

NAVI COST CONTROL SUBSCRIPTION AGREEMENT

This Navi Cost Control Subscription Agreement (the "**Agreement**") constitutes a legally binding agreement between you, the owner or operator of the restaurant, ("**Customer**") and Navi Inc. ("**Navi**") which governs your access to and use of Navi's proprietary cost control platform for use with restaurants, which also includes Navi's cost control mobile apps for use in connection with the platform, which currently includes inventory management, cost control and menu engineering functionality.

The fees for use of the platform and associated mobile apps are set out on the website located at www.navicostcontrol.com.

Customer may only use the Navi cost control platform in connection with the management and operation of the restaurant identified during the registration process.

CUSTOMER ACKNOWLEDGES THAT THEY HAVE READ THIS ENTIRE AGREEMENT AND CUSTOMER AGREES TO BE BOUND BY THE TERMS AND CONDITIONS SET OUT HEREIN.

SECTION 1 - DEFINITIONS

1.1 "**Confidential Information**" means any information of the Disclosing Party and includes, without limitation, any business, marketing, technical and scientific information, trade secrets, processes, designs, data, formulae, plans, prototypes, specifications, know-how, improvements, inventions (whether patentable or not), techniques, software, source code, customer lists, research, business opportunities, agreements or other information whether or not related to or arising from the activities contemplated in this Agreement and which may be in any form or medium and whether or not designated as confidential (or like designation). Notwithstanding the forgoing, Confidential Information will not include any information that (a) is in the public domain without such disclosure being as a result, directly or indirectly, of a breach of the obligations of confidence, secrecy or non-use by the Receiving Party or; (b) was previously known to the Receiving Party, reasonable proof of which lies upon the Receiving Party; or (c) was received by the Receiving Party without any obligation of confidentiality from a source (other than the Disclosing Party) lawfully having possession of such information and the right to disclose it; or (d) is released or disclosed to the public by the Disclosing Party; or (e) is required to be disclosed to the public by operation of law. The terms of this Agreement, including the pricing, will be the Confidential Information of Navi,

1.2 "**Customer Data**" means any data or electronic files which Customer creates on or provides to the Platform. Customer Data will not include any portions that consist of, incorporates or is based on any data or information provided by Navi.

1.3 "**Disclosing Party**" means a party whose Confidential Information is in the possession or control of the Receiving Party.

1.4 "**Documentation**" means user and technical documentation, if any, relating to the Platform made available to Customer by Navi.

1.5 "**Effective Date**" means the date first written above.

1.6 "**Fees**" means the fees for the Platform as set out on the website located at www.navicostcontrol.com, as the same may be modified in accordance with 7.2.

1.7 "**Force Majeure**" means any cause which is beyond the reasonable control of the affected party, provided such event is not due to the affected party's sole negligence, and may include, but not be limited to:

- (a) causes such as flood, earthquake, storm, lightning, fire, epidemic, war, explosion, riot, act of public enemy, act of civil or military authority, civil disturbance or disobedience;
- (b) sabotage, vandalism, ruptures or breakage of, or accidents to or at any facilities, plant, machinery or equipment;
- (c) inability to obtain, or curtailment of supplies of water, fuel or utilities or other governmental services;
- (d) inability to obtain, or curtailment of supplies of, any materials or equipment;
- (e) a failure or default of a third-party service provider or the failure of any third-party hardware or software; and
- (f) restraint by court order, or the action or inaction of, or inability to obtain, maintain or renew regulatory approvals from any governmental authority unless such inability was caused by the violation of the law by the party holding or needing the regulatory approval;

provided that the lack of finances or inability to pay will not be considered an event or occurrence outside of a party's reasonable control.

1.8 **"Intellectual Property"** means any: (i) invention, trademark, copyright, moral rights, industrial design, integrated circuit topography, trade secret or confidential business information; (ii) right to apply for the registration of same, any application for same or any registration of the same, including without limitation, any patent application, patent, industrial design application, industrial design registration, trademark application, trademark registration, copyright application or copyright registration; or (iii) other intellectual or industrial property right anywhere in the World and which will include, without limitation, any right in any cause of action relating to any of the foregoing.

1.9 **"Personal Information"** means personal information as defined in Privacy Law.

1.10 **"Platform"** means Navi's online platform as more particularly described on the first page of this Agreement as well as all mobile apps and other software that are made available for use in connection with the Platform.

1.11 **"Privacy Law"** means any privacy law that may be applicable, including the *Personal Information Protection and Electronic Documents Act* (Canada) and provincial privacy legislation.

1.12 **"Receiving Party"** means a party who is in possession or control of Confidential Information of the Disclosing Party.

1.13 **"Term"** means the term of this Agreement as determined by Section 14.1.

1.14 **"Update"** means one or more updates, improvements, error corrections and bug fixes made to the Platform.

1.15 **"User"** means any employee or consultant of Customer who accesses the Platform on behalf of Customer.

SECTION 2 - ACCESS

2.1 Subject to the terms and conditions of this Agreement and the payment of the Fees for the Platform, Navi grants to Customer a nonexclusive, non-transferable, nonsublicensable license to access

and use the Platform in connection with the restaurant described on the first page to this Agreement. Customer may not use the Platform for any other location or business.

2.2 The Platform will be made available over the Internet from a URL or IP address that Navi may select from time to time.

2.3 Customer will be provided with access credentials, such as a username and password combination, to enable Customer to access the Platform. The Platform may be accessed and used by Customer and Users. Customer will not permit any other party to access or use the Platform through use of Customer's access credentials or otherwise. Customer is solely responsible for ensuring that its access credentials are kept secret. Customer will be solely responsible for all activity of any party using any of Customer's access credentials.

2.4 Customer may engage consultants and contractors to access and use the Platform, provided the same is only done for the sole benefit of Customer within the scope of the rights granted herein. Customer will ensure that such consultants and contractors comply with the confidential obligations set out in Section 10 as well as all other restrictions and obligations imposed on Customer in this Agreement.

2.5 Any breach of the terms and conditions of this Agreement by any User will be deemed to be a breach of the terms and conditions of this Agreement by Customer on the same basis as if Customer itself committed the particular breach.

2.6 Navi may monitor Customer's and User's use of the Platform to ensure compliance with this Agreement.

2.7 At any time that Customer is not in full compliance with all of the terms and conditions set out in this Agreement or any other agreement with Navi, including being current in payment of the Fees for the Platform, Navi may withhold access to the Platform from Customer.

SECTION 3 - SUPPORT

3.1 While Customer is current in payment of the Fees for the Platform, Navi will make available to Customer telephone and email support during Navi's regular office hours, which are currently 9:00 am to 8:00 pm Eastern Time.

3.2 From time to time Navi may make certain Updates to the Platform available to Customer free of charge that Navi generally makes available to other users of the Platform. For greater certainty, nothing in this Agreement will obligate Navi to provide any Updates unless Navi deems an Update is necessary.

3.3 Navi may charge additional fees for certain Updates. Customer may purchase such Updates if it so chooses.

3.4 Navi will use its commercially reasonable efforts to correct any reproducible errors in the Platform. Under no circumstances does Navi give any warranty or representation that all errors can or will be corrected. Navi will have no obligation to correct any errors that it is unable to reproduce.

SECTION 4 - SERVICE LEVEL AGREEMENT

4.1 Navi will be entitled to conduct regular maintenance on the Platform including on the hardware, software and systems on which the Platform operates. Some of this regular maintenance may require that the Platform be brought off-line for a period of time while the Platform is being updated and during such time, Customer will be denied access to the Platform. Navi will make commercially reasonable efforts to

ensure that all regular maintenance that requires the Platform to be unavailable is scheduled at a time when use is at a minimum.

4.2 Navi will use commercially reasonable efforts, in the ordinary course of its business, to provide the Platform ninety seven percent (97%) of the time on a twenty four (24) hours per day/seven days a week basis, excepting its regular maintenance and any outages caused by Customer or a User or a third party or by a Force Majeure event. Such availability level is solely intended as a guideline and the failure to achieve the same will not constitute a breach of this Agreement. In the event that Navi fails to meet the availability level, Navi will, upon request by Customer, investigate the failure and advise Customer of what actions, if any, Navi will undertake to minimize such failure in the future. The forgoing constitutes Customer's sole remedy and recourse and Navi's sole obligation and liability for any failure to achieve the availability level.

4.3 At the request of Customer, Navi will investigate and institute reasonable remedial action to the Platform to reduce any material response time delay Customer is experiencing in the use of the Platform which are caused by acts or omissions of Navi.

SECTION 5 - OBLIGATIONS OF CUSTOMER

5.1 Customer will abide by the acceptable use policy applicable for the Platform. A link to the current form of acceptable use policy is located at the bottom of the main webpage for the Platform. Navi may change the acceptable use policy from time to time.

5.2 If Customer or any User fails to abide by the acceptable use policy or the provisions of this Agreement and Navi believes, acting reasonably, that such failure may adversely affect the security of the Platform or any Customer Data or the security of any data of any other customer or the security of any of Navi's systems or the reasonable use of the Platform by other users then Navi will be entitled to, in addition to other remedies, deny Customer or that User, as the case may be, access to the Platform until such party agrees in writing to fully abide by the acceptable use policy and this Agreement.

5.3 Customer acknowledges that Customer and Users are solely responsible for compliance with all applicable laws and regulations concerning Customer's business and their use of the Platform. Navi does not represent or warrant that the Platform or its use is in compliance with all applicable laws and regulations and specifically disclaims all such representations, warranties and conditions.

5.4 Customer will provide and make available to Navi appropriate management and technical personnel who will work with Navi and who will facilitate Navi's performance of its obligations hereunder. In addition, Customer will cooperate with Navi through making available such management decisions, information, authorizations, approvals and acceptances in order that Navi's obligations hereunder may be performed in a proper, timely and efficient manner.

SECTION 6 - RESTRICTIONS

6.1 The Platform contains copyrighted material, trade secrets and other proprietary material and the Intellectual Property of Navi. Customer agrees that Customer, its employees, contractors and consultants will not, directly or indirectly, and will not permit any third party to, directly or indirectly, in any manner whatsoever:

- (a) copy any of the Platform or any written materials for any purpose except as permitted in this Agreement;
- (b) permit any third party to access the Platform, in any manner whatsoever;

- (c) assign this Agreement or sell or otherwise transfer access to the Platform to any third party, except as may be permitted herein;
- (d) permit the Platform to be used for the benefit of any third party; or
- (e) use the Platform except as authorized herein and only as described in the Documentation.

6.2 The rights granted hereunder are solely for Customer's own internal business purposes and Customer may not use or permit the use of the Platform for the benefit of any third party, including without limitation, to provide service-bureau, time-sharing, outsourcing, application service provider or any other type of services for the benefit of any third party.

6.3 Customer will not attempt to circumvent any security measure implemented in the Platform or attempt to gain access to any portion of the Platform other than that which is needed to access and use the Platform as contemplated herein and the Documentation.

6.4 Customer will not in respect of the Platform:

- (a) undertake any activity which creates liability or damage or potentially creates liability or damage to Navi, any supplier or any other user or which creates damage or potentially creates damage to the Platform or the computer systems or data of Navi, any supplier or any other user; or
- (b) undertake any activity which creates any undue burden or interferes with the Platform or its use by other users.

6.5 Customer will not modify, distribute or publish copies of the Documentation without the prior written consent of Navi. Provided, Customer may reproduce the Documentation and distribute the Documentation internally to Users.

SECTION 7 - FEES AND PAYMENT

7.1 Customer will pay Navi the Fees arising in connection with the provision and use of the Platform. The Fees for use of the platform are set out on the website located at www.navicoscontrol.com.

7.2 Following the initial term, all Fees are subject to change at any time on thirty (30) days notice of the same.

7.3 Customer's credit card will be charged at the beginning of each month for all Fees due.

7.4 All amounts payable hereunder by Customer, including any taxes payable by Customer to Navi, will be payable in Canadian funds without deductions for taxes, assessments, fees or charges of any kind.

7.5 Customer will be responsible for all sales, use, value add, excise and similar taxes imposed by any governmental entity on the use of the Platform, other than those taxes based solely on Navi's income.

7.6 If Customer is in arrears in the payment of any Fees that are due, Navi may withhold access to the Platform until such arrears have been paid in full. Customer will remain liable for all Fees during any period in which access to the Platform is withheld due to a non-payment or a breach of this Agreement.

7.7 All amounts not paid by their due date will be subject to interest at 1.5% per month, compounded monthly.

SECTION 8 - CUSTOMER DATA

8.1 Navi has the right, but not the obligation, to refuse to store any Customer Data on the Platform or to remove the same that Navi, acting reasonably, believes violates any provision of this Agreement.

8.2 Navi has in place a disaster recovery plan to restore the Platform, Documentation and Customer Data in the event of a disaster. There are no assurances that the disaster recovery plan will be 100% effective (including the fact that backups are only made periodically) and Navi will have no liability to Customer for any loss of use of the Platform, Documentation or Customer Data or any loss or corruption of any Customer Data under any circumstance.

8.3 Navi will use industry standard security tools, technologies and processes designed to protect the Customer Data in the possession or control of Navi against unauthorized access, modification, destruction or encryption. However, Customer acknowledges and agrees that applications, systems and data which are made available over the Internet are inherently insecure against motivated individuals and Navi will have no obligation or liability to Customer for any breach of such tools, technologies and processes as a result of same.

8.4 Customer hereby authorizes (and hereby represents that it has the authority to authorize) Navi to conduct all activities as contemplated under this Agreement including, without limitation, storing, reproducing, processing and other handling of the Customer Data and the use, disclosure and transmission of the same pursuant to and in connection with the activities contemplated by this Agreement and the Documentation and all tasks, duties or activities reasonably ancillary thereto.

8.5 Customer will not:

- (a) provide, deposit or process any Customer Data which infringes or potentially infringes any third-party intellectual property or proprietary rights including without limitation, copyright, patent, trademark or trade secret or right of publicity or privacy;
- (b) provide, deposit or process any Customer Data in violation of any applicable law; or
- (c) provide, deposit or process any Customer Data which is harmful or potentially harmful including, without limitation, that which places the integrity or security of any computer system at risk or which is a virus, Trojan horse, worm, time bomb, back door or other harmful or invasive computer programme or file.

8.6 Customer will defend Navi in any suit or proceeding or threatened suit or proceeding brought against Navi based on a claim that the deposit, processing and management of Customer Data infringes any enforceable privacy, copyright, trademark, trade secret or any other right of any third party but only if: (a) Navi notifies Customer in writing of any such suit or proceeding or threatened suit or proceeding in a timely manner after Navi first learns of such suit or proceeding or threatened suit or proceeding; and (b) Navi will provide, at no cost, such reasonable assistance and cooperation as Customer may reasonably request from time to time in connection with the defence of any such suit or proceeding or threatened suit or proceeding. Customer may either defend or settle such claim. Customer agrees to pay such damages and costs finally awarded against Navi or payable pursuant to a settlement agreement in connection with such suit or proceeding. Customer will have complete control over any such suit or proceeding including, without limitation, the right to settle on behalf of Navi on any terms Customer deems desirable (in the exercise of its discretion, acting reasonably) so long as it is at no cost to Navi, and involves no admission of liability by Navi and does not subject Navi to any restriction or limitation. Navi will have the right to be independently represented by counsel of its own choice and at its own cost. Customer will not settle any such claim without Navi's prior written consent, which consent may not be unreasonably withheld.

8.7 Navi shall be entitled to use the Customer Data for the purposes of enhancing Navi's products and services and including to enhance the Platform. On termination of this Agreement, Navi will be entitled to retain a copy of Customer Data to use the same for the foregoing purposes.

SECTION 9 - OWNERSHIP

9.1 Navi will own all right, title and interest in and to the Platform and Documentation including all Intellectual Property embodied therein. All embodiments of and copies of any material relating in any way to the Platform or Documentation will remain the property of Navi.

9.2 Navi will own all right, title and interest in and to all Updates to any of the Platform and Documentation, including all Intellectual Property therein, whether arising from any request, suggestions or comments of Customer or any of its employees, consultants or contractors or any client, or otherwise, and whether or not Customer paid for the same. Navi will be entitled to incorporate such Updates into the Platform and Documentation without providing any credit or accounting to anyone for the same. Customer agrees to, and agrees to cause its employees, consultants and contractors to, promptly assign all right, title and interest in and to all such Updates, including all Intellectual Property therein, to Navi.

9.3 Navi will at all times own all work product it creates in the course of its activities arising under this Agreement or in connection with the Platform, including all Intellectual Property that is created or that arises in the course of the same.

9.4 Customer may not use any of Navi's trademarks for any purpose without the prior written consent of Navi.

SECTION 10 - CONFIDENTIAL INFORMATION

10.1 Subject to the limited rights granted in Section 8.7, Navi agrees that the Customer Data, including all of Customer's recipes, will be the Confidential Information of Customer.

10.2 A Receiving Party will be bound by an obligation of confidence to the Disclosing Party in respect of any Confidential Information of the Disclosing Party. In respect of such Confidential Information, the Receiving Party will not: (a) disclose, either directly or indirectly, any such Confidential Information, or any part thereof, other than to its employees and agents who have a need to know the Confidential Information; (b) use any such Confidential Information, or any part thereof, for any purpose except as contemplated in this Agreement; or (c) make any copies of any Confidential Information except as required to fulfill the obligations and to exercise the rights granted in this Agreement.

10.3 The Receiving Party will take all reasonable precautions and actions and will take at least the same precautions and actions as the Receiving Party takes to prevent the unauthorized use or disclosure of its own confidential information or that a prudent person in similar circumstances would take, whichever is the higher standard, to prevent the unauthorized access, use or disclosure of any Confidential Information.

10.4 In the event that the Receiving Party wishes to disclose any Confidential Information of the Disclosing Party to any of its employees or agents, the Receiving Party will ensure that such employees and agents are told of the confidential nature of the Confidential Information and be told to protect the same to at least the same level of protection as the provisions hereof provide.

10.5 If the Receiving Party becomes legally compelled (by discovery obligations, oral questions, interrogatories, requests for confidential information, documents, subpoena, civil investigative demand or otherwise) to disclose any Confidential Information, the Receiving Party will provide the Disclosing Party with prompt written notice of same so that the Disclosing Party may, at Disclosing Party's option,

either seek a protective order, other appropriate remedy or to obtain reliable assurances that the Confidential Information will be accorded confidential treatment. The Receiving Party will provide all reasonable assistance with same.

10.6 In the event a dispute between the parties requires the disclosure of Confidential Information in the course of court proceedings, the parties will endeavor to minimize such disclosure or seek an appropriate Order of the court protecting the confidentiality of such Confidential Information.

SECTION 11 - PRIVACY OBLIGATIONS

11.1 Customer will ensure it is in full compliance with all applicable Privacy Law in relation to any Personal Information provided to Navi for Navi to conduct all activities as contemplated in this Agreement. Customer hereby authorizes (and hereby represents that it has the authority to authorize) Navi to conduct all activities as contemplated in this Agreement including, without limitation, storing, reproducing, processing and other handling of Personal Information and the use, disclosure and transmission of the same pursuant to and in connection with the activities contemplated in this Agreement and the Documentation and all tasks, duties and activities reasonably ancillary thereto. In particular, Customer will obtain any consents or provide any notifications as required by Privacy Law.

11.2 Navi agrees to not use or disclose any Personal Information contained in the Customer Data other than in connection with the fulfilment of its obligations under this Agreement or as might otherwise be permitted or required under Privacy Law.

SECTION 12 - INTELLECTUAL PROPERTY INDEMNITY

12.1 Navi will defend, or at its option, settle any claims brought against Customer claiming Customer's use of the Platform infringes any copyright, trademark or trade secret of any third party and will reimburse Customer for any judgments, damages, costs or expenses payable by Customer to the party bringing such action together with reasonable attorneys' fees relating thereto. Customer agrees that Navi will be relieved of its obligations under this Section 12.1 unless Customer notifies Navi in a timely manner in writing of and gives Navi the exclusive authority to defend or settle such claim and gives Navi proper and full information and non-financial assistance to settle or defend any such claim.

12.2 If the Platform, or any part thereof, is, or in the opinion of Navi may become, the subject of any claim for infringement of any third-party proprietary right, or if it is determined by a court of competent jurisdiction that the Platform, or any part thereof, infringes any third-party proprietary right, then Navi may, at its option and expense, either (i) procure for Customer the right to use the Platform or (ii) replace or modify the Platform or parts thereof, so that the Platform becomes noninfringing or (iii) if it is not commercially reasonable to take the actions specified in items (i) or (ii) immediately preceding, terminate this Agreement on notice and Customer will immediately cease using such Platform and Customer will have no remedy or recourse against Navi as a result of such termination.

12.3 Navi will have no liability or obligations hereunder for any infringement claim relating to any of the following:

- (a) the combination of any of the Platform with any other product, software, hardware, equipment, system, process or service;
- (b) use of any of the Platform other than as described in the Documentation; or
- (c) arising as a result of any of Customer's specifications or directions.

12.4 The foregoing infringement provisions set out the entire liability and obligations of Navi and the sole recourse and remedy of Customer in respect of any claim that the Platform infringes any third-party rights. Notwithstanding any other term or condition of this Agreement, Navi will have no liability or obligation arising out of any patent infringement.

SECTION 13 - WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

13.1 Navi warrants that for a period of ninety (90) days from the Effective Date that the Platform will operate substantially in conformance to the description of the Platform set out in the Documentation. If the Platform does not operate as so warranted and Customer provides a detailed written notice of non-conformance within the warranty period then Navi will, at its option, (i) correct the non-conformance or replace the non-conforming parts or (ii) refund any amounts paid for the Platform and Customer will stop using the Platform. The foregoing will be Customer's only remedy or recourse against Navi and Navi's only liability or obligation in relation to any failure of or defect or error in the Platform whatsoever. Navi may have further obligations in connection with any maintenance and support service as described herein.

13.2 Navi does not represent or warrant that all errors and defects in the Platform can or will be corrected.

13.3 THE WARRANTIES STATED ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES, CONDITIONS AND REMEDIES OFFERED BY NAVI IN CONNECTION WITH THE PLATFORM AND DOCUMENTATION. NAVI EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES AND CONDITIONS CONCERNING ANY OF THE PLATFORM AND DOCUMENTATION, EXPRESS OR IMPLIED, INCLUDING ANY AND ALL IMPLIED WARRANTIES AND CONDITIONS, WARRANTIES AND CONDITIONS OF DESIGN, MERCHANTABILITY, MERCHANTABILITY QUALITY AND FITNESS FOR ANY PARTICULAR PURPOSE, PERFORMANCE AND ANY AND ALL WARRANTIES AND CONDITIONS THAT MIGHT OTHERWISE ARISE DURING THE COURSE OF DEALING, USAGE OR TRADE, AND THOSE WHICH MAY ARISE UNDER STATUTE. THIS AGREEMENT SETS OUT THE ENTIRE EXTENT OF ALL WARRANTIES AND CONDITIONS IN RESPECT OF THE PLATFORM AND DOCUMENTATION AND, EXCEPT AS SET OUT IN THE NEXT SENTENCE, NO AGENT OR REPRESENTATIVE OF NAVI IS AUTHORIZED TO ALTER THE WARRANTY OBLIGATIONS OF NAVI AS SET FORTH HEREIN. ANY ALTERATIONS ARE ONLY EFFECTIVE IF SUCH ALTERATIONS ARE SPECIFICALLY SET OUT IN WRITING AND SIGNED BY DULY AUTHORISED REPRESENTATIVES OF BOTH PARTIES.

13.4 UNDER NO CIRCUMSTANCES WILL NAVI BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, WITHOUT LIMITATION, ANY INTERRUPTION OF BUSINESS OR RELATED LOSSES OR EXPENSES OR LOSS OF ANTICIPATED SAVINGS, LOST OPPORTUNITY, ECONOMIC LOSS, OR ANY DAMAGE OR LOSS TO GOODWILL, REVENUE, DATA OR PROFIT INCURRED OR SUFFERED BY CUSTOMER WHICH MAY ARISE OUT OF THE USE OR INABILITY TO USE ANY PLATFORM OR DOCUMENTATION OR ANY ONE OR MORE FAILURES, DEFECTS OR ERRORS IN ANY OF THE PLATFORM AND DOCUMENTATION, WHETHER OR NOT NAVI WAS TOLD OF THE POSSIBILITY OF SAME.

13.5 IN ALL CIRCUMSTANCES, NAVI'S TOTAL MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT AND IN CONNECTION WITH THE USE OR INABILITY TO USE ANY OF THE PLATFORM OR DOCUMENTATION OR ANY ONE OR MORE FAILURES, DEFECTS OR ERRORS IN ANY OF THE PLATFORM AND DOCUMENTATION, ARISING IN ANY MANNER WHATSOEVER, WILL BE LIMITED TO THE TOTAL OF THE MONIES PAID BY CUSTOMER TO NAVI UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE DAY ON WHICH THE FIRST OF THE CLAIMS AROSE.

13.6 Customer hereby agrees that it is responsible for implementing procedures and systems to protect its operations and data as is prudent to prevent and mitigate against loss or damage to same in the event of any failure of or any errors or defects in the Platform or Documentation or any malfunction of any of the Platform. Under no circumstances will Navi incur any liability or obligations due to Customer's failure to implement the forgoing.

SECTION 14 - TERM AND TERMINATION

14.1 This Agreement will start on the Effective Date and continue for an initial term of six (6) months and thereafter shall renew for additional one (1) month terms at the end of the then current Term unless either party gives the other party at least thirty (30) days prior notice of termination and, in that case, the Agreement shall terminate at the end of the then current term.

14.2 This Agreement may be terminated by the non-defaulting party if any of the following events of default occur: (1) a party materially fails to perform or comply with this Agreement or any provision hereof and the same is not cured within 10 days of written notice of such default; (2) a party becomes insolvent or confirms in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; (3) a petition under any foreign or Canadian bankruptcy act, receivership statute or the like, as they now exist or as they may be amended, is filed by a party; or (4) such a petition is filed by any third party or an application for a receiver is made by anyone and such petition or application is not resolved in favour of the party within thirty (30) days.

14.3 On termination or expiry, each party will return to the other party all property and Confidential Information of that other party.

14.4 Notwithstanding any termination or expiry of this Agreement, Section 8, Section 9, Section 10, Section 11, Section 13 and Section 16.9 will survive such termination or expiry and remain in full force and effect and all other rights and obligations will terminate, provided termination or expiry does not relieve any party of any liability accruing at the date of termination.

SECTION 15 - FORCE MAJEURE

15.1 Except as may be expressly otherwise provided in this Agreement, to the extent by reason of Force Majeure a party is unable in whole or in part to perform or comply with any covenant or obligation hereunder, then the party will be relieved of such covenant, obligation or liability and will suffer no prejudice for failing to perform or comply during the continuance and to the extent of the inability so caused from and after the happening of the event of Force Majeure, provided that the party invoking Force Majeure gives to the other party prompt notice, written or oral (but if oral, promptly confirmed in writing), of such inability and reasonably full particulars of the cause thereof.

15.2 The party invoking Force Majeure will use all reasonable efforts to remedy the situation and remove, so far as possible and with reasonable dispatch, the cause of its inability to perform or comply, provided that settlement of strikes and other labour disputes will be wholly within the discretion of the party involved and such party will not be required to accede to demands of its opponents in any such strike or labour dispute.

15.3 The party invoking Force Majeure will give prompt notice of the cessation of the event of Force Majeure.

SECTION 16 - GENERAL

16.1 The parties agree that the relationship between them will be that of independent contractors. Neither party has the authority, express or implied, to execute any contract on behalf of the other, or bind

or create or assume any obligation or liability on behalf of the other for any purpose whatsoever. Nothing in this Agreement will be construed to constitute one party as employee or agent of the other or the parties as partners, joint venturers, co owners or participants in a joint or common undertaking. Neither of the parties' employees will be deemed to be the employees or servants of the other party for any purpose.

16.2 Customer will have no right to transfer, assign or otherwise dispose of its rights or obligations hereunder or this Agreement, without the prior written consent of Navi which may be withheld for any reason. Customer may not sublicense any of the rights granted herein.

16.3 Navi may subcontract the performance of any service. Navi will request that such subcontractors comply with the confidential obligations set out in Section 10 as well as all other restrictions and obligations imposed on Navi in the Agreement.

16.4 This Agreement will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

16.5 This Agreement and its schedules constitute the entire agreement between the parties and supersedes all previous agreements and representations, oral or written, relating to the subject matter of this Agreement. In no event will the terms or conditions of any of Customer's purchase orders or any other of its documents relating to the Platform or any services vary or add to or delete from the terms and conditions set out in this Agreement and all such terms and conditions of Customer shall have no force or effect.

16.6 During the Term of this Agreement and for a period of twelve (12) months thereafter, neither party will solicit, directly or indirectly, for employment or employ any employee of the other who is or was involved in the performance of any services without the prior written consent of the other. The foregoing restrictions will not apply if an employee of one party seeks employment with the other as a result of a response to a general solicitation (newspaper, trade journal or other advertisement or job fair) to which the employee has not been directed to or provided notice of by the soliciting party.

16.7 If any term, covenant or condition of this Agreement or the application thereof to any party or circumstance will be invalid or unenforceable to any extent, the remainder of this Agreement or application of such term, covenant or condition to a party or circumstance other than those to which it is held invalid or unenforceable will not be affected thereby and each remaining term, covenant or condition of this Agreement will be valid and will be enforceable to the fullest extent permitted by law.

16.8 The headings in this Agreement have been inserted for reference and as a matter of convenience only and are not to define, limit or enlarge the scope or meaning of this Agreement or any provision hereof. The words "hereof", "herein" and "hereunder" and words of similar import will refer to this Agreement as a whole and not to any particular provision of this Agreement or any particular Schedule.

16.9 The validity, interpretation, construction and performance of this Agreement will be governed by the laws of the Province of Ontario and the laws of Canada applicable therein, without reference to any conflict of laws principles. The parties agree that Ontario is the *forum conveniens* for any matter arising under this Agreement and that the courts of Ontario will have the exclusive jurisdiction and the parties hereby agree irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario to hear all matters arising out of this Agreement, the Platform and Documentation and in relation to the relationship between the parties arising in connection with the foregoing. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief and other equitable remedies.

16.10 The failure of either party to enforce at any time any of the provisions of this Agreement will not be deemed to be a waiver of the right of either party to enforce the same or a different provision in the future.

16.11 The rights and remedies of a party hereunder are cumulative and no exercise or enforcement by a party of any right or remedy hereunder will preclude the exercise or enforcement by the party of any other right or remedy hereunder or to which the party is otherwise entitled by law or equity to enforce.

16.12 Navi may list Customer's name in Navi's marketing materials, press releases and customer lists and may otherwise inform third parties that Customer is a customer that uses the Platform.

16.13 Each party will, from time to time, at the request of the other party, promptly execute and deliver all such other and additional instruments, notices, releases or documents and will do all such other acts and things as may be reasonably necessary or desirable in order to give full force and effect to this Agreement.

16.14 All notices, authorizations and requests in connection with this Agreement will be sent to the address set out on the first page and will be deemed given (i) five (5) days after being deposited in the Canadian or U.S. mail, postage prepaid, certified or registered, return receipt requested; or (ii) one (1) business day after being sent by overnight courier, charges prepaid; and addressed to Navi at 915-555 Richmond Street West, Toronto, Ontario M5V 3B1 and to Customer as Customer has indicated during the registration process, as each party may update the same.

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