



## PRophet Platform Master Agreement

This PRophet Platform Master Agreement (the “**Agreement**”) is made and entered into as of the Effective Date, by and between **Ahteed LLC dba PRophet** (“PRophet”), a Delaware limited liability company with its principal place of business at One World Trade Center, Floor 69, New York, NY 10007, and the Customer identified in the applicable Service Order (each, a “**party**” and collectively the “**parties**”).

This Agreement is effective on the date (“**Effective Date**”) that (i) Customer has clicked a box indicating acceptance, (ii) executed an order form that references this Agreement, or (iii) accessed or used the PRophet Products and Services in any manner.

### 1. Services.

**1.1. Provision of Services.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, during the Term, PRophet will provide access to the products and services owned or licensed by PRophet and identified in any service order (each, a “**Service Order**”) or statements of work (each, a “**Statement of Work**”) that are executed by both parties and made a part of this Agreement. “**Authorized User**” means a named employee or agent of Customer or a Customer Contractor, Customer Affiliate or Customer Client, who has a seat license to use the PRophet Products and Services.

**1.2. Service Orders and Statements of Work.** Each Service Order and Statement of Work will, by this reference, be incorporated in and made a part of this Agreement and will be subject to its terms and conditions. The term “**Agreement**,” as used in this Agreement, includes this Agreement, any Service Orders, any Statements of Work, and all exhibits and schedules attached thereto. In the event of any conflict between this PRophet Platform Master Agreement and any Service Order or Statement of Work, the terms of the Agreement will control except where the Service Order or Statement of Work expressly overrides such terms. Any modifications or changes to a Service Order or Statement of Work will be effective only if and when memorialized in a mutually agreed written amendment or addendum to the Service Order or Statement of Work.

### 2. Authorization and License to Use PRophet Products and Services.

**2.1.** PRophet authorizes Customer and its Authorized Users to access and use the PRophet Platform (the “**PRophet Platform**”), and the related products and services listed in the Service Order (collectively, with the PRophet Platform, the “**PRophet Products and Services**”), to optimize content placement by identifying journalists (“**Journalists**”) and media outlets (“**Publications**”).

a. **2.2** This authorization is non-exclusive and, other than as may be permitted in this Agreement, non-transferable.

**2.3** Customer shall access the PRophet Products and Services solely through the use of a web browser and Customer’s Access Credentials.

b. (a) “**Access Credentials**” means any method, technology or device used, alone or in combination, to verify an individual’s identity and authorization to access and use the PRophet Products and Services.

c. (b) Access Credentials are not transferrable without PRophet's prior written permission.

### 3. Customer Obligations and Authorization Limitations and Restrictions.

**3.1** Customer shall use the PRophet Products and Services in accordance with the terms of this Agreement.

**3.2** Customer shall not and shall ensure that its Authorized Users do not, except as this Agreement expressly permits:

(b) Permit any third-party to access or use the PRophet Products and Services or otherwise make available any of the PRophet Products and Services (or portion thereof) to any third-party for any standalone commercial purpose;

(c) Copy, reproduce, modify, disassemble, decompile, reverse engineer or create derivative works of any PRophet Products and Services or other PRophet technologies;

(d) Rent, lease, lend, sell, trade, resell sublicense, assign, distribute, publish or transfer the PRophet Platform to any third-party;

(e) Access or use the PRophet Products and Services other than by an Authorized User through the use of his or her own then valid Access Credentials;

(f) Input, upload, transmit or otherwise provide to or through the PRophet Products and Services, any information that infringes third party privacy rights, is libelous, or unlawful or that contains, transmits or activates any Harmful Code (which is any software, hardware or other technology, device or means, including any virus, worm, malware or other malicious computer code, the purpose or effect of which is to (1) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system or network or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality or use of any data processed thereby, or (2) prevent Customer or any Authorized User from accessing or using the PRophet Products and Services as intended by this Agreement;

(g) Access or use the PRophet Products and Services in any manner or for any purpose that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other rights of any third-party, or that violates any applicable law; or

(h) Access or use the PRophet Products and Services for purposes of competitive analysis of the PRophet Products and Services, the development, provision or use of a competing software service or product, or any other purpose that is to PRophet's detriment or commercial disadvantage.

#### **4. Use of PRophet Products and Services by or on behalf of Customer's Clients, Contractors, and/or Affiliates.**

**4.1. Customer Contractors.** Subject to the prior written approval of PRophet, which will not be unreasonably withheld or conditioned by PRophet, Customer's third-party contractors and service providers ("**Customer Contractors**") may use and access the PRophet Products and Services for the sole purpose of providing services to Customer; provided that Customer will ensure that the use of the PRophet Products and Services is in accordance with the terms of this Agreement.

**4.2. Customer Clients.** Direct use of and access to the PRophet Products and Services by any client of Customer (each, a "**Customer Client**") is not permitted unless Customer and the Customer Client enter into a separate Service Order authorizing access to the PRophet Products and Services.

**4.3. Customer Affiliates.** Direct use of and access to the PRophet Products and Services by any Customer Affiliate requires the prior written approval of PRophet and may require such Customer Affiliate to execute a separate Service Order or adopting agreement, which sets forth the specific terms and conditions (including fees) applicable to the use of the PRophet Products and Services by the Customer Affiliate. For purposes of this Agreement, "**Affiliate**" of Customer means any company that controls, is controlled by or is under common control with Customer, where "control" means the power to control the composition of the board of directors of such company, the possession of more than half of the voting equity share capital of such company, or the ability to consolidate such company's financial statements with those of Customer in accordance with generally accepted accounting principles. Customer is solely responsible for any use of, or access to, the PRophet Products and Services by its Customer Contractors, Clients, and Affiliates. If the conduct of a Contractor, Client or Affiliate would be a breach of this Agreement had the conduct been performed by Customer, then such conduct will be treated as a breach of this Agreement by Customer.

**5. Service Levels; Training; Professional Services.** If Customer asks PRophet to perform additional work or technical support that is not expressly described in this Agreement, including without limitation, then such work and/or technical support will be subject to additional fees, which will be documented and agreed upon in a separate Statement of Work between the parties. Additionally, Customer shall reimburse PRophet for any and all reasonable and necessary expenses incurred in connection with additional training; provided that such expenses are disclosed and approved in advance by Customer.

#### **6. Reporting and Payment Obligations.**

**6.1. Payments.** Payments due under this Agreement are payable within thirty (30) days of the date of the applicable invoice; except as otherwise set forth in the Service Order. All fees are quoted in U.S. Dollars. Customer is responsible for payment of all taxes (if any) associated with the use of the PRophet Products and Services, other than taxes based on PRophet's net income. PRophet may offset any payment obligations to Customer that PRophet may incur under this Agreement against any undisputed past due fees owed to PRophet by Customer under this Agreement or any

other agreement between PRophet and Customer. Any payment disputes must be brought by Customer within sixty (60) days of the date of invoice.

**6.2. Late Payments.** If an undisputed invoice amount is not received by PRophet by the due date, then without limiting PRophet's rights hereunder, PRophet may charge interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law (whichever is lower). If an undisputed invoice amount remains unpaid for thirty (30) days or longer, then PRophet shall have the right, without limiting PRophet's rights hereunder, to discontinue all access to and use of the PRophet Products and Services until such outstanding balance is paid in full. If PRophet refers such outstanding balance to a third-party for collection, then Customer shall pay all costs of collection, including without limitation, fees and expenses of an attorney and related court costs.

**7. Suspension of Services.** PRophet may suspend or otherwise deny Customer's or any Authorized User's access to or use of all or any part of the PRophet Products and Services, without incurring any resulting obligation or liability, if PRophet believes, in its good faith and reasonable discretion, that Customer or any Authorized User has failed to comply with, any material term of this Agreement, or accessed or used the PRophet Products and Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that is likely to cause imminent harm to PRophet or its Products and Services. PRophet will, if commercially reasonable, notify Customer and provide Customer with an opportunity to remedy any of the causes in the previous sentence prior to any suspension. This section does not limit any of PRophet's other rights or remedies, whether at law, in equity or under this Agreement.

## **8. Term and Termination.**

**8.1. Term.** This term of this Agreement commences on the Effective Date and, unless terminated earlier as set forth in this section, will continue in effect for so long as any Service Order is in effect ("**Term**").

**8.2. Termination.** In addition to any other express termination right set forth elsewhere in this Agreement or in a Service Order or Statement of Work:

(a) Either party may terminate this Agreement by written notice to the other party if the other party materially breaches this Agreement and (1) if such breach is incapable of cure, the termination will be effective immediately upon receipt of the breach notice; or (2) if such breach is capable of cure and the other party has failed to cure such breach within ten (10) days after its receipt of written notice thereof from the other party, the termination will be effective after such 10-day period; and

(b) Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (1) 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; (2) makes or seeks to make a general assignment for the benefit of its creditors; or (3) 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.

**8.3. Effect of Termination.** Upon termination or expiration of this Agreement for any reason, all rights, licenses, and authorizations granted by either party to the other under this Agreement will terminate immediately. Customer's rights under this Agreement are subject to the conditions precedent of payment by the Customer to PRophet of all sums then due and payable and upon Customer's continued compliance with the terms of this Agreement.

## **9. Privacy.**

**9.1. General.** Each of Customer and PRophet shall comply with all laws, rules, regulations, and self-regulatory practices applicable to their respective obligations and actions hereunder, including without limitation, the requirement that each party publish a privacy policy that is prominently linked from the home page of such party's corporate website and accurately describes the collection and use of data by such party.

**9.2. Compliance with Privacy Laws.** To the extent that data transmitted to PRophet under this Agreement is or is deemed to be personally identifiable information, personal information or personal data in Customer's jurisdiction, PRophet and Customer shall cooperate with each other in meeting their respective obligations under the applicable Privacy Laws. "**Privacy Laws**" means any laws and regulations relating to data privacy, data protection, or data retention; regulatory statements or enforcement actions that convey guidance related to the foregoing; regulatory guidance for industry best practices; and governmental frameworks adopted for extra-territorial transfers of personal data.

**9.3. GDPR and Model Contractual Clauses.** The parties do not intend to transfer or process personal data subject to GDPR. If applicable, when personal data is transferred from the countries of the European Union and European Economic Area by PRophet, such transfer will be subject to the E.U. Standard Contractual Clauses.

## **10. Confidentiality.**

10.1 “**Confidential Information**” of a given party (“**Disclosing Party**”) means any confidential technical data, trade secret, know-how, or other confidential information disclosed by the Disclosing Party to the other party hereunder (“**Receiving Party**”) in writing, orally, by drawing or other form. Confidential Information includes, but is not limited to, the consideration, payment terms, fees and other financial aspects of this Agreement, the terms of any PRophet agreement with any advertiser, vendor or other third-party and the Disclosing Party’s processes and methods for compiling and assembling data, and Customer’s Access Credentials for PRophet Platform.

10.2 The Receiving Party will: (a) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its confidential information and in no event less than a reasonable degree of care; (b) 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; (c) except as may be permitted by and subject to its compliance with this compelled disclosure requirements in this section, not disclose or permit access to Confidential Information other than to its Representatives who: (i) 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; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party’s obligations under this section; and (iii) are bound by written confidentiality obligations at least as protective of the Confidential Information as the terms set forth in this section or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information; (d) not directly or indirectly export, re-export or transmit any Confidential Information acquired from the Disclosing Party (or any product or materials utilizing any such Confidential Information) to any country or person if such export or transmission is restricted by regulation or statute, without first obtaining the necessary approvals; (e) ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ non-compliance with, the terms of this section.

10.3 The Receiving Party will have no liability for a breach of this section with respect to any of the Disclosing Party’s Confidential Information that, as established by documentary evidence, was: (i) already lawfully known to or in the possession of the Receiving Party; (ii) independently developed by the Receiving Party without reference to or use of any of the Disclosing Party’s Confidential Information; (iii) disclosed in published materials, which disclosure is not otherwise in breach of this Agreement; (iv) generally known to the public; (v) lawfully obtained from any third-party, which, to the knowledge of the party obtaining such information, has no obligation of confidentiality with respect to such information; or (vi) was approved in writing by the Disclosing Party for disclosure to a third-party without any confidentiality obligations.

10.4 Notwithstanding the terms of this Agreement, each party may disclose the terms of this Agreement: (i) in connection with the requirements of an initial public offering or securities filing, (ii) in confidence to accountants, banks and financing sources and their advisors, (iii) in confidence in connection with the enforcement of this Agreement or rights under this Agreement, and (iv) in confidence in connection with a merger or acquisition or proposed merger or acquisition or the like. All Confidential Information (including all rights therein under any patent, copyright, trademark, or other intellectual property laws in any country) will remain the exclusive property of the Disclosing Party.

10.5 No license has been granted by the Disclosing Party to the Receiving Party with respect to Confidential Information disclosed unless otherwise expressly provided in this Agreement, a Service Order, or a Statement of Work.

10.6 If the Receiving Party at any time is required to disclose any of the Disclosing Party’s Confidential Information to any government agency or court of competent jurisdiction, the Receiving Party (to the extent permitted by law) shall promptly notify the Disclosing Party of the required disclosure (prior to the disclosure, whenever possible, so that the Disclosing Party may seek an appropriate protective order). Notwithstanding the foregoing, the Receiving Party or its Representatives may retain Confidential Information to the extent it is “backed-up” on its electronic information management and communications systems or servers, is not available to an end user and cannot be expunged without considerable effort. In any case, all such Confidential Information will remain subject to the restrictions of this Agreement and will be promptly deleted in accordance with the Receiving Party’s ordinary recordkeeping procedures.

10.7 The Receiving Party will return to the Disclosing Party or (at the Disclosing Party's option) destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and will permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the expiration or termination of this Agreement, whichever comes first. At the Disclosing Party's request, the Receiving Party will certify in writing that it has fully complied with its obligations under this section. "**Representatives**" means the directors, officers, employees, legal advisors, and financial advisors of a party.

**11. Marketing.** Marketing activities, including the issuance of a press release, inclusion of Customer's name and logo on PRophet's website and in marketing, promotional materials, and customer lists, will be mutually agreed upon by both parties by written agreement on a case-by-case basis.

**12. Intellectual Property Rights.**

**12.1 Customer Content.** Customer grants to PRophet a limited, non-exclusive license to use, transmit, index, and transfer written content owned by or licensed to Customer, and uploaded to the PRophet Platform by Customer (collectively, "**Customer Content**") solely as required to provide Customer with access to the PRophet Products and Services or as otherwise necessary in order for PRophet to perform its obligations under this Agreement. As between PRophet and Customer, Customer retains all right, title, and interest in and to the Customer Content. Except with regard to third parties that are necessary for it to perform any Services, PRophet shall not export or share Customer Content with any third-parties (including, without limitation, Journalists or Publications) without obtaining the prior written consent of Customer or its authorized representatives.

**12.2 Reservation of Rights by PRophet.** Subject to the limited rights expressly granted hereunder, PRophet reserves all of their right, title and interest in and to all aspects of the PRophet Products and Services. No rights are granted to Customer hereunder other than as expressly set forth herein. Additionally, in the event Customer provides to PRophet any suggestions, specifications, comments, or other feedback (collectively, "Feedback") with respect to any PRophet Products and Services, Customer hereby (i) irrevocably waives and assigns to PRophet and any all rights Customer may have respect thereto to and (ii) acknowledges that PRophet may utilize, at its sole discretion, such Feedback, provided that such Feedback omits any Confidential Information of Customer, or any information that could identify Customer. Additionally, PRophet is not prohibited from improving its own services and technology on the basis of general principles, learning and know-how gained from developing and providing services to Customer and to PRophet's other customers.

**13. Third Party Content, Products and Services.** Third parties may make available through the PRophet Platform certain third party content, products, or services ("**Third Party Content**"). Any acquisition by Customer of such Third Party Content is solely between Customer and the applicable provider. PRophet does not warrant or support any Third Party Content, unless expressly provided otherwise in a Service Order. All right, title and interest in and to the Third Party Content are and will remain with the respective rights holders in the Third Party Content. To the extent necessary, Customer authorizes PRophet to act as Customer's agent, and on Customer's behalf to extract Third Party Content from third-party sources, sites and databases to incorporate the same into the PRophet Solution.

**14. Representations and Warranties; Disclaimer.** Each party represents and warrants that (i) it has the full right, power, and authority to enter into and perform its obligations under this Agreement, and (ii) entering into or performing its rights and obligations under this Agreement will not violate any agreement it has with a third-party. PRophet does not guarantee that Customer's use of any PRophet solution will provide it with any particular benefit or result. Except as expressly provided for in this Agreement and to the maximum extent permitted by applicable law, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, AND PROPHET EXPRESSLY DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE, MERCHANTABILITY, OR NON-INFRINGEMENT.

**15. Limitation of Liability.**

**15.1. Exclusion of Certain Damages.** EXCEPT FOR CLAIMS ARISING FROM (i) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, (ii) A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, OR (iii) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, LOST PROFITS, LOST BUSINESS, LOST REVENUE, COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES, FAILURE TO REALIZE EXPECTED SAVINGS OR LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA, HOWEVER CAUSED AND UNDER

ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY, NEGLIGENCE AND MISREPRESENTATION), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

**15.2. Liability Cap.** EXCEPT FOR CLAIMS ARISING FROM (i) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, (ii) A BREACH BY EITHER PARTY OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, OR (iii) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS (INCLUDING ATTORNEYS' FEES AND COSTS OF DEFENSE FOR INDEMNIFICATION) ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THIS AGREEMENT IN THE THREE MONTHS PRIOR TO THE EFFECTIVE DATE OF THE NOTICE OF ANY SUCH CLAIM. THIS PROVISION APPLIES REGARDLESS OF HOW THE LIABILITY AROSE OR THE THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY, NEGLIGENCE AND MISREPRESENTATION).

## **16. Indemnification.**

**16.1. By Customer.** Customer shall defend, indemnify, and hold harmless PRophet from and against all third-party claims, liabilities, costs, damages, judgments, expenses, and losses (including reasonable attorneys' fees and costs) of any kind whatsoever ("**Claims**") arising from the Customer's use of the PRophet Products and Services or any Customer Content or Customer's violation of its obligations of Confidentiality to PRophet.

**16.2. By PRophet.** PRophet shall defend, indemnify and hold harmless Customer from and against all Claims resulting from its breach of its obligation of Confidentiality to Customer or any infringement or alleged infringement of third-party Intellectual Property Rights as a result of Customer's authorized use of the PRophet Products and Services (each, an "**Infringement Claim**"). In the event of any such Infringement Claim, PRophet may, at its option: (i) obtain the right to permit Customer to continue using the PRophet Products and Services, (ii) modify or replace the relevant portion(s) of the PRophet Products and Services with a non-infringing alternative having substantially equivalent performance within a reasonable period of time, or (iii) terminate this Agreement as to the infringing PRophet Products and Services and provide a pro rata refund of any prepaid, unused Fees for such infringing service. Notwithstanding the foregoing, PRophet will have no liability for any Infringement Claim of any kind to the extent that it results from: (1) modifications to the PRophet Products and Services made by a party other than PRophet, (2) the combination of the PRophet Products and Services with other products, processes or technologies (where the infringement would have been avoided but for such combination), or (3) Customer's use of the PRophet Products and Services other than in accordance with this Agreement. The indemnification obligations set forth in this Section 16.2 are PRophet's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third-party intellectual property rights of any kind.

**16.3.** A party's indemnification obligations under this Section are mitigated to the extent the claim for which indemnification is sought is caused by the party seeking indemnification.

**16.4. Procedure.** The indemnified party shall promptly notify the indemnifying party in writing of any Claim, provided that any delay in notification will not relieve the indemnifying party of its obligations with respect to the Claim except to the extent that any delay prejudices its ability to defend the Claim. The indemnified party shall allow the indemnifying party to have sole control over defense and/or settlement of the Claim, so long as the indemnifying party does not enter into any settlement that requires the indemnified party to make an admission of fault or payment to any third-party. Nevertheless, the indemnified party may reasonably participate in such defense, at its sole expense, with the counsel of its choice, but shall not settle any such Claim without the indemnifying party's prior written consent.

**17. Relationship of Parties.** Nothing contained in this Agreement creates or should be interpreted as creating a partnership, agency, joint venture, or employment relationship between the parties, and neither party shall have any authority to bind the other party.

**18. Notices.** All notices and other communications hereunder must be in writing and must be delivered personally, mailed by registered or certified U.S. mail (return receipt requested), postage prepaid, or sent by overnight courier service, receipt requested, to the parties at the addresses set forth in a Service Order or Statement of Work. In lieu of the foregoing (a) notices to PRophet may be sent via email, return receipt enabled, to [support@prprophet.ai](mailto:support@prprophet.ai) and (b) notices to Customer may be sent via email, return receipt enabled, to the Business Contact email identified in the applicable Service Order.

**19. Compliance with Laws.** Each party will comply with all applicable laws, rules and regulations in fulfilling its obligations under this Agreement.

**20. Miscellaneous.** This Agreement is the entire agreement between the Parties and supersedes all prior agreements and understandings, oral or written. All prior agreements, understandings and representations are canceled in their entirety. All amendments, alterations, or modifications will be in writing. If any provision is held unenforceable or invalid, the balance of any such provision will not be affected. This Agreement will be binding upon, and inure to the benefit of, the permitted successors and assigns of the parties; provided, however, neither party may assign this Agreement without the prior written consent of the other which consent will not be unreasonably withheld, except that either party may freely assign this Agreement to its Affiliate or in connection with a merger, acquisition, or sale of all or substantially all its assets, by providing written notice to the other party. This Agreement may be executed in any number of counterparts, which together will constitute one and the same agreement. This Agreement will be governed by and construed in accordance with the laws (both substantive and procedural) of the State of New York, without regard to its conflicts of law provisions. Any claims (in court or arbitration) must be brought in the initiating party's individual capacity and not as a plaintiff or member in any class action or other similar proceeding. The waiver by either party of a breach of any provisions contained in this Agreement will be in writing and will in no way be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself. If either party fails to perform any term of this Agreement and the other party does not enforce that term, failure to enforce on that occasion will not prevent enforcement on any future occasion. Neither the expiration nor the termination of this Agreement will terminate any obligations or liability accrued to the time of such expiration or termination. This Agreement will be construed equally against the parties regardless of who is more responsible for its preparation.