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APICS North American Channel Partner Agreement

This North American Channel Partner Agreement (Agreement) is entered into this ____ day of _____, 2012 by and between the AMERICAN PRODUCTION AND INVENTORY CONTROL SOCIETY, INC. 8340 West Bryn Mawr Ave., Ste. 1000, Chicago, IL 60631 (hereinafter referred to as "APICS" and _____ (hereinafter referred to as "CHAPTER"). APICS and CHAPTER may be referred to individually as "party" and collectively as the "parties."

RECITALS

WHEREAS, APICS is an association of members primarily working in the operations and supply chain management profession and has developed and/or obtained rights to educational materials and products, including certain certification examinations that relate to the operations and supply chain management profession; and

WHEREAS, CHAPTER is a legal entity located within North America and is interested in partnering in supporting APICS members and providing opportunities for professional development in the operations and supply chain profession; and

WHEREAS, the parties desire to enter into a business relationship on the terms set forth herein under which CHAPTER shall promote APICS membership, professional development, networking opportunities, and certification examinations; promote and conduct educational programs using, but not limited to, APICS licensed products, and exchange information with APICS;

NOW THEREFORE, in consideration of the mutual covenants granted herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. GENERAL

- 1.1. APICS will provide services, products and support to designated Channel Partners as described elsewhere in this agreement and appendixes in the pursuance of providing support to APICS members and other customers.

NOTE: This document is an initial draft and a work in progress. This is not a proposed contract. It is intended for discussion purposes only. The document has not been formally reviewed by APICS Board nor any legal counsel. Contract language is subject to change as a result of the Board and legal review process.

- 1.2. CHAPTER is hereby designated as an APICS Channel Partner for the term of this Agreement
- 1.3. As a Channel Partner, CHAPTER shall:
 - 1.3.1. Serve as the local representative of APICS providing professional development and networking opportunities and support to APICS members.
 - 1.3.2. Promote APICS membership and its educational products including certification programs.
 - 1.3.3. Perform all duties and responsibilities as described in Section 4, below.
- 1.4. Both parties shall be providers of the services described in subsections 1.1 and 1.3 provided that both parties adequately perform all duties described herein and meet the demand as determined jointly and listed as their individual annual KPIs.

2. DEFINITIONS

- 2.1. "Agreement" is defined in the Preamble.
- 2.2. "APICS Members" as described in the APICS Board Operating Procedures.
- 2.3. "Channel Partners" means: an organization (e.g. Chapter, International Associate, and Authorized Education Provider) authorized to represent APICS in providing membership, education or certification services.
- 2.4. "Geographic Area/Territory" means: Chapters are not assigned specific territories with prescribed boundaries, but each CHAPTER is expected to serve members within a reasonable distance of its normal meeting location to be determined by its board of directors and with other CHAPTERS that are less than 50 miles from this location.

3. APICS' RESPONSIBILITIES AND ACCOUNTABILITIES

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- 3.1. APICS is responsible for developing, maintaining, distributing and administering the activities for the certification programs and other educational products as listed on Appendix 1. APICS is responsible for assuring the quality level and life cycle management of all educational products. APICS will notify Channel Partners 12 months prior to the end of production of an item.
- 3.2. APICS will manage the APICS membership program including marketing, enrollment, dues collections and rebates to CHAPTERS, database maintenance, and membership administration.
- 3.3. APICS is responsible for creating and elevating Brand awareness through marketing programs that include the CHAPTER; in marketing the certification and other educational programs to assure market awareness; to provide marketing templates in formats that are normally available to volunteer leaders; to coordinate with CHAPTER on marketing campaigns including creating, maintaining and the timely distribution of a rolling communications and marketing plan. This will allow the CHAPTER to synchronize its marketing plans with APICS.
- 3.4. APICS will coordinate the development and maintenance of web based interactive resources that CHAPTER can utilize to create a web presence, communicating with APICS members, gathering data from members and others, managing corporate and chapter performance measures and reporting. It may be necessary to share some of the costs between CHAPTER and APICS.
- 3.5. APICS will provide administrative services in support of the CHAPTER as indicated in Appendix TBD. These services may include graphics support, survey templates, insurance programs, legal services, financial control advice, etc. It may be necessary to share some of the costs between CHAPTER and APICS.
- 3.6. APICS will provide volunteer leadership education and training.
- 3.7. APICS will establish CHAPTER rebates on association dues.
- 3.8. APICS will establish material pricing for CHAPTER based on CHAPTER performance according to Chapter Benchmarking and Reporting (CBAR).

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- 3.9. APICS will limit volume buying to only Channel Partners and Enterprise Members.
- 3.10. APICS will only sell instructor kits to Channel Partners and Enterprise Members with an APICS-designated instructor.
- 3.11. APICS will provide validation data relating to certification status of individuals.
- 3.12. APICS will serve as a repository for best practices and make such information available to all Channel Partners.
- 3.13. APICS will negotiate value-added services from other organizations (e.g. Aberdeen research) and make those services available to CHAPTER.

4. CHAPTER'S RESPONSIBILITIES AND ACCOUNTABILITIES

- 4.1. CHAPTER will be a legal entity under the appropriate governmental authority in its location. CHAPTER must maintain this status as required by the recognizing government authority.
- 4.2. CHAPTERS must submit current By-laws to APICS. Those by-laws must require at least three officers elected by its members and hold at least one membership meeting per program year.
- 4.3. Chapters must participate in the APICS BOD/Director's insurance program or show proof of equivalent insurance in effect.
- 4.4. CHAPTER must comply with all governmental reporting requirements and annually complete and provide to APICS a financial letter of assertion from the board stating the status of the chapter's finances.
- 4.5. CHAPTER will implement and maintain a strategic and operations plan that meets the needs of their customers.
- 4.6. CHAPTER will submit to APICS an annual letter of compliance (see appendix [TBD])

5. MARKETING

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- 5.1. CHAPTER shall have the right to determine the nature of its own marketing or promotional activities in respect to the APICS Licensed Products and/or Third Party Materials obtained from APICS; provided that said marketing or promotional efforts are in accordance with this Agreement, the CHAPTER Appendix [TBD], applicable laws and regulations, and APICS' policies and guidelines, as updated or modified by APICS from time to time.
- 5.2. CHAPTER shall have the right to establish resale prices of the APICS Licensed Products and Third Party Materials obtained from APICS; provided, however, that CHAPTER shall offer favorable pricing discounts to APICS members.
- 5.3. Notwithstanding the foregoing, APICS reserves the right to request and receive copies of any promotional or descriptive materials CHAPTER plans to publish regarding APICS and/or the APICS Licensed Products. APICS shall have the right to reject any promotional and marketing materials that disparage or adversely affect APICS, the APICS Licensed Products, or as otherwise prohibited by this Agreement.
- 5.4. APICS will provide and maintain marketing templates for all APICS Licensed Products in formats compatible with CHAPTER's capability at least sixty (60) days prior to the release of a new Licensed Product or major revision by posting to the APICS repository.

6. KEY PERFORMANCE INDICATORS

- 6.1. Key Performance Indicators ("KPI's") shall be used to agree on targets and report performance, of both parties on an annual basis. The target performance levels will be discussed and agreed between the APICS and CHAPTER on an annual basis.
- 6.2. The KPIs as agreed between APICS and CHAPTER are referenced in CBAR as identified in appendix [TBD].

7. PROPRIETARY AND CONFIDENTIAL INFORMATION

- 7.1. APICS shall retain sole and exclusive ownership, title, and interest in all APICS-owned intellectual property rights in the APICS Licensed Products, Examinations, promotional and other APICS materials (including ownership of all trade secrets, copyrights, and trademarks pertaining thereto)

- 7.2. CHAPTER acknowledges that it may be given access to confidential and proprietary information solely for purposes of authorized use, as provided in this Agreement. Any information, which APICS considers to be confidential or proprietary shall, if tangible, be marked as such or, if communicated orally, designated at the time and promptly confirmed in writing as such.
- 7.3. APICS acknowledges that it may be given access to confidential and proprietary information solely for purposes of authorized use, as provided in this Agreement. Any information, which CHAPTER considers to be confidential or proprietary shall, if tangible, be marked as such or, if communicated orally, designated at the time and promptly confirmed in writing as such.
- 7.4. Confidential Information and any copies thereof that either party may have permitted the other party to make shall at all times remain, as between the parties, the sole property of that party
- 7.5. Confidential Information may not be copied or reproduced by either party without the express prior written consent of the other party except as necessary for performance under the Agreement or under another agreement between the parties. If either party's consent is granted, any such copies shall contain such proprietary rights notices as appear on the original thereof.
- 7.6. Confidential Information shall not include information: (a) previously known to either party from sources other than the other party that were without an obligation of confidence, (b) that was generated independently by either party; (c) that is published or otherwise made known to the public by either party, or that otherwise is or becomes publicly available through no breach of the Agreement by the other party. In the event either party receives a subpoena or other validly issued judicial process demanding Confidential Information, the recipient shall promptly notify the other party and tender to it the defense of such demand. Unless the demand shall have been timely limited, quashed (nullified) or extended, party shall thereafter be entitled to comply with such demand to the extent permitted by law. If requested by either party, the other party shall cooperate (at the expense of the disclosing party) in the defense of such a demand.
- 7.7. Both parties agree that the Confidential Information shall be disclosed only to those employees or agents of the other party who have a "need to know" such information and are under a binding obligation of confidentiality with respect to any such information received. Confidential Information shall not be disclosed to any other third party without the prior written consent of the other party. Both parties shall defend, indemnify and save the other party harmless from and against any and all damages, including reasonable attorney's fees, sustained as a result of the unauthorized use or disclosure of the other party's Confidential Information. Both parties acknowledges that the Confidential Information is valuable to the other party and that any threatened or actual

breach of this Section [TBD] “Proprietary and Confidential Information” by either party or the failure of the other party to return or turn over Confidential Information as required in the Agreement would cause irreparable injury to the party, for which monetary damages would be inadequate. Accordingly, both parties agree that the other party shall have the right to seek an immediate injunction enjoining any such breach, threatened breach or failure by the either party. Both parties agree to be responsible for all costs, including but not limited to, attorney fees, incurred by the other party in any action against the party arising out of the party’s breach of the terms of this Section 7 and/or the Agreement’s Confidential Information return requirements.

Both parties shall promptly advise the other party in writing of any unauthorized use or disclosure of Confidential Information of which the party becomes aware and shall provide reasonable assistance to the other party to bring about the cessation of such unauthorized use or disclosure.

8. ASSIGNMENT AND TRANSFER OF RIGHTS

Parties’ rights and obligations under this Agreement may not be transferred, leased, assigned, or sublicensed to another entity without the prior written approval of the other party. This Agreement shall be binding upon and inure to the benefit of the parties’ permitted successors and assigns.

9. ETHICAL STANDARDS

Both parties shall at all times follow the highest legal and ethical standards. CHAPTER agrees to act in accordance with APICS’ Code of Conduct, a copy of which will be supplied on the APICS website.

10. APICS’ RIGHTS AND RESPONSIBILITIES

All rights and/or licenses not specifically and expressly granted to the CHAPTER in the Agreement are reserved by APICS.

11. TERMS AND TERMINATION

- 11.1. This Agreement shall be effective as of the date first set forth on the signature page and shall continue in full force and effect for a period of one (1) year. This Agreement shall automatically renew for successive one (1) year periods, unless at least sixty (60) days prior to the expiration of the base period or any renewal period, either party gives written notice to the other of its election not to renew this Agreement. Notwithstanding the foregoing, this Agreement may be terminated by either party in accordance

with the terms set forth in this Section 11, or upon the mutual written consent of both parties

11.2. Either party may terminate this Agreement in any of the following circumstances:

11.2.1. If other party breaches any warranty or fails to perform any material obligation hereunder (other than breaches that are considered "gross misconduct," as set forth below), and such breach or failure is not remedied within thirty (30) days after written notice thereof to the party.

11.2.2. Immediately upon written notice, if either party becomes insolvent or bankrupt;

11.2.3. Immediately upon written notice, if other party engages in gross misconduct, which shall include but is not limited to: (i) unauthorized promotion, reprinting, distribution, modification or revision of the APICS Licensed Products, Examinations, Third Party Materials obtained from APICS, or other APICS materials, or any other activities infringing APICS' copyright in any of its materials; or (ii) nonpayment of any payment owed to other party within ten (10) days of the due date; or (iii) action or inaction by other party which adversely affects party, such as falsely advertising or promoting APICS' Examinations or changing/adding any requirement set by APICS regarding the Examinations without APICS' prior written consent; or (iv) disparaging, misusing, defaming or otherwise casting the "APICS" name, APICS Licensed Products, Third Party Materials obtained from APICS or Examinations in a negative light as set forth in Section [TBD].

11.3. On the effective date of termination, CHAPTER shall: (a) cease to have any rights to conduct the activities contemplated by Sections 3, 4, 5 and 6 (except as necessary to perform such continuing obligations as may be expressly set forth in those Sections); (b) discontinue use of all APICS trademarks and logos under the Agreement; and (c) immediately return to APICS all proprietary materials and Confidential Information of APICS and all materials (e.g., literature, forms, audio, visuals) loaned or otherwise made available under the Agreement unless otherwise negotiated under Section 11.4.1.

11.3.1. In addition to the obligations set forth in Section [TBD], upon termination, CHAPTER shall have the obligations set forth in this Section. Upon termination, CHAPTER may retain APICS Licensed Products, Third Party Materials obtained from APICS or Licensed Products purchased separately from APICS. In addition, upon termination of this Agreement, CHAPTER shall be liable for all outstanding invoices for the APICS Licensed Products and Third Party Materials obtained from APICS and said invoices shall automatically be accelerated, and all such invoices shall become due and payable upon the effective date of termination. APICS must accelerate all payments due to CHAPTER, and all such invoices shall become due and payable upon the effective date of termination. All orders or portions thereof remaining unshipped as of the effective date of termination may be canceled by APICS at its option.

11.3.1.1. Notwithstanding the foregoing, if existing inventories of the APICS Licensed Products or Third Party Materials obtained from APICS exist on the effective date of termination, APICS may, in its sole discretion, provide written permission for CHAPTER to continue to market and dispose of said existing inventories for a period of six (6) months. If such permission is granted, by APICS, CHAPTER's activities shall be subject to the following conditions:

11.3.1.1.1. The distribution and sale of existing inventories shall be subject to the payment set forth herein.

11.3.1.1.2. If, at any time during the six (6) month period, APICS determines, in its sole discretion, that continued marketing and/or distribution adversely affects APICS, then CHAPTER shall cease said activities immediately upon receipt of written notice from APICS.

11.3.1.1.3. At the end of the six (6) month period (or at such earlier time that CHAPTER's rights may be terminated as set forth herein), CHAPTER shall: (1) cease all marketing of the APICS Licensed Products and Third Party Materials

obtained from APICS; (2) cease all sale and/or distribution of the APICS Licensed Products and Third Party Materials obtained from APICS; and (3) cease all use of APICS' names, trademarks, logos and designations.

- 11.3.1.1.4. At the end of the six (6) month period (or at such earlier time that CHAPTER's rights may be terminated as set forth herein), CHAPTER shall, at APICS' option, destroy or return without compensation all existing copies of the APICS Licensed Products and Third Party Materials obtained from APICS in its inventories, as well as all other materials (e.g., literature, forms, audio, visuals) loaned or otherwise made available under the Agreement. Notwithstanding the foregoing, each party and its members may retain materials purchased from the other party.
- 11.3.1.1.5. If termination is due to breach or nonperformance by either party, all costs and expenses associated with destruction or return of copies of the APICS Licensed Products or Third Party Materials obtained from APICS shall be borne by the breaching or non-performing party. If the termination is for any other reason, all such costs and expenses shall be shared evenly by the parties.
- 11.3.1.1.6. Notwithstanding any other provision of this Agreement, upon termination, APICS shall have the option, exercisable at any time and in its sole discretion, to repurchase some or all of the remaining uncommitted inventory of the APICS Licensed Products and Third Party Materials obtained from APICS. APICS shall pay for all products repurchased (if received in new and resalable condition) in an amount agreed to by both parties or in accordance with the price paid by CHAPTER. Upon receipt of any products so repurchased, APICS shall issue an appropriate credit to CHAPTER's account or a cash reimbursement.

- 11.3.2. Immediately upon written notice, either party sublicenses or assigns any portion of this Agreement to a third party without the prior written approval of the other party.
- 11.3.3. Upon one hundred twenty (120) days advance written notice to other party if either party determines in its discretion that the relationship is no longer productive and is unlikely to improve significantly in the foreseeable future.
- 11.4. Termination shall be without prejudice to all rights and remedies of either party under this Agreement and at law.
- 11.5. The following Sections of this Agreement shall survive termination.

12. GENERAL INDEMNIFICATION

Both parties hereby agree to and shall indemnify, defend, and hold harmless the other party from and against any and all claims, demands, or actions and any losses, expenses, and damages resulting directly there from (including without limitation, court costs and reasonable attorney's fees) based on any use, promotion, advertising, marketing or distribution of the APICS Licensed Products, Third Party Materials obtained from APICS and/or Examinations, including but not limited to, the violation of any applicable statute, law, treaty, regulation, code, standard or requirement, worldwide.

13. PROPRIETARY RIGHTS INDEMNIFICATION

Both parties hereby agree to and shall indemnify, defend, and hold harmless the other party from and against any and all claims, demands or actions and any losses, expenses, and damages resulting directly there from (including court costs and reasonable attorney fees) based on any claim that the APICS Licensed Products and/or Examinations, or portion thereof, violate any copyright, trademark, patent or other intellectual property rights held by any third party in the United States provided CHAPTER promptly advises APICS of any such claim in writing, and shall allow APICS to control the defense. CHAPTER agrees to reasonably cooperate at APICS' request in the defense. In no event shall CHAPTER settle any claim, lawsuit or proceeding without APICS' prior written approval. Notwithstanding the foregoing, APICS shall have no obligation to indemnify, defend, or hold harmless CHAPTER if the claim of infringement arises out of: (1) CHAPTER's modification, revision, change or alteration of the APICS Licensed Products, Third Party Materials obtained from APICS or Examinations; or (2) CHAPTER's failure to comply with the terms of this Agreement, including without limitation, its applicable foreign trademark and copyright requirements.

14. WARRANTIES

14.1. CHAPTER Representation and Warranties

CHAPTER represents, warrants and covenants throughout the term of this Agreement, that:

- 14.1.1. CHAPTER is not and will not be bound by any agreements to the contrary; and that the persons executing this Agreement are fully authorized to do so;
- 14.1.2. CHAPTER will not modify or revise the text or the cover of the APICS Licensed Products, Third Party Materials obtained from APICS or any other materials provided to CHAPTER by APICS, except as may be expressly authorized or licensed in this Agreement or by a writing signed by APICS;
- 14.1.3. CHAPTER will ensure that all permits, licenses, and other government approvals have been obtained or maintained (at its own expense), and will provide evidence of such to APICS upon request;
- 14.1.4. CHAPTER will not disparage, misuse, defame or otherwise cast the "APICS" name, the APICS Licensed Products, Third Party Materials obtained from APICS or Examinations in a negative light;
- 14.1.5. CHAPTER will comply with all applicable statutes, laws, regulations, codes, standards, or other requirements, worldwide, including, but not limited to, foreign trademark and copyright registration and the fair trade and competition laws in each country a CHAPTER operates;
- 14.1.6. CHAPTER is, and shall remain throughout the term of this Agreement, a legal entity located in the Geographic Area.

14.2. Licensed Products Warranty

- 14.2.1. APICS warrants that the APICS Licensed Products, if and as delivered to CHAPTER shall be free from significant defects in materials and workmanship for a period of 90 days after the date the Licensed Products are supplied from APICS' facility. APICS shall, at CHAPTER's option, provide a credit voucher based upon the purchase price paid by CHAPTER in lieu of a replacement unit, or provide a cash refund.

- 14.2.2. APICS represents and warrants that it is not bound by any agreements to the contrary; and that the persons executing this Agreement are fully authorized to do so.
- 14.2.3. The foregoing states the entire liability of APICS and the exclusive remedies of CHAPTER with respect to APICS breach of the warranty with respect to the APICS Licensed Products and CHAPTER hereby waives any other rights with regard to breach of the warranty set forth above.
- 14.2.4. The APICS licensed products, third party materials obtained from APICS, examinations and any and all updates thereto are provided "as is" with the exception of the warranties expressly provided herein. The warranties in this section are limited warranties and are the sole and exclusive warranties made by APICS. APICS makes and chapter receives no additional warranty, express, implied, or statutory, including but not limited to, any warranties of design, merchantability or fitness for a particular purpose, even if chapter has been informed of such purpose. APICS makes no warranty that the APICS licensed products do not infringe the intellectual property rights of another person or entity outside of the united states. No agent, contractor or employee of APICS is authorized to alter or exceed the warranty obligations of APICS as set forth herein.

15. LIMITATION OF LIABILITY

- 15.1. To the maximum extent permitted by law, in no event shall APICS be liable for any consequential, special, indirect, incidental or punitive losses, costs of delay, lost profits, failure of delivery, damages or expenses of chapter arising under or in connection with this agreement, regardless of how such losses, damages or expenses arise and irrespective of whether or not chapter has been advised of the possibility of such losses, damages or expenses.
- 15.2. To the maximum extent permitted by law, the respective maximum liability of APICS to chapter under this agreement, for any and all claims, shall not exceed the fees paid to APICS by chapter.

16. TAXES, DUTIES

CHAPTER shall be solely responsible for payment of all taxes, withholdings, duties or other charges relating to its receipt and/or use (including any sale, resale or distribution) of the APICS Licensed Products, Third Party Materials obtained from APICS, and/or Examinations.

17. NON-DISCRIMINATION

Including but not limited to the authorized promotion, reprinting, distribution, or revision of the APICS Licensed Products, Third Party Materials obtained from APICS and/or Examinations, CHAPTER shall not discriminate against any individual, or otherwise deny equal access to its products, on the basis of corporate affiliation, race, sex, national origin, age, disability or protected status.

18. INTELLECTUAL PROPERTY

- 18.1. Neither party shall, during the term of this Agreement or at any time thereafter:
- indicate or imply an endorsement of presentations, activities, or programs by the other party without the prior written approval of that party.
 - use the other party's name, trademarks, service marks, logos, copyrighted material or other intellectual property without the other party's prior written approval.
- 18.2. This Section shall survive termination of this Agreement and shall continue to bind the parties hereto.

19. APICS LINK AND LOGO

CHAPTER agrees to place APICS' logo and maintain a link to APICS' website on the home page of CHAPTER's website. CHAPTER further agrees that in the event the display of APICS' logo and the link to APICS' website violates the terms of this Agreement, CHAPTER shall immediately remove or revise said link and/or APICS logo as required by APICS.

20. INDEPENDENT CONTRACTOR

It is expressly understood between the parties that each is an independent contractor of the other; that no employee or representative of one party shall be deemed to be an employee or representative of the other; that neither party is authorized to make any contract, agreement, warranty, or representation, or create any obligation, express or implied, on behalf of the other; and that each party shall not be deemed to be an agent, legal representative, joint venture, or partner of the other party for any purpose whatsoever.

21. ENTIRE AGREEMENT

- 21.1. This Agreement, and any Appendices hereto shall constitute the entire Agreement between APICS and CHAPTER and supersedes any previous agreements whether oral or written.
- 21.2. It is acknowledged and agreed by the parties that this Agreement shall be deemed to have been prepared and drafted jointly by the parties, and that, therefore, the terms and conditions herein shall not be construed or interpreted in favor of, or against, either party on this basis.

22. SEVERABILITY

In the event any provision of this Agreement is held invalid by an Illinois court of competent jurisdiction, this Agreement shall be modified to delete any provisions held to be invalid for any reason. In that event, all limitations of liability and exclusions of damages shall, to the greatest extent possible, continue in full force and effect and apply to the remaining provisions. This Agreement shall be construed and enforced as if said invalid provision had never been inserted herein.

23. WAIVER

- 23.1. Waiver by either party of any term or condition of this Agreement or any breach shall not constitute a waiver of any other term or condition or breach of this Agreement.
- 23.2. The failure of either party to enforce, in any one or more instances, any of the terms or conditions of this Agreement, shall not be construed as a waiver of the future performance of any such term or condition.

24. GENERAL

The rights and remedies of the parties provided in this Agreement are in addition to any other rights and remedies provided at law or in equity.

- 24.1. Each party agrees that it shall not publicize in any way, shape, or form the terms and conditions of this Agreement to any third party (excepting its attorneys, accountants, and financial advisors) without the prior written consent of the other party.
- 24.2. Notices under this Agreement shall be addressed to the parties at the addresses set forth on the first page of this Agreement.
- 24.3. Notice shall be sent by a traceable express courier, registered or certified mail, postage prepaid, return receipt requested. The date of notice shall be deemed to be the date on which such notice was actually received. Each party shall promptly give the other party written notice of any change of

address. All communications and correspondence shall be in the English language, unless otherwise agreed to in writing by each party.

- 24.4. This Agreement shall be governed by the laws of the State of Illinois and the United States without giving effect to any choice of law principles. Each party hereby submits to the exclusive jurisdiction of the state and federal courts within the State of Illinois in respect of any dispute arising out of, or in connection, with this Agreement.
- 24.5. This Agreement may be executed in one or more counterparts, each of which taken together shall be considered one and the same document.
- 24.6. Unless specifically limited in this Agreement, neither party shall be liable for any default or delay on its part in performing any obligation under this Agreement if such default or delay is caused by superior power (natural disaster, accident, war, civil disorder, strike, or any other cause beyond the reasonable control of such party or its agents or employees). In the event that either party is prevented by such an occurrence or circumstance for a period of more than 90 days from fulfilling its obligations under this Agreement, the other party may terminate this Agreement upon 90 days written notice.
- 24.7. Any dispute that arises between the parties shall be settled by arbitration in accordance with the rules for commercial arbitration of the American Arbitration Association (or a similar organization).