

## CONSULTING AGREEMENT

IMPORTANT – READ THIS CAREFULLY BEFORE RECEIVING OR OTHERWISE USING ANY SERVICES OR DELIVERABLES (EACH AS DEFINED BELOW).

BY AGREEING TO A STATEMENT OF WORK (DEFINED BELOW), CLICKING “I AGREE”, PAYING FOR ANY SERVICES OR DELIVERABLES, OR OTHERWISE RECEIVING OR USING ANY SERVICES OR DELIVERABLES (any of the foregoing is “**Acceptance**”), CUSTOMER (DEFINED BELOW) AGREES TO BE BOUND BY THIS AGREEMENT.

This Consulting Agreement (this “**Agreement**”) is made as of the day of Acceptance (the “**Effective Date**”) by and between Andi Business Consulting LLC, a Pennsylvania limited liability company with offices at 239 Fourth Ave., Suite 1401 5317, Pittsburgh, PA 15222 (“**Andi**”), and the entity or individual identified that is either identified in a separate Statement of Work or ordering process, or receiving or otherwise using the Services and Deliverables (“**Customer**”).

This Agreement governs Customer’s receipt and use of the Services and Deliverables. You are entering into this Agreement for Customer’s receipt and use of the Services and Deliverables. You represent and warrant that the individual entering into this Agreement on behalf of Customer has the authority to bind Customer to this Agreement.

**1. DEFINITIONS.** All capitalized terms used in this Agreement and defined in this Section or in the context in which they are used will have the meanings given to them herein. All other terms used in this Agreement will have their plain English (U.S.) meaning. As used in this Agreement or any attachment hereto:

**1.1 “Andi Property”** means (a) Andi’s proprietary software product called Vendor Tooling Management; (b) all and any other ideas, concepts, know-how, knowledge, processes, techniques, tools, approaches, methodologies, templates, copyrighted materials, inventions, operating instructions, standardized features, software, documentation, routines, programs, designs, other technology, or any intellectual property or Intellectual Property Rights created, developed, conceived, reduced to practice, owned, or licensed by Andi (i) prior to the Effective Date of this Agreement, (ii) during the term of this Agreement but outside the scope of this Agreement and any Statement of Work, or (iii) during the term of this Agreement that are generally applicable and not Customer-specific; and (c) all enhancements, modifications, improvements, and derivative works of and to each and any of the foregoing.

**1.2 “Deliverable”** means any work product that is (a) specifically described in a Statement of Work as a “deliverable” and (b) developed or created by Andi specifically and exclusively for Customer under this Agreement (excluding in each case any Andi Property or Third Party Products embodied or incorporated in each or any of the foregoing).

**1.3 “Intellectual Property Rights”** means all known or hereafter existing worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights.

**1.4 “Licensor Terms and Conditions”** means the terms and conditions applicable to access or use of any Third Party Product, including any confidentiality, license, or other agreement with the applicable Licensor(s), and any “terms of use” or similar terms imposed by such Licensor(s).

**1.5 “Licensor”** means the applicable licensor of a Third Party Product.

**1.6 “Services”** means, as applicable, the consulting, support, training, integration, implementation, or other professional services to be performed by Andi for Customer under this Agreement pursuant to one or more Statements of Work.

**1.7 “Statement of Work”** means a written statement of work, order form, estimate, quote, or other document signed or agreed to by both parties that describes the specific Services to be performed by Andi hereunder.

**1.8 “Third Party Product(s)”** means any third-party licensed software product(s) (e.g., Odoo) or other third-party material(s) in Customer’s custody or control.

**2. PERFORMANCE OF SERVICES.**

**2.1 Statements of Work.** The specific Services to be performed by Andi under this Agreement shall be set forth in one or more Statements of Work mutually agreed to by the parties. A Statement of Work shall not be binding unless signed by both parties, and upon such signing, shall be incorporated into this Agreement.

**2.2 Additional Services.** Any additional services required by Customer that are outside the scope of a Statement of Work ("**Additional Services**") shall be performed at Andi's then-current consulting rates on a time and materials basis; that is, Customer shall pay Andi for the time spent performing the relevant Additional Services, plus applicable materials, taxes, and expenses. Notwithstanding the foregoing, for Additional Services, Andi shall bill a minimum of one (1) labor hour for each new, unique request for assistance placed with Andi (as evidenced by an assigned unique case number), with billing in ¼ hour increments thereafter (rounding up to the next whole ¼ hour of labor).

**2.3 Change Orders; Conflicts.** In the event either party requires a material change to a Statement of Work, such party will provide a written change order to the other party for its approval, specifying the change required (each a "**Change Order**"). Each party agrees that a Change Order may necessitate a change in the delivery schedule or fees due under the applicable Statement of Work. No Change Order will be binding upon either party until it is signed by the authorized representatives of both parties. Each Statement of Work and Change Order will be governed by the terms of this Agreement. In the event of a conflict between the terms and conditions of this Agreement and those of a Statement of Work or Change Order (if any), the following order of precedence shall apply: (i) Change Order (if any), (ii) Statement of Work, (iii) this Agreement.

### **3. FEES AND PAYMENT.**

**3.1 Fees.** Customer will timely pay Andi all fees as specified in the applicable Statement of Work. Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, all fees are non-refundable.

**3.2 Payment Terms.** Unless otherwise expressly provided in this Agreement or the applicable Statement of Work, Customer will pay Andi all amounts due under this Agreement within thirty (30) days after the date of the invoice therefore. All payments must be made in U.S. dollars. Any amounts not paid when due will accrue interest at the lesser of one and one-half percent (1½%) per month or the maximum rate permitted by applicable law from the due date until paid. Without limiting any other remedy available to Andi, Andi reserves the right to suspend any Services during any period in which Customer has failed to timely pay any amounts due and payable.

**3.3 Taxes.** Fees exclude, and Customer will make all payments of fees to Andi free and clear of, all applicable sales, use, and other taxes and all applicable export and import fees, customs, duties, and similar charges. When applicable, Andi may include any taxes that it is required to collect as a separate line item on an invoice. Customer will be responsible for, and will indemnify and hold harmless Andi from, payment of all such taxes (other than taxes based on Andi's net income), fees, duties, and charges, and any related penalties and interest, arising from the payment of fees or the performance of Services hereunder.

**3.4 Travel and Other Expenses.** Services provided hereunder shall be provided remotely. If the applicable Statement of Work expressly requires that Andi send personnel to any Customer site or other location in connection with the Services, Customer shall pay Andi's reasonable travel, meals, and lodging expenses. Under such circumstances, Customer shall also pay actual costs for supplies and other expenses reasonably incurred by Andi, which are not of the sort normally provided or covered by Andi, provided that Customer has approved in advance the purchase of such supplies and other expenses. If Customer so requires, Andi shall submit written evidence of each expenditure to Customer prior to receiving reimbursement of such costs and expenses.

**4. CUSTOMER OBLIGATIONS.** Customer shall provide Andi with such resources, information, software access, and assistance as Andi may reasonably request in connection with the performance of the Services. Customer acknowledges and agrees that Andi's ability to successfully perform the Services in a timely manner is contingent upon its receipt from Customer of such information, resources, software access, and assistance. Andi will not be deemed in breach of this Agreement (or any Statement of Work) and will have no liability to Customer for failure to perform, a delay in performance of, or any other deficiencies in, the Services or Deliverables or for damages resulting from: (a) Customer's failure to provide any such information, resources, software access, and assistance; (b) the acts or omissions of Customer, its agents, contractors, or employees; or (c) performance of the Services or Deliverables in accordance with Customer's instructions. Without limiting the generality of the foregoing, Customer acknowledges and agrees that Customer's obligations include the following:

**4.1 Primary Contact.** Customer shall designate one (1) primary point of contact under each Statement of Work who shall be responsible for managing the relationship between Andi and Customer thereunder, including providing reasonable assistance to Andi with technical and non-technical issues related to the applicable Services.

**4.2 Access to Third Party Products.** Customer acknowledges and agrees that Andi is performing the Services solely for the benefit of Customer, and that Andi's ability to perform the Services may require Andi's access (either through remote access or direct physical access on Customer's premises) and use of certain Third Party Products. In connection therewith, Customer hereby represents and warrants that it has the right to provide Andi with access to, and use of, any and all portions of such Third Party Products in connection with Andi's performance of the Services, including, if applicable, the right to customize or configure each such Third Party Product for the benefit of Customer. Customer agrees to immediately notify Andi of any changes made (actual or attempted) by the applicable Licensor to Customer's license and access rights to such Third Party Product(s), including changes to the applicable Licensor Terms and Conditions, that may affect Andi's ability to continue performing the Services. Customer shall indemnify, defend, and hold Andi, its officers, employees, personnel, agents, and representatives harmless from and against any and all claims, liabilities, damages, and expenses (including reasonable attorneys' fees), arising out of Customer's breach of this Section, including any breach of Customer's representations and warranties hereunder.

**4.3 Personnel.** Customer shall provide sufficient, qualified, and knowledgeable personnel capable of (a) performing Customer's obligations as described in this Agreement and each Statement of Work and (b) making necessary and timely decisions on behalf of Customer.

## **5. WARRANTIES.**

**5.1 Performance.** Andi warrants to Customer that the Services will be performed in a professional manner consistent with industry standards. Andi shall, as its sole obligation and Customer's sole and exclusive remedy for any breach of the warranty set forth in this Section, re-perform the Services which gave rise to the breach, or at Andi's option, refund the fees paid by Customer for the Services which gave rise to the breach; provided that Customer notifies Andi in writing of the breach within thirty (30) days following performance of the defective Services, specifying the breach in reasonable detail.

**5.2 Disclaimers.** THE EXPRESS WARRANTIES IN THIS SECTION 5 ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICES AND DELIVERABLES, AND ANDI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. NO SPECIFIC RESULTS FROM THE PERFORMANCE OF THE SERVICES ARE ASSURED OR GUARANTEED. CUSTOMER ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES PROVIDED HEREIN.

**6. INFRINGEMENT CLAIMS.** Andi will defend at its own expense any action against Customer brought by a third party to the extent that the action is based upon a claim that Customer's use of any Deliverable infringes any U.S. patent or copyright or misappropriates any trade secret of a third party, and Andi will pay those costs and damages finally awarded against Customer in any such action that are specifically attributable to such claim or those costs and damages agreed to in a monetary settlement of such action. The foregoing obligations are conditioned on Customer (a) notifying Andi promptly in writing of such action, (b) giving Andi sole control of the defense thereof and any related settlement negotiations, and (c) cooperating and, at Andi's request and expense, assisting in such defense. If any Deliverable becomes, or in Andi's opinion is likely to become, the subject of an infringement claim, Andi may, at its option and expense, either (i) procure for Customer the right to continue using the Deliverable, (ii) replace or modify the Deliverable so that it becomes non-infringing, or (iii) terminate Customer's right to use the Deliverable and refund Customer the fees paid for such portion of the Deliverable which is allegedly infringing, upon which Customer shall have no further rights in and to the subject Deliverable. Notwithstanding the foregoing, Andi will have no obligation under this Section 6 or otherwise with respect to any infringement claim based upon (A) any use of the Deliverable not in accordance with this Agreement or for purposes not intended by Andi, (B) any use of the Deliverable in combination with other services, products, equipment, software, or data not intended by Andi to be used with the Deliverable, (C) any information, software code, or other materials furnished to Andi by Customer, its agents, representatives, or suppliers, including Customer's specifications, (D) any unauthorized or unlicensed activities by Customer, its agents, representatives, or suppliers, including any violation by Customer of Section 4.2, or (e) any modification of the Deliverable by any person other than Andi or its authorized agents or subcontractors; and Customer shall indemnify, defend, and hold Andi, its

officers, employees, personnel, agents, and representatives harmless from and against any and all claims, liabilities, damages, and expenses (including reasonable attorneys' fees) based upon any of the foregoing. THIS SECTION 6 STATES ANDI'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS RELATED TO THE SERVICES AND ANY DELIVERABLE UNDER THIS AGREEMENT.

## **7. OWNERSHIP.**

**7.1 Deliverables.** Except as provided in Section 7.2, the parties hereby agree that any and all Deliverables which are produced as a result of the Services performed by Andi under this Agreement, including any Intellectual Property Rights therein, shall be the property of Customer. Subject to Customer's payment of all applicable fees, Andi hereby assigns to Customer all of its rights in and to Deliverables.

**7.2 Andi Property.** Notwithstanding the foregoing in Section 7.1, as between the parties, Andi shall retain all Intellectual Property Rights in and to any and all Andi Property. Subject to Customer's payment of all applicable fees, Andi grants Customer a non-exclusive, non-transferable license, without rights to sublicense, to use the Andi Property that is incorporated into a Deliverable solely for Customer's own internal business purposes in connection with the permitted use of such Deliverable.

**7.3 Third Party Products.** Notwithstanding anything contained herein to the contrary, Andi acknowledges and agrees that it has no claim of ownership in and to any Third Party Products or any Intellectual Property Rights therein.

**8. LIMITATION OF LIABILITY.** ANDI'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH ANY SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES PAID TO ANDI UNDER THE STATEMENT OF WORK UNDER WHICH SUCH SERVICES OR DELIVERABLES ARE PROVIDED DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, OR INCIDENTAL DAMAGES, INCLUDING ANY LOST DATA, LOST PROFITS, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING FROM OR RELATING TO THIS AGREEMENT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THIS LIMITATION SHALL NOT APPLY TO CUSTOMER'S BREACH OF SECTION 4.2. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT ANDI WOULD NOT ENTER INTO THIS AGREEMENT OR ANY STATEMENT OF WORK WITHOUT THESE LIMITATIONS ON ANDI'S LIABILITY.

## **9. CONFIDENTIALITY.**

**9.1 Protection of Confidential Information.** Each party (the "**Disclosing Party**") may from time to time disclose to the other party (the "**Receiving Party**") certain information regarding the business of the Disclosing Party or its suppliers, including technical, marketing, financial, employee, planning, and other confidential or proprietary information ("**Confidential Information**"). Any information that the Receiving Party knew or should have known, under the circumstances, is considered confidential or proprietary by the Disclosing Party will be considered Confidential Information of the Disclosing Party. Without limiting the generality of the foregoing, Andi Property shall be considered Andi's Confidential Information.

**9.2 Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, and disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**9.3 Exceptions.** The Receiving Party's obligations under Section 9.2 with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party free of any confidentiality obligations at the time of disclosure by the Disclosing Party; (b) was disclosed to the Receiving Party free of any confidentiality obligations by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) was independently developed by the Receiving Party without access to, use of, or reference to the Disclosing Party's

Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party (on a case-by-case basis), (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding, or (iii) required by law or by the order of a court of similar judicial or administrative body, provided that the Receiving Party notifies the Disclosing Party (to the extent legally permitted) of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**9.4 Return of Confidential Information.** The Receiving Party will return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party (if any) and upon the expiration or termination of this Agreement (except for any computer records or files that have been created pursuant to the Receiving Party's automatic archiving and back-up procedures and the removal of which is not technically reasonable; provided that any Confidential Information of the Disclosing Party retained pursuant to this Section 9.4 shall remain subject to Section 9 for so long as any such Confidential Information remains in the Receiving Party's possession or control). Upon request from the Disclosing Party, the Receiving Party will certify in writing signed by an officer of the Receiving Party that it has fully complied with its obligations under this Section 9.4.

**9.5 Confidentiality of Agreement.** Except as expressly permitted hereunder, neither party will disclose any terms of this Agreement or any Statement of Work to anyone other than its attorneys, accountants and other professional advisors except: (a) as required by law; (b) pursuant to the mutual written agreement of the parties; (c) in connection with a financial investment in such party's business; or (d) in connection with a contemplated transfer of such party's business permitted by Section 12.3 (provided that any third party to whom the terms of this Agreement or any Statement of Work hereunder are to be disclosed is under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder).

## **10. TERM AND TERMINATION.**

**10.1 Term.** This term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (a) the completion of the Services, or (b) the time frame set forth in the Statement of Work.

**10.2 Termination.** Either party may terminate this Agreement or any uncompleted Statement of Work upon written notice to the other party if the other party: (a) breaches any material provision of this Agreement or the applicable Statements of Work and does not cure such breach within thirty (30) days after receiving written notice thereof; (b) formally declares bankruptcy, insolvency, reorganization, liquidation, or receivership; or (c) has instigated against it bankruptcy, insolvency, reorganization, liquidation, or receivership proceedings, and fails to remove itself from such proceedings within ten (10) days from the date of institution of such proceedings. Notwithstanding the foregoing, Andi may also terminate this Agreement or any uncompleted Statement of Work immediately upon written notice in the event (i) Customer fails to pay any amounts payable hereunder within ten (10) days after receiving written notice from Andi that payment is due, or (ii) Customer breaches Section 4.2.

**10.3 Effects of Termination.** Expiration or termination of this Agreement for any reason shall not release either party from liability which at said time has already incurred to the other party. In the event a Statement of Work is still in effect upon the expiration of this Agreement, such Statement of Work shall remain in effect and shall continue to be governed by the terms and conditions of this Agreement unless and until such Statement of Work is completed or otherwise terminated in accordance with this Agreement. Except as otherwise expressly set forth herein, the following provisions will survive expiration or termination of this Agreement pursuant to their terms, together with any other provisions necessary for their construction and enforcement: Sections 1, 3, 4.2 (with respect to Customer's representations, warranties, and indemnity obligations), 5, 6, 7, 8, 9, 10, and 12, together with any accrued payment obligations. Without limiting the foregoing, upon termination or expiration of this Agreement or any Statement of Work for any reason, any amounts owed to Andi under this Agreement or each applicable Statement of Work before such termination or expiration will be immediately due and payable, including any amounts due for Services performed and expenses incurred prior to such termination or expiration and any reasonable and necessary travel or out-of-pocket expenses incurred after such termination or expiration, without regard to whether any invoices had or had not been issued.

**11. SUPPORT SERVICES.** In the event the Services hereunder include software support for any Third Party Products (“**Support Services**”), the terms and conditions set forth in this Section (in addition to the other terms and conditions contained herein) shall apply to such Support Services.

**11.1 Supported Products.** As used in this Section or any Statement of Work, “**Supported Product(s)**” means any Third Party Product(s) for which Andi agrees to provide Support Services pursuant to a Statement of Work, including all fixes and updates thereto provided to Customer by the applicable Licensor as part of the standard delivered core product. Except as otherwise stated in the applicable Statement of Work, Supported Products do not include any customizations, modifications, or any country or region -specific functionality or localizations that were not provided to Customer by the applicable Licensor as part of the standard delivered core product.

**11.2 Customer Obligations.** In addition to those obligations of Customer set forth in Section 4, Customer acknowledges and agrees that Customer’s obligations with respect to Support Services include the following:

(a) **Personnel.** Customer shall provide sufficient, qualified, and knowledgeable personnel capable of (a) facilitating the testing of software fixes, updates, and workarounds for the Supported Products (if applicable) and (b) customizing, installing, and configuring code fixes and updates provided by Andi or a third party as needed for use with the Supported Products (if applicable).

(b) **Final Testing of Fixes and Updates.** For any Andi-provided fixes or updates to Supported Products, Customer shall be solely responsible for all final system testing to ensure that such fixes and updates perform as documented with the applicable Supported Products, and Customer shall not move any fixes or updates into a production environment unless and until Customer has successfully completed all such final system testing.

(c) **No Backups.** Customer acknowledges and agrees that Andi will not make or store copies of any Supported Products for Customer. Customer shall be solely responsible for making and storing emergency backups of the Supported Products.

**11.3 Remote Access to Deliverables and Andi Property.** Notwithstanding anything contained herein to the contrary, Customer acknowledges and agrees that in the event Andi, as part of any Support Services, provides Customer with remote access to Deliverables or Andi Property, such access and right to use shall immediately cease upon the expiration or termination of this Agreement or the applicable Statement of Work.

## **12. GENERAL.**

**12.1 Compliance.** Customer shall comply with all applicable laws, rules, and regulations in its use of the Services and Deliverables, including any such laws, rules, and regulations related to export and import controls.

**12.2 Assignment.** Neither party may assign this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld, except that Andi may, upon written notice to Licensee, assign this Agreement and Andi’s rights and obligations, in whole or in part, to any of its affiliates, any purchaser of all or substantially all of its assets, or to any successor entity resulting from any merger or consolidation of Andi with or into such successor entity.

**12.3 Force Majeure.** Except for any payment obligations, neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, material shortages, or any other cause which is beyond the reasonable control of such party.

**12.4 Notices.** Any notice required or permitted to be given hereunder by either party shall be in writing and shall be deemed given on the date received if delivered personally or five (5) business days after the date postmarked if sent by registered or certified U.S. mail, return receipt requested, postage prepaid to the addresses set forth in the initial Statement of Work hereunder, or to such other address or addresses as the parties may from time to time designate in writing.

**12.5 Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Pennsylvania, without reference to the choice of law provisions thereof. Any and all proceedings relating to the subject matter of this Agreement shall be maintained in the federal or state courts sitting in Pittsburgh, Pennsylvania, which courts shall have exclusive jurisdiction for such purpose, and the parties hereby consent to the

personal jurisdiction of such courts upon proper service of process. The Uniform Computer Information Transactions Act shall not apply to this Agreement.

**12.6 Remedies.** Except as provided in Sections 5 and 6, the parties' rights and remedies under this Agreement are cumulative. Each party acknowledges that any breach of Sections 4.2, 7, 9, or 12.13 of this Agreement would cause irreparable injury to the other party for which monetary damages would not be an adequate remedy, and therefore, the other party will be entitled to injunctive relief. If any legal action is brought by a party to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**12.7 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**12.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be deemed modified and will be interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

**12.9 Subcontractors.** Customer acknowledges and agrees that Andi may hire subcontractors to perform certain Services hereunder. Andi will be responsible for the direction and coordination of the services of each subcontractor and Customer will have no obligation to pay any subcontractor directly.

**12.10 Relationship of Parties.** The relationship of the parties established under this Agreement is that of independent contractors and neither party is a partner, employee, agent, or joint venture partner of or with the other, and neither party has the right or authority to assume or create any obligation on behalf of the other party.

**12.11 Construction.** The headings used for the sections of this Agreement are for information purposes and convenience only and in no way define, limit, construe, or describe the scope or extent of the sections. The word "including" or any variation thereof means "including, without limitation" and will not be construed to limit any general statement that such word or variation thereof follows. The word "or" is not exclusive. The language used in this Agreement will be deemed to be the language chosen by the parties to express the parties' collective mutual intent, and no rule of strict construction will be applied against any party.

**12.12 Non-Solicitation of Personnel.** Customer recognizes that the employees and independent contractors of Andi, and such employees' and independent contractors' loyalty and service to Andi, constitute a valuable asset of Andi. Accordingly, Customer hereby agrees, during the term of this Agreement and for one (1) year thereafter, not to make any offer of employment to, nor enter into a consulting relationship with, any person who was employed or retained by Andi during the previous two (2) years. Any violation of this provision shall constitute a material breach of this Agreement, and upon any such breach, Customer shall pay to Andi liquidated damages consisting of the amount of all compensation (e.g., salary, bonuses, fees, etc.) paid or to be paid by Customer to the person during the first twelve (12) months after such person was hired/retained by Customer. Each party acknowledges and agrees that the amount of liquidated damages stated herein is a good faith estimate of the training and personnel related investment costs Andi will lose if an Andi employee or independent contractor is hired or retained by Customer. In the event this Section is deemed unenforceable for any reason, Andi shall nevertheless be entitled to recover its actual damages resulting from Customer's breach.

**12.13 Entire Agreement.** This Agreement, together with all Statements of Work and any attachments or exhibits hereto or thereto, constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral regarding such subject matter. This Agreement and each Statement of Work shall not be modified except by a subsequently dated written amendment signed on behalf of Andi and Customer by their duly authorized representatives. Any different or additional terms of a related purchase order, confirmation, or similar form signed by the parties after the date hereof shall have no force or effect on this Agreement or its subject matter, and pre-printed or standard terms of Customer's purchase order are specifically excluded.