



SERVICE SUBSCRIPTION AGREEMENT

IMPORTANT – CAREFULLY READ ALL THE TERMS AND CONDITIONS OF THIS INNOVINT SUBSCRIPTION AND SERVICES AGREEMENT (THIS “**AGREEMENT**”). BY AGREEING TO AN ORDER FORM INCORPORATING THIS AGREEMENT, CLICKING “I ACCEPT”, OR PROCEEDING WITH THE INSTALLATION OF THE INNOVINT MOBILE APPLICATION SOFTWARE AND/OR ACCESS AND USE OF THE INNOVINT ONLINE SOFTWARE PLATFORM (COLLECTIVELY, THE “**INNOVINT SERVICES**”), OR USING THE INNOVINT SERVICES AS AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY NAMED ON THE APPLICABLE ORDER FORM ON WHOSE BEHALF YOU INSTALL AND/OR USE THE INNOVINT SERVICES (“**SUBSCRIBER**”), YOU ARE INDICATING THAT YOU HAVE READ, UNDERSTAND AND ACCEPT THIS AGREEMENT WITH INNOVINT, INC., A DELAWARE CORPORATION (“**INNOVINT**”), AND THAT YOU AGREE TO BE BOUND BY ITS TERMS. IF YOU DO NOT AGREE WITH ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL, ACCESS OR OTHERWISE USE THE INNOVINT SERVICES. THE EFFECTIVE DATE (THE “**EFFECTIVE DATE**”) OF THIS AGREEMENT SHALL BE THE DATE THAT SUBSCRIBER ACCEPTS THIS AGREEMENT.

1. DEFINITIONS

1.1 “**Authorized Users**” means (a) employees or contractors of Subscriber, and/or (b) Subscriber’s customers, clients, or representatives, in each case, who are authorized to use the InnoVint Services, solely for Subscriber’s internal business purposes, subject to applicable Usage Parameters and otherwise in compliance with this Agreement.

1.2 “**InnoVint Services**” has the meaning first given above.

1.3 “**Documentation**” means InnoVint-provided user documentation, in all forms, relating to the InnoVint Services (e.g., user manuals, on-line help files) that InnoVint makes available to Subscriber hereunder for the InnoVint Services, and any modified, updated, or enhanced versions of such documentation.

1.4 “**InnoVint Mobile Application**” means InnoVint’s proprietary mobile application software, in executable code form, for installation on authorized mobile devices, and any and all modified, updated, or enhanced versions thereof that InnoVint may provide to Subscriber or its Authorized Users under this Agreement.

1.5 “**InnoVint Platform**” means InnoVint’s proprietary online software platform for management of winemaking production and any and all modified, updated, or enhanced versions thereof that InnoVint may provide to Subscriber or its Authorized Users under this Agreement.

1.6 “**Intellectual Property Rights**” means patents and patent applications, inventions (whether

or not patentable), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, mask-work rights, moral rights, author’s rights, and other intellectual property rights, as may exist now or hereafter come into existence, and all derivatives, renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction.

1.7 “**Order Form**” means an order form entered into between Subscriber and InnoVint for Subscriber’s purchase of a Subscription or other services from InnoVint.

1.8 “**Subscription**” means a subscription purchased by Subscriber to access and use the InnoVint Services and receive Support during the applicable Subscription Term, as further specified on the applicable Order Form.

1.9 “**Subscription Term**” means the subscription term for Subscriber’s access and use of the InnoVint Services set forth on the applicable Order Form.

1.10 “**Support**” has the meaning given to such term in Section 2.3.

1.11 “**Usage Parameters**” means the maximum number of cases or facilities that may Subscriber may track using the InnoVint Services specified on the applicable Order Form, and any other parameters specified in the Documentation, Order Form, or in writing by InnoVint regarding the scope of use of the InnoVint Services by Subscriber or its Authorized Users.

2. USE OF THE INNOVINT SERVICES

2.1 Use of the InnoVint Services. Subject to Subscriber's compliance with the terms and conditions of this Agreement, including payment of all applicable fees, InnoVint hereby grants to Subscriber a personal, limited, worldwide, non-exclusive, non-sublicensable, non-transferable (except as permitted in Section 15.2) license, during the Subscription Term set forth in the applicable Order Form, solely in connection with Subscriber's internal business operations to permit Authorized Users to (a) install, execute and use the InnoVint Mobile Applications, only in object code, on authorized mobile devices owned or controlled by Subscriber or its Authorized Users solely for access and use of the InnoVint Platform, and (b) access and use the InnoVint Platform, over the internet, through the InnoVint Website and/or InnoVint Mobile Applications. Subscriber's right to use the InnoVint Services is subject to, and contingent upon Subscriber's compliance with, any Usage Parameters.

2.2 Use of the Documentation. Subject to Subscriber's compliance with the terms and conditions of this Agreement, InnoVint hereby grants to Subscriber a personal, limited, worldwide, non-exclusive, non-transferable (except as permitted in Section 15.2) license, without right of sublicense, during the Subscription Term, to reproduce, without modification, and internally use a reasonable number of copies of the Documentation solely in connection with use of the InnoVint Services in accordance with this Agreement.

2.3 Technical Support Services. During the applicable Subscription Term (subject to Subscriber's payment of applicable fees), InnoVint will use commercially reasonable efforts to provide Subscriber with remote technical support services relating to Subscriber's user of the InnoVint Services by email or phone from 8am-5pm Pacific, Monday through Friday, excluding holidays ("**Support**") in accordance with InnoVint's then current Support terms and conditions. InnoVint may also offer enhanced support services for an additional fee.

2.4 Use Restrictions. Except as otherwise explicitly provided in this Agreement, Subscriber will not, and will not permit or authorize third parties (including, without limitation, any Authorized User), to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to derive the structure of the InnoVint Services or the source code from the

InnoVint Services, except to the extent such a restriction is not permitted by applicable law and provided that, in such event, Subscriber must first request such code from InnoVint in writing in advance and any such use will be limited as needed for interoperability; (b) distribute, license, sublicense, assign, transfer, provide, lend, rent, lease, disclose, use for timesharing or service bureau purposes or otherwise use or permit third parties to use the InnoVint Services for the benefit of any third party, (except as expressly and specifically authorized in writing by InnoVint); (c) modify, adapt, translate, or create derivative works of the InnoVint Services or Documentation; nor (d) circumvent or disable any security or other technological features or measures of the InnoVint Services; (e) use or access the InnoVint Services in order to build a similar or competitive product or service or disclose to any third party any benchmarking or comparative study involving any InnoVint Services; (f) remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of InnoVint or its suppliers on or within the InnoVint Services or Documentation; or (g) violate any applicable laws or regulations, or the rights of any third party in connection with the use or access of the InnoVint Services. InnoVint reserves all rights and licenses not expressly granted to Subscriber in Section 2.1 and no implied license is granted by InnoVint. SUBSCRIBER ACKNOWLEDGES THAT THE InnoVint SERVICES MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE SUBSCRIPTION TERM AND/OR SUBSCRIBER'S USE INCONSISTENT WITH THIS AGREEMENT

2.5 Compliance with Laws. Subscriber will use the InnoVint Services and Documentation in compliance with all applicable laws and regulations.

2.6 Protection against Unauthorized Use. Subscriber shall be solely responsible for any and all use, whether authorized or unauthorized, of the InnoVint Services associated with Subscriber's account. Without limited the foregoing, Subscriber will immediately notify InnoVint in writing of any unauthorized use that comes to Subscriber's attention. If there is unauthorized use by anyone who obtained access to the InnoVint Services directly or indirectly through Subscriber, Subscriber will take all steps necessary to terminate the unauthorized use. Subscriber will cooperate and assist with any actions

taken by InnoVint to prevent or terminate unauthorized use of the InnoVint Services or Documentation. Subscriber agrees that it shall not permit any person other than Authorized Users to access and use the InnoVint Services. With respect to each Authorized User, Subscriber shall ensure that such Authorized User uses the InnoVint Services solely in accordance with this Agreement and the applicable Usage Permissions. Subscriber acknowledges and agrees that any non-compliance by any Authorized User with any of the requirements above will be deemed a breach by Subscriber of this Agreement.

2.7 Proprietary Rights. InnoVint or its licensors retain all right, title and interest in and to the InnoVint Services and related Documentation and materials (and any and all copies thereof) including, without limitation, any and all Intellectual Property Rights thereto. Title to the InnoVint Services shall not pass from InnoVint to Subscriber, and the InnoVint Services and all copies thereof shall at all times remain the sole and exclusive property of InnoVint.

2.8 Feedback. To the extent Subscriber or any Authorized Users provide any feedback to InnoVint concerning or regarding the functionality, features, performance of the InnoVint Services, Documentation, or other materials or services provided or made available by InnoVint (including identifying potential errors and improvements), Subscriber hereby grants InnoVint a perpetual, irrevocable, non-exclusive, royalty-free, fully-paid-up, fully-transferable, worldwide license (with rights to sublicense through multiple tiers of sublicensees) under all of Subscriber's Intellectual Property Rights, for InnoVint to use and exploit in any manner and for any purpose.

2.9 Mobile Devices. Subscriber acknowledges and agrees that in order to use the InnoVint Mobile Application, Authorized Users must have a compatible mobile device. Subscriber and its Authorized Users are solely responsible for determining whether or not a mobile device is or is not compatible with the InnoVint Mobile Application and InnoVint makes no representations or warranties whatsoever regarding the InnoVint Mobile Application and compatibility with any mobile device. Subscriber acknowledges and agrees that it and its Authorized Users are solely responsible for any fees

or charges incurred from use of the InnoVint Mobile Application through mobile devices, including, without limitation, any mobile phone provider charges for SMS, data services, etc.

2.10 InnoVint iOS Mobile Applications. Subscriber acknowledges that this Agreement is between Subscriber and InnoVint only, and not with Apple, Inc. ("**Apple**"). Subscriber's use of the InnoVint Mobile Application must comply with Apple's then-current App Store Terms of Service. InnoVint, and not Apple, is solely responsible for the InnoVint Mobile Application and the services and related content available thereon. Subscriber acknowledges that Apple has no obligation to provide maintenance and support services with respect to the InnoVint Mobile Application. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to the InnoVint Mobile Application. Subscriber agrees that InnoVint, and not Apple, is responsible for addressing any claims by Subscriber or its Authorized Users relating to the InnoVint Mobile Application or Subscriber's or any Authorized Users' possession and/or use of the InnoVint Mobile Application, including, but not limited to: (a) product liability claims; (b) any claim that the InnoVint Mobile Application fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation, and all such claims are governed solely by this agreement and any law applicable to InnoVint as provider of the InnoVint Mobile Application. Subscriber agrees that InnoVint, and not Apple, shall be responsible, to the extent required by this Agreement, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to the InnoVint Mobile Application or Subscriber's or any Authorized Users' possession and use of the InnoVint Mobile Application. Subscriber represents and warrants that Subscriber and its Authorized Users (i) are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) are not listed on any U.S. Government list of prohibited or restricted parties. Subscriber agrees to comply with all applicable third-party terms of agreement when using the InnoVint Mobile Application (e.g., Subscriber must not be in

violation of its wireless data service terms of agreement when using the InnoVint Mobile Application). The parties agree that Apple and Apple's subsidiaries are third-party beneficiaries to this Agreement as it relates to the license granted herein to Subscriber to use the InnoVint Mobile Application. Upon Subscriber's acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against Subscriber as they relate to the license granted herein to Subscriber to use the InnoVint Mobile Application as a third-party beneficiary thereof.

2.11 Subscriber Data. As between the Subscriber and InnoVint, Subscriber is solely responsible for the accuracy, quality and integrity of the documents and other content, data, information (including, personal information), and materials submitted by, or collected on behalf of, Subscriber and/or Authorized Users in connection with the use of and access to the InnoVint Services (collectively, "**Subscriber Data**"), and shall ensure that it has all necessary rights to provide and use the Subscriber Data in connection with the Service. InnoVint may use, store and host the Subscriber Data to the extent necessary in connection with providing the InnoVint Services and other services hereunder, except as otherwise expressly permitted in this Agreement. Subscriber Data shall be deemed Subscriber's Confidential Information. Notwithstanding the foregoing, InnoVint may use and exploit for any purpose any and all aggregated non-personally identifiable data or information resulting from Subscriber's or its Authorized Users' use of the InnoVint Services or other services provided by InnoVint.

3. **THIRD-PARTY INTEGRATED SERVICES**. Subscriber acknowledges that the InnoVint Services may enable or assist you to access and interact products, services, applications, or websites made available by third parties ("**Third-Party Applications**"). Subscriber's access and use of any Third-Party Applications are at Subscriber's own risk. Any use of Third-Party Applications is governed solely by the terms and conditions of such Third-Party Applications (and Subscriber agrees to comply with all such terms and conditions), and any contract entered into, or any transaction completed via any Third-Party Application, is between Subscriber and the relevant third party, and not InnoVint. INNOVINT MAKES NO REPRESENTATION AND SHALL HAVE NO LIABILITY OR

OBLIGATION WHATSOEVER IN RELATION TO THE CONTENT OR USE OF, OR CORRESPONDENCE WITH, ANY SUCH THIRD-PARTY APPLICATION OR ANY TRANSACTIONS COMPLETED AND ANY CONTRACT ENTERED INTO BY SUBSCRIBER AND ANY SUCH THIRD PARTY.

4. **FEES AND PAYMENT**

4.1 Subscription Fees. The subscription fees payable by Subscriber for the InnoVint Services license and services, and any other amounts due and payable by Subscriber for services provided hereunder, will be set forth in each Order Form ("**Subscription Fees**"). The Subscription Fees shall be paid in advance for the Subscription Term specified on the Order Form. Unless otherwise set forth on the Order Form, the Subscription Fees will remain fixed during the Subscription Term unless Subscriber at any time during a Subscription Term (a) exceeds the applicable Usage Parameters (including, without limitation, the permitted number of cases, facilities, or Authorized Users) or other applicable limits, or (b) Subscriber submits an Order Form, which is accepted by InnoVint, to increase the Usage Parameters or subscribe to additional features or product. Upon any increase in fees pursuant to clause (a) or (b) above, Subscriber shall pay the Subscription Fees for such increase, pro-rated for the remainder of Subscriber's then-current Subscription Term, and such Order Form shall renew concurrently with Subscriber's then-current Subscription for a period equal to Subscriber's initial Subscription Term.

4.2 Services. The fees payable by Subscriber for Support are included in the Subscription Fees; provided that any additional or enhanced support requested by Subscriber shall be charged at InnoVint's then-current prices for such additional or enhanced support services.

4.3 Payment Terms. Subscriber will pay InnoVint the fees and any other amounts owing under this Agreement, plus any applicable sales, use, excise, or other taxes as set forth in each Order Form. Unless otherwise specified in applicable Order Form, Subscriber will pay all amounts due within 30 days of the date of the applicable by check or wire transfer through InnoVint's third party payment processor, or by such other means as InnoVint may specify from time-to-time. InnoVint reserves the right to change the method of payment, including by introducing payment processing fees, upon notice to Subscriber.

Any amount not paid when due will be subject to finance charges equal to 2.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Subscriber will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by InnoVint to collect any amount that is not paid when due. Amounts due from Subscriber under this Agreement may not be withheld or offset by Subscriber against amounts due to Subscriber for any reason. All amounts payable under this Agreement are denominated in United States dollars, and Subscriber will pay all such amounts in United States dollars. Each party is responsible for its own expenses under this Agreement. All fees payable under this Agreement are non-refundable.

4.4 Change in Fees. InnoVint may change its fees and payment terms at its discretion; provided however, that such changes will not take effect for Subscriber until the start of the next Subscription Term (as specified in the applicable Order Form). InnoVint will provide written notice to Subscriber of any changes to the fees that affect the InnoVint Services licensed and Support purchased by Subscriber.

4.5 Taxes. Other than net income taxes imposed on InnoVint, all fees specifically exclude, and Subscriber will bear and be responsible for the payment of, all taxes, duties, and other governmental charges (collectively, "taxes") resulting from this Agreement. Subscriber will pay any additional taxes as are necessary to ensure that the net amounts received by InnoVint after all such taxes are paid are equal to the amounts that InnoVint would have been entitled to in accordance with this Agreement as if the taxes did not exist.

5. TERM AND TERMINATION

5.1 Term. This Agreement will commence upon the Effective Date and continue for as long as any InnoVint Services or Support are being provided to Subscriber under this Agreement unless terminated earlier in accordance with the terms of this Agreement. The Subscription Term and (subject to Section 4.4) the corresponding periodic Subscription Fees set forth in an Order Form will automatically renew for additional successive terms equal in duration to the initial Subscription Term, unless at

least thirty (30) days before the end of the then-current Subscription Term either party provides written notice to the other party that it does not want to renew the Subscription for an additional Subscription Term.

5.2 Termination for Material Breach. Either party may terminate this Agreement if the other party does not cure its material breach of this Agreement within thirty (30) days of receiving written notice of the material breach from the non-breaching party. Termination in accordance with this Section 5.2 will take effect when the breaching party receives written notice of termination from the non-breaching party, which notice must not be delivered until the breaching party has failed to cure its material breach during the thirty (30) day cure period. If Subscriber fails to timely pay any fees, InnoVint may, without limitation to any of its other rights or remedies, suspend performance of the InnoVint Services until it receives all amounts due.

5.3 Effect of Termination. If this Agreement is terminated for any reason, upon such termination: (a) the licenses granted under this Agreement in respect of the InnoVint Services shall immediately terminate and Subscriber and its Authorized Users shall cease use of the InnoVint Services and Documentation; (b) InnoVint's obligations to perform Support shall immediately terminate; Subscriber will pay to InnoVint the full amount of any fees or other amounts that have accrued prior to the effective date of the termination or are otherwise due and payable hereunder; (c) any and all liabilities accrued prior to the effective date of the termination will survive; (d) within ten (10) calendar days of such termination, each party shall destroy or return all Confidential Information of the other party in its possession or control, and will not make or retain any copies of such information in any form, except that the receiving party may retain one (1) archival copy of such information solely for purposes of ensuring compliance with this Agreement. and (e) Subscriber will provide InnoVint with a written certification signed by an authorized Subscriber representative certifying that all use of the InnoVint Services and Documentation by Subscriber has been discontinued. If Subscriber terminates the Agreement (or any specific Subscription) for any reason other than in accordance with Section 5.2, the Subscription Fees for

the entire term of the Agreement or remainder of the Subscription (as applicable) shall be immediately due and payable. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE INNOVINT SERVICES MAY CONTAIN DISABLING CODE THAT (EITHER AUTOMATICALLY OR AT INNOVINT'S CONTROL) WILL RENDER THE INNOVINT SERVICES (AND RELATED DATA) UNUSABLE UPON TERMINATION OR SUBSCRIBER'S BREACH OF THIS AGREEMENT. The following Sections shall survive any termination or expiration of this Agreement: 1, 2.4, 2.5, 2.6, 2.7, 2.8, 2.11, 3 4, 5.3, 6.2, and 7 through 13 (inclusive).

6. WARRANTIES AND DISCLAIMER

6.1 Mutual Warranties. Each party represents and warrants to the other that: (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such party in accordance with its terms; and (b) no authorization or approval from any third party is required in connection with such party's execution, delivery, or performance of this Agreement.

6.2 Disclaimer. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN SECTION 6.1, INNOVINT MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. INNOVINT EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT. INNOVINT DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE INNOVINT SERVICES. INNOVINT DOES NOT WARRANT THAT THE INNOVINT SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE INNOVINT SERVICES WILL BE SECURE OR UNINTERRUPTED. INNOVINT DOES NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE INNOVINT SERVICES IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE INNOVINT SERVICES WILL ALWAYS BE AVAILABLE. INNOVINT EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF SUBSCRIBER'S USE OF THE INNOVINT SERVICES.

7. INTELLECTUAL PROPERTY INFRINGEMENT

7.1 Defense of Infringement Claims. InnoVint will, at its expense, either defend Subscriber from or

settle any claim, proceeding, or suit ("**Claim**") brought by a third party against Subscriber alleging that Subscriber's use of the InnoVint Services as authorized herein infringes or misappropriates any third party's copyright, trade secret or patent issued as of the Effective Date (except to the extent Subscriber is responsible for the event giving rise to InnoVint's liability under this Section 7.1); provided that: (a) Subscriber gives InnoVint prompt written notice of the Claim; (b) Subscriber grants InnoVint full and complete control over the defense and settlement of the Claim; (c) Subscriber provides assistance in connection with the defense and settlement of the Claim as InnoVint may reasonably request; and (d) Subscriber complies with any settlement or court order made in connection with the Claim (e.g., relating to the future use of any infringing InnoVint Services). Subscriber will not defend or settle any Claim arising under this Section 7.1 without InnoVint's prior written consent. Subscriber will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but InnoVint will have sole control over the defense and settlement of the Claim.

7.2 Indemnification of Infringement Claims. InnoVint will indemnify Subscriber from and pay (a) all damages, costs, and attorneys' fees finally awarded against Subscriber in any Claim under Section 7.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by Subscriber in connection with the defense of a Claim under Section 7.1 (other than attorneys' fees and costs incurred without InnoVint's consent after InnoVint has accepted defense of the Claim); and (c) all amounts that InnoVint agrees to pay to any third party to settle any Claim under Section 7.1.

7.3 Exclusions from Obligations. InnoVint will have no obligation under this Section 7 or otherwise for any infringement or misappropriation to the extent that it arises out of or is based upon (a) use of the InnoVint Services in combination with other products or services if such infringement or misappropriation would not have arisen but for such combination; (b) the InnoVint Services are provided to comply with designs, requirements, or specifications required by or provided by Subscriber, if the alleged infringement or misappropriation would not have arisen but for the compliance with such

designs, requirements, or specifications; (c) use of the InnoVint Services by Subscriber for purposes not intended or outside the scope of the license granted to Subscriber; (d) Subscriber's failure to use the InnoVint Services in accordance with instructions provided by InnoVint, if the infringement or misappropriation would not have occurred but for such failure; or (e) any modification of the InnoVint Services not made or authorized in writing by InnoVint where such infringement or misappropriation would not have occurred absent such modification.

7.4 Limited Remedy. This Section 7 states InnoVint's sole and exclusive liability, and Subscriber's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by the InnoVint Services.

8. SUBSCRIBER INDEMNIFICATION

8.1 Defense. Subscriber will defend InnoVint from any actual or threatened third party Claim arising out of or based upon Subscriber's use of the InnoVint Services or Subscriber's breach of any of the provisions of this Agreement if: (a) InnoVint gives Subscriber prompt written notice of the Claim; (b) InnoVint grants Subscriber full and complete control over the defense and settlement of the Claim; (c) InnoVint provides assistance in connection with the defense and settlement of the Claim as Subscriber may reasonably request; and (d) InnoVint complies with any settlement or court order made in connection with the Claim. Subscriber will not enter into any settlement that involves an admission of liability, negligence or other culpability of InnoVint or requires InnoVint to contribute to the settlement without InnoVint's prior written consent InnoVint will have the right to participate in the defense of the Claim at its own expense and with counsel of its own choosing, but Subscriber will have sole control over the defense and settlement of the Claim.

8.2 Indemnification. Subscriber will indemnify InnoVint from and pay (a) all damages, costs, and attorneys' fees finally awarded against InnoVint in any Claim under Section 8.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by InnoVint in connection with the defense of a Claim under Section 8.1 (other than attorneys' fees and costs incurred without

Subscriber's consent after Subscriber has accepted defense of the Claim); and, (c) all amounts that Subscriber agrees to pay to any third party to settle any Claim under Section 8.1.

9. LIMITATIONS OF LIABILITY

9.1 Disclaimer of Indirect Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, INNOVINT WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO SUBSCRIBER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, OR FOR ANY LOST PROFITS OR LOSS OF BUSINESS, EVEN IF INNOVINT IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

9.2 Cap on Liability. UNDER NO CIRCUMSTANCES WILL INNOVINT'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER TO INNOVINT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH LIABILITY (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION).

10. JURISDICTIONAL LIMITATIONS; INDEPENDENT ALLOCATIONS OF RISK

10.1 Jurisdictional Limitations. SOME JURISDICTIONS MAY NOT ALLOW THE EXCLUSION AND/OR LIMITATION OF IMPLIED WARRANTIES OR CONDITIONS OR ON HOW LONG AN IMPLIED WARRANTY LASTS, OR OF INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR OTHER DAMAGES, SO THE LIMITATIONS AND/OR EXCLUSIONS SET FORTH ABOVE IN SECTION 8 AND 9 MAY NOT APPLY TO SUBSCRIBER. IN SUCH EVENT, INNOVINT'S WARRANTIES AND CONDITIONS AND ANY LIABILITY OF INNOVINT FOR SUCH DAMAGES WITH RESPECT TO THE INNOVINT SERVICES WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW IN SUCH JURISDICTION.

10.2 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN

THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY INNOVINT TO SUBSCRIBER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT. THE LIMITATIONS IN SECTION 9 WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT.

11. CONFIDENTIAL INFORMATION

11.1 Definition. “**Confidential Information**” means any proprietary information of a party to this Agreement disclosed by one party to the other that is in written, oral, graphic, machine readable, or other tangible form and is customarily considered confidential between business parties, including but not limited to end user information, pricing, marketing information, product information, supplier information, financial information, and information that is marked “Confidential” or “Proprietary” or in some other manner to indicate its confidential nature. Without limiting the foregoing, the InnoVint Services, Documentation, and Feedback shall be deemed InnoVint’s Confidential Information.

11.2 Exceptions. Confidential Information will not include any information that (a) was publicly known and made generally available prior to the time of disclosure by the disclosing party, (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party, (c) is already in the possession of the receiving party at the time of disclosure, (d) is obtained by the receiving party from a third party without a breach of that third party’s obligations of confidentiality, or (e) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.

11.3 Non-Use and Non-Disclosure. Each party will (a) treat as confidential all Confidential Information of the other party, (b) not disclose Confidential Information to any third party, except on a “need to know” basis to third parties that have signed a non-disclosure agreement containing provisions substantially as protective as the terms of this Section provided that the disclosing party has obtained the written consent to that disclosure from the other party, and (c) will not use Confidential Information

except in connection with performing its obligations or exercising its rights under this Agreement. Each party is permitted to disclose the other party’s Confidential Information if required by law so long as the other party is given prompt written notice of that requirement prior to disclosure and assistance in obtaining an order protecting the information from public disclosure.

11.4 Confidentiality of Agreement. Neither party to this Agreement will disclose the terms of this Agreement, including any pricing terms, to any third party without the consent of the other party, except as required by securities or other applicable laws. Notwithstanding the above provisions, each party may disclose the terms of this Agreement (a) in connection with the requirements of a public offering or securities filing; (b) in confidence, to accountants, banks, and financing sources and their advisors; (c) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (d) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

12. **EXPORT**. Subscriber acknowledges that the laws and regulations of the United States of America and foreign jurisdictions may restrict the export and re-export of certain commodities and technical data of United States of America origin, including the InnoVint Services. Subscriber agrees that it will not export or re-export the InnoVint Services without the appropriate United States or foreign government licenses or permits.

13. GENERAL

13.1 Relationship. InnoVint will be and act as an independent contractor (and not as the agent or representative of Subscriber) in the performance of this Agreement.

13.2 Assignability. Subscriber may not assign its right, duties, and obligations under this Agreement without InnoVint’s prior written consent, which consent will not be unreasonably withheld or delayed, except that Subscriber may assign this Agreement without consent to a successor (including a successor by way of merger, acquisition, sale of assets, or operation of law) if the successor agrees in writing to assume and fulfill all of the Subscriber’s obligations under this Agreement. Any attempted assignment or transfer of this Agreement by Subscriber in contravention of the foregoing shall be

null and void. InnoVint may freely assign or transfer this Agreement hereunder without Subscriber's consent.

13.3 Third Party Rights. Except otherwise specified herein, the provisions hereof are for the benefit of the parties only and not for any other person or entity.

13.4 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth on the applicable Order Form. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section 15.4. Notices are deemed given upon personal delivery, five (5) business days following the date of mailing or upon confirmation of transmission if sent by e-mail. Without limiting the foregoing, whenever Subscriber visits the InnoVint website or sends emails to InnoVint, Subscriber is communicating with InnoVint electronically. For that reason, Subscriber also consents to receive communications from InnoVint electronically, including by e-mail and notices posted on the InnoVint website. Subscriber agrees that all agreements, notices, disclosures, and other communications that InnoVint provides to Subscriber electronically satisfy any legal requirement that such communications be in writing, to the extent permitted by applicable law.

13.5 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control, so long as that party uses all commercially reasonable efforts to avoid or remove the causes of non-performance.

13.6 Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A., without reference to its choice of law rules. Each party hereby irrevocably consents to the exclusive jurisdiction and venue of the federal, state, and local courts in San Francisco, California in connection with any action arising out of or in connection with this Agreement. Notwithstanding anything in this Agreement to the contrary, InnoVint

may seek injunctive or other equitable relief in any court of competent jurisdiction to protect any actual or threatened misappropriation or infringement of its intellectual property rights or those of its licensors, and Subscriber hereby submits to the exclusive jurisdiction of such courts and waives any objection thereto on the basis of improper venue, inconvenience of the forum or any other grounds. Subscriber agrees that any breach of the license restrictions or other infringement or misappropriation of the intellectual property rights of InnoVint or its licensors will result in immediate and irreparable damage to InnoVint for which there is no adequate remedy at law. The United Nations Convention on Contracts for the International Sale of Goods in its entirety is expressly excluded from this Agreement, including, without limitation, application to the InnoVint Mobile Application, InnoVint Platform, and services provided hereunder. Furthermore, this Agreement (including without limitation, the InnoVint Mobile Application, InnoVint Platform and services provided hereunder) will not be governed or interpreted in any way by referring to any law based on the Uniform Computer Information Transactions Act (UCITA) or any other act derived from or related to UCITA. The prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action.

13.7 Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

13.8 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the use of the InnoVint Services under this Agreement is found to be illegal, unenforceable, or invalid, Subscriber's right to use the InnoVint Services will immediately terminate.

13.9 Entire Agreement. This Agreement (which includes all Order Forms entered into hereunder) is the final and complete expression of the agreement

between these parties regarding Subscriber's use of the InnoVint Services. This Agreement supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement, except to the extent InnoVint makes any software or other products and services available to Subscriber under separate written terms. Except as otherwise specified herein, this Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is

sought. InnoVint will not be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by Subscriber in any receipt, acceptance, confirmation, correspondence, or any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, and such terms shall have no force or effect.

