

DATA SERVICES MASTER TERMS

EXHIBIT A

1 DESCARTES DATA SERVICES

1.1 Terms of Descartes Data Services. All Data Services that Descartes agrees to provide and Customer agrees to subscribe for in an Agreement shall, in addition to the terms and conditions of the Agreement (including for greater certainty any appendices thereto), be subject to the following terms and conditions:

- (a) Descartes shall provide the Data Services to Customer during the Term of the Agreement at the service levels described in the Agreement.
- (b) Customer shall be authorized to Use the Data Services solely for the Permitted Use.
- (c) No license is given to any of the underlying software used by Descartes to provide the Data Services to Customer. Customer is solely authorized to access the Data Services via an Internet browser or through such other connections that conform to Descartes' then applicable hardware, software and communication specifications for the Data Services. Customer must adhere to all such specifications in configuring such connections to properly function with the Data Services. Customer may request that Descartes assist in such configuration efforts, subject to payment by Customer for any such services provided by Descartes. Descartes is in no way responsible or liable for the provision or cost of such connections or any related hardware or software to facilitate the connections or for the ability or inability of such connections to properly function or perform on behalf of Customer.
- (d) Descartes may, but shall be under no obligation to, modify the Data Services, provided such modification does not have a material adverse effect on the scope and nature of the Data Services as of the Effective Date.

2 DESCARTES CONTENT LICENSE TERMS

2.1 Terms of Licenses to Content. Any licenses to Content granted to Customer by Descartes in an Agreement shall, in addition to the terms and conditions of the Agreement, be subject to the following terms and conditions:

- (a) The license shall be a non-exclusive, non-transferable license for the Term of the Agreement for Customer to Use the Content for the Permitted Use.
- (b) The license shall be for the Content, as it exists at the Effective Date and for any new releases, modifications, updates or other changes that Customer becomes entitled to pursuant to an Agreement.
- (c) If Customer breaches the Agreement by Using the Content beyond the Permitted Use, then Customer shall pay to Descartes on demand any amounts required to bring Customer's Use of the Content into compliance with the Permitted Use, as determined with reference to Descartes' current price list for the Content. This remedy shall be in

addition to, and not in lieu of, any other right or remedy that Descartes may have pursuant to the Agreement with respect to such a breach of the Agreement by Customer.

3 PERMITTED USERS**3.1 Permitted Users of Data Services and Content.**

The Agreement shall identify those Permitted Users who are authorized to Use the Data Services or Content. Customer agrees that it is responsible for all Permitted Users who Use the Data Services or Content. Accordingly, the terms, conditions, restrictions and obligations of the Agreement (excluding Customer's payment obligation to Descartes) shall be construed to also apply to all Permitted Users, and Customer shall be liable for any breach of the Agreement by a Permitted User.

4 SERVICES

4.1 Professional Services. Descartes shall perform all Professional Services that Descartes agrees to provide in an Agreement for the fees specified therein and in a professional and workmanlike manner by personnel having a level of skill commensurate with their responsibilities.

5 FEES AND PAYMENT

5.1 Fees. The following terms and conditions shall apply in respect of payment of Fees by Customer:

- (a) Customer shall pay Descartes the Fees in the amounts and on such terms as set out in the Agreement.
- (b) Unless otherwise expressly provided in the Agreement, all Fees are expressed in United States Dollars (\$USD).
- (c) At Descartes' option, Descartes may assess a late payment fee equal to one and one half per cent (1.5%) of the unpaid amount for each succeeding thirty (30) day period or portion thereof in which Descartes has not received payment from Customer of Fees when due.
- (d) Customer shall promptly and carefully review statements and invoices provided or made available by Descartes to Customer reflecting transaction activity. If Customer believes any adjustments are needed with respect to any amounts due to Descartes, or if Customer has any other questions or concerns regarding any statement or report provided by Descartes, Customer must so notify Descartes in writing within ninety (90) days after such invoice or report is received. If Customer fails to notify Descartes within such time frame, Descartes will not be required to investigate the matter or effect any related adjustment, absent any willful misconduct by Descartes. If Customer notifies Descartes after such time period, Descartes may, in its sole discretion and at Customer's cost, investigate the matter addressed in Customer's notice, but Descartes will not have any liability to effect any

related adjustment absent any willful misconduct by Descartes.

- (e) At Descartes' option, Descartes may suspend provision of any Services or not provide an update for the Content if Descartes has not received payment of Fees from Customer when due.
- (f) A failure by Customer to pay Fees when due shall be deemed to be a material breach of the Agreement.
- (g) All Fees payable to Descartes are exclusive of any taxes, assessments or duties that may be assessed upon the Services or Content or any licenses under the Agreement, including, without limitation, sales, use, excise, value added, personal property, electronic/internet commerce, export, import and withholding taxes, but not including taxes based upon Descartes' income. Customer shall directly pay any such taxes assessed against it. Customer shall promptly reimburse Descartes for any such taxes payable or collectable by Descartes. If any tax in the nature of withholding tax is payable on any sums payable to Descartes under this Agreement, Customer shall pay Descartes such amount as is necessary to ensure that the net amount received by Descartes after such withholding shall be equal to the amount originally due.
- (h) If Descartes authorizes Customer to pay any Fees by credit card then Customer agrees to pay to Descartes an additional processing charge equal to 4% of such Fees (subject to change without notice).

5.2 Collection Expenses. Customer agrees to reimburse Descartes for any and all collection related expenses incurred by Descartes in the collection of any amounts owed to Descartes pursuant to the Agreement.

6 OWNERSHIP OF INTELLECTUAL PROPERTY

6.1 Ownership. As between Descartes and Customer, Descartes and its licensors shall have and retain all right, title and interest, including any copyrights, patents, trade secrets, moral rights and other Intellectual Property Rights in and to any software, documentation, processes or methodology produced or used by Descartes in the performance of Services or in the compilation or formatting of the Content pursuant to an Agreement. To the extent of any interest of Customer therein (including, to the extent that any Services performed by Descartes may constitute a "work made for hire"), Customer irrevocably agrees to assign and, upon its creation, automatically assigns to Descartes the ownership of such Intellectual Property Rights absolutely and without the necessity of any additional consideration. Customer agrees to do and perform such other acts and things and to execute and file such other agreements, documents, certificates or instruments as may be considered necessary or advisable by Descartes in order to carry out the intent of this provision and should Customer be unable or unwilling to do so, Customer irrevocably appoints Descartes and its duly authorized officers as Customer's agent and attorney to do all such acts and things and to execute and file all such aforementioned documents.

7 INDEMNIFICATION

7.1 Descartes Indemnification for Data Services. Subject to the Indemnification Procedure, Descartes shall defend Customer, at Descartes' expense, from and against any claim brought by a third party alleging that any Data Services provided by Descartes to Customer under the Agreement infringe any (i) European Union, United States or Canadian patent issued as of the Effective Date, (ii) European Union, United States or Canadian trademark issued as of the Effective Date, (iii) copyright, or (iv) trade secret, and shall indemnify Customer against all damages and costs assessed against Customer that are payable as part of a final judgment or settlement. Should the Data Services provided by Descartes to Customer under the Agreement become, or in Descartes' opinion be likely to become, the subject of a claim of infringement, Descartes may, at its sole option and/or election use reasonable commercial efforts to (a) obtain for Customer the right to continue using the Data Services pursuant to the terms and conditions of the Agreement, (b) replace or modify the Data Services so that they become non-infringing but functionally equivalent or (c) where either (a) or (b) are not practicable, terminate the Agreement. The foregoing defense and indemnification obligation shall not apply to any claim arising out of (i) the combination of the Data Services with other products not claimed to be owned, developed or deployed by or on behalf of Descartes, (ii) the modification of the Data Services, or any part thereof, unless such modification was made by Descartes, (iii) unauthorized use of the Data Services, or (iv) any infringement caused by any action of Customer. THIS INDEMNIFICATION PROVISION STATES THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF DESCARTES AND ITS LICENSORS TO CUSTOMER AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO THE INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.

7.2 Customer Indemnification. Subject to the Indemnification Procedure, Customer shall defend, indemnify and hold Descartes and Descartes' officers, directors, employees, agents and shareholders harmless against any liability, damages, costs and expenses (including, without limitation, reasonable attorneys' fees) as a result of any third party claims brought against Descartes arising out of (i) Use of the Data Services or Content by Customer or a Permitted User, (ii) misuse of Passcodes or distribution of Passcodes by Customer to anyone other than Permitted Users, (iii) any contract concluded by Customer using the Data Services or Content, or (iv) any Services provided by Descartes to Customer; provided that this indemnification shall not apply in respect of those matters for which Descartes has an indemnification obligation under the Agreement.

8 DISCLAIMER OF WARRANTIES

8.1 DISCLAIMER. CUSTOMER ACKNOWLEDGES THAT: (i) DESCARTES AND ITS PARTNERS USE MULTIPLE SOURCES ("DATA SOURCES") TO DERIVE THE CONTENT BEING USED OR MADE AVAILABLE THROUGH THE DATA SERVICES AND THAT SUCH

DATA SOURCES MAY BE UNRELIABLE; (ii) THE CONTENT MAY BE NON-CURRENT DUE TO CHANGES IN LOCAL, STATE, OR FEDERAL TAX LAWS, REGULATIONS, OR OTHERWISE; (iii) THE CONTENT MAY REQUIRE LANGUAGE TRANSLATION, WHICH MAY RESULT IN TRANSLATION ERRORS; AND (iv) THE CONTENT INHERENTLY CARRIES RISK OUT OF THE CONTROL OF EITHER PARTY. DESCARTES SHALL NOT BE LIABLE TO CUSTOMER OR ANY USER OF THE CONTENT FOR ANY ERRORS OR INCOMPLETENESS IN THE CONTENT. EXCEPT AS EXPRESSLY PROVIDED IN AN AGREEMENT, DESCARTES AND DESCARTES' LICENSORS MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR THE CONTENT OR OTHERWISE, AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, DESCARTES SPECIFICALLY DISCLAIMS ANY COLLATERAL WARRANTIES AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DESCARTES DOES NOT REPRESENT OR WARRANT THAT THE DATA SERVICES OR ANY SERVICES PROVIDED IN CONNECTION WITH THE CONTENT WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR ERRORS OR THAT THE SERVICES OR THE CONTENT ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS. EXCEPT AS EXPRESSLY PROVIDED IN AN AGREEMENT, THE DATA SERVICES AND CONTENT ARE PROVIDED SOLELY ON AN "AS-IS" BASIS.

9 LIMITATION OF LIABILITY

9.1 AGGREGATE LIABILITY. CUSTOMER AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY LIABILITY ON THE PART OF DESCARTES UNDER AN AGREEMENT (INCLUDING FOR BREACH OF ANY PROVISION OF THE AGREEMENT, FUNDAMENTAL BREACH OR ANY OTHER BREACH GIVING RISE TO LIABILITY OR ARISING OUT OF OR RELATED TO THE AGREEMENT, SERVICES, CONTENT OR IN ANY OTHER WAY), FOR ANY CAUSE OF ACTION WHATSOEVER AND REGARDLESS OF THE FORM OF ACTION (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL BE LIMITED TO CUSTOMER'S ACTUAL DIRECT DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL FEES PAID TO DESCARTES BY CUSTOMER UNDER THE AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

9.2 CONSEQUENTIAL DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES SHALL DESCARTES OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO CUSTOMER OR ITS LICENSORS OR ANY OTHER PERSON, FIRM, CORPORATION OR ENTITY FOR SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, MULTIPLE, CONSEQUENTIAL, OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, LOSS OF REVENUE, WORK STOPPAGE, DATA LOSS OR DAMAGE OR COMPUTER MALFUNCTION, OR ANY

DAMAGES IN THE NATURE OF LOST OPPORTUNITY COSTS OR COSTS FOR PROCUREMENT OF AN ALTERNATIVE TO THE SERVICES OR CONTENT PROVIDED UNDER THE AGREEMENT, WHETHER SUCH DAMAGES ARE ALLEGED IN TORT, CONTRACT, ANY OTHER LEGAL OR EQUITABLE THEORY OR OTHERWISE, EVEN IF DESCARTES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER AGREES THAT IN NO EVENT WILL DESCARTES' DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS BE LIABLE FOR ANY DAMAGES, INCLUDING DIRECT, INCIDENTAL, ORDINARY, PUNITIVE, EXEMPLARY, INDIRECT, SPECIAL, CONSEQUENTIAL OR ANY OTHER DAMAGES ARISING UNDER THE AGREEMENT.

9.3 EXCLUSION FROM LIMITATION OF LIABILITY. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THE AGREEMENT SHALL LIMIT DESCARTES' LIABILITY FOR DAMAGES TO CUSTOMER FOR DEATH OR PERSONAL INJURY RESULTING SOLELY FROM DESCARTES' WILLFUL ACTIONS OR DESCARTES' GROSS NEGLIGENCE.

9.4 TIME FOR COMMENCEMENT OF ACTION. NO ACTION AGAINST DESCARTES OR ANY OF ITS DIRECTORS, OFFICERS, EMPLOYEES OR SHAREHOLDERS, REGARDLESS OF FORM (INCLUDING NEGLIGENCE), ARISING OUT OF ANY CLAIMED BREACH OF THE AGREEMENT OR TRANSACTIONS UNDER THE AGREEMENT OR IN ANY OTHER WAY RELATED TO THE AGREEMENT MAY BE BROUGHT BY CUSTOMER MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION HAS FIRST ARISEN.

10 CONFIDENTIALITY

10.1 Discloser, Recipient. In the performance of an Agreement, each party may disclose to the other party certain Confidential Information. For the purposes of the Agreement, (i) "Discloser" means the party (and its Affiliates) that is providing Confidential Information to the other party to the Agreement; and (ii) "Recipient" means the party (and its Affiliates) that is receiving Confidential Information from the other party to the Agreement.

10.2 Non-Disclosure. Recipient acknowledges and agrees that the Confidential Information provided by Discloser shall remain the sole and exclusive property of Discloser or the third party providing such information to Discloser. Recipient shall not disclose, reproduce, use or transfer, directly or indirectly, in any form, by any means, or for any purpose, the Confidential Information provided by Discloser, except as may reasonably be required pursuant to, or for performance of, the Agreement and subject to the provisions of this Section 10. The disclosure of such Confidential Information to Recipient does not confer upon Recipient any license, interest, or rights of any kind in or to the Confidential Information, except as expressly provided under the Agreement. Recipient shall require its employees and those of its Affiliates receiving the Confidential Information provided by Discloser or its Affiliates to abide by these confidentiality restrictions and Recipient shall only allow Recipient's and its Affiliates' independent contractors to receive Confidential Information of Discloser or its Affiliates if such contractors have executed a nondisclosure agreement with restrictions

no less protective of the Confidential Information than those contained herein. Subject to the terms set forth herein, Recipient shall protect the Confidential Information provided by Discloser with the same degree of protection and care Recipient uses to protect its own Confidential Information, but in no event less than reasonable protection in light of general industry practice.

10.3 Exceptions to Non-Disclosure. Nothing in the Agreement shall prohibit or limit Recipient's disclosure or use of information if Recipient can establish that (i) at the time of disclosure such information was generally available to the public; (ii) after disclosure by Discloser, such information becomes generally available to the public, except through breach of the Agreement by Recipient; (iii) such information was in Recipient's possession without obligation of confidentiality prior to the time of disclosure by Discloser and was not acquired directly or indirectly from Discloser; (iv) the information became available to Recipient from a third party who, to the knowledge of Recipient, does not owe a confidentiality obligation to Discloser; (v) the information was developed by or for Recipient independently of the disclosure of such information by Discloser; (vi) the information is disclosed by Recipient pursuant to a requirement of a governmental agency or by operation of law, provided that, with respect to subsection (vi), Recipient shall first notify Discloser prior to disclosure in order to give Discloser an opportunity to seek an appropriate protective order and/or waive compliance with the terms of the Agreement and shall disclose only that part of the Confidential Information which Recipient is required to disclose or (vii) the information relates to the tax treatment or the tax structure of the transactions contemplated herein, where "the tax treatment or the tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

10.4 Passcodes. In the event that a Permitted User's access to the Data Services or Content requires the Permitted User to use Passcodes, then Descartes shall issue such Passcodes to a designated employee of Customer (an "Administrative User") and/or authorize such Administrative User to issue or create Passcodes for Permitted Users. The Administrative User shall be responsible for managing and distributing the Passcodes to Permitted Users. The Administrative User shall only provide the Passcodes to Permitted Users. Customer acknowledges that Descartes relies solely on the ability of Permitted Users to enter the correct Passcodes to validate that such person has the authority to use the Data Services or Content. Customer shall be solely responsible and liable for issuing, administering and ensuring that proper security methods are in effect with respect to protection of each of the Passcodes provided to Permitted Users and, therefore, Customer shall be responsible for all actions through the Data Services or Content that occur through access to or Use of the Data Services or Content using Passcodes issued through Customer's Administrative User.

11 TERM AND TERMINATION

11.1 Term. The Agreement shall be in force for the Term unless earlier terminated as provided by the Agreement.

11.2 Termination by Either Party. The Agreement may be terminated by a party if the other party is subject to an Insolvency Event, or by a non-breaching party in the following circumstances:

- (a) if the other party commits a material breach of the Agreement (including, without limitation, the failure to pay any Fees due to Descartes in accordance with the Agreement) and such breach remains uncured thirty (30) days after written notice of such breach is delivered to such other party; and
- (b) immediately upon material breach by either party of any obligations set forth in section 10 (Confidentiality);

11.3 Termination by Descartes. Descartes may terminate the Agreement immediately upon a material breach by Customer of section 6 (Ownership of Intellectual Property). Descartes may terminate the Agreement on sixty (60) days notice in the event that Descartes discontinues the Data Services or providing the Content provided thereunder for all customers to whom Descartes provides such Data Services or Content.

11.4 Consequences of Termination. Upon and after expiration or termination of the Agreement, all licenses to the Content granted by Descartes under the Agreement and Customer's right to receive updates to the Content or receive Services pursuant to an Agreement shall immediately terminate and Customer shall immediately cease the Use of the Data Services. Customer shall immediately return to Descartes or, if Descartes so requests in writing, destroy all Descartes property provided to Customer. Within thirty (30) days after the date of any termination or expiration of the Agreement, Customer shall provide Descartes with a signed written statement by an officer of Customer certifying that Customer has returned to Descartes and/or destroyed all such items in accordance with Descartes' instructions.

11.5 Survival. Notwithstanding the foregoing and any expiration or termination of the Agreement, in addition to any provisions in the Agreement which are expressly stated to survive termination, the following provisions of the Master Terms shall survive such expiration or termination: sections 5 (Fees and Payment), 6 (Ownership of Intellectual Property), 7 (Indemnification), 8 (Disclaimer of Warranties), 9 (Limitation of Liability), 10 (Confidentiality), 11.5 (Survival), 12 (Miscellaneous), 13 (Indemnification Procedure) and 14 (Definitions).

12 MISCELLANEOUS

12.1 Audit. Customer shall, upon reasonable advance written notice and during normal business hours, provide access and allow Descartes to inspect Customer's books, records and computer systems and hardware in order to confirm Customer's compliance with any use restrictions applicable to the Data Services and/or Content.

12.2 Successors and Assigns. The Agreement shall be

binding upon and inure to the benefit of the parties to the Agreement, and their respective successors and permitted assigns.

- 12.3 Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior proposals, agreements and understandings between the parties, whether oral or written, with respect to the subject matter. Unless made in writing and executed by duly authorized representatives of all parties to the Agreement, no amendments or modifications to the Agreement shall be binding. The terms of any purchase order or other document submitted by Customer to Descartes from time to time shall be of no force or effect to the extent that they are inconsistent with or in addition to the terms of the Agreement.
- 12.4 Appendices.** Any appendices, attachments and schedules referred to in these Data Services Master Terms or the Agreement and attached hereto or thereto are incorporated herein or into the Agreement by reference to the same extent as if set forth in full in the Agreement. In the event of any inconsistency between any appendix, attachment or schedule and the main body of the Agreement, the terms and conditions of the main body of the Agreement shall prevail unless otherwise expressly provided to the contrary in such appendix, attachment or schedule or in these Data Services Master Terms.
- 12.5 Construction.** Each provision of the Data Services Master Terms and the Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Data Services Master Terms or the Agreement shall be prohibited or declared invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity and shall not invalidate the remainder of such provision or the remaining provisions of the Data Services Master Terms or the Agreement which provisions shall continue in full force and effect.
- 12.6 Waiver.** Neither party hereto shall, by mere lapse of time without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any provision of the Agreement. Failure by either party to enforce any term of the Agreement shall not be deemed a waiver of future enforcement of that or any other term in the Agreement.
- 12.7 Multiple Counterparts.** The Agreement may be executed in several counterparts all of which taken together shall constitute one single Agreement between the parties.
- 12.8 Execution by Facsimile and Transmissions in PDF & Other Document-Scanning Programs.** Execution and delivery of a facsimile transmission of the Agreement or execution and delivery of this Agreement in a PDF or a similar document-scanning file format shall constitute, for purposes of the Agreement, delivery of an executed original and shall be binding upon the party whose signature appears on the transmitted copy. Any party so executing the Agreement hereby undertakes to originally-execute and deliver to the other party hereto on request of that party a copy of the Agreement as soon as possible after execution by facsimile and execution

and transmission in PDF & other document-scanning programs.

- 12.9 Compliance With Law.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under the Agreement.
- 12.10 Notice.** Any notices, demands and other communications pursuant to the Agreement shall be in writing and shall be delivered in person, mailed by first class mail and postage prepaid (registered or certified to the extent available, and via airmail if overseas), couriered overnight, delivered by facsimile transmission or transmitted electronically in a PDF or similar document-scanning file format to the party to receive the notice at the applicable address set out in the Agreement or at such other address as may be designated in writing by the receiving party. All such notices shall be effective upon receipt.
- 12.11 Dispute Resolution.** Except for the right of either party to apply to a court of competent jurisdiction for interim or interlocutory relief or other provisional remedy to prevent irreparable harm pending final determination or to pursue a claim for infringement of any Intellectual Property Right, any dispute or controversy between the parties arising out of or relating to the Agreement (each, a "Dispute") shall be attempted to be resolved by good faith negotiations between the parties which negotiations shall not terminate until the Dispute has been considered by a senior officer of each party.
- 12.12 Export.** Customer agrees to comply with all domestic, foreign and local export laws and regulations applicable to the Data Services and Content should such export be permitted under the Agreement.
- 12.13 Assignment.** Customer may not, without the prior written consent of Descartes, assign or transfer the Agreement or any obligation incurred hereunder, including without limitation by change of effective voting control of Customer, merger, reorganization, consolidation, or sale of all or substantially all of Customer's assets and any attempt to do so in contravention of this section shall be void and of no force and effect.
- 12.14 Governing Law.** Unless expressly agreed to the contrary in an Agreement, the Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to its conflicts of law principles and the parties hereby submit to the sole and exclusive jurisdiction of the courts of the State of New York. The parties specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods.
- 12.15 Further Assurances.** The parties hereto shall with reasonable diligence do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated in the Agreement, and each party shall provide such further documents or instruments required by any other party as may be reasonably necessary or desirable to effect the purpose of the Agreement and carry out its provisions.
- 12.16 English Language Provision.** The parties acknowledge having required that the Agreement and all documents, notices and judicial proceedings entered into, given or instituted pursuant thereto, or

relating directly or indirectly thereto, be drawn up in English.

12.17 Force Majeure. "Force Majeure" means an act of God, war, natural disaster, governmental regulations, communication or utility failures or casualties. A party (the "Claiming Party") will not be in breach of this Agreement or otherwise liable to the other party (the "Non-claiming Party") for any delay in performance or any non-performance of any obligations under this agreement (and the time for performance will be extended accordingly) if and to the extent that the delay or non-performance is owing to Force Majeure. This clause only applies if (i) the Claiming Party could not have avoided the effect of the Force Majeure by taking precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all relevant factors, it ought reasonably to have taken but did not take; and (ii) to the Claiming Party has used reasonable endeavours to mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement in any other way that is reasonably practicable. The Claiming Party shall promptly notify the Non-claiming Party of the nature and extent of the circumstances giving rise to Force Majeure. If the Force Majeure in question prevails for a continuous period in excess of three (3) months after the date on which the Force Majeure begins, the Non-claiming Party shall be entitled to give notice to the Claiming Party to terminate this agreement. The notice to terminate must specify the termination date, which must be not less than thirty (30) clear days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, the agreement will terminate on the termination date set out in the notice.

12.18 No Agency. Nothing in the Agreement shall constitute or be deemed to constitute one party as agent of the other, for any purpose whatsoever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose.

12.19 Descartes is a Non-Party. All transactions concluded through Use of the Data Services or Content by Customer shall be between the Customer and the other parties to that transaction pursuant to the terms and conditions agreed upon by the Customer and those parties. Descartes shall not be a party to any transaction or contract concluded through Use of the Data Services or Content.

13 INDEMNIFICATION PROCEDURE

13.1 Notice of Indemnification. A party seeking indemnification pursuant to the Agreement (an "Indemnified Party") from or against the assertion of any claim by a third person (a "Third Person Assertion") shall give prompt notice (a "Notice of Claim") to the party from whom indemnification is sought (the "Indemnifying Party"); provided, however, that failure to give prompt notice shall not relieve the Indemnifying Party of any liability hereunder (except to the extent the Indemnifying Party has suffered actual material prejudice by such failure).

13.2 Assumption of Defense. Within twenty (20)

business days of receipt of a Notice of Claim from the Indemnified Party, the Indemnifying Party shall have the right exercisable by written notice to the Indemnified Party, to assume the defense of a Third Person Assertion. If the Indemnifying Party assumes such defense, the Indemnifying Party may select counsel, which shall be reasonably acceptable to the Indemnified Party.

13.3 Failure to Defend. If the Indemnifying Party (a) does not, within the time limited, assume the defense of any Third Person Assertion after receipt of a Notice of Claim or (b) having so assumed such defense, unreasonably fails to defend against such Third Person Assertion, then, upon twenty (20) days' written notice to the Indemnifying Party, the Indemnified Party may assume the defense of such Third Person Assertion. In such event, the Indemnified Party shall be entitled as part of its damages to indemnification for the costs of such defense.

13.4 Conflicts of Interest. If the Indemnifying Party has been advised by the written opinion of counsel to the Indemnified Party that the use of the same counsel to represent both the Indemnified Party and the Indemnifying Party would present a conflict of interest, then the Indemnified Party may select its own counsel to represent the Indemnified Party in the defense of the matter and the costs of such defense shall be borne by the Indemnifying Party. The Indemnifying Party shall be entitled to continue to handle its own representation in such matter through its own counsel.

13.5 Settlement. The party controlling the defense of a Third Person Assertion shall have the right to consent to the entry of judgment with respect to, or otherwise settle, such Third Person Assertion with the prior written consent of the other party, which consent shall not be unreasonably withheld.

13.6 Participation. Notwithstanding the assumption of the defense of a Third Person Assertion by either party in accordance with the Agreement, the other party shall agree to cooperate, as necessary, in the defense or prosecution of any Third Party Assertion and shall be entitled to participate, at its own expense, in the defense or settlement of any Third Person Assertion.

14 DEFINITIONS

14.1 "Affiliate" of a party shall mean any corporation that (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party, as the case may be. For the purposes of this definition "control" means the ability to vote greater than fifty percent (50%) of the outstanding voting securities of such corporation.

14.2 "Confidential Information" means any information disclosed by a party or an Affiliate hereunder to another party or its Affiliate hereunder relating to an Agreement or a proposed amendment to an Agreement which consists of information (including any copies, extracts, summaries or adaptations of such information), regardless of the form of its disclosure, that is either: (i) clearly marked as "Confidential" or "Proprietary" or with some other marking at the time of disclosure, (ii) if

disclosed orally is identified as such at the time of disclosure and in a written summary delivered within ten (10) days following the disclosure; or (iii) that by its nature or by the circumstances in which it is disclosed, ought reasonably be considered to be confidential. All information relating to business processes, information technology systems and requirements, products, product features, sales and marketing plans, customers, prospective customers, target markets, pricing and financial data shall be deemed to be Confidential Information of the Disclosing Party.

- 14.3 "Content"** means all materials, data, and other information collected and formatted by Descartes comprised of a compilation of governmental regulatory information (such as sanctioned party lists) and/or customs and trade information (such as global tariffs, taxes and duties, customs rulings, and regulations) as set forth in an Agreement.
- 14.4 "Customer"** shall have the meaning set forth in an Agreement.
- 14.5 "Data Services"** means those network-based services provided over the Descartes Network and identified as "Data Services" in the Agreement.
- 14.6 "Denied Party Search"** is a single per Entity requested search of the SPLs available through the DPS Service.
- 14.7 "Descartes Network"** means the physical hardware architecture and communication infrastructure operated by Descartes over which Descartes makes its network-based services generally commercially available, including the operating system, system and network interfaces, internal network, databases, disk storage, central applications, engines, warehouses and internal communications backbone.
- 14.8 "Documentation"** means any end-user instructional or supplementary materials related to the Data Services or Content, in human or machine readable form, that are provided by Descartes to Customer, but only to the extent that Descartes, in its sole discretion, makes such materials generally available for commercial distribution.
- 14.9 "DPS Service"** is a service that enables an authorized User Account to search for matches against Entities on the various Sanctioned Party Lists. Descartes reserves the right to add to, reduce, update or modify the SPL.
- 14.10 "Effective Date"** means the date that the Agreement becomes effective, as identified in the Agreement and, in the absence of a specific effective date being so set out, the date of signature of the Agreement by Descartes.
- 14.11 "Entity"** means a person, company or other identifiable entity.
- 14.12 "Fees"** means the amounts to be paid by Customer to Descartes pursuant to the Agreement.
- 14.13 "Indemnification Procedure"** means the procedure set out in section 13 of the Data Services Master Terms.
- 14.14 "Insolvency Event"** means (i) the Customer transfers the whole or a substantial part of its assets for the benefit of its creditors, is unable to pay its debts as they fall due, has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of

any statutory provision for the time being in force for the relief of insolvent debtors, convenes a meeting of creditors, enters into liquidation except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, has a receiver and/or manager or an administrator or administrative receiver appointed of its undertaking or any part of it, has a resolution passed or a petition presented to any court for its winding up or for the granting of an administration order in respect of it, suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or (ii) any other analogous step, process or procedure is taken in relation to the Customer in any jurisdiction, or the other Customer becomes subject to the laws relating to insolvency, bankruptcy or liquidation in any jurisdiction.

- 14.15 "Intellectual Property Rights"** means patent and other patent rights (including patent disclosures and applications and patent divisions, continuations, continuations-in-part, reissues, reexaminations, and extensions thereof), copyrights, and other rights in works of authorship (including registered and unregistered copyrights and unpublished works of authorship), trade secrets, trade-marks and all other forms of intellectual property.
- 14.16 "Object Code"** means computer programs assembled or compiled in magnetic or electronic binary form, which are readable and usable by machines, but not generally readable by humans without reverse-assembly, reverse-compiling, or reverse engineering.
- 14.17 "Passcodes"** means login identifications and/or passwords that are required to be input by the Customer or a Permitted User to access the Data Services or Content.
- 14.18 "Permitted Use"** means Use for internal business in accordance with and subject to the Scope of Use. Except as expressly provided in the Agreement, "Permitted Use" excludes redistribution, remarketing, loaning, renting, sublicensing or otherwise making any Data Services or Content available or accessible to any third party.
- 14.19 "Permitted User"** means those individuals or classes of individuals identified in an Agreement whom Customer may authorize to Use the Data Services or Content.
- 14.20 "Sanctioned Party List" or "SPL"** means those export screening lists of Entities to which certain trade restrictions may apply, for which Customer has contracted to receive access to under this Agreement as set out in Attachment A.
- 14.21 "Scope of Use"** means the scope for which the Data Services or Content can be Used, including restrictions on such Use, as identified in the Agreement.
- 14.22 "Services"** means Professional Services or Data Services.
- 14.23 "Subscription Fees"** means recurring, periodic Fees payable by Customer for access to the Data Services or Content, as identified in the Agreement.
- 14.24 "Support Services"** means support services in respect of the Data Services or Content subscribed to pursuant to an Agreement and described in the Agreement.

- 14.25 "System"** means a third party software application used to manage an organization's global trade, including, without limitation, Oracle GTM and SAP GTS.
- 14.26 "Term"** shall mean the period of time commencing on the Effective Date for which the Agreement is to be in force, as identified in the Agreement.
- 14.27 "Use"** means to load, execute, employ, utilize, store

or display. Use is deemed to occur where any such process occurs at any computer terminal or workstation that initiates or is activated by any such process.

- 14.28 "User Account"** means each unique authorized login account which permits one user to access mkdenial.com at a time.