



Lapine Terms and Conditions for Consulting Services

1. Definitions.

“**Agreement**” refers to the Order together with these General Terms & Conditions.

“**Client**” refers to the company, organization or person purchasing Consulting Services from Lapine.

“**Consulting Services**” refers to the consulting services, individually and collectively, as set forth in an Order or otherwise requested by Client to be provided by Lapine.

“**Lapine**” refers to David S. Lapine Company, Inc. and/or any of its affiliates that provide the Consulting Services to Client.

“**Order**” refers to each order, statement of work, or other ordering document between Client and Lapine governing Client's purchase of Consulting Services.

2. Consulting Services. Subject to the terms and conditions of this Agreement, Lapine shall provide the Consulting Services to Client as set forth in the applicable Order.

3. Payment of Invoices. Client will compensate Lapine under the terms of the applicable Order for the Consulting Services performed and expenses incurred through the term of the applicable Order or the effective date of termination. Client shall be responsible for any taxes imposed on the Consulting Services, other than taxes imposed on Lapine's income or property. Lapine's invoices are due upon receipt. Any payment not received within thirty (30) days of receipt of a correct invoice shall accrue a late charge equal to the lesser of (A) 1½% per month or (B) the highest rate allowable by law, in each case compounded monthly.

4. Term. With respect to Consulting Services that are to be provided for/over a specific period of time, the term of the Agreement (the “**Term**”) shall commence on the start date indicated in the Order (or, if no start date is indicated, upon Client's acceptance of the Order, or as otherwise agreed by the parties), and shall remain in effect for the term set forth in the Order (including, any renewal periods), unless sooner terminated as provided for in the Agreement. With respect to any Consulting Services for which no term is specified in the Order, the Term shall commence upon Lapine's acceptance of the Order, and remain in effect until the Consulting Services have been rendered and payment of all amounts due in respect of the Consulting Services are received in full, unless sooner terminated as provided for in the Agreement.

5. Suspension and Termination. Lapine may suspend its performance under this Agreement, in whole or in part, immediately on notice, without liability to Client, if Client materially breaches this Agreement. Lapine will resume performance as soon as commercially practicable upon Client's cure of the breach. Each party may, immediately on notice, without liability to the breaching party, terminate this Agreement, in whole or in part, if the breaching party (i) fails to cure a material breach of this Agreement within thirty (30) days of notice; or (ii) is affected by a change in its ability to direct its affairs or insolvency event, or is unable to pay its debts when due. Upon termination, Client will pay Lapine for all Consulting Services rendered, including a pro-rated portion for Deliverables in progress, and expenses incurred by Lapine prior to the effective date of termination.

6. Ownership of Deliverables. Upon full payment to Lapine hereunder, and subject to the terms and conditions contained herein, Client shall own the works of authorship, materials, information and other intellectual property specified as deliverables to be provided by Lapine pursuant to the applicable Order (the “**Deliverables**”) for Client's internal business purposes. Each party (and/or its third party licensors) is and shall remain the owner of all right, title and interest in and to any marks, technology, software, content and other materials used or provided by such party under this Agreement and the associated intellectual

property rights, including, without limitation, patents, trademarks, copyrights and trade secrets ("**IP Rights**") that either existed prior to the commencement date of the Order or are independently developed by such party on or after such commencement date (collectively, "**Pre-Existing Works**"). For clarification, except as otherwise expressly provided herein, Lapine will continue to own all IP Rights in or related to technology or software used or provided by Lapine in connection with the Consulting Services that constitute Pre-Existing Works, as updated by Lapine from time to time. Lapine hereby grants Client a non-exclusive, perpetual, worldwide, non-transferable (other than to its affiliates and any independent contractors performing services on its behalf), non-assessable and royalty-free license to access, use, reproduce, and operate such Lapine Pre-Existing Works, and to copy any documentation associated therewith as reasonably necessary in connection with access and use of the Deliverables.

7. **Approval of Deliverables.** Client shall approve each Deliverable that conforms in all material respects to the requirements set forth in the Order. Approval of a Deliverable shall be deemed given if Client has not provided Lapine with written notice of such approval or with written notice that a Deliverable does not conform with the foregoing within fifteen (15) days of delivery. If Lapine is unable to correct the deficiencies in a Deliverable within fifteen (15) days of notice thereof, Client shall be entitled, at its option, to a refund or credit of professional fees paid to Lapine hereunder with respect to the Consulting Services giving rise to such Deliverable and this shall be Client's sole and exclusive remedy, and Lapine's sole and exclusive obligation, with respect to any claim that a Deliverable does not conform to the requirements of this Agreement.

8. **Client Responsibilities.** Client shall cooperate with Lapine to allow Lapine to perform the Consulting Services, including, providing Lapine with reasonable and timely access to data, information and personnel of Client. With respect to the data and information provided by Client to Lapine for the performance of the Consulting Services, Client shall have the rights required to provide such data and information, and shall do so only in accordance with applicable law and with any procedures agreed upon in writing. Client shall be solely responsible for, among other things (a) the performance of its personnel and agents; (b) the accuracy and completeness of all data and information provided to Lapine for purposes of the performance of the Consulting Services; (c) making all management decisions, performing all management functions and assuming all management responsibilities; (d) designating a competent management member to oversee the Consulting Services; and (e) evaluating the adequacy and results of the Consulting Services. Lapine's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Consulting Services. Lapine shall be entitled to rely on all decisions and approvals of Client.

9. **Limitation of Warranties.** THIS IS AN ENGAGEMENT FOR CONSULTING SERVICES. THE CONSULTING SERVICES AND DELIVERABLES MAY INCLUDE ADVICE AND RECOMMENDATIONS, BUT LAPINE WILL NOT MAKE ANY DECISIONS ON BEHALF OF CLIENT AND CLIENT IS SOLELY RESPONSIBLE FOR THE IMPLEMENTATION OF SUCH ADVICE AND RECOMMENDATIONS. LAPINE WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER. LAPINE DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

10. **Indemnification.**

(a) Lapine shall indemnify, defend, and hold harmless Client and its officers, directors, employees and agents from all claims, liabilities, or expenses relating to the Consulting Services ("**Claims**") attributable to the claims of third parties for infringement by a Deliverable of any U.S. patent existing at the time of delivery and known to Lapine or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) modification of such Deliverable other than by Lapine or its subcontractors or use thereof in a manner not contemplated by the Order, (ii) the failure of the indemnified party to use any corrections or modifications made available by Lapine, (iii) information, materials, instructions, specifications, requirements or designs provided by or on behalf of the indemnified party, or (iv) the use of such Deliverable in combination with any platform, product, network or data not provided by Lapine. If Client's use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an

infringement or unauthorized use, Lapine, at its option and expense, shall have the right to (x) procure for Client the continued use of such Deliverable, (y) replace such Deliverable with a non-infringing Deliverable, or (z) modify such Deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by Lapine, the replacement or modified Deliverable is capable of performing substantially the same function. In the event Lapine cannot reasonably procure, replace or modify such Deliverable in accordance with the immediately preceding sentence, Lapine may require Client to cease use of such Deliverable and refund the professional fees paid to Lapine with respect to the Consulting Services giving rise to such Deliverable. The foregoing provisions of this Section constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of Lapine, relating to a claim that any of Lapine's Deliverables infringes any patent, copyright or other intellectual property right of a third party.

(b) Client shall indemnify, defend, and hold harmless Lapine and its officers, directors, employees and agents from all Claims attributable to the claims of third parties arising from (i) Lapine's use of information or materials provided by Client to Lapine for Lapine's use in connection with the Consulting Services or (ii) product liability claims arising from Client's products and services.

(c) The indemnifying party's ("**Indemnifying Party**") indemnification and hold harmless obligation to the indemnified party ("**Indemnified Party**") is expressly conditioned on the following: (i) Indemnifying Party shall be notified in writing promptly of any such claim or demand, (ii) Indemnifying Party shall have sole control of the defense of any action or such claim or demand and of all negotiations for its settlement or compromise; and that (iii) Indemnified Parties shall cooperate Indemnifying Party in a reasonable way and at Indemnifying Party expense to facilitate the settlement or defense of such claim or demand. The Indemnified Party may, at its expense and option, use counsel of their choosing to observe the defense of any such claim. Indemnifying Party may not settle or otherwise dispose of a claim without Indemnified Party's prior written consent, which consent shall not be unreasonably withheld.

11. **Limitation on Damages.** Each party, its subsidiaries, subcontractors, and their respective personnel shall not be liable for any Claims for an aggregate amount in excess of (i) in the case of Lapine, the fees paid by Client to Lapine pursuant to the applicable Order under which liability is asserted, or (ii) in the case of Client, the fees paid and payable by Client to Lapine pursuant to the applicable Order under which liability is asserted, except to the extent resulting from their recklessness, bad faith or intentional misconduct. In no event shall either party, its subsidiaries, subcontractors, or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense relating to the Consulting Services. The provisions of this Section 11 shall not apply to any Claim for which one party has an express obligation to indemnify the other pursuant to Section 10.

12. **Force Majeure.** Neither party shall be liable for any delays or non-performance directly or indirectly resulting from circumstances or causes beyond its reasonable control, including, fire, epidemic or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority.

13. **Limitation on Actions.** No action, regardless of form, relating to the Consulting Services, may be brought by either party more than one year after the cause of action has accrued, except that an action for non-payment may be brought not later than one year following the due date of the last payment owing to the party bringing such action.

14. **Independent Contractor.** Each party is an independent contractor and neither party is, nor shall be considered to be, nor shall purport to act as, the other's agent, partner, fiduciary, joint venture, or representative.

15. **Confidentiality and Internal Use.**

(a) To the extent that, in connection with this Agreement, either party (each, the "**Receiving Party**") comes into possession of any confidential information of the other (the "**Disclosing Party**"), it will

(i) not disclose such information to any third party without the Disclosing Party's consent and (ii) use at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The Disclosing Party hereby consents to the Receiving Party disclosing such information (i) as expressly set forth in the Order, (ii) to contractors in connection with the Order that have agreed to be bound by confidentiality obligations similar to those in this Section 15(a), (iii) as may be required by law or regulation, or to respond to governmental inquiries, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining hereto, or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the Receiving Party on a nonconfidential basis from a source that the Receiving Party believes is not prohibited from disclosing such information to the Receiving Party, (C) is already known by the Receiving Party without any obligation of confidentiality with respect thereto, or (D) is developed by the Receiving Party independently of any disclosures made to the Receiving Party hereunder.

(b) All Consulting Services and Deliverables shall be solely for Client's benefit and are not intended to be relied upon by any person or entity other than Client. Client shall not disclose the Consulting Services or Deliverables or refer to the Consulting Services or Deliverable in any communication, to any person or entity other than Client except (i) as specifically set forth in the Order, or (ii) to Client's contractors solely for the purpose of their providing services to Client, provided that such contractors comply with the restrictions on disclosure set forth in this sentence. Notwithstanding the foregoing, Client shall not be prohibited from creating its own materials based on the content of such Consulting Services and Deliverables and using and disclosing such Client-created materials for external purposes, provided that Client does not, expressly or by implication, in any manner whatsoever, attribute such materials to Lapine or otherwise refer to or identify Lapine in connection with such materials. Client shall indemnify and hold harmless Lapine, its subsidiaries, subcontractors and their respective personnel from all Claims attributable to claims of third parties relating to Client's use or disclosure of the Consulting Services or Deliverables.

(c) Lapine may use Client's name and logo as part of a list of representative clients.

16. **Survival and Interpretation.** All provisions which are intended by their nature to survive performance of the Consulting Services shall survive such performance, or the expiration or termination of Term. In the event of any conflict or ambiguity between these terms and the Order, these terms shall control. Each of the provisions of these terms shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence), or otherwise, notwithstanding the failure of the essential purpose of any remedy. Any references herein to the term "including" shall be deemed to be followed by "without limitation."

17. **Non-exclusivity.** Lapine may (i) provide any services to any person or entity, and (ii) develop for itself, or for others, any materials or processes including those that may be similar to those produced as a result of the Consulting Services, provided that, Lapine complies with its obligations of confidentiality set forth hereunder.

18. **Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM RELATING TO THIS ENGAGEMENT.**

19. **Entire Agreement, Amendment, and Notices.** These terms, and the Order, including attachments, constitute the entire agreement between the parties with respect to the Consulting Services, supersede all other oral and written representations, understandings or agreements relating to the Consulting Services, and may not be amended except by written agreement signed by the parties. All notices hereunder shall be (i) in writing, (ii) delivered to the representatives of the parties at the addresses set forth in the Order, unless changed by either party by notice to the other party, and (iii) effective upon receipt.

20. **Governing Law, Jurisdiction and Venue, and Severability.** These terms, the Order, including attachments, and all matters relating to the Consulting Services, shall be governed by, and construed in accordance with, the laws of the State of Connecticut (without giving effect to the choice of law principles

thereof). Any action based on or arising out of the Consulting Services shall be brought and maintained exclusively in any state or federal court, in each case located in Fairfield County, the State of Connecticut. Each of the parties hereby expressly and irrevocably submits to the jurisdiction of such courts for the purposes of any such action and expressly and irrevocably waives, to the fullest extent permitted by law, any objection which it may have or hereafter may have to the laying of venue of any such action brought in any such court and any claim that any such action has been brought in an inconvenient forum. If any provision of these terms or the Order is unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth herein.