

# TERMS AND CONDITIONS

These general Terms and Conditions (“Terms”) apply to any Consulting Agreement (“Agreement”) executed between Uncommon Solutions, Inc. and any individual who, or entity that, is listed as the “Client” in that Agreement. By signing such Consulting Agreement, or any amendment thereto, the Client warrants, represents and affirms that he/she/it has read, understood and agrees to all these Terms as if fully set forth in the parties’ fully signed Consulting Agreement.

## A. SUMMARY

1. **SPECIFICS:** The Agreement is comprised of all recitals and numbered paragraphs in the signed “Consulting Agreement” and are effective, including, without limitation, all Terms herein. Exhibits, if any, shall be considered part of the Agreement as well.
2. **AGENTS.** Client Contact (for Client) and the Uncommon Account Representative (for Uncommon) shall be the parties’ agents for implementing the Agreement, for any Notices and for resolution of any issues. The individuals serving in such capacities may be changed from time to time upon reasonable written Notice to the other party.
3. **CLIENT ASSISTANCE REQUIRED.** Client will use all reasonable efforts as are standard in the industry to assist Uncommon in providing consulting services (“Services”), including, without limitation, making personnel, resources and property available when requested during Regular Business Hours, responding promptly to requests for information, providing Uncommon with any and all information in Client’s possession or control to assist Uncommon in the performance of Services and complying with operating instructions and any End User License Agreement (“EULA”) for any and all Hardware or Licensed Software.
  - a. Client is solely responsible for acquiring, servicing, maintaining and updating all Hardware and Licensed Software.
  - b. Client agrees to access and Use any Hardware, Licensed Software and Services in compliance with all operating instructions and procedures that Uncommon or third parties may provide and as may be amended from time to time in the manufacturer’s sole discretion.

## B. DEFINITIONS

1. “Agreement” means any signed Consulting Agreement between Client and Uncommon Solutions, Inc. and includes these Terms and Conditions, whether specified or not.
2. “Claim” or “Claims” means any disagreement, including, without limitation, controversy, dispute, demand, cause of action, litigation, or other controversy or legal proceeding whatsoever.
3. “Client” means the individual or entity referenced in the Agreement and shall include all that party’s authorized parents, subsidiaries and affiliates and owners, officers, directors, managers, employees, agents, independent contractors and authorized assigns.
4. “Client Information” means all information, Intellectual Property and tangible property owned by Client, or properly licensed by Client from a third party, that is provided to Uncommon in order to perform the Services or is input into any Licensed Software or Hardware by Client or at Client’s request.
5. “Custom Software” means any software program(s), code, updates, improvements or modifications and related Documentation that Uncommon develops, whether in source code, Object Code, reconfigurable binary, or any other form, and all Improvements thereto.
6. “Derivative Work” shall have the meaning provided by the U.S. Copyright laws as amended from time to time.
7. “Documentation” means user manuals, binders, release notes, installation notes, written utility programs and other written or graphic materials related to any software and all copies thereof.

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8. "End User" is defined as the individual who, or entity that, actually makes use of software for its intended purpose as opposed to distributing, licensing or otherwise transferring such software.
9. "Hardware" means computers, hard drives, monitors, printers, keyboards/mouse, fax machines, telephones, cables, network equipment and other hard goods related in any manner to the functioning of computer software or Licensed Software or to the Services detailed by the Agreement, including these Terms.
10. "Help Desk" means an Uncommon service, reached by telephone or email inquiry, available to Client during Regular Business Hours where Client personnel can request assistance with Use or technical issues relating to Custom Software.
11. "Improvements" means any enhancement, adaptation, addition, modification, revision, bug or error fix or new version, including Derivative Works, of any portion of software or related Documentation.
12. "Intellectual Property" means rights in and to any and all intangible and industrial property as that phrase is commonly understood, including, without limitation, (i) all ideas reduced to an expression, concepts, work or inventions that are the result of creativity, including, without limitation, patents, trademarks, copyrights, moral rights, trade dress and Trade Secrets, whether or not registered or registrable, and including all rights to such registration, and (ii) confidential and/or proprietary information and know-how, all in any form or format.
13. "**Interest**" means additional dollars or portions thereof due at a rate equal to the eighteen percent (18%) per annum (or 1.5% monthly), compounded monthly.
14. "Jurisdiction" means the county in which Uncommon has its principal place of business, including the court system(s) located in that county as well as the closest U.S. Federal Court should U.S. Federal laws apply.
15. "Licensed Software" means all software, whether in source code, Object Code, reconfigurable binary, or any other form, and related Documentation provided by a third party, or by a third party through Uncommon, as well as all Improvements thereto.
16. "Regular Business Hours" means Monday through Friday, 8am to 5pm (MST), excluding national holidays, including, without limitation, New Year's Eve, New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Easter, Memorial Day, Independence Day, Labor Day, Thanksgiving, day after Thanksgiving, Christmas Eve and Christmas Day.
17. "**Object Code**" with respect to particular software means the machine-readable version in binary form of the code for that software which can be processed and manipulated by a computer to produce intended results.
18. "**Tax**" or "Taxes" means any tax, levy, charge, impost, duty (including without limitation goods and services tax, value added tax, sales tax, withholding tax, stamp duty or transaction duty), fee, deduction and any interest, fine or penalty charge that is assessed, levied, imposed or collected by any government body.
19. "Trade Secret" shall have the meaning provided by Colorado law as amended from time to time.
20. "Techniques and Component Elements" means certain data, ideas, modules, components, designs, utilities, templates, concepts, analyses, methods, techniques, algorithms, formulas, technical information, know-how and specifications invented or developed prior to the Effective Date or after the Effective Date but having general application which does not incorporate Client Information or Uncommon's Intellectual Property.
21. "Transfer" means any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly.
22. "Uncommon" means Uncommon Solutions, Inc. and shall include all that party's officers, directors, managers, employees, agents, independent contractors, subcontractors and authorized assigns.
23. "Use" means loading, utilizing, storing or displaying software by the number of authorized users, which may include sub-licensees (or End Users) only if authorized in writing. "Use" includes copying of all or any portion of software from storage units or media into Hardware and/or transmitting software to Hardware for the purposes intended by Client as detailed by the Agreement.

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24. The Definitions detailed by this Section B., paragraphs #1-24 shall survive the termination of the Agreement.

### C. SERVICES

1. **SERVICES.** Uncommon shall use reasonable efforts as are standard in the industry to provide the Services described in the Agreement.
2. **CONSULTING SERVICES.** Services are charged on an hourly basis as more specifically detailed by the Agreement and will be invoiced monthly pursuant to paragraph #2 of the Agreement entitled "Payment of Fees."
  - a. Client understands that it is engaging Uncommon and not a specific individual. Uncommon, solely, will select its employees or independent contractors who are to work with Client and such individual(s) may change from time to time in Uncommon's sole and exclusive discretion.
  - b. If Client requests a change in dates to any Service, Uncommon will work with Client to attempt to reschedule that Service, but cannot guarantee availability for changes made 1-5 days before the scheduled Service date.
  - c. The rescheduling of any of Service is subject to Uncommon's availability and is at Uncommon's sole discretion. Uncommon's inability to reschedule due to pre-existing conflicts shall not be considered a breach of any Agreement with Client. Cancellations or any request to reschedule must be in writing.
  - d. Services may include recruiting, placement and/or staffing assistance as more specifically detailed in the Agreement.
  - e. All Uncommon independent contractors and employees are required to execute a nondisclosure agreement to maintain the confidentiality of Client Information.
3. **HELP DESK.** IF APPLICABLE, Uncommon's Help Desk shall have authority to assist any Client personnel requesting assistance from such Help Desk at the rates detailed herein unless Client has specifically provided information to Uncommon regarding individuals who do not have such authorization.
4. **CUSTOM SOFTWARE DEVELOPMENT.** Should Client wish to contract with Uncommon for the development or improvement of any Custom Software, the parties must agree to a Master Service Agreement, which shall replace the Consulting Agreement.
5. **THIRD PARTY LICENSED SOFTWARE AND/OR HARDWARE.** Client understands that there may be Licensed Software and Hardware which will be provided from third parties to Client at standard retail pricing and which may not be returnable in the event of cancellation. Wherever possible, any EULA or other agreement for Use of Licensed Software or Hardware will be between Client and the third party owner of such software or Hardware. Should such license agreement be between Uncommon and the third party owner of Licensed Software and/or Hardware, Uncommon will take efforts as are standard in the industry to obtain appropriate rights for Client's intended Use. Client will use best efforts to abide by all terms and conditions of any EULA applicable to any Hardware and/or Licensed Software obtained from third parties. Client is solely and fully responsible for its own agreements with third parties if it seeks to sublicense or otherwise Transfer assignable licenses.
6. **LICENSE OF CLIENT INFORMATION AND INTELLECTUAL PROPERTY.** Client may provide certain Client Information to Uncommon during the course of the Agreement. The parties understand and agree that Client is the owner, on its own or through others, of certain Intellectual Property included within Client Information.

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In that event, Client warrants and represents that it has sufficient ownership rights in such Intellectual Property to provide a license to Uncommon in order to fulfill the intent of the Agreement without violating any third party's Intellectual Property rights. Client hereby indemnifies and holds Uncommon harmless from any and all liability for third party Claims relating to Client Information and Intellectual Property provided under the Agreement to Uncommon. This Agreement does not transfer any ownership rights to Uncommon of such Intellectual Property except as specifically granted herein. Client hereby grants Uncommon a royalty-free, terminable, world-wide license to view, copy, report on, commingle and otherwise to use Client Information solely to provide Services to Client and for Uncommon's internal statistical purposes (see paragraph C. #9 below) unless otherwise agreed in writing and, if applicable, perform troubleshooting and maintenance in the ordinary course of the Services to be provided.

- a. Uncommon will not share Client Information with any unauthorized third-party.
- b. Uncommon will treat Client Information with the same degree of care that it treats its own Information. Upon completion of Uncommon's use as detailed above, it will destroy the copies/backups of such information except as necessary and reasonable to provide Services to Client.
- c. Client's sole and exclusive remedy for any damage or lost Client Information shall be for Uncommon to use commercially reasonable efforts to replace or restore the lost or damaged Client Information from the latest backup of such data that Uncommon has maintained in accordance with its standard archival/backup procedures.
- d. Within five (5) days of termination of the Agreement, Client may request a comma-delimited file containing all Client Information unless Client has otherwise breached the Agreement.
- e. The terms of this paragraph #6 and all subparagraphs shall survive the termination of the Agreement.

7. **FEES** must be paid as detailed in the Consulting Agreement, paragraph #2.

## 8. **TERMINATION**

- a. As detailed in the Agreement, paragraph A. Specifics, #3 "Termination," either party may terminate the Agreement upon thirty (30) days written Notice to the other. The termination date will be the 30th day after Notice is received.
- b. Uncommon may terminate the Agreement without a period to cure, effective immediately upon receipt of Notice if Client or any authorized sub-licensee:
  - i. Uses Custom Software in breach of the Agreement; or
  - ii. Becomes, threatens or resolves to become subject to any form of insolvency administration.
- c. Except for a breach of the Agreement entitled Payment of Fees" or Paragraph C. #8b. of the Agreement, in the event Client breaches the Agreement (including Terms), Uncommon will provide Client with a Notice to cure such breach. Client will have thirty (30) days from the date of such Notice to cure the breach; and if the breach is cured to Uncommon's reasonable satisfaction, the Agreement will remain in full force and effect. If not cured, the termination date will be the 30<sup>th</sup> day after receipt of the Notice to cure.
- d. All Fees and/or charges incurred up to the date of termination shall be fully due and payable regardless of termination.
- e. Termination of the Agreement is without prejudice to, and does not affect the accrued rights or remedies of, any of the parties arising up to the date of termination.
- f. The terms of subparagraphs d. – f. above shall survive the termination of the Agreement.

9. **INTELLECTUAL PROPERTY.** Uncommon, on its own or on behalf of others, is the sole owner of all right, title and interest to its Intellectual Property, including, without limitation, any of its Custom Software, any modifications made thereto by either party, all Uncommon materials identified with a copyright notice,

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trademark indicia, Uncommon trade names, its patent or patent pending products and other of Uncommon's Intellectual Property created by or for the benefit of Uncommon, or a Derivative Work or derivative thereto, and identified from time to time as being its Intellectual Property. No title to, or ownership of, any such Intellectual Property is Transferred to Client by or through the Agreement except as specifically provided herein. Client warrants and represents that, within five (5) days of termination for any reason, it will (i) return all Uncommon tangible and Intellectual Property in its possession or control to Uncommon, (ii) destroy all archival or backup copies of such Intellectual Property and (iii) certify, in writing, that Client does not have possession or control of any Uncommon real or Intellectual Property. **Client** is the sole owner of all right, title and interest in its Client Information. No title to, or ownership of, such Client Information is Transferred to Uncommon by or through the Agreement other than as specifically provided herein. Without limiting Uncommon's right to use Client Information in order to complete the Services detailed in the Agreement and for internal statistical purposes to improve its products and services, Uncommon agrees to destroy all Client's Intellectual Property, return all Client's physical property collected during the term of the Agreement and execute a confirmation that Uncommon does not have possession or control of any Client real or Intellectual Property within ten (10) days of the termination of the Agreement.

10. **NO COMMINGLING.** Each party shall continue to have the ability to conduct its business during the pendency and after the termination of the Agreement, however, neither may, directly or indirectly, anywhere throughout the world, present, develop, manufacture, produce, market, sell or provide any product or service that uses any concepts, formats, presentation methods, terminology, and/or other Intellectual Property owned by the other or that is specifically derived from or attributable to a party's tangible or intangible property except as permitted herein. Further, both parties understand and acknowledge that each party's own employees, contractors, vendors and customers constitute a highly trained, unique and valuable component necessary to that party's business. As a result, at no time during the Agreement or for five (5) years subsequent to its termination, shall either party, directly or indirectly, induce or attempt to induce any person not to purchase or use any product or induce or attempt to induce any of the other party's employees, independent contractors, agents, affiliates, subsidiaries, other clients, assignees or successors to terminate his or her employment or association with that other party. In addition to all other rights and remedies available to either party, each party may request an injunction in a court of proper jurisdiction for breach of this paragraph. This paragraph shall not operate as a waiver of either party's rights or remedies for a breach of the Agreement.
  
11. **MUTUAL CONFIDENTIALITY.** Each party acknowledges that the other has invested significant time and effort and will, over the course of the Agreement, continue to invest time and effort in furtherance of its business, which effort has and will cause the production of various Trade Secrets and other confidential information (collectively "Information"). The use or disclosure of such Information by the receiving party ("Recipient"), directly or indirectly, is expressly prohibited without the Information owner's ("Owner") prior written authorization, or as provided herein.
  - a. Such Information will be considered confidential and proprietary if it is stamped as "CONFIDENTIAL" or would reasonably be considered confidential under ordinary circumstances or is orally identified as such to Recipient. Recipient agrees to maintain Information as secret and will not, directly or indirectly, disclose such Information to any third parties without the Owner's written authorization. The Recipient agrees to take reasonable precautions to ensure that its employees, contractors, and other related parties that may have access to the Information as part of the Recipient's ordinary course of business shall also abide by the confidentiality obligations hereunder.

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- b. Notwithstanding, Information, whether or not marked as CONFIDENTIAL, shall include: both party's consulting procedures, methods and processes, Uncommon's Custom Software and third party Licensed Software Object Code, source code, Client Information, both party's pass codes, customer and vendor lists and related information, business plans and activities, processes, techniques, technical data, research and development information, formulas, ideas, know-how, unregistered copyrightable works, inventions (whether patentable or not), technical information, designs, technology, compositions, data, drawings, schematics, product development plans, and other business, technical and financial information in any form or format.
- c. Information shall not be deemed to be confidential or proprietary which information (i) is known to the Recipient before disclosure by its Owner; (ii) is now or hereafter becomes part of the public domain without fault of the Recipient; (iii) is disclosed to the Recipient on a non-confidential basis by a third party under no legal disability to make such a disclosure, or (iv) is disclosed pursuant to judicial action or Governmental regulation, subpoena or court order. Disclosure of Information pursuant to this subparagraph c.(iv) is not precluded if such disclosure is in compliance with a valid subpoena or order of a court or other governmental body of the United States or any political subdivision thereof; provided that if the Recipient is so required to disclose, it will first give advance Notice to the Owner of any such request for disclosure as promptly as feasible in order that its Owner may, at its discretion, seek a protective order or such other appropriate remedy as that Owner deems necessary. If, failing the entry of a protective order, the Recipient is, in the opinion of its counsel, compelled to disclose the Information, the Recipient shall disclose only that portion of the Information as is legally required without liability hereunder.
- d. The Recipient acknowledges and agrees that any breach of the obligations of the paragraphs and subparagraphs relating to CONFIDENTIALITY will cause the Owner of such Information to suffer immediate, irreparable harm for which monetary damages alone would be an inadequate remedy. Accordingly, the parties agree that the Owner is entitled to equitable relief, including injunctive relief and specific performance, against the Recipient for any breach of such Recipient's obligations as to the Owner's Information, in addition to, and not to the exclusion of, all other remedies at law, in equity or otherwise under the Agreement.

### 12. WARRANTY AND EXCLUSIONS. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THE AGREEMENT,

- a. Each party warrants and represents that (i) it has all necessary rights, licenses and approvals required to perform its obligations hereunder; (ii) each party's representations and obligations are not in conflict with any other obligations or agreement it has with any third party; and (iv) each party will comply with all applicable U.S. Federal, state and local laws, rules and regulations during the course of this Agreement.
- b. **AS STATED IN PARAGRAPH #4 OF THE AGREEMENT, THE PARTIES AGREE THAT UNCOMMON'S LIABILITY, IF ANY, UNDER THIS AGREEMENT FOR ANY CLAIMS WHATSOEVER SHALL ONLY BE FOR ACTUAL DAMAGES CAUSED DIRECTLY BY UNCOMMON'S NEGLIGENCE AND PROVEN IN A FINAL JUDGMENT, AND INCURRED BY CLIENT DIRECTLY, AND SHALL NOT EXCEED THE FEES CLIENT HAS PAID TO UNCOMMON UNDER THIS AGREEMENT (INCLUDING ANY ATTORNEYS' FEES AND COSTS). UNCOMMON HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED REGARDING SUCH SERVICES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT AND ACCURACY.**
- c. **UNCOMMON DISCLAIMS ANY AND ALL WARRANTIES THAT SERVICES, LICENSED SOFTWARE AND HARDWARE ARE, OR WILL BE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT**

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**ERROR OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PROGRAM LIMITATIONS;**

- d. CLIENT ASSUMES THE ENTIRE COST OF ALL NECESSARY SERVICES, REPAIR OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF UNCOMMON'S NEGLIGENCE OR WILLFUL MISCONDUCT;**
- e. UNCOMMON HEREBY DISCLAIMS AND MAKES NO OTHER WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS OR EFFECTIVENESS OF THE REPORTS, DATA, SCORES, RESULTS OR OTHER INFORMATION OBTAINED, GENERATED OR OTHERWISE RECEIVED BY CLIENT FROM ACCESSING AND/OR USING LICENSED SOFTWARE, HARDWARE AND/OR SERVICES OR OTHERWISE RESULTING FROM THE AGREEMENT, AND**
- f. USE OF LICENSED SOFTWARE, ANY PROVIDED HARDWARE AND SERVICES AND ANY RESULTING INFORMATION AND/OR REPORTS ARE ENTIRELY AT CLIENT'S OWN RISK, AND UNCOMMON SHALL HAVE NO LIABILITY OR RESPONSIBILITY THEREFORE EXCEPT AS DETAILED HEREIN.**

**13. LIMITATIONS ON LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNCOMMON SHALL NOT BE LIABLE IN ANY MANNER TO CLIENT OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR LOST PROFITS WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS INFORMATION, OR ANY OTHER LOSS OR ATTORNEYS' FEES OR COSTS) ARISING OUT OF THE USE OF OR INABILITY TO USE SERVICES, EVEN IF UNCOMMON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF UNCOMMON'S FAULT OR NEGLIGENCE. IN THE EVENT THIS LIMITATION IS ADJUDICATED IN A JURISDICTION THAT DOES NOT ACCEPT SUCH LIMITATION(S), UNCOMMON'S LIABILITY SHALL NOT EXCEED THE CONSULTING FEES PAID BY CLIENT FOR THE MONTH PRIOR TO THE PROVEN LOSS, INCLUDING ATTORNEYS' FEES AND COSTS. IN THE UNLIKELY EVENT OF ANY CLAIM, AS DEFINED BY THE AGREEMENT, AGAINST CLIENT BY ANY THIRD PARTY, UNCOMMON'S SOLE RESPONSIBILITY TO CLIENT WILL BE LIMITED TO PROVIDING DISCLOSURE OF THE SERVICES PROVIDED THROUGH IDENTIFICATION OF THE AGREEMENT. SUCH DISCLOSURE SHALL NOT BE A BREACH BY UNCOMMON OF ANY TERM OF THE AGREEMENT, INCLUDING THE CONFIDENTIALITY TERMS.**

**14. U.S. GOVERNMENT RESTRICTED RIGHTS/EXPORT RESTRICTIONS.** It is Uncommon's understanding that Services are not being provided to the U.S. government or any quasi-governmental or public entity. In the event provision to the U.S. government is required or exists through a sublicense, the following shall apply:

**SERVICES PROVIDED WITH RESTRICTED RIGHTS.** If technical data, computer software or Services are used on behalf of a U.S. government agency or quasi-government agency, this Agreement constitutes the entire agreement between the government agency and Uncommon and is binding on government users in accordance with the policy stated at FAR Sec. 12.211 and 12.212 (nondefense agencies) or DFAR 227.7201 and 227.7202 (for defense agencies). Any Licensed Software and any related Services are commercial items, developed at private expense, and not under a government contract. Pursuant to FAR 12.212 (for

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nondefense agencies) and DFARS 227.7202-1 and 227.7202-3 (for defense agencies), the government's rights in such Software and related Services are limited to those rights granted in the Agreement.

Client shall provide Uncommon with prompt notice of government inclusion; Client warrants and represents that it will not, on its own or through others, export or transmit Custom Software, technical data or Service provided to any country to which such export or transmission is restricted by any applicable U.S. regulation or statute without the prior written consent of Uncommon and, if required, the consent of the Bureau of Export Administration of the U.S. Department of Commerce or such other governmental entity as may have jurisdiction over such export or transmission. Client agrees to indemnify and hold Uncommon harmless from any Claims whatsoever, including, but not limited to, attorneys' fees and costs, for any breach of this paragraph #14, including subparagraphs.

15. **DISPUTE RESOLUTION/BINDING MEDIATION.** If any Claim arises relating to the Agreement that cannot be resolved through informal negotiation, the parties agree to proceed in good faith to submit the matter to a mediator with arbitrator powers ("Binding Mediation"). Either party may request such Binding Mediation by a written Notice to the other. Within ten (10) business days following Notice of an intent to mediate by either party, the parties will jointly select, appoint and arrange to meet, either in person, telephonically or electronically, an impartial person skilled in the area of dispute and located in the Denver, Colorado metro area who can resolve the dispute confidentially. If the parties cannot jointly choose a mediator, each side shall choose an unaffiliated, neutral mediator (within fifteen (15) days of the Notice of intent to mediate), which mediators shall jointly choose a third unaffiliated, neutral mediator (within twenty (20) days of the Notice of intent to mediate) and which third mediator shall solely determine the controversy. The mediator's decision shall be determined pursuant to Colorado law, except where U.S. Federal law applies, without regard to any conflict of laws, and shall rely upon the Colorado Rules of Civil Procedure. Should one party fail to select a mediator within the timeframe above, fail to schedule a mediation session within sixty (60) days of the Notice of intent to mediate or fail to appear at a scheduled mediation session, the mediator shall rule in favor of the other party. The parties will share equally in the cost of such mediation. At each party's own cost and expense, it may also engage legal counsel to assist in presenting its arguments to the mediator. Mediation shall terminate when 3 hours of mediation has been completed unless modified by mutual agreement. The mediator shall issue a final binding decision within thirty (30) days of the final mediation session, which decision shall be fully enforceable and registrable as a judgment in the Jurisdiction without further action. Neither party will take any action, or fail to act, to the detriment of the other during the term of the Agreement or during any dispute between the parties.
  
16. **INDEPENDENT CONTRACTORS.** Each party is an independent contractor to the other. Nothing in the Agreement shall be construed to make the parties partners or joint venturers. Each party, personally and unconditionally, agrees to hold harmless and indemnify the other, its officers, directors, managers, owners, employees, agents, affiliates, and its clients, from (i) any assessment of taxes, penalties, damages, liabilities and costs incurred due to a party's failure to qualify as an independent contractor or (ii) failure to remit appropriate taxes to governmental agencies (including foreign agencies where applicable). **EACH PARTY IS AN INDEPENDENT CONTRACTOR TO THE OTHER AND IS NOT AN AGENT OR REPRESENTATIVE OR JOINT VENTURER WITH THE OTHER FOR ANY PURPOSE, IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS AND IS REQUIRED TO PAY ALL STATE AND FEDERAL TAXES WITHOUT CONTRIBUTION FROM THE OTHER.** The terms of this paragraph #16 shall survive the termination of the Agreement.
  
17. **PHOTOGRAPHS/USE OF LIKENESS & NAME.** Client agrees to permit Uncommon or its agents to utilize Client's name in any non-detrimental manner (i.e., use of name as a reference of listed client) for



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Uncommon's marketing, advertising or other promotional materials. Neither party will use the other's trademarks for any advertising or promotion without obtaining prior written authorization.

18. **WAIVER.** Waiver by either party of any provision of the Agreement (including these Terms) must be in writing to be effective. Waiver of any breach of any provision of the Agreement shall not constitute or operate as a waiver of breach of such provision on any other occasion, nor a waiver of any breach of other provisions, nor shall failure to enforce any provision operate as a waiver of such provision.
19. **APPLICABLE LAW/CHOICE OF LAW.** The Agreement (including these Terms) shall be construed in accordance with and governed by the laws of the State of Colorado, except to the extent that U.S. Federal law applies, without regard to any conflict of laws provisions. Jurisdiction and venue shall be appropriate in the county of Uncommon's principal place of business at the time the dispute arises. Disputes shall be determined through Binding Mediation as detailed herein. The parties agree that any judgment or award rendered by the mediator may be entered in the proper court of the Jurisdiction and such judgment shall bind both parties no matter where located or residing. Neither party shall contest subject matter or personal jurisdiction within the Jurisdiction.
20. **NO ASSIGNMENT.** Client may not assign or Transfer the Agreement or license contained herein without Uncommon's prior written authorization. A transfer of all shares of a corporation shall not be considered an assignment.
21. **ENTIRE AGREEMENT.** This Agreement (including these Terms) constitutes the entire understanding and agreement of the parties with respect to the subject matter covered in it and supersedes all other prior agreements, understandings, or statements, written or oral, by or between the parties with respect to such subject matter.
22. **NO MODIFICATION.** The Agreement may not be modified or amended, nor may any term or provision be waived or discharged, except in writing, signed by the party or parties against whom such amendment, modification, waiver, or discharge is sought to be enforced.
23. **NO NEGATIVE COMMENTS.** During the course of the Agreement and after its termination, neither party will make any negative comments, written or oral, directly or indirectly, on its own or through others, regarding the other.
24. **SEVERABILITY.** The provisions of the Agreement shall be deemed severable, and the invalidity, illegality or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provisions. In the event any provision of the Agreement is found to be invalid, illegal or unenforceable, the parties shall endeavour to modify that clause in a manner that gives effect to the intent of the parties in entering into the Agreement.
25. **EXHIBITS.** All Exhibits attached to or made part of the Agreement are incorporated and agreed upon by the parties. In the event a conflict occurs between the terms of any Exhibit and the Agreement, or within the Agreement itself, the terms more protective of Uncommon's rights and remedies shall control.
26. **SECURITY.** To the extent he/she/it is reasonably able, neither party will permit third parties from obtaining any security interest in, or any lien or encumbrance of any nature upon, the other's Intellectual Property that is in the Recipient's possession or control. Further, each party will promptly provide Notice (within two (2)

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business days) to the other in the event an attempt to encumber such other's Intellectual Property occurs or is threatened.

27. **LIABILITY.** If multiple entities are listed as "Client" in the Agreement, such Clients shall be jointly and severally liable for any and all Claims made by Uncommon for a breach of the Agreement or by third parties as detailed herein. Client hereby indemnifies and holds Uncommon harmless from any third party Claims regarding Client's acts or omissions alleged to have caused injury or damage to third parties, including, but not limited to, attorneys' fees and costs.
- a. In the event of a Claim as to the payment(s) due to any party, (i) all monies agreed upon will be paid pursuant to the Agreement; and (ii) within three (3) days of receipt of any Notice to cure or other Claim, all Fees which are in disagreement will be placed in an interest bearing escrow account with U.S. Bank, located in Arapahoe County, or any successor bank, until the parties' Claims can be resolved by Binding Mediation.
  - b. Interest on the monies in the escrow account will be apportioned to the party entitled to that money as determined by the mediator. Bank charges on the monies in the account will be apportioned to the party not entitled to that money as determined by mediation.
28. **NOTICES.** Any notice, request, demand or other communication ("Notice") required under the Agreement shall be in writing and shall be deemed sufficiently given upon delivery if provided to the authorized Uncommon Account Representative and/or Client Contact, if delivered by hand (signed receipt obtained), or within the continental U.S., a Notice will be deemed received seven (7) days after posting, if properly addressed and sent by U.S. mail, first class, postage prepaid. Notices sent by courier, email, facsimile or other electronic transmission methods are effective as of the date received as long as a written confirmation of receipt exists. All such Notices shall become effective on the date of receipt.
29. **HEADINGS.** All captions, fonts, underlining or footers used in this Agreement are for convenience only and shall have no meaning in the interpretation or effect of the Agreement.
30. **BANKRUPTCY/ABANDONMENT.** In the event Client files for bankruptcy of any form or is unable to pay any creditor within thirty (30) days of when payment is required by such creditor, Client must provide immediate Notice of such filing or inability to pay to Uncommon. The Agreement shall terminate on the date of such court filing (if made) or receipt of Notice (if no court filing made). In the event Uncommon files for bankruptcy of any form, the Agreement shall continue in force until otherwise ordered by a Bankruptcy Court.
31. **CONSTRUCTION.** The Agreement, any Exhibits, and any and all amendments to it, shall not be construed against the drafter.
32. **TIMING.** Where the day on or by which something must be done is not a business day in the Jurisdiction, that thing must be done on or by the following business day.
33. **FORCE MAJEURE.** No party hereto will be liable for damages for any delay or default in performance during the term hereof if such delay or default is caused by conditions beyond its control, including, but not limited to, acts of God, Government restrictions, regulations, laws or sequester, continuing domestic or international problems such as wars, threats of terrorism, or insurrections, strikes, fires, floods, work stoppages and embargoes; provided, however, that either party will have the right to terminate the Agreement "without breach" upon thirty (30) days prior written Notice if the other party's delay or default due to any of the above-mentioned causes continues for a period of two (2) months.

## TERMS AND CONDITIONS

34. **EXECUTION OF ADDITIONAL DOCUMENTS.** Should the execution of additional documentation be required to fulfill the intent of the Agreement, including without limitation, a short-form Copyright Assignment, Patent Assignment or License Agreement, the parties will execute such documentation promptly upon request without additional compensation. The party requiring the signed documentation shall provide the form of document for signature.
35. **SIGNATURES/COUNTERPARTS.** The Agreement may be signed in counterparts. Further, facsimile or digital signatures shall be accepted and as valid as a hand-written signature.
36. **AUTHORITY.** The individuals executing the Agreement on behalf of their respective parties hereby represent and warrant that they have the right, power, legal capacity, and appropriate corporate or other authority to enter into the Agreement on behalf of the entity for which they sign.
37. **SURVIVAL.** The terms of paragraphs #9 - #37 and all subparagraphs shall survive the termination of the Agreement.

BY SIGNING THE CONSULTING AGREEMENT, YOU, THE CLIENT, AFFIRM, WARRANT AND REPRESENT THAT YOU HAVE FULLY READ, UNDERSTOOD AND AGREE TO THE AGREEMENT, INCLUDING ALL THESE TERMS AND CONDITIONS.