



ADAM 5 On Demand

This software as a service agreement for Adam 5 On Demand (this "Agreement") applies to the Adam 5 On Demand Service Order Form (the "Order Form") entered into by the client so-identified on the Order Form (the "Client") and the provider so-identified on the Order Form (the "Provider") and is effective as of the effective date so-specified on the Order Form (the "Effective Date"). Provider and Client are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, Provider distributes a time-and-attendance, payroll processing, and human talent software application known as "Adam 5 On Demand" that (i) provides employer and employees with secure direct access to their payroll and benefit information and (ii) is remotely accessed by the employer and employees via the Internet (such application selected by Client in accordance with Section 1 is referred to as the "Adam 5 On Demand") and is described in more detail in Exhibit A);

WHEREAS, Client has requested, and Provider has agreed to provide, the Adam 5 On Demand on the terms set forth in this Agreement and the Order Form.

NOW, THEREFORE, in consideration of these premises, the mutual covenants and promises contained herein and in the Order Form, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Provider and Client hereby agree as follows:

1. Adam 5 On Demand. Subject to the terms and conditions set forth herein, Provider will provide Client, directly or indirectly, with the functionality of the Adam 5 On Demand that is expressly selected on the Order Form.

2. Implementation.

(a) Provider shall implement the Adam 5 On Demand for Client (the "Implementation Services") itself or through an authorized subcontractor in accordance with the working plan attached to the Order Form (as such plan may be modified by the Parties in writing from time to time, the "Working Plan"), subject to Client's cooperation and assistance. The fee for providing the Implementation Services (the "Implementation Fee") is set forth on the Order Form (subject to any adjustment pursuant to Section 4(a)), which fee is based upon an estimate of the number of hours to provide the Implementation Services as identified on the Order Form (the "Estimated Hours").

(b) Each Party shall comply with such Party's implementation responsibilities that are set forth in the Working Plan (the "Implementation Responsibilities"), including providing all necessary equipment, personnel, passwords, and data. Failure of Client to comply with Client's Implementation Responsibilities may result in delays and additional costs.

(c) Provider shall provide the training courses set forth in the Working Plan for the Adam 5 On Demand to Client's personnel (the "Training Courses"), at the training facilities designated in the Working Plan, in accordance with Provider's training policies and procedures. Client shall ensure that the appropriate Client personnel attend the Training Courses.

3. Support. Provider shall provide standard support to Client for the Adam 5 On Demand ("Support") during Client's normal business hours in accordance with Provider's support policies and procedures. Support shall also be subject to any special conditions that are agreed to by the Parties and set forth on the Order Form. The annual service fee for providing Support (the "Annual Service Fee") shall be set forth on the Order Form. Client may not elect to terminate Support during the Term (as defined below) of this Agreement.

4. Client's Payment.

(a) Client will pay the Implementation Fee in accordance with the payment schedule set forth in the Working Plan; provided, however, that in the event the actual number of hours spent by Provider in providing the Implementation Services exceeds the number of Estimated Hours by more than 10%, then Client will pay such excess over 10% to Provider, calculated using Provider's then-current time and materials rates.

(b) Following completion of the Implementation Services (as reasonably determined by Provider), Client will pay monthly in advance to Provider the fees and charges for the Adam 5 On Demand provided in the Order Form (the "Monthly Fees").

(c) Client will pay a prorated portion of the Annual Service Fee concurrently with the execution of the Order Form; such prorated amount shall be based upon the number of days remaining in the calendar year as of such execution date. Thereafter, Client will pay the Annual Service Fee in its entirety in advance on or before the twentieth day of each January.

(d) Invoices for any and all fees payable under this Agreement by Client (including, but not limited to, Implementation Fees, Monthly Fees, and Annual Service Fees) will be transmitted electronically (where permitted by law) by Provider to Client; otherwise, such invoices will be delivered in hard copy. All fees under this Agreement shall be due and payable by Client within ten calendar days of the date of invoice and will be deemed past due if amounts due are not paid in full within 20 calendar days from the date of invoice. All payments by Client hereunder shall be payable electronically via wire transfer (bank draft) or to the lockbox account of Provider designated by Provider from time to time, or at such other place as Provider from time to time may designate in writing (including via electronic mail). If Client elects not to receive or pay its invoices electronically (where permitted by law), then Client will be charged an additional \$15.00 processing fee for each invoice, payable on the same terms as invoices for the Adam 5 On Demand. Client agrees that all payments and other sums payable by Client hereunder shall be the unconditional obligation of Client and shall be made without abatement, reduction, set off, counterclaim, or any other defense of any kind or nature, including, without limitation, any arising out of any present or future claim Client may have against Provider or Provider's licensors or their respective agents or representatives. Any payments made in a manner other than as set forth herein will not be credited towards Client's account and will be deemed outstanding.

(e) All undisputed past due amounts owed by Client shall bear interest until paid in full at the rate of the lesser of (i) 1.5% per month or (ii) the maximum allowed by law. If any undisputed amount is past due, Provider may suspend providing any and all services pursuant to this Agreement, unless and until such undisputed past due amount, all accrued interest, and any and all collection fees are paid to Provider.

(f) Client will notify Provider in writing within 20 calendar days following the date of invoice of any inaccuracies or good faith disputes with respect to an invoice, the charges therein, and/or the services reflected in the invoice. In the event of a good faith dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein. Provider will review and issue a credit for the disputed amount if deemed justified by Provider, in Provider's reasonable discretion. If Client fails to notify Provider in writing within 20 calendar days following the date of invoice of any inaccuracies or good faith disputes with respect to such invoice, the charges therein, and/or the services reflected in the invoice, all such claims will be deemed

waived. Upon resolution of the disputed portion of an invoice, any amounts owed to Provider with respect thereto shall be paid with interest at the rate set forth above accruing from the date such amounts were originally due.

(g) Provider shall be entitled to increase any and all fees under this Agreement (including, but not limited to, the Monthly Fees and the Annual Service Fees) upon 30 days' prior written notice to Client.

5. Taxes and Tariffs. Client shall pay and reimburse Provider for all taxes in connection with the provision of the Adam 5 On Demand, including sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties. In the event that Client is required by law to withhold any form of tax, tariff, or duty from any amount payable to Provider under this Agreement, then Client shall reimburse Provider for same and promptly provide Provider with copies of documentation required in connection with such withholding. Client agrees to reimburse and hold Provider and Provider's licensors harmless from any deficiency (including penalties and interest) relating to taxes that are the responsibility of Client under this Agreement. Each Party shall be responsible for taxes related to its own net income, employment taxes of its own employees, and for taxes on any property it owns or leases.

6. Client's Responsibilities. In connection with Provider's provision of the Adam 5 On Demand, Client will be responsible for:

(a) Providing and maintaining all equipment necessary to enable Client to access or otherwise receive the Adam 5 On Demand's functionality;

(b) Providing all data necessary to enable Client to avail itself of the Adam 5 On Demand's functionality;

(c) Obtaining, maintaining, and paying for Internet access;

(d) Providing Provider with information and data that is current, correct, and of an appropriate format and level necessary to enable Provider to make the Adam 5 On Demand available;

(e) Utilizing the Adam 5 On Demand in a careful and prudent manner with competent agents, employees, or subcontractors only in accordance with this Agreement and the Order Form; and

(f) Fulfilling such other tasks and responsibilities as are described in this Agreement.

7. Term. The term of this Agreement shall commence upon the Effective Date and, unless sooner terminated in accordance with Section 8, shall continue for a period of one year (the "Initial Term"). Unless either Party delivers to the other Party written notice of its election not to renew the Agreement at least 90 days prior to the expiration of the Initial Term, this Agreement shall thereafter renew for successive one-month periods (each a "Renewal Term," and together with the Initial Term, the "Term").

8. Termination.

(a) Either Party may terminate this Agreement (i) prior to the expiration of the Initial Term for any reason upon at least 90 days prior written notice to the other Party, and (ii) thereafter, for any reason upon at least 30 days prior written notice to the other Party. If Client terminates the Agreement pursuant to this Section 8(a) during the Initial Term, Client shall pay to Provider (x) all Monthly Fees and Implementation Fees incurred through the date on which this Agreement terminates, plus (y) a termination fee equal to 50% of the remaining Monthly Fees that Provider would have otherwise earned pursuant to the Order Form

for the remainder of the Initial Term as if the Agreement had not been terminated (the "Termination Fee"). If Client terminates the Agreement pursuant to this Section 8(a) during any Renewal Term, Client shall pay to Provider all Monthly Fees and Implementation Fees incurred through the date on which this Agreement terminates. Client acknowledges and agrees that if Client terminates this Agreement prior to the expiration of the Initial Term, Provider will suffer damages and losses that are difficult, if not impossible, to calculate. Client further acknowledges and agrees that the Termination Fee is not a penalty but, instead, constitutes a reasonable estimate of the losses and damages Provider will suffer by virtue of any such termination and that the same is valid and enforceable against Client. Client shall not be entitled to any refunds.

(b) In the event a Party has committed a material breach of this Agreement, other than a monetary breach (for which there shall be no cure period), the non-breaching Party shall give written notice to the breaching Party describing the nature of the breach in reasonable detail. The breaching Party shall then have ten business days to cure the breach. If the breach is not cured within the ten-day period, the non-breaching Party may give written notice to the breaching Party of the termination of this Agreement after the tenth day. Termination shall be effective upon receipt of such written notice. If this Agreement is terminated pursuant to this Section 8(b) as a result of a material breach of this Agreement by Client during the Initial Term, Client, in addition to any other damages and/or remedies available to Provider under law or at equity, shall immediately pay to Provider (i) all Monthly Fees and Implementation Fees incurred through the date of termination, plus (ii) the Termination Fee. If this Agreement is terminated pursuant to this Section 8(b) as a result of a material breach of this Agreement by Client during any Renewal Term, Client shall pay to Provider all Monthly Fees and Implementation Fees incurred through the date of termination, in addition to any other damages and/or remedies which may be available under law or at equity. Client shall not be entitled to any refunds.

(c) If a Party becomes insolvent or bankrupt or insolvency proceedings have been instituted in connection with such Party (either voluntary or involuntary), the other Party may give written notice of termination which shall be effective immediately, in addition to any other remedies which may be available under law or at equity.

(d) Promptly following termination of this Agreement for any reason, Provider shall forward to Client an electronic copy (in Microsoft SQL format) of Client's data in Provider's possession.

9. Intellectual Property.

(a) Provider hereby grants Client a personal, nonexclusive, non-transferable license, without the right to sublicense, to use the Adam 5 On Demand web site designated by Provider (the "Provider Web Site") during the Term solely for Client's internal business purposes and consistent with the terms set forth in this Agreement (the "Site License"). Client may not modify or alter any of the content, information, or documentation contained on the Provider Web Site other than the data entries that are expressly contemplated and permitted by the Provider Web Site to be input by Client.

(b) All materials furnished by Provider to Client, including, but not limited to, all forms, brochures, documents, and other materials that are accessible through the Provider Web Site (collectively, "Materials"), are licensed (not sold). Provider hereby grants Client a personal, nonexclusive, non-transferable license, without the right to sublicense, to use the Materials solely for purposes that are consistent with the terms set forth in this Agreement (the "Materials License"). Client shall not distribute, alter, or use the Materials for any other purpose. Client agrees to treat all Materials as Confidential Information. Upon the termination of this Agreement, Client shall destroy all Materials or, if requested by Provider, return all Materials to Provider.

(c) The Site License and Materials License are together referred to herein as the “License.”

(d) Except as expressly authorized herein, Client shall not:

(i) Copy or otherwise utilize or reproduce any portion of the Provider Web Site or the Materials contained therein, except to the extent necessary for Client to use the Provider Web Site and Materials for their intended purpose, as set forth in this Agreement;

(ii) Distribute, disclose, market, rent, lease, transfer, or provide or permit access to any third party any portion of the Provider Web Site or the Materials;

(iii) Use the Provider Web Site or the Materials except as authorized pursuant to this Agreement and except for Client’s internal business programs; or

(iv) Copy, duplicate, utilize, or access, or permit any third party to copy, duplicate, utilize, or access any or all of the Provider Web Site and/or Materials to compete against or otherwise impair the business of Provider.

(e) Subject to the non-exclusive License granted herein, Provider and Provider’s licensors retain all right, title, and interest, including, without limitation, all copyrights, trade secrets, patents, trademarks, service marks, and all other proprietary rights, in and to the Provider Web Site, the Materials, and all of Provider’s Confidential Information.

(f) In addition to the terms and conditions set forth in this Agreement, use of the Provider Web Site by Client’s authorized users shall be subject to the “Terms of Use” and “Privacy Notice” statements provided on and accessible through the Provider Web Site and which, by this reference, are incorporated herein. Before the first usage of the Provider Web Site by any authorized user of Client, the authorized user will be required to agree to and comply with the “Terms of Use” and “Privacy Notice” provisions before being granted access to the Provider Web Site. Provider reserves the right from time to time to modify the terms and conditions of the “Terms of Use” and “Privacy Notice” provisions, and the continued use of the Provider Web Site after the date of any such modification shall be deemed consent to such modified terms and conditions.

(g) Client shall not, and shall not attempt to, (i) circumvent any or all security features of the Provider Web Site, or (ii) use the Provider Web Site or the Adam 5 On Demand to provide similar services or other services to any third parties.

(h) All trademarks, copyrights, and other intellectual property rights associated with the Adam 5 On Demand and the Provider Web Site (the “Intellectual Property”) are owned or licensed exclusively by Provider or Provider’s licensors. Client shall not have any rights or ownership in the Intellectual Property. Client may not use the Intellectual Property, except for the purposes expressly contemplated in this Agreement, unless it obtains Provider’s prior written consent. Client agrees that it will not modify, disassemble, decompile, or otherwise reverse engineer the Intellectual Property or any related hardware. In addition, Client warrants that any information or materials it provides Provider under this Agreement do not infringe any third party copyright, trademark, patent, trade secret, or any other third party intellectual property rights, nor will Provider’s use of such information or materials in accordance with any instructions provided by Client cause Provider to infringe any third party intellectual property rights.

10. WARRANTY DISCLAIMER. NEITHER PROVIDER NOR ANY OF PROVIDER’S LICENSORS, CONTRACTORS, OR PROVIDERS MAKES ANY WARRANTY (EXPRESS OR IMPLIED) UNDER THIS AGREEMENT. PROVIDER AND PROVIDER’S LICENSORS FURTHER DISCLAIM, AND CLIENT HEREBY WAIVES, ALL IMPLIED WARRANTIES FOR THE ADAM 5 ON DEMAND, THE PROVIDER WEB SITE, OR ANY OTHER SERVICES PROVIDED HEREUNDER, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR INTENDED USE OR PARTICULAR PURPOSE, OR NON-INFRINGEMENT. EACH PARTY WAIVES ANY LIABILITY OF THE OTHER PARTY (AND CLIENT WAIVES WITH RESPECT TO PROVIDER’S LICENSORS, CONTRACTORS, AND PROVIDERS) IN NEGLIGENCE, TORT, AND STRICT LIABILITY ARISING FROM ANY ACT OR OMISSION OF THE OTHER PARTY IN THE PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EXCEPT AS AND TO THE EXTENT THAT SUCH LIABILITY ARISES OUT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE OTHER PARTY.

11. LIMITATION OF LIABILITY. NEITHER PARTY (INCLUDING PROVIDER’S LICENSORS, CONTRACTORS, OR PROVIDERS) SHALL BE LIABLE TO THE OTHER PARTY FOR ANY EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST REVENUES, LOST PROFITS, OR LOST PROSPECTIVE ECONOMIC ADVANTAGE ARISING FROM ANY ACT OR OMISSION IN PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT. NEITHER PROVIDER NOR PROVIDER’S LICENSORS SHALL BE RESPONSIBLE FOR CLIENT’S INABILITY OR FAILURE TO ACCESS THE ADAM 5 ON DEMAND, THE PROVIDER WEB SITE, OR TO OTHERWISE USE THE SERVICES OR THE HARDWARE (INCLUDING, BUT NOT LIMITED, TO OR INABILITY DUE TO HARDWARE OR SOFTWARE FAILURE OR INTERNET CONNECTIVITY). EXCEPT FOR ANY CLAIM OR CAUSE OF ACTION CONCERNING CLIENT’S NON-PAYMENT, UNDER NO CIRCUMSTANCES WILL A PARTY’S (INCLUDING PROVIDER’S LICENSORS’) LIABILITY EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO PROVIDER BY CLIENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE CAUSE GIVING RISE TO THE CLAIM. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT INCREASE THIS LIMIT. THIS ALLOCATION OF LIABILITY REPRESENTS THE AGREED AND BARGAINED-FOR UNDERSTANDING OF THE PARTIES AND IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

12. Confidentiality and Non-Disclosure. During the Term, each Party may be given access to information (in hardcopy, electronic, or other form) that relates to Client’s, Provider’s, or Provider’s licensors’ past, present, or future research, development, business activities, clients, products, services, and technical or proprietary knowledge (“Confidential Information”); provided, however, that this Agreement does not constitute Confidential Information. In connection therewith, the following provisions shall apply:

(a) Each Party agrees that all Confidential Information communicated or revealed to it (the “Receiving Party”), either intentionally or unintentionally, by the other Party (the “Disclosing Party”) during the Term shall be deemed confidential and proprietary and shall be used by the Receiving Party solely for the purposes of performing its obligations under this Agreement.

(b) Neither Party shall disclose or distribute any of the Confidential Information or other trade secrets to any other person or entity unless specifically authorized in writing to do so by the Disclosing Party.

(c) The Confidential Information may not be copied or reproduced without the Disclosing Party's prior written consent.

(d) All Confidential Information made available hereunder, including copies thereof, shall be returned or destroyed upon the first to occur of (i) the expiration or earlier termination of this Agreement, or (ii) the request by the Disclosing Party, unless the Receiving Party is otherwise allowed to retain such Confidential Information. Provider may retain, subject to the terms of this Section 12, copies of Client's Confidential Information required for compliance with its recordkeeping or quality assurance requirements; provided, however, that any such copies shall continue to be subject to the obligations of confidentiality set forth in this Section 12.

(e) Nothing in this Agreement shall prohibit or limit either Party's use of information (including, but not limited to, ideas, concepts, know-how, techniques, and methodologies) (i) previously known to it without an obligation of confidentiality, (ii) independently developed by or for it, without the use of, or reference to, another Party's Confidential Information, (iii) acquired by it from a third party that is not, to its knowledge, under an obligation of confidentiality with respect to such information, or (iv) that is or becomes publicly available through no breach of this Agreement.

(f) If either Party receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information of the other Party, it shall promptly notify the other of such receipt and tender to it the defense of such demand. The Party receiving the subpoena shall thereafter be entitled to comply with such subpoena or other process to the extent required by law.

13. Indemnification. Client shall indemnify, hold harmless, and defend Provider and Provider's licensors, and their respective owners, partners, officers, directors, affiliates, agents, and employees, from and against all claims, losses, expenses, costs, damages, and liabilities (including reasonable attorneys' fees and expenses and other costs of litigation) arising, directly or indirectly, from (a) the failure of Client, its partners, officers, directors, agents, employees, and subcontractors to fulfill any of its obligations or covenants under this Agreement, (b) any third party action or claim brought or threatened against Provider or Provider's licensors in connection with any representations, warranties, or covenants to Client's customers or other third parties, express, implied, statutory, or otherwise; or relating to, arising out of, or in connection with Client's products and services, or (c) any loss or damage to property, whether such property is owned by Client or a third party, and for any personal injuries or deaths arising after delivery of the Adam 5 On Demand. The foregoing indemnification shall not apply to claims to the extent that they are caused directly by Provider's or Provider's licensors' gross negligence or willful misconduct. THE FOREGOING INDEMNIFICATION INCLUDES, HOWEVER, ANY AND ALL COSTS, EXPENSES, LOSSES, AND DAMAGES ARISING FROM THE NEGLIGENCE OF PROVIDER AND PROVIDER'S LICENSORS AND THEIR EMPLOYEES, AGENTS, OFFICERS, DIRECTORS, PARTNERS, REPRESENTATIVES, AND THOSE ACTING FOR OR ON THEIR BEHALF. The Parties agree that the foregoing indemnities are limited to the extent necessary to comply with applicable state or federal law and that this Agreement shall be deemed to be amended to comply with those laws to the extent such requirements are at variance with the indemnification provisions set forth herein.

14. Remedies. If Client is in default hereunder and such default shall be continuing beyond any applicable cure period, Provider may, at its option, seek all contractual, legal, and/or equitable remedies against Client, including, without limitation: (a) proceeding by appropriate court action or actions, either under law or at equity, to enforce performance by Client of its obligations hereunder without the requirement of posting a bond or any other security; (b) recovering damages resulting from any breaches thereof; (c) terminating the Agreement in accordance with Section

8 above; and/or (d) recovering from Client any and all amounts which may have accrued to the date of such termination or may otherwise be payable hereunder, including, without limitation, amounts payable pursuant to Section 8(b). No remedy referred to in this Section 14 shall be deemed exclusive, but all such remedies shall be cumulative and shall be in addition to all other remedies in Provider's favor existing under this Agreement, the Order Form, or otherwise at law or in equity.

15. Independent Contractor. The relationship of Provider and Client is that of an independent contractor and not of an employee or agent. Neither Party shall hold itself out or act as an employee or agent of the other, nor will either Party have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary, or agency relationship between the Parties for any purpose. Neither Party shall be deemed a joint employer of the other's employees, each Party being responsible for any and all claims by its employees. Neither Party's employees shall be deemed "leased" employees of the other for any purpose.

16. Force Majeure. Neither Party shall be responsible for delays in, or suspension of performance of, this Agreement (except Client's obligation to pay for the Adam 5 On Demand and other expenses described herein) caused by acts of God or governmental authority, strikes or labor disputes, fires, or other loss of facilities, or other similar or dissimilar causes beyond the reasonable control of such Party.

17. Binding Agreement. This Agreement constitutes a binding obligation of the Parties with respect to the matters set forth herein and is enforceable against the Parties in accordance with its terms. Each Party represents that it is duly authorized to execute this Agreement and such Agreement does not conflict with or violate any agreement with any other party.

18. Entire Agreement. This Agreement and the Order Form contain the entire agreement between the Parties relating to the subject matter hereof and shall supersede all previous agreements between the Parties, whether written or oral, with respect to the subject matter hereof. This Agreement cannot be modified, altered, or amended except by a writing signed by each of the Parties and consented to by Provider's licensors.

19. Notices. All notices, payments, and deliveries shall be deemed to have been sufficiently given when delivered in writing by personal service or by certified first class mail to Provider and Client at their respective addresses or fax numbers indicated on the Order Form.

20. Governing Law. This Agreement, including issues of formation, validity, interpretation, and enforcement of this Agreement, shall be governed by, and subject to, the law of the state of Texas, without the application of any conflicts of law rules that might call for the application of a different law. All disputes regarding or related to this Agreement shall be subject to arbitration in Dallas, Texas, pursuant to Section 21, and any issues that are not encompassed in Section 21, including claims that Section 21 is void, shall be subject to the exclusive jurisdiction of the courts of the United Mexican States.

21. Arbitration.

(a) All claims, disputes, controversies, and all other matters arising out of, or related to, the validity, scope, making, interpretation, enforceability, performance, breach of, or relating in any way to this Agreement or the relationship between the Parties created by this Agreement or the subject matter of this Agreement, including the authority or capacity of any signatory to this Agreement, shall be determined by binding arbitration in Dallas, Texas, in accordance with the rules and procedures of the International Center for Dispute Resolution (the "Arbitration Body"), supplemented by the IBA Rules on the Taking of Evidence in International Commercial Arbitration. The arbitration shall be conducted in English as spoken in the U.S. Each Party

will provide and pay for translators and translated documents required by such Party. All awards, final or interim, shall be in writing with the reasons for the decision stated. The making, validity, scope, interpretation, and enforceability of this Agreement, including who shall be parties to the arbitration and what issues shall be submitted to arbitration, shall be determined by the arbitrator chosen in accordance with this Agreement (the "Arbitrator").

(b) Any Party may initiate arbitration by written notice to the other Party of the intention to arbitrate, specifying the claims to be arbitrated. The arbitration shall be conducted before a single Arbitrator selected by the Parties. Should the Parties be unable to agree on the neutral Arbitrator within 15 days following the non-initiating Party's receipt of an arbitration notice, the Arbitration Body shall appoint the Arbitrator. In the event of the incapacity of the Arbitrator after appointment, which incapacity will prevent the conclusion of the proceedings within the time limits set forth below, such Arbitrator shall be replaced in the same manner as originally appointed.

(c) The Arbitrator shall have a minimum of ten years' experience in the computer software industry. Within 15 days following the appointment of the Arbitrator (the "Appointment Date"), the Arbitrator shall convene a preliminary hearing to set a schedule for the proceedings. Unless the Parties stipulate to the contrary, the final arbitration hearing will be held no later than 180 days after the notice of intent to arbitrate is served, and the Arbitrator will render the Arbitrator's final decision no later than 60 days after the final hearing is concluded.

(d) Unless the Arbitrator, upon a showing of good cause, rules otherwise, a claim of confidentiality of any answer or document will be honored, and such information will not be disclosed to third parties or used for any purpose outside the arbitration without the consent of the Party claiming the privilege. The discovery period shall begin 15 days after the Appointment Date and shall conclude 90 days later. Each Party shall produce all documents relied upon to support a claim or defense and a list of all individuals with knowledge relevant to any claim or defense within 15 days following the beginning of the discovery period. Each Party will be allowed to ask 20 written interrogatories, including subparts, and to propound 20 requests for production of documents or other tangible things. The Parties may interview and discuss matters with witnesses. The receipt and consideration of all evidence will be within the sole discretion of the Arbitrator.

(e) The substantive law of the state of Texas shall apply to all issues presented to the Arbitrator, including the validity, scope, interpretation, and enforceability of this Section 21.

Conflict of laws or choice of law principles that might call for the application of another law shall not be applied.

(f) This Section 21 shall apply to the Parties and all those who benefit directly or indirectly from this Agreement or who seek to enforce or take advantage of this Agreement, including all subcontractors, suppliers, designers, or manufacturers. All legal doctrines, such as agency, assumption, estoppel, third party beneficiary, and alter ego, shall be broadly construed to include non-signatories within the application of this Section 21. As a means of lowering costs, efficiently resolving disputes, and avoiding conflicting decisions, the Parties agree to consolidated arbitration of interrelated disputes involving common questions of law or fact in accordance with the terms of this Agreement, including disputes involving third parties.

(g) The Arbitrator is empowered to issue subpoenas for witnesses and documents. Any and all decisions or orders of the Arbitrator may be enforced if necessary by any court. The Arbitrator's award(s) (interim and final) may be confirmed and judgment entered upon the award(s) in any court having jurisdiction over the Parties or in any jurisdiction where any of the Parties have real or personal property, each Party consenting to jurisdiction in such venues.

(h) In no event shall the Arbitrator award money damages or equitable relief or specific performance that is not expressly authorized by, or that is in conflict with, this Agreement.

22. Assignment. Client may not assign or sublicense this Agreement or the Order Form (or delegate Client's rights, duties, or obligations under this Agreement or the Order Form) without Provider's prior, express, and written consent. Provider may assign this Agreement and the Order Form (and delegate Provider's rights, duties, and obligations under this Agreement and the Order Form) upon Provider's election.

23. Third Party Beneficiary. Provider's licensors of the Adam 5 On Demand shall be third party beneficiaries of this Agreement with the right to enforce this Agreement as if a party hereto.

24. Survival. This Section 24 and Sections 4, 5, 8, 9(h), and 10 through 23 shall survive the expiration or termination of this Agreement.