

PROFESSIONAL SERVICES AGREEMENT

California, New York, Texas, Florida,

This **PROFESSIONAL SERVICES AGREEMENT** (this "Agreement"), dated as of "DATE" is made by and between _____, with its principal office located at _____ ("Client"), and "SECURITY ONDEMAND", a "STATE" corporation with its principal office located at "Address" ("Security OnDemand"). The parties, intending to be legally bound, hereby agree as follows:

1.1 **Services.** "SECURITY ONDEMAND" and Client will develop and enter into one or more statements of work incorporating a description of the specific services requested by Client (each, and as modified by the parties from time to time, a "Work Schedule"). Each Work Schedule will set forth, among other things, project scope, various project activities and tasks to be performed by the parties, Deliverables and roles and responsibilities of the parties. Each Work Schedule shall specifically identify this Agreement and indicate that it is subject to the terms hereof. To the extent there are any conflicts or inconsistencies between this Agreement and any Work Schedule, the provisions of this Agreement shall govern and control. "SECURITY ONDEMAND" will provide to Client those services described as its obligation in each Work Schedule (collectively, the "Services").

1.2 **Deliverables and Acceptance.** Deliverables, if any, under this Agreement will be as set forth under any Work Schedule. Each Work Schedule will describe, if applicable, the deliverables that "SECURITY ONDEMAND" is obligated to furnish to Client hereunder (collectively, the "Deliverables"), the acceptance criteria for each of the "SECURITY ONDEMAND" Deliverables (the "Acceptance Criteria") and the completion criteria, if any, to signify completion of each phase of a project. Client shall review, evaluate and/or test, as the case may be, each of the "SECURITY ONDEMAND" Deliverables within the applicable time period set forth in a Work Schedule (with respect to each "SECURITY ONDEMAND" Deliverable, the "Acceptance Period") to determine whether or not such Deliverable satisfies the applicable Acceptance Criteria in all material respects. If Client does not furnish a written notice to "SECURITY ONDEMAND" specifying that a "SECURITY ONDEMAND" Deliverable has failed to satisfy its Acceptance Criteria in all material respects prior to the end of the Acceptance Period therefor, then Client will be deemed to have accepted such "SECURITY ONDEMAND" Deliverable. If any "SECURITY ONDEMAND" Deliverable fails to satisfy its Acceptance Criteria in any material respect, then Client will notify "SECURITY ONDEMAND" in writing specifying the respects in which such Deliverable does not conform to the applicable Acceptance Criteria and what modifications are necessary to make it conform thereto. Thereafter, "SECURITY ONDEMAND" shall use its diligent commercially reasonable efforts to modify such "SECURITY ONDEMAND" Deliverable to so conform and the Deliverable will be resubmitted for acceptance by Client. If, after repeated attempts, "SECURITY ONDEMAND" is unable to remedy any non-conforming portion of any "SECURITY ONDEMAND" Deliverable, Client may terminate pursuant to Section 11.2 herein. Client's remedies and "SECURITY ONDEMAND"'s entire liability to Client as a result thereof will be subject to the limitations set forth in Section 9 hereof. If requested by "SECURITY ONDEMAND", Client will promptly sign and deliver to "SECURITY ONDEMAND" a mutually acceptable certificate evidencing such acceptance.

2. PROJECT SCHEDULE; CHANGES

2.1 **Project Schedule; Changes.** Each Work Schedule will set forth the projected work effort and schedule applicable to the Services. All statements and agreements concerning time are good faith estimates based upon information available and circumstances existing at the time made, and each Work Schedule is subject to equitable adjustment upon any material change in such information or circumstances, the occurrence of an excusable delay (as provided for in Section 2.2 hereof) or upon modification of the scope, timing or level of work to be performed by "SECURITY ONDEMAND". Either party will be entitled to propose changes in accordance with the change procedure provided in each Work Schedule. It is mutually acknowledged that any such change may affect the fees or charges payable to "SECURITY ONDEMAND" and/or the project schedule. Neither party shall have any obligation respecting any change until an appropriate change order or amendment to the applicable Work Schedule is executed and delivered by both parties.

2.2 **Excusable Delays and Failures.** "SECURITY ONDEMAND" will be excused from delays in performing, or from its failure to perform, hereunder to the extent that such delays or failures result from causes beyond "SECURITY ONDEMAND"'s reasonable control. A delay caused by a subcontractor engaged by "SECURITY ONDEMAND" will not be considered an excusable delay of "SECURITY ONDEMAND", unless such delay is an excusable delay that affects such subcontractor, in which case such delay will be deemed an excusable delay of "SECURITY ONDEMAND". Without limiting the generality of the foregoing, Client acknowledges that Client's failure or delay in furnishing necessary information, equipment or access to facilities, delays or failure by Client in completing tasks required of Client or in otherwise performing Client's obligations hereunder or under any Work Schedule and any assumption contained in a Work Schedule which is untrue or incorrect will be considered an excusable delay or excusable failure to perform hereunder and may impede or delay completion of the Services. Client further acknowledges that such delays or failures may result in additional charges for the Services.

3. PAYMENT

3.1 **Project Fees and Reimbursable Items.** Client shall pay to "SECURITY ONDEMAND" the fees and other compensation set forth in each Work Schedule. Client will also reimburse "SECURITY ONDEMAND" for all reasonable out-of-

pocket travel, living and other ancillary expenses paid or incurred by "SECURITY ONDEMAND" in connection with the Services and any other reimbursable items set forth in each Work Schedule. "SECURITY ONDEMAND" will have no obligation to perform any Services when any amount required to be paid by Client remains due and unpaid beyond the date such amount is due. Any suspension of Services by "SECURITY ONDEMAND" as a result of Client's failure to make payment as required will extend the due dates of "SECURITY ONDEMAND" Deliverables and other Services to the extent impacted by such suspension or delay.

3.2 **Invoices; Payments.** "SECURITY ONDEMAND" will invoice Client for all fees, charges and reimbursable items payable to "SECURITY ONDEMAND" on a monthly basis as such payments are due. Client will pay the invoiced amount in full within thirty (30) days of the date of each invoice, without deduction, setoff, defense or counterclaim for any reason. Client will pay interest, at a rate equal to the lesser of 1.5% per month (or part thereof) or the maximum legal rate permitted, on the amount shown on any invoice that is paid later than thirty (30) days after the date of the invoice.

3.3 **Taxes.** Client agrees to pay amounts equal to any Federal, state or local sales, use, excise, privilege or other taxes or assessments, however designated or levied, relating to any amounts payable by Client to "SECURITY ONDEMAND" hereunder, this Agreement or any Services provided by "SECURITY ONDEMAND" to Client pursuant hereto and any taxes or amounts in lieu thereof paid or payable by "SECURITY ONDEMAND", exclusive of taxes based on "SECURITY ONDEMAND"'s net income or net worth. "SECURITY ONDEMAND" will invoice Client for any taxes payable by Client that are required to be collected by "SECURITY ONDEMAND" pursuant to any applicable law, rule, regulation or other requirement of law. "SECURITY ONDEMAND" shall clearly indicate on the invoices sent to Client the amount billed for any service provided within the United States, by state, and the amount billed for any service provided outside the United States.

4. **OBLIGATIONS OF THE PARTIES**

4.1 **Working Environment.** For any Services to be provided by "SECURITY ONDEMAND" at any of Client's sites, Client shall provide "SECURITY ONDEMAND"'s personnel with (i) a suitable and adequate work environment, including space for work and equipment for performance of the Services; (ii) access to and use of Client's facilities and relevant information, including software, hardware and documentation, and Client will provide and maintain PC workstations for such personnel's use and assist such personnel in a timely manner by promptly correcting any hardware or software problems that would affect the performance of Services; and (iii) any other items set forth in each Work Schedule.

4.2 **Client's Personnel Commitment.** Client will ensure that all Client's personnel who may be necessary or appropriate for the successful implementation of the Services will, on reasonable notice, (i) be available to assist "SECURITY ONDEMAND"'s personnel by answering business, technical and operational questions and providing requested documents, guidelines and procedures in a timely manner; (ii) participate in the Services as outlined in the Work Schedule; (iii) participate in progress and other Service related meetings; (iv) contribute to software and system testing; and (v) be available to assist "SECURITY ONDEMAND" with any other activities or tasks required to complete the Services in accordance with the Work Schedule.

4.3 **Visa/Work Permits.** In the event it is necessary for "SECURITY ONDEMAND" to obtain visas or work permits for "SECURITY ONDEMAND" personnel, Client will cooperate with "SECURITY ONDEMAND" by taking all reasonably necessary actions to facilitate "SECURITY ONDEMAND"'s efforts, including, but not limited to, providing documentation indicating the nature and location of the work to be performed, the necessity of the work to be performed, and other documentation as may be reasonably required and related to this Agreement, and posting such notices as may be legally required.

4.4 **Export Control.** The term "technical data" used in this section is defined in the United States Export Administration Regulations ("Regulations"). The parties acknowledge that to the extent any tangible or intangible technical data provided under this Agreement are subject to US export laws and the Regulations, each party agrees that it will not use, distribute, transfer, or transmit technical data provided by the other party under this Agreement except in compliance with the Regulations. Each party shall comply with the Foreign Corrupt Practices Act, as amended, and the rules and regulations thereunder.

5. **OWNERSHIP**

5.1 **Ownership of "SECURITY ONDEMAND" Deliverables.** "SECURITY ONDEMAND" agrees that upon payment in full, the "SECURITY ONDEMAND" Deliverables shall be the property of, and ownership thereof shall vest in, Client. Ownership of Deliverables excludes "SECURITY ONDEMAND" Proprietary Intellectual Property, as defined below, and any third party software that is incorporated into the Deliverables. "SECURITY ONDEMAND" agrees to take all reasonably necessary actions which are necessary to assure the conveyance to Client of all right, title and interest in, to and under any "SECURITY ONDEMAND" Deliverables, including copyright. The cost of conveying such rights shall be at Client's expense.

5.2 **Grant of License.** "SECURITY ONDEMAND" hereby grants to Client, a royalty-free, worldwide, non-exclusive right and license to client only to that necessary "SECURITY ONDEMAND" Proprietary Intellectual Property, if any, that is

incorporated into the "SECURITY ONDEMAND" Deliverables, for use only in conjunction with the "SECURITY ONDEMAND" Deliverables, and only for Client's internal use.

5.3 **Residual Rights.** Notwithstanding the above, Client agrees that "SECURITY ONDEMAND", its employees and agents shall be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any Services performed hereunder, subject to its obligations respecting Client's Confidential Information pursuant to Section 6. Client understands and agrees that "SECURITY ONDEMAND" may perform similar services for third parties using the same personnel that "SECURITY ONDEMAND" may utilize for rendering Services for Client hereunder, subject to "SECURITY ONDEMAND" obligations respecting Client's Confidential Information pursuant to Section 6.

5.4 **"SECURITY ONDEMAND" Proprietary Intellectual Property.** Client acknowledges that as part of performing the Services, "SECURITY ONDEMAND" personnel may utilize proprietary software, methodologies, tools, specifications, drawings, sketches, models, samples, records, documentation, works of authorship or creative works, ideas, knowledge or data which has been originated or developed by the personnel of "SECURITY ONDEMAND" or its affiliates or by third parties under contract to "SECURITY ONDEMAND" to develop same, or which has been purchased by, or licensed to, "SECURITY ONDEMAND" (collectively, "SECURITY ONDEMAND" Proprietary Intellectual Property"). "SECURITY ONDEMAND" Proprietary Intellectual Property includes, but is not limited to, "SECURITY ONDEMAND" methodologies for managing Year 2000 projects and the Impact Analyzer™ and Viewer™, Code Changers™, and Data Migration Program Generator™ tools and any new or improved methodologies or tools developed by "SECURITY ONDEMAND" during the course of any project hereunder which are not explicitly included with Client Deliverables. Client agrees that "SECURITY ONDEMAND" Proprietary Intellectual Property is the sole property of "SECURITY ONDEMAND" (or its licensor) and that "SECURITY ONDEMAND" (or its licensor) will at all times retain sole and exclusive title to and ownership thereof. Except as expressly provided above, nothing contained in this Agreement or otherwise shall be construed to grant to Client any right, title, license or other interest in, to or under any "SECURITY ONDEMAND" Proprietary Intellectual Property (whether by estoppel, implication or otherwise). Client agrees to take all reasonably necessary actions, which are necessary to assure the conveyance of all right, title and interest in, to and under any "SECURITY ONDEMAND" Proprietary Intellectual Property or any enhancement thereof, including copyright, to "SECURITY ONDEMAND" (or its licensor). The cost of conveying such rights shall be at "SECURITY ONDEMAND"'s expense.

6. CONFIDENTIAL INFORMATION

6.1 **Confidentiality Obligations.** Client and "SECURITY ONDEMAND" shall each (i) hold the Confidential Information (as defined below) of the other in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care, and (ii) not use the Confidential Information of the other party for any purpose whatsoever except as expressly contemplated under this Agreement or any Work Schedule. Each party shall disclose the Confidential Information of the other only to those of its employees having a need to know such Confidential Information and shall take all reasonable precautions to ensure that its employees comply with the provisions of this Section 6.1.

6.2 The term "Confidential Information" shall mean any and all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by either party (the "disclosing party") to the other (the "receiving party") in connection with the efforts contemplated hereunder, including (i) all trade secrets, (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any information related thereto, and (iii) information relating to business plans, sales or marketing methods and customer lists or requirements.

6.3 The obligations of either party under this Section 6.1 will not apply to information that the receiving party can demonstrate (i) was in its possession at the time of disclosure and without restriction as to confidentiality, (ii) at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by the receiving party, (iii) has been received from a third party without restriction on disclosure and without breach of agreement by the receiving party, (iv) is independently developed by the receiving party without regard to the Confidential Information of the other party, or (v) is required to be disclosed by law or order of a court of competent jurisdiction or regulatory authority, provided that the receiving party shall furnish prompt written notice of such required disclosure and reasonably cooperate with the disclosing party, at the disclosing party's expense, in any effort made by the disclosing party to seek a protective order or other appropriate protection of its Confidential Information.

7. INDEMNIFICATION

7.1 **Intellectual Property Rights Indemnity.** "SECURITY ONDEMAND" and Client (in such case, the "indemnifying party") each agree to indemnify and hold harmless the other (in such case, the "indemnified party") from and against any costs and

damages awarded against the indemnified party by a court pursuant to a final judgment as a result of, and defend the indemnified party against, any claim of infringement of any U.S. patent or copyright or misappropriation of any trade secret related to a "SECURITY ONDEMAND" Deliverable (in the case of indemnification by "SECURITY ONDEMAND") or "SECURITY ONDEMAND"'s possession, use or modification of any software, documentation, data or other property provided by Client (in the case of indemnification by Client).

7.2 **Intellectual Property Rights Exclusions.** "SECURITY ONDEMAND" shall have no obligation under Section 7.1 or other liability for any infringement or misappropriation claim resulting or alleged to result from: (1) use of the "SECURITY ONDEMAND" Deliverables or any part thereof in combination with any equipment, software or data not approved for by "SECURITY ONDEMAND", or use in any manner for which the Deliverable was not designed, or if the Deliverable has been modified or altered by a person or entity other than "SECURITY ONDEMAND"; (2) any aspect of Client's software, documentation or data which existed prior to "SECURITY ONDEMAND"'s performance of Services; (3) any claim arising from any instruction, information, design or other materials furnished by any third party including Client to "SECURITY ONDEMAND" hereunder; or (4) Client's continuing the allegedly infringing activity after being notified thereof or after being informed and provided with modifications that would have avoided the alleged infringement. This section 7 sets forth the exclusive remedy and entire liability and obligation of each party with respect to intellectual property infringement or misappropriation claims, including patent or copyright infringement claims and trade secret misappropriation.

7.3 **Infringement Remedies.** In the event of an infringement or misappropriation claim as described in Section 7.1 above arises, or if "SECURITY ONDEMAND" reasonably believes that a claim is likely to be made, "SECURITY ONDEMAND", at its option and in lieu of indemnification, may: (i) modify the applicable "SECURITY ONDEMAND" Deliverables provided under the Services so that they become non-infringing but functionally equivalent; or (ii) replace the applicable "SECURITY ONDEMAND" Deliverables with material that is non-infringing but functionally equivalent; or (iii) obtain for Client the right to use such "SECURITY ONDEMAND" Deliverables upon commercially reasonable terms; or (iv) remove the infringing or violative "SECURITY ONDEMAND" Deliverables and refund to Client the fees received for such "SECURITY ONDEMAND" Deliverables that are the subject of such a claim based on a five (5) year straight line depreciation.

7.4 **Personal Injury and Property Damage Indemnity.** "SECURITY ONDEMAND" and Client each agree to indemnify, defend and hold harmless the other from and against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, arising out of third party claims for bodily injury or damage to real or tangible personal property, not including software, data, and documentation, to the extent caused directly and proximately by the gross negligence or willful misconduct of the indemnifying party, its employees or agents.

7.5 **Indemnification Procedures.** The obligations to indemnify, defend and hold harmless set forth above in this Section 7 will not apply to the extent the indemnified party was responsible for giving rise to the matter upon which the claim for indemnification is based and will not apply unless the indemnified party (i) promptly notifies the indemnifying party of any matters in respect of which the indemnity may apply and of which the indemnified party has knowledge; (ii) gives the indemnifying party full opportunity to control the response thereto and the defense thereof, including any agreement relating to the settlement thereof, provided that the indemnifying party shall not settle any such claim or action without the prior written consent of the indemnified party (which shall not be unreasonably withheld or delayed); and (iii) cooperates with the indemnifying party, at the indemnifying party's cost and expense in the defense or settlement thereof. The indemnified party may participate, at its own expense, in such defense and in any settlement discussions directly or through counsel of its choice on a monitoring, non-controlling basis.

8. **WARRANTY**

8.1 **Limited Warranty.** With respect to any "SECURITY ONDEMAND" Deliverable or Services, "SECURITY ONDEMAND" warrants the following for a period of thirty (30) days following final acceptance by Client of the particular "SECURITY ONDEMAND" Deliverable or the performance of such other Services (the "Warranty Period"):

- (a) the applicable Services rendered hereunder will be performed by qualified personnel;
- (b) the Services performed will substantially conform to any applicable requirements set forth in the Work Schedule;
- (c) the "SECURITY ONDEMAND" Deliverables will materially conform to the corresponding specifications for such "SECURITY ONDEMAND" Deliverables; as set forth in the applicable Work Schedule.

8.2 **Remedies.** "SECURITY ONDEMAND" does not warrant that any "SECURITY ONDEMAND" Deliverable will operate uninterrupted or error-free, provided that "SECURITY ONDEMAND" shall remain obligated pursuant to this Section 8. In the event that any "SECURITY ONDEMAND" Deliverable or Service fails to conform to the foregoing warranty in any material respect, the sole and exclusive remedy of Client will be for "SECURITY ONDEMAND", at its expense, to promptly use commercially reasonable efforts to cure or correct such failure. Upon failure of the foregoing, Client's remedies, and "SECURITY ONDEMAND"'s entire liability, as a result of such failure, shall be subject to the limitations set forth in Section 9 hereof. The foregoing warranty is

expressly conditioned upon (i) Client providing “SECURITY ONDEMAND” with prompt written notice of any claim thereunder prior to the expiration thereof, which notice must identify with particularity the non-conformity; (ii) Client’s full cooperation with “SECURITY ONDEMAND” in all reasonable respects relating thereto, including, in the case of modified software, assisting “SECURITY ONDEMAND” to locate and reproduce the non-conformity; and (iii) with respect to any “SECURITY ONDEMAND” Deliverable, the absence of any alteration or other modification of such “SECURITY ONDEMAND” Deliverable by any person or entity other than “SECURITY ONDEMAND”.

8.3 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8.1, “SECURITY ONDEMAND” DOES NOT MAKE ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER SUCH WARRANTY BE EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY WARRANTY FROM COURSE OF DEALING OR USAGE OF TRADE.

8.4 **Responsibility of Client.** In the event that Client asserts any claim for warranty services hereunder and such claim relates to any matter that is determined not to be “SECURITY ONDEMAND”’s responsibility hereunder (including any problem with Client’s computer hardware or software that was not caused by any Services performed by “SECURITY ONDEMAND”), Client will be responsible to pay “SECURITY ONDEMAND” for all costs incurred for all evaluation, correction or other services performed by “SECURITY ONDEMAND” relating to such claim on a time and materials basis at “SECURITY ONDEMAND”’s then standard billing rates.

9. LIMITATION OF LIABILITY AND REMEDIES

9.1 **Exclusion of Damages.** Except as expressly provided herein, in no event shall either party be liable to the other party or any other person or entity for any special, exemplary, indirect, incidental, consequential or punitive damages of any kind or nature whatsoever (including, without limitation, lost revenues, profits, savings or business) or loss of records or data, whether in an action based on contract, warranty, strict liability, tort (including, without limitation, negligence) or otherwise, even if such party has been informed in advance of the possibility of such damages or such damages could have been reasonably foreseen by such party.

9.2 **Total Liability.** In no event shall either party's liability to the other party or any other person or entity arising out of or in connection with this Agreement or the Services exceed, in the aggregate, the total fees paid by Client to “SECURITY ONDEMAND” for the particular Services or “SECURITY ONDEMAND” Deliverable with respect to which such liability relates (or in the case of any liability not related to a particular portion of the Services, the total fees paid by Client to “SECURITY ONDEMAND” under the applicable Work Schedule), whether such liability is based on an action in contract, warranty, strict liability or tort (including, without limitation, negligence) or otherwise. “SECURITY ONDEMAND” will not be liable for any damages claimed by Client based upon any third-party claim, except for claims by “SECURITY ONDEMAND”’s subcontractors against Client relating to work performed at “SECURITY ONDEMAND”’s request under this Agreement. The limitations specified in this Section 9 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose. No action arising out of or in connection with this Agreement or any of the Services or Products provided hereunder may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for nonpayment of any monies due “SECURITY ONDEMAND” hereunder may be brought within two (2) years of the date of the termination of performance under this Agreement.

10. EMPLOYEES

10.1 **No Employee Relationship.** “SECURITY ONDEMAND”’s employees are not and shall not be deemed to be employees of Client. “SECURITY ONDEMAND” shall be solely responsible for the payment of all compensation to its employees, including provisions for employment taxes, workmen’s compensation and any similar taxes associated with employment of “SECURITY ONDEMAND”’s personnel. “SECURITY ONDEMAND”’s employees shall not be entitled to any benefits paid or made available by Client to its employees.

10.2 **Non-Solicitation Obligations.** During the term hereof and for a period of twelve (12) months thereafter, neither party shall, directly or indirectly, solicit for employment or employ, or accept services provided by, any employee, officer or independent contractor of the other party who performed any work in connection with or related to the Services.

10.3 **Subcontractors.** “SECURITY ONDEMAND” may engage third parties to furnish services in connection with the Services or Products, provided that such third parties have executed appropriate confidentiality agreements with “SECURITY ONDEMAND”. In addition, Services may be performed by affiliates of “SECURITY ONDEMAND”. No such engagement will relieve “SECURITY ONDEMAND” from any of its obligations under this Agreement.

11. TERM AND TERMINATION

11.1 **Term.** The term of this Agreement will commence on the date first written above and will remain and continue in

effect, unless sooner terminated, as provided hereunder.

11.2 **Termination.** This Agreement may be terminated by either party (the “non-breaching party”) upon written notice to the other party if any of the following events occur by or with respect to such other party (the “breaching party”): (i) the breaching party commits a material breach of any of its obligations hereunder and fails to cure such breach within the time period set forth in Section 11.3 hereof or fails to reach an agreement with the non-breaching party regarding the cure thereof; or (ii) any insolvency of the breaching party, any filing of a petition in bankruptcy by or against the breaching party, any appointment of a receiver for the breaching party, or any assignment for the benefit of the breaching party’s creditors.

11.3 If either party commits a material breach, as set forth above, and such party fails to reach an agreement with the other party regarding cure of such breach within thirty (30) days after receipt of notice of such breach, the non-breaching party may, in addition to other remedies, terminate this Agreement in whole or in part.

11.4 **Termination by “SECURITY ONDEMAND”.** In the event “SECURITY ONDEMAND” terminates this Agreement pursuant to this Section 11, “SECURITY ONDEMAND” will be entitled to recover payment for all Services rendered through the date of termination (including for work in progress), those costs incurred in anticipation of performance of the Services to the extent they cannot reasonably be eliminated, any other termination costs “SECURITY ONDEMAND” incurs, including, but not limited to, cancelling any secondary contracts it undertook in anticipation of performance of the Services, any reasonable wind-down expenses, any reasonable expenses incurred in reallocating “SECURITY ONDEMAND” personnel to other projects, and any other actual damages suffered by “SECURITY ONDEMAND”.

11.5 **Termination by Client.** In the event Client terminates this Agreement pursuant to this Section 11, Client may retain all “SECURITY ONDEMAND” Deliverables delivered to or for the benefit of Client hereunder through the date of termination, upon payment by Client for all Deliverables and any other Services rendered through the date of termination (including work in progress). In addition, Client may recover its actual damages, subject to the limitations set forth in Section 9 hereof.

11.6 **Survival.** In the event of termination or upon expiration of this Agreement, Sections 3, 5, 6, 7, 8 (subject to the expiration of any warranty period), 9, 11, and 12 hereof will survive and continue in full force and effect.

12. MISCELLANEOUS

12.1 This Agreement will be governed by the laws of the State of California, without reference to the principles of conflicts of law. The parties acknowledge and agree that this Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code of any State having jurisdiction. Neither party may assign or otherwise transfer any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, except either party may, upon prior written notice to the other party (but without any obligation to obtain the consent of such other party), assign this Agreement or any of its rights hereunder to any affiliate of such party, or to any entity who succeeds (by purchase, merger, operation of law or otherwise) to all or substantially all of the capital stock, assets or business of such party, if such entity agrees in writing to assume and be bound by all of the obligations of such party under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assignees. All notices required by this Agreement will be given in writing to the other party and delivered by registered mail, international air courier, facsimile, or the equivalent. Notices will be effective when received as indicated on the facsimile, registered mail, or other delivery receipt. All notices will be given by one party to the other at its address stated on the first page of this Agreement unless a change thereof previously has been given to the party giving the notice. This Agreement may be modified only by a written amendment executed by duly authorized officers or representatives of both parties. This Agreement may be executed in several counterparts, each of which will be deemed an original, and all of which taken together will constitute one single Agreement between the parties with the same effect as if all the signatures were upon the same instrument. This Agreement and all Work Schedules attached hereto constitute the complete and exclusive statement of the agreement between the parties and supersedes all proposals, oral or written, and all other prior or contemporaneous communications between the parties relating to the subject matter herein.

IN WITNESS WHEREOF, “SECURITY ONDEMAND” and Client have caused this Agreement to be signed and delivered by their duly authorized officers, all as of the date first herein above written.

“SECURITY ONDEMAND” Technologies, Inc

Client

By: _____
Name:
Title:

By: _____
Name:
Title: