the Content or receive Services pursuant to an Agreement shall immediately terminate and Customer shall immediately cease the Use of the Data Services. Customer shall immediately pay Provider any amounts payable or accrued but not yet payable to Provider, including any deferred payments or payments originally to be made over time.

7. Confidentiality

1. **Confidential Information.** "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of a party that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (B) the disclosing party designates as confidential or, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation: (i) nonpublic information relating to a party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs; (ii) third party information that Customer or Provider is obligated to keep confidential; (iii) the material terms and conditions of this Agreement; and (iv) any nonpublic information relating to any activities conducted hereunder.
2. **Exclusions.** Notwithstanding the above, the term "Confidential Information" does not include any information that is either: readily discernible from publicly available products or literature; or approved for disclosure by prior written permission of an executive officer of the disclosing party.
3. **Use of Confidential Information.** Each party shall only use Confidential Information furnished to it hereunder in furtherance of the activities contemplated by this Agreement, and, except as authorized in this

Agreement, it shall not disclose the Confidential Information to any other persons without the disclosing party's express written authorization.

4. **Required Disclosures.** A receiving party may disclose Confidential Information of the disclosing party as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that the receiving party (i) gives the disclosing party reasonable written notice to allow it to seek a protective order or other appropriate remedy (except to the extent compliance with the foregoing would cause the receiving party to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses its best efforts to obtain confidential treatment for any Confidential Information so disclosed.
5. **Return of Information.** Except as set forth otherwise in the specific provisions concerning Customer Data set forth in Section 5(c) above, if a disclosing party so requests at any time, the receiving party shall return promptly all copies, extracts, or other reproductions in whole or in part of the Confidential Information in its possession.
6. **Survival.** The parties hereto covenant and agree that this Section 7 will survive the expiration, termination, or cancellation of this Agreement for a period of 3 years, except for Confidential Information constituting a trade secret, with respect to which this Section will survive the expiration, termination, or cancellation of this Agreement for so long as such Confidential Information remains a trade secret.

8. Mutual Indemnification

1. **Indemnification by Provider.** Provider shall defend, indemnify and hold harmless Customer from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third party claim, suit or proceeding that arises from Customer and/or the Customer's Users' use of the System in accordance with this Agreement that, to Provider's knowledge, infringes or misappropriates any U.S. trade secret, trademark, or copyright. Provider will have no indemnity obligation to Customer if the alleged infringement or misappropriation is based on (i) any combination, operation, or use of the System with products, services, information, materials, technologies, business methods or processes not furnished by Provider to the extent the infringement or misappropriation is based on such combination, operations or use; (ii) any modification (other than by Provider) to the System to the extent the infringement or misappropriation is based on

such modification; or (iii) the Customer's failure to promptly install any Update that is provided by Provider that would have eliminated the actual or alleged infringement or misappropriation.

2. **Indemnification by Customer.** Customer shall defend, indemnify and hold harmless Provider from and against all damages, liabilities, losses and expenses, including reasonable attorneys' fees and expenses, resulting from any third party claim, suit or proceeding that arises from the Customer and/or the Customer's Users' use of the System (other than to the extent indemnified by Provider under Section 8.1).

9. Indemnification Procedure

1. **Notice of Indemnification.** A party seeking indemnification pursuant to the Agreement (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice (a "Notice of Claim") to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).
2. **Assumption of Defense.** Within twenty (20) business days of receipt of a Notice of Claim from the Indemnified Party, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.
3. **Failure to Defend.** If the Indemnifying Party (a) does not, within the time limited, assume the defense of any Third Person Assertion after receipt of a Notice of Claim or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, then, upon twenty (20) days written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled as part of its damages to indemnification for the costs of such defense.
4. **Conflicts of Interest.** If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the costs of such defense shall be

borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.

5. **Settlement.** The party controlling the defense of a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.
6. **Participation.** Notwithstanding the assumption of the defense of a Third Person Assertion by either party in accordance with the Agreement, the other party shall agree to cooperate, as necessary, in the defense or prosecution of any Third Party Assertion and shall be entitled to participate, at its own expense, in the defense or settlement of any Third Person Assertion.
7. **Sole Remedy.** Indemnification pursuant to this Section is the parties' sole remedy for any third party claim against the other party in the nature of intellectual property infringement or misappropriation.
10. **Disclaimer of Warranties.** PROVIDER SHALL NOT BE LIABLE TO CUSTOMER OR ANY USER OF THE CONTENT FOR ANY ERRORS OR INCOMPLETENESS IN THE CONTENT. EXCEPT AS EXPRESSLY PROVIDED IN AN AGREEMENT, PROVIDER LICENSOR MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR THE CONTENT OR OTHERWISE, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER SPECIFICALLY DISCLAIMS ANY COLLATERAL WARRANTIES AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT REPRESENT OR WARRANT THAT THE DATA SERVICES OR ANY SERVICES PROVIDED IN CONNECTION WITH THE CONTENT WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR ERRORS.
 1. **Disclaimer of Consequential Damages.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL PROVIDER OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ITS LICENSORS OR ANY OTHER PERSON, FIRM, CORPORATION OR ENTITY FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS OR COMPUTER MALFUNCTION, OR ANY DAMAGES IN THE

NATURE OF LOST OPPORTUNITY COSTS OR COSTS FOR PROCUREMENT OF AN ALTERNATIVE TO THE HARDWARE, SOFTWARE OR SERVICES PROVIDED UNDER THE AGREEMENT, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT OR OTHERWISE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT IN NO EVENT WILL PROVIDER'S DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES ARISING OUT OF THE AGREEMENT. PROVIDER SHALL NOT HAVE ANY LIABILITY REGARDING DELIVERY OR FAILURE OF DELIVERY OF ANY PACKAGE OR FREIGHT, EITHER BY OR TO CUSTOMER, OR IN RESPECT OF DELIVERIES FACILITATED BY CUSTOMER, REGARDLESS OF THE CAUSE OF SUCH LOSS OR DAMAGE.

2. **Limitation of Liability.** CUSTOMER AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LIABILITY ON THE PART OF PROVIDER UNDER AN AGREEMENT (INCLUDING FOR BREACH OF ANY PROVISION OF THE AGREEMENT, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THE AGREEMENT, HARDWARE, SOFTWARE OR SERVICES IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID TO PROVIDER BY CUSTOMER IN THE PREVIOUS 12 MONTHS PRIOR TO THE CLAIM.
3. **Time for Commencement of Action.** NO ACTION AGAINST PROVIDER OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT OR IN ANY OTHER WAY RELATED TO THE AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS FIRST ARISEN.

11. General Notices

1. **Notices.** Notices regarding this Agreement to Provider shall be in writing and sent by first class mail or overnight courier at the address provided at



that time on Provider's website. Provider may give notice by means of posting notice on the System, by electronic mail to Customer's email address on record with Provider, or by written communication sent by first class mail or overnight courier to Customer's address on record in Provider's account information. All notices shall be deemed to have been given three days after mailing or posting (if sent by first class mail), upon delivery in the case of courier, or 12 hours after either sending by email or posting on the System.

2. **Promotional Materials.** Either party may include statements, and may use the other party's name and logos, in its website, commercial advertisements and promotional materials for the sole purpose of indicating that Customer is a user of the System. Customer will obtain approvals from "CUSTOMER" for Provider to do the same.
3. **Force Majeure.** "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. "Force Majeure Event" does not include economic hardship, changes in market conditions, and insufficiency of funds. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event.
4. **Assignment.** Customer may not, without the prior written consent of Provider, assign or transfer the Agreement or any obligation incurred hereunder, including without limitation by change of effective voting control of Customer, merger, reorganization, consolidation, or sale of all or substantially all of Customer's assets and any attempt to do so in contravention of this section shall be void and of no force and effect.
5. **Governing Law; Venue.** The laws of the State of Georgia (without giving effect to its conflict of laws principles) govern all matters arising out of or

relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement. Any claims or actions regarding or arising out of this Agreement must be brought exclusively in a court of competent jurisdiction sitting in Fulton County, Georgia, and each party to this Agreement submits to the jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to this Agreement. Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to

1. The laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any state or federal court sitting in Fulton County, Georgia; and
 2. Any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
6. **Recovery of Litigation Costs.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the unsuccessful party shall pay to the successful party its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the successful party may be entitled.
7. **Survival of Certain Provisions.** Each party hereto covenants and agrees that the provisions in Sections 2, 3.2, 6.3, 7,8,9, 10 and 11 in addition to any other provision that, by its terms, is intended to survive the expiration or termination of this Agreement, shall survive the expiration or termination of this Agreement.
8. **Execution by Facsimile and Transmissions in PDF and Other Document-Scanning Programs.** Execution and delivery of a facsimile transmission of the Agreement or execution and delivery of this Agreement in a PDF or a similar document-scanning file format shall constitute, for purposes of the Agreement, delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy. Any party so executing the Agreement hereby undertakes to originally execute and deliver to the other party hereto a copy of the Agreement as soon as possible after execution by facsimile and execution and transmission in PDF and other document-scanning programs.
9. **Execution of Agreement.** This Agreement may be executed in one or more counterparts, any of all of which shall constitute one and the same

instrument. Any Manually executed signature page delivered by a party by facsimile or other electronic transmission shall be deemed to be an original signature page hereto.

10. **Amendments.** This agreement may be amended only by an instrument in writing signed by both Parties.
11. **Binding Effect.** This Agreement shall be binding upon, and inure to the benefit of the Parties hereto and their heirs, successors and assigns; Any failure of a party to enforce at any time any of the provisions of this Agreement, or any rights or remedies with respect thereto, shall not constitute a waiver of any such provision, right, remedy or election in any way affect the validity thereof or of this Agreement. Invalidation of any of the provisions contained herein, or the application of such invalidation thereof to any person, by legislation, judgment or court orders shall in no way affect any of the other provisions hereof or the application thereof to any other person, and the same shall remain in full force and effect, unless enforcement as so modified would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes here.
12. **Entire Agreement.** This Agreement as if fully set forth herein constitutes the entire understanding and agreement between the Parties relating to the subject matter hereof, and supersedes and replaces any and all prior agreements, whether written or oral, that may exist between them with respect thereto.