

REALEC NETWORK SERVICE AGREEMENT

Cover Sheet

Overview: This is a set of modules that together constitute an agreement between RealEC Technologies, Inc. (called “RealEC”) and your company, referred to as the “User”. Taken as a whole, these documents establish a business relationship between RealEC and the User, permitting the User to access and perform actions on RealEC’s computer network. This Cover Sheet provides an overview of the documents and explains the individual modules.

Process: An Agreement is set up by selecting appropriate modules, completing the Network Service Agreement, and signing that document. Note that the individual modules are not signed.

Modules:

Network Service Agreement: This is the overall document that defines the Agreement. It is the only document signed by the parties, and it lists what modules are included to make up the agreement. It also completely identifies the parties, and it sets out the term of the agreement.

Network Access Module: This document is a mandatory component of the Agreement. It grants the license under which the User accesses the Network, which is required for all forms of Agreement.

Standard Terms and Conditions: This document is also mandatory for all Agreements, as it sets out the standard terms and conditions under which RealEC enters into the Agreement. These are general terms that apply both to customers and providers of services on the Network.

Service Provider Module: This document is used if the User will provide services to customers using the Network. It modifies the basic as required, and it provides a schedule setting out fees payable to RealEC.

MornetPlus Access Module: This document grants access to the Fannie Mae MornetPlus network on the same terms and conditions as employed in the Agreement.

REALEC NETWORK SERVICE AGREEMENT

This is a Realec Network Service Agreement (the “**Agreement**”), effective _____, _____ (the “Effective Date”), between Realec Technologies, Inc., a Delaware corporation (“**Realec**”), and

a _____ (“**User**” or “**you**”).

Background. Realec has developed a Network that facilitates the performance of real-estate-related transactions. The Realec Network can be accessed either through desktop software or directly through an internet website. You have stated a desire to use the Realec Network in your business, and Realec is willing to enter into an agreement to that effect.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Scope: This Agreement consists of this cover sheet and the following attached components:

Mandatory components: Network Access Module
Standard Terms and Conditions

Optional (check) ___ Service Provider Module
 ___ MORNET PLUS Access Module

Term: Initial Term: _____.
Renewals: _____.

IN WITNESS WHEREOF, the parties enter into this Agreement as of the Effective Date shown above.

REALEC “**User**”

Realec Technologies, Inc. _____

By: _____ By: _____
Its: _____ Its: _____

NETWORK ACCESS MODULE

This is a Network Access Module, a component of the REALEC NETWORK SERVICE AGREEMENT (the “Agreement”) executed between RealEC and the User. Definitions appearing elsewhere in the Agreement apply here as well.

Section 1. License

- 1.01** License. RealEC hereby grants, and User hereby accepts, a non-transferable, non-exclusive and revocable license to use the Network in accordance with the terms and conditions of this Agreement (the “Access License”).
- 1.02** Fees. This License is granted at no charge.

Section 2. Term and Termination

- 2.01** Term. This Access License remains in force from the Effective Date and is automatically terminated upon termination of the Agreement.
- 2.02** Rights and Obligations upon Termination. Upon termination of this Access License, Licensee shall immediately (i) cease using the Network, and (ii) return to RealEC all software, hardware, papers, materials and other property of RealEC, including without limitation all Proprietary Information.
- 2.03** Transition. Upon written request, RealEC shall provide for a reasonable transition period during which User may continue to access the Network, in order to permit an orderly change in User’s business practices.

Section 3. Software Integration

- 3.01** IDK. In the event that User chooses to access the RealEC Network through direct integration, then RealEC will provide a software integration kit at no charge. User may request assistance from RealEC to complete the integration process, and if assistance is available, RealEC will provide the same to User at RealEC’s then prevailing rates, plus reimbursement for any expenses incurred by RealEC. Such software integration kit is Software, as defined elsewhere in the Agreement.

[End of document]

Standard Terms and Conditions

These Standard Terms and Conditions apply to all components of the REALEC NETWORK SERVICE AGREEMENT (the "Agreement") executed between RealEC and the User. Definitions appearing elsewhere in the Agreement apply here as well.

Section 1. Definitions

- 1.01** "Data" includes all Documents and other information, programs, messages, and other information provided or transmitted on, through or in connection with the RealEC Network.
- 1.02** A "Document" is any individual transmission of information over the Network.
- 1.03** The "GLB" means the Gramm-Leach-Bliley Act, 15 USC Sections 6801-6809, as may be amended.
- 1.04** "Non-Public Private Information" has the meaning set out in the GLB.
- 1.05** "RealEC Customer" or "Customer" means an entity authorized to purchase RealEC Services using the RealEC Network.
- 1.06** "RealEC Network" or "Network" means the then-current release of RealEC's communications network operated by RealEC for the real estate industry, including any documentation, software, related applications and communication systems.
- 1.07** "RealEC Service" or "Service" means any product or service electronically transmitted by a Provider to a Customer by means of the RealEC Network. Examples of Services are real property title insurance reports, flood certifications, mortgage loan settlement documents, consumer credit reports, appraisals or property valuation or inspection reports, or other mortgage loan origination or servicing documents. It is anticipated that Services will be added or removed from time to time.
- 1.08** "RealEC Service Provider" or "Service Provider" or "Provider" is an entity that provides Services on the Network pursuant to a RealEC Service Provider Agreement.
- 1.09** "RealEC User" or "User" is a generic term for entities using the Network to transact business, and it includes both Customers and Providers.

Section 2. Commercial Transactions on the RealEC Network

- 2.01** Business Relationships. RealEC provides the Network as a means for facilitating transactions between Providers and Customers. As such, RealEC does not take part in transactions and does not act in any way except as a source of facilitation means. RealEC makes no representation or in any way guarantees that any Customer(s) will place orders with a Provider. RealEC further makes no representation to a Customer regarding the nature or quality of Services offered by a Provider.
- 2.02** Separate Agreement. Each Provider shall maintain a separate contractual relationship with each Customer to which such Provider transmits a Service.
- 2.03** Invoicing and Payment. Each Provider shall invoice each Customer directly for any Service delivered and accepted by a Customer. Any fees due from any Customer to a Provider are the sole obligation of the Customer and the collection of such fees is the sole obligation of the Provider. RealEC shall neither be obligated to, nor guarantees, nor otherwise insures the collection or payment of, nor indemnifies a Provider for the nonpayment of, any such fees. RealEC makes no representation or guaranty concerning the financial condition, reputation, business practices or any other attributes of any Customer. Any fees due to RealEC under this Agreement are due and payable regardless whether Customer pays Provider.

Section 3. Additional Responsibilities of User.

3.01 Security Measures.

- (a) RealEC will provide "Access Codes" to each User to enable User to access the RealEC Network. User is solely responsible for the security, distribution and use of the RealEC Network under User's Access Code(s). RealEC will have no responsibility for Access Codes not within its actual control. User will immediately notify RealEC in the event of any loss, theft or unauthorized disclosure or use of any of User's Access Codes or if User otherwise has reason to believe that the RealEC Network is no longer secure for any reason.
- (b) Except for RealEC's obligations regarding the privacy of information, and RealEC's obligations regarding proper operation of the Network, both as set out below, User is solely responsible for safeguarding its Data. User is solely responsible for backup and restoration of User's Data. RealEC is not responsible for the accuracy and/or completion of User's Data.

- 3.02** Access. Unless otherwise agreed by RealEC in writing, User may authorize its employees, but no other individuals or entities, to use the RealEC Network. User

will keep a record of all such operators of the Realec Network, which record will include at least the name and address of each such operator and the date of initial access to the Realec Network. User and any such operator may not re-market, resell or redistribute the Realec Network to any third person or entity. User shall inform each of its operators of the terms and conditions of the Agreement and shall be responsible for any breach of such terms or conditions by any such operator.

3.03 Designated Liaison. User shall appoint a “Designated Liaison” to be User's main contact person with Realec. User shall promptly notify Realec in writing of any changes in appointment of the Designated Liaison.

3.04 Start-Up. User is responsible for obtaining, installing and maintaining all equipment and communication lines required to access and use the Realec Network.

3.05 Software. In the event that Realec licenses to User software or software documentation, either as specifically set out in a component of the Agreement or otherwise (“Software”), the following provisions will apply to such license.

(a) Realec grants a nonexclusive, nontransferable and revocable license to User to use an executable version of the Software in connection with the Realec Network and for such other purposes to which Realec may consent in writing and for no other purpose whatsoever. No ownership or other interest in the Software is granted to User, other than the license granted herein. The Software is provided for User’s internal use only, and User will not enable or (to the extent within User’s control) permit any third persons or entities to use the Software, either directly or through User. THE SOFTWARE IS PROVIDED TO USER “AS IS” AND ALL EXPRESS AND IMPLIED WARRANTIES ARE EXPRESSLY EXCLUDED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

(b) Realec reserves the right to modify or enhance the Software at any time and, at its option, may make available to User the modified and/or enhanced versions of the Software. Unless otherwise agreed by Realec in writing, User will use only the most recent version of the Software provided by Realec and will follow Realec’s instructions concerning the return or destruction of any prior versions of the Software.

(c) User recognizes that the Software constitutes proprietary and confidential information and trade secrets belonging to Realec and, in some cases, third persons or entities. User agrees to treat the Software as strictly confidential and not to disclose or permit the disclosure of the Software to any third person or entity without Realec’s prior written consent.

- (d) User may make one (1) copy of Software for backup purposes only. Otherwise, User will only make one (1) operating copy of Software for each computer on which Software is to run. No other copies or reproductions of the Software, in any format whatsoever, are authorized.
- (e) Immediately upon termination of the Agreement for any reason, User will permanently delete all Software from computer storage, will either destroy or ship to RealEC all physical copies of Software, and will certify to RealEC that the actions set out above have been completed.
- (f) Modifications of this general license may be set out in applicable portions of the Agreement, as required.

Section 4. User Representations and Warranties.

- 4.01** User represents and warrants to RealEC that throughout the Initial Term and any extension thereof, the following is true and correct:
- 4.02** Standing. User is certified to do business in all jurisdictions in which it conducts business and is in good standing in all such jurisdictions.
- 4.03** Adverse Actions. User shall take no action, whether intentional or unintentional, that has the purpose or effect of damaging the Networks or causing them to malfunction or the purpose or effect of reflecting adversely on the goodwill and/or reputation of the Networks, RealEC, or any of its affiliated companies. User will take all reasonable actions to ensure that the information it transmits over the Networks is true and correct.
- 4.04** Authorization; Substantial Conformity. User possesses all necessary rights and authorizations to enter into and perform under this Agreement. Each Document and each Service developed and/or transmitted by User shall substantially conform to any published representations and specifications concerning such Service.
- 4.05** Non-Infringement. User's development and transmission of a Document and/or Service shall not in any way constitute infringement or other violation of any copyright, trade secret, trade or service mark (whether or not registered), patent, design right, proprietary information or any other intellectual property rights or other rights of any third person or entity.
- 4.06** Security. User has established and will maintain security procedures that are reasonably sufficient to ensure that (i) all Document transmissions are authorized, and (ii) Documents are protected from improper access. User has taken all necessary and reasonable action by instruction, agreement or otherwise with its employees, VANs (value added networks) and other agents to fulfill its warranty obligation under this Section

- 4.07** Viruses. User shall use all reasonable efforts to ensure that each Service and each Document shall be transmitted free of all known bugs, viruses, so-called "time bombs" or other functions, routines, devices or instructions designed or available to create any unauthorized access to, or interruption in the functioning of, the Networks.
- 4.08** Compliance. Each Document and each Service provided by User, and the provision of technical assistance in connection with transmission of the same, shall comply with all applicable laws, rules and regulations, and shall fully conform to all commonly accepted standards and practices in the industry. User's use of the Networks shall comply with all applicable laws, rules and regulations.
- 4.09** Operating Policies. From time to time, RealEC may establish "Operating Policies" to govern User's use of the Network. User agrees comply with such Operating Policies, as in effect, from time to time. RealEC shall not be responsible for the failure of any User or any other person or entity to comply with the Operating Policies. RealEC has no obligation to enforce the Operating Policies against any User or any other person or entity

Section 5. RealEC Representations and Warranties.

- 5.01** RealEC represents and warrants to User that throughout the Initial Term and any extension thereof, the following is true and correct:
- 5.02** Standing and Power. RealEC is certified to do business in all jurisdictions in which it conducts business and is in good standing in all such jurisdictions. RealEC possesses all necessary rights and authorizations to enter into and perform under this Agreement.
- 5.03** Security. RealEC has established and will maintain security procedures that are reasonably sufficient to ensure that (i) the Network is and remains secure, and (ii) data stored on the Network are protected from improper access.
- 5.04** Viruses. RealEC shall use all reasonable efforts to ensure that the Network is protected from all known bugs, viruses, so-called "time bombs" or other functions, routines, devices or instructions designed or available to create any unauthorized access to, or interruption in the functioning of, the Networks.
- 5.05** Compliance. Products and Services provided by RealEC, and the provision of technical assistance in connection with transmission of the same, shall comply with all applicable laws, rules and regulations.
- 5.06** Warranty. Products and services provided by RealEC hereunder shall meet industry standards and shall be delivered or rendered in a workmanlike manner.

5.07 EXCEPT AS SET OUT HEREIN, REALEC DOES NOT MAKE AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES REGARDING THE NETWORK, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. WITHOUT DEROGATING THE GENERALITY OF THE FOREGOING, REALEC SPECIFICALLY DOES NOT WARRANT THAT ITS NETWORK OR ANY COMPONENT THEREOF WILL (I) PERFORM WITHOUT INTERRUPTION OR ERROR, OR THAT ALL IRREGULARITIES, ERRORS, PROBLEMS OR DEFECTS WILL BE CORRECTED, (II) MEET USER'S REQUIREMENTS, OR (III) BE ACCESSIBLE FROM THE CONFIGURATION WHICH USER MAY SELECT. IN NO EVENT SHALL REALEC, OR ANY OF ITS AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS OR ASSIGNS, AS SUCH, BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES UNDER OR IN CONNECTION WITH THIS AGREEMENT, ITS NETWORKS, OR ANY SERVICE, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, INTEREST, REVENUE, DATA OR USE, OR INTERRUPTION OF BUSINESS, INCURRED BY USER OR ANY THIRD PERSON OR ENTITY, WHETHER BASED UPON CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, DUTY TO WARN AND STRICT LIABILITY), WARRANTY OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF REALEC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE TOTAL CUMULATIVE LIABILITY OF REALEC, OR ANY OF ITS THIRD-PARTY LICENSORS, AND ITS AFFILIATES, PARTNERS, OFFICERS, EMPLOYEES, DIRECTORS, AGENTS, CONTRACTORS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS, AS SUCH, TO USER OR ANY THIRD PERSON OR ENTITY FOR ANY LOSSES, SHALL NOT EXCEED THE GREATER OF (A) THE TOTAL COMPENSATION PAID BY USER TO REALEC DURING THE CONSECUTIVE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE OCCURRENCE OF THE EVENT(S) GIVING RISE TO SUCH LIABILITY; OR (B) \$10,000.

Section 6. Network Interruptions and Incidents

6.01 User shall immediately, in writing, notify RealEC of any malfunctions (“Incidents”) associated with the Network. Upon receipt of notification regarding an Incident, RealEC shall use reasonable efforts to correct such Incident as soon as practicable. The liability of RealEC arising out of or related to an Incident associated with the

RealEC Network is expressly limited to not charging User for any services that RealEC has failed to provide as a result of such Incident. In the event RealEC notifies User that RealEC cannot correct an Incident, RealEC and User, each in its sole discretion, shall have the right to cancel the affected service(s). In the event any portion of RealEC's services are terminated pursuant to the preceding sentence, User shall remain liable for any fees payable for (i) all non-terminated services; and (ii) the terminated services that were rendered prior to the effective date of termination. In the event all of RealEC's services are so terminated (i) User shall remain liable for the fees for the terminated services that were rendered prior to the effective date of termination; and (ii) either party may terminate this Agreement. Interruption for RealEC Network maintenance, as discussed below, shall not constitute an Incident.

- 6.02** Network Maintenance. RealEC may interrupt the services contemplated by this Agreement, without liability, for the performance of routine RealEC Network maintenance, in which case RealEC will use commercially reasonable efforts to conduct such maintenance expeditiously and shall conduct such maintenance during non-business hours.

Section 7. Data Protection and Privacy

- 7.01** RealEC Obligation. RealEC is and shall continue to be in full compliance with the provisions of GLB, including the requirements to prevent unauthorized access to Non-Public Private Information and to limit dissemination of such information.
- 7.02** User Obligation. User represents and warrants that all Documents containing Non-public Private Information originated by User are properly transmitted to the Network under GLB.
- 7.03** Provider Obligation. Use and protection of Non-public Private Information received by a Provider is the sole responsibility of such Provider.
- 7.04** Transmission Monitoring. Subject to the provisions of GLB, User consents to RealEC's interception, collection, use, reproduction, storage and review of any Document to facilitate (a) billing, (b) network maintenance, including, without limitation, the diagnosis and correction of Incidents, (c) the protection and security of the Networks, (d) compliance with applicable law or valid legal process, or (e) RealEC's 's collection, generation, storage, reproduction, and use of statistical information for purposes of, among other things, measuring the use of the Networks and/or any Document transmitted to, from, or between Users. Except as required by law or by valid legal process, RealEC shall not, without User's consent, specifically identify User in association with such statistical information. In connection with such interception, collection, reproduction, storage or usage, RealEC shall have the right to remove any Document the content of which RealEC deems to be in violation of law or any term or condition set forth in this

Agreement, upon reasonable notice of such removal to User. Notwithstanding the foregoing, RealEC shall not have any obligation to remove, screen, police, edit or monitor any Document.

Section 8. Proprietary Information and Intellectual Property Rights

8.01 Protection. All information disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) in the course of performing under this Agreement or to which the other party gains access in connection with this Agreement, and identified as proprietary by the Disclosing Party (“Proprietary Information”) shall be deemed to be the property of the Disclosing Party. The Receiving Party agrees to (i) receive such Proprietary Information in confidence, (ii) use reasonable efforts to maintain the confidentiality of such Proprietary Information and not disclose such Proprietary Information to third persons or entities (except for the Receiving Party's representatives, agents and contractors who have a need to know, are under a duty of non-disclosure, and are acting for the sole benefit of the Receiving Party), which efforts shall accord such Proprietary Information at least the same level of protection against unauthorized use and disclosure that the Receiving Party customarily accords to its own information of a similar nature, (iii) use or permit the use of such Proprietary Information solely in accordance with the terms of this Agreement, and (iv) promptly notify the Disclosing Party in writing of any loss or unauthorized use, disclosure or access of the Disclosing Party's Proprietary Information of which it becomes aware.

8.02 Exclusions. Proprietary Information does not include information which: (i) is or becomes generally available to the public through no fault of the Receiving Party; (ii) was previously known to the Receiving Party free of any obligation to keep it confidential; (iii) is subsequently rightfully disclosed to the Receiving Party; (iv) is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Proprietary Information, or (v) is required to be disclosed by the Receiving Party as a matter of law, provided that the Receiving Party uses all reasonable efforts to provide the Disclosing Party with at least ten (10) days' prior notice of such disclosure and the Receiving Party discloses only that portion of the Proprietary Information that is legally required to be furnished pursuant to the opinion of its legal counsel.

8.03 Intellectual Property Rights.

- (a) No patent, copyright, trademark or trade secret protected right, or technology or other proprietary right and/or all related documentation of RealEC (collectively, the “Protected Property”) is licensed, granted or otherwise transferred by RealEC pursuant to this Agreement, except for the limited right to benefit from the use of such Protected Property strictly in accordance with the terms of this Agreement.

- (b) User shall (i) never remove or destroy any copyright or other proprietary marking placed upon, contained with, or used in connection with the RealEC Network or any Software; (ii) never create or authorize new versions, modifications, enhancements or derivative works to, nor translate, reverse engineer, de-compile or disassemble, the RealEC Network, Software or any portion thereof.; and (iii) never sub-license, in whole or in part, or grant a security interest in, or otherwise transfer rights to the RealEC Network, the Software or any portion thereof.

- (c) Use of RealEC Name. User may use the name of RealEC or any of RealEC's trademarks, trade names, service marks or logos solely in connection with any of User's promotional or advertising materials for its own Services; provided, however, that any such use must be pre-approved by RealEC in writing. User shall indicate on such material that the trademarks of RealEC are the property of RealEC and indicate which trademarks, if any, are registered trademarks. Any such use without such prior written approval shall constitute a material breach of this Agreement. Without in any way limiting the generality of the foregoing, User may not (i) explicitly state or imply that RealEC has rated, ranked or otherwise endorsed the use of User's services and products; or (ii) make any representation or warranty in any way related to RealEC or the RealEC Network. In addition, notwithstanding any prior written approval, User shall immediately change or correct, at User's expense, any such promotional or advertising material which RealEC, in its sole judgment, determines to be inaccurate, misleading or otherwise objectionable.

8.04 Injunctive Relief. Each party acknowledges that a party's breach of any of the provisions of this Agreement is likely to cause irreparable injury to the other party for which the other party will have no adequate remedy at law. Accordingly, each party consents to the entry of injunctive relief against it to prevent or remedy any breach of this Agreement, in addition to such other rights and remedies as may be available under this Agreement, at law, in equity or otherwise, including but not limited to money damages.

Section 9. Indemnification

9.01 By User. User shall indemnify and hold harmless RealEC and its affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any claims, actions, losses, damages or other liabilities that arise out of or result from any claim of any third person or entity relating to (i) any dispute or alleged dispute between Users or between a User and a third person or entity relating to any material, product or service sold or distributed by User, including, without limitation, any Service, whether in connection with the Networks or otherwise; (ii) any breach by User of

any covenant, representation or warranty set forth in this Agreement or otherwise; (iii) any irregularity, error, problem or defect occurring on the Networks which is caused by User; (iv) any defamatory or illegal, or allegedly defamatory or illegal, material transmitted across the Networks by User (or any person or entity that gains access to the Networks through User pursuant to this Agreement or otherwise); or (iv) a claimed violation by User of the GLB.

9.02 By RealEC. RealEC shall indemnify and hold harmless User and its affiliates, partners, officers, employees, directors, agents, contractors, representatives, successors and assigns, as such, from and against any claims, actions, losses, damages or other liabilities that arise out of or result from any claim of any third person or entity relating to (i) any dispute or alleged dispute relating to the alleged infringement by the Network or Software of the claimed patent, trademark or copyright rights of a third party; (ii) any dispute or alleged dispute relating to the alleged gross negligence or willful misconduct of RealEC; or (iii) any claimed violation by RealEC of the GLB.

Section 10. Termination by RealEC

10.01 In addition to any termination provisions set out in the Agreement, RealEC may terminate the Agreement immediately under the following circumstances:

- (a) User Default. “User Default” occurs when User: (i) breaches any material provision of this Agreement, including, but not limited to, the provisions regarding payment, such breach remaining uncured thirty days after written notice; or (ii) uses the RealEC Network for any unlawful purpose or in any unlawful manner, including any violation of the GLB. In the event of a User Default, RealEC may, upon notice to User (in addition to the other rights or remedies RealEC may have under this Agreement, at law, in equity or otherwise): (i) suspend services to the User until such time that such circumstance is corrected (provided RealEC shall not be prohibited from terminating this Agreement after suspending services); (ii) declare all fees that have been billed to User to be immediately due and payable; and/or (iii) terminate this Agreement.
- (b) User Bankruptcy, Insolvency, Reorganization. If User files or initiates proceedings or has proceedings filed or initiated against it, relating to its liquidation, insolvency, reorganization or other relief (such as the appointment of a trustee, receiver, liquidator, custodian or other official) under any bankruptcy, insolvency or other similar law or makes an assignment for the benefit of its creditors or enters into an agreement for the composition, extension or readjustment of its obligation in connection with the foregoing, then this Agreement shall terminate immediately and

without notice. Upon such termination RealEC shall be entitled to the rights and remedies set forth above.

Section 11. Changes to Terms and Operating Policies

11.01 Changes. From time to time the orderly operation of the Network and RealEC's business may require certain changes to Operating Policies or terms and conditions of the Agreement. So long as such changes affect all Users equally, RealEC shall have the right to make the following system-wide changes in the terms and conditions of this Agreement (collectively the "Changes") at any time on a prospective basis, without User's consent. Changes may include any of the following measures: (i) modifying the description of, or withdrawing, any RealEC Service provided as part of the RealEC Network, effective immediately upon notice to User, (ii) modifying any non-monetary term or condition of the Agreement, or an Operating Policy, effective upon such notice as RealEC deems reasonable, or (iii) modifying any monetary term or condition of the Agreement (including the fees payable to RealEC by User), effective upon thirty (30) days notice to User.

11.02 User's Rights. In the event of any Changes, User shall have the right to terminate this Agreement by giving written notice to RealEC within thirty (30) days after the date of RealEC's notice. Any such termination by User shall be effective either (i) upon receipt by RealEC of User's termination notice, or (ii) as of the effective date of the Changes in question, whichever is later. In the event that User does not notify RealEC of its election to terminate this Agreement during such thirty (30) day period, User shall be deemed to have agreed to such Changes.

11.03 Notice. Notice of Changes may, at RealEC's option, be provided electronically over the RealEC Network (in which event notice shall be deemed to have been given on the date such notice is posted on the RealEC Network).

Section 12. General

12.01 Notices. Except for notice of Changes, all notices and statements under this Agreement shall be given in writing, delivered by hand, overnight express or similar service (fee prepaid), or first class United States registered or certified mail with return receipt requested (postage prepaid), or facsimile to the addresses shown on then-current billing documents, to the attention of both the President and General Counsel of each party. All written notices and statements shall be deemed given, delivered, received and effective upon personal delivery, the same day of sending by facsimile once confirmed, one calendar day after sending by overnight express or similar service, or three calendar days after mailing by first class United States mail.

- 12.02** Headings. The paragraph and section headings used in this Agreement are for purposes of convenience only and shall not be deemed a part of this Agreement for purposes of construction or interpretation.
- 12.03** Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter hereof, and all other prior agreements or understandings, written or verbal, are hereby superseded. This Agreement cannot be amended, waived or modified unless the parties so agree in writing.
- 12.04** Assignment. Neither party may assign its rights or obligations under this Agreement without obtaining the written consent of the other party, which consent shall not be unreasonably withheld. In this regard, an assignment by User shall be deemed to occur upon any change of control of User, as defined in the Securities Laws of the United States.
- 12.05** No Waiver. Failure on the part of either party to complain of any action or non-action of the other party shall not be deemed to be a waiver of any rights under this Agreement. No waiver of any of the provisions of this Agreement shall be deemed to be a waiver of other provisions of this Agreement, and a waiver at any time of the provisions of this Agreement shall not be construed as a waiver at any subsequent time of the same provisions.
- 12.06** Severability. If any term of this Agreement is held to be invalid or unenforceable, this Agreement shall be construed without such invalid or unenforceable term.
- 12.07** Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts. Each counterpart so executed shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.
- 12.08** Governing Law. This Agreement shall be construed in accordance with the internal laws, and not the law of conflicts, of the State of Texas applicable to agreements made and to be performed in such state.
- 12.09** Force Majeure. No party shall not be liable for any failure of performance hereunder due to causes beyond its reasonable control, including without limitation acts of God, fire, explosion, vandalism, storm, war, riot, strike or disturbance, or other similar catastrophes, man-made or natural; any law, order, regulation, direction, action or request of any jurisdiction.

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