



## STANDARD CHARTER MANAGEMENT TERMS AND CONDITIONS

THESE STANDARD CHARTER MANAGEMENT TERMS AND CONDITIONS shall apply to any Agreement (as defined below) by and between The Marchi Corporation (“MARCHI”) with facilities located at 1551 Quivira Road, San Diego, California 92109 and OWNER (as defined below).

### ARTICLE I: TERMS AND CONDITIONS

Section 1.01 – Agreement: The AGREEMENT executed by MARCHI and OWNER (as defined thereunder) shall apply and such Agreement shall incorporate and include these STANDARD CHARTER MANAGEMENT TERMS AND CONDITIONS incorporated therein by reference. For purposes of this Agreement, the term “Agreement” shall include the Agreement and these STANDARD CHARTER MANAGEMENT TERMS AND CONDITIONS.

### ARTICLE II: DEFINITIONS

Section 2.01 – Definitions: The definitions set forth in the Agreement shall apply. The following definitions shall also apply:

- (1) Acceptance Date: The term “Acceptance Date” for the Boat shall mean the date the Boat is accepted by MARCHI in accordance with Section 4.01 of the Agreement.
- (2) Agreement: The term “Agreement” shall mean that certain Agreement signed by MARCHI and OWNER.
- (3) Authorized Person: The term “Authorized Person” shall mean employees and contractors of the Receiving Party who agree in writing to maintain the confidentiality of the Confidential Information.
- (4) Boat: The term “Boat” shall mean the water vessel defined as the Boat in the Fee Schedule.
- (5) Boat Slip: The term “Boat Slip” shall mean the docking facilities for the Boat as determined by MARCHI.
- (6) Cancellation Notice: The term “Cancellation Notice” shall mean that written notice from one party to the other party seeking to cancel the Agreement because of breach by such other party.
- (7) Charter Services: The term “Charter Services” shall mean those services set forth in Article V of the Agreement as provided by Marchi to a Guest.
- (8) Confidential Information: The term “Confidential Information” shall mean all written information disclosed by the Disclosing Party to the Receiving Party that is identified by the Disclosing Party as confidential at the time such information comes into the possession or knowledge of the Receiving Party and that is not: (i) already known to the Receiving Party; (ii) in the public domain; (iii) conveyed to the Receiving Party by a third party who is not subject to restrictions to the disclosure or use of such information; (iv) released by the Disclosing Party without restriction; (v) independently developed by the Receiving Party; and (vi) required by court order to be released by the Receiving Party.
- (9) OWNER: The “OWNER” shall mean the party that signs on behalf of OWNER under the Agreement.
- (10) Defect: The term “Defect” shall mean maintenance issues that substantially impair the performance, utility, and functionality of the Boat as represented in the Documentation.
- (11) Defect Notice: The term “Defect Notice” shall mean that certain written notice from MARCHI to OWNER identifying Defects, documenting required Repairs and providing estimated costs for such Repairs.
- (12) Delivery Date: The term “Delivery Date” shall mean the date the Boat is delivered to MARCHI by OWNER and available for initial inspection and acceptance by MARCHI.
- (13) MARCHI: The term “MARCHI” shall mean The Marchi Corporation as set forth in the Statement of Parties (above).



- (14) Documentation: The term “Documentation” shall mean those certain written specifications for the Boat as defined by the manufacturer and builder of the Boat.
- (15) Disclosing Party: The term “Disclosing Party” shall mean the party to the Agreement who discloses Confidential Information to the other party to the Agreement.
- (16) Effective Date: The term “Effective Date” shall mean the date the Agreement is signed by both MARCHI and OWNER, whichever is later.
- (17) Fee: The term “Fee” shall mean the Fee defined in the Agreement.
- (18) Fee Schedule: The term “Fee Schedule” shall mean the Fee Schedule attached to the Agreement.
- (19) Guest: The term “Guest” shall mean a party that accepts an invitation from MARCHI to charter the Boat, receives Charter Services and rides the Boat during a Charter Outing conducted by MARCHI for or on behalf of such Guest.
- (20) Maintenance Services: The term “Maintenance Services” shall mean those certain maintenance services set forth in Article IV of the Agreement.
- (21) Nonpayment Notice: The term “Nonpayment Notice” shall mean that written notice from MARCHI to OWNER alleging nonpayment under the Agreement and seeking to cancel the Agreement unless payment is rendered as provided hereunder.
- (22) Charter Outing: The term “Charter Outing” shall mean a single consecutive period of time during which the Boat is navigated through waterway and open water by MARCHI for the benefit of Guests riding on (and occupying) the Boat during such navigation.
- (23) Charter Receipts: The term “Charter Receipts” shall mean monies paid to MARCHI by Guests (or on behalf of Guests) for Charter Services (net of advance deposits and cost reimbursements).
- (24) Charter Share: The term “Charter Share” shall mean the percentage of Charter Receipts to be paid to OWNER by MARCHI as set forth under the Agreement.
- (25) Receiving Party: The term “Receiving Party” shall mean the party to the Agreement who receives Confidential Information from the other party to the Agreement.
- (26) Repair: The term “Repair” shall mean fixes to Defects as set forth in the applicable Defect Notice.
- (27) Season: The term “Season” shall mean the period of time each calendar year starting on May 1<sup>st</sup> and ending on September 30<sup>th</sup> (inclusive).
- (28) Services: The term “Services” shall mean Maintenance Services and Charter Services.
- (29) Term: The term “Term” shall mean a period of time commencing on the Effective Date and continuing for the period of time defined in the Agreement or until the Agreement is terminated or canceled as provided hereunder (whichever is earlier).
- (30) Termination Notice: The term “Termination Notice” shall mean that written notice from OWNER to MARCHI seeking to terminate the Agreement.

### **ARTICLE III: SCOPE OF SERVICES**

Section 3.01 – Charter Services: During the Term, MARCHI shall provide Charter Services in accordance with the terms and conditions of Article V of the Agreement.

Section 3.02 – Maintenance Services: During the Term, MARCHI shall provide Maintenance Services in accordance with the terms and conditions of Article IV of the Agreement.

Section 3.05 – Personnel: MARCHI shall designate qualified employees and contractors of MARCHI to perform the Services who are experienced in boat maintenance and charter services. The personnel assigned to perform the Services shall be determined solely by MARCHI.



Section 3.06 – Cooperation: MARCHI and OWNER hereby acknowledge that successful performance of the Services shall require OWNER to cooperate with MARCHI in good faith and to provide information as may be requested from time to time. OWNER hereby agrees to provide such good faith cooperation and information. OWNER shall provide all of the documentation and information required for MARCHI to operate the Boat and to manage system repairs, upgrades, preventive maintenance for the Boat including loan, tax, and insurance documentation and authorizations required for MARCHI to act on behalf of OWNER in maintaining compliance with all loan, tax and insurance requirements.

#### **ARTICLE IV: MAINTENANCE SERVICES**

Section 4.01 – Acceptance: MARCHI shall inspect the Boat within ten days next succeeding the Delivery Date. MARCHI shall identify Defects and provide Owner with Defect Notice documenting required Repairs. OWNER shall authorize MARCHI to complete the Repairs within thirty days of receiving such Defect Notice. The Boat shall be accepted by MARCHI for Services under this Agreement on the Acceptance Date.

Section 4.02 – Inspections: Starting on the thirtieth day next succeeding the Acceptance Date and each monthly recurrence thereafter, MARCHI shall inspect the Boat, identify Defects and provide Owner with Defect Notice documenting required Repairs. OWNER shall authorize MARCHI to complete the Repairs within thirty days of receiving such Defect Notice.

Section 4.03 – Boat Slip: Except as otherwise authorized by MARCHI, the Boat shall be docked at the Boat Slip starting on the Acceptance Date and for the remainder of the Term.

Section 4.04 – Cleaning: Starting on the Acceptance Date, MARCHI shall clean the interior of the Boat and wash the exterior hull and deck of the Boat after each Charter Outing. Starting on the Acceptance Date, MARCHI shall wash the exterior of the Boat twice per month. Starting on the Acceptance Date, MARCHI shall wax the top and hull of the Boat once each year.

Section 4.05 – Engine: MARCHI shall change the Boat engine oil and oil filter and engine fuel filter on each anniversary of the Acceptance Date or as the manufacturer recommends.

Section 4.06 – System: Starting on the Acceptance Date, MARCHI shall manage Boat Repairs, upgrades, and preventive maintenance.

Section 4.07 – Administrative: Starting on the Acceptance Date, MARCHI shall manage timely payment on behalf of OWNER of all Boat loan, tax, registration and insurance obligations of OWNER. OWNER hereby authorizes MARCHI to act on behalf of OWNER for such purposes and shall provide all necessary documentation required by MARCHI to deliver and perform such services.

Section 4.08 – Repairs: OWNER hereby authorizes MARCHI to conduct inspections and to engage contractors and vendors as required to complete Repairs. All costs incurred to complete such Repairs shall be invoiced to OWNER without mark-up by MARCHI, and OWNER shall pay such costs within thirty days of receiving such invoice. Any failure or refusal of OWNER to complete Repairs or to pay for such Repairs shall constitute cause for cancellation of this Agreement by MARCHI under the terms of Section 7.04.

#### **ARTICLE V: CHARTER SERVICES**

Section 5.01 – Charter Rights: OWNER hereby grants MARCHI the sole and exclusive license to use the Boat to provide Charter Services to Guests and to conduct Charter Outings as scheduled by MARCHI. All Charter Outings shall be subject to the discretion of MARCHI. OWNER hereby authorizes MARCHI to operate the Boat in waterways and open waters as determined by MARCHI (subject to applicable laws and regulations) in providing Charter Services, inspecting and testing the Boat and conducting Charter Outings.

Section 5.02 -- Operation: All Charter Outings and Boat operations shall be conducted by a licensed boat captain and subject to the approval of MARCHI and OWNER jointly. MARCHI shall have sole and exclusive authority to select the licensed boat captain for a Charter Outing.

Section 5.03 -- Charter Pricing: MARCHI shall have the sole and exclusive authority and right to determine pricing and charges for Charter Outings. All Charter receipts shall be paid to MARCHI and MARCHI shall collect such Charter Receipts.

Section 5.04 -- Marketing: All marketing for Charter Services shall be determined by MARCHI and



OWNER jointly and subject to the final approval of MARCHI.

Section 5.05 -- Trademark: OWNER hereby authorizes MARCHI to post MARCHI trademarks, signs and logos on the Boat during the Term under the Agreement. Such placement on the Boat shall be subject to the sole and exclusive discretion of MARCHI.

Section 5.06 -- Owner Access: OWNER access and use of the Boat, for less than 24 hours, shall be subject to charter engagement schedules. The OWNER shall return the Boat to the Boat Slip ready for charter immediately after use. For access and use of the Boat over 24 hours, fourteen-day notice shall be given to MARCHI. OWNER access and use of the Boat during the Season shall be by charter engagement with MARCHI at standard charter fees or as agreed by MARCHI and OWNER.

Section 5.07 -- Additions: MARCHI may add additional fixtures or additional options to the Boat (in each such case, an "Addition"), provided that: (a) each such Addition shall be designed for use with the Boat to which it is being added; (b) the value or usefulness of the Boat shall not be reduced thereby; (c) the addition of the Addition shall not result in the possible cancellation of any warranty or maintenance agreement with respect to the Boat; and (d) such Addition can be readily removed from the Boat at or prior to the termination of this Agreement. Such Addition shall be the property of MARCHI.

## **ARTICLE VI: PAYMENTS AND FEES**

Section 6.01 -- Fees: OWNER shall pay the Fee to MARCHI as set forth in the Agreement.

Section 6.02 -- Share: MARCHI shall pay the Charter Share to OWNER as set forth in the Agreement. In making payment of the Charter Share to OWNER, MARCHI shall have the right to reduce the amount of the Charter Share by any outstanding amounts owed to MARCHI by OWNER as well as any and all costs incurred by MARCHI on behalf of OWNER which have not been reimbursed by OWNER as of the payment date of such Charter Share.

Section 6.03 -- Cost: OWNER shall pay all costs and expenses incurred by MARCHI in connection with performing Services under the Agreement. Such costs and expenses shall include (without limitation) cost of Repairs, upgrades and preventive maintenance as

well as all Boat loan, tax, insurance and registration expenses. Such expenses and costs shall be subject to the prior approval of OWNER and shall be invoiced to OWNER by MARCHI without mark-up.

Section 6.04 -- Invoicing and Payment: MARCHI shall invoice OWNER for Fees and costs incurred by MARCHI. OWNER shall pay any such invoice in full within thirty (30) days of receipt.

Section 6.05 -- Taxes: OWNER shall pay any and all applicable taxes incurred in connection with Services performed under the Agreement including (without limitation) any applicable sales or use taxes and any applicable personal property taxes (excluding income taxes assessed against MARCHI).

Section 6.06 -- Late Fee: Any amount which is not paid by OWNER when due shall be increased by a late charge equal to 1% of such unpaid amount for each month (12% per annum) in which such amount is due and not paid. Late fees shall not be compounded.

## **ARTICLE VII: TERMINATION**

Section 7.01 -- Termination Limitations: The Agreement shall only be terminated or canceled as provided under this Article VIII.

Section 7.02 -- Term: The Agreement shall be valid for the Term.

Section 7.03 -- Termination: Either party may terminate the Agreement for convenience by providing One-Hundred Eighty Days (180) days Termination Notice to the other party.

Section 7.04 -- Cancellation: If a party violates its obligations under the Agreement, the other party may cancel the Agreement by sending Cancellation Notice describing the noncompliance to the non-complying party. Upon receiving Cancellation Notice, the non-complying party shall have thirty (30) days from the date of such notice to cure any such noncompliance or, if such noncompliance cannot be cured within such thirty day period, to begin curing such noncompliance in good faith. If such noncompliance is not cured within the required thirty (30) day period or (if the noncompliance cannot be cured within the thirty day period) the non-complying party does not begin curing such noncompliance within such thirty day period, the party providing Cancellation Notice shall have the right to cancel the Agreement as of the thirty-first (31<sup>st</sup>) day after the date of the Cancellation Notice.



Section 7.05 – Unbilled Expenses: Upon termination or cancellation, MARCHI shall be entitled to reimbursement of unbilled expenses up to the date of written Termination Notice or Cancellation Notice.

Section 7.06 – Nonpayment: Notwithstanding any provision to the contrary, OWNER failure to pay an invoice when due or to reimburse MARCHI for the costs of a Repair shall be sufficient cause for cancellation of the Agreement by MARCHI as provided hereunder. MARCHI shall exercise such right of cancellation by submitting Nonpayment Notice to OWNER. Upon receipt of Nonpayment Notice, OWNER shall have twenty (20) days to cure the Nonpayment. If OWNER fails to cure the nonpayment within such twenty (20) days, MARCHI shall have the right to cancel the Agreement as of the date established by MARCHI in the Nonpayment Notice.

Section 7.07–Return: Upon termination or cancellation of the Agreement, MARCHI shall return to OWNER all property and Documentation owned by OWNER in the possession or control of MARCHI. Upon termination or cancellation of the Agreement, OWNER shall remove the Boat from the Boat Slip. This Section 7.07 shall survive termination and cancellation of the Agreement.

Section 7.08 – Final Accounting: Upon termination or cancellation of the Agreement, OWNER shall not be entitled to a refund of any sums paid to MARCHI hereunder in anticipation of services, including (but not limited to) all fees and expenses rendered to MARCHI by OWNER hereunder. Termination or cancellation of the Agreement shall not relieve OWNER or MARCHI from any payment obligation under this Agreement preceding the date of termination or cancellation. All payment obligations under the Agreement preceding the date of termination or cancellation shall survive such termination or cancellation of the Agreement, including (without limitation) the obligation of MARCHI to pay the Charter Share to Owner. In making final payment of the Charter Share to OWNER, MARCHI shall have the right to reduce the amount of the Charter Share by any outstanding amounts owed to MARCHI by OWNER as well as any and all costs incurred by MARCHI on behalf of OWNER which have not been reimbursed by OWNER as of such termination or cancellation date.

## **ARTICLE VIII: OWNERSHIP AND TITLE**

Section 8.01 – Ownership: MARCHI hereby agrees that the Boat shall be the sole and exclusive property of

OWNER and OWNER shall have sole and exclusive title to the Boat.

Section 8.02 – Confidential Information: Each party shall maintain Confidential Information in strict confidence. Neither party shall disclose Confidential Information, except to Authorized Persons. Neither party shall duplicate, use or disclose Confidential Information of the other party except as otherwise permitted under the Agreement. The terms and provisions of this Section 8.02 shall survive termination and cancellation of the Agreement.

Section 8.03 – Liens/Sale: During the Term, OWNER shall not grant any liens on the Boat or use the Boat for security in obtaining any loans or sell the Boat without providing thirty days advance written notice to MARCHI. Such notice shall provide MARCHI advance written notice of the identity of the proposed lien holder (or buyer as the case maybe) and the amount of the proposed lien or sale (as the case maybe). Notwithstanding any provision to the contrary hereunder, upon receipt of such notice MARCHI shall have the right to terminate this Agreement with ten days advance written notice of such termination to OWNER.

## **ARTICLE IX: MARCHI WARRANTY**

Section 9.01 – Service Warranty: The Services to be provided by MARCHI hereunder shall be performed in a timely and professional manner by qualified boating and boat management personnel and shall conform to the standards generally observed in the boating industry for similar services at the time such Services are rendered. Charter Services and Charter Outings shall be conducted by a licensed boat captain. OWNER’s sole remedy in the event of a breach of this Section 9.01 shall be re-performance of the Services.

**SECTION 9.02 – WARRANTY LIMITATION: THE SERVICE WARRANTY IN SECTION 9.01 IS IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY. MARCHI HEREBY DISCLAIMS AND OWNER HEREBY WAIVES, ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF MERCHANTABILITY.**





Section 9.03 – Express Warranties: OWNER hereby acknowledges and agrees that MARCHI (including officers, employees, agents, directors and independent contractors of MARCHI) has not made or granted any express warranties concerning the Services except the warranties set forth in Section 9.01.

Section 9.04 – Negligence/Breach: MARCHI shall defend, indemnify and hold OWNER and its officers, directors, employees, and agents harmless from and against any and all claims, actions, liability, expenses, costs, or losses arising from (i) the negligent or willful acts (or any failure to act) of MARCHI; (ii) any violation of law by MARCHI in using the Boat; and (iii) any breach by MARCHI of the obligations of MARCHI hereunder. This Section 9.04 shall survive termination and cancellation of the Agreement.

Section 9.05 – Limitation of Damages: Neither party shall be liable to the other party under the Agreement for any lost profits, consequential, exemplary, incidental or punitive damages, regardless of the form of action, whether in contract or in tort, including negligence, and regardless of whether such other party has been advised of the possibility of such damages in advance or whether such damages are reasonably foreseeable. This Section 9.05 shall survive termination and cancellation of the Agreement.

Section 9.06 – Force Majeure: Neither party shall be liable for any failure to perform its obligations under the Agreement because of circumstances beyond the reasonable control of such party, which such circumstances shall include (without limitation) natural disaster, terrorism, riot, sabotage, labor disputes, war, any acts or omissions of any government or governmental authority, declarations of government, transportation delays, power failure, computer failure, telecommunications failure, subcontractor failure and any other events reasonably beyond the control of such party.

Section 9.07 – Compliance: MARCHI shall comply with all applicable law in operating and using the Boat, including any and all applicable international, state and federal law as well as insurance and manufacturer requirements governing navigation, operation and use of the Boat.

Section 9.08 – MARCHI Insurance: MARCHI shall maintain charter insurance coverage in the amount of \$2,000,000 per incident and wharf insurance in the coverage amount of \$5,000,000 per incident. MARCHI, at OWNER's expense, shall keep the Boat

insured against all risks of loss or damage from fire and such other risks as are covered by endorsement commonly known as supplemental or extended coverages for not less than the Stipulated Loss Value and shall maintain public liability and property damage insurance covering the Boat in an amount equal to the Stipulated Loss Value.

Section 9.09 -- Indemnification: MARCHI hereby assumes liability for and hereby agrees to indemnify, protect, save and keep harmless OWNER its assignees, successors or transferees, and their respective employees, officers and/or agents (herein "Indemnified Persons"), from and against any and all liabilities, damages, penalties, claims, suits, costs, and expenses and disbursements, including legal expenses of any kind and nature imposed on, incurred by, or asserted against the Indemnified Persons arising out of the use and operation of the Boat in providing Charter Services and conducting Charter Outings. All indemnities contained in any section of this Lease, including this Section 9.09, shall continue in full force and effect notwithstanding the expiration or other termination of this Agreement and are expressly made for the benefit of, and shall be enforceable by any and all of the Indemnified Persons.

## **ARTICLE X: OWNER WARRANTY**

Section 10.01 – OWNER Warranty: OWNER hereby represents and warrants that OWNER has obtained all necessary authorizations and permissions to license the Boat to MARCHI for Charter Services and to conduct Charter Outings. OWNER hereby represents and warrants that OWNER has obtained all authorizations, permissions or licenses to permit MARCHI to perform the Services and to operate and use the Boat for Charter Services and Charter Outings. OWNER hereby represents and warrants that operation of the Boat by MARCHI shall not infringe upon or violate any ownership or contract rights of any third party.

Section 10.02 – Indemnification: OWNER shall defend, indemnify and hold MARCHI and its officers, directors, employees, and agents harmless from and against any and all claims, actions, liability, expenses, costs, or losses arising from (i) the negligent or willful acts (or any failure to act) of OWNER; (ii) any violation of law by OWNER in using the Boat; and (iii) any breach by OWNER of the obligations of OWNER hereunder. This Section



11.02 shall survive termination and cancellation of the Agreement.

Section 10.03 – Compliance: OWNER shall comply with all applicable law in using the Boat, including any and all applicable international, state and federal law as well as insurance and manufacturer requirements governing navigation, operation and use of the Boat.

Section 10.04 – Boat Warranty: OWNER represents and warrants that the Boat shall be free of Defects on the Delivery Date and shall perform substantially as represented in the Documentation.

Section 10.05 – Title: OWNER hereby represents and warrants that OWNER is the sole and exclusive owner of the Boat, including all ownership and title thereto, and that the Boat is free and clear from any and all liens security grants and encumbrances except as disclosed to MARCHI by OWNER in advance of the Effective Date. OWNER further represents and warrants that OWNER has authorized MARCHI to provide the Services as set forth under this Agreement. OWNER shall protect and defend the Boat against all persons claiming against or through OWNER, at all times keep the Boat free and clear from any legal process or other encumbrance arising by or through OWNER, give MARCHI immediate written notice thereof and indemnify MARCHI from any loss caused thereby.

## **ARTICLE XI: MISCELLANEOUS**

Section 11.01 – Assignments: All assignments of rights under the Agreement by OWNER without the prior written consent of MARCHI shall be void.

Section 11.02 – Public Announcements: All public announcements of the relationship of MARCHI and OWNER under the Agreement shall be subject to the prior approval of MARCHI.

Section 11.03 – Entire Agreement: The Agreement contains the entire understanding of the parties and supersedes previous verbal and written communications, proposals and agreements between the parties concerning the subject matter hereof.

Section 11.04 – Amendments and Modifications: Except as provided herein, alterations, modifications or amendments of a provision of the Agreement shall not be binding unless such alteration, modification or

amendment is in writing and signed by MARCHI and OWNER.

Section 11.05 – Severability: If a provision of the Agreement is rendered invalid, void or unlawful, the remaining provisions shall remain in full force and effect.

Section 11.06 – Captions: The headings and captions of the Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of the Agreement, or any particular section, paragraph, or provision.

Section 11.07 – Counterparts: The Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

Section 11.08 – Governing Law: The Agreement shall be governed by the laws of the State of California without regard to any rules of conflict or choice of laws, which require the application of laws of another jurisdiction, and venue shall be San Diego, California.

Section 11.09 – Notice: Notices shall be in writing. Notices shall be deemed delivered when delivered by Certified or Registered Mail – Return Receipt Requested, by commercial express delivery service or by hand to the address set forth for MARCHI or to the address set forth for OWNER in the Agreement. Notice shall be deemed given on the date of receipt - as evidenced in the case of Certified or Registered Mail by Return Receipt and in the case of commercial express delivery by electronic or written delivery confirmation.

Section 11.10 – Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neuter, singular or plural, as the context shall require.

Section 11.11 – Waiver: Waiver of breach of the Agreement shall not constitute waiver of another breach. Failing to enforce a provision of the Agreement shall not constitute a waiver or create an estoppel from enforcing such provision. Any waiver of a provision of the Agreement shall not be binding unless such waiver is in writing and signed by the waiving party.

Section 11.12 – Relationship of the Parties: Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to



act as agent for the other. Each party shall maintain its separate identity.

Section 11.13 – Arbitration: Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association in San Diego, California. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Three Qualified Arbitrators shall be selected by the parties in accordance with the Arbitration Rules of American Arbitration Association. Each party shall have the right of discovery as set forth in the Federal Rules of Civil Procedure.

Section 11.14 – Assurances: Each party hereby represents and warrants that all representations, warranties, recitals, statements and information provided to the other party under the Agreement are true, correct and accurate as of the Effective Date to the best of their knowledge.

Section 11.15 – Litigation Expense: In the event of litigation or arbitration arising out of the Agreement, each party shall pay its own costs and expenses of litigation or arbitration (excluding fees and expenses of arbitrators and administrative fees and expenses of arbitration).

Section 11.16 – Equitable Remedies: The parties hereby acknowledge that in certain cases damages at law may be an inadequate remedy. In addition to all other remedies that may be available at law or equity, each party shall have the right of specific performance, injunction or other equitable remedy in the event of a breach or threatened breach of the Agreement.



