

TERMS AND CONDITIONS

Customer agrees to pay for, and Profound Technologies agrees to provide, the services set forth in the Statement(s) of Work (the "SOW") to which these General Terms and Conditions are attached and made a part thereof. Collectively, these terms and the SOW constitute the entire agreement (the "Agreement") between the parties and replace all oral or written communications between Customer and Profound Technologies.

1. Definitions

- 1.1. "Projected Start Date" shall mean the anticipated date that the services set forth in the SOW are implemented and active.
- 1.2. "Managed Services Start Date" shall mean the actual date the Managed Services Program set forth in the SOW becomes active following execution of this Agreement, Profound Technologies' receipt of payment per the terms set forth in the SOW, and installation of a Communication Link (if applicable).
- 1.3. "Managed Services Program" shall mean technical Managed Service in conjunction with any audiovisual design, installation, service or rentals and may include Profound Technologies Help Desk, Profound Technologies Priority Response ("CPR"), Profound Technologies Managed Services, or any other professional services and/or product lines set forth in the SOW.
- 1.4. "Coverage Term" shall mean the length of time that the Managed Services Program under this Agreement is active.
- 1.5. "Communication Link," if applicable, shall mean digital or analog connections to the Customer such as data or phone lines.
- 1.6. "Critical Product Loaner" shall mean equipment loaned to Customer on a short-term or long-term basis to minimize the impact of defective equipment deemed critical to the Managed Services Program set forth in the SOW. Loaner Equipment may not be identical to the original devices, nor provide identical performance; however, such equipment shall provide similar functionality.
- 1.7. "High Priority Service Call" shall mean a visit to Customer's site as part of a Managed Services Program to service non-functioning, business-critical systems or equipment.
- 1.8. "System Control Software" shall mean the executable object code, the uncompiled object code and/or the source code of software programs along with any updates, patches, scripts, modifications, enhancements, designs, concepts or other materials that constitute the software programs necessary for proper functionality and operation of the system to be provided by Profound Technologies as set forth in the SOW.

2. Scope of Work and Responsibilities

- 2.1. Generally. Subject to the terms and conditions set forth herein, Profound Technologies agrees to perform the services, including providing any accompanying products (as applicable), set forth in the SOW. The SOW will set forth the description of the services to be provided, the time schedule of such services, the fees for such services and any other terms and conditions that apply to the specific SOW. Any products or equipment provided as part of the SOW are also subject to the terms of this Agreement.
- 2.2. Standard of Care. Profound Technologies shall perform any design and consulting services set forth in the SOW in accordance with the standard of skill and care generally exercised by other consulting firms in the same locale acting

under similar circumstances and conditions. In the event the SOW sets forth services other than design and consulting services, then such other services shall be performed in a workmanlike manner consistent with industry standards.

2.3. Access to Customer Site.

2.3.1. Generally. Profound Technologies' performance of the services is dependent upon Customer's obligation to timely provide products, services, personnel, technical data and other information, and/or access to facilities as may be deemed necessary by Profound Technologies for performance of the services set forth in the SOW. Customer hereby grants Profound Technologies reasonable access to Customer's premises and equipment for the purpose of performing the Services.

2.3.2. Walls and Ceilings. To the extent applicable, Customer hereby certifies that there is a minimum of ten (10) inches of clearance above any ceiling and that all walls are "fishable," as that term is generally accepted within the construction industry, where audiovisual work is to be performed. Customer agrees to pay additional fees if these conditions are not satisfied.

2.3.3. Allocation of Time. Customer agrees to allocate continuous periods of time, to provide access to Customer's computer network, and to make Customer's network administration staff or consultant available, as estimated and defined in the SOW, to allow for the performance of the services by Profound Technologies. In the event that Customer fails to allocate time, or provide the required network access or administration staff required per the SOW, or if Customer's other agents, contractors or consultants providing services to the Customer, outside of Profound Technologies' scope of responsibility, cause delays or additional visits to the service location as required for the performance of the services, and such failure causes a delay in the performance of the services by Profound Technologies hereunder, or results in additional costs to Profound Technologies, then Profound Technologies shall take such action as it deems reasonably prudent and shall provide Customer with a written description of such delay and the resultant costs. Customer shall pay Profound Technologies for all such additional costs and agrees to extend the schedule for performance, if any, set forth in the SOW by the time period of such delay or such additional time as required as a result of such delay.

2.4. Hazardous Materials. Profound Technologies shall have no responsibility for the discovery, presence, handling, removal

or disposal of or exposure of persons to hazardous materials in any form in connection with the Project, including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB), bacteria, mold, fungi, lead-based paints or other similar materials or other toxic substances, infectious materials, or contaminants.

2.5. Construction Administration Services as Part of Profound Technologies' Design Services.

2.5.1. Periodic Site Visits. If included as part of Profound Technologies' design or consulting services set forth in the SOW, Profound Technologies shall visit the site at intervals, appropriate to the stage of construction, or as otherwise agreed with Customer in writing. The purpose of the periodic site visits is to become generally familiar with the progress and quality of the work designed by Profound Technologies and to determine in general if such work is proceeding in accordance with any contract documents as part of the contract for construction. Profound Technologies shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work designed by Profound Technologies. On the basis of such on-site observations, Profound Technologies shall keep Customer informed of the progress and quality of the work designed by Profound Technologies and shall endeavor to guard the Customer against defects and deficiencies in such work of the contractor.

2.5.2. Means and Methods. Except as specifically set forth in a SOW, Profound Technologies shall not have control or charge of, and shall not be responsible for: (i) construction means, methods, techniques, sequences or procedures, (ii) safety precautions and programs in connection with the work, (iii) the acts or omissions of any construction contractor, subcontractors or any other persons performing any of the construction work; or the failure of any of them to carry out the work in accordance with any contract documents that are part of the contract for construction. In the event that Profound Technologies is performing any installation services, Profound Technologies shall have responsibility for the safety of its employees only, but shall not be responsible for overall site safety, which shall be the responsibility of other parties.

2.5.3. Contractor Submittals. Review of any construction contractor submittals (for example, shop drawings), if included as part of Profound Technologies' design or consulting services set forth in the SOW, is conducted only for the limited purpose of checking for conformance with information given and the design concept expressed in any contract documents prepared by Profound Technologies, but such review is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities or for substantiating instructions for installation or performance of equipment or systems designed by the construction contractor, all of which remain the responsibility of the construction contractor to the

extent required by any contract documents as part of the contract for construction. Profound Technologies' review shall not constitute approval of safety precautions or of construction means, methods, techniques, sequences or procedures. Profound Technologies' approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by any contract documents as part of the contract for construction, Profound Technologies shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by any contract documents as part of the contract for construction.

2.5.4. Design without Construction Administration Services. If Profound Technologies provides design services under the SOW, but Customer has determined to forgo any project observation or review of the contractor's performance or any other construction administration phase services, then, as a result of Customer's decision to forgo Profound Technologies' continued involvement during the construction administration phase, the Customer assumes all responsibility for interpretation of the any contract documents prepared by Profound Technologies and for construction observation and supervision and waives any and all claims against Profound Technologies that may be in any way connected thereto. Customer shall indemnify, defend and hold harmless Profound Technologies and its officers, directors, owners, agents, employees, successors and assigns from and against any and all claims, damages, losses, judgments, payments, awards and expenses (including reasonable attorneys' fees and litigation costs) arising out of or resulting from the performance of such services by any persons or entities other than Profound Technologies and from any and all claims arising from modifications, clarifications, interpretations, adjustments or changes made to the contract documents prepared by Profound Technologies to reflect changed field or other conditions, unless such claims arise directly from the sole negligence or willful misconduct of Profound Technologies. If Customer requests that Profound Technologies provide any specific and/or limited construction administration phase services, and if Profound Technologies agrees to provide such services, then Profound Technologies shall be compensated for said services as additional services and said services shall be performed in accordance with the terms and conditions of the SOW, this Agreement and/or any amendments to such agreements.

2.6. Managed Service Program.

2.6.1. Optional Services. During the term of any Managed Services Program, Profound Technologies may recommend optional upgrades or modifications to improve the serviceability or maintain the integrity

of the Products or system. Pricing for and procurement of such upgrades or modifications will be subject to a separate agreement in writing to be executed by the parties.

- 2.6.2. Coverage Term. The Coverage Term for the Managed Services Program is defined in the SOW and initiates upon either (as specified): (i) The execution of this Agreement, (ii) The receipt by Profound Technologies of either full or initial payment per the applicable payment terms or (iii) The installation of a Communications Link (if applicable).
- 2.6.3. Automatic Renewal. Upon completion of any Coverage Term, this Agreement will automatically renew for a successive one (1) year period unless either party provides written notification of its intent not to renew at least sixty (60) days prior to the renewal date. Renewal of any expired Managed Services Program may be subject to additional charges including, but not limited to, any charges for re-inspection or certification of the Products or system. Notwithstanding the foregoing, in the event any Profound Technologies product, device, equipment, or Managed Services Program is discontinued, or any third-party software, product, device, or equipment covered under the Managed Service Program is discontinued, sunset, updated, or the manufacturer's support for any such items are discontinued, then such Managed Services Program shall not be renewed. Renewals to extend any Managed Services Program may be subject to price increases by Profound Technologies, which shall be indicated on the invoice delivered for any such renewal.
- 2.6.4. Business Hours. Profound Technologies' Support Center and related telephone Managed Service as part of the Managed Services Program are available from 8:00 a.m. on Mondays to 10:00 p.m. on Fridays, Eastern Standard Time, excluding Profound Technologies-observed holidays. Work or services performed at the Customer's facility is conducted between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding Profound Technologies' observed holidays ("Profound Technologies' Regular Business Hours"), including all travel time. Work requested by Customer outside of Profound Technologies' Regular Business Hours will be quoted by Profound Technologies on a time and materials basis.
- 2.6.5. Service Level Agreement. In the event that Profound Technologies' Support Center, Profound Technologies remote Managed Services are disrupted or unavailable, due to issues within Profound Technologies' control, for four (4) or more hours in any twenty-four (24) hour calendar day, then Profound Technologies will extend the Coverage Term by one (1) day for each day of disrupted service. If Profound Technologies is unable to respond to a High-Priority Service Call within eight (8) business-hours after confirming the service issue with the Customer, then Profound Technologies will extend the Coverage Term by one

(1) day for every additional eight (8) business-hours that Profound Technologies is unable to respond. If Critical Equipment, as defined in the SOW as part of the Managed Services Program is unavailable for loan, then Profound Technologies will extend the Coverage Term by one (1) day for every business-day that the loaner equipment, or Critical Equipment, is unavailable. Profound Technologies is not responsible for service disruption on Customer-supplied data lines and connections.

- 2.6.6. Exclusions. The following services are not provided under the Profound Technologies Managed Services Program, but are available on a time and materials basis: (i) Replacement of camera image pick-up devices (e.g., tubes and chips, etc.); (ii) Re-tubing of monitors and projectors or replacement of Projector Light Engines; (iii) Repair or replacement of Cathode Ray Tubes(CRT), LCD & DLP Projectors, and LCD and Plasma flat panel displays due to burn-in as a result of normal usage; (iv) Repair or replacement of consumables (e.g., lamps, printer cartridges, fuses, VCR heads, batteries, etc.); (v) Replacement of components not available from original manufacturer; or, (vi) repair or replacement of equipment damaged due to: disaster, accident, neglect or misuse by Customer, failure or defect of electrical power, failure or defect of external electrical circuitry, failure or defect of air conditioning or humidity control ,the use of Profound Technologies-supplied products with items not provided or approved by Profound Technologies; compatibility issues caused by Customer-provided equipment or products or services provided by a third party.
- 2.6.7. Suspension. The Customer recognizes, acknowledges, understands and agrees that continued and timely payment for the Managed Services Program is a material term of this Agreement. In the event that Customer fails to render payment for such services and such payment remains overdue fifteen (15) days after the invoice is due, then Profound Technologies has the right to suspend performance of its services under the Managed Services Program until such time that all outstanding monies are paid. Any such suspension of the services shall be without liability to Profound Technologies, including any delay or disruption damages, and such suspension of services shall not extend the Coverage Term.
- 2.6.8. Termination. Either Party may terminate the Managed Services Program set forth in the SOW for any reason with ninety (90) days prior written notice. Either Party shall have the right to suspend performance or immediately terminate the Managed Services Program under this Agreement, if (a) the other Party becomes insolvent or subject to bankruptcy, receivership, or ceases to do business; or (b) the other Party fails to perform its obligations hereunder for a period of thirty (30) days after receipt of written notice from the other Party and such failure is not cured within thirty (30) days. Any

termination of this Agreement will not relieve either Party of its obligation to pay any sum due hereunder. In the event Profound Technologies fails to perform the services regarding the Managed Services Program and such non-performance is not cured within thirty (30) days of written notice from Customer, Customer may terminate the Managed Services Program services under this Agreement and Profound Technologies will refund a pro-rated amount for the remaining Coverage Term for which Customer has paid in advance, less any amounts owed Profound Technologies for other services provided hereunder at additional costs. If this Agreement is terminated for any reason, Customer remains responsible for all non-cancellable, third-party charges including, but not limited to, continuing data and phone line expenses or for other services rendered under this Agreement.

2.7. Customer Responsibilities.

2.7.1. Customer Representative. Customer will designate for each SOW a project manager, or similar Customer representative, acceptable to Profound Technologies, who will be both responsible and authorized to: (i) Make all decisions and give all approvals required by Profound Technologies, and (ii) Provide, on a timely basis, Profound Technologies personnel with all information, data, and support required for Profound Technologies' performance of the services under the SOW. Profound Technologies may request information, approvals, decisions, or other actions by Customer from time to time and Customer shall provide a proper, prompt and timely response in writing, where the timing for a response shall be identified by Profound Technologies at the time of the request. In the event that Customer fails to respond in a proper and timely manner and such failure causes a delay in the performance of services by Profound Technologies hereunder, or results in additional costs to Profound Technologies, then Profound Technologies shall take such action as it deems reasonably prudent and necessary and shall provide Customer with a written description of such delay and the resultant costs. Customer shall pay Profound Technologies for all such costs and agrees to extend the schedule for performance, if any, set forth in the SOW by the time period of such delay or such additional time as required as a result of such delay.

2.7.2. Government Licenses & Permits. Customer will comply with all government import and export control laws and procedures applicable to any products, hardware or equipment, and will obtain permits and licenses required for the operation and performance thereof. Customer will obtain all regulatory, governmental, and other approvals and consents necessary or deemed appropriate by Profound Technologies for any products, hardware or equipment or for the services provided under the SOW.

2.8. Any change to the original project scope and/or price as set forth in the SOW must be submitted in writing by Customer to Profound Technologies. Profound Technologies shall promptly prepare a change control document which will set forth the degree of effort, projected timeframe, estimated cost of such change and any other terms and conditions that apply to the change control document. Upon acceptance of the change control document, the Customer shall sign such change control document. The SOW shall be deemed amended to incorporate such change as set forth in the change control document. Profound Technologies will provide no additional services until Customer and Profound Technologies sign such change control document. In addition, where products are no longer required due to Customer-driven changes, a restocking charge of thirty percent (30%) will apply. Customer is responsible to pay all restocking charges.

3. Software and Software Licensing

3.1. Software provided as part of the services, system or Managed Service Program set forth in the SOW is licensed to Customer subject to the terms of this Agreement and any applicable end user software license agreements, provided by Profound Technologies, its licensors, or third party vendors in connection therewith (the "Software License"). Such license terms will also apply to any and all software updates and enhancements provided by Profound Technologies, its licensors, or third-party vendors in connection with this Agreement.

3.2. System Control Software License. Profound Technologies hereby grants to Customer a worldwide, perpetual, non-exclusive, non-transferable license to all System Control Software for Customer's use in connection with the establishment, use, maintenance, service and modification of the system implemented by Profound Technologies. As part of this limited license granted by Profound Technologies to the Customer, Customer may make and retain copies of the System Control Software for back-up and archival purposes and, as required or allowed herein, for modifications to the System Control Software during the Coverage Term. Customer may make modifications to the object code version of the System Control Software, if and only if: (i) The results of all such modifications are applied solely to the system provided by Profound Technologies under this Agreement, (ii) The Customer shall immediately disclose any and all such modifications to Profound Technologies and, (iii) Customer acknowledges that, pursuant to Section 3.3 of this Agreement, all such modifications are the property of Profound Technologies. Should Customer make any such modifications, Customer retains only a license to use such modification(s) during the applicable Coverage Term. In no way does the foregoing System Control Software License confer any right to Customer to license, sublicense, sell, or otherwise authorize the use of the System Control Software, whether in executable form, source code, object code, or otherwise, by any third parties, except in connection with the use of the system as part of Customer's ordinary course of business and only when such use is previously disclosed to and specifically approved by Profound Technologies. Customer is not licensed to reverse engineer, decompile or disassemble the System Control Software, except, and only to the extent

that, applicable law may permit such activity or such activity is expressly authorized herein or in the SOW.

Notwithstanding the foregoing System Control Software License, Customer shall not, under any circumstances whatsoever, copy, distribute, or modify the software specifically used in conjunction with the Profound Technologies remote Managed Service. All express or implied warranties, if any, relating to any portions of System Control Software shall be deemed null and void if any modification to the System Control Software is made by any party other than Profound Technologies, except any modifications or customizations expressly authorized in the SOW or herein.

- 3.3. Ownership of the System Control Software. Profound Technologies owns and hereby retains all rights, title and interest in and to all intellectual property rights to the System Control Software and any supporting documentation provided by Profound Technologies, including retention of an exclusive copyright in the System Control Software, documentation, all related intellectual property and all subsequent full or partial copies, enhancements, modifications and other derivatives of the software, documentation and other applicable intellectual property. The System Control Software is licensed to the Customer pursuant to the terms and conditions stated herein, and the Customer expressly acknowledges that the System Control Software has not been sold to it, and that the Customer acquires no rights or title to the System Control Software in conjunction with this Agreement.
- 3.3.1. Customer expressly disclaims any interest, property right, or intellectual property right in the System Control Software and/or any modifications made to the System Control Software, and hereby expressly assigns to Profound Technologies full ownership, title and all interest or property right in any translations, compilations, partial copies, modifications, updates and related intellectual property in connection therewith, regardless of the form or media in or on which the same may exist. With respect to copyrights, this assignment is and will be effective for the entire duration of the copyrights and will include, but not be limited to all rights to derivative works which are created from any modifications, changes, updates, or any other alteration of the System Control Software. Customer agrees to place proper notice of copyright on all copies of the System Control Software and documentation generated by the Customer pursuant to this Agreement.
- 3.3.2. The System Control Software and documentation, all related intellectual property, and any information learned or discovered by Customer about the performance of the System Control Software in the course of use under this Agreement constitutes proprietary trade secret information owned solely and exclusively by Profound Technologies, which constitutes "Confidential Information" subject to the provisions of Section 7 of this Agreement.
- 3.3.3. All copies and/or distribution of the System Control Software shall remain within the direct control of Customer and its representatives at all times.

Customer further agrees to secure and protect each computer, workstation or terminal which allows direct access to the System Control Software as well as the software itself, documentation related to the software, and copies thereof and all related intellectual property in a manner consistent with the maintenance of Profound Technologies' rights therein and the confidential and/or proprietary nature thereof. Customer shall take appropriate action, including by instruction or agreement with any of Customer's employees or consultants who are permitted access to the System Control Software, in order to assume and satisfy the obligations hereunder.

- 3.4. Third-Party Software and Hardware. Any and all licenses, product warranties or service contracts provided by third parties in connection with any software, hardware or other software or services provided in the Customer system shall be delivered to Customer for the sole benefit of Customer and, except as expressly provided to the contrary herein, Customer shall retain no further rights therein or thereto after the Coverage Term, except as provided by the vendor of any such hardware or software to the Customer, independent of any responsibilities or actions required by Profound Technologies.
- 3.4.1. Customer understands and acknowledges that the hardware and software provided by Profound Technologies may include third-party software including without limitation, open source software, and other materials not owned by Profound Technologies (collectively, the "Third-Party Software"). Customer's use of the Third-Party Software, in connection with the use of the system provided by Profound Technologies, is subject to the terms and conditions contained in the license agreements issued by the providers of the Third-Party Software ("Third-Party Licenses"), the terms and conditions of which are binding upon Customer.
- 3.4.2. Profound Technologies does not make any representations or provide any warranties, expressed or implied, including without limitation ANY IMPLIED WARRANTY OF MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE regarding any Third-Party Software. Profound Technologies WILL NOT BE LEGALLY RESPONSIBLE FOR ANY DAMAGES, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE USE OR INABILITY TO USE ANY THIRD PARTY SOFTWARE.
- 3.5. System Control Software Warranties. Profound Technologies represents and warrants to Customer that: (i) Profound Technologies has all necessary rights and authority to execute and deliver the foregoing Software License for the System Control Software, to perform its obligations hereunder, and to grant the rights granted under said System Control Software License to Customer; (ii) The System Control Software, as delivered as part of the system provided by Profound Technologies as set forth in the SOW, will not infringe or otherwise violate the rights of any third party, or violate any applicable law, rule or regulation; and (iii) Throughout the Coverage Term, the executable object code of the System Control Software and the system will

perform substantially in accordance with the requirements set forth in the SOW. If the System Control Software fails to perform as specified and accepted, all remedies are pursuant to the policies and terms as specifically set forth in the SOW and this Agreement. Profound Technologies' makes no warranty or representation that the System Control Software will be bug or error free, or that use of the System Control Software will achieve any particular result(s), except as may be stipulated in the published specifications included within the documentation. NO OTHER WARRANTY OF ANY TYPE OR NATURE IS PROVIDED FOR THE SYSTEM CONTROL SOFTWARE, WHICH IS DELIVERED "AS IS", "WHERE IS" AND "WITH ALL FAULTS." EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, OF MERCHANTABILITY, OR WARRANTY OF NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

- 3.6. Control Software Indemnification. Customer shall indemnify, defend and hold harmless Profound Technologies, its subsidiaries, and affiliates, and their respective officers, directors, employees, agents and subcontractors from and against any and all liability, damages, loss, cost or expense, including but not limited to reasonable attorneys' fees and expenses, arising out of or in connection with: (i) Any third-party claims that Customer's use of the software is in contravention of the grant of rights, infringes or otherwise violates any rights of any such third party, or (ii) Customer's activities to reverse engineer, decompile, or disassemble the System Control Software in contravention to this Agreement and applicable law.
- 3.7. Control Software and Termination. The foregoing System Control Software License will automatically terminate upon the disassembly of the audiovisual system provided by Profound Technologies, unless the system is reassembled by Profound Technologies in its original configuration in another location. Profound Technologies may terminate this license upon notice for failure to comply with any of terms set forth in this Agreement. Upon termination, Customer agrees to immediately destroy the software, including all copies and back-ups thereof and modifications thereto.

4. Title and Delivery

- 4.1. Title to any product or equipment manufactured by a third-party and supplied by Profound Technologies and purchased by Customer as part of the SOW shall pass to Customer upon delivery to common carrier for shipment to Customer, which shall be shipped. F.O.B. origin.
- 4.2. Title to any product or equipment manufactured by a third-party and merely supplied by Profound Technologies on a rental or loaner basis shall remain with and be the property of Profound Technologies at all times.
- 4.3. Title to any and all software, along with any related documentation thereto, shall be retained by Profound Technologies or its licensors.

5. Fees and Payment

- 5.1. Customer will pay Profound Technologies the compensation specified in the SOW. Customer will be invoiced as set forth in the SOW. If a Communications Link is required and must be established between Profound Technologies and

Customer, then Profound Technologies shall specify such additional costs, which are payable by Customer.

- 5.2. All invoices are due and payable in full upon receipt by Customer. Customer agrees to pay Profound Technologies on demand for all costs and expenses, including reasonable attorneys' fees and court costs, which may be incurred in the collection of any unpaid invoices.
- 5.3. If Customer does not pay an invoice pursuant to the SOW, the amount due will be subject to interest charges of 1½% per month. This interest will begin to accrue on the 31st day following presentment of the applicable invoice and will compound on a daily basis thereafter. Customer agrees to provide Profound Technologies with a written explanation of any disputed amounts within fifteen (15) days of receipt of invoice, to pay all undisputed amounts of the invoice when due and to cooperate in good faith with Profound Technologies to resolve disputed amounts within thirty (30) days of receipt of the written explanation of the disputed item(s). Any item invoiced and not disputed by Customer within fifteen (15) days following receipt of invoice shall be considered accepted in all respects.
- 5.4. Pricing set forth in the SOW does not include taxes, including sales, use, value-added or other excise, duties and similar fees, nor does it include shipping costs, insurance or related fees and costs. Customer will pay the aforementioned taxes and costs arising out of or in connection with this Agreement, except tax based on Profound Technologies' net income. Unless Customer provides valid tax exemption certificates, Customer shall be responsible for all taxes as set forth herein.
- 5.5. All payments to Profound Technologies shall be in U.S. dollars and Profound Technologies' preferred method of payment is by company check or Electronic Funds Transfer (EFT). If Customer chooses a method of payment which results in an additional charge to Profound Technologies, such as a credit card transaction with related fees, then Profound Technologies reserves the right to invoice Customer for those additional charges and fees and Customer agrees to pay said additional charges and fees, if any.
- 5.6. All payments must be received prior to initiating any Managed Services Program. When advanced replacement parts exchange is provided by Profound Technologies, Customer will return the defective component to Profound Technologies within ten (10) days of receiving the replacement component, or the Customer will pay for the replacement part at Profound Technologies' standard list price.
- 5.7. Profound Technologies reserves the right to invoice Customer for stored equipment if services are delayed for issues beyond Profound Technologies' reasonable control.

6. Nondisclosure and Confidentially

- 6.1. Either party may receive from the other "Confidential Information" (as defined below) and marked as such. Each party agrees to protect and neither shall disclose nor use any of the other party's Confidential Information, except to the extent required in connection with the performance of the services set forth in the SOW. The term "Confidential Information" shall mean any and all non-public, proprietary or other non-publicly available information, materials, documents, data, plans, technical information,

specifications, inventions, know-how, formulae, business information, and other information in whatever form held by the disclosing party, which the disclosing party has designated and specifically marked as confidential, or which should be reasonably deemed to confidential based on the type of information or context of its disclosure. Confidential information does not include any information: (i) That is part of the public domain or has become, after disclosure, part of the public domain through no fault of the receiving party; (ii) That was known to the receiving party without an obligation to keep such information confidential prior to its receipt of such information; (iii) That has been legally and properly received from a third party through no breach of any agreement and without any obligation to keep it confidential; (iv) That was learned, developed or obtained by the receiving party independently of the disclosing party's Confidential Information; or, (v) That is required to be disclosed by a court of competent jurisdiction or other legal or governmental authority or proceeding, provided that, the receiving party has notified the disclosing party and the disclosing party has been provided the opportunity to seek any necessary limitation on the disclosure of such Confidential Information at the disclosing party's sole cost and expense.

7. Limited Warranty and Disclaimer

7.1. Except as provided in Section 3.5 above, and those pass-through warranties provided by a third-party manufacturer for any product, equipment or hardware provided as part of the SOW, Profound Technologies' sole warranty under this Agreement is that it will perform the services required under this Agreement in accordance with the Standard of Care set forth herein and that the services, other than any design and consulting services, shall be free from defects in workmanship for a period of thirty (30) days following completion of the services ("Warranty Period"). Customer shall advise Profound Technologies of any warranty claims arising during the Warranty Period within ten (10) days of finding that any warranty-covered service, service item or product does not conform to the foregoing limited warranty. Profound Technologies, at its option, shall correct or re-perform a Service that is determined to be defective in workmanship during the Service Warranty Period. THE FOREGOING LIMITED WARRANTY SHALL NOT APPLY TO NORMAL WEAR OR TEAR OR TO ANY DEFECT RESULTING FROM (i) TAMPERING, ALTERATION, OR REPAIR BY ANYONE OTHER THAN PROFOUND TECHNOLOGIES; (ii) LIGHTNING, FIRE OR OTHER ACTS OF GOD OR OTHER ACTS BEYOND THE REASONABLE CONTROL OF EITHER PARTY; (iii) USE OF ANY SERVICE, SERVICE ITEM OR PRODUCT IN A MANNER THAT FAILS TO COMPLY WITH THE INTENDED USE, APPLICABLE SPECIFICATIONS AND/OR CARE AND HANDLING INSTRUCTIONS (IF APPLICABLE) OR OTHER STANDARDS FOR REASONABLE USE, CARE OR HANDLING OR (v) COMPLIANCE BY PROFOUND TECHNOLOGIES WITH THE CUSTOMER'S REQUESTS OR SPECIFICATIONS.

7.2. PROFOUND TECHNOLOGIES DOES NOT WARRANT THAT CUSTOMER'S USE OF ANY SERVICE OR ACCOMPANYING SERVICE ITEM OR PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE. PROFOUND TECHNOLOGIES'S WARRANTY OBLIGATIONS ARE EXPRESSLY LIMITED TO THE CORRECTION OF A SERVICE AS DESCRIBED ABOVE, OR THE REPLACEMENT

OF ANY PRODUCT PER THE MANUFACTURER'S WARRANTY. EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THESE TERMS AND CONDITIONS, PROFOUND TECHNOLOGIES PROVIDES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO ANY SERVICES OR ACCOMPANYING SERVICES ITEMS OR PRODUCTS, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTIES REGARDING NON-INFRINGEMENT OR QUALITY OR PERFORMANCE OF ANY THIRD-PARTY SOFTWARE, PRODUCTS OR OTHER PROCESSES USED BY PROFOUND TECHNOLOGIES IN CONNECTION WITH ITS PERFORMANCE HEREUNDER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. THESE DISCLAIMERS AND LIMITATIONS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8. Limitation of Liability and Remedies

8.1. PROFOUND TECHNOLOGIES SHALL NOT BE LIABLE, WHETHER IN CONTRACT, TORT, PRODUCTS LIABILITY, STRICT LIABILITY, NEGLIGENCE, OR IN ANY OTHER THEORY OF RECOVERY, FOR ANY AMOUNT IN EXCESS OF THE TOTAL AMOUNT OF COMPENSATION ACTUALLY PAID AND RECEIVED BY PROFOUND TECHNOLOGIES IN CONNECTION WITH THE SOW UNDER WHICH THE LIABILITY SPECIFICALLY ARISES. FURTHER, IN NO EVENT SHALL PROFOUND TECHNOLOGIES BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR FOR LOSS OF REVENUE OR PROFITS, EVEN IF THE POSSIBILITY OF SUCH DAMAGES OR LOSS HAD BEEN DISCLOSED OR WAS REASONABLY FORESEEABLE. THESE LIMITATIONS SHALL APPLY REGARDLESS OF ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

8.2. Profound Technologies will not be held to have failed to meet its obligations under this Agreement if Profound Technologies either delays performance or fails to perform as the result of any cause beyond its reasonable control.

8.3. No lawsuit, claim, arbitration or other proceeding, regardless of form, arising out of this Agreement may be brought by either party more than one year after the existence of the cause of action has become known to the party injured; except that, proceedings related to violation of any duty to protect Confidential Information may be brought during the applicable statute of limitations.

9. Indemnification

9.1. Subject to Section 8, Profound Technologies indemnifies Customer from any claims, losses, damages, or expenses for personal injury or property damage resulting from Profound Technologies' performance hereunder on Customer's premises, but only to the extent (i) Caused by Profound Technologies' gross negligence and, provided that, (ii) Profound Technologies has sole control of the defense, if it so chooses, and all related settlement negotiations, and (iii) Such indemnification is limited in the case of real or tangible property to the reduction in value or replacement cost of such property.

9.2. Client hereby agrees, at its sole cost and expense, to indemnify, defend and hold Profound Technologies harmless from and against any loss, cost, damages, liability or expense arising out of or relating to: (i) A third-party claim, suit, proceeding, action or allegation of infringement based on information, data, files or other content submitted by

Customer or otherwise related to Customer's access to and/or use of the services; (ii) Any fraud or manipulation, or other breach of this Agreement by Customer; and/or (iii) Customer's violation of any of the prohibitions under Section 4 above.

10. Dispute Resolution

- 10.1. In the event of a dispute, the parties will first seek to resolve the issues between the principals of each respective party. The principals will meet within thirty (30) days following demand by one of the parties.
- 10.2. If the principals are unable to reach resolution, then the parties agree to engage in mediation.
- 10.3. If mediation between the parties is unsuccessful, then the parties may seek resolution through a court of competent jurisdiction. The parties agree that this Agreement and any and all disputes or causes of action arising out of this Agreement or the services provided thereunder shall be governed by the laws of the Commonwealth of Pennsylvania, without regards to principles of conflicts of laws. Further, any dispute shall be subject to the exclusive jurisdiction of the federal courts in the Eastern District of Pennsylvania or the Montgomery County Court of Common Pleas in Pennsylvania, and Customer submits to the jurisdiction of such courts.

11. Termination; Survival

- 11.1. This Agreement shall terminate upon completion of the services under the SOW and payment in full of Profound Technologies' final invoices by Customer, unless terminated by either party for material breach and where such material breach is not cured within thirty (30) days of written notice. If such breach is due to Profound Technologies' failure to perform and cannot be cured within such thirty (30) day period, then such period shall be extended, provided that, Profound Technologies, within such thirty (30) day period, commences to cure such breach.
- 11.2. Except as provide for under Section 2.6.7, for the Managed Services Program, the SOW is non-cancelable. Should the Customer terminate the SOW before completion, all fees set forth in the SOW are due in full to Profound Technologies, unless such termination by Customer is for a material breach by Profound Technologies, which shall be subject to the foregoing conditions set forth in Section 11.1 above.
- 11.3. Either party may immediately terminate this Agreement if the other party ceases doing business in the ordinary course, experiences a change of control, becomes insolvent, has a receivers appointed for its assets, or becomes the subject of bankruptcy proceedings.
- 11.4. When this Agreement terminates, both parties will continue to comply with all of the terms of this Agreement that call for performance subsequent to the termination date, including payment by Customer for services rendered by Profound Technologies through the date of termination.

12. Marketing

- 12.1. Customer agrees to participate in marketing/communications and similar activities with Profound Technologies; provided that, Customer shall have the right to review and approve any use of its name prior to release.

13. Insurance

- 13.1. Within thirty (30) days of executing this Agreement, Profound Technologies shall deliver to Customer a Certificate of Insurance evidencing the coverage carried by Profound Technologies, which shall become Exhibit B to the SOW. Profound Technologies shall keep such coverage or its equivalent, in place throughout the duration of the SOW.

14. Independent Contractor

- 14.1. The relationship of Profound Technologies and Customer shall be that of independent contractors and no agency, joint venture, partnership or other relationship is hereby created. Neither Party, nor its respective agents, representatives or employees shall be deemed to be the agent, representative or employee of the other. Neither Party shall have the right to bind the other, transact any business in the other's name or on its behalf or incur any liability for or on behalf of the other. Each Party shall comply with all applicable federal, state, and local wage and tax laws relating to such Party and shall be solely responsible for obtaining insurance for its employees, representatives and agents and for paying all wages to, and other costs, fees and expenses related to, and for withholding and paying all applicable federal, state, and social security taxes, unemployment taxes and any similar taxes on behalf of its employees, representatives and agents.

15. General Provisions

- 15.1. No person or entity not a Party to this Agreement will be deemed a third-party beneficiary of this Agreement or to any provision contained herein.
- 15.2. Neither party will be in default or otherwise liable for any delay in or failure of its performance hereunder if such delay or failure arises by any reason beyond its reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, or failures or delay in transportation or communications. The Parties will promptly inform and consult with each other as to any of the above causes that in their judgment may or could be the cause of a delay in the performance of this Agreement.
- 15.3. Customer will not assign or otherwise transfer this Agreement or any rights or obligations provided hereunder without the prior written consent of Profound Technologies, which such consent shall not be unreasonably withheld.
- 15.4. Customer hereby acknowledges that the Services are not designed or intended for access and/or use in or during high-risk activities including, but not limited to, medical procedures; online control of aircraft, air traffic, aircraft navigation or aircraft communications; or the design, construction, operation or maintenance of any nuclear facility. In conjunction with Section 7 above, Profound Technologies hereby expressly disclaims any express or implied warranty of fitness for such purposes.
- 15.5. Customer agrees that Profound Technologies may use subcontractors to provide all or a part of the services set forth in the SOW. If Profound Technologies is required to use or work with any union personnel to provide any of the services set forth in the SOW, then Customer shall be responsible for the payment of any additional costs

- incurred by Profound Technologies to comply with union rules, regulations or union activities.
- 15.6. Customer and Profound Technologies agree that during the term of the agreement, including any applicable renewal periods, and for a period of one (1) year after termination of the agreement, Customer and Profound Technologies shall not, directly or indirectly (for instance, through another person or entity): (i) Solicit for employment, or employ or otherwise hire, on a full-time, part-time or other basis, any employee of the other party, or directly or indirectly provide assistance which enables or assists others to do so; or (ii) Influence or attempt to influence any employee to terminate or modify his or her relationship with that party, or directly or indirectly provide assistance which enables or assists others to do so.
 - 15.7. This Agreement shall be binding upon the respective successors and assigns of the Parties.
 - 15.8. If either Party waives or modifies any term or condition of this Agreement, this will not void, waive or change any other term or condition. If either Party waives a default by the other, this will not waive future or other defaults.
 - 15.9. Any notice or other communication hereunder shall be in writing and shall be deemed given and effective (i) When delivered personally, by fax or by overnight express mail, or (ii) Three (3) days after the postmark if mailed by certified or registered mail, postage prepaid, return receipt requested, addressed as follows: Profound Technologies, 256 Eagleview Blvd, #314, Exton PA 19341, Attention: CEO.
 - 15.10. If any part of this Agreement for any reason is declared to be invalid, the remainder of this Agreement shall continue in effect as if the Agreement had been entered without the invalid portion.
 - 15.11. The SOW, including any exhibits, attachments or schedules attached thereto, and these Terms and Conditions sets forth the full understanding and entire agreement between the Parties and supersedes any and all prior oral and written communications and agreements relating to the subject matter herein and the SOW. Except as otherwise provided, this Agreement may only be changed in writing and executed by both Parties.
 - 15.12. Any captions and headings used herein are for convenience purposes only and are not a part of this Agreement and shall not be used to interpret or construe this Agreement.