MEMORANDUM

TO: MAYOR AND CITY COMMISSION

FROM: CITY ATTORNEY'S OFFICE

DATE: November 6, 2023

RE: **Master Agreement with Ungerboeck Systems International, LLC for Enterprise Management System Software for RP Funding Center**

Attached hereto for your consideration is a proposed Master Services Agreement with Ungerboeck Systems International, LLC (Ungerboeck) for its Enterprise Management System software for use by the RP Funding Center. This Enterprise System integrated software is designed to streamline and automate all business activities such as venues and events, with the exception of ticketing, for the RP Funding Center. Specifically, the Enterprise System software includes a comprehensive set of tools to handle the entire event lifecycle related to the receipt and documentation of all business inquiries, booking of event space, creation of contracts, day-to-day event planning, managing customer relationships and recording/managing financial transactions for the RP Funding Center.

The Purchasing Department has approved Ungerboeck as a sole source provider of these services, which the RP Funding Center has utilized since 1995. The original agreement with Ungerboeck was an annual agreement subject to automatic renewals each year unless terminated by the City.

The term of this new Master Agreement with Ungerboeck is for an initial term of five (5) years, with a retroactive effective date of October 1, 2023, subject to City Commission approval. The Agreement contains automatic renewals for successive one (1) year terms, unless either party provides written notice of termination ninety (90) days prior to the end of any term. The Agreement also enables the City to terminate the Agreement during the initial term in the event sufficient funds are not budgeted by the City Commission for the services.

The total cost of Ungerboeck's services for the five (5) year term is $173,038.80, of which the first year's cost of $30,060.36 is budgeted in the RP Funding Center's FY24 budget. The remaining cost will be subject to City Commission approval of the budget in subsequent budget years. The long term Master Agreement will result in savings of $91,350 over the five (5) year term.

It is recommended that the City Commission approve the Master Agreement with Ungerboeck for the Enterprise Management System software for the RP Funding Center

and authorize the appropriate City officials to execute this Agreement and all corresponding documents.

Attachment

MASTER AGREEMENT

THIS MASTER AGREEMENT (this "**Agreement**") is between Ungerboeck Systems International, LLC having an address at 100 Ungerboeck Park, O'Fallon, MO 63368 ("**Provider**") and City of Lakeland dba RP Funding Center having an address at 701 W Lime St, Lakeland, Florida 33815-4509 and is effective as of October 1, 2023, (the "**Effective Date**"). The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Provider's direct competitors are prohibited from accessing the Services, except with Provider's prior written consent.

1. <u>Definitions</u>.

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "**Control**," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

"**Authorized User(s)**" means Customer's employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; and (b) for whom access to the Services has been purchased hereunder.

"**Customer**" means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into one or more Order Forms.

"**Customer Data**" means electronic information and data that is submitted by or for Customer or an Authorized User by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.

"**Documentation**" means any manuals, instructions, or other documents, specifications, or materials that the Provider provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Provider Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof; provided all Documentation may be updated from time to time by Provider and may be available on Provider's website.

"**Order Form**" means an ordering document or online order that is entered into between Customer and Provider or any of their Affiliates specifying the Services to be provided hereunder and subscription term, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

"**Provider Materials**" means the Services, Documentation, and Provider Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Provider or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Provider Systems. For the avoidance of doubt, Provider Materials include Resultant Data and any information, data, or other content derived from Provider's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"**Services**" means the software products and professional services that are ordered by Customer under an Order Form or online ordering portal or under a free trial, and made available online by Provider, including associated Provider offline or mobile components, as described in the Documentation.

"**Third-Party Systems**" means Web-based, mobile, offline, or other software functionality that interoperates with a Service, that is provided by Customer or a third party and any of Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

2.   Term and Termination.

2.1   Term. This Agreement commences on the Effective Date and continues until all subscriptions pursuant to any Order Form have expired in accordance with the stated subscription end date or have been terminated in accordance with the terms of this Agreement.

2.2   Renewal Term. The initial term of each subscription shall be as specified in the applicable Order Form (the "**Initial Term**"). Unless explicitly specified in an Order Form, Service subscriptions will automatically renew for additional one-year terms, unless either party gives the other written notice (email acceptable) at least 90 days before the end of the relevant subscription term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**").

2.3   Termination. In addition to any other express termination rights set forth elsewhere in this Agreement: a party may terminate this Agreement for cause (i) upon thirty (30) days' written notice to the other party of a material breach (including non-payment of fees owed) if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

2.4   Non-Appropriation. Customer staff responsible for the management of this Agreement shall use best efforts to obtain an appropriation in the full amount required under the Agreement including the submission of budget requests each year that are sufficient to cover all Customer's payment obligations set forth herein. In the event the required funds are not made available Customer shall provide written notice to Provider at least 120 days in advance of the upcoming Renewal Term. Such written notice shall include clear evidence that the specific funds to pay the fees due under the Agreement are not available. Termination will become effective on the last day of the current Term. In no event shall Customer be entitled to receive a refund of any prepaid amounts. Additionally, If Customer terminates the contract for non-appropriation, Customer may not replace the Services with any competitor of Provider for a period of 12 months from the date of termination, provided however, that such prohibition on replacement of Services will be limited to

services specifically used in the RP Funding Center and not other Customer departments which currently use such Services or seek to procure such Services.

2.5   <u>Refund or Payment upon Termination</u>. If this Agreement is terminated by Customer in accordance with <u>Section 2.3</u>, Provider will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Provider in accordance with <u>Section 2.3</u>, Customer will pay any unpaid fees covering the remainder of the Term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Provider for the period prior to the effective date of termination.

3.   <u>Fees and Payment</u>.

3.1   <u>Fees</u>. Customer will pay all fees specified in Order Forms including any preapproved out-of-pocket expenses incurred by Provider. Except as otherwise specified herein or in an Order Form, (i) fees are based on Services and subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities of Services or Authorized Users purchased cannot be decreased during the Term.

3.2   <u>Taxes</u>. All fees and other amounts payable by Customer under any Order Form do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Provider has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Provider will invoice Customer and Customer will pay that amount unless Customer provides Provider with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Provider is solely responsible for taxes assessable against it based on its income, property, and employees.

3.3   <u>Payment</u>. Unless otherwise stated in the Order Form, invoiced fees are due on the earlier of net 45 days from receipt of invoice or on the applicable annual renewal date as set forth on the Order Form for any Renewal Term in accordance with Florida Statute § 218.74 et. Seq., the Local Government Prompt Payment Act. Customer is responsible for providing complete and accurate information to Provider in order to receive invoices. Provider is under no obligation to integrate into any Customer payment portal or comply with any Customer payment prerequisites such as purchase order numbers or vendor onboarding questionaries.

3.4   <u>No Deductions or Setoffs</u>. All amounts payable to Provider under this Agreement shall be paid by Customer to Provider in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax as may be required by applicable law). Any prepayments for professional services will be credited by Provider against the actual time and materials billed for that particular month until the prepayment is exhausted; provided any prepaid amounts that <u>remain</u> after the 12-month anniversary date of the Order Form will be immediately forfeited by Customer and shall not be credited or refunded.

3.5   <u>Late Payment</u>. If Customer fails to make any payment when due then, in addition to all other remedies that may be available Provider may: (a) charge interest on the past due amount at the rate of 1% per month on the unpaid balance in accordance with Florida Statute § 218.74 et. seq., the Local Government Prompt Payment Act, if lower, the highest rate permitted under applicable law; (b) accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and

payable; and (c) suspend Services until such amounts are paid in full, provided that Provider will give Customer at least seven (7) days' prior notice that its account is overdue before suspending Services to Customer.

    3.6   Fee Increases.

After the Initial Term:

    a.   Any promotional or one-time priced subscriptions for Services shall revert to Provider's then current list price;

    b.   Provider may further increase fees for any Services by a maximum of 5% plus any positive increase in the Total OECD CPI* https://data.oecd.org/price/inflation-cpi.htm (by clicking on the Table tab) measured at the most recently available monthly or quarterly period all of which shall be selected by Provider in its sole discretion.

    c.   Section 3.6 (b) shall not apply to any Service(s) in which : (i)the volume or length for any Services is not being renewed under precisely the same terms in the Initial Term., or (ii) the Services are no longer commercially available to customers in the same bundle or standalone Service initially purchased; or (iii) Customer fails to either timely execute the renewal Order Form with such pricing or fails to timely remit payment as provided under Section 3.3 or comply with all obligations in this Agreement, or (iv) if the Customer undergoes at any point during the Term a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

    d.   Notwithstanding anything to the contrary, the fees for professional services are only fixed during the time period set forth on a specific Order Form and any change orders or new requests subject to a new Order Form will result in Customer being charged Provider's then standard market rates.

4.   Provision of Services.

    4.1   Access and Use. Subject to Customer's and Authorized Users' use of the Services in accordance with this Agreement, the Documentation and the applicable Order Form, Provider will (a) make the Services available to Customer pursuant to this Agreement, and the applicable Order Forms and Documentation, (b) be responsible for the performance of its personnel (including its employees and contractors) and their compliance with Provider's obligations under this Agreement, except as otherwise specified in this Agreement, (c) provide Support Services as set forth in Section 7.1, (d) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Provider shall give advance electronic notice), and (ii) any unavailability caused by a Force Majeure Event, and (e) provide the Services in accordance with laws and government regulations applicable to Provider's provision of its Services to its customers generally (i.e., without regard for Customer's particular use of the Services).

    4.2   Protection of Customer Data. Provider will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Authorized Users). The terms of the data processing addendum available at Provider's website at https://mailerhub.gomomentus.com/hubfs/Momentus_DPA_GDPR-English.pdf ("**DPA**") posted as of the

Effective Date are hereby incorporated by reference. To the extent personal data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by Provider, its Processor Binding Corporate Rules, and/or the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices. Upon request by Customer made within 30 days after the effective date of termination or expiration of this Agreement and in a format selected by Provider, Provider will make Customer Data available to Customer for export or download. After such 30-day period, Provider will have no obligation to maintain or provide any Customer Data and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

4.3   Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, or Provider Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services or the Provider Materials, are and will remain with Provider.

4.4   Changes. Provider reserves the right, in its sole discretion, to make any changes or updates to the Services and Provider Materials that it deems necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of Provider's Services to its customers; (ii) the competitive strength of or market for Provider's Services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the scope of Services. The parties shall evaluate and, if agreed, implement all such requested changes in accordance with a new Order Form. No requested changes to the scope of Services will be effective unless and until memorialized in a new written Order Form signed by both parties.

4.5   Free Trial. If Customer in an Order Form obtains a free trial for any Service , excluding any professional services Provider will make the applicable Service(s) available to Customer on a trial basis free of charge until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Service(s), or (b) the start date of any paid Service subscriptions ordered by Customer for such Service(s), or (c) termination by Provider in its sole discretion; provided following the end of the free trial period the software subscription shall automatically renew at Provider's then market rate and be coterminous with all other Services unless notice of termination is provided by Customer 90 days prior to such end date. Additional trial terms and conditions may appear on the trial registration web page, if any, or Order Form and are incorporated into this Agreement by reference and are legally binding. ANY DATA CUSTOMER ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR CUSTOMER, DURING CUSTOMER'S FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE TRIAL PERIOD. NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDER SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE SERVICES FOR THE FREE TRIAL PERIOD UNLESS SUCH EXCLUSION OF LIABILITY IS NOT ENFORCEABLE UNDER APPLICABLE LAW IN WHICH CASE PROVIDER'S LIABILITY WITH RESPECT TO THE SERVICES PROVIDED DURING THE FREE TRIAL SHALL NOT EXCEED $1,000.00. WITHOUT LIMITING THE FOREGOING, PROVIDER AND ITS AFFILIATES AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO CUSTOMER THAT: (A) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL MEET

CUSTOMER'S REQUIREMENTS, (B) CUSTOMER'S USE OF THE SERVICES DURING THE FREE TRIAL PERIOD WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR, AND (C) USAGE DATA PROVIDED DURING THE FREE TRIAL PERIOD WILL BE ACCURATE.

4.6   Suspension or Termination of Services. Provider may, directly or indirectly or by any other lawful means, suspend, terminate, or otherwise deny Customer's, or any Authorized User's access to or use of all or any part of the Services or Provider Materials, without incurring any resulting obligation or liability, if: (a) Provider receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Provider to do so; or (b) Provider believes, in its sole discretion, that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Documentation; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities; or (iii) this Agreement expires or is terminated. If applicable, Provider will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

5.   Use of Services.

5.1   Definition:

"**Harmful Code**" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses; provided harmful code does not include any means any software, hardware, or other technology, device, or means used by Provider or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Provider or its designee.

5.2   Subscriptions. Services are purchased as subscriptions for the term stated in the applicable Order Form or in the applicable online purchasing portal. Subscriptions for Services or additional Authorized Users may be added during a subscription term, and any pricing shall be prorated for the portion of the then current remaining Term; provided such additional Services or additional Authorized Users will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Provider regarding future functionality or features.

5.3   Usage Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or Provider Materials except as expressly permitted by this Agreement. Any third-party materials that are not Provider Materials shall be subject to the applicable third-party license agreement between such third party and Customer. For purposes of clarity and without limiting the generality of the foregoing, Customer will not (a) make any Service available to anyone other than Customer or Authorized Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order Form or the Documentation, (b) sell, resell, license, sublicense, distribute, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service or Third-Party System to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service or Third-Party System to store or transmit Harmful Code, (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein, (f) attempt to gain unauthorized access to any Service or its related systems or networks, (g) permit direct or indirect access to or use of any Services in a way that circumvents a contractual

usage limit, or use any Services to access, copy or use any of Provider's Intellectual Property Rights except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works of a Service or any part, feature, function or user interface thereof, (i) copy content except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any Service, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Services, (3) copy any ideas, features, functions or graphics of the Services, or (4) determine whether the Services are within the scope of any patent.

5.4   Usage Limits. Services are subject to usage limits specified in Order Forms and Documentation. If Customer exceeds a contractual usage limit, Provider may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding Provider's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order Form for additional quantities of the applicable Services promptly upon Provider's request, and/or pay any invoice for excess usage in accordance with Section 3.

6.   Customer Obligations.

6.1   Definition.

(a)   "**Access Credentials**" means any username, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device, used alone or in combination, to verify an individual's identity and authorization to access and use the Services.

6.2   Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Documentation all Customer systems on or through which the Services are accessed or used including using Provider's most current or supported versions of any software; (b) provide all cooperation and assistance as Provider may reasonably request to enable Provider to exercise its rights and perform its obligations under and in connection with this Agreement; (c) be responsible for Authorized Users' compliance with this Agreement, Documentation and Order Forms; (d) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Third-Party Systems with which Customer uses Services; (e) use commercially reasonable efforts to prevent unauthorized access to or use of Services, Access Credentials and content through physical, administrative, and technical controls, screening, and security procedures and other safeguards, and notify Provider promptly of any such unauthorized access or use; (f) use Services only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations; and (g) comply with terms of service of any Third-Party Systems with which Customer uses Services. Provider is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement.

6.3   Corrective Action. If Customer or Provider becomes aware of any actual or threatened activity prohibited by this Agreement, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services, and Provider Materials and permanently erasing from their systems

and destroying any data to which any of them have gained unauthorized access); and (b) notify the other Party of any such actual or threatened activity.

7.   Provider Support.

   7.1   Definition.

      (a)   "**Provider Systems**" means the information technology infrastructure used by or on behalf of Provider in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Provider or through the use of third-party services.

   7.2   Support Services. Subject to the terms and conditions of this Agreement, the Services include Provider's standard customer support services ("**Support Services**") a current copy of which is available at https://infohub.gomomentus.com/hubfs/SLAs/Momentus_SLA_English.pdf and which version as the Effective Date is attached hereto as Exhibit A (the "**Service Level Agreement** "). Provider may amend the Service Level Agreement from time to time in its sole discretion and such updates shall amend and replace Exhibit A. Customer may also purchase enhanced Support Services separately at Provider's then current rates pursuant to an Order Form.

   7.3   Data Backup. The Provider Systems are programmed to perform routine daily data backups as set out in Provider's backup policy in effect from time to time. Provider will deliver to Customer its then most current back-ups of Customer Data. In the event of any loss, destruction, damage, or corruption of Customer Data caused by the Provider Systems or Services, Provider will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Provider's then most current backup of such Customer Data.

   7.4   Third-Party Products and Services. Provider may make available through configurations designed to interoperate with third-party products or services such as electronic signature providers. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any third-party provider, product or service is solely between Customer and such third-party and Providers does not guarantee the continued availability of such items.

8.   Confidentiality.

   8.1   Confidential Information. "Confidential Information" means all information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of Provider includes the Services, and the terms and conditions of this Agreement and all Order Forms (including pricing).   The parties agree this information may be subject to the disclosure under the Florida Public Records Act Chapter 119. Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without knowledge of any breach of any obligation owed to the Disclosing Party, or (iv) was independently developed

by the Receiving Party or (v) is subject to disclosure pursuant to Florida Statute Chapter 119, the Florida Public Records Act or any other applicable law. For the avoidance of doubt, the non-disclosure obligations set forth in this Section 8 apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Provider Services.

8.2   Protection of Confidential Information. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order Form to any third party other than its Affiliates, legal counsel, and accountants ("**Representatives**") without the other party's prior written consent, provided that a party that makes any such disclosure to its Representatives will remain responsible for such Representative's compliance with this Section 8. Notwithstanding the foregoing, Provider may disclose the terms of this Agreement and any applicable Order Form to a contractor to the extent necessary to perform Provider's obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

8.3   Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy or waive its rights; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 8, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

9.   Intellectual Property Rights.

9.1   Definitions.

(a)   "**Intellectual Property Rights**" means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(b)   "**Resultant Data**" means data and information related to Customer's use of the Services that is used by Provider in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation or improvement of the Services.

9.2   Provider Materials. Subject to the limited rights expressly granted hereunder, all right, title, and interest in and to the Provider Materials, including all Intellectual Property Rights therein, are and will remain

with Provider and, with respect to third-party materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the third-party materials. All other rights in and to the Provider Materials are expressly reserved by Provider. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Provider an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto. Customer has the right to access and use applicable content subject to the terms of applicable Order Forms, this Agreement, and the Documentation.

9.3   Customer Materials. Subject to the limited rights expressly granted hereunder, as between Customer and Provider, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto. Customer grants Provider its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for Provider to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. Customer grants to Provider and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Authorized Users relating to the operation of Provider's or its Affiliates' services.

10.   Representations and Warranties.

10.1   Mutual Representations and Warranties. Each party represents and warrants to the other party that: (a) it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2   Additional Provider Warranties. Provider represents, warrants, and covenants to Customer that Provider will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement. Provider warrants that during the Term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, (b) Provider will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation.

10.3   Additional Customer Warranties. Customer represents, warrants, and covenants to Provider that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Provider and processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable law.

10.4   DISCLAIMERS. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR

OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES PROVIDED FREE OF CHARGE, CONTENT AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER. FOR THE AVOIDANCE OF DOUBT, IN THE EVENT CUSTOMER HAS ELECTED TO SUBSCRIBE TO ANY SERVICE, WHICH IS DESIGNED TO PROVIDE RISK RELATED RECCOMENDATIONS OR SUGGESTIONS, IT IS SPECIFICALLY AGREED BETWEEN THE PARTIES THAT PROVIDER HAS NO LIABILITY FOR ANY DAMAGES, INCIDENT, LOSS OR OTHER EVENT WHICH MAY OCCUR IN CONNECTION WITH CUSTOMER'S USE OF, OR FAILURE TO USE ANY INFORMATION OR RECCOMENDATIONS OBTAINED FROM OR GENERATED BY SUCH SERVICE.

11.   Mutual Indemnification.

    11.1   Definitions.

        (a)   "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise; including any claim of infringement or misappropriation of a party's intellectual property rights.

        (b)   "**Losses**" means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

    11.2   Provider Indemnification. Provider shall indemnify, defend, and hold harmless from and against any and all Losses incurred by Customer resulting from any Action by a third party (other than an Affiliate of Customer) that Customer's use of the Services (excluding Customer Data) in accordance with this Agreement (including the Documentation) infringes or misappropriates such third party's Intellectual Property Rights. The above defense and indemnification obligations do not apply if (a) the allegation does not state with specificity that the Services are the basis of the Claim against Customer; (b) a claim against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by Provider, if the Services or use thereof would not infringe without such combination; (c) a claim against Customer arises from Services under an Order Form for which there is no charge; (d) failure to timely implement any modifications, upgrades, replacements, version updates, or enhancements made available to Customer by or on behalf of Provider; or (e) a claim against Customer arises from a Third-Party Services or Customer's breach of this Agreement, the Documentation or applicable Order Forms.

    11.3   Customer Indemnification. To the extent permitted by law and subject to the monetary limitations set forth in Florida Statute § 768.28, Customer shall indemnify, defend, and hold harmless Provider and its Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Provider Indemnitee**") from and against any and all Losses incurred by such Provider Indemnitee resulting from any Action by a third party (other than an Affiliate of a Provider Indemnitee) arise out of or result from, or are alleged to arise out of or result from: (a) Customer Data, including any processing of Customer Data by or on behalf of Provider in accordance with this Agreement;

(b) arising from Customer's use of the Services in an unlawful manner or in violation of the Agreement, the Documentation, or Order Form; (c) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Provider's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Provider; and (d) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement.

11.4   Indemnification Procedure. Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 11.2 or Section 11.3, as the case may be. The party seeking indemnification (the "**Indemnitee**") shall cooperate with the other party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action unless it unconditionally releases Indemnitee of all liability.

11.5   Mitigation. If any of the Services or Provider Materials are, or in Provider's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Rights, or if Customer's or any Authorized User's use of the Services or Provider Materials is enjoined or threatened to be enjoined, Provider may, at its option and sole cost and expense: (a) obtain the right for Customer to continue to use the Services and Provider Materials materially as contemplated by this Agreement; (b) modify or replace the Services and Provider Materials, in whole or in part, to seek to make the Services and Provider Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Provider Materials, as applicable, under this Agreement; or (c) by written notice to Customer, terminate this Agreement upon 30 days' written notice and require Customer to immediately cease any use of any such infringing Services upon the date of such notice. Customer will be entitled to a refund of any prepaid fees covering the remainder of the term of the terminated subscriptions

11.6   Sole Remedy. This Section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

12.   Limitations of Liability.

12.1   EXCLUSION OF DAMAGES. EXCEPT FOR INFRINGEMENT CLAIMS INVOLVING THE INTELLECTUAL PROPERTY RIGHTS OF EITHER PARTY, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

12.2   CAP ON MONETARY LIABILITY. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAYABLE BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "**FEES AND PAYMENT**" SECTION ABOVE, OR LIMIT EITHER PARTY'S: (1) OBLIGATIONS NOT TO INFRINGE ON THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (2) INDEMNIFICATION OBLIGATIONS, OR (3) LIABILITY ASSOCIATED WITH GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

13.   Miscellaneous.

13.1   Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: The sections titled "**Free Trial**," "**Fees and Payment**," "**Intellectual Property Rights**," "**Confidentiality**," "**Disclaimers**," "**Mutual Indemnification**," "**Limitations of Liability**," "**Refund or Payment upon Termination**," "**Surviving Provisions**" and "**Miscellaneous**" will survive any termination or expiration of this Agreement, and the section titled "**Protection of Customer Data**" will survive any termination or expiration of this Agreement for so long as Provider retains possession of Customer Data.

13.2   Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

13.3   Public Announcements. Provider may, without Customer's consent, issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement. Upon signing the applicable Order Form and these Terms, Provider may issue a press release announcing the relationship and the manner in which Customer will use the Service.

13.4   Notices. Notices given pursuant to this Agreement, will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) the second business day after mailing if sent by a nationally recognized overnight courier, signature required; (c) except for notices of termination or an indemnifiable claim ("**Legal Notices**"), which shall clearly be identifiable as Legal Notices, the day of sending by mail.

13.5   Entire Agreement. This Agreement, together with any Order Forms currently in effect, is the entire agreement between Provider and Customer regarding Customer's use of Services and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer issued purchase order or in any other Customer order documentation (excluding Order Forms) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order

Form, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

13.6 <u>Assignment</u>. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets provided such party provide written notice of such event. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.7 <u>Force Majeure</u>. In no event will either party be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments), when and to the extent such failure or delay is caused by any circumstances beyond such party's reasonable control (a "**Force Majeure Event**"), including (i) acts of God; (ii) flood, fire, earthquake, or explosion; (iii) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (iv) government order, law, or actions; (v) embargoes or blockades in effect on or after the date of this Agreement; (vi) national or regional emergency; (vii) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (viii) shortage of adequate power or transportation facilities. Either party may terminate this Agreement if a Force Majeure Event affecting the other party continues substantially uninterrupted for a period of 30 days or more. In the event of any failure or delay caused by a Force Majeure Event, the affected party shall give prompt written notice to the other party stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

13.8 <u>No Third-Party Beneficiaries</u>. There are no third-party beneficiaries under this Agreement.

13.9 <u>Waiver</u>. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

13.10 <u>Severability</u>. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

13.11 <u>Export Compliance</u>. The Services other Provider technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Provider and Customer each represents that it is not on any U.S. government denied-party list. Customer will not permit any Authorized User to access or use any Service in a U.S.-embargoed country or region (currently the Crimea, Luhansk or Donetsk regions, Cuba, Iran, North Korea, or Syria) or as may be updated from time to time on Provider's website or in violation of any U.S. export law or regulation.

13.12 <u>Provider Contracting Entity, Notices</u>. The Provider entity entering into this Agreement, the address to which Customer should direct notices under this Agreement, the law that will apply in any dispute

or lawsuit arising out of or in connection with this Agreement, and the courts that have jurisdiction over any such dispute or lawsuit, depend on where Customer is domiciled are as stated on the following table:

For Customers domiciled in North America				
If Customer is domiciled in:	**The Provider entity entering into this Agreement is:**	**Notices should be addressed to:**	**Governing law is:**	**Courts with exclusive jurisdiction are:**
Any country in North America	Ungerboeck Systems International, LLC	100 Ungerboeck Park O'Fallon, MO 63368 Attn: Sales Operations, with a copy to Attn.: Legal Department	Florida and controlling United States federal law	Polk County, Florida or the U.S. District Court in and for the Middle District of Florida, Tampa Division, U.S.A.

For Customers domiciled in Europe, the Middle East, or Africa				
If Customer is domiciled in:	**The Provider entity entering into this Agreement is:**	**Notices should be addressed to:**	**Governing law is:**	**Courts with exclusive jurisdiction are:**
Any country other than France or the United Kingdom	Ungerboeck Systems International GmbH	Kaiserstrasse 72 76133 Karlsruhe Germany Attn: Director, EMEA Sales Operations, with a copy to Attn.: Legal Department	Germany	Munich, Germany
United Kingdom	Ungerboeck Systems International GmbH	Kaiserstrasse 72 76133 Karlsruhe Germany Attn: Director, EMEA Sales Operations, with a copy to Attn.: Legal Department	England and Wales	London, England
France	Ungerboeck Systems International GmbH	Kaiserstrasse 72 76133 Karlsruhe Germany Attn: Director, EMEA Sales Operations, with a copy to Attn.: Legal Department	France	Paris, France

For Customers domiciled in Asia or the Pacific Region				
If Customer is domiciled in:	**The Provider entity entering into this Agreement is:**	**Notices should be addressed to:**	**Governing law is:**	**Courts with exclusive jurisdiction are:**
Any country other than Mainland China, Hong Kong, Macau, and Taiwan	Ungerboeck Systems International Pty	34 Station St, Nundah, QLD 4012 Australia Attn: APAC Sales Operations, with a copy to Attn.: Legal Department	Brisbane, Queensland, Australia	Brisbane, Queensland, Australia

Mainland China, Hong Kong, Macau, and Taiwan	Ungerboeck Systems International Limited	34 Station St, Nundah, QLD 4012 Australia Attn: APAC Sales Operations, with a copy to Attn.: Legal Department	Hong Kong	Hong Kong

13.13   Agreement to Governing Law and Jurisdiction. Each party agrees to the applicable governing law listed in the table above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

13.14   Local Law Requirements: France.

With respect to Customers domiciled in France, the following provisions shall be applicable:

(a)   Section 10.2 "Additional Provider Warranties" is replaced by the following:

Additional Provider Warranties. During an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Provider will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Third-Party Products and Services" section above, Provider will not materially decrease the overall functionality of the Services.

(b)   a new Section 13.10.1 is added as follows:

13.10.1 Exclusions. To the extent permitted under applicable law, the provisions of Article 1222 and 1223 of the French Civil Code shall in no event be applicable.

(c)   a new Section 13.10.2 is added as follows:

13.10.2 Language. The Parties agree that this Agreement and/or any Documentation and other information or policies referenced or attached to this Agreement may be in English.

(d)   a new Section 13.10.3 is added as follows:

13.10.3 Independence Towards Third Parties. For the avoidance of doubt, any third parties, including those Customers contracted with to provide consulting and/or implementation services in relation to the Services, are independent of Provider and Provider shall in no event be responsible for their acts or omissions, including when such acts or omissions impact Customer's use of the Services.

(e)   In the event of any conflict between any statutory law in France applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

13.15   Local Law Requirements: Germany. With respect to Customers domiciled in Germany, Section 10 "Representations and Warranties", Section 11.6 "Sole Remedy", and Section 12 "Limitations of Liability" of this Agreement are replaced with the following sections respectively:

14.   WARRANTIES FOR CUSTOMERS DOMICILED IN GERMANY

14.1   Agreed Quality of the Services. Provider warrants that during an applicable subscription term (a) this Agreement, the Order Forms and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, (b) Provider will not materially decrease the overall security of the Services, (c) the Services will perform materially in accordance with the applicable Documentation, and (d) subject to the "Third-Party Products and Services" section above, Provider will not materially decrease the overall functionality of the Services.

14.2   Content. Provider is not designating or adopting content which is publicly available or from a third party as its own and assumes no warranty or liability for such content. The parties agree that the "10.3 Reporting of Defects," "10.4 Remedies resulting from Defects" and "10.6 Exclusions" section shall apply accordingly to Provider's responsibility in the event Provider is deemed responsible for such content by a court of competent jurisdiction.

14.3   Reporting of Defects. Customer shall report any deviation of the Services from the "10.1 Agreed Quality of the Services" section ("**Defect**") to Provider in writing without undue delay and shall submit a detailed description of the Defect or, if not possible, of the symptoms of the Defect. Customer shall forward to Provider any useful information available to Customer for rectification of the Defect.

14.4   Remedies Resulting from Defects. Provider shall rectify any Defect within a reasonable period of time. If such rectification fails, Customer may terminate the respective Order Form provided that Provider had enough time for curing the Defect. In the "Refund or Payment upon Termination" section, sentence 1 and sentence 3 shall apply accordingly. If Provider is responsible for the Defect or if Provider is in default with the rectification, Customer may assert claims for the damage caused in the scope specified in the "Limitation of Liability" section below.

14.5   Defects in Title. Defects in title of the Services shall be handled in accordance with the provisions of Section 11 "Mutual Indemnification".

14.6   Exclusions. Customer shall have no claims under this Section 10 "Representations and Warranties" if a Defect was caused by the Services not being used by Customer in accordance with the provisions of this Agreement, the Documentation, and the applicable Order Forms.

14.7   Liability resulting from Indemnification for Customers domiciled in Germany. The below "Limitation of Liability" section shall apply to any claims resulting from this "Mutual Indemnification" section.

15.   LIMITATION OF LIABILITY FOR CUSTOMERS DOMICILED IN GERMANY

15.1   Unlimited Liability. The Parties shall be mutually liable without limitation

(a)   in the event of willful misconduct or gross negligence,

   (b) within the scope of a guarantee taken over by the respective party,

   (c) in the event that a defect is maliciously concealed,

   (d) in case of an injury to life, body, or health, or

   (e) according to the German Product Liability Law.

  15.2 <u>Liability for Breach of Cardinal Duties</u>. If cardinal duties are infringed due to slight negligence and if, as a consequence, the achievement of the objective of this Agreement including any applicable Order Form is endangered, or in the case of a slightly negligent failure to comply with duties, the very discharge of which is an essential prerequisite for the proper performance of this Agreement (including any applicable Order Form), the parties' liability shall be limited to foreseeable damage typical for the contract. In all other respects, any liability for damage caused by slight negligence shall be excluded.

  15.3 <u>Liability Cap</u>. Unless the parties are liable in accordance with "Unlimited Liability" section above, in no event shall the aggregate liability of each party together with all of its Affiliates arising out of or related to this Agreement exceed the total amount paid by Customer and its Affiliates hereunder for the Services giving rise to the liability in the 12 months preceding the first incident out of which the liability arose. The foregoing limitation will not limit Customer's and its Affiliates' payment obligations under the "Fees and Payment" section above.

  15.4 <u>Scope</u>. With the exception of liability in accordance with the "Unlimited Liability" section, the above limitations of liability shall apply to all claims for damages, irrespective of the legal basis including claims for tort damages. The above limitations of liability also apply in the case of claims for a party's damages against the respective other party's employees, agents, or bodies.

  15.5 <u>Local Law Requirements: Spain</u>. With respect to Customers domiciled in Spain, in the event of any conflict between any statutory law in Spain applicable to Customer, and the terms and conditions of this Agreement, the applicable statutory law shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Ungerboeck Systems International, LLC   City of Lakeland dba RP Funding Center

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

                Attest: _____
                   Kelly S. Koos, City Clerk

                   Approved as to form and correctness:

                By:_____
                   Palmer C. Davis, City Attorney

EXHBIT A

SERVICE LEVEL AGREEMENT ("SLA")

For the purposes of this Exhibit Provider is referred to as Ungerboeck Systems International, LLC

The purpose of the Service Level Agreement is to provide each Customer with the expectations within which issues reported with Momentus Technologies Software will be captured, logged, reported on, and resolved. The responsibilities of both parties are included in this SLA. This SLA describes the **standard** service level guidelines followed by the Customer Support Services team members. In addition to standard support, additional services may be purchased.

1. SUBMITTING ISSUES AND MONITORING PROGRESS.
Customers shall have one named contact and one backup contact to report incidents to by creating a support ticket and monitor their progress via Momentus Technologies Support Center: https://supportcenter.ungerboeck.com unless explicitly changed in their success plan.

2. INITIAL RESPONSE TIMES

Severity	Target Response Time
Critical	1 hour
High	4 business hours
Medium	16 business hours
Low	24 business hours

3. DEFINITIONS AND RESPONSE GUIDELINES FOR MOMENTUS TECHNOLOGIES FUNCTIONALITY ISSUES

1. **Critical**
Catastrophic impact to mission critical functionality resulting in extremely serious interruptions to the Services.
Examples of Critical issues include:
- System is down causing users to experience a total loss of service
- Inability to use a feature or functionality that is currently relied upon for mission critical and time sensitive functionality that does not have any manual workaround
- Security of data integrity is severely compromised

Momentus Technologies Responsibilities for Critical issues:
- Momentus Technologies hours of operation are 24/7/365 for Critical issues
- Momentus Technologies has a 24x7 commitment until resolution
- Momentus Technologies will provide regular updates to Customer regarding progress towards resolution

Customer Responsibilities for Critical issues:
- Enter a ticket through https://supportcenter.ungerboeck.com ensuring that "Critical priority" has been chosen at time of ticket submission.
- Designate resource(s) to be available 7x24 to work with Momentus Technologies on resolution
- Allow Momentus Technologies to view the error and control your computer using remote connectivity software such as Teams
- Provide all the relevant information including but not limited to:
    i. a written description of the specific steps to recreate the issue including screen prints;
    ii. full text copies of all error messages, including information in any Details window;
    iii. diagnostic window information (click Shift+F9 on any window);
    iv. whether this error occurs for all users or only specific users and on all computers or only specific computers

For performance issues, Customers will be asked to provide:
    i. accurate timing (to the second) with comparison to other machines (if relevant); and
    ii. hardware specifications of an affected user's computer (RAM and processor speed).

2. **High**
Significant impact to mission critical functionality resulting in serious interruptions to normal Services. In a production system, mission critical tasks cannot be performed.
Examples of High issues include:
- Issues that are impairing mission critical functionality
- Inability to deploy a mission critical feature and deployment date is imminent and not flexible
Customer shall remain accessible for troubleshooting from the time a High issue is logged until such time as it is resolved.

3. **Medium**
Significant impact to important tasks resulting in serious interruptions to normal Services. In a production system, important tasks cannot be performed.
Examples of Medium issues include:
- Issues that are impairing important functionality
- Inability to deploy a mission critical feature, but deployment is not imminent and is flexible
Customer will respond to Momentus Technologies' requests for additional information and implement recommended solutions in a timely manner.

4. **Low**
The problem results in interruptions to normal operations.
Customer will respond to Momentus Technologies' requests for additional information and implement recommended solutions in a timely manner.

4. SERVICE LEVEL GUIDELINES

Momentus Technologies' monthly expected uptime Service Level is 99.9%. This service level only applies to production systems. Downtime refers to periods of time during which the software cannot be accessed. Downtime does not include the following:

- The period when the Services are not available due to Planned Downtime
- Performance or availability issues due to a Force Majeure Event
- Performance or availability issues that resulted from Customer's or third-party hardware, software, or services
- Performance or availability issues that resulted from actions or inactions of Customer or third parties related to, including but not limited to hardware, machinery, and equipment
- Performance or availability issues that resulted from actions or inactions of Customer or Customer's employees, agents, contractors, or vendors or anyone gaining access to Momentus Technologies' network by means of Customer's passwords or system
- Performance or availability issues that were caused by Customer's use of the Services after Momentus Technologies advised Customer to modify its use of the Services, if Customer did not modify its use as advised
- Intermittent periods of Downtime that are ten minutes or less in duration
- **Performance or availability issues due to** trial offers, early adopter programs and/or demos (as determined Momentus Technologies).

5. TECHNICAL SERVICES PROJECTS, CUSTOM REPORTS AND APPLICATION PROGRAMMING INTERFACE (API) SUPPORT

Technical service projects, custom reports and API support are not covered under this SLA. Customers may purchase enhanced support or additional services that could cover these items or customers may request technical consulting or paid support to cover these incidents.

6. PRODUCT ENHANCEMENTS

Customers may provide product enhancement suggestions on the Provider idea forums at supportcenter.ungerboeck.com. These suggestions are regularly reviewed and may be considered for upcoming releases. From time to time, Momentus Technologies may answer questions or respond to specific suggestions on the forums but has no obligation to do so.

7. REGULAR BUSINESS HOURS

Momentus Technologies local support teams are available at the following times:

- North America: Monday through Friday, 8:00 a.m. to 5:00 p.m. US Central Standard Time (CST)
- Europe: Monday through Friday, 8:00 a.m. - 5:00 p.m. Central European Time (CET)
- Asia-Pacific: Monday through Friday, 8:00 a.m. - 5:00 p.m. Australian Eastern Standard Time (AEST)

Support for non-critical issues is not offered outside of regular business hours. However, support is available 24/7 for critical issues. Issues handled outside the local office hours will be handled in English only.

8.   SCOPE OF MAINTENANCE SERVICE.

Maintenance Service is defined as access to software upgrades, corrections, and technical operating assistance for all licensed software modules. Other services, including, but not limited to, those listed below are considered outside the scope of Maintenance Service:

- Any customization of the application not included in the base offering whether by a third-party or Momentus Technologies Software or any resulting complication or issue from said customization
- Any customization outside of the application that accesses the Momentus Technologies Software database such as custom reports, custom interfaces, BI tools, etc. whether by a third-party or Momentus Technologies Software or any resulting complication or issue from said customization
- Any direct modification of the data contained in the Momentus Technologies Software database or any resulting complication or issue from said direct modification
- Any direct modification of the database schema whether by the addition of columns within Momentus Technologies Software-supplied tables, the addition of tables, triggers, stored procedures, or indexes outside the scope of the Momentus Technologies Software-supplied schema or any resulting complication or issue from said direct modification
- Any application performance issue regardless of potential cause when the application is installed outside the Momentus Technologies Hosting environment
- Any issue of any type encountered in a version of the application that is past its Mainstream Support date
- Any issue of any type encountered using hardware that does not meet the current published technical guidelines

For assistance outside the scope of maintenance service, Momentus Technologies reserves the right to charge the customer for the time spent.

9.   UPGRADED CUSTOMER SUCCESS PLANS

In addition to the standard Momentus Technologies support, customers with paid success plans are entitled to additional benefits such as a named success manager for escalations.

10. END OF SUPPORT

From time to time, Momentus Technologies will discontinue support for older versions of the Services after a period of time. Customers on unsupported versions will receive support only after migrating to supported versions of the Services.

11. THIRD PARTY TOOLS AND INTEGRATION

Customers will be asked to turn off third party tools and integration when troubleshooting issues including but not limited to performance related issues.