

NORTH AMERICAN SCIENCE ASSOCIATES, LLC (“NAMSA”)
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These terms and conditions apply to all work completed by NAMSA for any Client or project unless superseded by a Client or project specific Agreement, (“Project Agreement”).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 30 days of the date of invoice, interest in the amount of 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 within each Work Order 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.
- 2.4 **Reimbursement of Expenses.** Without limiting any of the foregoing, 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.

- 2.5 **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.
- 2.6 **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 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 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.
- 2.7 **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 12 months after the date of commencement of Services pursuant to a proposal. NAMSA may, in its sole discretion, increase Project Fees based on increases in the Consumer Price Index and increases in NAMSA's costs and shall provide 30 days advance notice of any such increases. If Client objects to such increase during the 30 day period NAMSA and Client shall endeavor to resolve Client's objections. If Client's objections cannot be resolved within 60 days of such notice, each Party shall have the right to cancel the Project.
- 2.8 **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 30 days of invoice receipt or Client shall waive its right to dispute the invoice amount.
- 2.9 **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.
- 2.10 **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.

- 2.11 **Set-Off.** In addition to any rights and remedies of NAMSA provided by this Agreement and by law, NAMSA shall have the right in its sole discretion, without prior notice to Client, any such notice being expressly waived by Client to the extent permitted by applicable law, upon any amount becoming due and payable by Client hereunder, to set-off and appropriate any apply against such amount any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by NAMSA or any Affiliate thereof to or for the credit or the account of Client. NAMSA agrees promptly to notify Client after any such set-off and application made by NAMSA; provided that the failure to give such notice shall not affect the validity of such set-off and application.

3. **CONFIDENTIAL INFORMATION**

- 3.1 "Confidential Information" means any and all technical and non-technical information disclosed by one Party to the other in connection with this Project Agreement, whether in electronic, written, graphic, oral, machine readable or other tangible or intangible form, that is marked or identified at the time of disclosure as "Confidential" or "Proprietary" or in some other manner so as to clearly indicate its confidential nature, or which, by its nature, the receiving Party would reasonably deem to be confidential or proprietary. Without limiting the foregoing, the raw data, report and product information developed or delivered from the Services shall be deemed the Confidential Information of Client and describe proprietary aspects of the Services and any related documentation or materials, including any feedback provided by Client regarding the Services, shall be deemed the Confidential Information of NAMSA.
- 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 to the same extent and in at least the same manner as the receiving Party protects its own Confidential Information of a similar nature, but in no event less than reasonable care; 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.
- 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 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 Section 3 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 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 according to the proposal for the Project Fees 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, 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. All rights not expressly granted to the NAMSA IP are reserved.

5. **DATA PROTECTION**

To the extent that any of the Services provided involve the exchange of Personal Information, each Party acknowledges and expressly agrees that each Party is responsible for ensuring that Personal Information is collected and processed in a manner compliant with all applicable data protection laws and that is the responsibility of each Party to notify the other Party in advance of any transfer of Personal Information that is subject to any certain data protection regulations. 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 Information.

6. **WARRANTIES, PROJECT OUTCOME, LIMITATIONS**

- 6.1 **Project Outcome.** Regulatory approvals including registrations, licenses, permits, governmental approvals, certifications, CE Marks, or clearances necessary for the manufacture, use, storage, import, transport, purchase, distribution, promotion, marketing or sale of medical device products ("Regulatory Approvals") are influenced by changing regulatory requirements, individuality of regulatory body personnel, government policy, and other uncontrollable factors. In addition, Regulatory 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 Approvals, NAMSA cannot guarantee and does not represent or warrant that Client will obtain, approval for individual medical products, devices, or their submissions. Without limiting the foregoing, NAMSA makes no representation or warranty regarding any particular results with respect to the Services.
- 6.2 **Limited 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 a professional and workmanlike manner; (b) all Services furnished to Client under this Project Agreement will not infringe upon or violate any patent, copyright, or misappropriate any trade secret of any third party (provided that none of the information provided by Client or the technology of Client infringes or misappropriates the intellectual property rights of any third party; and (c) all Services and Work Product furnished hereunder will conform as delivered in all material respects with the Services and Work Product descriptions set forth in this Project Agreement.
- 6.3 **Limited 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 limited warranty provided in Section 6.2, NAMSA shall promptly refund the fees paid for such Services as described in the Project proposal.
- 6.4 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.2, NAMSA HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES AND CONDITIONS RELATING TO THE SERVICES AND THE WORK PRODUCT, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING OR SECTION 6.1 ABOVE, 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.

7. SUB-CONTRACTORS

NAMSA, at its sole discretion and with prior written notice to Client, may subcontract some of the Services provided to Client. No such notice obligation applies should the subcontractor be an Affiliate of NAMSA. 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. In the event that NAMSA's relationship with a particular subcontractor terminates, or in NAMSA's judgment, a replacement is required for other reasons, NAMSA will use commercially reasonable efforts to provide Service continuity to Client during this period.

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 Agreement in the event the other Party is in material breach of its obligations herein, pursuant to submission of a 30 days prior written notice detailing such breach, provided the breach was not cured during said period.
- 9.2. Either Party may terminate this Project Agreement 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 Agreement 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 Agreement 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 30 days after filing, or (ii) upon the other Party's dissolution or cessation of conducting business.
- 9.4. Termination of this Project Agreement 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.
- 9.5. In the event this Project Agreement 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). After receipt of a notice of Early Termination, unless waived by Client, NAMSA will use commercially reasonable efforts to reduce or eliminate further costs and expenses and will cooperate with Client to provide for an orderly wind-down of the Services but does not guarantee that it may be able to do so in the circumstances.

Without limiting the foregoing, 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 Agreement 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.

- 9.6 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 Agreement, costs associated with reassignment of NAMSA personnel, etc. (collectively, the "Early Termination Costs"). Therefore, in addition to any and all other compensation and reimbursement due to NAMSA under this Project, including pursuant to Section 9.6, if the termination is by Client without cause, or by NAMSA for cause, and the total fees for the Project are greater than \$1,000,000 in value, then Client shall pay to NAMSA an amount equal to 20% of the budget for the remainder of Services that have not yet been performed, to cover NAMSA's costs associated with Early Termination. Given the difficulty of assessing the actual amount of Early Termination Costs, the Parties agree that the foregoing is a reasonable approximation of damages, and is not a penalty.
- 9.7 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 Project, including the fulfillment of any regulatory requirements.

10. INDEMNIFICATION

- 10.1 NAMSA will defend 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"), against any and all third-party claims, actions, suits, or proceedings, (individually a "Claim", collectively, "Claims"), and indemnify and hold the Client Indemnified Parties harmless from and against any liabilities, losses, regulatory fines, costs and expenses (including interest, penalties, reasonable attorneys' fees and other expenses of litigation (individually or collectively, "Losses") arising from any actual or alleged:
- a. violation by NAMSA of applicable Data Protection Laws;
 - b. personal injury or death actually caused by NAMSA;
 - c.
 - infringement or misappropriation of such third party's intellectual property rights by Services or the Work Product; provided that the foregoing indemnity shall not apply and NAMSA shall have no liability for any claim of infringement or misappropriation based on or arising from (i) use of any version other than the latest commercially available version of the Services or Work Product provided to Client, to the extent the infringement or misappropriation would have been avoided by use of such version; (ii) modification of any Work Product by Client or any third party; or (iii) the combination or use of the Work

Product furnished hereunder with materials not furnished by NAMSA to the extent such infringement would have been avoided by use of the NAMSA Work Product alone.

- In the event the Services are held to, or NAMSA believes is likely to be held to infringe or misappropriate, NAMSA shall have the right at its sole option and expense to (i) substitute or modify the Services or the Work Product so that they are non-infringing; or (ii) obtain for Client a license to receive and use the Services and the Work Product under commercially reasonable terms; or (iii) if (i) and (ii) are not reasonably practicable as determined by NAMSA in its reasonable judgment, terminate this Project Agreement as to the infringing Service or Work Product and provide an equitable refund of fees for the affected Services or Work Product.

10.2 Client will defend 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"), against any and all Claims, and indemnify and hold NAMSA Indemnified Parties harmless from and against any and all Losses arising from any actual or alleged:

- a. violation by Client of applicable Data Protection Laws;
- b. breach or alleged breach of any covenant or obligation of Client in this Project Agreement;
- c. willful misconduct or negligent act, error or omission of Client, its agents, servants, employees, subcontractors, consultants or other representatives;
- d. that Confidential Information and other Client IP, including the Client's products, technology and services, infringe or misappropriate the intellectual property rights of any third party; or;
- e. that Client's products technology or services are defective or cause any adverse health effects or health risks relating to the use, sale, possession, receipt or storage of Client's products, technology, services, 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, conditioned or delayed.

11. **LIMITATION ON DAMAGES; LIABILITY**

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

NEITHER PARTY SHALL BE LIABLE FOR ANY LOST PROFITS, LOSS OF DATA, EQUIPMENT DOWNTIME, OR 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 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 Agreement, 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 Agreement shall limit NAMSA from providing Services to any third party, including Services equal or similar to the Services rendered hereunder to Client.

14. **AFFILIATES**

For purposes of this Project Agreement, the term "Affiliates" is defined as any person or entity Controlling, Controlled by, under common Control with a Party, or managed by primarily the same executives as those who manage the day to day operations of a Party. The term "Control," including the correlative term "Controlled By" means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or any Party or other ownership interest, by contract, management, or otherwise) of a person or entity. Control shall also be deemed to exist when a person or entity possesses, directly or indirectly, through one or more intermediaries (i) in the case of a corporation more than 50% of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); or (iii) in the case of any other person or entity, more than 50% of the economic or beneficial interest therein.

15. **DISPUTE RESOLUTION**

15.1 **Discussion by Executives.** Except as otherwise provided herein, any dispute, controversy or claim arising under, out of or in connection with this Agreement, including any subsequent amendments, or the validity, enforceability, construction, performance or breach hereof (and including the applicability of this Section 15 to any such dispute, controversy or claim) (each a "Dispute") shall be first submitted to an executive officer of each of the Parties having authority to resolve such Dispute for attempted resolution by good faith negotiations within 10 business days. In such event, each Party shall cause its designated executive officer to meet and be

available to attempt to resolve such issue. If the Parties should resolve such Dispute, a memorandum setting forth their agreement will be prepared and signed by both Parties if requested by either Party. The Parties shall cooperate in an effort to limit the issues for consideration in such manner as narrowly as reasonably practicable in order to resolve the Dispute.

15.2 **Governing Law.** This Agreement and all rights and obligations of the Parties arising out of or relating to this Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, U.S.A. without giving effect to conflicts of laws principles. The Parties hereby expressly agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply.

15.3 **Jurisdiction.** The Parties agree that any Dispute that is not resolved pursuant to Section 15.1 shall be subject to the exclusive jurisdiction of the state and federal courts in New York City, New York, U.S.A. and each Party hereby submits to such jurisdiction.

16. **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.

17. **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.

18. **ENTIRE AGREEMENT**

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