



Master Subscription Agreement

This Master Subscription Agreement (the "Agreement"), entered as of the date (the "**Effective Date**") of Customer's accepting this agreement between Original Tech, Inc., dba Prelim, a Delaware corporation ("**Prelim**"), and Customer. Prelim and Customer will be referred to individually as a "**Party**" and collectively as the "**Parties**."

WHEREAS, Customer wishes to procure the software services described in this Agreement, and Prelim wishes to provide such services to Customer, each on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

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

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

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

"**Confidential Information**" means any information that is treated as confidential by either party, including trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing. Confidential Information includes Prelim Materials. Confidential Information does not include information that the Receiving Party can demonstrate by documentation: (a) was already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information directly or indirectly from or on behalf of the Disclosing Party; (b) was or is independently developed by the Receiving Party

without reference to or use of any of the Disclosing Party's Confidential Information; (c) was or becomes generally known by the public other than by breach of this Agreement by, or other wrongful act of, the Receiving Party or any of its Representatives; or (d) was received by the Receiving Party from a third party who was not, at the time, under any obligation to the Disclosing Party or any other Person to maintain the confidentiality of such information.

"Harmful Code" means any: (a) virus, trojan horse, worm, backdoor, or other software or hardware devices the effect of which is to permit unauthorized access to, or to disable, erase, or otherwise harm, any computer, systems, or software; or (b) time bomb, drop dead device, or other software or hardware device designed to disable a computer program automatically with the passage of time or under the positive control of any Person, or otherwise deprive Customer of its lawful right to use such Software.

"Intellectual Property Rights" means all or any of the following: (a) patents, patent disclosures, and inventions (whether patentable or not); (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith; (c) copyrights and copyrightable works (including computer programs), mask works, and rights in data and databases; (d) trade secrets, know-how, and other confidential information; and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection provided by applicable Law in any jurisdiction throughout the world.

"Law" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, state, local or foreign government, or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

"Losses" means any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

"Order Form" means an online order or document specifying the Services to be provided between Prelim and Customer.

"Prelim Materials" means the Service Software, Prelim Systems, and any and all other information, data, documents, materials, works and other content, devices, methods, processes, hardware, software and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans or reports, that are provided or used by Prelim or any Subcontractor (defined in **Section 2.4**) in connection with the Services or otherwise comprise or relate to the Services or Prelim Systems. For the avoidance of doubt, Prelim Materials include Resultant Data and any information, data or other content derived from Prelim's monitoring of Customer's access to or use of the Services, but do not include Customer Data.

"Prelim Personnel" means all individuals involved in the performance of Services as employees, agents, or independent contractors of Prelim or any Subcontractor.

"Prelim Systems" means the information technology infrastructure used by or on behalf of Prelim in performing the Services, including all computers, software, hardware, databases, electronic systems (including database

management systems) and networks, whether operated directly by Prelim or through the use of third-party services.

"**Permitted Use**" means any use of the Services by Customer in conformance with this Agreement.

"**Person**" an individual, corporation, partnership, limited liability company, association, joint stock company, joint venture, estate, trust, unincorporated organization, or other entity or organization, or a local, state, United States, or foreign governmental or public body or authority, or any agency or subdivision thereof.

"**Personal Information**" means name, address, telephone number, and any information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located.

"**Process**" means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information or other content. "**Processing**" and "**Processed**" have correlative meanings.

"**Representatives**" means, with respect to a Party, that Party's employees, officers, independent contractors, service providers, subcontractors, and legal advisors.

"**Resultant Data**" means information, data, and other content that is derived by or through the Services from Processing Customer Data and is sufficiently different from such Customer Data that such Customer Data cannot be reverse engineered or otherwise identified from the inspection, analysis, or further Processing of such information, data, or content.

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

"**Third Party Materials**" means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Prelim.

2. Services.

2.1 Services. Subject to and conditioned on Customer's compliance with the terms and conditions of this Agreement, during the Term (defined in **Section 10.2**) Prelim will use commercially reasonable efforts to provide to Customer the services in this Agreement (collectively, the "**Services**") in accordance with the terms and conditions hereof, except for:

- (a) Scheduled Downtime in accordance with **Section 5**;
- (b) Service downtime or degradation due to a Force Majeure Event;
- (c) any other circumstances beyond Prelim's reasonable control, including Customer's use of Third Party Materials, misuse of the Services, or use of the Services other than in compliance with the express terms of this Agreement; and

- (d) any suspension or termination of Customer's access to or use of the Services as permitted by this Agreement.

2.2 Service and System Control. Except as otherwise expressly provided in this Agreement, as between the Parties:

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

(b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Services and Prelim Materials by any Person by or through the Customer Systems or any other means controlled by Customer, including any: (i) information, instructions, or materials provided by any of them to the Services or Prelim; (ii) results obtained from any use of the Services or Prelim Materials; and (iii) conclusions, decisions, or actions based on such use.

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

2.4 Subcontractors. Prelim may from time to time in its discretion engage third parties to perform Services (each a "**Subcontractor**").

2.5 Suspension or Termination of Services. Prelim may suspend, terminate, or otherwise deny Customer's or any other Person's access to or use of all or any part of the Services or Prelim Materials, without incurring any resulting obligation or liability, if: (a) Prelim receives a judicial or other governmental demand, order, or request that requires Prelim to do so; or (b) Prelim believes, in its sole discretion, that: (i) Customer has failed to comply with, any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) Customer is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This **Section 2.5** does not limit any of Prelim's other rights or remedies, whether at law, in equity, or under this Agreement.

3. Authorization and Customer Restrictions.

3.1 Authorization. Subject to and conditioned on Customer's payment of the Fees (defined in **Section 7.1**) and compliance and performance in accordance with all other terms and conditions of this Agreement, Prelim hereby authorizes Customer during the Term to access and use the Services and such Prelim Materials as Prelim may supply or make available to Customer solely for the Permitted Use and the conditions and limitations set forth in this Agreement. This authorization is non-exclusive and, other than as may be expressly set forth in **Section 14.6**, non-transferable.

3.2 Reservation of Rights. Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Prelim Materials, or Third Party Materials. All right, title, and interest in and to the Services, the Prelim Materials, and the Third Party Materials are and will remain with Prelim and the respective rights holders in the Third Party Materials.

3.3 Authorization Limitations and Restrictions. Customer will not, and will not permit any other Person to, access or use the Services or Prelim Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. Without limiting the generality of the foregoing, Customer will not, except as this Agreement expressly permits:

- (a) copy, modify, or create derivative works or improvements of the Services or Prelim Materials;
- (b) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Prelim Materials, in whole or in part;
- (c) bypass or breach any security device or protection used by the Services or Prelim Materials or access or use any of the Services or Prelim Materials except through the use of then valid Access Credentials;
- (d) input, upload, transmit, or otherwise provide to or through the Services or Prelim Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- (e) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Prelim Systems, or Prelim's provision of services to any third party, in whole or in part;
- (f) access or use the Services or Prelim Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right Prelim or any third party or that violates any applicable Law;
- (g) access or use the Services or Prelim Materials for purposes of competitive analysis of the Services or Prelim Materials, the development, provision, or use of a competing software service or product, or any other purpose that is to Prelim's detriment or commercial disadvantage;
- (h) access or use the Services or Prelim Materials in, or in association with, the design, construction, maintenance, operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or property damage; or
- (i) otherwise access or use the Services or Prelim Materials beyond the scope of the authorization granted under **Section 3.1.**

4. Customer Obligations.

4.1 Customer Systems and Cooperation. Customer will at all times during the Term: (a) set up, maintain, and operate in good repair all Customer Systems on or through which the Services are accessed or used;

and (b) provide all cooperation and assistance as Prelim may reasonably request to enable Prelim to exercise its rights and perform its obligations under and in connection with this Agreement.

4.2 Effect of Customer Failure or Delay. Prelim is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").

4.3 Corrective Action and Notice. If Customer becomes aware of any actual or threatened activity prohibited by **Section 3.3**, Customer will immediately: (a) take all reasonable and lawful measures within its control that are necessary to stop the activity or threatened activity and to mitigate its effects; and (b) notify Prelim of any such actual or threatened activity.

5. Service Levels and Credits.

5.1 Service Levels. Subject to the terms and conditions of this Agreement, Prelim will use commercially reasonable efforts to make the Services Available at least 99.9% of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding holidays, weekends, periods of scheduled maintenance, and unavailability as a result of any of the Exceptions described below in **Section 5.2** (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer over the Internet and operating in material accordance with this Agreement.

5.2 Exceptions. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or access to or use of the Services by Customer, or using Customer's Access Credentials, that does not strictly comply with this Agreement; (b) Customer Failure; (c) Customer's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Prelim pursuant to this Agreement; (f) Scheduled Downtime; (g) times that the Services are not Available due to Customer maintenance requests; or (h) disabling, suspension, or termination of the Services pursuant to **Section 2.5**.

5.3 Service Level Failures and Remedies. In the event of a Service Level Failure lasting more than 1 hour, Prelim will issue a credit to Customer in the amount of 5% of the monthly Fees for the Services due for the Service Period in which the Service Level Failure occurred (each a "**Service Credit**"). In no event will more than one such Service Credit accrue per day, and such Service Credits will not be cumulative beyond a total of credits for 1 week of Fees in any one calendar month. Notwithstanding the foregoing, Prelim has no obligation to issue any Service Credit unless (a) Customer reports the Service Failure to Prelim within 24 hours of such Service Level Failure; and (b) requests such Service Credit in writing within 10 days of the Service Level Failure. Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred. This **Section 5.3** sets forth Prelim's sole obligation and liability and Customer's sole remedy for any Service Level Failure.

5.4 Scheduled Downtime. Prelim will use commercially reasonable efforts to give Customer at least eight hours prior notice of all scheduled outages of the Services ("**Scheduled Downtime**").

6. Security.

6.1 Customer Control and Responsibility. Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Customer in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's Access Credentials; and (e) all access to and use of the Services and Prelim Materials directly or indirectly by or through the Customer Systems or its Access Credentials, with or without Customer's knowledge or consent.

6.2 Access and Security. Customer will be responsible for all processes necessary to securely administer the distribution and use of all Access Credentials, protect against any unauthorized access to or use of the Services, and control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

6.3 Personal Information.

(a) Prelim will use commercially reasonable efforts not cause or permit any Personal Information to be processed in any manner or for any purpose other than the performance of the Services in compliance with the obligations and restrictions set forth in this Agreement and all applicable Laws.

(b) Prelim will promptly notify Customer in writing if Prelim becomes aware of any unauthorized access, use, or other act respecting Personal Information or if Prelim becomes the subject of any government, regulatory, or other investigation or proceeding relating to its privacy, data security, or handling practices.

7. Fees; Payment Terms.

7.1 Fees. Customer will pay Prelim the fees set forth in the Order Form or Billing Page of Prelim website (the "Fees") in accordance with this **Section 7**.

7.2 Fee Increases. Prelim may increase Fees for any contract year by providing written notice to Customer at least 30 calendar days prior to the commencement of that contract year and Schedule A will be deemed amended accordingly.

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

7.4 Payment. Invoices are due in full 30 days after the invoice date. Past due amounts will incur interest until paid at the lesser of: (a) 1.5% per month; and (b) the highest rate permitted by law. All amounts will be

invoiced and paid in U.S. Dollars. Customer agrees to reimburse Prelim for all expenses, including reasonable attorneys' fees, incurred by Prelim in the collection of any overdue and unpaid invoices.

7.5 No Deductions or Setoffs. All amounts payable to Prelim under this Agreement will be paid by Customer to Prelim in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to **Section 5.3** or any deduction or withholding of tax as may be required by applicable Law).

7.6 Billing Disputes. If Customer believes that Prelim has billed Customer incorrectly, Customer must contact Prelim no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Failure by Customer to contact Prelim within 60 days will be deemed acceptance by Customer of the accuracy of said billing statement. Inquiries should be directed to Company's customer support department.

8. Intellectual Property Rights.

8.1 Services and Prelim Materials. All right, title, and interest in and to the Services and Prelim Materials, including all Intellectual Property Rights therein, are and will remain with Prelim and the respective rights holders in the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Services or Prelim Materials (including Third-Party Materials) except as expressly set forth in **Section 3.1** or the applicable third-party license, in each case subject to **Section 3.3**. All other rights in and to the Services and Prelim Materials (including Third-Party Materials) are expressly reserved by Prelim and the respective third-party licensors. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Prelim an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

8.2 Customer Data. As between Customer and Prelim, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in **Section 8.3**.

8.3 Consent to Use Customer Data. Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data: (a) to Prelim, its Subcontractors, and the Prelim Personnel as are necessary or useful to perform the Services; and (b) to Prelim as are necessary or useful to enforce this Agreement and exercise its rights and perform its obligations hereunder.

9. Confidentiality.

9.1 Protection of Confidential Information. The Parties acknowledge that, in connection with this Agreement, each Party (the "**Receiving Party**") may obtain Confidential Information of the other Party (the "**Disclosing Party**"). Such Confidential Information will not be used or disclosed by the Receiving Party except as specifically authorized, or as necessary to perform the Services. The Receiving Party agrees to keep such Confidential Information confidential and to accord such Confidential Information the same standards and procedures it uses to protect its own confidential business information (but not less than reasonable care), including limiting access to its Representatives on a need-to-know basis and only after such Persons have been informed of and are bound to

maintain confidentiality. Nothing in this Agreement will prohibit or restrict Receiving Party's right to develop, use, or market products or services similar to or competitive with those of the Disclosing Party as disclosed in the Confidential Information as long as doing so will not thereby breach this Agreement.

9.2 Compelled Disclosures. If the Receiving Party or any of its Representatives is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable Law, the Receiving Party will: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy; and (b) provide reasonable assistance to the Disclosing Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party will disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.

10. Term and Termination.

10.1 Initial Term. The initial term of this Agreement begins as of the Effective Date and, unless terminated earlier pursuant to any of the Agreement's express provisions, will continue in effect until 12 months from such date (the "**Initial Term**").

10.2 Renewal. This Agreement will automatically renew for additional successive 12 month terms unless earlier terminated pursuant to this Agreement's express provisions or either Party gives the other Party written notice of non-renewal at least 30 days prior to the expiration of the then-current term (each a "**Renewal Term**" and, together with the Initial Term, the "**Term**").

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

(a) Prelim may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than 30 days after Prelim's delivery of written notice thereof; or (ii) breaches any of its obligations under **Section 3.3** or **Section 9**.

(b) Either Party may terminate this Agreement upon written notice, effective immediately, if: (a) a petition under any bankruptcy law is filed by or against the other Party; (b) a receiver is appointed for the other Party's assets; (c) the other Party becomes insolvent or takes advantage of any insolvency or any similar statute; or (d) the other Party is in material breach of this Agreement and such breach remains uncured, if curable, for 30 days after written notice of the breach.

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

(a) all rights, licenses, consents, and authorizations granted by either Party to the other under this Agreement will immediately terminate;

(b) Customer will immediately cease all use of any Services or Prelim Materials and (i) promptly return to Prelim, or at Prelim's written request destroy, all documents and tangible materials containing, reflecting,

incorporating, or based on any Prelim Materials or Prelim's Confidential Information; and (iii) if requested by Prelim, an authorized officer of Customer will certify to Prelim in writing that Customer has complied with the requirements of this **Section 10.4(b)**;

(c) notwithstanding anything to the contrary in this Agreement, Prelim may retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course and all such Customer Data will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

(d) Prelim may disable all Customer access to the Services and Prelim Materials;

(e) Prelim will make all Customer Data available to Customer for electronic retrieval for a period of 30 days, but thereafter Prelim may, but is not obligated to, delete stored Customer Data; and

(f) if Prelim terminates this Agreement pursuant to **Section 10.3(a)** or **Section 10.3(b)**, Customer will pay in full for the Services up to and including the last day on which the Services are provided.

10.5 Surviving Terms. The provisions of **Sections 1, 3.3, 6 -15**, and any other term of this Agreement that by its nature operates beyond termination or expiration, will survive and continue in full force and effect after any termination or expiration of this Agreement.

11. Representations and Warranties.

11.1 Mutual Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) it is duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has the full right, power and authority to enter into and perform its obligations and grant the rights, licenses, consents and authorizations it grants or is required to grant under this Agreement;

(c) the execution of this Agreement by its Representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such Party; and

(d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

11.2 Additional Prelim Representations, Warranties, and Covenants. Prelim represents, warrants, and covenants to Customer that Prelim will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

11.3 Additional Customer Representations, Warranties and Covenants. Customer represents, warrants and covenants to Prelim that Customer owns or otherwise has and will have the necessary rights and consents in and

relating to the Customer Data so that, as received by Prelim and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or any privacy or other right of any third party or violate any applicable Law.

11.4 DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN **SECTION 11.1** and **SECTION 11.2**, ALL SERVICES AND PRELIM MATERIALS ARE PROVIDED "AS IS" AND PRELIM HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHER, AND PRELIM SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PRELIM MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PRELIM MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. PRELIM EXPRESSLY DISCLAIMS AND IS NOT RESPONSIBLE FOR ALL DECISIONS OR ANALYSIS MADE BY ANY PERSON BASED UPON THE USE OR RESULTS OF THE SERVICES OR PRELIM MATERIALS. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

12. Indemnification.

12.1 Prelim Indemnification. Prelim will indemnify, defend, and hold harmless Customer and its officers, directors, employees, agents, successors, and permitted assigns (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by Customer Indemnitee arising out of or relating to any claim, suit, action or proceeding (each, an "**Action**") by a third party (other than an Affiliate of any Customer Indemnitee) alleging that Customer's use of the Services (excluding Customer Data and Third Party Materials) in compliance with this Agreement infringes a United States Intellectual Property Right. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any:

- (a) access to or use of the Services or Prelim Materials in combination with any hardware, system, software, network, or other materials or service not provided or authorized in writing by Prelim;
- (b) modification of the Services or Prelim Materials other than: (i) by or on behalf of Prelim; or (ii) with Prelim's written approval in accordance with Prelim's written specifications;
- (c) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Prelim; or
- (d) act, omission or other matter described in **Section 12.2(a)**, **Section 12.2(b)**, **Section 12.2(c)** or **Section 12.2(d)**, whether or not the same results in any Action against or Losses by any Prelim Indemnitee.

12.2 Customer Indemnification. Customer will indemnify, defend, and hold harmless Prelim and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Prelim Indemnitee**") from and against any and all Losses incurred by such Prelim Indemnitee in

connection with any Action by a third party (other than an Affiliate of any Prelim Indemnitee) that arises out of or relates to any:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of Prelim in accordance with this Agreement;
- (b) any other materials or information (including any Personal Information, documents, data, specifications, software, content, or technology) provided by or on behalf of Customer, including Prelim's compliance with any specifications or directions provided by or on behalf of Customer to the extent prepared without any contribution by Prelim;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer or any third party on behalf of Customer in connection with this Agreement.

12.3 Indemnification Procedure. Each Party will promptly notify the other Party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to **Section 12.1** or **Section 12.2**. The Party seeking indemnification (the "**Indemnitee**") will cooperate with the other Party (the "**Indemnitor**") at the Indemnitor's sole cost and expense. The Indemnitor will immediately take control of the defense and investigation of such Action and will employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee's failure to perform any obligations under this **Section 12.3** will not relieve the Indemnitor of its obligations under this Section 12 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

12.4 Mitigation. If any of the Services or Prelim Materials are, or in Prelim's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer's use of the Services or Prelim Materials is enjoined or threatened to be enjoined, Prelim may, at its option and sole cost and expense:

- (a) obtain the right for Customer to continue to use the Services and Prelim Materials as materially contemplated by this Agreement;
- (b) modify or replace the Services and Prelim Materials, in whole or in part, to seek to make the Services and Prelim Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Prelim Materials, as applicable, under this Agreement; or
- (c) by written notice to Customer, terminate this Agreement and require Customer to immediately cease any use of the Services and Prelim Materials.

THIS **SECTION 12** SETS FORTH CUSTOMER'S SOLE REMEDIES AND PRELIM'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THIS AGREEMENT OR ANY SUBJECT MATTER HEREOF

(INCLUDING THE SERVICES AND PRELIM MATERIALS) INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT.

13. Limitations of Liability.

13.1 EXCLUSION OF DAMAGES. IN NO EVENT WILL PRELIM OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT [OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO **SECTION 5.3**; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (d) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 CAP ON MONETARY LIABILITY. IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PRELIM AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY AND OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE FEES ACTUALLY RECEIVED BY PRELIM IN THE TWELVE MONTHS PRECEDING THE DATE OF THE OCCURRENCE OR EVENT UNDERLYING THE CLAIM.

14. Miscellaneous.

14.1 Force Majeure. Neither Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by acts of God, flood, fire, explosion, war, terrorism, invasion, riot, other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, or national or regional emergency, in each case, provided that such event is outside the reasonable control of the affected Party.

14.2 Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party will have authority to contract for or bind the other Party in any manner whatsoever. Prelim retains absolute discretion in the manner and means of carrying out the Services, and Customer will have no obligation to direct or control the working conditions of Prelim's employees or Subcontractors.

14.3 Public Announcements. The Parties shall work together in good faith to issue at least one mutually agreed upon press release within 90 days of the Effective Date, and Customer otherwise agrees to reasonably cooperate with Prelim to serve as a reference account upon request.

14.4 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder will be in writing and addressed to Prelim as follows (or as otherwise specified by a Party in a notice given in accordance with this Section):

If to Prelim: Original Tech, Inc., dba Prelim
Attn: Legal Department
Email: legal@prelim.com

Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail, if sent during normal business hours of the recipient with confirmed receipt, and on the next business day, if sent after normal business hours of the recipient with confirmed receipt.

14.5 Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. No terms or conditions of any purchase order or similar document provided by Customer to Prelim will constitute a part or amendment of this Agreement or be binding on Prelim for any purpose unless expressly accepted by Prelim in writing.

14.6 Assignment. Customer may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without Prelim's prior written consent. Prelim may, without Customer's consent, assign this Agreement to an Affiliate or as part of a change of control. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

14.7 Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing, identified as an amendment to this Agreement and signed by an authorized representative of both parties. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving.

14.8 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

14.9 Governing Law; Submission to Jurisdiction; Attorneys' Fees. This Agreement and all related documents are governed by, and construed in accordance with, the laws of the State of California, without regard to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of California. The sole and exclusive jurisdiction and venue for any litigation arising out of this Agreement shall be an appropriate federal or state court in the State of California, and the Parties irrevocably consent to the personal jurisdiction of such courts. Each Party hereby waives

any objection or defense of personal jurisdiction or forum non-conveniens it may otherwise possess. In any action or proceeding to enforce rights under this Agreement, the prevailing Party will be entitled to recover costs and attorneys' fees.

14.10 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under **Section 9** or, in the case of Customer breach of **Section 3.3**, **Section 4.3**, or **Section 8.1** would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.