

## MASTER SUBSCRIPTION AGREEMENT

### 1. DEFINITIONS

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

**Agreement:** means this Master Subscription Agreement together with any and all Order Forms (as defined below) and the Service Level Agreement;

**Vocantas:** means Valsoft Corporation Inc. d/b/a Vocantas Software;

**Customer:** means the customer identified on the Order Form referencing this Agreement;

**Customer Data:** means any data in any form submitted by, or on behalf of, Customer to Vocantas;

**Effective Date:** means the date on which the parties hereto enter into an Order Form referencing this Agreement;

**Mobile Application:** means the Vocantas Communicate mobile application that Users can download to their mobile devices;

**Non-Vocantas Application:** means any software application that is provided by or to Customer or a third party other than Vocantas;

**Order Form:** means an ordering document specifying the Services to be provided hereunder that is entered into between Customer and Vocantas or any of their respective Affiliates, including any addenda and supplements thereto;

**Professional Services:** means any implementation, integration, consulting and similar services, which may be described in an Order Form;

**Services:** means the Professional Services and Software Services collectively;

**Software Services:** means the Mobile Application and the Web-Based Application provided by Vocantas;

**Web-Based Application:** means the Vocantas Communicate shift management and employee scheduling software application that allows Users to access features and functions through a web interface;

**Users:** means employees, consultants or contractors of Customer who are authorised by Customer to use the Software Services and each shall be a "User".

### 2. VOCANTAS SOFTWARE RESPONSIBILITIES

- 2.1. Provision of Software Services. Vocantas will: (a) make the Software Services available to Customer pursuant to this Agreement and applicable Order Forms; and (b) provide support for the Software Services to Customer. Upon execution by Vocantas and Customer (or their respective Affiliates), any Order Form will become part of this Agreement. By entering into an Order Form, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.
- 2.2. Protection of Customer Data. Vocantas will maintain commercially reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data. 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 Users).
- 2.3. Vocantas Personnel. Vocantas will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with its obligations under this Agreement, except as otherwise specified herein.

### 3. USE OF SOFTWARE SERVICES

- 3.1 Subscriptions. Unless otherwise provided in the applicable Order Form, Services are purchased as subscriptions for the term stated in the applicable Order Form. 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 Vocantas.

- 3.2 Customer Responsibilities. Customer will (a) be responsible for Users' compliance with this Agreement and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Vocantas promptly of any such unauthorized access or use, and (d) use Services only in accordance with this Agreement, applicable laws and government regulations. Any use of the Services in breach of the foregoing by Customer or Users that in Vocantas's judgment seriously threatens the security, integrity or availability of Vocantas' services, will entitle Vocantas to immediately suspend the Services, provided however that Vocantas 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. Customer shall bear all risks, consequences and additional costs arising from failure to fulfil its obligations
- 3.3 Usage Restrictions. Customer will not (a) make any Service available to anyone other than Customer or Users, or use any Service for the benefit of anyone other than Customer or its Affiliates, (b) sell, resell, license, sublicense, distribute, make available, rent or lease any Service, or include any Service in a service bureau or outsourcing offering, (c) use a Service to store or transmit infringing, libellous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use a Service to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) deliberately 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 or use any of Vocantas intellectual property except as permitted under this Agreement or an Order Form, (h) modify, copy, or create derivative works based on a Service or any part, feature, function or user interface thereof, (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, (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 Service, (3) copy any ideas, features, functions or graphics of the Service, or (4) determine whether the Services are within the scope of any patent. Customer's breach of its obligations may result in breaking of software or rendering it not usable. Any repair works to make good the Software for intended purpose shall have additional fee.
- 3.4 Non-Vocantas Applications. Use of Non-Vocantas Applications and any exchange of data between Customer and any Non-Vocantas Application provider is solely between Customer and the applicable Non-Vocantas Application provider. Vocantas will not be liable for any issues with Customer Data arising from the use of a Non-Vocantas Application with the Services. Customer will remove or cease integration with a Non-Vocantas Application if required in order to avoid violating applicable law or third-party rights. If Customer does not take required action in accordance with the above, or if in Vocantas' reasonable judgment continued violation is likely, Vocantas may disable the applicable Service and/or integration with the relevant Non-Vocantas Application. If requested by Vocantas, Customer shall confirm such deletion and discontinuance of use in writing and Vocantas shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable.

#### **4. FEES & PAYMENT**

- 4.1 Subscription Fees. Customer will pay all subscription fees specified in the Order Forms. Except as otherwise specified herein or in an Order Form, payment obligations are non-cancellable; subscription fees paid are non-refundable. The subscription fees may be reviewed from time to time at Vocantas' sole discretion.
- 4.2 Usage Based SMS Fees. If Customer elects to enable short message service ("SMS") within the Software Services, Customer will then be responsible to pay all usage-based fees associated with SMS messages as set out in **Exhibit 1**.
- 4.3 Professional Services Fees.
- 4.3.1. Fixed Price. If an Order Form provides for payment of Professional Services fees on a fixed price basis, Vocantas will invoice Customer for work performed as set forth in such Order Form.
- 4.3.2. Time & Materials. If an Order Form provides for payment of Professional Services fees on a time and materials ("T&M") basis, the Professional Services shall be provided at the T&M rates as specified in such Order Form. On a T&M engagement, if an estimated total amount is stated in the applicable Order

Form, that amount is solely a good faith estimate and not a guarantee that the Professional Services will be completed for that amount; the actual amount may be higher or lower.

- 4.4 Expenses. Customer shall reimburse Vocantas for reasonable travel and out-of-pocket expenses incurred in conjunction with the Services, provided Vocantas has received Customer's prior written permission.
- 4.5 Invoicing and Payment. Vocantas will invoice Customer in accordance with the relevant Order Form. Customer is responsible for providing complete and accurate billing and contact information to Vocantas and notifying Vocantas of any changes to such information.
- 4.6 Overdue Payments. If any invoiced amount is not received by Vocantas by the due date (except with respect to charges then under reasonable and good faith dispute), then without limiting Vocantas' rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. If Customer's account is 30 days or more overdue (except with respect to charges then under reasonable and good faith dispute), Vocantas may, without limiting its other rights and remedies, suspend the Services to Customer until such amounts are paid in full. If such failure to pay has not been cured within 60 days of the due date, then upon written notice Vocantas may terminate this Agreement and all outstanding Order Forms.
- 4.7 Taxes. Vocantas' fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Any Taxes assessed as a result of transactions governed by this Agreement shall be borne by the taxpayer designated by any applicable laws and government regulations and paid by such taxpayer in accordance therewith. If Vocantas has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 4.6, Vocantas will invoice Customer and Customer will pay that amount unless Customer provides Vocantas with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **5 PROPRIETARY RIGHTS AND LICENSES**

- 5.1 License by Vocantas to Customer. Subject to the terms and conditions of this Agreement and all applicable Order Forms, Vocantas grants Customer a worldwide, limited-term royalty-free license to use the Software Services during the subscription term as subscribed for in accordance with each applicable Order Form.
- 5.2 Reservation of Rights. Subject to the limited rights expressly granted hereunder, Vocantas and its Affiliates reserve all of their right, title and interest in and to the Software Services, including all of their related intellectual property rights. No rights are granted to Customer hereunder other than as expressly set forth herein.
- 5.3 License by Customer to Vocantas. Customer grants Vocantas, its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display Customer Data as required for Vocantas to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement.
- 5.4 License by Customer to Use Feedback. Customer grants to Vocantas and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its services any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Vocantas' services.
- 5.5 Work Product. Customer shall have a license right to use or access any work product delivered as part of the Professional Services, solely for its internal business purposes and solely in connection with (as the case may be) the Software Services regarding which the Professional Services were commissioned. Other than the limited license described in the prior sentence, Vocantas shall retain all right, title and interest in and to any such Professional Services work product and any derivative, enhancement or modification thereof.
- 5.6 Publicity. While this Agreement is in effect, either party may include the name and logo of the other party in lists (including on its website) of customers or vendors in accordance with the other party's standard logo and/or trademark usage guidelines. Except as set forth herein, neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.

## **6 CONFIDENTIALITY**

- 6.1 Definition of 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 Vocantas includes the Software Services, and the terms and conditions of this Agreement and all Order Forms (including pricing). 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 breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party. For the avoidance of doubt, the non-disclosure obligations set forth in this “Confidentiality” section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional Vocantas services.

- 6.2 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, auditors and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel, auditors or accountants will remain responsible for such Affiliate’s legal counsel’s, auditors’ or accountant’s compliance with this “Confidentiality” section. Notwithstanding the foregoing, Vocantas may disclose the terms of this Agreement and any applicable Order Form to a subcontractor to the extent necessary to perform Vocantas’ obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- 6.3 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.
- 6.4 Permitted use of Customer Data. Vocantas shall be entitled to collect and use anonymized Customer Data for the purposes of (a) improving its services; (b) using in marketing materials and providing to Vocantas’s customers and prospective customers benchmarking or other strategic insights derived from aggregated customer data, provided always that any Customer Data shall at all times be anonymized such that none of Customer nor any of its Affiliates or Users shall be individually identifiable. For the avoidance of doubt use of Customer Data in the manner described in this Section 6.4 shall not constitute a breach of the confidentiality obligations set out in this Section 6.

## **7 WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS**

- 7.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 7.2 Vocantas Warranties. Vocantas warrants that during an applicable subscription term: (a) the Services will be provided with due skill, care and diligence using appropriately skilled and qualified personnel; and (b) Vocantas’ general operation of the Software Services, without reference to any specific customer’s business or data, complies with all applicable laws. For any breach of a warranty by Vocantas, Customer’s exclusive remedies are those described in the “Termination” and “Refund or Payment upon Termination” sections below.
- 7.3 Customer Warranties. Customer warrants that disclosure by or on behalf of the Customer of Customer Data to Vocantas under this Agreement is in compliance with applicable laws (including, but not limited to, Applicable Data Protection Laws) and Customer has all necessary consents to disclose the Customer Data to Vocantas for the purposes of the provision of the Services.

- 7.4 Customer Acknowledgements. Customer acknowledges that: (a) use of the Software Services may not be uninterrupted or error-free; and (b) Vocantas shall not have any liability whatsoever for errors by Users (e.g. failure to use adequate password practices or adequately authenticate Users) or for the content of data uploaded or downloaded (not including viruses and other harmful code or data) by Users.
- 7.5 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.

## **8 MUTUAL INDEMNIFICATION**

- 8.1 Indemnification by Vocantas. Vocantas will defend Customer against any claim, demand, suit or proceeding made or brought against Customer by a third party alleging that any Software Service infringes or misappropriates such third party's intellectual property rights (a "**Claim Against Customer**"), and will indemnify Customer from any damages, reasonable attorney fees and costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by Vocantas in writing of, a Claim Against Customer, provided Customer (a) promptly gives Vocantas written notice of the Claim Against Customer, (b) gives Vocantas sole control of the defense and settlement of the Claim Against Customer (except that Vocantas may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability), and (c) gives Vocantas all reasonable assistance, at Vocantas' expense. If Vocantas receives information about an infringement or misappropriation claim related to a Service, Vocantas may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Vocantas' warranties under "Vocantas Warranties" above, (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement, or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software or hardware not provided by Vocantas, if the Services or use thereof would not infringe without such combination; or (3) a Claim against Customer arises due to Customer's breach of this Agreement or applicable Order Forms.
- 8.2 Indemnification by Customer. Customer will defend Vocantas and its Affiliates against any claim, demand, suit or proceeding made or brought against Vocantas by a third party (a) alleging that (i) any Customer Data or Customer's use of Customer Data with the Services; or (b) the combination of a Non-Vocantas Application provided by Customer and used with the Services; infringes or misappropriates such third party's intellectual property rights; or (b) arising from Customer's use of the Services in an unlawful manner or in violation of the Agreement or Order Form (each a "Claim Against Vocantas"), and will indemnify Vocantas from any damages, attorney fees and costs finally awarded against Vocantas as a result of, or for any amounts paid by Vocantas under a settlement approved by Customer in writing of, a Claim Against Vocantas, provided Vocantas (a) promptly gives Customer written notice of the Claim Against Vocantas, (b) gives Customer sole control of the defense and settlement of the Claim Against Vocantas (except that Customer may not settle any Claim Against Vocantas unless it unconditionally releases Vocantas of all liability), and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against Vocantas arises from Vocantas' breach of this Agreement or applicable Order Forms.
- 8.3 Exclusive Remedy. This "Mutual Indemnification" section 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.

## **9 LIMITATION OF LIABILITY**

- 9.1 Limitation of 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 PAID BY CUSTOMER 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 A CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

- 9.2 Exclusion of Consequential and Related Damages. 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. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.
- 9.3 Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or personal injury or death, which means that some of the above limitations may not apply to either party or its Affiliates. IN THESE JURISDICTIONS, THE LIABILITY OF EITHER PARTY OR ITS AFFILIATES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.
- 9.4 Any claims or damages that Customer may have against Vocantas shall only be enforceable against Vocantas and not any other entity or its or their officers, directors, representatives or agents.
- 9.5 Nothing in this Agreement shall operate or have effect so as to limit or exclude a party's liability for: (i) breach of Section 6 (Confidentiality); (ii) the indemnification obligations under Section 8 (Mutual Indemnification); (iii) fraud or wilful default; or (iv) death or personal injury caused by gross negligence.

## **10 TERM AND TERMINATION**

- 10.1 Term of Agreement. This Agreement commences on the Effective Date and continues until all subscriptions hereunder (as set out in applicable Order Forms) have expired or have been terminated.
- 10.2 Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Order Form. Except as otherwise specified in an Order Form, subscriptions will automatically renew for additional periods equal to the expiring subscription term, unless either party gives the other written notice at least 90 days before the end of the relevant subscription term.
- 10.3 Termination. A party may terminate this Agreement for cause (a) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (b) 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.
- 10.4 Refund or Payment upon Termination. If this Agreement is terminated by Customer in accordance with Section 10.3 above, Vocantas 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 Vocantas in accordance with Section 10.3 above, 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 Vocantas for the period prior to the effective date of termination.
- 10.5 Return of Customer Data. Save as may be required by law, upon termination of this Agreement, Customer may, within two months after the effective date of the termination of this Agreement, issue a written request to Vocantas for the delivery to the Customer of the then most recent back-up of the Customer Data. Vocantas shall use commercially reasonable efforts to deliver the back-up to the Customer within 30 days of its receipt of such a written request.

- 10.6 Surviving Provisions. The sections titled "Fees and Payment," "Proprietary Rights and Licenses," "Confidentiality," "Disclaimers," "Mutual Indemnification," "Limitation of Liability," "Refund or Payment upon Termination," "Surviving Provisions", "Non-Solicitation" and "General Provisions" 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 Vocantas retains possession of Customer Data.

## **11. NON- SOLICITATION.**

During the period commencing on the Effective Date and ending 18 months following the expiration or termination of this Agreement, the Customer shall not, without the Vocantas' prior written consent, directly or indirectly solicit or encourage any person to leave the employment of Vocantas or its Affiliates.

## **12. GENERAL PROVISIONS**

12.1 Export Compliance. The Services, other Vocantas technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each of Vocantas and Customer represent to the other that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Software Services in a U.S.-embargoed country or region or in violation of any U.S. export law or regulation.

12.2 Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

12.3 Entire Agreement and Order of Precedence. This Agreement including the Exhibits hereto together with any applicable Order Forms form the entire agreement between Vocantas and Customer regarding Customer's use of the Services and supersede 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 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, and (2) this Master Subscription Agreement. Titles and headings of sections of this Agreement are for convenience only and shall not affect the construction of any provision of this Agreement.

12.4 Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

12.5 Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

12.6 Subcontract of Services. Customer agrees that Vocantas Software may subcontract certain portions of the Services to be performed by affiliates or other third parties in connection with this Agreement, provided that no such arrangement shall relieve Vocantas of any of its obligations hereunder.

12.7 Change in Services. Vocantas may change, modify, and otherwise convert the technology used to provide the Services and terms under which the Services are offered, provided that the basic functionality and quality of the Services will not be materially affected.

12.8 Force Majeure. Except as otherwise provided, if performance hereunder (other than payment) is interfered with by any condition beyond a party's reasonable control, including, but not limited to disruption of Internet access or services, the affected party, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such condition.

12.9 Waiver. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

12.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

12.11 Assignment. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Vocantas' prior written consent (not to be unreasonably withheld); provided, however, that either Customer may assign this Agreement in its entirety (including all Order Forms), without Vocantas' consent to its Affiliates or in connection with a corporate reorganization. Vocantas may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Customer's consent.

12.12 Arbitration of Disputes. Any dispute, controversy or claim arising out of or relating to this Agreement, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS Comprehensive Arbitration Rules and Procedures. The Tribunal will consist of three arbitrators. The place of arbitration will be New York, New York. The language to be used in the arbitral proceedings will be English. To the extent state law is applicable, the arbitrators shall apply the substantive law of New York. Each party will be entitled to depose a maximum of three witnesses, plus all experts designated to be witnesses at the arbitration. The depositions shall be limited to a maximum of six hours per deposition. All aspects of the arbitration shall be treated as confidential and neither the parties nor the arbitrators may disclose the content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. The result of the arbitration shall be binding on the parties and judgment on the arbitrators' award may be entered in any court having jurisdiction.

BY AGREEING TO ARBITRATE, EACH PARTY AGREES TO WAIVE ITS RIGHT TO A JURY TRIAL AND ITS RIGHT TO PARTICIPATE IN A CLASS, COLLECTIVE, OR OTHER JOINT ACTION WITH RESPECT TO CLAIMS.

12.13 Vocantas' Legal Fees. If Vocantas or any legal action or other proceedings is brought for a breach of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in bringing such action or proceeding, in addition to any other relief to which such party may be entitled.

12.14 Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (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 email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer. All other notices to Customer will be addressed to the relevant personnel designated by Customer in the applicable Order Form.

12.15 Electronic Signatures. Each party expressly consents to the electronic execution of this Agreement and any Order Forms, to the provision of any information in connection with this Agreement by electronic means and to the retention and use of the executed Agreement as an electronic original. Each party also confirms that any electronic signature inserted on this Agreement or an Order Form by (or on behalf of) such party was inserted by the relevant signatory for the purpose of signing and authenticating this Agreement or applicable Order Form.

12.16 Counterparts. This Agreement may be executed in counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all counterparts together shall constitute the same agreement.

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