

## CHEF PARTICIPATION AGREEMENT

Version Date: August 23, 2019

THIS CHEF PARTICIPATION AGREEMENT IS A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN YOU (“PARTICIPANT”), AND CHEFNEX, INC., A DELAWARE CORPORATION (“COMPANY”). BEFORE YOU MAY USE THE CHEFNEX WEBSITE (“WEBSITE”) AND ALL ASSOCIATED SERVICES (COLLECTIVELY, THE “SERVICE”) TO CREATE A CHEF PROFILE, POST ANY FOOD PRODUCTS AND IN ORDER TO POST AND SELL FOOD PRODUCTS THROUGH THE SERVICE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE “I ACCEPT” BUTTON, YOU ARE AGREEING TO BE BOUND BY, AND ARE BECOMING A PARTY TO, THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, PLEASE SELECT “I DECLINE.” SELECTING “I ACCEPT” WILL BE THE LEGAL EQUIVALENT OF YOUR SIGNATURE ON A WRITTEN CONTRACT, AND EQUALLY BINDING. YOU MUST AGREE TO THESE TERMS AND CONDITIONS IN ORDER TO BE ABLE TO POST AND SELL ANY ITEMS USING THE SERVICE.

### 1. DEFINITIONS

- (a) “Balance Due” means for each Verified Sale, the Net Revenue less the Product Sales Commission.
- (b) “Credential” means a password, user identification code or methodology which allows access to the Service.
- (c) “Food Product” means, (i) if Participant is authorized as a cottage food operation, nonpotentially hazardous foods as provided under California Health and Safety Code § 114365.5 and that are prepared in the kitchen of Participant in accordance with applicable permits; and/or (ii) if Participant is authorized as a microenterprise home kitchen operation, foods other than raw milk or raw milk products, raw oysters or otherwise prohibited under California Health and Safety Code § 113825 and that are prepared in the kitchen of Participant in accordance with applicable registration; and/or (iii) if Participant is authorized and permitted as a commercial kitchen, foods in compliance with the California Health and Safety Code.
- (d) “Intellectual Property Rights” means all United States and worldwide trademarks, service marks, trade names, trade dress, logos, copyrights, rights of authorship, inventions, moral rights, patents, rights of inventorship, all applications, registrations and renewals in connection with any of the above, database rights, know-how, trade secrets, rights of publicity, privacy and/or defamation, rights under unfair competition and unfair trade practices laws, and all other intellectual and industrial property rights related thereto.
- (e) “Net Revenue” means the gross amount paid by a User and received by Company for the purchase of Food Products from Participant via the Service less (a) amounts collected from the User by Company or paid by Company for sales or use taxes or duties on such Sale, (b) the Payment Processing Fees, if any, and (c) credits and chargebacks of any kind charged to Company with respect to such Sale.
- (f) “Participation Fee” means the fee due for being a participant in the Services and being able to create a profile, list Products on the Service. The then-current Participation Fee is posted on the Service at <http://www.chefnexus.com/fees> and is incorporated into this

Agreement by reference. Company may change the Participation Fee from time to time. Company's changes to the Participation Fee is effective fifteen (15) days following Company's notice to Participant of the changes, which will be provided by posting the changes on the Service at <http://www.chefnex.com/fees>. Unless otherwise stated, all fees are quoted in U.S. Dollars

- (g) "Participant Information" means (i) a Participant's name, address, phone, fax and other contact information, (ii) Participant's image or likeness and biographical information, Product images, Product descriptive text, and links of Participant as provided by Participant to Company, and (iii) any other data entered or modified on the Service by Participant.
- (h) "Payment Processing Fees" means the processing and service charges and fees that are assessed by the credit card issuer, automated clearinghouse network, electronic check provider or other banking institution to process a payment pursuant to a Purchase hereunder.
- (i) "Product Sales Commission" means the amount due from Sales revenue of each Food Product sold through the Service. The then-current Product Sales Commission is posted on the Service at <http://www.chefnex.com/fees> and is incorporated into this Agreement by reference. Company may change the Product Sales Commission from time to time. Company's changes to the Product Sales Commission is effective fifteen (15) days following Company's notice to Participant of the changes, which will be provided by posting the changes on the Service at <http://www.chefnex.com/fees>. Unless otherwise stated, all fees are quoted in U.S. Dollars.
- (j) "Registration" means all permits, licenses and registrations required under the California Health and Safety Code in order to sell the applicable Food Products and operate Participant's kitchen.
- (k) "Sale" means an agreement between Participant and a User that Participant will sell and the User will purchase Food Products through the Service. A Sale takes place when a User agrees, through the Service, to purchase Food Products from Participant according to the terms set forth by Participant on the Service.
- (l) "Sales Amount" means the total dollar amount of a Sale, and is comprised of the aggregate amount of all individual items to be sold in such Sale.
- (m) "Users" means consumers who register to use and buy Food Products through the Service.
- (n) "Verified Sale" is the sale of Food Product via the Service that has been fulfilled by Participant in accordance with the terms of this Agreement and for which Participant has provided to Company confirmation of delivery in accordance with Company's delivery confirmation policies/requirements as the same may exist and be communicated to Participant from time to time.

## 2. License Grants

- (a) License to use the Service. Subject to Participant's performance of all of the provisions of this Agreement, including, but not limited to, Participant's payment to Company of the then current Participation Fee, Company hereby grants Participant, during the term of this Agreement, a limited, terminable, personal, non-exclusive license to access and

use the Service as provided herein and not to download (other than page caching) or modify the Service or any information or data therein, or any portion of it, except with express written consent of Company. The Service or any portion thereof may not be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of Company. Participant may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of Company without prior express written consent.

- (b) License to use Participant Information. Participant hereby grants to Company an irrevocable, non-exclusive, non-transferable license to copy, use, publicly display and transmit Participant Information to Users only from and via the Service to Users. Notwithstanding anything else to the contract, Company shall be permitted to use Participant Information, both during and following the term of this Agreement, to compile, offer and sell statistical summary data derived from the activity on the Service, including, but not limited to, availability and price trends for Food Products, as well as frequency of search requests made by Users looking to purchase such Food Products.
- (c) Rights Reserved. Notwithstanding anything to the contrary herein, all rights not specifically granted in the licenses set forth above shall be reserved and remain always with the respective licensing party.

### 3. Terms of Use

- (a) Dealings with Users. Participant's correspondence to or transactions with Users of the Service, or any other transaction or activity arising from or related to the Service, including, but not limited to, Sales, delivery of Food Products, and any other terms, conditions, actions, warranties or representations associated with such transactions, are solely between Participant and such other parties notwithstanding processing of payment by Company on the Service. Company shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such transaction or activity. COMPANY EXPRESSLY DISCLAIMS AND MAKES NO REPRESENTATIONS, GUARANTEES OR WARRANTIES AS TO ANY SALE, OR ANY OTHER TRANSACTION CONDUCTED THROUGH THE SERVICE, OR ANY OTHER ACTIVITY ARISING FROM OR RELATED TO THE SERVICE. Company is not involved in any Sale or any other transaction between Participant and Users.
- (b) Compliance with Law. Participant will use the Service in accordance with applicable law, including, but not limited to, the California Health and Safety Code. Participant will obtain, and maintain in good standing throughout the term of this Agreement, all Registrations prior to and as a condition to use of the Service. Company may, without notice, terminate access to the Service by Participant or take other actions as are reasonably necessary to comply with legal requirements.
- (c) Prohibited Uses. Participant shall not to modify, sublicense, distribute, market, transfer, reverse engineer, reverse compile or make any copies of any element of the Service. Participant is solely responsible for any and all acts and omissions that occur under Participant's account, and Participant shall not to engage in unacceptable use of the Service, which includes, without limitation, use of the Service to: (a) disseminate, store or transmit unsolicited messages, chain letters or unsolicited commercial email; (b) disseminate or transmit material that, to a reasonable person may be abusive, obscene,

pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (c) disseminate, store or transmit files, graphics, software or other materials that actually or potentially infringe the copyright, trademark, patent, trade secret or other intellectual property right of any person; (d) create a false identity or otherwise attempt to mislead any person as to the identity or origin of any communication; (e) misrepresent or otherwise attempt to mislead any person as to any Participant Information, Registration or otherwise engage in fraudulent or deceptive conduct; (f) interfere, disrupt or attempt to gain unauthorized access to other accounts on the Service or any other computer network; or (g) engage in any other activity deemed by Company to be in conflict with the spirit or intent of this Agreement.

- (d) Disclosure of Account Information. Participant authorizes Company and each of its affiliates to disclose to third parties, agents, and other representatives, including without limitation, consultants, auditors or attorneys, information provided by Participant or that Company or its affiliates have obtained about Participant's accounts and the transactions associated therewith in the following instances: (i) when it is necessary or helpful in completing a transaction; (ii) to comply with a law, regulation or court order which applies to Company or an affiliate; (iii) when authorized by Participant; (iv) to local, state and federal authorities, if Company believes Participant violated the California Health and Safety Code or any other applicable law, or that a crime may have been committed involving Participant's use of the Service; and/or (v) in response to requests by agents of Company, or its affiliates, such as independent auditors, attorneys or consultants.
- (e) Participant's Responsibilities. Participant shall be exclusively responsible for (i) all operations of Participant's kitchen and for the Food Products prepared by Participant in full compliance with applicable laws, including, but not limited to, the California Health and Safety Code; (ii) the supervision, management, and control of its use of the Service, including, but not limited to, implementing procedures sufficient to satisfy its obligations for security under this Agreement to prevent misuse, unauthorized copying, modification, or disclosure of Credentials. **COMPANY DOES NOT PROTECT PARTICIPANT FROM UNAUTHORIZED USE OF PARTICIPANT'S CREDENTIALS.**
- (f) Reliance on Credentials. Participant agrees that Company may act in reliance upon any Participant Information. Company will not be required to inquire into the truth or evaluate the merits of any Participant Information or any statement or representation contained in any notice or document presented by Participant. Participant will take all reasonable precautions to prevent unauthorized use of Credentials. Any Person using a Credential is conclusively deemed to have actual authority to engage in transactions in the Service, and, accordingly, all Sales made by a person using Participant's Credential are hereby authorized by Participant.
- (g) Breach of Security Measures. Participant shall immediately notify Company if it becomes aware of any other person using Participant's Credentials or of any breach of a security measure established by Company or the Participant. If Company is so informed or if Company otherwise reasonably believes that a Participant, or any other person has breached a security measure established by Company or the Participant, Company has the right, in its sole discretion, to restrict the Participant's access to the Service until the Participant can establish to Company's satisfaction that it has addressed the cause(s) of the security breach. Company may terminate or restrict the use of any individual

Credential for the same reasons. Notwithstanding anything else to the contrary, Company has no duty to take any action upon a Participant notice under this Section or Company becoming aware of a breach of a security measure, and Participant shall solely be responsible for any such breaches regardless of any act or failure to act by Company.

4. Sales and Payment

- (a) Agreement to Sell. Participant shall sell Food Products to any User that accepts to purchase such Food Products according to the terms set forth by Participant on the Service. Participant acknowledges that its listing of Food Products with terms of on the Service constitutes an offer to sell such Food Products according to such terms. Purchaser's offer shall be deemed accepted and an agreement shall be created between Participant and a User for the sale of such Food Products by Participant to such User upon User's agreement, within the Service, to purchase such Food Products according to the terms set forth by Participant on the Service.
- (b) Consummation of Sales Transactions. As an accommodation to Participant and Users, Company makes available on the Service a mechanism for Users to directly pay for Purchases using their credit cards and for Participants to obtain payment from Sales through the Service. Each Sale shall be consummated on the Service using the Company's third party payment processor on behalf of Participant. Participant and the User making the purchase are contractually bound and solely responsible for completion of the Sale. The collection by Company of payment on the Service does not make Company a seller or otherwise a party to any Purchase or Sale.
- (c) Agency Relationship. Company acts as a facilitator by accepting payments arising from Sales and paying the funds to the Participant, less applicable Product Sales Commission and Payment Processing Fees. Participant acknowledges that (i) Company is not a bank and that the processing of Sales is a payment service rather than a banking service; and (ii) with respect to a Sale, Company is not acting as a trustee, fiduciary or escrow with respect to Participant's funds arising from such Sale, but is acting only as an agent, based upon Participant's direction and Participant's requests.
- (d) Participant's Acknowledgment. Participant hereby acknowledges that receipt of the Balance Due, as adjusted below, constitutes payment in full for the corresponding Sale.

5. Food Product Preparation and Delivery.

- (a) Preparation. Participant shall observe and comply with all requirements of its Registration(s), the California Health and Safety Code in the preparation of Food Products and all other applicable laws. Failure of Participant to comply with all requirements of the Registration(s), the California Health and Safety Code in the preparation of Food Products and all other applicable laws shall be deemed to be a material breach of this Agreement and Company shall have the right to immediately terminate this Agreement and Participant's access to and use of the Service upon confirmation of such failure.
- (b) Delivery. Participant shall deliver the Food Products sold in a the Sale directly to the purchasing User, at the address specified by such User as shown on the Service, within the time period specified by Participant on the Service. Participant may not use any third party to deliver Food Products sold to Users unless expressly permitted by the California Health and Safety Code. Participant shall promptly deliver a replacement

order at its cost in the event that the original order was misaddressed through no fault of User. Participant will immediately notify Company by email if it becomes aware of a problem with a delivery, whether a misaddressed shipment, damage/loss or otherwise.

- (c) Risk of Loss. NOTWITHSTANDING ANYTHING TO THE CONTRARY, PARTICIPANT SHALL BEAR ALL RISK OF LOSS FROM CASUALTY TO ITS FOOD PRODUCTS SOLD THROUGH THE SERVICE UNTIL THE FOOD PRODUCTS HAS BEEN DELIVERED TO THE USER'S ADDRESS.

## 6. Financial Provisions

- (a) Set Up-Fee. Participant shall pay to Company a non-refundable, set-up and administration fee in the then current amount as posted on the Service at <http://www.chefnex.com/fees> prior to Participant's access to the Service. Any services Company may provide or other actions undertaken by Company prior to receipt of the foregoing fee shall not be deemed to be a waiver Company's right to receive such fee.
- (b) Participation Fees. This Agreement and Participant's license to use the Service is conditioned on the payment by Participant of the Participation Fees when due. Participant is responsible for paying all Participation Fees associated with using the Service and all applicable taxes. The fees are due on the first business day of each calendar month during the term of this Agreement.
- (c) Fee Payments. Payment of fees may be made by credit card, Apple Pay™ or PayPal™, authorized pursuant to this Agreement. Payments of fees, whether made by credit card, Apple Pay™ or PayPal™, must, in each case, be received on or before the first business day of the applicable period for which such payment is made. Any fees not paid when due will start bearing interest at 2% per month. All rates, packages, terms are subject to change.
- (d) Product Sales Commission. This Agreement and Participant's Sales are conditioned on the payment when due by Participant of the above fees and, when applicable, the Product Sales Commission. For each Verified Sale of Food Product(s) via the Service, Company shall retain a percentage of the Net Revenue received by Company for such Verified Sale in accordance with the then current Product Sales Commission and shall pay to Participant the Balance Due. Company shall provide to Participant a monthly statement within fifteen (15) calendar days of the end of each calendar month, in each case setting forth the total amount of Verified Sales completed on the Service in the preceding calendar month, a calculation of the Product Sales Commission due to Company and the Balance Due payable to Participant. Company shall make payment of Balance to Participant from each Verified Sale on the later of the date of the monthly statement issued by Company covering such Verified Sales or the date that the corresponding User funds from the Sale have cleared Company's bank.
- (e) Set Off. Should any fees remain unpaid as the date of Company's payment of Product Sales Commission to Participant, Company may elect to set off and deduct from the Balance Due any such fees due hereunder.
- (f) Taxes. Participant shall be responsible for all sales, use and other taxes and all applicable duties, levies and export fees and similar charges imposed on Participant by any federal, state or local government entity with respect to any Sale.

7. Intellectual Property Rights

- (a) Title To the Service. Company exclusively owns all worldwide right, title and interest in and to all contents, graphics, designs, data, computer codes, ideas, know-how, “look and feel,” compilations, magnetic translations, digital conversions and other matters included within the Service and related to the Service (collectively “Materials”), and all modifications and derivative works thereof, and all Intellectual Property Rights related thereto. The copying, redistribution, use or publication by Participant of any of the Materials or any part of the Service, is strictly prohibited. Participant shall not challenge, contest or otherwise impair Company's ownership of the Service or the validity or enforceability of Company's Intellectual Property Rights related thereto.
- (b) Data Rights. Any and all information obtained from Users, or transactions processed through the Service, including User names, addresses, telephone numbers, e-mail addresses, product preferences, order, purchase and shipping information, and any other information concerning use, transactions, and traffic through the Service (“User Data”) shall be Company's Confidential Information and the sole property of Company. Participant will respect and protect this confidentiality as required below. Participant will not sell, rent or otherwise transfer such information or the right to use such information. Participant will use the information only for fulfilling Sales. Participant will not mail to or otherwise solicit or initiate contact of any kind using any User names or addresses supplied by Company without Company’s specific permission.

8. Confidentiality

- (a) Company Confidential Information. During the performance of this Agreement, Company may disclose to Participant confidential information regarding its business, including without limitation the Service, other documentation, know-how, inventions, formulae, designs, research and development activities and other proprietary information which constitutes trade secrets of Company (collectively “Company's Confidential Information”). Participant shall not in any way disclose, copy, modify, distribute or otherwise transfer Company's Confidential Information, or any part thereof, to any other person or entity at any time. Participant has the right to disclose Company's Confidential Information only to its employees who have a specific need to know in order to perform Participant's obligations hereunder, but Participant shall be responsible for all of its employees' actions. Participant shall use Company's Confidential Information only to properly fulfill its obligations hereunder, and not for any other purpose. Company does not represent that Company's Confidential Information it may disclose hereunder will meet the requirements of Participant or that Company's Confidential Information when combined with other information or when used in a particular way by Participant will be sufficient or suitable for Participant's purpose. Upon Company's request, Participant shall immediately return to Company the originals and all copies of any of Company's Confidential Information, whether on magnetic media, written materials or otherwise. Notwithstanding anything else herein, Company’s Confidential Information may be disclosed to the extent required by applicable law, provided the Company is given reasonable advance notice of such disclosure. For the avoidance of doubt, Company’s Confidential Information shall include the User Data.

- (b) Publicity. During the term of this Agreement, Company may issue one or more press releases announcing and promoting Participant's use of the Service, and create various forms of collateral documentation concerning Participant's use of the Service, including white papers, case studies, brochures, web site content and related materials, provided that Company complies with Participant's generally applicable trademark use policies of which Participant has notified Company.
- (c) Injunctive Relief. Both parties acknowledge that any breach of confidentiality by Participant may result in irreparable and continuing damage to Company for which there will be no adequate remedy by law, and both parties agree that in the event of such breach Company will be entitled to injunctive relief and other equitable remedies in addition to all other remedies available.

9. Warranties and Limitations

- (a) Participant General Warranties. Participant represents and warrants to Company that:
  - (i) Participant has the right and authority to enter into and perform its obligations under this agreement; and
  - (ii) Participant has the right to grant the license set forth above; and
  - (iii) Participant owns the Participant Information.
- (b) Participant Representations with respect to Food Product. Participant hereby represents and warrants to Company that (i) Participant has all necessary rights to advertise and sell the Food Products on the Service, including valid Registration(s) in full compliance with the California Health and Safety Code; (ii) the Food Products shall be prepared and sold in full compliance with the California Health and Safety Code; (iii) Participant has in place policies of insurance providing coverage for any liabilities associated with Food Products; (iv) Participant has all necessary releases to use with the posting of any photographs, drawings and images of the Food Products, and any name, likeness and statement used on the Service; and (iv) all Food Product details contained within the Participant Information shall accurately and correctly represent the Food Product.
- (c) Company Warranty Disclaimer. THE SERVICE AND ALL PARTS THEREOF ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND. USE OF THE SERVICE IS AT THE PARTICIPANT'S SOLE RISK AND NEITHER COMPANY NOR ANY OF ITS LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ERRORS WILL BE CORRECTED. NEITHER COMPANY NOR ANY OF ITS LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS MAKE ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICE. COMPANY MAKES NO WARRANTY REGARDING ANY SALES CONDUCTED THROUGH THE SERVICE.
- (d) Limitation of remedies. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT FOR PARTICIPANT'S VIOLATION OF COMPANY'S INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION OBLIGATIONS PROVIDED BELOW, NEITHER PARTY SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR NOT, THAT ARE IN ANY WAY RELATED TO THIS AGREEMENT, THE BREACH THEREOF, THE USE OR INABILITY TO USE THE SERVICE OR ANY PARTY THEREOF, THE RESULTS GENERATED FROM THE USE OF THE



SERVICE, LOSS OF GOODWILL OR PROFITS, LOST BUSINESS HOWEVER CHARACTERIZED AND/OR FROM ANY OTHER CAUSE WHATSOEVER.

- (e) Insurance. Participant agrees to obtain comprehensive general and product liability insurance in amounts not less than One Hundred Thousand Dollars (\$100,000) each occurrence, and naming Company and its affiliates, officers, managers, directors, agents, related entities and employees, as additional named insureds. Participant will furnish Company with certificates of such insurance prior to any Sale on the Service.
- (f) Release. In the event Participant has a dispute with one or more Users, Participant hereby releases Company (and its officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes or any other use of the Service. Participant hereby waives California Civil Code §1542, which states: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his settlement with the debtor."

10. Allocation of Risks

- (a) Indemnification. Participant shall indemnify, defend and hold harmless Company, its officers, directors, shareholders, employees, partners, sponsors, agents, attorneys, representatives, subsidiaries, affiliates, successors and assigns from all liabilities, losses, damages, claims and expenses, including reasonable attorneys' fees and costs, whether or not a lawsuit or other proceeding is filed, that in any way arises out of or relates to (a) Participant's breach or violation of Section 2(a), 3 or 8 of this Agreement or of any of Participant's representations and warranties hereunder; (b) Participant's use of the Service and any transaction or other activity that arises from or is otherwise related to the Service and its use, including, but not limited to, any Sales by Participant; (c) any claims or allegations that the Food Product was tainted, adulterated, spoiled or otherwise unsuitable for consumption or any other claims arising out of the use of Food Products purchased through use of the Service or otherwise; (d) any disputes between Participant and any User, whether arising from a Sale or otherwise; (e) any sales, use and other taxes and all applicable duties, levies and export fees and similar charges imposed by any federal, state or local government entity with respect to any Sale; and/or (f) Participant's negligence or willful misconduct. In the event, Participant fails to promptly indemnify and defend such claims and/or pay Company's expenses, as provided above, Company shall have the right to defend itself, and in that case, Participant shall reimburse Company for all of its reasonable attorney's fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Company's written requests.
- (b) Contrary Intention. The foregoing indemnities shall be payment obligations and not merely reimbursement obligations, it being understood that Company and Participant have a "contrary intention" with respect to the provisions of paragraph 2 of Section 2778 of the California Civil Code.

11. Termination

- (a) Termination by Either Party. Either party may terminate this Agreement at any time, for any reason, upon a thirty (30) day notice to the other party. Should Participant have paid in advance for a time period extending past the date of termination, Company shall pay Participant that pro-rata portion of Participation Fees paid by Participant for the period following the date of termination.
- (b) Termination for Cause. This Agreement shall automatically terminate without notice upon the occurrence of any of the following: (i) failure to pay the Participation Fees then due within one (1) business day of the due date thereof; (ii) the cessation of business by Participant; (iii) Participant attempts to use, copy, license, or convey the Service or the use thereof in any manner contrary to the terms of this Agreement or in derogation of Company's proprietary rights in the Service; (iv) Participant commits any fraudulent or deceptive act related to the Service or otherwise violates any provision of Section 3; or (v) Participant makes an assignment for the benefit of creditors, a petition in bankruptcy is filed by or against Participant, a receiver, trustee in bankruptcy, or similar officer is appointed to take charge of all or part of Participant's property, or Participant is adjudicated bankrupt.
- (c) Effect of Termination. Participant agrees that immediately upon termination of this Agreement, whether or not Participant receives notice of such termination, the license shall be immediately terminated and Participant shall not have any further rights to use the Service. Upon termination of the license granted hereunder, Company's obligations to Participant shall cease. In addition, upon any termination of this Agreement, Company shall have the right to immediately remove all Participant Information from the Service.
- (d) Cumulative Remedies. All rights and remedies conferred herein shall be cumulative and in addition to all of the rights and remedies available to each party at law, equity or otherwise.

## 12. General Terms and Conditions

- (a) Relationship of Parties. The relationship between Company and Participant is only that of independent contractor. Neither party is the agent or legal representative of the other party, and neither party has the right or authority to bind the other party in any way. This Agreement creates no relationship as partners or a joint venture, and creates no pooling arrangement.
- (b) Notices. All notices under this Agreement will be in writing, in English and delivered to the parties at their respective addresses as of the date of this Agreement, or at such other address designated by written notice. Notices will be deemed to have been duly given and effective: (a) when receipt is electronically confirmed, if transmitted by facsimile; or (b) when received, if (i) personally delivered, (ii) sent via email with a confirmatory letter sent by regular US Mail, or (iii) sent by overnight courier or certified or registered mail, return receipt requested.
- (c) Assignment. Participant has no right to assign, delegate, transfer or otherwise encumber this Agreement or any portion thereof without Company's prior written consent.
- (d) Amendments. Company shall have the right, at any time and without notice, to add to or modify the terms of this Agreement, simply by delivering such amended terms to Participant by email at the address provided to Company by Participant or by posting

the changes on the Service. Participant's access to or use of the Service after the date such amended terms are delivered to Participant shall be deemed to constitute acceptance of such amended terms. Participant agrees to review this Agreement periodically to be aware of such modifications. In the event that Participant does not agree to modifications made, Participant's only remedy is to discontinue using the Service.

- (e) Waiver. The failure of either party to enforce any of its rights hereunder or at law shall not be deemed a waiver or a continuing waiver of any of its rights or remedies against the other party, unless such failure or waiver is in writing.
- (f) Attorneys' Fee. In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and expenses incurred in addition to any other relief to which it is entitled.
- (g) Severability. If any provision, or part thereof, of this Agreement is judicially declared invalid, void or unenforceable, each and every other provision, or part thereof, nevertheless shall continue in full force and effect, and the unenforceable provision shall be changed or interpreted so as best to accomplish the objectives and intent of such provision within the limits of applicable law.
- (h) Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of California, without application of its conflicts or choice of law rules. This Agreement shall be deemed to be performed in Santa Clara County, California. Both parties irrevocably submit to the jurisdiction of the state or federal courts located in Santa Clara County, California, for any action or proceeding regarding this Agreement, and both parties waive any right to object to the jurisdiction or venue of the courts in Santa Clara County, California.
- (i) Force Majeure. Company shall not be liable for any delay or non-performance due to acts of God, natural casualties, war, trade embargos, government regulations, strikes, material shortages, viruses, civil unrest and/or other causes beyond its reasonable control (a "Force Majeure Event"). If a Force Majeure Event occurs, Company shall give Participant written notice within ten (10) days of such occurrence, detailing the circumstances of the Force Majeure Event and an estimate of the anticipated delay in performance.
- (j) Entire Agreement. This Agreement constitutes the entire agreements between the parties regarding the subject matter hereof, and supersede all prior or contemporaneous understandings or agreements, whether oral or written regarding the subject matter hereof.
- (k) Authority. If this Agreement is being accepted by an individual, such individual represents and warrants that he or she has the authority from the respective governing body to enter into this Agreement and to bind his or her respective company to all the terms and conditions of this Agreement.