

UPTICK END USER LICENSE AGREEMENT

This End User License Agreement ("**Agreement**") is entered into as of the date of purchase (the "**Effective Date**"), by and between **Selleration, Inc.**, a Delaware corporation ("**Selleration**") having a business address at 205 E 42nd Street, 16th Floor, New York, New York 10017, and the student client ("**Client**").

RECITALS

Selleration has developed and owns certain proprietary sales assessment and skill development simulation software known as the "UPTick Application";

Client desires to engage Selleration to provide the UPTick Application to Client on a web-based "Software as a Service" subscription basis, and Selleration is willing to provide such service to Client.

Therefore, in consideration of the mutual covenants, terms and conditions set forth in this Agreement, the adequacy and sufficiency of which consideration is hereby accepted and acknowledged by the parties, Selleration and Client agree as follows.

TERMS AND CONDITIONS

1. **Definitions.**

(a) "**Authorized User**" means Client who is to use the Service, for whom Client has ordered the Service, and to whom Client (or Selleration, at Client's request) has supplied a user identification and password.

(b) "**Client Data**" means electronic data and information submitted by or for Client to the Service, and data and information specific to Client and its Authorized Users that is generated by Client and its Authorized User's use of the Service.

(c) "**Service**" means the hosted sales assessment and skill development simulation service ordered by Client and made available by Selleration online pursuant to this Agreement. The Service includes the provision on a hosted basis of non-exclusive use of and access to proprietary Selleration software, including the Software, and associated hosting and support services as described herein.

(d) "**Site**" means the web site used by the Client and/or such other web site or sites that Selleration communicates to Client where Client may access the Service.

(e) "**Software**" means Selleration's proprietary UPTick Application software used by Selleration to deliver the Service, made available to Client through the Site on a "Software as a Service" subscription basis, and all updates and any associated documentation thereto made available as a part of the Service pursuant to this Agreement.

2. **Service.**

(a) *Use of Service.* Under the terms of and subject to the restrictions in this Agreement, including payment of all applicable fees as described in Exhibit A, Selleration will provide the Service on a subscription

basis to Client during the Term (as hereinafter defined) of this Agreement. Client may use and access the Service and Software solely through the Site. Client's rights to use the Service are non-exclusive, non-transferable, and non-sublicensable. Client may use the Service only for Client's own benefit, and not for the benefit of any third party.

(b) *Support; Maintenance.* As part of the Service, Selleration will provide to Client its standard support for the Service at no additional charge. Selleration will use commercially reasonable efforts to make the Service available on a 24 hours a day, 7 days a week, and 365 days a year basis, subject to Section 12(b) (Force Majeure) below and to downtime for maintenance purposes. Selleration will, to the extent practicable, schedule planned maintenance downtime during the weekend hours between 6:00 p.m. Friday and 3:00 a.m. Monday EST. So long as the Service is not materially diminished, Selleration may from time to time modify the Service and add, change, or delete features of the Service, in its sole discretion, without notice to Client. Client's continued use of the Service after any such changes to the Service constitutes Client acceptance of these changes.

(c) *Use by Authorized Users.* In no event may third parties use and access the Service. Client shall be fully responsible for use of the Service and their compliance with the terms of this Agreement. Client acknowledges that it is solely responsible for: (a) all use of the Service made using Client's Authorized Users' user names and passwords, and (b) maintaining the confidentiality of Client's Authorized Users' user names and passwords. Only one individual may access the Service at the same time using the same user name and password. Client agrees to notify Selleration immediately of any unauthorized use of an Authorized User's email address, user name or password, or any other breach of security regarding the Service of which Client becomes aware.

(d) *Equipment.* Client will, at its own cost and expense, provide all of the equipment, operating platforms, software (including a Web browser), and connectivity needed to use the Service.

(e) *Usage Restrictions.* Client warrants and agrees not to, (i) violate any local, state, national or international law or regulation in connection with its use of the Service, or otherwise use the Service in any way that is in furtherance of criminal, fraudulent, or other unlawful activity; (ii) interfere with or disrupt the Service or servers or networks connected to the Service; (iii) violate any codes of conduct, requirements, terms of use, policies or regulations of networks connected to the Service; (iv) interfere with or attempt to interfere with any other person's use of the Service; (v) gain access to or attempt to gain access to any account, computers or networks related to the Service without written authorization; (vi) use the Service to transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs, corrupted files and Trojan horses, or any other similar software that may damage the operation of another's computer or property; (vii) use the Service in a manner that results in excessive bandwidth usage, as determined in Selleration's sole discretion; (viii) impersonate any other person or entity, or misrepresent Client's affiliation with any other person or entity; (ix) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content or communication transmitted through the Service; (x) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights; or (xi) interfere with or disrupt the integrity or performance of the Service or any third-party data contained therein.

3. Intellectual Property.

(a) *Intellectual Property Rights.* Client agrees that Sellation and its licensors, if any, own all intellectual property rights in and to the Service, the Software, and the Site, including but not limited to the look and feel, structure, organization, design, algorithms, templates, data models, logic flow, text, graphics, logos, and screen displays associated therewith. Client will not reverse engineer, decompile or disassemble the Software, or otherwise attempt to reconstruct or discover the source code for the Software. Client further agrees not to resell, lease, rent, assign, distribute, time share or otherwise commercially exploit or make the Service available to or for the benefit of anyone other than Client.

(b) *Reservation of Rights.* Subject to the limited rights expressly granted to Client hereunder, Sellation reserves all rights in the Service, Site, and Software, including all intellectual property and other proprietary rights. Except as expressly set forth in this Agreement, no rights are granted to Client hereunder regarding the Service, Site or Software, including any right to obtain access to or possession of any source code or other technical material relating to the Service, Site or Software, or regarding Sellation's trademarks or service marks.

(c) *Client Data.* Client shall retain ownership of Client Data. Client grants Sellation a worldwide, limited term license to host, copy, transmit and display Client Data, as necessary for Sellation to provide Client the Service in accordance with this Agreement. Solely in order to provide the Service to Client, Sellation may copy, archive, index, and create metadata relating to Client Data. Sellation may derive and compile from Client's and its Authorized Users' usage of the Service certain aggregated and/or analytical information, including but not limited to usage and performance metrics and statistics (collectively, "**Anonymous Data**"), so long as such Anonymous Data does not reveal that Client is the provider or source of such data or that such data is associated with Client. Such Anonymous Data and metadata may be used for Sellation's own purposes without restriction, including, but not limited to, using such data in conjunction with data from other sources to improve Sellation's products and services and create new products.

(d) *Feedback.* Sellation shall have a royalty-free, worldwide, transferable, and perpetual license to use or incorporate into the Service any suggestions, ideas, enhancement requests, corrections, feedback, or other information provided by Client relating to the Service.

4. **Confidentiality and Security.**

(a) "**Confidential Information**" means any information or data that is disclosed by one party to the other party pursuant to this Agreement that is marked as confidential. In addition, Client's Confidential Information includes Client Data (but not Anonymous Data), and Confidential Information of Sellation (whether or not marked) includes the Service and Software, as well as the structure, organization, design, algorithms, templates, data models, logic flow, and screen displays associated with the Service and Software. Confidential Information does not include information that the receiving party can show: (a) is or becomes publicly known or available without breach of this Agreement; (b) is received by a receiving party from a third party without breach of any obligation of confidentiality; or (c) was previously known by the receiving party as shown by its written records.

(b) *Use of Confidential Information.* A receiving party agrees: (a) to hold the disclosing party's Confidential Information in confidence, and to protect the disclosing party's Confidential Information in the same manner that it protects the confidentiality of its own similar confidential information (but in no event using less than reasonable care); and (b) except as expressly authorized by this Agreement, not to, directly or indirectly, use, disclose, copy, transfer or allow access to the disclosing party's Confidential Information.

Without limiting the foregoing, Client shall disclose and allow access to the Service only for the purpose of supporting and augmenting Client's use of the Service. Notwithstanding the foregoing, a receiving party may disclose Confidential Information of the disclosing party as required by applicable law, applicable regulatory authorities, or court order; provided, however, that in such event, such party shall use its best efforts to inform the other party prior to any such required disclosure.

(c) *Injunctive Relief.* Each party acknowledges and agrees that any violation of this Section 5 may cause the disclosing party irreparable injury for which the disclosing party would have no adequate remedy at law, and that the disclosing party shall be entitled to preliminary and other injunctive relief against the receiving party for any such violation. Such injunctive relief shall be in addition to, and not in limitation of, all other remedies or rights that disclosing party shall have at law or in equity.

(d) *Security.* Selleration will take reasonable security measures designed to protect Client's Confidential Information, including Client Data. These measures will include the use of reasonable physical, administrative, and technical security techniques and systems designed to prevent unauthorized access and disclosure, maintain data accuracy, and ensure appropriate use of Client's Confidential Information.

(e) *Return of Confidential Information.* Upon termination or expiration of this Agreement, the receiving party will return to the disclosing party or destroy all Confidential Information delivered or disclosed to the receiving party, together with all copies in existence thereof at any time made by the receiving party; provided that return of Client Data by Selleration to Client is covered by Section 6(e) below.

5. Term And Termination.

(a) *Term.* This Agreement will begin on the Effective Date indicated on Exhibit A and, unless earlier terminated according to the provisions hereof, shall continue for the period as described on Exhibit A (the "**Term**").

(b) *Termination for Cause.* Either party may terminate this Agreement (i) upon thirty (30) days prior written notice if the other party materially breaches any of the terms and conditions of this Agreement and such material breach is not cured within such thirty (30) day period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Selleration will have the right to suspend Client's use of or access to the Service in the event Selleration determines in its sole discretion that Client has breached this Agreement.

(c) *Termination for Convenience.* Selleration may terminate this Agreement without cause by giving written notice. Client may terminate this Agreement without cause upon at least thirty (30) days' prior written notice. In such event, Client shall not be entitled to any refund of any portion of fees paid to-date.

(d) *Effects of Termination; Survival.* Upon termination of this Agreement, Client's right to use the Service shall immediately terminate, and Client will cease all use of the Service. The terms provided in Sections 3, 4, 7, 8, 9, 10, and 11 of this Agreement, and any other provision that must survive termination to full its essential purpose, shall survive any termination of this Agreement.

(e) *Destruction of Client Data.* Upon written request by Client made within one (1) year after the effective date of termination or expiration of this Agreement, Selleration will make Client Data available to Client for export or download. After that one-year period, Selleration will have no obligation to maintain or

provide Client Data, and will thereafter delete or destroy all copies of Client Data on Sellation's systems or otherwise in Sellation's possession or control, unless legally prohibited.

6. Independent Contractors; Publicity.

(a) *Independent Contractors.* The parties are and intend to be independent contractors with respect to the services contemplated hereunder, and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way. The parties agree that no Sellation employee or contractor is or shall be considered as having an employee status with Client. No form of joint employer, joint venture, partnership, or similar relationship between the parties is intended or hereby created.

(b) *Right of Publicity.* Client agrees that Sellation may include Client as a customer in promotional material for the Software and/or for Sellation, including use of Client's logos, trademarks, trade names and similar identifying material. Client can revoke this right by notifying Sellation in writing. Upon receipt of such request, Sellation will use commercially reasonable efforts to remove any reference to Client from such promotional material within 30 days and make no further reference to Client.

7. Warranties; Disclaimers.

(a) *Warranties.* Client and Sellation each warrant respectively that (a) such party has full authority to enter into this Agreement and is not bound by any contractual or legal restrictions from fulfilling their obligations hereunder, and (b) this Agreement is a valid and binding obligation of such party, enforceable against such party in accordance with its terms, except as such enforceability may be limited by laws relating to creditors' rights generally and the exercise of judicial discretion in accordance with general principles of equity. In addition, Sellation warrants that the provision of the Service by Sellation does not and will not violate or contravene any applicable law, rule or regulation. In the event of a breach of this warranty by Sellation, as Client's sole and exclusive remedy, Sellation will, at its expense, use commercially reasonable efforts to cause the Service to conform to such applicable law, rule or regulation.

(b) *Warranties Regarding Client Data.* Client represents and warrants that Client Data and associated content and data ("**Client Data**") provided to Sellation in connection with Client use of the Site and the Service: (i) is owned by Client, or Client has the full right to provide the Client Data to Sellation; (ii) does not infringe or misappropriate any copyright, trademark, trade secret or other intellectual property right; (iii) does not violate any person's right of privacy or publicity; and (iv) does not contain any unlawful, obscene, defamatory or libelous material. Client further represents and warrants that Client's use of Client Data on the Site or in connection with the Service is not in breach of any covenant or obligation of confidentiality that Client has to any other person or entity. Client is solely responsible for the Client Data, and acknowledges that Sellation has no responsibility or intent to review or monitor any Client Data. Sellation is not responsible for the accuracy, completeness or integrity of any Client Data entered into the Service via electronic data interface, integrations with Client systems, or manually entered by Client, Client representatives or contractors, or otherwise. Sellation does not warrant the accuracy of data in reports generated using Client Data and expressly disclaims responsibility for the results obtained through reports designed and generated by Client using the Service's reporting functionality. Client is solely responsible for data validation in any reports designed and generated by Client.

(c) Client shall be solely responsible for Client's use of the Service, and, except as otherwise agreed in writing by the parties, for maintaining backup copies of Client Data. Client acknowledges and agrees

that the Service is strictly a tool to be used in conjunction with good and reasonable business judgment by competent personnel.

(d) *Third Party Materials.* The Service may contain features, functionality and information that are provided through or by third-party content, software, web sites, and/or systems ("**Third-Party Materials**"). Client's use and access of these features and functionality are subject to the terms published or otherwise made available by the third-party providers of Third-Party Materials. Selleration has no responsibility for any Third-Party Materials, and Client irrevocably waives any claim against Selleration with respect to such Third-Party Materials.

(e) *DISCLAIMER OF WARRANTIES.* SELLERATION DOES NOT WARRANT THAT THE SERVICE WILL OPERATE WITHOUT INTERRUPTION OR ERROR-FREE, OR THAT THE SERVICE WILL BE TOTALLY SECURE. UNDER NO CIRCUMSTANCES WILL SELLERATION BE HELD LIABLE FOR ANY LOSS OF CLIENT DATA. TO THE EXTENT THAT DATA IS BEING TRANSMITTED OVER THE INTERNET HEREUNDER, CLIENT ACKNOWLEDGES THAT SELLERATION HAS NO CONTROL OVER THE FUNCTIONING OF THE INTERNET, AND SELLERATION MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PERFORMANCE OF THE INTERNET. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, CLIENT ACKNOWLEDGES AND AGREES THAT THE SERVICE AND USE OF SOFTWARE ARE PROVIDED "AS IS;" AND THAT SELLERATION MAKES NO (AND, EXCEPT AS PROVIDED HEREIN, HEREBY DISCLAIMS ALL) WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND WHATSOEVER, WHETHER WRITTEN OR ORAL, OR EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE, AGAINST INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICE OR SOFTWARE (OR ANY COPY OR COMPONENTS THEREOF) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED BY SELLERATION, OR THEIR QUALITY OR RELIABILITY, OR OTHERWISE ARISING UNDER THESE TERMS. SELLERATION IS NOT RESPONSIBLE FOR ANY DECISION MADE OR ACTION TAKEN BY CLIENT, CLIENT'S CUSTOMERS, OR ANY OTHER PERSON IN RELIANCE UPON THE DATA OR CLIENT DATA.

8. Indemnification.

(a) Client, at Client's expense, shall indemnify, defend and hold Selleration and its officers, directors, owners, employees, and affiliates (collectively, the "**Selleration Indemnitees**") harmless from and against all liability, damages, injuries, losses, costs and expenses (including attorney's fees) based on any third party claim against a Selleration Indemnitee arising out of or relating to Client's use of the Service in violation of this Agreement, or alleging that the Client Data or Client's use of the Service in violation of this Agreement infringes the intellectual property rights, or has otherwise harmed, a third party. Client shall have no liability for any such claim unless Selleration (a) promptly gives written notice of the claim to Client; (b) gives Client sole control of the defense and settlement of the claim through counsel chosen and paid for by Client (provided that Client may not settle or defend any claim unless it unconditionally releases Selleration of all liability); and (c) provides to Client, at Client's cost, all reasonable assistance.

(b) Selleration, at Selleration's expense, shall indemnify, defend and hold Client harmless from and against all liability, damages, injuries, losses, costs and expenses (including attorney's fees) based on any third party claim against a Client Indemnitee arising out of or relating to Selleration's provision of the Service in violation of this Agreement, or alleging that the use of the Service, as produced and furnished by

Selleration hereunder, infringes the intellectual property rights, or has otherwise harmed, a third party. Selleration shall have no liability for any such claim of infringement based on: (i) any modification of the Service by a person or entity other than Selleration; (ii) any use or combination of the Service with any service, software or equipment not supplied or approved in writing by Selleration; (iii) any use of the Service not permitted by this Agreement; (iv) products or processes developed pursuant to Client's direction, design or specification; or (v) any settlement or compromise of such claims made without Selleration's prior written consent. Selleration shall have no liability for any such claim unless Client (a) promptly gives written notice of the claim to Selleration; (b) gives Selleration sole control of the defense and settlement of the claim through counsel chosen and paid for by Selleration (provided that Selleration may not settle or defend any claim unless it unconditionally releases Client of all liability); and (c) provides to Selleration, at Selleration's cost, all reasonable assistance.

9. **Liability.**

(a) *LIMITATION OF LIABILITY.* THE LIMIT OF SELLERATION'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT, OR BY STATUTE OR OTHERWISE) TO CLIENT OR TO ANY THIRD PARTY CONCERNING PERFORMANCE OR NON PERFORMANCE BY SELLERATION, OR IN ANY MANNER RELATED TO THIS AGREEMENT OR THE SERVICE, FOR ANY AND ALL CLAIMS SHALL NOT EXCEED IN THE AGGREGATE THE SERVICE FEE PAID BY CLIENT TO SELLERATION HEREUNDER.

(b) *EXCLUSIONS.* EXCEPT FOR ANY ACTS OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, BREACHES OF SECTION 5 (CONFIDENTIALITY AND SECURITY), AND IN THE CASE OF CLIENT, MISAPPROPRIATION OF INFRINGEMENT OF THE SERVICE OR SOFTWARE, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE LOSS, DAMAGE OR EXPENSES WHETHER ARISING IN CONTRACT OR TORT (INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF DATA, OR THE COST OF RECREATING LOST DATA), EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE.

(c) THE ALLOCATIONS OF LIABILITY IN THIS SECTION REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES AND SELLERATION'S COMPENSATION REFLECTS SUCH ALLOCATION. THESE LIMITATIONS OF LIABILITY WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. **Dispute Resolution.**

(a) The parties agree to work together in good faith to resolve any dispute regarding this Agreement internally and by escalating it to higher levels of management and optional mediation, prior to resorting to binding arbitration.

(b) *Arbitration.* Except for claims brought under Sections 5 or 9, Selleration and Client shall arbitrate any dispute resulting from or arising from this Agreement. Any such arbitration shall be in accordance with the commercial rules of Judicial Arbitration and Mediation Services ("**JAMS**") in effect at the time the dispute is filed, except to the extent such rules conflict with these Terms. The cost of the arbitration will be borne equally by the Parties. Any such arbitration shall be held in Raleigh, North Carolina USA and

directed by JAMS. Notwithstanding the foregoing or the then-current specified commercial rules of JAMS, the following shall apply with respect to the arbitration proceeding: (a) the arbitration proceedings shall be conducted by one (1) arbitrator selected by the parties, provided, if the parties fail to make such designation within five (5) days after receipt by JAMS of the demand for arbitration, JAMS shall make the appointment in its sole discretion of an arbitrator with a minimum of ten (10) years' experience and knowledge of software outsourcing and software-as-a-service subscription agreements); (b) the arbitrator will apply North Carolina law and will have no power to alter any provision of these Terms nor to determine any matter, except as provided in this Section 11. The arbitrator will not be bound by legal rules of procedure, and may receive evidence in any manner designed to achieve an equitable result for the Parties; and (c) the existence, subject, evidence, proceedings and rulings resulting from the arbitration proceedings shall be deemed Confidential Information, and shall not be disclosed by either Party, their representatives, or the arbitrator, except: (i) to the professional advisors of each of the Parties; (ii) in connection with a public offering of securities of either of the Parties; (iii) as ordered by any court of competent jurisdiction; or (iv) as required to comply with any applicable governmental statute or regulation. All offers, promises, conduct, and statements, whether written or oral, made in the course of negotiation or arbitration hereunder are confidential, privileged, and inadmissible for any purpose, including, without limitation, impeachment, or estoppel, in any other litigation or proceeding involving any of the Parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the negotiation or arbitration. Either Party may seek equitable relief in arbitration prior to arbitration on the merits to preserve the status quo. EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTER-CLAIM (WHETHER IN CONTRACT, STATUTE, EQUITY, OR TORT (SUCH AS NEGLIGENCE)), OR OTHERWISE RELATING TO THIS AGREEMENT.

(c) *Choice of Law & Jurisdiction.* This Agreement will be governed solely by the internal laws of the State of North Carolina, without reference to: (i) such State's principles of conflicts of law; (ii) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (iii) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Raleigh, North Carolina.

11. Miscellaneous.

(a) *European Union.* If Client is located in the European Union, Client consents to the processing of personal information in the United States by Selleration in connection with the Service.

(b) *Force Majeure.* Neither party shall be liable for any failure or delay in the performance of its obligations (except for payment obligations hereunder) due to causes beyond the reasonable control of the party affected, including but not limited to war, sabotage, insurrection, riot or other act of civil disobedience, strikes or other labor shortages, act of any government affecting the terms hereof, acts of terrorism, accident, fire, explosion, flood, hurricane, severe weather or other act of God, failure of telecommunication or internet service providers.

(c) *Entire Agreement.* This Agreement (including any attachments hereto specifically agreed by the parties) constitutes the entire understanding of the parties with respect to its subject matter, and supersedes all prior or contemporaneous written and oral communications, understandings or agreements with respect to its subject matter. No waiver of any provision of this Agreement, or of any rights or obligations of any party hereunder, will be effective unless in writing and signed by the party waiving

compliance. The failure by any party to exercise any right provided herein shall not be deemed a waiver or forfeiture of any such right. Headings used in this Agreement are for convenience of reference only and shall not be deemed a part of this Agreement.

(d) *Assignment.* Client shall have no right to assign this Agreement or any of Client's obligations hereunder. Selleration may assign this Agreement and any of its rights hereunder to third parties. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, and their respective permitted successors and permitted assigns.

(e) *Severability.* Every provision of this Agreement is intended to be severable. If any section of this Agreement is found to be invalid or unenforceable, then such section will be deemed amended and interpreted, if possible, in a way that renders it enforceable. If such an interpretation is not possible, then the section will be deemed removed from this Agreement and the rest of this Agreement will remain in full force and effect.

(f) *No Agency or Third Party Beneficiaries.* This Agreement does not designate either party as the agent, employee, legal representative, partner or joint venture of the other party for any purpose whatsoever. There are no intended third-party beneficiaries under this Agreement.

(g) *Export Controls.* Client agrees to comply with all relevant export laws and regulations, including, but not limited to, the U.S. Export Administration Regulations and Executive Orders ("**Export Controls**"). Client warrants that neither Client nor any Authorized User is a person, company or destination restricted or prohibited by Export Controls ("**Restricted Person**"). Client will not, directly or indirectly, export, re-export, divert, or transfer the Software or Service, any portion thereof or any materials, items or technology relating to Selleration's business or related technical data or any direct product thereof to any Restricted Person.

(h) *Attorney's Fees.* Client will pay on demand all of Selleration's reasonable attorneys' fees and other costs incurred by Selleration to collect any fees or charges due to Selleration following Client's breach of this Agreement.

(i) *Notices.* Any notice by a party under this Agreement will be in writing and either personally delivered, delivered by facsimile with receipt confirmation, or sent via reputable overnight courier (such as Federal Express) or certified mail, postage prepaid and return receipt requested. Notices to either party should be sent to the address specified for such party on the first page of this Agreement. Either party may from time to time notify the other in accordance with this Section 12(i) of a change of address. All notices will be in English and will be deemed effective on the date of personal delivery, upon confirmation of a facsimile transmission, or upon receipt if delivered by overnight courier or certified mail.

(j) *Amendments.* No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted.

(k) *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties hereto and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be

executed and delivered by facsimile transmission or email transmission. Delivery of an executed signature page to this Agreement by any party by facsimile or email transmission will be as effective as delivery of a manually executed copy of this Agreement by such party.