



# Communicorp Master Services Agreement

## Version 1

Effective June 1, 2015

This Master Services Agreement (this "Agreement") is entered into and effective as of the date ("Effective Date") identified on the Program Specification Document (the "PSD") by and between Communicorp, Inc., a Georgia corporation, with offices at 1001 Lockwood Avenue, Columbus, Georgia 31999 ("Communicorp"), and the customer identified in the PSD ("Customer"). This Agreement and the corresponding PSD govern the Services. Customer and Communicorp are referred to herein individually as a "Party" and collectively as the "Parties."

**WHEREAS**, Communicorp is engaged and has expertise in the business of graphic arts and electronic communication services, designing and launching of retail e-commerce sites, purchasing, warehousing and distributing consumer goods and print for processing and shipping customer orders for such items; and

**WHEREAS**, Customer and Communicorp desire to have Communicorp provide specified services in connection with a print and/or merchandise inventory program as outlined in this Agreement subject to the following terms and conditions.

NOW, THEREFORE in consideration of the terms, mutual promises and agreements contained herein, the parties hereto agree as follows:

1. **Definitions.** In addition to all other terms defined herein, the following terms shall have the following meanings:

"Documentation" shall mean all written materials used by the Parties to host, support, use and maintain the System, but not limited to, instructions for use of the System and all user manuals, technical manuals, help text, bar codes, catalogs, and other materials, either in written or machine readable form.

"Facility" shall mean Communicorp's fulfillment centers located in Columbus, GA, unless otherwise other noted.

"Materials" shall mean printed materials and/or merchandise that Customer has ordered from Communicorp at mutually agreed upon prices.

"Program" shall mean the Materials, services and related data, as outlined in the Exhibits.

"Services" shall mean all services provided to Customer by Communicorp under this Agreement, including, but not limited to, the hosting, support and maintenance of the web store presence, if applicable, and fulfillment services provided by Communicorp pursuant to this Agreement.

## 2. Term and Termination.

- a. Term. The Term of this Agreement shall begin on the Effective Date and shall be continue until the date set forth in the PSD, unless earlier terminated pursuant to the terms hereof (hereinafter the "Initial Term") or renewed ("Renewal Term" and together with the Initial Term, the "Term").
- b. Right to Terminate. Notwithstanding any other provision hereof, this Agreement may be terminated as follows:
- i. By mutual agreement of the Parties;
  - ii. By either Party at any time if the other Party has materially breached the terms of this Agreement and, if the breach is curable, the breaching Party has failed to cure such breach within thirty (30) days after written notice thereof;
  - iii. By either party for any reason or no reason upon not less than sixty (60) days prior written notice to the other party;
  - iv. By Communicorp if Customer fails to pay any amount when due under this Agreement ("Payment Failure") and such Payment Failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment;
  - v. Immediately by Communicorp if three (3) or more Payment Failures occur; or
  - vi. Immediately by either Communicorp or Customer in the event that the other party becomes insolvent, files or is forced to file any petition in bankruptcy; makes an assignment for the benefit of its creditors; or applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

c. Effect of Termination.

In the event of termination, at will or for cause, and as a condition precedent to Customer's right to terminate this Agreement, Customer shall pay Communicorp for all outstanding invoices, documented out-of-pocket expenses and costs for work in progress, outstanding shipping charges and the established cost for any Materials remaining in inventory and/or in transit (each, a "Reimbursement Payment"). Payment shall be made within forty five (45) days from date of final invoice regardless of final disposition of the Materials. Within thirty (30) days after Communicorp's receipt of Customer's final payment, Communicorp shall prepare and ship, at Customer's direction and expense, all Materials. If no address is provided or pick up does not occur, storage fees shall accrue and be due from the Customer. Any termination under this Section will be effective on the latest to occur of (i) Communicorp's receipt of Customer's written notice of termination, (ii) Communicorp's shipment of the Materials upon receipt of the Reimbursement Payment or (iii) such other later date (if any) set forth in such termination notice (if and to the extent that such later date is approved by Communicorp in writing).

Upon the expiration or earlier termination of this Agreement, all indebtedness of Customer to Communicorp under this Agreement, of any kind, shall become immediately due and payable to Communicorp, without further notice to Customer.

### 3. **Payment.**

- a. **Invoicing and Payment.** Fees for any requested Services will be set forth in the PSD and will be invoiced separately from product charges. Fees are due and payable within thirty (30) days of the date of the invoice. Except as otherwise provided, all fees are quoted and payable in United States dollars by check or wire transfer.
- b. **Price Adjustments.** Due to material cost fluctuation, Communicorp reserves the right to review the product pricing and/or program fees annually and adjust pricing at a rate of not more than 5% (five percent) or the Consumer Price Index (CPI), whichever is higher. Customer will be notified a minimum of thirty (30) days prior to price adjustments.
- c. **Sales and Use Taxes.** Communicorp shall remit all applicable sales taxes to the appropriate taxing authorities. Any and all use taxes shall be the responsibility of Customer or the customers of Customer, as applicable. Further, Customer shall indemnify, defend and hold harmless Communicorp, its officers, directors, shareholders, employees and agents from and against any and all claims, suits or liabilities and expenses (including costs and attorneys' fees) resulting from purchaser's failure to remit to the appropriate authorities any use taxes relating to the Materials.
- d. **Employment Taxes.** Communicorp is solely responsible for payment of any employment related taxes (including, but not limited to, FICA, FUTA, Social Security or similar taxes under applicable laws) for Communicorp's personnel. Should Customer be required under any law to withhold or deduct any portion of the payments due to Communicorp, Customer shall withhold such taxes as required by applicable law and deduct such amount from the sum payable to Communicorp and shall provide Communicorp with a valid and timely certificate of such taxes paid on a timely basis.
- e. **Invoice Disputes.** Customer shall notify Communicorp in writing of any dispute with any invoice (along with substantiating documentation and a reasonably detailed description of the dispute) within ten (10) business days from the date of such invoice. Customer will be deemed to have accepted all invoices for which Communicorp does not receive timely notification of dispute, and shall pay all undisputed amounts due under such invoices. The Parties shall seek to resolve any such disputes expeditiously and in good faith. Notwithstanding anything to the contrary, Customer shall continue performing its obligations under this Agreement during any such dispute, including Customer's obligation to pay all due and undisputed invoice amounts in accordance with the terms of this Agreement.
- f. **Late Payments.** Except for invoiced payments that Customer has successfully disputed, Customer shall pay interest on all late payments (whether during the Term or after the expiration or earlier termination of the Term), at the lesser of the rate of one and a half percent (1.5%) per month or the highest rate permissible under applicable law. Customer shall also reimburse Communicorp for all costs incurred by Communicorp in collecting any late payments, including attorneys' fees and court costs. In addition to all other remedies available under this Agreement or at law (which Communicorp does not waive by the exercise of any rights under this Agreement), if Customer fails to pay any amounts when due under this Agreement, Communicorp may (i) suspend the delivery of any Materials, (ii) reject Customer's Purchase Orders or cancel accepted Purchase Orders or (iii) terminate this Agreement.

- g. **No Set-off Right.** Customer shall not, and acknowledges that it will have no right, under this Agreement, any Purchase Order, any other agreement, document or law to, withhold, offset, recoup or debit any amounts owed (or to become due and owing) to Communicorp or any of its affiliates, whether under this Agreement or otherwise, against any other amount owed (or to become due and owing) to it by Customer or Customer's affiliates, whether relating to Customer's or its affiliates' breach or non-performance of this Agreement, any Purchase Order, any other agreement between (i) Customer or any of its affiliates and (ii) Communicorp or any of its affiliates, or otherwise.
4. **Communicorp Obligations.** During the Term of this Agreement, Communicorp shall provide Customer with the services outlined in Exhibits attached to this MSA.
5. **Customer's Obligations.** Customer shall provide Communicorp with ordering and authorization requirements in writing as set forth in the PSD and its exhibits.
6. **Relationship between Communicorp and Customer.** This Agreement does not in any way create the relationship of principal and agent, or any similar relationship between Communicorp and Customer, including, but not limited to that of joint venturers, partners, employees or associates. Neither Party is granted any right nor authority to assume or create any obligation or responsibility for or on behalf of the other Party, nor to otherwise bind the other Party other than as may be expressly authorized in this Agreement.
7. **Ownership of Materials.**
- a. **Materials Owned by Communicorp.** Materials are considered Communicorp-owned when the Materials; (i) are produced or procured by Communicorp; (ii) are stored in the facility after production/procurement; and (iii) are not invoiced or paid for until they are shipped from the facility. In the event of termination Customer will reimburse Communicorp for any unused inventory at Customer expense within thirty (30) days in the case of obsolete items, or upon termination. Applicable transportation costs and sales tax will apply.
- b. **Discount Pricing.** There may be instances when Communicorp and Customer agree to offer merchandise for sale at less than agreed-upon unit pricing. This may be to facilitate additional sales or for inventory reduction purposes. In any event, Communicorp shall be entitled to the full sell price which Communicorp would otherwise be entitled to under this Agreement.
- c. **Materials Owned by Customer.** Materials are considered Customer-owned if (i) Customer delivers existing Customer materials to Communicorp for addition to the inventory at the inception of the Program ("Existing Customer Materials"); or (ii) Customer pays Communicorp for the Materials before the Materials are shipped and while the Materials reside in the Facility. Existing Customer Materials to be delivered to Communicorp are reflected in the relevant Exhibit attached to the PSD. Customer shall bear all costs associated with the transfer of Existing Customer Materials to Communicorp. Upon delivery to Communicorp, any Existing Customer Materials shall be in a condition acceptable to Communicorp and shall have clear markings for identification. Communicorp accepts no responsibility for non-conforming and/or damaged goods received from or on behalf of Customer.
8. **Intellectual Property Matters.**

- a. During the Term of this Agreement and subject to the limitations set forth herein, Communicorp hereby grants to Customer a limited, revocable, non-exclusive, non-transferable (except as expressly set forth below) license to access any software incident to its web store presence. Communicorp reserves all rights to the software not expressly granted herein. Without limiting the foregoing, Customer has no right to possess the software or any copies thereof in any form, nor to duplicate, copy or transfer any documentation thereof without the prior written consent of Communicorp. Communicorp hereby retains its entire right, title and interest, including all intellectual property rights, in and to all its Confidential Information and Trade Secrets. Any disclosure of such Confidential Information or Trade Secrets hereunder shall not be construed as an assignment, grant, option, license or other transfer of any such right, title or interest whatsoever to Customer or any of its representatives.

## 9. **Shipping.**

- a. Communicorp shall exercise commercially reasonable efforts to ensure that Customer's orders are delivered expeditiously. Shipping SLA expectations shall be as set forth in each Exhibit under the Section entitled Service Levels.
- b. **Hours of Operation.** Communicorp's normal hours of operation for fulfillment orders will be 8:30 AM until 5:00 PM Eastern Time, Monday through Friday except for Communicorp holidays. A list of holidays recognized by Communicorp will be provided to Customer upon request.
- c. **Backorders.** If a backorder occurs, the backordered item(s) will be shipped to Customer's customer within two (2) business days after they are manufactured or received in the fulfillment center by Communicorp.
- d. **Transfer of Title and Risk of Loss.** Title to Materials and risk of loss of Materials shipped under any Purchase Order passes to Customer upon Communicorp's tender of the Materials to the carrier. Freight charges will be considered FOB Origin, Freight Collect. In the event of an international shipment, customs documents will be completed with the transporter of the Customer's choice and held on file unless requested by Customer.

## 10. **Performance Reviews.**

- a. **Quarterly Reviews.** If mutually agreeable to the parties. Following at the end of each quarter during the initial term and any renewal term of this Agreement, the parties will meet and comprehensively review the services and operations and identify and jointly seek to implement any improvements to the level of service performed by Communicorp hereunder. However, failure to conduct performance reviews pursuant to this Section shall not constitute a material breach of this Agreement.
- b. **Slow Moving or Obsolete Inventory.** The parties should confer during quarterly review session to review and resolve all "slow-moving" and "obsolete inventory" issues. For purposes of this Agreement "slow- moving" inventory shall mean that which Communicorp at its sole discretion has deemed slow moving. Likewise, "obsolete" inventory shall mean those items which are deemed obsolete by Customer or Communicorp. For slow moving items, a plan will be formulated to encourage sale of the item. If an item retains its status as a "slow moving" item for a period of three (3) months it shall, upon the conclusion of the three (3) month period, be designated as an "obsolete" item by Communicorp. Customer shall have three (3)

months from the date that an item is designated as an “obsolete” item to purchase such inventory or to direct Communicorp to dispose of such inventory. However, in either event, Communicorp shall be entitled to the full sell price which Communicorp would otherwise be entitled to under this Agreement. Customer agrees to purchase all obsolete Materials upon receipt of Communicorp’s invoice and within Communicorp’s standard credit terms.

#### 11. **Confidentiality and Non-Disclosure.**

- a. As used herein, “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including, but not limited to, pricing and other terms reflected in all exhibits, Project Proposals or statements of work hereunder), the Services, business and marketing plans, technology and technical information, product designs, and business processes. “Trade Secret” shall mean any Confidential Information without regard to form which: (i) is not commonly known by or available to the public; (ii) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (iii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
- b. The Receiving Party agrees to hold all Confidential Information and Trade Secrets in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information and/or Trade Secrets to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential and to require such employees, agents, subcontractors, and representatives to be bound by legally enforceable and binding confidentiality covenants at least as restrictive as the parties’ respective obligations set forth in this Agreement. The obligation of nondisclosure set forth herein shall not apply to any Confidential Information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party, as demonstrated by the Receiving Party, without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. Each party shall use its commercially reasonable efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information and/or Trade Secrets. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information and/or Trade Secrets has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person. Furthermore, if either party receives a subpoena or other legal process requiring the disclosure or is compelled by applicable Law to disclose any Confidential Information or Trade Secret, then, to the extent permitted by applicable Law, the receiving party shall: (i) promptly, and prior to such disclosure, notify the disclosing party in writing of such

requirement so that the disclosing party can seek a protective order or other remedy, or waive its rights; and (ii) provide reasonable assistance to the disclosing party, at the disclosing party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. No such compelled disclosure by the receiving party will otherwise affect the receiving party's obligations hereunder with respect to the Confidential Information or Trade Secrets so disclosed. Notwithstanding Communicorp's obligations relating to Customer's Confidential Information, Communicorp shall have the right to disclose the fees and expenses paid under this Agreement, if any, to a third party engaged by Communicorp for the sole purpose of an objective measurement and comparison to benchmark such fees and expenses against industry standards.

12. **Mutual Representations and Warranties.** Each of Customer and Communicorp represents and warrants that:

- a. It is a corporation duly incorporated or limited liability company duly organized, validly existing, and in good standing under the laws of its state of incorporation or organization.
- b. It has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement.
- c. This Agreement, when executed and delivered, will be a valid and binding obligation of it enforceable in accordance with its terms.
- d. It is duly licensed, authorized, or qualified to do business and is in good standing in every jurisdiction in which a license, authorization, or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized, or qualified would not have a material adverse effect on its ability to fulfill its obligations under this Agreement.
- e. The execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles.
- f. It will comply with all applicable federal, state, local, international, and other laws and regulations applicable to the performance by it of its obligations under this Agreement and will obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement.
- g. There is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

13. **Indemnification; Limitation of Liability.**

- a. Communicorp will indemnify, defend, and hold Customer harmless, along with its affiliates and subsidiaries and their respective officers, directors, employees, successors and permitted assigns, from and against any and all damages, penalties, losses, liabilities, judgments, settlements, awards, costs and expenses and reasonable attorneys' fees and related costs

- (collectively, "Losses") incurred by, asserted against or imposed upon it as a result of any claims, assertions, demands, causes of action, suits, proceedings or other actions, whether at law or in equity, (collectively, "Claims") by a third party against it alleging that any materials, services, or software used to provide its web store presence infringe or misappropriate any patent, copyright, trade secret, trade name, service mark or other intellectual or proprietary right of such third party; provided, however, that Communicorp will have no liability under this Section to the extent that Claims result from the negligence or willful acts of Customer, its affiliates, subsidiaries and their respective offices, directors, employees, successors and permitted assigns. The foregoing indemnity is conditional upon Customer (i) promptly giving written notice of the Claim to Communicorp; (ii) giving Communicorp sole control of the defense and settlement of the Claim (except that Communicorp may not settle or defend any Claim unless it unconditionally releases Customer of all liability); and (iii) provides to Communicorp, at Communicorp's cost, all reasonable assistance. Failure of Customer to timely give such notice to Communicorp shall relieve Communicorp of its indemnity obligations hereunder only to the extent it is prejudiced or damaged by such failure.
- b. Customer will indemnify, defend, and hold Communicorp harmless, along with its affiliates and subsidiaries and their respective officers, directors, employees, successors and permitted assigns (each a "Communicorp Indemnitee"), from and against any and all Losses incurred by, asserted against or imposed upon any Communicorp Indemnitee as a result of any Claims by a third party against Communicorp alleging any Customer-provided content included in the Materials infringe or misappropriate any patent, copyright, trade secret, trade name, service mark or other intellectual or proprietary right; provided, however, that Customer will have no liability under this Section to the extent that Claims result from the negligence or willful acts of a Communicorp Indemnitee. In addition to the foregoing, it is further understood and agreed that Customer shall indemnify, defend and hold Communicorp harmless from and against any Losses, incurred by, asserted against or imposed upon any Communicorp Indemnitee as a result of any Claims for libel, invasion of right of privacy, copyright infringement or plagiarism or claims that any other rights legal or equitable have been infringed by any matter included in the material manufactured hereunder for Customer; provided that such claims are based on matter included or contained in material furnished to Communicorp by or on behalf of Customer and are not based on any unauthorized deletions from or additions to such material or copy and provided further, that Customer will have no liability under this Section to the extent that Claims result from the negligence or willful acts of a Communicorp Indemnitee. The foregoing indemnity is conditional upon Communicorp (i) promptly giving written notice of the Claim to Customer; (ii) giving Customer sole control of the defense and settlement of the Claim (except that Customer may not settle or defend any Claim unless it unconditionally releases Communicorp of all liability); and (iii) provides to Customer, at Customer's cost, all reasonable assistance. Failure of Communicorp to timely give such notice to Customer shall relieve Customer of its indemnity obligations hereunder only to the extent it is prejudiced or damaged by such failure.
- c. OTHER THAN AS EXPRESSLY SET FORTH HEREIN, TO THE EXTENT LAWFULLY PERMITTED, COMMUNICORP PROVIDES THE SERVICES "AS IS." NEITHER COMMUNICORP NOR ANY PERSON ON COMMUNICORP'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF



PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND CUSTOMER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY COMMUNICORP, OR ANY OTHER PERSON ON COMMUNICORP'S BEHALF.

- d. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, AND/OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A PARTY.
- e. ADDITIONALLY, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE GREATER OF:
- i. ONE MILLION DOLLARS (\$1,000,000) OR THE EQUIVALENT IN LOCAL CURRENCY; OR
  - ii. THE AGGREGATE AMOUNT PAYABLE BY CUSTOMER TO COMMUNICORP UNDER THE AGREEMENT DURING THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRECEDING EACH CLAIM (OR IF TWELVE (12) MONTHS HAVE NOT ELAPSED IN THE TERM AT THE TIME OF A CLAIM, THE ESTIMATED AGGREGATE CHARGES TO CUSTOMER FOR THE SERVICES SET FORTH IN THE AGREEMENT DURING THE FIRST TWELVE (12) MONTHS OF THE TERM.
- f. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTION 13(e) DO NOT APPLY TO LIABILITY ARISING FROM:
- i. A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT;
  - ii. A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, AND DATA PROTECTION OBLIGATIONS UNDER THIS AGREEMENT;
  - iii. ANY INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHTS;
  - iv. A PARTY'S OBLIGATION TO PAY REASONABLE ATTORNEYS' FEES AND COURT COSTS IN ACCORDANCE WITH THIS AGREEMENT;
  - v. DAMAGES CAUSED BY A PARTY'S FAILURE TO COMPLY WITH APPLICABLE LAWS, RULES OR REGULATIONS; OR
  - vi. DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

This Section shall survive termination of this Agreement.

14. **Use of Designs, Graphics, and/or Logos.** If Customer provides Communicorp with designs, graphics, and/or logos and requests that Communicorp utilize certain of the same, then:
- a. Customer represents and warrants that Customer has the authority to authorize, and rights reasonably necessary to permit, Communicorp to use the designs, graphics, and/or logos, and that it will comply with, and that Communicorp's use will comply with, all restrictions and other terms of any license that Customer has to use the designs, graphics, and/or logos. Customer shall be responsible for any loss or liability sustained by Communicorp because of a breach of the foregoing representation and warranty.
  - b. Customer is fully responsible for providing any notices required under any designs, graphics, and/or logos license.
  - c. Communicorp acknowledges and agrees that Customer is the owner of certain trademarks and service marks (the "Marks") and all goodwill associated therewith (collectively "Proprietary Rights"). Subject to the terms and conditions of this Agreement, during the term of this Agreement, Communicorp is hereby granted a non-exclusive license to use and display the Marks in the United States solely in connection with performing the Services pursuant to this Agreement.
  - d. The Marks license hereby granted to Communicorp is and shall be subject to the following terms, conditions and limitations:
    - i. Communicorp agrees to use the Marks only in the form and manner and with appropriate legends as prescribed from time to time by Customer in accordance with customary trademark practices.
    - ii. Communicorp's license to use the Marks shall include the right to display the Marks in online and printed catalogs, websites, and other mediums as is necessary to provide the Materials under this Agreement.
    - iii. Communicorp will submit to Customer for its review any and all proposed uses of the Marks, and Customer shall have the right to approve or disapprove copies or samples of all uses of the Marks.
    - iv. Communicorp agrees that nothing herein shall give to it any right, title, license, or interest in the Marks (except the right to use them in accordance with the terms of this Agreement), that the Marks are the sole property of Customer, and that any and all goodwill arising from the use by Communicorp of the Marks shall inure to their respective owner's sole benefit.

Subject to use required to complete pending orders, upon the expiration or termination of this Agreement, Communicorp shall fill all paid for outstanding orders and discontinue use of the Marks.

15. **Miscellaneous Provisions.**

- a. **Insurance.** The Parties shall obtain and maintain insurance in amounts sufficient to provide coverage for any liabilities which may reasonably arise out of or result from the Parties' respective obligations pursuant to this Agreement. Each of the Parties shall provide proof of insurance as requested by the other.

- b. OFAC. None of the Customer, any of its subsidiaries or, to the Customer's knowledge, any director, officer, agent, employee or affiliate of the Customer or any of its subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC"); and the Customer will not, directly or indirectly, use, lend, contribute or otherwise make available proceeds to any subsidiary, joint venture partner or other person or entity, for the purpose of financing the activities of any person, or in any country or territory, that, at the time of such funding, is subject to any U.S. sanctions administered by OFAC.
- c. Non-Exclusivity. Communicorp is engaged by Customer on a non-exclusive basis to provide the Materials under this Agreement and accordingly, Customer may obtain products, services, or Materials similar to, identical to, or in addition to or outside the scope of this Agreement at any time during the Term or otherwise from a third party or provide them internally. Customer shall only be obligated to pay for Materials, in such amounts, to the extent, at such locations and in such other manner as is specifically set forth in this Agreement or applicable Purchase Order. Furthermore, this Agreement does not limit Communicorp's right to manufacture or sell, or preclude Communicorp from manufacturing or selling, to any person, or entering into any agreement with any other person related to the manufacture or sale of other goods or products that are similar to or competitive with the Materials.
- d. Waiver. Any failure of a Party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing by the other Party, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.
- e. Entire Agreement. This Agreement and any PSD, including the attached exhibits, constitute the entire Agreement between the parties hereto and supersedes any and all previous representations, understandings, discussions, website terms and conditions of Customer, click-through terms of Customer or agreements between the parties hereto as to the subject matter hereof. No additional or different terms contained in any purchase order, confirmation of order, acknowledgement of order or other document hereafter delivered by one party hereto to the other party hereto will be binding on the recipient of such document and the parties hereby expressly reject any and all such terms as material alterations to the Agreement as to the material contained herein as of the date hereof and may not be modified or changed except by an instrument in writing signed and agreed by both parties hereto. From time to time, the parties hereto may execute one or more PSD to this Agreement, which may also contain attachments such as project plans and specifications. Such PSD, when signed by an authorized representative of each of the parties, will be incorporated and made a part of this Agreement. Unless expressly provided for in a PSD, in the event of a conflict between the provisions contained in this Agreement and those contained in a PSD, the provisions contained in this Agreement will prevail. Any modifications to this Agreement contained in a PSD will be applicable solely to such PSD unless otherwise expressly provided therein.
- f. No Third Party Beneficiary Rights. No provision of this Agreement is intended or shall be construed to provide or create any third party beneficiary right or any other right of any kind in any Customer client, customer, affiliate, insurer, lender, shareholder, partner, officer, director, guest, contractor, subcontractor, employee or agent of Customer.

- g. Third Party Processor. If either Party utilizes a third party to process any information, including but not limited to file information, the use of such third party shall not diminish or relieve the Parties of their obligations under this Agreement.
- h. Amendment; Binding Effect; Assignment.
- i. No amendment, modification or alteration of the terms of this Agreement shall be binding unless in writing and executed by an authorized representative of all Parties hereto. For purposes of the preceding sentence, emails, including emails that bear an electronic "signature block" identifying the sender, do not constitute signed writings. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors (including, without limitation, successors by merger) and permitted assigns. Customer and Communicorp each acknowledge that it has had the opportunity to review this Agreement with its legal counsel.
  - ii. This Agreement and the obligations of Customer hereunder are personal to Customer and its staff. Neither Customer nor any successor, receiver, or assignee of Customer will directly or indirectly delegate or assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of Customer's assets or stock or through merger, an insolvency proceeding, by operation of law or otherwise, without the prior written consent of Communicorp, which shall not unreasonably be withheld or delayed. Any purported delegation or assignment in violation of this Section will be void. Communicorp may, without Customer's consent, delegate or assign any and all of its rights and obligations under this Agreement to: (a) Communicorp's parent company; (b) any affiliate of Communicorp or Communicorp's parent company; or, (c) any company that succeeds to substantially all of Aflac's business. For purposes of this Agreement, "Affiliate" means, with respect to a party at the time of determination, any other person or entity which, whether directly or indirectly, Controls, is Controlled by or is under common Control with such party, as the case may be. For the purpose of this definition, "Control" means the ownership, directly or indirectly, of more than fifty percent (50%) of the voting shares of an entity, or otherwise the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity.
- i. Force Majeure. Neither Party shall be liable for loss or damage resulting from any cause beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party (a "Force Majeure Event"). Any such excuse for delay will last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party will use its commercially reasonable efforts to minimize the delays caused by any such event beyond its reasonable control. The failure of a Party's obligation to pay amounts due under this Agreement shall in no event constitute Force Majeure Event unless there exists a system-wide banking failure or interruption in service in the United States impacting such payment.
- j. Advertising and Publicity. Customer will not use the name, logo, or brand of or refer to Communicorp, or any of its affiliates or parent company, directly or indirectly in any advertisement, presentation, news release, or external publication without Communicorp's prior written approval. In addition, Customer shall not use the name, logo, or brand of or refer

to Communicorp, or any of its affiliates or parent company, directly or indirectly on any social media outlet (i.e., weblogs or “blogs,” wikis, and other forms of online publishing) including, but not limited to, Facebook, Twitter or YouTube without Communicorp’s prior written approval.

- k. Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia and the federal laws of the United States of America without regard to provisions regarding choice of law that would result in the application of the laws of another jurisdiction. Customer hereby consents and submits to the exclusive jurisdiction and forum of the state and federal courts in the State of Georgia in all questions and controversies arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.
- l. Cumulative Remedies. All rights and remedies of Communicorp herein will be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against Customer for the enforcement of this Agreement, and temporary and permanent injunctive relief.
- m. Compliance with Laws. Customer shall at all times comply with all laws applicable to this Agreement, Customer’s performance of its obligations hereunder and Customer’s use or sale of the Materials. Without limiting the generality of the foregoing, Customer shall (i) at its own expense, maintain all certifications, credentials, licenses and permits necessary to conduct its business relating to the purchase, use or resale of the Materials and (ii) not engage in any activity or transaction involving the Materials, by way of resale, lease, shipment, use or otherwise, that violates any law.
- n. Severability. In the event that any one or more of the provisions, or parts of any provisions, contained in the Agreement will for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the same will not invalidate or otherwise affect any other provision hereof, and the Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- o. Facsimile/Scanned Signatures and Counterparts/Execution by Copies. The parties agree that this Agreement will be considered signed when the signature of a party is delivered by facsimile transmission or when the signature of a party is delivered as a scanned original transmitted via electronic mail. Aflac and Supplier agree that legible counterpart copies signed and exchanged by electronic means will be binding in the same manner as an original handwritten executed copy and all copies together will constitute one instrument.
- p. Notices. Any notice given pursuant to this Agreement will be in writing and will be given by personal service, overnight courier, confirmed facsimile, confirmed electronic mail or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing below, or as changed through written notice to the other party in accordance with this subsection. Notice given by personal service, facsimile or electronic mail will be deemed effective and received on the date it is delivered to the addressee, notice given by overnight courier will be deemed effective and received on the business day following delivery of the notice to the overnight courier, and notice mailed by certified mail will be deemed effective and received on the third day following its placement in the mail addressed to the addressee as set forth in the PSD for Customer and as set forth below for Communicorp:

To Communicorp:  
Mr. Eric Seldon, President  
Communicorp, Incorporated  
1001 Lockwood Avenue  
Columbus, Georgia 31999  
Fax: 706-596-3129

- q. Survival. All provisions of this Agreement that by their nature are intended to survive the expiration or termination of this Agreement shall survive and remain in full force and effect including, but not limited to, the applicable provisions of Sections 2, 3, 7, 8, 11, 13, and 14.
- r. Headings; Interpretation. The headings in this Agreement are for convenience only and will not be used to construe or interpret any provisions of this Agreement. Should any provision of this Agreement require judicial interpretation, the Parties agree that the court construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one Party than against another.

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