

TARGETED INTERACTIVE ADVERTISING

Terms and Conditions

1. Service and Support

1.1 TIA Service. FocalPoint makes available over the Internet certain targeted interactive advertising tools and resources that are used to create, launch and manage online e-mail advertising campaigns (the “TIA Service”). On the terms and conditions specified herein, Client may access and use the TIA Service during any applicable Usage Period (as defined below) for the respective numbers of e-mail marketing campaigns (“Campaigns”) and e-mails per campaign (“E-mails”) that are specified in any document that references this Agreement and is labeled as a “Schedule of Service” and that is executed, whether in printed or electronic form, by Client and by FocalPoint from time to time (any such document, a “Schedule of Service”). Use of the TIA Service pursuant to any given Schedule of Service shall be subject to any other restrictions or limitations stated in such Schedule of Service. All Campaigns shall be completed, and all E-mails shall be sent, by or on behalf of Client under such Schedule of Service within the first year (or such other period of time as is specified in such Schedule of Service) after the date that such Schedule of Service is executed and submitted to FocalPoint by Client (each such period, a “Usage Period”). All rights of Client to use and access the TIA Service pursuant to any given Schedule of Service shall expire upon the earlier to occur of: (i) Client’s completion of the number of Campaigns, or sending of the maximum number of E-mails, specified in such Schedule of Service; or (ii) expiration of the applicable Usage Period. Client shall be deemed to have waived its rights as of the end of the Usage Period to conduct or complete any further Campaigns (or portions of Campaigns), and to send any further E-mails, under such Schedule of Service, regardless of how many Campaigns have then been completed and how many E-mails have then been sent. Client and FocalPoint each agree to give force and effect to documents that, in accordance with this Agreement and applicable law, are signed or executed electronically. Installation and training on the use of the TIA Service or the FocalPoint Web Site (as defined in Section 1.2) are the sole responsibility of Client, unless such expressly otherwise provided in an applicable Schedule of Service.

1.2 Documentation. All use of the TIA Service by Client shall be in accordance with these Terms and Conditions and any applicable documentation and policies published or otherwise made available by FocalPoint from time to time (collectively, the “Documentation”), including but not limited to, any documentation that FocalPoint makes available on its Web site (currently www.FocalPointEmarketing.com, together with any replacement or successor site, the “Web Site”). FocalPoint shall not be responsible for complying, and disclaims any intention of complying, with any special instructions, additional specifications, or requirements regarding the TIA Service, or regarding any Campaigns or E-mails, that are not specifically identified in this Agreement, an applicable Schedule of Service, or the Documentation.

2. Restrictions and Responsibilities

2.1 Prohibited Activities. This is an Agreement for the provision and use of the TIA Service and Client is not granted a license to any software by this Agreement. Client shall not, directly or indirectly, in whole or in part: (i) reverse-engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, underlying structure, processes, or algorithms of, or contained in or used or made available through, the TIA Service, any component thereof, or any software, documentation, or data relating to the TIA Service or used by FocalPoint in providing the TIA Service (all of the foregoing, collectively, the “FocalPoint Resources”); (ii) remove, obliterate, or cancel from view any proprietary notices, legends, or labels from any FocalPoint Resources; (iii) modify, translate, or create derivative works based on any FocalPoint Resources; or (iv) copy, distribute, pledge, assign, or otherwise transfer, or encumber any rights to, any FocalPoint Resources. Client shall use the TIA Service solely for its lawful, legitimate, internal business purposes, and Client shall not use the TIA Service or any other FocalPoint Resources for timesharing or service bureau purposes or otherwise for the benefit of any third party. If Client is using the TIA Service in any then-current member state of the European Community, the foregoing prohibition against modifying, translating, reverse-engineering, decompiling, disassembling, and creating derivative works of the TIA Service and the other FocalPoint Resources shall not affect Client’s rights under any legislation implementing the European Community Council Directive on the Legal Protection of Computer Programs.

2.2 Contact Lists. Client agrees that, as between Client and FocalPoint, any contact lists and similar or related information that are utilized in the TIA Service (collectively, the “Contact Lists”) are the valuable and irreplaceable assets of FocalPoint. As such, Client shall not attempt in any manner to download, export, extract, or otherwise develop or utilize any content of any of the Contact Lists except as occurs in the ordinary course of using the TIA Service, as made available to Client by FocalPoint hereunder, in accordance with the Documentation.

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2.3 Confidentiality. Client acknowledges that the FocalPoint Resources and other information and materials disclosed to Client under this Agreement (collectively, “Confidential Information,” and including, but not limited to, Documentation, product designs and plans, pricing schedules, contact lists, and technical information) constitute confidential and proprietary information and trade secrets of FocalPoint and its affiliates and suppliers. Client shall maintain the Confidential Information in strict confidence and shall not publish or disclose to third parties any Confidential Information without FocalPoint’s prior written consent. In addition, Client shall not transfer, sell, or assign any Confidential Information. The Confidential Information is provided solely for use by Client in connection with this Agreement, and Client shall ensure that all persons under its direction or control refrain from any unauthorized reproduction or disclosure of Confidential Information. Client agrees that any breach of this Section, or of Sections 2.1, 2.2, or 2.4, by it or any of its users, agents, employees, or representatives shall cause irreparable injury to FocalPoint that cannot be compensated for in damages and that, in such an event, in addition to any other remedies, FocalPoint shall be entitled to seek and obtain injunctive relief, without the necessity of proving actual damages or posting bond.

2.4 Marks. Client acknowledges and agrees that the names and logos associated with the TIA Service and FocalPoint’s other company names and logos and all related product and service names, trademarks, trade names, trade dress, design marks, slogans, and the like (collectively, the “Marks”) are the property of FocalPoint or its affiliates or suppliers. Client is not authorized to use any of the Marks in any advertising or publicity, or in any other commercial manner, without the prior written consent of FocalPoint. Client’s use of the TIA Service hereunder confers no title or ownership in the TIA Service, the other FocalPoint Resources, or the Marks, and nothing in this Agreement shall be construed as a sale of any right, title, or interest in the TIA Service, the other FocalPoint Resources, or the Marks, except as expressly provided herein. All ownership rights in and to the TIA Service, the other FocalPoint Resources, and the Marks shall remain in FocalPoint or its third-party affiliates and suppliers, as the case may be, and FocalPoint and such affiliates and suppliers retain any rights not expressly granted herein. FocalPoint may reproduce, use, and display Client’s name, trademarks, and logos as necessary for performance of FocalPoint’s obligations hereunder.

2.5 Client Information. In using the TIA Service or otherwise in connection with this Agreement, Client may provide certain information (such as, for example, names, contact information, or other information regarding the intended recipients of E-mails) to FocalPoint. FocalPoint may use any such information, as well as technical and statistical information about Client’s use of the TIA Service, to tailor its presentations to Client, to enable or facilitate Client’s use of the TIA Service or specific features or functions thereof, or to correspond or communicate with Client. If Client was referred to FocalPoint, or entered into this Agreement, as a result of solicitation by a third-party marketing partner of FocalPoint, FocalPoint may share any such information received or about Client with such marketing partner. Other than for any such third-party marketing partners, FocalPoint will not disclose information that Client provided to FocalPoint hereunder, or other confidential information of or about Client, to third parties that Client has not approved of in advance, and FocalPoint will not otherwise sell or redistribute any such information of or about Client without obtaining Client’s prior consent.

2.6 Minimum System Requirements. Client, at its expense, shall provide and maintain in good repair such personal computers and related software, hardware, and equipment, as well as Internet accounts and access, as are required for it and its authorized end-users to access and use the TIA Service and that at least meet the minimum applicable system requirements therefor, as such requirements are updated by FocalPoint from time to time, in its discretion (the “Minimum System Requirements”). The Minimum System Requirements currently include a Windows PC, with Microsoft Internet Explorer 6.0 or a newer release installed, and a stable high-speed Internet connection. While the TIA Service may possibly work in a limited manner on Macintosh, UNIX, and other platforms, there is no guarantee of any functionality whatsoever of the TIA Service on non-Windows platforms. Similarly, the TIA Service may possibly work in a limited manner using a Web browser other than Internet Explorer (such as Netscape Navigator and Mozilla Firefox), but there is no guarantee of any functionality whatsoever of the TIA Service using Web browsers other than Internet Explorer. Client, at its expense, shall promptly implement any change to its personal computers and related software, hardware, equipment, and method of Internet access that is required to accommodate any changes from time to time to the Minimum System Requirements. Failure of hardware, software, equipment, or Internet access to meet the Minimum System Requirements may result in the

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inability, or in impaired ability, to access or use the TIA Service, and FocalPoint shall have no responsibility or liability with respect thereto. Client shall solely bear the risk of loss of any such hardware, software, equipment, or Internet access.

3. Fees and Payment

3.1 Fees. Unless expressly otherwise provided in any given Schedule of Service, Client agrees to pay FocalPoint the fees for the use of the TIA Service under any Schedule of Service (the "Fees") in accordance with FocalPoint's fee schedule in force and effect as of the date such Schedule of Service is executed and submitted by Client, as such fee schedule is updated from time to time by FocalPoint and published or posted on the Web Site or otherwise made available by FocalPoint (with the fees that apply under such fee schedule currently based on several criteria, including, but not limited to, the number of Campaigns and the maximum number of E-mails in each Campaign). The fees stated in any updated or revised fee schedule shall take force and effect immediately upon being published, posted, or made available by FocalPoint, except that no such updated or revised fee schedule shall apply to the Fees payable under any Schedule of Service executed and submitted by Client prior to when such updated or revised schedule was first published, posted, or made available by FocalPoint. Fees payable for the use of the TIA Service shall be invoiced at the commencement of the Usage Period applicable to each Schedule of Service. Payment of Fees with respect to any invoice is due and payable due upon receipt of the invoice by Client and in accordance with the terms of the invoice. Client must notify FocalPoint in writing, with reasonable supporting documentation attached, of any Fees or charges disputed in good faith within thirty (30) days after receipt of the applicable invoice, or Client shall be deemed to agree to all Fees stated on such invoice. If Client so notifies FocalPoint of a dispute, Client shall continue to be responsible for paying the undisputed charges stated on the applicable invoice, in accordance herewith. Payment of Fees shall be made by cash, check, or credit card, or by credit verification and acceptance by FocalPoint. Notwithstanding the foregoing provisions of this Section, FocalPoint may, in its sole discretion, request advance payment of Fees, in whole or in part, from Client with respect to any Schedule of Service, and FocalPoint may change its Fees and payment terms at any time and from time to time. FocalPoint may refuse to accept, cancel, or re-schedule any Schedule of Service if FocalPoint determines, in its sole discretion, that Client's financial condition or previous payment record so warrants. All Fees are non-refundable, except as expressly provided herein or within any Schedule of Service. If Client fails, through no fault of FocalPoint, to utilize all the TIA Service for all Campaigns (or portions thereof) and the maximum numbers of E-mails purchased under any given Schedule of Service within the applicable Usage Period, Client shall forfeit its rights to the unused Campaigns (or portions thereof) and E-mails, and FocalPoint shall have no obligation to extend the Usage Period or take any other action with respect thereto. Notwithstanding the immediately preceding sentence, FocalPoint may, in its sole discretion, on a case-by-case basis, extend the Usage Period or otherwise allow for some or all of such unused Campaigns or E-mails to be used by Client through the TIA Service, without prejudice or setting of precedent.

3.2 Late Charges. Amounts for which payment has not been received by FocalPoint on or before the applicable due date, in accordance with the terms of the applicable invoice, shall be subject to and accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted under applicable law. Client shall be liable for all attorneys' and collection agency fees and charges incurred in connection with collection of past due amounts hereunder. If Client fails to make payment of any Fees to FocalPoint in accordance herewith and in a timely manner, then in addition to any other available rights and remedies, FocalPoint shall have the right to immediately suspend or disable Client's access to and use of the TIA Service until Client has paid FocalPoint all outstanding amounts then due and payable hereunder in full, together with any applicable interest charges, in accordance herewith.

3.3 Taxes. Fees for the TIA Service and any other amounts payable hereunder, are exclusive of all applicable taxes (except for taxes based on FocalPoint's net income) and telecommunication charges, unless expressly stated otherwise in an applicable Schedule of Service. To the extent permissible by law, Client shall pay, and FocalPoint reserves the right to collect in arrears, any applicable sales, use, excise, or other taxes and telecommunication charges, or other charges of any nature whatsoever, now or hereafter imposed or assessed on FocalPoint by federal, state, county, or local government authority, with respect to the providing of the TIA Service to Client hereunder.

4. Term & Termination

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4.1 Term. This Agreement shall take force and effective as of the Effective Date and shall continue in force and effect until terminated in accordance herewith.

4.2 Termination by Client. Client may terminate this Agreement (and all Schedules of Service then in force and effect) at any time by sending an e-mail notification of such termination to administrator@foclpoint.com or by sending written notification of such termination to FocalPoint Marketing, LLC, 900 Route 9 North, Woodbridge, NJ 07095, USA. Any such notification shall specifically and fully identify Client and state Client's contact information (including company name, address, and telephone number) and reference this Agreement. No refunds shall be issued if Client terminates this Agreement.

4.3 Termination by FocalPoint. FocalPoint may terminate this Agreement and any Schedule of Service then in force and effect at any time, with or without cause, and with or without notice. As used herein, "cause" means any breach by Client of any term or condition of this Agreement, any misuse or illegal, fraudulent, or improper use of the TIA Service (including, but not limited to, any use of the TIA Service other than in accordance with the applicable Documentation), or any violation or failure to comply by Client with any applicable law, regulation, rule, or ordinance, including, but not limited to, any violation of the CAN-SPAM Act of 2003, as amended from time to time (the "Act") or any other applicable laws, regulations, rules, and ordinances existing now or in the future in any relevant jurisdiction that relate to spamming or commercial e-mail, telemarketing, facsimile advertising, privacy, confidentiality, obscenity, harassment, defamation, libel, intellectual property or other proprietary rights, or any other relevant subject area) and all applicable policies and procedures of FocalPoint, as modified and amended by FocalPoint from time to time, regarding use of the TIA Service, including, but not limited to, any policies of Client relating to privacy or confidentiality (all of the foregoing acts, laws, regulations, rules, ordinances, policies, and procedures, as in effect at any given time, collectively, the "Applicable Laws"). FocalPoint shall not be liable to Client or to any third party should FocalPoint exercise its right provided above to at any time terminate this Agreement or any Schedule of Service, except that, upon any such termination by FocalPoint other than a termination for cause, as described above, FocalPoint will provide Client a proportionate refund of any Fees previously paid by Client to FocalPoint under any Schedule of Service with respect to which the Usage Period has not yet expired, as prorated for any Campaigns and E-mails that Client has not used at the time of such termination. If FocalPoint terminates this Agreement for cause, as described above, no refund shall be issued.

5. Legal Compliance and Indemnification

5.1 Compliance. FocalPoint will use commercially reasonable efforts to maintain the TIA Service so that Client, in using the TIA Service in accordance with the Documentation, may comply with the Act. Nevertheless, as between the parties, Client is solely and exclusively responsible for complying with (and Client shall comply with) all Applicable Laws. Client warrants and covenants that any materials and information (such as, for example, message headers, subject lines, and message content) that Client from time to time provides or supplies to FocalPoint or in using the TIA Service shall conform to the standards and other requirements set forth in the ACT. Client further warrants and covenants that: (i) Client shall use the TIA Service, and otherwise perform hereunder, only in compliance with this Agreement and all Applicable Laws; (ii) Client shall not misrepresent its identity, or the identity of any other person or entity, in messages or content transmitted or distributed through the use of the TIA Service; (iii) Client shall not transmit through use of the TIA Service (or otherwise provide to FocalPoint in connection with this Agreement) content or information that is unlawful, threatening, abusive, harassing, libelous, deceptive, fraudulent, invasive of another's privacy, violative of, or infringing in any way upon, the rights of others, vulgar, obscene, or otherwise contains objectionable material of any kind or nature, under the Applicable Laws or standards of any relevant jurisdiction, including, but not limited to, any transmissions of content that constitute or encourage conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any Applicable Law; and (iv) Client shall not transmit through use of the TIA Service any content that contains a virus, trojan horse, worm, or other disabling device or harmful component (including, but not limited to, any spyware, adware, or malware, any bots or spiders, or anything similar or analogous) or that that cannot be exported without prior written government authorization (such as, for example, certain encryption software). If FocalPoint at any time, or from time to time, believes that any content transmitted or distributed by Client through use of the TIA Service, or that Client's use of the TIA Service, is or may be (or is alleged to be) in breach or violation, or may cause Client to be in breach or violation, of the warranties set

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forth above in this Section, FocalPoint may, in its sole discretion, without notice, and without limiting any other of its rights and remedies, remove any such content, halt the running by Client of any Campaign, or suspend or in any other way prohibit Client's use of the TIA Service, until all such content and use, and Client, is no longer in breach or violation of such warranties. In addition, any breach by Client of this Section shall constitute grounds for FocalPoint to immediately disable or suspend Client's access to and use of the TIA Service and for FocalPoint to terminate this Agreement.

5.2 Indemnity. Client shall indemnify, defend and hold FocalPoint and its officers, directors, employees, suppliers, and affiliates (collectively, the "Indemnitees") harmless from and against any claim, suit, action, or proceeding that arises out of or relates to any actual or alleged breach by Client of any of the warranties or other obligations set forth in Section 5.1 or that otherwise arises out of or relates to Client's use of the TIA Service (including, but not limited to, claims relating to the transmission of unsolicited messages or content or relating to any errors in data or distribution information provided by Client), and Client shall pay any damages, losses, liabilities, settlements, penalties, fines, costs, and expenses (including, but not limited to, court costs and attorneys' fees) suffered or incurred by any of the Indemnitees in connection with any such claim, suit, action, or proceeding. Although FocalPoint has no obligation to monitor any content provided by Client or Client's use of the TIA Service, FocalPoint may do so if and as it deems appropriate.

FocalPoint shall indemnify and hold Client harmless from and against any claim, suit, action, or proceeding that arises out of or relates to a violation of the Applicable Laws or standards of any jurisdiction that is exclusively caused by FocalPoint and which arises out of or relates to Client's use of the TIA Service set forth hereunder. FocalPoint shall pay damages, losses, liabilities, settlements, penalties, fines, costs, and expenses (including, but not limited to, court costs and attorneys' fees) suffered or incurred by Client in connection with any such claim, suit, action, or proceeding. Provided always, however, that the maximum amount payable by FocalPoint for any and all liability under this section shall not be in excess of five times (5X) the amount calculated pursuant to Section 6.3 of this Agreement.

6. DISCLAIMERS AND LIMITATION OF LIABILITY

6.1 DISCLAIMER. FOCALPOINT DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, RELATING TO THE TIA SERVICE OR THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT.

6.2 NO INDIRECT DAMAGES. IN NO EVENT SHALL FOCALPOINT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR OTHER INDIRECT DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR OTHER MONETARY LOSS, LOSS OR INTERRUPTION OF DATA OR COMPUTER TIME OR AVAILABILITY, ALTERATION OR ERRONEOUS TRANSMISSION OF DATA, ACCURACY, TIMELINESS, OR AVAILABILITY OF DATA, UNAUTHORIZED ACCESS TO OR USE OF DATA PROCESSED OR TRANSMITTED BY, TO, OR THROUGH THE TIA SERVICE, PROGRAM ERRORS, OR DAMAGES RELATING TO PATENT, TRADEMARK, OR COPYRIGHT INFRINGEMENT OR MISAPPROPRIATION OF TRADE SECRETS) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER FOCALPOINT KNOWS OR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 LIMITATION OF LIABILITY. FOCALPOINT'S TOTAL, CUMULATIVE, AND AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THE TIA SERVICE OR THIS AGREEMENT, WHETHER TO CLIENT OR ANY THIRD PARTY, REGARDLESS OF THE FORM OF ACTION, AND NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT OR ANY PROVISION HEREOF, SHALL IN NO EVENT EXCEED AN AMOUNT EQUAL TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO FOCALPOINT HEREUNDER DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE OF THE FIRST EVENT, ACT, OR OMISSION GIVING RISE TO ANY SUCH LIABILITY.

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7. GENERAL

7.1 Entire Agreement. This Agreement, together with any Schedules of Services or other exhibits or attachments hereto or thereto, and any amendments to any of the foregoing, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior or contemporaneous representations, statements, understandings, and agreements, whether written or oral, relating to the subject matter hereof. Client acknowledges that it has not been induced to enter into this Agreement or any Schedule of Service by any representation or warranty not set forth in this Agreement. In the event of any conflict of these Terms and Conditions with the terms of any Schedule of Service, these Standard Terms and Conditions shall prevail. Except as expressly provided herein, no purchase order or other document issued solely by Client shall in way alter, affect, or add to these Terms and Conditions. The headings and captions in this Agreement are intended for convenience of reference only and shall not affect interpretation of this Agreement.

7.2 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed severed from this Agreement and all other provisions shall remain in full force and effect.

7.3 Survival. The provisions of this Agreement, and the rights, duties and obligations of the parties hereunder and under any Schedule of Service, which by their nature are intended to survive the term of this Agreement or the expiration or termination of any Schedule of Service, shall survive and continue as valid and enforceable rights, duties, and obligations.

7.4 Governing Law. This Agreement and all performance hereunder shall be governed by, and construed and enforced in accordance, with the laws of the State of New Jersey, as such are applicable to contracts made, executed, and wholly performed in New Jersey, and without regard to conflicts of laws principles. Subject to Section 7.5, the exclusive venue for any actions and proceedings arising out of or relating to, this Agreement shall be the state or federal courts situated in the State of New Jersey, and each party hereby irrevocably submits and consents to the personal and subject matter jurisdiction of such courts and irrevocably waives any objection or claim that such courts lack personal jurisdiction over such party or otherwise do not constitute an appropriate and convenient venue for any such actions. Client agrees that no action arising out of this Agreement, regardless of form or the basis of the claim, may be brought by Client more than one (1) year after the cause of action has arisen (or if multiple causes, from the date the first such cause arose). IN ANY ACTION OR PROCEEDING COMMENCED TO ENFORCE ANY RIGHT OR OBLIGATION OF EITHER OF THE PARTIES UNDER THIS AGREEMENT OR OTHERWISE WITH RESPECT TO THE SUBJECT MATTER HEREOF, CLIENT HEREBY IRREVOCABLY WAIVES ANY RIGHT CLIENT MAY NOW HAVE OR HEREAFTER POSSESS TO A TRIAL BY JURY.

7.5 Dispute Resolution. If any dispute arises in connection with this Agreement, or any breach hereof, such dispute shall be addressed in accordance with this Section. Upon either party providing written notice to the other of such a dispute, the parties shall promptly confer and attempt, in good faith, to resolve the dispute informally. If the dispute is not resolved within thirty (30) days after delivery of such a written notice, then, upon written demand of either party, such dispute shall be settled by binding arbitration to be held in Woodbridge, New Jersey and conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) then in effect, insofar as such rules are not inconsistent with the provisions of this Agreement, utilizing a sole, neutral, and impartial arbitrator mutually agreed to by the parties (or, if the parties fail to so agree, chosen by the AAA). Any such arbitrator shall possess reasonable knowledge and experience (e.g., at least five (5) years’ experience) in the information technology industry. The arbitrator shall have no power to alter, add to, or subtract from the terms of this Agreement. Any award rendered by an arbitrator in any arbitration hereunder shall be final and binding upon the parties, and judgment on any such award may be entered in any court having jurisdiction thereof. Each party shall pay its own expenses incurred in connection with any arbitration under this Section, and each party shall share equally in any third-party costs and expenses of the arbitration. Notwithstanding the foregoing, neither party shall be obligated to comply with the procedures set forth in the Section with regard to breaches, or alleged breaches, of this Agreement as to which injunctive relief is sought.

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7.6 UCITA. The Parties expressly acknowledge and agree that all provisions of all state laws adopting, in whole or in part, or in any modified form, the provisions of the Uniform Computer Information Transactions Act shall be inapplicable to, and shall not govern, this Agreement, and each party hereby opts out of, and expressly waives any and all rights that may arise under, any such law.

7.7 Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Client shall not assign, delegate, or otherwise transfer this Agreement, any Schedule of Service, or any of its obligations hereunder, (whether directly, by operation of law, or through a sale, merger, consolidation, or other transaction or change of control) without the prior written consent of FocalPoint.

7.8 Independent Contractors. The parties are independent contractors with respect to this Agreement. Neither party shall be entitled or considered to act as an agent of the other party or to bind or commit the other party. No form of joint employer, joint venture, partnership, or similar relationship between the parties is hereby intended or created by this Agreement.

7.9 No Third Party Rights. Each party enters into this Agreement solely for its own benefit and purpose. This Agreement in no way confers any rights upon, or imposes obligations on either of the parties toward, any third party, including, but not limited to, any recipient of E-mails or other messages transmitted through the TIA Service.

7.10 Force Majeure. FocalPoint shall not be responsible for any delays or failures in performance hereunder that are caused, directly or indirectly, by events or circumstances beyond FocalPoint's reasonable control (any such event or circumstance, a "Force Majeure"), including, but not limited to, natural disasters and catastrophes, acts of God, war, terrorism, or sabotage, strikes and labor stoppages, weather conditions, fire, theft, lightening, power failure, power surges and spikes, outages, interruptions, and unavailability of utilities or public or third-party communications networks or network components, events or circumstances attributable to third-party manufacturers or suppliers of equipment, Client's failure to furnish any information necessary or appropriate for FocalPoint's performance hereunder in a timely manner, delays or failures caused by viruses or other destructive elements contained in or resulting from any information or materials furnished by Client, and other events or circumstances attributable to Client or third parties. If a Force Majeure occurs, the time for FocalPoint's performance shall be extended by a period of time reasonably necessary to accommodate and recover from the applicable delay or failure. If and to the extent that a Force Majeure is caused by Client or third parties under Client's control and requires FocalPoint to devote more time or resources to performance hereunder than would have otherwise reasonably been expected, FocalPoint shall notify Client thereof, and Client shall promptly compensate FocalPoint, at FocalPoint's then-prevailing rates, for any additional time expended and shall promptly reimburse FocalPoint for any costs and expenses incurred.

7.11 Publicity. If FocalPoint elects to issue a press release pertaining to this Agreement, FocalPoint and Client agree to cooperate promptly in developing a joint press release, subject to both parties' prior review and approval, announcing the execution of this Agreement. Client agrees to allow FocalPoint to name Client as a client of FocalPoint in any marketing or advertising materials FocalPoint may create from time to time. FocalPoint will not use Client's names, trademarks, and logos, other than the corporate name of Client, in any such materials without the prior written consent of Client, which consent shall not be unreasonably withheld.

7.12 Web Site. Client acknowledges and agrees that, separately from this Agreement, all use of the Web Site is subject to the Terms and Conditions of Use and Privacy Policy posted on the Web Site. In the event and to the extent of any irresolvable conflict or inconsistency between this Agreement and such Terms and Conditions of Use or such Privacy Policy, the terms of this Agreement shall govern and prevail with respect to the subject matter hereof.

7.13 Notices. All notices required or permitted under this Agreement shall be in writing or human-readable electronic form and shall be sent by first class or certified mail, by nationally recognized overnight carrier, via e-mail or receipted facsimile, or delivered personally, to the respective addresses or contact numbers of the parties set forth herein (as updated by each party from time to time by a notice delivered in accordance herewith). Notices shall be effective three (3) days after deposit

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in the U.S. Mail, the next day after delivery to a nationally recognized overnight carrier, and the same day as sent or delivered when sent by e-mail or received facsimile or delivered personally.

7.14 Amendment. Neither this Agreement nor any Schedule of Service may be modified or amended except by a writing signed by the authorized representatives of each of the parties, except that FocalPoint may amend, at any time, without prior notice or Client's approval, these Terms and Conditions by posting revised terms and conditions ("Amended Terms") on the FocalPoint Web Site and sending a copy of the Amended Terms to Client at the address, facsimile number, or e-mail address of Client that is provided herein (as updated by Client from time to time, in accordance herewith). All Amended Terms shall be effective upon the date that notice thereof becomes effective, in accordance with Section 7.13, with respect to any Schedules of Service entered into on or after such date, but no Amended Terms shall alter or otherwise affect the terms applicable to any Schedule of Service executed by the parties prior to when such Amended Terms becomes effective hereunder. CLIENT AGREES TO REGULARLY REVIEW THE FOCALPOINT WEB SITE TO OBTAIN NOTICE OF ANY SUCH AMENDED TERMS IN A TIMELY MANNER. BY EXECUTING ANY SCHEDULE OF SERVICE AFTER HAVING RECEIVED NOTICE OF ANY AMENDED TERMS AND AFTER SUCH AMENDED TERMS HAVING BECOME EFFECTIVE, CLIENT SHALL BE DEEMED TO HAVE ACCEPTED SUCH AMENDED TERMS AND SHALL BE BOUND BY SUCH AMENDED TERMS AS THEY APPLY TO ANY SUCH SCHEDULE OF SERVICE. No such amendment by FocalPoint of these Terms and Conditions shall serve to constitute a default or termination by FocalPoint of this Agreement, nor shall any such amendment serve as a basis for Client to terminate this Agreement.

7.15 Non-Waiver. Any failure by either Party to enforce any of the provisions of this Agreement or to exercise any right or remedy available hereunder shall not constitute a waiver of such provision, right, or remedy. The waiver of any default by either party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

7.16 Non-Exclusive Remedies. Unless expressly otherwise provided in this Agreement, no remedy set forth herein is intended to be, nor shall be, exclusive of, or mutually exclusive with regard to, any other remedy, and each such remedy shall be in addition to every other remedy given hereunder, or now or hereafter existing or available at law, in equity, by statute, or otherwise, individually or in any combination thereof.