

Professional Services Agreement

This Professional Services Agreement (“Agreement”) governs Subscriber’s purchase and use of Professional Services from the Inriver entity set forth in the applicable Order Form (“Inriver”), as defined below. Capitalized terms have the definitions set forth herein. By executing an Order Form that references this Agreement, Subscriber is accepting and agreeing to the terms of this Agreement. Subscriber and Inriver may be referred to individually as “Party” and collectively as “Parties”. If the individual accepting the Agreement is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity to these terms and conditions. The Agreement is effective as of the date Subscriber signs an Order Form and will remain in effect until terminated as provided in this Agreement.

1 DEFINITIONS

- 1.1 “**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party. As used herein, “control” means the legal or equitable ownership of at least a majority of the voting equity interests in such entity.
- 1.2 “**Confidential Information**” means any non-public information 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, disclosed by a Party (“Discloser”) to the other Party (“Recipient”). Confidential Information includes, but is not limited to the terms of this Agreement (including all Order Forms and related pricing), roadmaps, product plans, product designs, architecture, technology and technical information, source codes, security audit reviews, business and marketing plans and business processes, however disclosed. Confidential Information shall not include information that was (i) at the time of disclosure, through no fault of the Recipient, already known and generally available to the public; (ii) at the time of disclosure, already rightfully known to the Recipient without any obligation of confidentiality; (iii) disclosed to the Recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; or (iv) independently developed by the Recipient without access to or use of the Discloser’s Confidential Information.
- 1.3 “**Deliverable(s)**” means a deliverable under an Order Form.
- 1.4 “**Inriver Personnel**” means all employees and subcontractors, if any, engaged by Inriver to perform the Professional Services.
- 1.5 “**Intellectual Property**” means all intellectual property rights worldwide whether registered or unregistered, including copyrights, patents, patent applications, trademarks, service marks, trade secrets and other proprietary rights.
- 1.6 “**Order Form**” means a mutually agreed ordering document (whether in the form of a statement of work, schedule or otherwise) specifying the Professional Services to be provided hereunder that is entered into between Subscriber and Inriver, including any addendums thereto. An Inriver Affiliate that executes an Order Form with Subscriber will be deemed to be “Inriver” as such term is used in this Agreement. Order Forms will be deemed incorporated herein by reference.

- 1.7 **“Project”** means a project as described in an Order Form.
- 1.8 **“Professional Services”** means any professional services to be provided under this Agreement by Inriver, its affiliates, or its or their respective subcontractors under an Order Form, including the provision of any Deliverables specified in such Order Form.
- 1.9 **“Subscriber”** means the entity specified in an Order Form as being the contracting Party to this Agreement.
- 1.10 **“Subscriber Materials”** means any documents, data, know-how, methodologies, policies, procedures, protocols, templates, forms, workflows, software, and other materials provided to Inriver by Subscriber, including reports and specifications.

2 **PROFESSIONAL SERVICES**

Inriver shall provide Professional Services to Subscriber as specified in each Order Form in accordance with the terms and conditions of this Agreement. The Parties agree that Inriver shall be allowed to engage representatives, subagents or independent contractors to provide the Professional Services.

3 **OBLIGATIONS**

- 3.1 **Inriver's Obligations.** Inriver is responsible for all Inriver Personnel. As such, Inriver will comply with all applicable laws and regulations. Subscriber will have no power or authority to directly supervise or control Inriver Personnel with respect to the means, manner or method of performance of the Professional Services. Inriver shall ensure that Inriver Personnel are suitably qualified and that Inriver provides reasonably sufficient staff to perform the Professional Services.
- 3.2 **Subscriber's Obligations.** Subscriber shall respond promptly to any Inriver request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Inriver to perform Professional Services in accordance with the requirements of the Order Form. Subscriber shall provide such Subscriber Materials as Inriver may reasonably request in order to carry out the Professional Services, in a timely manner, and shall ensure that all Subscriber Materials and other information are complete and accurate in all material respects.
- 3.3 **Mutual Obligations.** Inriver and Subscriber shall actively participate in scheduled Project meetings. Each Party shall, as soon as practicable following the execution of the applicable Order Form, assign a project manager (each a “Project Manager”) who shall have the principal responsibility for overseeing and managing the performance of that Party under the Order Form and who shall be that Party’s primary point of contact. Each Party shall ensure that its Project Manager shall be suitably skilled, experienced, and qualified to collaborate and interface with the other Party regarding the provision of Professional Services hereunder. Each Party agrees that its Project Manager shall dedicate such time as needed to perform its obligations as set forth in the Order Form.

4 **DELIVERY, TESTING AND ACCEPTANCE**

Following delivery of each Deliverable, according to applicable Order Form, Subscriber shall have the period of time specified in the Order Form, or if no such time period is provided, ten (10) business days (the “Test Period”), in which to test the Deliverable to verify that it meets the specifications set forth in the Order Form or otherwise described in applicable documentation. The Deliverable shall be deemed accepted upon written

notice of acceptance by Subscriber. If Subscriber does not notify Inriver of non-acceptance within the Test Period, Subscriber shall be deemed to have accepted the Deliverable. If Subscriber, in its reasonable and good faith judgment, determines that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable Order Form or as mutually agreed upon in writing by the Parties, Subscriber must so notify Inriver no later than the last day of the Test Period and provide a written description of the deficiencies in detail. Inriver shall provide Subscriber with a work plan for the correction of the deficiencies. The work plan shall be subject to Subscriber's written approval, which Subscriber will not unreasonably withhold, condition or delay. Inriver shall exercise commercially reasonable efforts to correct all deficiencies within the timeframe specified in the work plan, unless otherwise agreed by the Parties. If Inriver is unable to correct a deficiency within the agreed-upon timeframe and to Subscriber's reasonable satisfaction, Subscriber may terminate the Order Form immediately upon written notice and recover all Professional Services fees paid under such Order Form for such deficient Deliverable.

5 CHANGE ORDERS

- 5.1 **Change in Project.** If the Parties determine that a Deliverable's functional requirements specified in an Order Form require modification (for example, due to incorrect assumptions or changed requirements) or if either Party wishes to change the scope or performance of the Professional Services, it shall submit details of the requested change to the other Party in writing. Inriver shall, within a reasonable time after such request, provide a written estimate to Subscriber of the likely time required to implement the change and the likely effect of the change on the Professional Services and fees.
- 5.2 **Change Order.** Promptly after receipt of the written estimate, the Parties shall negotiate in good faith and seek to agree in writing on the terms of such change (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing.

6 FEES AND EXPENSES; PAYMENT TERMS

- 6.1 **Invoicing and Payment.** In consideration of the provision of the Professional Services by Inriver and the rights granted to Subscriber under this Agreement, Subscriber shall pay the fees within time set forth in the applicable Order Form, or if no time is specified in the Order Form, within thirty (30) days after Subscriber's receipt of such invoice. In the event of a payment dispute, Subscriber shall, within ten (10) business days following receipt of the relevant invoice, deliver a written statement to Inriver on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. The Parties shall seek to resolve all such disputes expeditiously and in good faith.
- 6.2 **Fees on Time and Materials Basis.** Any amount set forth in a time-and-materials Order Form is solely a good-faith estimate for Subscriber's budgeting and Inriver's resource-scheduling purposes, and is not a guarantee that the Professional Services will be completed for that amount; the actual amount may be higher or lower. Unless otherwise agreed by the Parties in writing, after the estimated amount has been expended, Inriver will continue to provide Professional Services under the same rates and terms. Inriver will periodically inform Subscriber on the status of the Professional Services and the fees accrued under Order Forms. Where the Professional Services are provided on a time and materials basis (i) the fees payable for the Professional Services shall be calculated in accordance with Inriver's hourly fee rates for the Inriver Personnel set forth in the applicable Order Form; (ii) Inriver shall, unless else is set forth in the Order Form, issue invoices to Subscriber monthly in arrears for the immediately preceding month together with a reasonably detailed

breakdown of any expenses for such month; and (iii) unless otherwise specified in the applicable Order Form, Subscriber shall not be liable for overtime, and in no event shall any charges exceed the rates agreed upon.

6.3 **Fixed Fee.** Where Professional Services are provided for a fixed price, the total fees for the Professional Services shall be the amount set out in the applicable Order Form. The total price shall be paid to Inriver in installments, as set out in the Order Form, with each installment being conditional on Inriver achieving the corresponding Project milestone. On achieving a Project milestone specified in the applicable Order Form in respect of which an installment is due, Inriver shall issue invoices to Subscriber for the fees that are then payable, together with a detailed description of any expenses incurred.

6.4 **Travel and Out-of-Pocket Expenses.** Subscriber agrees to reimburse Inriver for all actual, documented and reasonable travel and out-of-pocket expenses incurred by Inriver in connection with the performance of the Professional Services that have been approved in advance in writing by Subscriber.

6.5 **Overdue Charges.** If any invoiced undisputed amount is not received by Inriver by the due date, then without limiting Inriver's rights or remedies, those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower.

6.6 **Suspension of Professional Services.** Subject to section 6.1 and disputed payments, if any amount owed by Subscriber under this Agreement is thirty (30) days or more overdue and at least one reminder has been issued, Inriver may, without limiting its other rights and remedies, suspend its performance of Professional Services until such amounts are paid in full. Inriver shall not be held liable for any loss and/or damage suffered by Subscriber or anyone else as a result of such suspension.

6.7 **Taxes.** The fees do not include any levies, duties excise, sales, use, value added or other taxes, tariffs or duties that may apply to the Service ("Taxes"). Subscriber is responsible for paying all Taxes associated with its purchases hereunder. If Inriver has the legal obligation to pay or collect Taxes for which Subscriber is responsible under this section, Inriver will invoice Subscriber and Subscriber will pay that amount unless Subscriber provides Inriver with a valid tax exemption certificate authorized by the applicable taxing authority. For clarity, Inriver is solely responsible for taxes assessable against it based on its income, property and employees.

7 **NON-SOLICITATION**

During the period of performance of Professional Services and one year thereafter, Subscriber agrees that it will not solicit directly or indirectly the employment or services of the Inriver Personnel.

8 **REPRESENTATIONS, WARRANTIES AND DISCLAIMERS**

8.1 **Representations.** Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 **Inriver Warranty.** Inriver warrants that the Professional Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards. In the event of breach of the aforementioned warranty, Subscriber's sole and exclusive remedy will be, at Inriver's option to: (i) use reasonable efforts to correct a nonconformance; or (ii) terminate the applicable Order Form and refund fees attributable to the non-conforming Professional Services. Subscriber acknowledges and agrees that Inriver is not liable for the performance of any third party hardware, devices, equipment, software, connectivity, data

transport, or other products or services provided by a third party ("Third Party Products"), such Third Party Products may impact the performance of the Professional Services provided hereunder, and Inriver shall have no liability related thereto.

- 8.3 **DISCLAIMER.** THE EXPRESS WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INRIVER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE REGARDING OR RELATING TO THE PROFESSIONAL SERVICES OR DELIVERABLES, OR ANY OTHER MATERIALS FURNISHED OR PROVIDED TO SUBSCRIBER PURSUANT TO THE ORDER FORM. INRIVER WILL NOT BE LIABLE FOR ANY SUBSCRIBER MATERIALS OR ANY THIRD-PARTY SERVICES OR PRODUCTS IDENTIFIED OR REFERRED TO SUBSCRIBER BY INRIVER. NO EMPLOYEE, AGENT, REPRESENTATIVE OR AFFILIATE OF INRIVER HAS THE AUTHORITY TO BIND INRIVER TO ANY REPRESENTATIONS OR WARRANTIES NOT CONTAINED IN THE AGREEMENT OR AN ORDER FORM.

9 INTELLECTUAL PROPERTY RIGHTS; OWNERSHIP

- 9.1 Subscriber recognizes and agrees that Inriver's Professional Services are typically provided to assist and support Subscriber and any third party service providers in the implementation of Inriver's product information management software-as-a-service platform (the "Inriver PIM Service") and that any Deliverables under this Agreement are for use within, or in connection with, the Inriver PIM Service. Therefore, all right, title and interest in and to the Deliverables, including all Intellectual Property rights, shall remain with Inriver, or its subcontractors or licensors. Inriver hereby grants to Subscriber a non-exclusive, non-transferable, limited right to use the Deliverables solely within, or in connection with, the Inriver PIM Service.
- 9.2 Inriver and its licensors are, and shall remain, the sole and exclusive owners of all right, title and interest in and to any and all materials, documentation, software and other technology created or developed by Inriver prior to the execution of the applicable Order Form or outside of the scope and specifications of the Order Form ("Pre-Existing Materials"). Subscriber may use such Pre-Existing Materials during the term of this Agreement solely to the extent necessary to enable use of the Deliverables for Subscriber's internal business purposes. All other rights in and to Pre-Existing Materials are expressly reserved by Inriver.
- 9.3 Subscriber and its licensors are, and shall remain, the sole and exclusive owner of all right, title and interest in and to Subscriber Materials, including all Intellectual Property rights therein. Inriver shall have no right or license to use any Subscriber Materials except solely during the term of the Agreement to the extent necessary to provide the Professional Services to Subscriber. All other rights in and to Subscriber Materials are expressly reserved by Subscriber.

10 INDEMNIFICATION

- 10.1 **Inriver Indemnification.** Inriver will defend, indemnify, and hold harmless Subscriber from and against any and all third party claims, demands, suits, or causes of action (collectively, "Claims") and will pay any costs, losses or damages that may be finally awarded against Subscriber (including reasonable attorneys' fees) (collectively, "Damages") to the extent arising out of any alleged infringement or misappropriation of any Deliverables of any third party Intellectual Property right, provided that Subscriber follows the process

described in Section 10.4 below. Notwithstanding the foregoing, Inriver will have no liability for any Claim of infringement or misappropriation: (i) that is based on the combination, operation, or use of the Deliverables with materials (e.g., software, hardware or content) or services not furnished by Inriver or reasonably anticipated to be used in combination with the Deliverables, or (ii) that is based on any modification of the Deliverables by Subscriber, by any third party, or by Inriver at Subscriber's direction.

10.2 **Remedies.** In the event any Deliverable is held or are believed by Inriver to infringe or misappropriate any Intellectual Property right of a third party, Inriver will have the option, at its expense, to (i) replace the Deliverable with a non-infringing equivalent, (ii) modify the Deliverable to be non-infringing, (iii) obtain for Subscriber a license to continue using the Deliverable or, in the event (i), (ii) and (iii) are commercially unreasonable, (iv) refund the fees paid by Subscriber for the infringing Deliverable and require that Subscriber discontinue its use. The foregoing remedies constitute Subscriber's sole and exclusive remedies and Inriver's entire liability with respect to infringement of Intellectual Property rights.

10.3 **Subscriber Indemnification.** Subscriber will defend, indemnify, and hold harmless Subscriber from and against any and all Claims and will pay any Damages to the extent arising out of any alleged infringement or misappropriation of any Subscriber Materials of any third party Intellectual Property right, provided that Inriver follows the process described in Section 10.4 below.

10.4 **Process.** The indemnified Party shall notify the indemnifying Party promptly upon receipt of any written Claim or notice of any infringement of third party Intellectual Property rights in connection with this Agreement. The indemnified Party may retain counsel of its choice, at its expense, to participate in any proceeding. The indemnifying Party shall have the right to settle or compromise any Claim at its discretion, provided that the terms of the settlement or compromise provide for the unconditional release of the indemnified Party. The indemnifying Party shall not settle, without the indemnified Party's prior written consent, any Claim which imposes upon the indemnified Party any obligation, or in any way prejudices the rights of the indemnified Party, other than as set forth herein.

11 TERM AND TERMINATION

11.1 **Term.** This Agreement will become effective as of the date an Order Form is executed by the Parties, and unless terminated earlier as provided in this Agreement, will continue in effect for so long as an Order Form between Inriver and Subscriber remains effective. Upon the termination of all Order Forms between Inriver and Subscriber, this Agreement will automatically expire. Each individual Order Form shall commence on the date set forth in the Order Form and shall expire upon completion of the performance of all Professional Services as set forth therein.

11.2 **Termination for Convenience.** Either party may terminate this Agreement at any time for convenience upon thirty (30) days' written notice to the other. To the extent there are Order Forms in effect when a party terminates this Agreement, such Order Forms shall continue to be governed by this Agreement as if it had not been terminated. Subscriber may terminate an Order Form for convenience to the extent permitted in such Order Form.

11.3 **Termination for Cause.** Either Party may terminate this Agreement and/or any Order Form if the other Party is in material breach of its undertakings under this Agreement and the other Party fails to remedy such breach within a period of thirty (30) days from receipt of written notice requiring such remedy, except that in the event of unlawful conduct, fraud, or material misrepresentation by either Party, the other Party will be

entitled to terminate this Agreement immediately. Either Party may terminate this Agreement immediately by providing written notice to the other Party if the other Party becomes insolvent.

11.4 **Effect of Termination.** Upon any termination of an Order Form, Subscriber will pay, in accordance with Section 6.1 of this Agreement, any unpaid fees and expenses incurred on or before the termination date (such Professional Services fees to be paid on a time-and-materials or percent-of-completion basis, as appropriate). In the event that Subscriber terminates an Order Form for cause and Subscriber has pre-paid any fees for Professional Services not yet received, Inriver will refund such pre-paid fees. In the event that Inriver terminates an Order Form for cause, any pre-paid fees for Professional Services charged on a fixed-fee basis are non-refundable, unless expressly stated otherwise in the applicable Order Form. Each Party shall also promptly return to the other Party any data, programs, and materials delivered by a Party for purposes of performing this Agreement.

11.5 **Survival.** Upon any expiration or termination of this Agreement, any provision of this Agreement which, by its nature, would survive termination of this Agreement will survive, including without limitation the following sections: Sections 6 through 14, inclusive.

12 CONFIDENTIALITY

12.1 **Obligations.** Each Party will hold the other Party's Confidential Information in confidence with at least as much care as it holds its own Confidential Information, and neither Party will disclose any of the other Party's Confidential Information to any third party. Each Party may use the Confidential Information solely for purposes of its performance under this Agreement, and may disclose such information to its employees, subcontractors and professional advisors only on a need-to-know basis, provided that such employees, subcontractors and professional advisors are bound by obligations of confidentiality at least as restrictive as those set forth in this Agreement.

12.2 **Required Disclosure.** If the Recipient is requested or required to disclose any of the Discloser's Confidential Information under a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "Legal Requirement"), the Recipient will, if lawfully permitted to do so, provide prompt notice of such Legal Requirement to the Discloser so that the Discloser may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the Discloser is not successful in obtaining a protective order or other appropriate remedy and the Recipient is legally compelled to disclose such Confidential Information, or if the Discloser waives compliance with the provisions of this Agreement in writing, the Recipient may disclose, without liability hereunder, such Confidential Information solely to the extent necessary to comply with the Legal Requirement.

12.3 **Disposition of Confidential Information on Termination.** Upon termination or expiration of this Agreement or upon the Discloser's written request, the Recipient will return to the Discloser all copies of Confidential Information in the Recipient's possession or within its control. Alternatively, upon prior written notice, the Recipient may destroy such Confidential Information; provided that the Confidential Information is (i) destroyed in accordance with applicable law, rule or regulation and (ii) is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case a representative of the Recipient will certify in writing to the Discloser that all such Confidential Information has been so destroyed. The obligations with respect to Confidential Information, as set forth in this section, shall continue in force and effect for a period of five (5) years after termination or expiration of this Agreement or, with respect to such

portions of such Confidential Information that constitute trade secrets under applicable law, for so long as such trade secret status is maintained.

- 12.4 **Remedy.** Each Party acknowledges that a breach of this Section 12.4 may result in irreparable and continuing damage to the Discloser for which monetary damages may not be sufficient and agrees that the Discloser will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

13 **LIMITATION OF LIABILITY**

INRIVER (DEFINED FOR PURPOSES OF THIS SECTION AS INRIVER'S PARENT, AFFILIATES, SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS AND EMPLOYEES) SHALL NOT BE LIABLE TO SUBSCRIBER OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL THEORY, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION OR INFRINGEMENT, OR COST OF SUBSTITUTE SOFTWARE, WHETHER INCURRED BY SUBSCRIBER INTERNALLY OR IN CONNECTION WITH ANY THIRD PARTY. EXCEPT WITH RESPECT TO THE INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATION UNDER THIS AGREEMENT, INRIVER'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF THE FEE PAID BY SUBSCRIBER UNDER THE ORDER FORM FOR THE PROFESSIONAL SERVICES GIVING RISE TO THE CLAIM FOR LIABILITY. THE LIMITATIONS PROVISIONS OF THIS SECTION SHALL BE APPLICABLE TO ANY CLAIM FILED BY SUBSCRIBER ARISING OUT OF OR RELATING TO ANY PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT. SUBSCRIBER MUST, IN ORDER TO PRESERVE ITS RIGHT TO COMPENSATION, GIVE NOTICE OF ANY CLAIM WITHIN THREE (3) MONTHS FROM WHEN SUBSCRIBER BECAME AWARE OF THE BASIS FOR THE CLAIM.

14 **GENERAL PROVISIONS**

- 14.1 **Export Laws.** The Professional Services, including Deliverables Inriver makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Neither party will access or use any Deliverables or Confidential Information provided to it hereunder in a U.S.-embargoed country or region or in violation of any applicable export law or governmental regulation.
- 14.2 **No Third-Party Beneficiaries.** Except as specifically identified in this Agreement, nothing in this Agreement is intended to confer upon any person other than the Parties and their respective successors or permitted assigns, any rights, remedies, obligations or liabilities whatsoever.
- 14.3 **Independent Contractors.** Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between any of the Parties hereto. Neither Party shall have the power nor authority to control the activities or operations of the other. At all times, the status of the Parties shall be that of independent contractors.
- 14.4 **Force Majeure.** Neither Party will be responsible for delays or failures in performance resulting from acts of government, acts of terror acts of civil or military authority, or other acts or causes reasonably beyond the control of that Party, including but not limited to fire, flood, earthquake, labor dispute, epidemics, pandemics, telecommunications or Internet service interruptions, or similar. The Party experiencing the force majeure event agrees to give the other Party notice promptly following the force majeure event, and to use

commercially reasonable efforts to re-commence performance as promptly as practicable. Except for obligations of payment of any fees owed, in the event any failure to perform because of a force majeure event remains uncured for a period of thirty (30) days, the other Party may terminate this Agreement and applicable Order Form, without liability, by providing written notice.

14.5 **Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party’s prior written consent (not to be unreasonably withheld, conditioned or delayed). Notwithstanding the above, the Parties shall have the right, without the other Party’s consent, to assign this Agreement in its entirety (including all Order Forms) to its Affiliate or in connection with a merger, corporate reorganization, or sale of all or substantially all of its assets, provided that; (i) such assignee can honor the assignor’s obligations under the Agreement, and (ii) the assignee is not a direct competitor of the other Party. The assigning Party must notify the other Party in writing without undue delay of such transaction and shall provide all necessary information on the assignee. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns. Notwithstanding the foregoing, Inriver shall be entitled to assign its rights to receive payment under this Agreement (including interest and other related collection costs) to an external factoring company, and Subscriber will be notified thereof separately. Payment shall in such event be made irrevocably by Subscriber to such company.

14.6 **Governing Law.** This Agreement will be governed by the applicable law depending on where Subscriber is domiciled, without regard to conflict of law principles, and any dispute, controversy or claim arising out of or in connection with the Agreement shall be finally settled, in English language, as follows:

Domicile	Governing Law	Dispute Resolution
North America, Central America and South America	State of Illinois	The state or federal courts located in Cook County, Illinois.
Germany	Germany	The Arbitration Rules of the Arbitration Institute of the German Arbitration Institute. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Berlin, Germany.
Europe (excluding Germany), Middle East, Africa, Asia, Pacific Region	Sweden	The Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The arbitral tribunal shall be composed of three arbitrators. The seat of arbitration shall be Malmö, Sweden.

In addition to above, the Parties agree that: i) any claims or counterclaims based on this Agreement shall only be raised by Subscriber against Inriver and not a company to which Inriver may have assigned the right to collect and receive payment; ii) any action for collection of payment obligations may be brought in any court with competent jurisdiction (notwithstanding the contrary above); iii) any claim under this Agreement must be filed within twelve (12) months from when a Party became aware of the basis for the claim; and iv) the Parties unconditionally waive any right to have a jury trial.

14.7 **Severability & Waiver.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement

will remain in effect. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.

- 14.8 **Notices.** Except for termination, all notices related to this Agreement (including notices for material breach or violation hereof) shall be in writing to address identified in the Order Form, addressed to “ATTENTION: LEGAL DEPARTMENT”, and will be considered delivered upon (i) personal delivery, (ii) the fifth business day after mailing, or (iii) the day of sending by email to legal@inriver.com. The same delivery periods shall apply for notices of termination, but such shall be addressed to finance@inriver.com. Billing-related notices to Subscriber will be addressed to the relevant billing contact designated by Subscriber. All other notices to Subscriber will be addressed to the relevant administrator designated by Subscriber.
- 14.9 **Entire Agreement and Order of Precedence.** This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) this Agreement, and (2) the applicable Order Form. This Agreement may not be amended or modified except by mutual written agreement.
-