

ALUVII SOFTWARE SUBSCRIPTION AGREEMENT

This Software Subscription Agreement, together with the “**Proposal**” (the “**Agreement**”) is entered into as of the “**Effective Date**” indicated in the “**Subscription Details**” between ALUVII, INC., a Delaware corporation (“**Aluvii**”), and the “**Company**” named in the Proposal. Company desires to obtain a license and right to use the Park Management Software of Aluvii (collectively, with any deliverables or documentation relating thereto, the “**Services**”). Commencing on the Effective Date specified in the Subscription Details, Aluvii agrees to perform the Services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. THE SERVICES

1.1 The Services. Subject to Company’s performance of its duties under this Agreement, including but not limited to timely payment of all Fees (as defined below), during the Term (as defined below) Aluvii shall provide Company with the Services, consisting of: (i) those particular services which Aluvii normally provides through the Website (as defined below) (“**Website Services**”); and (ii) those particular Services that Aluvii normally provides through telephone or in-person consultations, including, but not limited to, consulting, hardware sales, and custom development (“**Other Services**”). Aluvii may perform the Other Services at Company’s premises, Aluvii’s premises or such other premises that Aluvii may deem appropriate. Company will permit Aluvii to have reasonable access to Company’s premises, personnel and technology at Company’s premises for the purposes of performing the Services.

1.2 Restricted Services. Notwithstanding anything to the contrary in this Agreement, Aluvii reserves the right, in accordance with its normal business practices, to restrict access to the Restricted Services and Proprietary Content to only Company Users (as such capitalized terms are defined below).

“**Restricted Services**” means those particular Services, the primary purpose of which is to (a) educate or train Company Users with respect to customer, employee or vendor relationship management or loyalty programs or (b) provide management-level reporting, features or accessibility to Company Users with respect to the Services.

“**Proprietary Content**” means text, audio, visual or audiovisual materials, graphical images, or other copyrightable subject matter that is (a) provided or made available by Aluvii to Company or its Company Users and (b) conspicuously marked as confidential, proprietary or otherwise subject to copyright.

1.3 Limitations on Services. Aluvii shall not be obligated to provide any services or perform any tasks not specifically set forth in this Agreement or in The Subscription Details attached hereto. Without limiting the generality of the foregoing, the Services do not include (i) custom functionality to the Services, (ii) necessary modifications to third party applications enabling them to

function properly with updates, upgrades or modifications provided by Aluvii, or (iii) any new functionality or module Aluvii makes generally available as a separately priced offering. In addition, Aluvii has no obligation under this Agreement to install, alter, modify or otherwise customize or configure any software or hardware on Company’s computer system(s) or network(s).

1.4 Alteration of Services. Aluvii shall have no obligation to perform services in connection with any change to the scope of the Services unless and until the parties have agreed upon the effect of such change and the applicable fees in writing.

1.5 Additional Services. Notwithstanding the first sentence of Section 1.3, the parties hereto may agree to certain additional ancillary services (in addition to the Services and the license set forth in Section 2.1) that shall be performed by Aluvii, which shall be set forth in writing in a Statement of Work to be signed by each of the parties hereto (each a “**Statement of Work**”). Aluvii’s support and maintenance obligations shall not apply to any deliverables provided pursuant to a Statement of Work (“**Deliverables**”). Unless otherwise and expressly stated in a Statement of Work and subject to the terms and conditions of this Agreement, Aluvii hereby grants to Company Users, a limited, non-exclusive, non-transferable and irrevocable right and license to use, copy, reproduce and display such Deliverables solely in connection with the Company’s internal business operations, and in no event for release, display, disclosure or resale to any third party; provided, however, that Aluvii shall retain legal ownership of the IP Rights in the Deliverables except with respect to the license set forth in this sentence. Company hereby agrees that any restrictions set forth in this Agreement with respect to the use of the Software, the Website or the Services shall apply to the Deliverables as well, unless otherwise set forth in a Statement of Work. Company hereby agrees to pay, in addition to the fees set forth herein and in The Subscription Details, any fees set forth in a Statement of Work.

2. RIGHT TO USE; RESTRICTIONS AND LIMITATIONS

2.1 Right to Use for Company Users. Subject to the terms and conditions of this Agreement, Aluvii hereby grants to Company and its authorized employees (“**Company Users**”) (a) a limited, non-exclusive, non-transferable and revocable right and license to use the Park Management Software and the Software, and access the

Website Services through the Website during the Term, and (b) solely with respect to the Proprietary Content, a limited, non-exclusive, non-transferable and revocable right and license to use, copy, reproduce and display such Proprietary Content solely in connection with the Company's internal business operations. The parties expressly agree that neither Company nor any Company User or Company Representative (as defined below) shall use, modify, reproduce, release, display or disclose any Proprietary Content except as expressly permitted pursuant to this Agreement. "**Park Management Software**" shall mean the Aluvii resource planning software designed to assist in the planning, performance and management of amusement parks or fun centers and/or management of customers of such amusement parks or fun centers.

2.2 Use by End Users. During the Term, Company's employees, customers, vendors and other related constituents ("**End Users**") may access and use the Website to among other things, communicate with the Company and Company Users as permitted by the Website, provided that all End Users shall be subject to the terms and conditions of use of the Website, which shall be communicated in written terms of use to End Users upon access to the Website (the "**Terms of Use**"). Unless otherwise agreed in writing by Company, End Users shall have no rights to access or use the Restricted Services or Proprietary Content in any manner. Aluvii reserves the right to change the Terms of Use at any time and for any or no reason or to restrict or prevent access to the Services to any particular End User.

2.3 Limitations. Neither Company nor any Company User will (a) reproduce, download, modify or distribute all or any portion of the Services, the Park Management Software or any other computer software installed or used by Aluvii in maintaining and hosting the Website or otherwise providing the Services ("**Software**"), or any intellectual property relating to such Services, Park Management Software or Software; (b), nor will they attempt to, reverse translate or reverse engineer, decompile or "unlock," or disassemble the Park Management Software, the Software or any portion thereof; (c) market, distribute, sell or resell the Services, or any part thereof, whether as a distributor, reseller, service bureau or otherwise; (d) utilize framing or similar techniques to present the Services or the Website (or any part thereof) on any internet website or internet domain owned or controlled by Company; (e) rent, lease, or otherwise permit third parties to use the Services, Park Management Software or Software; (f) use the Services to provide services to third parties (e.g., as a service bureau); (g) circumvent or disable any security or other technological features or measures of the services; or (h) attempt in any manner to reconstruct or discover any source code or underlying algorithms of the Park Management Software, the Software, or any portion thereof. Neither the Company nor any Company User shall remove Aluvii logos, privacy statements, trademarks, Terms of Use or similar materials from the Website (or any viewable or printable output generated by the Website or the Services provided hereunder) without Aluvii's prior written consent. The Services (and the Website) may only be used for lawful purposes and in a lawful manner.

Company shall comply with all applicable laws, statutes and regulations.

2.4 Authorized Users Only. This Agreement restricts the use of the Services to the Company, those Company Users to which Company has granted access, and End Users subject to Section 2.2.

2.5 Protection against Unauthorized Use. Company will use reasonable efforts to prevent any unauthorized use of the Services, Park Management Software or the Software and immediately notify Aluvii in writing of any unauthorized use that comes to Company's attention. If there is unauthorized use by anyone who obtained access to the Services directly or indirectly through Company, Company will take all steps reasonably necessary to terminate the unauthorized use. Company will cooperate and assist with any actions taken by Aluvii to prevent or terminate unauthorized use of the Services.

2.6 Services through Website. Aluvii shall, at its discretion, provide the Website Services to Company by and through an internet website or internet domain (or portion of an internet website or internet domain) owned or controlled by Aluvii, or self-service kiosks owned or controlled by Company (such internet website, internet domain or self-service kiosks collectively the "**Website**"). Notwithstanding anything to the contrary in this Agreement, Aluvii shall not be responsible for the operation of any of Company's self-service kiosks or the repair or maintenance thereof. Subject to Company's performance of its obligations under this Agreement, including without limitation timely payment of all Fees and any other amounts due hereunder: (a) Aluvii shall host, operate and maintain the Website in a manner which permits Company and its Company Users to reasonably access and use the Website Services and (b) Aluvii shall retain the sole and exclusive right to control or direct the manner or means by which the Website is hosted, operated and maintained and the Services made available to Company and its End Users.

2.7 Company Content. Subject to technical protocols and requirements of the Website and the Services provided hereunder, Company shall be solely responsible for providing, updating, uploading and maintaining any and all Company information and/or materials on, within, displayed, linked or transmitted to, from or through the subdomain ("**Company Content**"). Company assumes sole responsibility for the accuracy of Company Content, and ensuring that Company Content does not infringe or violate any right of any third party or is not offensive, harmful, inaccurate or deceptive.

2.8 Reliance on Information. In providing the Services, Aluvii shall be entitled to rely upon and act in accordance with any instructions, guidelines, data or information provided by the Company or any Company Representative who has actual or apparent authority to provide such instructions, guidelines or information, and shall incur no liability in doing so.

3. SECURITY; PASSWORDS

3.1 Company Representatives. The Services shall be performed in conjunction with Company personnel and provided based upon the information and materials (including Company Content) provided by Company personnel. Company shall appoint at least one person who shall be the primary point of contact (the “*Company Representative(s)*”) for receiving alerts or other communications from Company Users by or through the Services, and Company shall provide Aluvii with the contact information for such Company Representative(s), including current name(s), title(s), email address(es), and telephone number(s).

3.2 Security. At all times, Company shall be solely responsible for undertaking measures to ensure the confidentiality of any password issued by Aluvii to Company for the purpose of accessing and using the Services. Company is solely responsible for any authorized or unauthorized access to any account or password issued by Aluvii to Company or any Company Representative. If any Company password is lost, stolen or otherwise compromised, Company shall promptly notify Aluvii, whereupon Aluvii may suspend access to the Service by use of such password and issue a replacement password to Company and/or the Company Representative(s).

4. AVAILABILITY OF SERVICES

Subject to the terms and conditions of this Agreement, Aluvii shall provide the Website Services on a twenty-four (24) hours a day, seven (7) days a week basis throughout the Term. Company acknowledges and agrees that from time to time the Services may be inaccessible or inoperable due to equipment malfunctions, periodic maintenance procedures, repairs or upgrades which Aluvii may undertake from time to time, service malfunctions and causes beyond the reasonable control of Aluvii or which are not reasonably foreseeable by Aluvii, including, without limitation, interruption or failure of telecommunication or digital transmission links, including an event of Force Majeure (as set forth in Section 10.8 of this Agreement), delays or failures due to Company’s internet service provider, hostile network attacks, network congestion or other failures. Company agrees that Aluvii may not have control over the stability and throughput speed of the internet or the availability of the Services on a continuous or uninterrupted basis. Regardless of the cause of any interruption in the normal Website Services, Aluvii shall use commercially reasonable efforts to promptly re-establish the Website Services.

5. COMPENSATION; PAYMENT TERMS

5.1 Set-Up Fee. In consideration for the Website Services to be rendered by Aluvii, Company shall pay to Aluvii, upon execution of this Agreement, a non-refundable one-time fee in the amount set forth in The Subscription Details (the “*Set-Up Fee*”). If the Company elects during the Term to obtain additional Services not originally subscribed for, then an additional set-up fee(s) may apply.

5.2 Subscription Fees. In addition to the Set-Up Fee, Company agrees to pay to Aluvii periodic fees in the amount set forth in The Subscription Details to this Agreement in each instance that the Services are used by Company with respect to a particular subscription, amusement park, fun center, facility or development (each “*Project*” and each fee a “*Subscription Fee*,” and collectively with the Set-Up Fees and any fees set forth in a Statement(s) of Work, the “*Fees*”). If additional functionality is added to the Services, the parties agree to negotiate in good faith for an increase in the Fees to become effective as of the time of such addition. Company acknowledges that the Fees set forth in The Subscription Details represent current prices, but are intended to increase over time to adjust for inflation and for the number of users/computers accessing the Services, Park Management Software and Software.

5.3 Payment of Fees. The Fees shall be invoiced in advance of each covered month, and Company shall pay the Fees as set forth on each such invoice within thirty (30) days of Company’s receipt thereof. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Company will reimburse any costs or expenses (including, but not limited to, reasonable attorneys’ fees) incurred by Aluvii to collect any amount that is not paid when due. Failure of Company to make any payment of Fees when due, shall be deemed a material breach of this Agreement and Aluvii shall have the right (in addition to any other rights or remedies it may have) to immediately and without notice suspend the Services (in whole or in part). All payments shall be made in U.S. dollars and shall not be subject to set-off for any claims against Aluvii.

5.4 Travel and Expenses. In the event that performance of the Services require Aluvii personnel to incur travel costs, Company shall pay Aluvii all reasonable expenses incurred by Aluvii, including travel, living, and out-of-pocket expenses (including without limitation air and ground transportation, hotel accommodations, and meals and beverages).

5.5 Taxes. Other than net income taxes imposed on Aluvii, Company will bear all taxes, fees, duties, and other governmental charges (collectively, “*taxes*”) resulting from this Agreement. Company will pay any additional amounts as are necessary to ensure that the net amounts received by Aluvii after all such taxes are paid are equal to the amounts that Aluvii would have been entitled to in accordance with this Agreement as if the taxes did not exist.

6. CONFIDENTIALITY; PRIVACY

6.1 Confidentiality. Subject to the other terms and conditions of this Agreement, as a result of this Agreement and the ongoing relationship of the parties, each of the parties may have access to or acquire knowledge of

confidential and proprietary information concerning the other and the other's business (the "**Confidential Information**"), and each agrees to treat the Confidential Information as confidential. All Confidential Information shall remain solely the property of the disclosing party, and the recipient shall maintain and protect the confidentiality of such Confidential Information with the same degree of care used to protect its own confidential information, but in any event, no less than a reasonable degree of care; provided, however, that neither party shall have any such obligation with respect to the use or disclosure to third parties of such Confidential Information as can be established to: (a) have been known publicly; (b) have been known generally in the industry on a non-confidential basis before communication by the disclosing party to the recipient; (c) have become known publicly; (d) have been known otherwise by the recipient before communication by the disclosing party; (e) have been received by the recipient without any obligation of confidentiality from a source (other than the disclosing party) lawfully having possession of such information. Except as prohibited by applicable law or legal process or to the extent part of an examination by a regulatory or self-regulatory body, if the recipient is requested or required (by deposition, interrogatories, requests for information or documents in legal proceedings, subpoenas, regulatory processes (including those of self-regulatory organizations), or similar process) in connection with any proceeding to disclose or otherwise becomes legally compelled to disclose any Confidential Information, the recipient shall provide the disclosing party with prompt written notice and, if requested by the disclosing party after receipt of such notice, the recipient shall provide disclosing party with reasonable assistance (subject to reimbursement by the disclosing party of all reasonable and out-of-pocket expenses incurred by the recipient in providing such assistance) so as to enable the disclosing party to seek a protective order or other appropriate remedy or waive compliance with this Agreement. To the extent this Agreement applies, if such a protective order or other remedy is not obtained or if the disclosing party waives compliance with this Agreement, the recipient may disclose Confidential Information, but only such Confidential Information as it is legally required to disclose in the reasonable opinion of counsel to the recipient, and shall exercise reasonable efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information disclosed. Company's obligations under this paragraph will survive the termination of this Agreement or of any license granted under this Agreement for whatever reason. Each of the parties agrees not to utilize another's Confidential Information for any purpose other than the performance of this Agreement. Each of the parties understands, acknowledges and agrees that a breach of this Section would cause the non-breaching party irreparable damage, for which the award of damages would be inadequate compensation. Accordingly, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive.

6.2 Privacy. The names, addresses and other information identifiable to any particular End User

generated by use of the Services, together with information regarding the manner in which Company uses the Services, will not be disclosed by Aluvii except as necessary to carry out the terms and conditions of this Agreement or (a) to comply with law or comply with legal process served upon Aluvii, (b) to protect and defend Aluvii's rights or property or those of any of Aluvii's customers, clients, vendors or third party providers, (c) to protect the personal safety of Aluvii's users or the public, or (d), if in Aluvii's sole discretion, Aluvii believes that it is necessary to disclose any such information in order to avoid exposure to civil or criminal liability or public ridicule, or to avoid harm to Aluvii's business or reputation. Notwithstanding the foregoing, Aluvii does capture certain metadata relating to the use of the Website Services by Company Users ("**Metadata**"). Company agrees that Aluvii shall own all Metadata (excluding any personally-identifiable information therein) and that no license to the Metadata is granted to Company hereunder.

6.3 Publicity. Aluvii may identify Company on Aluvii's customer lists and in its marketing and advertising materials, and announce that Company is a customer of Aluvii (including as to the Services), and reproduce Company's name, logo, trademark, trade name, service mark, or other commercial designations in connection therewith. Aluvii may develop and publish a case study based upon Company's use of the Services. Such prior consent shall not be required for Aluvii to disclose Company's name and the value of this Agreement in connection with any filings or disclosures required by Aluvii under applicable state or federal securities laws or in connection with due diligence by a potential financier or acquirer of Company.

7. TITLE

7.1 Ownership. As between Aluvii and Company, (a) Aluvii is, and shall be, the sole and exclusive owner of the Services, Park Management Software, Software, Website and Usage Information and Statistics (as defined below) including but not limited to all related IP Rights (as defined below) therein, and (b) Company is, and shall be, the sole and exclusive owner of the Company Content and Company Data (as defined below), including but not limited to all related IP Rights therein. Title to any software and hardware now owned by Aluvii and/or its third party providers and used in providing the Services remains exclusively owned by Aluvii and/or its third party providers and is not transferred to Company. Company understands and agrees that Aluvii may use and disclose, in an aggregated format only, any and all data derived or collected from Company's use of the Services for the purpose of generally improving the look and feel of the Services and to otherwise operate, manage, maintain and improve Aluvii's products and services; provided that such aggregated data is not identified or identifiable as originating with or associated with any particular End User.

7.2 Reservation of Rights. Except for the express rights granted to Company and its Company Users under this Agreement, nothing contained herein shall be deemed

or construed as a grant of any further rights or licenses in or to the Services, Park Management Software, Software, Website or Usage Information and Statistics. Aluvii reserves to itself all rights to the Services not expressly granted to Company in accordance with this Agreement.

7.3 Company Data. “*Company Data*” means recorded information personally identifiable to End Users, regardless of the form or method of recording, transmitted directly by End Users in connection with the Services and stored or maintained on one or more file servers or other storage devices owned or controlled by Aluvii.

7.4 IP Rights. “*IP Rights*” means (i) rights in patents, patent applications and patentable subject matter, whether or not the subject of an application, (ii) rights in trademarks, service marks, trade names, trade dress and other designators of origin, registered or unregistered, (iii) rights in copyrightable subject matter or protectable designs, registered or unregistered, (iv) rights in computer software, databases and documentation, (v) trade secrets, (vi) rights in internet domain names, uniform resource locators and e-mail addresses, (vii) rights in semiconductor topographies (mask works), registered or unregistered, (viii) know-how, and (ix) all other intellectual and industrial property rights of every kind and nature and however designated, whether arising by operation of law, contract, license or otherwise.

7.5 Usage Information and Statistics. “*Usage Information and Statistics*” means any information about End Users’ or Company Users’ interactions with, and usage of, the Services, Proprietary Content or the Website as may be collected by Aluvii, which information is not identifiable to any particular End User or Company User by name.

7.6 Feedback. Aluvii is hereby granted a royalty-free, fully paid-up, nonexclusive, perpetual, irrevocable, worldwide, transferable (only to a successor in interest by way of merger, reorganization or sale of all or substantially all assets or equity), sublicensable license to use, copy, modify, or distribute, including by incorporating into the Services, any suggestions, enhancement requests, recommendations or other feedback provided by Company or its users relating to the operation of the Services.

8. WARRANTIES; DISCLAIMERS

8.1 Limited Warranty. Except as otherwise may be limited by this Agreement, Aluvii warrants that it shall provide the Services in a professional manner. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN THIS SECTION 8.1, THE SERVICES ARE PROVIDED ‘AS IS’ WITHOUT WARRANTY OF ANY KIND, ORAL, WRITTEN, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.2 Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW IN NO EVENT SHALL ALUVII OR ITS LICENSORS OR SUPPLIERS BE LIABLE TO COMPANY, COMPANY USERS, OR TO ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE SERVICES, EVEN IF SUCH PARTIES HAVE BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ALUVII DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE SERVICES. ALUVII DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. ALUVII EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF COMPANY’S USE OF THE SERVICES. IN NO EVENT SHALL ALUVII BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY UNAUTHORIZED USE OR MISUSE OF ANY SOFTWARE, WEBSITE OR INFORMATION, EXCEPT IN THE CASE OF ALUVII’S GROSS NEGLIGENCE WITH RESPECT TO SUCH USE OR MISUSE. Company’s exclusive remedy for breach by Aluvii of its limited warranty shall be to discontinue the Services and receive an immediate pro-rated refund of Subscription Fees prepaid for any portion of the Term subsequent to discontinuation of Services. Notwithstanding anything to the contrary in this Agreement, Aluvii’s liability hereunder for any type of damages whatsoever, regardless of the form of action, shall not exceed the aggregate dollar amount paid by Company to Aluvii in the twelve (12) months prior to the claimed injury or damage.

8.3 Indemnity. Company will defend, and indemnify Aluvii, its affiliates, employees, officers, agents, licensors and successors and assigns from all damages and liability including, without limitation, reasonable attorneys’ fees, incurred as a result of Company’s violation of its obligations under this Agreement, or the negligent or willful acts of Company, or violation of any third party intellectual property or privacy rights. Company’s obligation to indemnify under this provision shall survive termination of this Agreement.

9. TERM AND TERMINATION

9.1 Term. This Agreement shall commence upon the Effective Date and, unless earlier terminated in accordance with the Agreement’s terms, shall remain in effect for the initial term as set forth in The Subscription Details, and shall automatically renew for additional successive one-year periods unless either party notifies the other party in writing at least thirty (30) days prior to expiration of its intention to terminate the Agreement (the “*Term*”).

9.2 Termination for Material Breach. If either party defaults in performing any material obligations required

under this Agreement, the non-defaulting party may give written notice of default, describing in reasonable detail the default. If the party in default fails to remedy such material default within thirty (30) days following such written notice, then the non-defaulting party may, in addition to all other remedies available at law or in equity, terminate this Agreement. Termination in accordance with this Section 9.2 will take effect when the defaulting party receives written notice of termination from the non-defaulting party, which notice must not be delivered until the defaulting party has failed to cure its material breach during the thirty (30) day cure period. Aluvii's exercise of its termination rights under this Section shall not entitle Company to a refund of, or relieve Company of any obligation to pay, any portion of any Fees which are payable to Aluvii under this Agreement. In the event of a breach or the threat of a breach of this Agreement by Company, Aluvii, in addition to any other remedies it may have at law or in equity, shall be entitled to obtain a temporary restraining order, preliminary injunction, and other appropriate relief so as to specifically enforce the terms of this Agreement without the necessity of posting a bond or other surety.

9.3 Effect of Termination. If this Agreement is terminated for any reason, (a) Company shall pay to Aluvii any Subscription Fees, or other amounts that have accrued prior to the effective date of the termination, (b) any and all liabilities accrued prior to the effective date of the termination shall survive, (c) Company shall provide Aluvii with a written certification signed by an authorized Company representative certifying that all use of the Services by Company has been discontinued, (d) Aluvii may charge a separate Set-Up Fee to Company if it wishes to activate Services at a later date, and (e) Sections 5, 6, 7, 8, 9 and 10 shall survive termination.

10. GENERAL PROVISIONS

10.1 Notice. Any notice required or permitted to be given hereunder shall be in writing and will be effective (a) three (3) business days after deposit in the U.S. Mail, certified, return receipt requested, postage prepaid or (b) one (1) business day after deposit with a reputable express next day courier providing written receipt of delivery and addressed to the parties at their respective addresses as first written in this Agreement.

10.2 Independent Contractors. Each party is an independent contractor and the parties shall not have the authority to bind, represent or commit the other. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership or an agency relationship between the parties. The parties agree and acknowledge that no Company User has or shall have any rights as a third party beneficiary or otherwise arising from or relating to this Agreement.

10.3 Entire Agreement. This Agreement and the attached Exhibits constitute the entire agreement between Aluvii and Company with respect to the subject matter hereof. No amendment, change, waiver, or discharge hereof shall be valid unless in writing and signed by both

parties to this Agreement. THIS AGREEMENT EXPRESSLY SUPERSEDES ANY PRIOR AGREEMENT ENTERED INTO BETWEEN COMPANY AND ALUVII, OR ANY OF ALUVII'S PREDECESSOR'S-IN-INTEREST; PROVIDED, HOWEVER, NOTHING HEREIN SHALL EFFECT OR TERMINATE ONGOING RIGHTS FROM NON-DISCLOSURE AGREEMENTS ENTERED INTO BY THE PARTIES PRIOR TO THE EFFECTIVE DATE, AND, PROVIDED FURTHER, ANY NEW CONFIDENTIAL INFORMATION EXCHANGED BETWEEN THE PARTIES SHALL BE GOVERNED BY THE CONFIDENTIALITY OBLIGATIONS SET FORTH HEREIN.

10.4 Governing Law; Venue. This Agreement will be governed and construed under the laws of the State of Utah without regard to conflict of laws provisions or the United Nations Convention on the International Sale of Goods. The exclusive venue for disputes arising out of or relating to this Agreement shall be in the state or federal courts located in the State of Utah. Company hereby irrevocably and unconditionally submits to the personal jurisdiction of such courts, waives any claim or objection, whether procedural or substantive, based upon lack of personal jurisdiction, inconvenient forum or the like, and further waives any right to trial by jury with respect to any such dispute. In the event an action or suit is brought by any party hereto to enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of reasonable attorneys' fees and costs, as determined by the judge of the court.

10.5 Waiver/Severability. Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed as a waiver of the party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice the party's right to take subsequent action. Exercise or enforcement by either party of any right or remedy under this Agreement will not preclude the enforcement by the party of any other right or remedy under this Agreement or that the party is entitled by law to enforce. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the use of the Services under this Agreement is found to be illegal, unenforceable, or invalid, Company's right to use the Services will immediately terminate.

10.6 Headings. Headings are used in this Agreement for reference only and will not be considered when interpreting this Agreement.

10.7 Subcontractors. Aluvii may utilize a subcontractor or other third party to perform its duties under this Agreement so long as Aluvii remains responsible for all of its obligations under this Agreement.

10.8 Hiring of Employees. During the Term and for one year thereafter, neither party shall hire any current employee (the “*Employee*”) of the other party (the “*Employing Party*”) who is performing Services in connection with this Agreement. In the event of a breach of this Section, the breaching party shall pay the non-breaching party as liquidated damages, and not as a penalty, the equivalent of the compensation to be paid to the Employee by the breaching party for the Employee’s first twelve (12) months of work. The breaching party shall immediately notify the Employing Party of the hire, and payment is due within thirty (30) days of the breach. The foregoing shall not prohibit a party, however, from hiring an Employee when the Employee provides such party with written permission expressly authorizing such hire.

10.9 Force Majeure. Except for the payment of any fees by Company, if the performance of any part of this Agreement is prevented, hindered, delayed or otherwise made impracticable by reason of any cause or event not within the reasonable control of such party and without its fault or negligence, that party shall be excused from such to the extent that it is prevented, hindered or delayed by such causes.

10.10 Assignment and Transfer. Neither the Agreement nor any rights or obligations under the Agreement may be assigned or otherwise transferred by Company, in whole or in part, whether voluntary or by operation of law. The Agreement and the rights and obligations of Aluvii under the Agreement may be assigned and/or delegated, without the consent of Company, by Aluvii (i) to any entity which is a wholly-owned subsidiary or parent of Aluvii, to an entity which survives a merger to which Aluvii is a party, or to an entity which acquires all or substantially all of the assets of Aluvii or substantially all of Aluvii’s interests in the product suite which contains the Service, and (ii) to Aluvii’s affiliate(s) and/or third party subcontractors and vendors, provided no such delegation under subsection 10.10(ii) shall relieve Aluvii from its responsibility or obligations under the Agreement. Subject to the foregoing, the Agreement shall be binding upon and shall inure to the benefit of the parties and their respective permitted successors and assigns.

10.11 Counterparts; Electronic Transmission. This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same instrument. A facsimile or other reproduction of this Agreement may be executed by one or more parties hereto, and an executed copy of this Agreement may be delivered by one or more parties hereto by facsimile or similar electronic transmission device.

IN WITNESS THEREOF, the parties have caused this Software Subscription Agreement to be agreed to by their duly authorized representatives as of the Effective Date.