

NORTH AMERICAN SCIENCE ASSOCIATES, LLC  
STANDARD TERMS AND CONDITIONS:

These terms and conditions apply to all work completed by NAMSA for any Client or project unless superseded by a Client or project specific Agreement.

*Please note, these terms and conditions are not editable. If you require revisions, please contact your Account Manager for our Master Services Agreement template.*

**1. SERVICES**

- 1.1 **Services.** Client may from time to time request NAMSA (hereinafter each individually a “Party” and collectively the “Parties”) and NAMSA may agree to provide certain services (each a “Project”) for Client in accordance with the terms and conditions of this Project Agreement which services may include but are not limited to clinical services, consulting, regulatory assistance, pre-clinical services, laboratory testing, test reports, data, studies, protocols, test results, procedures, specifications, techniques and models prepared by NAMSA (the “Services”) pursuant to each proposal for each Project.
- 1.2 To facilitate efficient sample submission for routine testing, NAMSA and Client may establish a standing proposal whereby Client, at its discretion, may send NAMSA test articles for testing from time to time by completing a sample submission form and submitting to NAMSA the completed sample submission form along with test article(s). In such cases, the terms and conditions of this Project Agreement will apply to the standing proposal and the sample submission form.

**2. PROJECT FEES AND PAYMENT**

- 2.1 **Project Fees.** All fees for Services rendered will be detailed in the proposal for that Project (“Project Fees”) or otherwise agreed in writing for standing proposal pursuant to Section 1.2 above.
- 2.2 **Payment Terms.** Client shall remit payment to NAMSA upon invoice receipt. If NAMSA does not receive payment within thirty (30) days of the date of invoice, interest in the amount of one and one half percent (1½%) per month compounded monthly may, in NAMSA’s discretion, be charged on the overdue balance provided, however, the interest rate shall not exceed the maximum interest rate permitted by law.
- a. Prepayment: Unless Client receives credit approval from NAMSA’s credit department, Client will be invoiced and Services will be completed on a prepaid basis.
- b. For Clients with approved credit limits, the general payment schedule detailed in section 2.3 will apply provided the total value of all ongoing Services does not exceed the Client’s credit limit.
- 2.3 **General Payment Schedules.** Client will pay NAMSA for fees, expenses and pass-through costs in accordance with the budget and payment schedule contained in each Project proposal.

Unless specifically stated otherwise, the following shall apply:

- a. For proposals, Projects or tests with Project Fees under \$40,000, Client will be invoiced when report or deliverable is issued; and,

- b. For proposals, Projects or tests with a Project Fee between \$40,001 and \$1,000,000, an initial non-refundable payment equal to fifteen percent (15%) of the Project Fees will be invoiced upon Client's signed acceptance of the proposal. The initial payment will be applied to the final invoice; and,
  - c. For proposals, Projects or tests with a Project Fee greater than \$1,000,000, an initial non-refundable payment equal to ten percent (10%) of the Project Fees will be invoiced upon Client's signed acceptance of the proposal. The initial payment will be applied to the final invoice; and,
  - d. Client will be invoiced not more frequently than twice monthly through Project completion based on Services performed; and,
  - e. Any agreed out-of-pocket expenses will be invoiced as they are incurred but not more frequently than twice monthly.
- 2.4 **"Chosen Currency"** shall mean the currency denomination specified in a Project proposal and utilized in all invoices submitted. In the absence of a defined denomination in a proposal the chosen currency shall be United States Dollars (USD).
- a. If NAMSA incurs pass-through expenses in a currency other than the Chosen Currency, then Client will reimburse NAMSA for NAMSA's actual costs in the Chosen Currency based on the Oanda.com foreign currency exchange rate for the applicable currencies on the date that provider makes payment in respect of such expenses.
- 2.5 **Reimbursement of Expenses.** Client shall reimburse NAMSA for reasonable out-of-pocket or pass through expenses such as those for business travel, local transportation, business meals, accommodations and any other reasonable business expense incurred by NAMSA in performing the Project. Approval for such expenses shall be included in the Project proposal or approved separately in writing by the Client. All such expenses shall be itemized on Project invoices. A service charge of five percent (5%) of reimbursable expenses shall be added to all reimbursable expenses to cover administrative costs and the delay between incurring the cost and payment for the expense by Client.
- 2.6 **Change Orders / Revisions to Project proposals and Project Fees.** Project Fees are set based on the assumptions set forth in each proposal, and are subject to change if those assumptions change or are inaccurate. If, during the performance of the Services, the scope of the Services deviates from the assumptions in the proposal, NAMSA shall document changes in scope, timelines and Project Fees in a change order to the Project proposal for review and acceptance by Client (each a "Change Order"). Upon mutual agreement by NAMSA and Client to a Change Order, the applicable proposal including fees, expenses and timelines, as applicable, will be deemed amended to incorporate such change in accordance with the Change Order. If Client fails to respond promptly and execute or seek to negotiate the Change Order, NAMSA may cease providing the Services until the matters set forth in the Change Order have been resolved to NAMSA and Client's satisfaction.
- 2.7 **Disputed Amounts.** If Client disputes in good faith all or any portion of an invoice, then Client shall notify NAMSA in writing of the disputed amount within thirty (30) days of its receipt of the applicable invoice, including the specific amount in dispute and the basis for the dispute. Client shall pay any portion of an invoice that is not in dispute consistent with the terms of this Project Agreement. Both Parties shall use reasonable efforts to resolve any disputed amounts within thirty (30) days of NAMSA's receipt of Client's written notification. Nonpayment by Client of any disputed amount that is pending resolution shall not be deemed a breach of this Project Agreement until after such thirty (30) day period.

- 2.8 **Project Fees Increase.** Project Fees are subject to change and may be adjusted by NAMSA from time to time. Such adjustment shall take effect no earlier than twelve (12) months after the date of commencement of Services pursuant to a proposal. NAMSA may increase Project Fees based on increases in the Consumer Price Index and increases in NAMSA's costs and shall provide thirty (30) days advance notice of any such increases. If Client objects to such increase during the thirty (30) day period NAMSA and Client shall endeavor to resolve Client's objections. If Client's objections cannot be resolved within sixty (60) days of such notice, each Party shall have the right to cancel the Project.
- 2.9 **Collection Costs.** Client shall pay for all costs incurred by NAMSA in collecting overdue balances of Project Fees, including the cost of third parties, court costs, deposition costs, arbitration and arbitrator's fees, and reasonable attorney's fees, if any, hired by NAMSA to collect overdue Project Fees. Client shall notify NAMSA of any dispute in Project Fees invoiced within thirty (30) days of invoice receipt or Client shall waive its right to dispute the invoice amount.
- 2.10 **Taxes.** Client will pay any and all taxes, however designated, that are based on the Services or on the Project Fees set forth in any Project proposal, except for taxes based on the net income of NAMSA or employment taxes for NAMSA personnel. In the event that pursuant to any law or regulation, tax is required to be withheld at source from any payment made to NAMSA, the Client shall withhold said tax at the rate set forth in the certification issued by the appropriate taxing authority and provided to the Client by NAMSA, or in the absence of such certification, at the rate determined by said law or regulation.
- 2.11 **Personnel Retainer Fees.** In the event NAMSA is delayed in starting work on a Project due to events or circumstances which are beyond its reasonable control and Client desires for NAMSA to keep specified NAMSA personnel assigned to the Project until such time as the Project is started, then, in addition to any other sums payable to NAMSA hereunder, Client shall pay for each such specified personnel a fee calculated on a full time equivalent (FTE) day basis. NAMSA shall submit to Client a monthly invoice for such fees.
- 2.12 **Delay in Study – Animal Care.** In the event NAMSA purchases animals for a Project and is then delayed in starting work on the Project is delayed or put on hold after it starts, and if such delays are due to events or circumstances which are beyond NAMSA's reasonable control, Client shall pay for the care and handling of animals during the delay purchased for the Project if such additional fees were not included in any Change Order or Project proposal. The additional fees for animal care and handling during any delay will be the same as the per diem fees detailed in the proposal or if not in the proposal at NAMSA's standard rate.

### 3. **CONFIDENTIAL INFORMATION**

- 3.1 Confidential Information as used in this Project Agreement shall include business, financial, technical, development and commercial information, including but not limited to pricing and discounting information, Project proposals, discoveries, ideas, inventions, intellectual property, patents and patent applications, designs, formulas, test results, test procedures, report format and templates, protocols, concepts, drawings, specifications, techniques, models, data, software, research, processes, procedures, formulas, trade secrets, technical expertise, know-how, marketing plans, service instruments, regulatory plans and development plans disclosed by either Party (the "disclosing Party") whether communicated orally or in writing or obtained by the other Party (the "receiving Party") through observation or examination of the other Party's facilities or procedures.

- 3.2 Confidential Information shall not include, nor shall the provisions of this Project Agreement apply to, information which the receiving Party can establish: (a) at the time of disclosure is or thereafter becomes available to the public through no fault of the receiving Party; (b) was known to, or was otherwise in the possession of the receiving Party or its affiliate prior to the receipt of such Confidential Information from the other Party; (c) is obtained by the receiving Party from a source other than the disclosing Party and other than one who would be breaching a commitment of confidentiality to that disclosing Party by disclosing the Confidential Information to the receiving Party; or, (d) is developed by the receiving Party independently of any disclosure made hereunder.
- 3.3 Each Party to this Project Agreement shall: (a) use the Confidential Information solely for the performance of Services described in the proposal; (b) hold the Confidential Information in strict confidence; and, (c) not disclose such Confidential Information to any third party except as specifically authorized herein or as specifically authorized by disclosing Party in writing. The raw data, report and product information derived or developed from the Services is the Confidential Information of the Client for the exclusive use of the Client to whom they are addressed and only for that specific work product for which Services were performed.
- 3.4 Each Party may disclose Confidential Information received hereunder to only those of its officers, employees, advisors and consultants who are directly concerned with the Services and who are subject to obligations of confidentiality and restricted use at least as stringent as those set forth herein. Each Party shall advise such officers, employees, advisors and consultants upon disclosure of any Confidential Information to them of the confidential nature of the Confidential Information and the terms and conditions of the Project Agreement and shall use all reasonable safeguards to prevent unauthorized disclosure.
- 3.5 The receiving Party may disclose Confidential Information of the disclosing Party if and to the extent that such disclosure is required to be disclosed pursuant to judicial process, court order or administrative request, provided that the receiving Party shall notify the disclosing Party of any such process, order or request sufficiently prior to disclosing such Confidential Information so as to permit the disclosing Party opportunity to seek to preserve the confidentiality of such information.
- 3.6 The Parties agree to return or destroy all of the other Party's Confidential Information (including copies, excerpts and summaries) within its possession or control upon request, except that each Party may retain one (1) copy for archival purposes only.
- 3.7 Each Party acknowledges and expressly agrees that the remedy at law for any breach by it of the terms of this Section 3 may be inadequate and that the full amount of damages which may result from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by either Party of this Section 3, the other Party shall be entitled to seek immediate injunctive relief prohibiting any such breach and requiring the immediate return of all Confidential Information. The remedies set forth in this Paragraph shall be in addition to any other remedies available for any such breach or threatened breach, including the recovery of damages from the breaching Party.
- 3.8 Nothing in this Project Agreement shall be construed to convey to either Party any right, title or interest in any Confidential Information received by it hereunder, or any license to use, sell, exploit, copy or further develop in any way such Confidential Information.

- 3.9 The obligations set forth in this Section 3 shall survive termination of this Project Agreement and will remain in effect for five (5) years after the date of the last disclosure of Confidential Information between the Parties.

#### 4. WORK PRODUCT; PROPERTY RIGHTS

- 4.1 **Work Product and Ownership of Client Intellectual Property (“IP”).** All Services provided by NAMSA under this Project Agreement are the property of NAMSA and shall remain NAMSA’s work product (raw data and report information derived or developed from the Services) until NAMSA has received payment in full for the Services performed to produce such work product (“Work Product”). Work Product (result(s) in its final finished form) produced as a result of Services performed under this Project Agreement shall become the property of Client upon payment in full for the Services performed by NAMSA to produce the Work Product. Such Work Product, following NAMSA’s receipt of payment in full, are collectively defined as “Client IP”, for the exclusive use of the Client to whom they are addressed for that specific Work Product for which Services were performed.
- 4.2 **NAMSA Intellectual Property.** All Confidential Information and intellectual property owned by NAMSA and in existence on the Effective Date or on the date of any proposal or created or acquired thereafter (including all computer programs, software, applications, databases, estimates, and other documentation generally used by NAMSA), and all Confidential Information and intellectual property developed by NAMSA, in whole or in part, not in direct connection with this Project Agreement (including any improvement, alteration or enhancement to NAMSA’s systems, software, applications or processes which are developed or implemented during the term of this Project Agreement), together with all related rights, title and interests thereto, shall continue to be owned exclusively by NAMSA or the third parties from whom NAMSA has secured the right of use (collectively, defined as “NAMSA IP”). Client shall have no right, title, or interest in or to NAMSA IP except as expressly set forth in this Project Agreement. NAMSA IP shall not include the Client IP and Client’s Confidential Information (as defined in Section 3). For avoidance of doubt, technical expertise, protocols, methods, controls, SOP’s specifications, templates, documents (excluding Report Data and Results) that are developed or produced by NAMSA for Services, (collectively “Service Instruments”) are furnished solely with respect to Services and NAMSA will retain all common law, statutory, ownership and other reserved rights in such Service Instruments.

#### 5. DATA PROTECTION

- 5.1 **Personal Data.** Personal Data shall be defined as any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
- 5.2 **Applicable Data Protection Laws.** The Parties acknowledge that this Agreement may implicate various Data Protection Laws, which shall include, but are not limited to, the European Union’s General Data Protection Regulation (Regulation 2016/679) (hereinafter “GDPR”) and any national member state laws implementing the GDPR; the California Consumer Privacy Act of 2018 (“CCPA”); national standards governing the protection of personal information (“GB/T 35273-2017 Information Security Technology – Personal Information Security Specification” (Standards),

effective May 1, 2018); and the UK Data Protection Act 2018, together with any amendments or revisions to the foregoing.

- 5.3 **Data Processing Roles.** To the extent that any of the Services provided involve the exchange of Personal Data, each Party acknowledges and expressly agrees that NAMSA shall be considered a “processor” and Client shall be considered a “controller” as defined by the applicable Data Protection Laws. As such, at all times, NAMSA shall be processing Personal Data solely at the direction of and on behalf of the Client except as otherwise required under applicable Data Protection Laws.
- 5.4 **Data Processing Agreement.** Each Party acknowledges that, to the extent required under any applicable Data Protection Laws, the Parties shall enter into a Data Processing Agreement that will govern the processing and transfer of any Personal Data. To the extent that these Terms and Conditions contradict any provision in a Data Processing Agreement, the Data Processing Agreement shall take precedence.
- 5.5 **Personal Data Processing.** Each Party is responsible for ensuring that Personal Data is collected and processed in a manner compliant with all applicable Data Protection Laws. Each Party shall notify the other Party in advance of any transfer of Personal Data to which Data Protection Laws apply.
- 5.6 **Personal Data sub-processing.** The Client authorizes NAMSA and any of its affiliates to appoint (and permit each to appoint) sub-processors in accordance with these Terms and Conditions, provided that NAMSA remain liable for the acts and omissions of such sub-processor as if committed by NAMSA hereunder.
- 5.7 **Data Subject Rights.** The Client shall be responsible for complying with any applicable Data Protection Laws as those laws relate to the exercise of data subject rights. NAMSA shall assist the Client by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Client’s obligations, as reasonably understood by the Client, to respond to requests to exercise data subject rights under applicable Data Protection Laws, at the Client’s sole cost.
- 5.8 **International Data Transfer.** Each Party acknowledges and expressly agrees that NAMSA operates from within the United States. As such, each Party is responsible for ensuring that any Personal Data is transferred to the United States under a mechanism compliant with all applicable Data Protection Laws. Each Party acknowledges that, if required, it will enter into a Data Processing Agreement per section 5.4.
- 5.9 **Personal Data Breach.** NAMSA shall notify the Client without undue delay, but not more than five (5) business days, upon NAMSA becoming aware of a NAMSA or sub-processor Personal Data Breach affecting Personal Data, providing the Client with sufficient information to allow the Client to meet any obligations to report or inform data subjects of the Personal Data Breach under applicable Data Protection Laws.

## 6. WARRANTIES, PROJECT OUTCOME, LIMITATIONS

- 6.1 **Project Outcome.** Regulatory approvals are influenced by changing regulatory requirements, individuality of regulatory body personnel, government policy, and other uncontrollable factors. In addition, approvals are highly dependent on product performance and the quality, completeness, and availability of technical data. While NAMSA applies its expertise to present the

available information in a manner intended to maximize the possibility of obtaining regulatory approval, NAMSA cannot guarantee approval for individual medical products or submissions, and makes no representation or warranty regarding any particular results with respect to the Services.

- 6.2 **Warranties.** With respect to the Services, NAMSA warrants: (a) it will perform the Services according to the terms and conditions of this Project Agreement, the proposal, and in conformity with generally accepted standards of the Clinical Research industry; (b) all Services furnished to Client under this Project Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party; (c) all Services furnished will conform to and be performed in accordance with Client's requirements as stated in the proposal; (d) NAMSA has legal title to transfer all Services provided to Client pursuant to this Project Agreement, free and clear of any security interest, liens, claims, charges or encumbrances of any nature whatsoever, together with full power and lawful authority to deliver such Services to Client; and (e) the information provided to Client prior to the execution date of a Project is accurate and complete.

THE FOREGOING WARRANTIES ARE EXCLUSIVE. NAMSA DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NAMSA DOES NOT WARRANT ANY PARTICULAR RESULT, OR THAT THE SERVICES WILL MEET CLIENT NEEDS OR WILL OPERATE WITHOUT INTERRUPTION OR IN AN ERROR-FREE MANNER.

- 6.3 **Remedies.** As Client's sole and exclusive remedy, and NAMSA's entire obligation, for breach of the foregoing warranty in Section 6.2, NAMSA shall promptly re-perform any non-conforming Services at no additional cost to Client, and if NAMSA is unable to re-perform such Services in conformance with the terms and provisions of the warranty provided in Section 6.2, NAMSA shall promptly refund the fees paid for such Services as described in the Project proposal.

## 7. **SUB-CONTRACTORS**

NAMSA, at its sole discretion and with prior written notice to Client, may subcontract some of the Services provided to Client. NAMSA is solely responsible for completion of the Services subcontracted and for the full compliance by such subcontractors with the terms of this Project Agreement. NAMSA shall promptly pay its subcontractors for all amounts due as agreed to between NAMSA and such subcontractors irrespective of any payment or lack of payment by Client to NAMSA, and NAMSA will keep all property of Client and all deliverables under this Project Agreement free and clear at all times of any and all liens or encumbrances of any kind. In the event that NAMSA's relationship with a particular subcontractor dissolves, or in NAMSA's judgment, a replacement is required for other reasons, NAMSA will provide Service continuity to Client during this period. The appointment of any subcontractor by NAMSA will not create any liability on the part of Client to such subcontractor and such subcontractor will not obtain any rights as a third party beneficiary under this Project Agreement.

## 8. **TERM**

This Project Agreement shall be effective as of the start date for the Project and terminate once the Project is complete.

## 9. **TERMINATION**

- 9.1. Either Party may terminate this Project in the event the other Party is in material breach of its obligations herein, pursuant to submission of a ten (10) days prior written notice detailing such breach, provided the breach was not cured during said period.
- 9.2. Either Party may terminate this Project after good faith consultation with the other Party and upon written notice to the other Party if, in its reasonable medical judgment, it determines that continuation of the Project or the Services described in the Project would endanger the lives of the subjects enrolled therein or otherwise threaten the safety of such subjects. In such cases, and after good faith consultation, no additional advance notice would be required prior to Project termination notice.
- 9.3. Either Party may terminate this Project by written notice (i) upon the other Party entering into voluntary or involuntary insolvency, receivership or bankruptcy proceedings or any other voluntary or involuntary proceedings for the settlement of the other Party's debts and which is not discharged within thirty (30) days after filing, or (ii) upon the other Party's dissolution or cessation of conducting business.
- 9.4. After receipt of a notice of termination of this Project hereunder, except as directed by Client, NAMSA will use reasonable best efforts to reduce or eliminate further costs and expenses and will cooperate with Client to provide for an orderly wind-down of the Services.
- 9.5. Termination of this Project by either Party shall not affect the rights and obligations of the Parties accrued prior to the effective date of the termination. The payment, confidentiality, termination, indemnity, and intellectual property obligations contained within this Project Agreement, and other terms by their nature which would continue beyond the termination or expiration of this Project Agreement, shall survive its termination.
- 9.6. In the event this Project hereunder is terminated prior to completion ("Early Termination"), Client shall pay NAMSA for all Services performed in accordance with this Project Agreement up to the date of termination and reimburse NAMSA for all reasonable costs and expenses incurred in performing those Services up to the termination date, including all non-cancelable costs incurred prior to termination but paid after the termination date, even if the Parties' original payment schedule spreads-out payments for certain Services (such as unit or milestone-based payments) or defers payments for certain Services until the end of the Services. Client shall also reimburse NAMSA for all future non-cancelable obligations to third parties (where such obligations were created as a result of a Project being authorized by the Client).

Certain Services of NAMSA require greater utilization of resources at the outset such that compensation for such Services based on a percentage of milestones completed prior to NAMSA fully completing the milestone would work to the detriment of NAMSA. Therefore, if payments are unit or milestone based, and this Project hereunder is terminated before the completion of a milestone or unit, Client will pay NAMSA on a time and materials basis for those partially completed units or milestones.

- 9.7. Early Termination Charges. Client acknowledges that Early Termination of this Project will likely cause NAMSA to incur additional costs such as unforeseen down time of NAMSA personnel assigned to the Project, costs associated with reassignment of NAMSA personnel, etc. (collectively, the "Early Termination Costs"). In addition to any and all other compensation and reimbursement due to NAMSA under this Project, if the termination is by Client without cause, or by NAMSA for cause, and the total fees for the Project are greater than one million (\$1,000,000)



U.S. Dollars in value, then Client shall pay to NAMSA an amount equal to twenty percent (20%) of the budget for the remainder of Services that have not yet been performed, to cover NAMSA's costs associated with Early Termination.

9.8 Payment for Early Termination Costs. Client shall also pay for all actual costs, including time spent by NAMSA personnel (which shall be billed at NAMSA's standard daily rates in effect as of the date of the termination notice), incurred to complete activities associated with the Early Termination and close-out of affected Projects, including the fulfillment of any regulatory requirements.

9.9 NAMSA shall promptly refund to Client any unearned deposits or prepayments.

## 10. INDEMNIFICATION

10.1 NAMSA will defend, indemnify and hold harmless Client, its Affiliates, subsidiaries, respective directors, officers, employees, shareholders, representatives and agents and all other of their respective successors and permitted assignees (the "Client Indemnified Parties"), from and against any and all suits, claims, actions, causes of actions, liabilities, losses, damage to property or for injury to or death of any person, regulatory fines, costs and expenses (including, but not limited to, interest, penalties, reasonable attorneys' fees and other expenses of litigation) (individually a "Claim", collectively, "Claims") arising from, or in connection with any actual or alleged:

- a. inaccuracy in any representation or warranty made by NAMSA in this Project Agreement;
- b. any act of NAMSA that causes a violation of applicable Data Protection Laws;
- c. breach or alleged breach of any covenant or obligation of NAMSA in this Project Agreement;
- d. willful misconduct or negligent act, error or omission of NAMSA, its agents, servants, employees, subcontractors, consultants or other representatives;
- e. Claim that the products, Services, names or marks furnished by NAMSA constitute an infringement of any trade secret, patent, copyright, trademark, trade name, confidential information or other legal right of any third party;

10.2 Client will defend, indemnify and hold harmless NAMSA, its Affiliates, subsidiaries, respective directors, officers, employees, shareholders, representatives and agents and all other of their respective successors and permitted assignees (the "NAMSA Indemnified Parties"), from and against any and all Claims:

- a. inaccuracy in any representation or warranty made by Client in this Project Agreement;
- b. any act of the Client that causes a violation of applicable Data Protection Laws;
- c. breach or alleged breach of any covenant or obligation of Client in this Project Agreement;
- d. willful misconduct or negligent act, error or omission of Client, its agents, servants, employees, subcontractors, consultants or other representatives;
- e. Claim that the products, Services, names or marks furnished by Client constitute an infringement of any trade secret, patent, copyright, trademark, trade name, confidential information or other legal right of any third party;
- f. Claim that Client's products are defective or any claim for adverse health effects or health risks relating to the use, sale, possession, receipt or storage of Client's products or derivatives thereof.

- 10.3 Neither Party shall be obligated to indemnify the other Party in any manner whatsoever for the other Party's negligence.
- 10.4 The indemnifications provided here shall be contingent upon the Indemnified Party promptly notifying the Indemnifying Party ("Client" or "NAMSA" as the case may be) of a Claim and providing reasonable cooperation and tendering to the Indemnifying Party, and its insurer, full authority to defend or settle the Claim or suit. The Indemnified Party has the right to participate (at its own expense) in the Claim or suit and in selecting counsel therefore. Notwithstanding the foregoing, the Indemnifying Party shall not settle any Claim hereunder without the Indemnified Party's written consent, which consent shall not be unreasonably withheld.

**11. LIMITATION ON DAMAGES; LIABILITY**

IN NO EVENT SHALL NAMSA OR ITS AFFILIATES BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR DAMAGES UNDER OR AS A RESULT OF A BREACH OF THIS PROJECT AGREEMENT IN EXCESS OF THE TOTAL FEES PAID BY CLIENT TO NAMSA UNDER WHICH THE BREACH IS CLAIMED.

NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, OR ANY OTHER SIMILAR DAMAGES UNDER ANY THEORY OF LIABILITY, UNDER OR AS A RESULT OF THIS PROJECT AGREEMENT REGARDLESS OF WHETHER THE CLAIM GIVING RISE TO SUCH DAMAGES IS BASED UPON BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER THEORY, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF.

THESE LIMITATIONS ON LIABILITY WERE AND ARE AN EXPRESS PART OF THE BARGAIN BETWEEN THE PARTIES AND WERE A CONTROLLING FACTOR IN SETTING THE FEES APPLICABLE TO THIS PROJECT AGREEMENT. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS PROJECT AGREEMENT SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF ANY OF THE REMEDIES PROVIDED FOR UNDER THIS PROJECT AGREEMENT.

**12. NON-SOLICITATION**

During the term of this Project Agreement and for six (6) months thereafter, Client shall not (i) directly offer employment to, (ii) induce, (iii) solicit, (iv) entice, or (v) cause any person who is an employee, consultant or director of NAMSA (hereinafter "Person"), who has worked directly on this Project or other services associated with this Project Agreement, to leave NAMSA. The foregoing shall not be violated by (i) a general advertising not targeted to any such Person, or (ii) soliciting or hiring any Person whose employment with NAMSA has been terminated.

**13. NON EXCLUSIVITY**

This proposal or Project, will not be construed as exclusive and shall not limit Client from engaging the Services of any third party, which Services are equal or similar to the Services rendered hereunder by NAMSA. Similarly, nothing in this project or Proposal shall limit NAMSA from providing Services to any third party, including Services equal or similar to the Services rendered hereunder to Client.

**14. DISPUTE RESOLUTION**

Any dispute, controversy or claim (a "Dispute") concerning or relating to this Project Agreement or any executed Project shall be resolved in the following manner:

- 14.1 Any Dispute shall first be submitted by the Parties in writing to a panel of two senior executives, (“Executives”) one appointed by NAMSA and one appointed by Client, who shall promptly meet and confer in an effort to resolve such Dispute. In the event the Executives are unable to resolve any Dispute within thirty (30) days after submission of the Dispute to them, and the Parties have not agreed to an extension of time within which a Dispute may be resolved, either Party may then refer such Dispute to arbitration in accordance with subsection 14.2, 14.3 and 14.4.
- 14.2 If the Parties have not been successful in resolving the Dispute through the process referred to in subsection 14.1, the Dispute shall be settled by binding arbitration in accordance with the then prevailing commercial arbitration rules of the American Arbitration Association. Arbitration shall be conducted before a single arbitrator selected from the AAA’s national roster of arbitrators. The arbitration shall be held in the city and state where NAMSA has performed the Services for the Client, unless the Parties mutually agree to an alternative location. The arbitration shall be conducted in English. In rendering the award, the arbitrator must apply the substantive law of the State of Ohio, without regard to Conflict of Laws principals. Under no circumstances shall the arbitrator award damages in excess of or inconsistent with the limitations contained in the “Limitation on Damages; Liability” section of this Project Agreement. Any court with jurisdiction shall enforce this provision and enter judgment on any award. The arbitration shall be held no more than eight (8) months from the selection of the arbitrator. If the arbitration is to be held in a country other than the United States, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with the International Arbitration Rules.
- 14.3 The arbitration proceedings shall be confidential and neither Party shall publicize the nature of any Dispute or the outcome of any arbitration proceedings except to enforce any award or to the extent required by law, provided in such case the Party required to make any disclosure informs the other Party of such requirement to allow the other Party to seek a protective order.
- 14.4 Each Party has the right before or during arbitration to seek and obtain from the appropriate court, provisional remedies such as injunction to avoid irreparable harm, maintain the status quo or preserve any confidential or proprietary information.

15. **SEVERABILITY**

Any term or clause of this Project Agreement that is determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction or arbitrator shall be deemed severed from this Project Agreement and shall not affect the continuing legality, validity, or enforceability of the remaining provisions.

If any provision of this Project Agreement or the application thereof to any Party or circumstance shall be declared void, illegal or unenforceable, the remainder of this Project Agreement shall be valid and enforceable to the extent permitted by applicable law. In such event, the Parties shall use commercially reasonable efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by applicable law, achieves the purposes intended under the invalid or unenforceable provision.

16. **WAIVER**

No breach of any provision of this Project Agreement by the Parties may be waived unless such waiver is in writing. Waiver of one breach shall not be deemed a waiver of any other breach of the same or any other provision in the Project Agreement. This Project Agreement may be modified only by written agreement of both Parties.

17. **ENTIRE AGREEMENT**

This Project Agreement, and any exhibits or attachments attached hereto, constitutes the entire Agreement between the Parties.