COMPEAT SERVICES AGREEMENT

This terms and conditions set forth in this agreement (these "Terms and Conditions") are incorporated into, and form a part of, a written agreement referencing these Terms and Conditions between Compeat Inc., a Texas corporation doing business as Compeat Restaurant Management Systems, with its principal office at 11500 Alterra Parkway Suite 130, Austin, Texas, 78758 ("Compeat") and the customer identified in the Order Form (these Terms and Conditions and the Order Form together, the "Agreement").

The Agreement applies to your access to and use of the Services. In the event of a conflict between these Terms and Conditions and the written agreement between the parties, the terms of the written agreement shall govern.

BY ACCESSING OR USING THE SERVICES, CUSTOMER AGREES TO COMPLY WITH, AND BE BOUND BY, THESE TERMS AND CONDITIONS IN THEIR ENTIRETY WITHOUT LIMITATION OR QUALIFICATION AS WELL AS ALL APPLICABLE LAWS AND REGULATIONS. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND TO COMPLY WITH ALL APPLICABLE LAWS, CUSTOMER IS NOT AUTHORIZED TO ACCESS OR USE THE SERVICES.

1. Definitions

(a) "Access Credentials" means any user name, identification number, password, license or security key, security token, PIN or other security code, method, technology or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

(b) "Add-on Order" has the meaning set forth in **Section 6(f)**.

(c) "Agreement" has the meaning set forth in the preamble.

(d) "Authorized User" has the meaning set forth in **Section 2(c)**.

(e) "Available" has the meaning set forth in **Section 3(d)**.

(f) "Billing Cycle" has the meaning set forth in **Section 6(c)**.

(g) "Compeat" has the meaning set forth in the preamble.

(h) "Compeat Systems" means the information technology infrastructure used by or on behalf of Compeat in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Compeat or through the use of third-party services.

(i) "Confidential Information" means the terms of this Agreement and any information in any form or medium (whether oral, written, electronic or other) that the disclosing party considers confidential or proprietary, including information consisting of or relating to the disclosing party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the disclosing party has contractual or other confidentiality obligation, in each case whether or not marked, designated or otherwise identified as "confidential." "Confidential Information" does not include information that: (a) was rightfully known to the receiving party without restriction on use or disclosure prior to such information's being disclosed or made available to the receiving party in connection with this Agreement; (b) was or becomes generally known by the public other than by the receiving party's noncompliance with this Agreement; (c) was or is received by the

receiving party on a non-confidential basis from a third party that, to the Receiving Party's knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the receiving party without reference to or use of any Confidential Information

(j) "Customer" has the meaning set forth in the preamble.

(k) "Customer Data" means information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly, from Customer by or through the Services.

(l) "Customer Entity" means a Customer owned, operated or managed operation for which a restaurant, commissary or accounting entity is created in the Compeat Services database.

(m) "Customer Information Form" means a form designated by Compeat that includes Customer billing, contact and Customer Entity information.

(n) "Customer Requirements" means those requirements for the Customer System as set forth in the Professional Services Guide.

(o) "Customer Systems" means the Customer's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems) and networks, whether operated directly by Customer or through the use of third-party services.

(p) "Documentation" means any manuals, instructions or other documents or materials that Compeat provides or makes available to Customer in any form or medium and which describe the functionality, components, features or requirements of the Services, including any aspect of the installation, configuration, integration, operation, use, support or maintenance thereof.

(q) "Effective Date" means the date on which this Agreement was signed by Compeat.

(r) "Exception" has the meaning set forth in **Section 3(d)**.

(s) "Initial Term" has the meaning set forth in **Section 10(a)**.

(t) "Intellectual Property Rights" means any and all registered and unregistered rights granted, applied for or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

(u) "Professional Services" has the meaning set forth in **Section 4(b)**.

(v) "Professional Services Guide" has the meaning set forth in **Section 4(a)**

(w) "Order Form" means a written and signed Order Form prepared by Compeat for the Customer, a copy of which is attached to the written agreement between the parties, and is hereby incorporated into, and made a part of, this Agreement by reference as if fully set forth herein.

(x) "Renewal Term" has the meaning set forth in **Section 10(a)**.

(y) "Scheduled Downtime" has the meaning set forth in **Section 2(f)**.

(z) "Service Period" has the meaning set forth in **Section 3(d)**.

(aa) "Service Level Failure" has the meaning set forth in **Section 3(d)**.

(bb) "Services" means the websites, mobile applications, materials and other services and information developed, operated, and maintained by Compeat, accessible via https://cloud.compeat.com or another designated web site or IP address, the content contained therein, any offline components provided by Compeat for use in connection therewith, and any professional services, support services or other services identified on the Order Form.

(cc) "Service Activation Date" means the date Compeat installs and provides Customer access to Compeat Services. Compeat will provide Service Activation as set forth in **Section 6(b)** of this Agreement.

(dd) "Service Credit" has the meaning set forth in **Section 3(e)**.

(ee) "Service Software" means Compeat's software application or applications and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Compeat provides remote access to, and use of, as part of the Services.

(ff) "Subscription Fee" means a fee for the Services that are applicable to each Customer Entity. The amount of the fee is based on the Service Software utilized and the number of Customer Entities. The Subscription Fees are set forth in the Order Form.

(gg) "Term" has the meaning set forth in **Section 10(a)**.

(hh) "Thin Client Software" has the meaning set forth in **Section 2(d)**.

(ii) "Total Amount Due with Order" has the meaning set forth in **Section 6(b)**.

2. Compeat's Services

(a) Authorization. Subject in all respects to Compeat's receipt of the Total Amount Due with Order set forth in the Order Form and Customer's compliance with the terms and conditions of this Agreement, Compeat agrees to host, manage, operate and maintain the Service Software for remote electronic access and use by Authorized Users, and hereby authorizes Authorized Users to access and use the Services during the term of this Agreement, solely for Customer's own internal use. This authorization is non-exclusive and non-assignable (except as set forth in **Section 12(a)** of this Agreement).

(b) Customer Entities. The Customer Entities that are authorized to access and use the Services are identified on the Customer Information Form. Customer has selected the Service Software, and agrees to pay the corresponding Subscription Fees, for the number of Customer Entities set forth on the Order Form.

(c) Authorized Users. Customer agrees to restrict access to, and use of, the Services to (i) employees of the Customer Entities, (ii) those third parties, including law firms, accounting firms, or consulting companies, who are performing professional services specifically for Customer, and (iii) those parties identified as Authorized Users on the Customer Information Form ("Authorized Users"). Customer shall remain liable for any breach of this Agreement by any Authorized User obtaining access to the Services by or through the Customer.

(d) License Grant. Customer acknowledges that it may be necessary to download and install software (the "Thin Client Software") on the Customer System in order to access and use the Services. Compeat hereby grants each Authorized User a non-exclusive, non-transferable license to download, copy, install, access, use and execute the Thin Client Software for use solely in connection with access and using the Services.

(e) Data Backup. The Compeat Systems are programmed to perform routine data backups of Customer Data on a daily basis and such backups are retained for a seven (7) day period. In the event of any loss, destruction, damage or corruption of Customer Data caused by the Compeat Systems or Services, Compeat will, as its sole obligation and liability and as Customer's sole remedy, use commercially reasonable efforts to restore the Customer Data from Compeat's then most current backup of such Customer Data.

(f) Scheduled Downtime. Compeat will use commercially reasonable efforts to; (a) schedule downtime for routine maintenance of the Services between the hours of 11:00 p.m. and 4:00 a.m. Central Standard Time; and (b) give Customer at least twenty four (24) hours prior notice of all scheduled outages of the Services ("Scheduled Downtime").

(g) Control of Services. Compeat has and will retain sole control over the operation, provision, maintenance and management of the Services, including the: (i) Compeat Systems; (ii) locations where any of the Services are performed; (iii) selection, deployment, modification and replacement of the Service Software; and (iv) performance of Service maintenance, upgrades, corrections and repairs.

(h) Changes. Compeat reserves the right, in its sole discretion, to make any changes to the Services that it deems necessary or useful to: (a) maintain or enhance (i) the quality or delivery of Compeat's services to its customers, (ii) the competitive strength of or market for Compeat's services or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law.

(i) Suspension or Termination of Services. Compeat may, directly or indirectly, and by use of any lawful means, suspend, terminate or otherwise deny any Authorized Users' access to or use of all or any part of the Services, without incurring any resulting obligation or liability, if: (a) Compeat receives a judicial or other governmental demand or order, subpoena or law enforcement request that expressly or by reasonable implication requires Compeat to do so; or (b) Compeat believes, in its good faith and reasonable discretion, that: (i) any Authorized User has failed to comply with any material term of this Agreement, including without limitation making all payments when due, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any material instruction or requirement of the Documentation; (ii) an Authorized User is, has been, or is likely to be involved in any fraudulent, misleading or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section does not limit any of Compeat's other rights or remedies, whether at law, in equity or under this Agreement.

3. Customer's Rights and Obligations

(a) Customer Systems and Cooperation. Customer shall at all times during the Term: (a) set up, maintain and operate in good repair and in accordance with the Documentation and the Customer Requirements all Customer Systems on or through which the Services are accessed or used; (b) provide Compeat with such access to Customer Systems as is necessary for Compeat to perform the Services in accordance with this Agreement and the Documentation; and (c) provide, and require each Authorized User to provide, all cooperation and assistance as Compeat may reasonably request to enable Compeat to exercise its rights and perform its obligations under and in connection with this Agreement.

(b) Use Limitations and Restrictions. Customer shall not, and shall not permit any other person to, access or use the Services or Documentation except as expressly permitted by this Agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

i. copy, modify or create derivative works or improvements of the Services or Documentation;

ii. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available any Services or documentation to any party other than an Authorized User, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud or other technology or service;

iii. reverse engineer, disassemble, decompile, decode, adapt or otherwise attempt to derive or gain access to the source code of the Services or Documentation, in whole or in part;

iv. bypass or breach any security device or protection used by the Services or Documentation or access or use the Services or Documentation other than by an authorized user through the use of his or her own then valid Access Credentials;

v. input, upload, transmit or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit or activate any Harmful Code;

vi. damage, destroy, disrupt, disable, impair, interfere with or otherwise impede or harm in any manner the Services, Compeat Systems or Compeat's provision of services to any third party, in whole or in part;

vii. remove, delete, alter or obscure any trademarks, Documentation, warranties or disclaimers, or any copyright, trademark, patent or other intellectual property or proprietary rights notices from any Services or Documentation, including any copy thereof;

viii. access or use the Services or Documentation in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction or disclosure of the data of any other Compeat customer), or that violates any applicable law;

ix. access or use the Services or Documentation for purposes of competitive analysis of the Services, the development, provision or use of a competing software service or product or any other purpose that is to the Compeat's detriment or commercial disadvantage; or

x. otherwise access or use the Services or Documentation beyond the scope of the authorization granted under **Section 2(a)**.

(c) Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 3(b)**, Customer shall immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Documentation and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Compeat of any such actual or threatened activity.

(d) Service Levels. Subject to the terms and conditions of this Agreement, Compeat will use commercially reasonable efforts to make the Services Available throughout each calendar month during the Term (each such calendar month, a "Service Period)", excluding unavailability as a result of any of the Exceptions (as defined below). "Service Level Failure" means a failure to make the Services available during a continuous eight hour period during any Service Period. "Available" means the Services are available for access and use by Customer over the Internet and operating in material accordance with the Documentation. The following "Exceptions" are excluded from the determination of a Service Level Failure, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any impaired ability of Customer to access or use the Services that is due, in whole or in part, to: (a) any act or omission by an Authorized User including, without limitation, the use of Customer's Access Credentials other than in strict compliance with this Agreement and the Documentation; (b) the Customer Systems; (c) Customer's Internet connectivity; (d) a Force Majeure Event; (e) failure, interruption, outage or other problem with any software, hardware, system, network, facility or other matter not supplied by Compeat pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension or termination of the Services pursuant to **Section 2(i)**.

(e) Service Level Failures and Remedies. In the event of a Service Level Failure, Compeat shall issue a credit to Customer in the amount of one-thirtieth (1/30) of the monthly Subscription Fees for the Services due for the Service Period the Service Level Failure occurred (each a "Service Credit"), subject to the following:

i. Compeat has no obligation to issue any Service Credit unless (i) Customer reports the Service Failure to Compeat immediately on becoming aware of it; and (ii) requests such Service Credit in writing within ten (10) days of the Service Level Failure; and

ii. in no event will a Service Level Credit for any Service Period exceed ten percent (10%) of the total Subscription Fees that would be payable for that Service Period if no Service Level Failure had occurred.

Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred. This **Section 3(e)** sets forth Compeat's sole obligation and liability and Customer's sole remedy for any Service Level Failure.

4. Professional Services

(a) Available Professional Services. Customer acknowledges that Compeat offers the following optional professional services in connection with the installation and implementation of the Services: 1) software installation, 2) point-of-sale polling setup, 3) data conversion, 4) Compeat University, 5) implementation support, 6) system integration assistance, and 7) custom programming. Detailed descriptions of the Compeat implementation process and the Professional Services provided by Compeat are included in the Compeat Professional Services Guide (the "Professional Services Guide"), the receipt of which Customer hereby acknowledges. Customer acknowledges that the Professional Services offered by Compeat are subject to change from time to time in Compeat's sole discretion.

(b) Professional Services. Compeat shall provide those professional services, and only those professional services, described in the Order Form (the "Professional Services") to Customer in accordance with the terms and conditions of this Agreement.

5. Support Services

(a) Support. The Services include Compeat's standard customer support services in accordance with Compeat's service support schedule then in effect. If Customer reports a defect in the

Services which is reproducible or otherwise reasonably verifiable, Compeat shall make commercially reasonable efforts to remedy the defect.

(b) Help Desk. Compeat will provide help desk services to Customer's designated personnel who work at Customer's central office or headquarters, who in turn will support Customer's other corporate or restaurant level users. Help desk service is available via telephone or email between 8:00 a.m. and 6:00 p.m. Central Time, Monday through Friday, except holidays. Customer will be notified in advance, via email, of Compeat holiday closures. Customer will provide Compeat with the name or names of the personnel who are authorized to contact Compeat's help desk.

(c) Additional Services. Customer acknowledges that the following services are not included in the Support Services or the Subscription Fee: additional training, setup of a new POS system, data conversions, other system interfaces, problem solving related to Customer's computers or computer networks, or support provided to Customer personnel not authorized (as described in **Section 5(a)** above). Help desk services not covered by the Subscription Fee are provided at Compeat's then-current rates, and are payable in accordance with the provisions set forth in **Section 6**.

6. Fees and Payments

(a) Fees. Customer shall pay Compeat the Subscription Fees and Professional Services Fees set forth in the Order Form in accordance with this **Section 6**. Subscription Fees are charged for each Customer Entity in the Services database effective on the Service Activation Date and that has not been deactivated per the terms and conditions set forth in **Section 7** of this Agreement.

(b) Total Amount Due with Order. The amount designated in the Order Form as the Total Amount Due with Order ("Total Amount Due with Order") is due upon execution and delivery of this Agreement. Compeat shall have no obligation to allow Customer to access or use the Services, or perform any other services set forth in this Agreement, until it has received the Total Amount Due with Order payment from Customer.

(c) Billing Cycle. The Service Activation Date represents the start date for a Subscription Fee billing cycle (a "Billing Cycle"). Compeat shall invoice the Subscription Fees for each three month (quarterly) Billing Cycle thirty (30) days prior to the start of each Billing Cycle and payment is due on or before the start of the new Billing Cycle.

(d) Fee Increases. All fees set forth in the Order Form are guaranteed for a period of one year from the Effective Date, and such rates will also be applicable to new Customer Entities. Commencing on the one year anniversary of the Effective Date, all fees shall be invoiced at Compeat's then-prevailing rate.

(e) Reimbursable Expenses. If and to the extent out-of-pocket expenses are included in the Order Form and Compeat actually incurs such expenses ("Reimbursable Expenses"), Customer shall reimburse Compeat for such expenses as set forth in this **Section 6**. Expenses may include, but are not limited to, meals, travel, parking and lodging.

(f) Add-on Orders. Customer may order additional Services or additional Professional Services from Compeat at any time ("Add-on Orders"). All Add-on Orders will be confirmed via a Compeat Add-on Services order form that must be signed by Customer before Compeat has any obligation to provide services thereunder. All Add-on Orders will be subject to the terms and conditions of this Agreement.

i. Add-on Orders for new Service Software will be invoiced by Compeat upon the Service Activation Date of the new Service. Add-on Orders for Professional Services will be

invoiced upon Customer's approval of such additional Professional Services. Add-on Orders shall be invoiced by Compeat, and paid by Customer, in accordance with **Section 6**.

ii. If Customer places an Add-on Order for new Services pursuant to this Agreement, the Subscription Fee will be prorated to be consistent with the Billing Cycle established by this Agreement to synchronize the Subscription Fee payments for all Customer Entities.

(g) Taxes. All Subscription Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments unless listed on Compeat's invoice. Customer is responsible for all other sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Compeat's income.

(h) Payment. Customer shall pay all Subscription Fees and Reimbursable Expenses within thirty (30) days after the date of the invoice. Customer shall make all payments hereunder in U.S. dollars. Customer shall make payments to the address or account specified in the Order Form or such other address or account as Compeat may specify in writing from time to time.

(i) Late Payment. If Customer fails to make any payment when due then, in addition to all other remedies that may be available to Compeat:

i. Compeat may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law;

ii. Customer shall reimburse Compeat for all reasonable costs incurred by Compeat in collecting any late payments or interest, including attorneys' fees, court costs and collection agency fees;

iii. If such failure continues for forty five (45) days after the invoice date, Compeat may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other person by reason of such suspension; and

iv. Compeat may require that any Services provided by Compeat be prepaid in full in advance;

(j) No Deductions or Setoffs. All amounts payable to Compeat under this Agreement shall be paid by Customer to Compeat in full without any setoff, recoupment, counterclaim, deduction, debit or withholding for any reason (other than Service Credits issued pursuant to **Section 3(e)** or any deduction or withholding of tax as may be required by applicable law). Compeat will not prorate or otherwise return any Subscription Fees. Any prepaid fees for Professional Services that are not actually provided to Customer, will be credited to Customer's account or refunded.

7. Customer Entity Deactivation

(a) Deactivation. Customer may request that a Customer Entity be deactivated by Compeat. Upon receiving the deactivation request, Compeat will execute a command on Customer's Compeat Services database that will turn off the ability for Customer to poll data from the Point-of-Sale system and to enter any additional inventory, labor, or daily sales transactions for that deactivated Customer Entity. The ability to view data or to view or print reports for that deactivated Customer Entity will not be removed.

(b) Fees for Deactivated Entities. Deactivated Customer Entities will be excluded from future Subscription Fee billings. For a Customer Entity to be excluded from an upcoming Billing Cycle, a deactivation request from Customer must be received 30 days prior to the next Billing Cycle.

(c) Compeat's Access to Customer's Database. If Customer requests services defined in this Section, Customer hereby authorizes Compeat to access Customer's database to perform these services.

(d) Reactivation Fee. Customer may request that a deactivated Customer Entity be reactivated. Compeat may require that Customer pay Compeat's then-current reactivation fee prior to reactivating a deactivated Customer Entity.

8. Intellectual Property Rights.

(a) Services and Documentation. All right, title and interest in and to the Services and Documentation, including all Intellectual Property Rights therein, are and will remain with Compeat. Customer has no right, license or authorization with respect to any of the Services or Documentation except as expressly set forth in this Agreement. All other rights in and to the Services and Documentation are expressly reserved by Compeat.

(b) Customer Data. As between Customer and Compeat, Customer is and will remain the sole and exclusive owner of all right, title and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto; provided, however, that Customer agrees that Compeat may use Customer's data in a "cleansed" or "de-identified" form (i.e. a form in which specific individuals are not identifiable) for its own purposes, including for its own internal purposes, for use in connection with its advertising and marketing purposes, and for sale to third parties.

9. Confidentiality

(a) Confidential Treatment. As a condition to being provided with any disclosure of or access to Confidential Information, the receiving party shall (i) not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement; (ii) except as may be permitted by and subject to its compliance with **Section 2(c)**, not disclose or permit access to Confidential Information other than to its representatives who: (a) need to know such Confidential Information for purposes of the receiving party's exercise of its rights or performance of its obligations under and in accordance with this Agreement; (b) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this **Section 9** and (c) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this **Section 9**; (iii) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its own sensitive information and in no event less than a reasonable degree of care; and (iv) ensure its representatives' compliance with, and be responsible and liable for any of its representatives' non-compliance with, the terms of this **Section 9**.

(b) Compelled Disclosures. If the receiving party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the receiving party shall: (a) 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 under **Section 9(a)**; and (b) 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. If the disclosing party waives compliance or, after providing the notice and assistance required under this **Section 9(b)**, the receiving party remains required by law to disclose

any Confidential Information, the receiving party shall disclose only that portion of the Confidential Information that the receiving party is legally required to disclose.

(c) Public Announcements. Neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to this Agreement or otherwise use the other party's trademarks, service marks, trade names, logos, domain names or other indicia of source, affiliation or sponsorship, in each case, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that Compeat may, without Customer's consent, include Customer's name and/or other indicia in its lists of Compeat's current or former customers of Compeat in promotional and marketing materials.

10. Term and Termination

(a) Term. The term of this Agreement shall be for one (1) year from the date of this Agreement ("Initial Term") and shall automatically renew for successive twelve (12) month periods (each a "Renewal Term" and, together with the Initial Term, the "Term") unless terminated per **Section 10(b)**.

(b) Termination. In addition to any other express termination right set forth elsewhere in this Agreement:

i. Compeat may terminate this Agreement, effective immediately on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder as set forth in **Section 6(i)**; or (ii) breaches any of its obligations under **Section 3(b)** (Use Limitations and Restrictions) or **Section 9** (Confidentiality).

ii. Compeat may terminate this Agreement, effective on thirty (30) days' written notice to Customer, if Customer materially breaches any provision of this Agreement not referenced in **Section 10(b)(i)**, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after Compeat provides Customer with written notice of such breach;

iii. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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; and

(c) Effect of Expiration or Termination. Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

i. all rights, licenses, consents and authorizations granted by Compeat to Customer hereunder will immediately terminate;

ii. Customer shall immediately cease all use of any Services and (i) promptly return to Compeat, or at Compeat's written request destroy, all documents and tangible materials containing, reflecting, incorporating or based on Compeat's Confidential Information;

iii. notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control, (i) Compeat may retain Customer

Data in its then current state and solely to the extent and for so long as required by applicable law; (ii) Compeat will also retain Customer Data in its backups, archives and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (iii) all information and materials described in this **Section 10(d)(iii)** will remain subject to all confidentiality, security and other applicable requirements of this Agreement;

iv. Compeat may disable all Customer access to the Services and Documentation; and

v. if Customer requests in writing at least ten (10) days prior to the effective date of expiration or termination, Compeat shall, within ten (10) days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Compeat, provided that Customer has at that time paid all Subscription Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Compeat's services in transferring such Customer Data.

(d) Surviving Terms. The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: **Section 8** through **Section 12**.

11. Disclaimer of Warranties; Limitation of Liability

(a) DISCLAIMER OF WARRANTIES. ALL SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND COMPEAT HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND COMPEAT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, COMPEAT MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE.

(b) EXCLUSION OF DAMAGES. IN NO EVENT WILL COMPEAT OR ANY OF ITS LICENSORS, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO **SECTION 3(d)**, (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(c) CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF COMPEAT AND ITS LICENSORS, SERVICE PROVIDERS AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY AND OTHERWISE, EXCEED THE AMOUNT PAID BY CUSTOMER TO COMPEAT DURING THE FIRST YEAR OF THE INITIAL TERM. THE FOREGOING LIMITATION APPLIES NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

12. General

(a) Assignment. Customer may not transfer or assign this Agreement or any rights or obligations hereunder without the prior written consent of Compeat, which consent shall not be unreasonably withheld. Compeat's rights and obligations under this Agreement are freely assignable by Compeat upon the express written assumption of the obligations hereunder by the Assignee.

(b) Entire Agreement. This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties and supersedes any prior written, electronic, or oral agreements between the parties. Any notice given under this Agreement shall be sufficient if it is in writing and if sent by certified or registered mail. The Parties agree that this Agreement may be executed in counterparts (including by facsimile, PDF, or scanned image) each of which shall be deemed an original and both of which together shall constitute one and the same instrument.

(c) Force Majeure. In no event will Compeat be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by any circumstances beyond Compeat's reasonable control (a "Force Majeure Event"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation.

(d) Governing Law. This Agreement shall be deemed to have been made and executed in Travis County, Texas regardless of order or place in which the signatures of the parties shall be affixed hereto, and shall be interpreted and the rights and liabilities of the parties determined in the state courts of Travis County, Texas in accordance with the laws of the State of Texas, U.S.A.