QUBIT INC. – ENTERPRISE TERMS AND CONDITIONS

These terms and conditions are incorporated by reference in the Sales Order Form signed by the Customer and Qubit Inc (**"Qubit"**).

1   DEFINITION AND INTERPRETATION

1.1   The definitions and rules of interpretation in this clause apply in this Agreement.

Affilitate: means an entity which directly or indirectly controls, is controlled by, or is under common control with the Customer.

Agreement: means these terms and conditions together with a completed and signed Sales Order Form. For the avoidance of doubt each Sales Order Form entered into between Customer and Qubit incorporating these terms and conditions form one separate Agreement.

Authorized Users: means those employees, independent contractors and workers of the Customer who are authorized by the Customer to use the Services.

Business Day: means any day which is not a Saturday, Sunday or public holiday in the United States.

Confidential Information: means information disclosed by (or on behalf of) one party to the other party in connection with or in anticipation of this Agreement (including the content of the Agreement) that is marked as confidential or, from its nature, content or the circumstances in which it is disclosed, might reasonably be considered to be confidential. It does not include information that the recipient already knew, that becomes public through no fault of the recipient, that was independently developed by the recipient or that was lawfully given to the recipient by a third party.

Customer: means the entity which purchases the Services from Qubit as more particularly detailed in the Sales Order Form.

Customer Site: means those properties (including website(s) and mobile applications) owned and operated by the Customer or a Customer Affiliate on which Customer elects and Qubit agrees to implement the Script and the Services as such properties are more particularly detailed in the Sales Order Form.

Data Protection Laws: means U.S. federal, state and local, as well as foreign, laws and government-issued rules, regulations, guidelines, directives and requirements currently in effect and as they become effective that relate in any way to the privacy and processing of personal data, including the Data Protection Act 1998 implementing the Directive 95/46/EC on the protection of individuals with regard to the processing of personal data, the Privacy and Electronic Communications (EC Directive) Regulations 2003 implementing Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications (or as applicable any similar legislation in any jurisdiction implementing Directive 95/46/EC, Directive 202/58/EC or similar or analogous legislation) as may be amended, modified or replaced from time to time, and including all related codes of practice.

Effective Date: is as defined in the Sales Order Form.

Fees: means: (i) the Subscription Fees; and/or (ii) any other charges set out in a Sales Order Form for Services purchased on a time and material basis (or otherwise).

Generally Applicable Know-How: means information, know-how and materials generally applicable to Qubit's business, business methods and processes (including Qubit's underlying information collection methodologies) that are derived, prepared or generated by Qubit and/or its sub-contractors within Qubit's environment pursuant to (and/or as a consequence of) the Services which does not include Customer Confidential Information.

Initial Subscription Term: means unless otherwise stated in a Sales Order Form, the fixed period of 12 months from and including the Effective Date.

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know- how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Renewal Period: means the period described in clause 11.1.

Sales Order Form: means the ordering document for the Services which together with these terms and conditions form an Agreement.

Script: means the Javascript and associated protocols provided by Qubit to the Customer pursuant to this Agreement which when implemented on the Customer Site manages the Services.

Services: means the services provided by Qubit to the Customer under an Agreement as described more particularly in the Sales Order Form which: (i) are implemented on the Customer Site via the Script; and (ii) may include additional services provided on a time and material basis.

SLA: means the Qubit standard service level agreement for the Services located at: http://www.qubitproducts.com/content/qubit-service-level-agreement (or such other URL as Qubit may provide from time to time).

Subscription Fees: means the subscription fees payable by the Customer to Qubit for the Services as set out in the Sales Order Form and paid in accordance with clause 6 of this Agreement.

Subscription Term: has the meaning given in clause 11.1.

Third Party Users: means agency partners or other third parties identified in the Sales Order Form which the Customer may permit to use the Script/Services in accordance with clause 2.1 (b).

Virus: means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2   Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3   Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them.

1.4   If any term in these terms and conditions conflicts with any term in a Sales Order Form then the Sales Order Form shall prevail in relation to the Services detailed in that Sales Order Form.

2   USE OF THE SERVICES

2.1   Subject to the timely payment by the Customer of the Subscription Fees and solely during the Subscription Term, Qubit grants to the Customer a non-exclusive, non-transferable right to:

(a)   permit the Authorized Users to use the Services; and

(b)   permit Third Party Users to use the Services; and

(c)   permit a Customer Affiliate or Affiliates listed in the Sales Order Form to use the Services and its employees and workers to use the Services

in each case solely for the Customer's internal business operations (and if applicable the business purposes of a relevant Customer Affiliate). Nothing in this Agreement limits Customer's liability for a breach of this clause 2.1 by the Customer.

2.2   Qubit permits the Customer (or if applicable the Customer Affiliate) to download the Script (including any updates to the Script that Qubit may make available from time to time) for the sole purpose of permitting the Customer (or if applicable the Customer Affiliate) to integrate the Customer Site with the Service.

2.3   The Customer shall be solely responsible for any failure of a Customer Affiliate, an Authorized User or Third Party User to comply with the terms of the Agreement and shall ensure that Customer Affiliates, Authorized Users and Third Party Users discontinue use on termination of the Agreement.

2.4   The Customer shall: (i) use all reasonable endeavors to not (and shall procure that Third Party Users and Customer Affiliates shall use all reasonable endeavors to not) access, store, distribute or transmit any Viruses when using the Services; (ii) not use the Service in a manner that is illegal or causes damage or injury to any person or property; (iii) not use any automated system, including "robots," "spiders," "offline readers," to access the Service in a manner that sends more request messages to the Service than a human can reasonably produce in the same period of time by using a conventional online web browser; or (iv) not attempt to interfere with or compromise the Service integrity or security. Qubit may, without liability or prejudice to its other rights under the Agreement, disable the Customer's, the Third Party Users' or the Customer's Affiliate(s) access to the Service for breaches of the provisions of this clause 2.4.

2.4   The Customer shall not:

(a)   except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties: (i) and except to the extent expressly permitted under the Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Script (as applicable) in any form or media or by any means; or (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Script;

(b)   access all or any part of the Services in order to build a product or service which competes with the Services;

(c)   (without prejudice to clauses 2.1 (b) and 2.1 (c)) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party, or

(d)   (without prejudice to clause 2.1 (b)) attempt to obtain, or assist third parties in obtaining, access to the Services.

2.5   The Customer shall use all reasonable endeavors to prevent any unauthorized access to, or use of, the Services and, in the event of any such unauthorized access or use, promptly notify Qubit.

3   PARTIES' OBLIGATIONS

3.1   Qubit shall, during the Subscription Term, perform the Services with reasonable skill and care in accordance with the Agreement (including the SLA).

3.2   Customer shall:

(a)   permit and assist Qubit to monitor page impressions for the purpose of calculating the Subscription Fee; and

(b)   (i) ensure that the Customer Affiliates, Authorized Users and Third Party Users use the Services in accordance with the terms and conditions of the Agreement; and (ii) be responsible for any Authorized Users', Third Party Users or Customer Affiliates' breach of the Agreement.

3.3   The parties shall:

(a)   provide each other with: (i) all necessary co-operation in relation to the Agreement; and (ii) all necessary access to such information as may be required in order to render and receive the Services;

(b)   comply with all applicable laws and regulations with respect to its activities under the Agreement;

(c)   carry out all responsibilities set out in the Agreement in a timely and efficient manner. If there are delays in the Customer's provision of such assistance as agreed by the parties, Qubit may adjust any agreed timetable or delivery schedule as reasonably necessary; and

(d)   be solely responsible for: (i) procuring and maintaining its network connections and telecommunications links; (ii) all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its network connections or telecommunications links or caused by the internet. Customer must ensure that its network and systems, including its Internet browser used complies with the relevant and reasonable specifications provided by Qubit from time to time.

3.4   Notwithstanding clause 3.1, Qubit:

(a)   is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities (including the internet) which are not within Qubit's reasonable control and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities;

(b)   does not accept responsibility for any use of the Services contrary to Qubit's instructions, or modification or alteration of the Services by any party other than Qubit or Qubit's authorised contractors or agents; and/or

(c)   does not warrant that the Customer's use of the Services will be uninterrupted or error-free; nor that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements. No implied conditions, warranties or other terms apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

4   PERSONAL DATA

Customer acknowledges and agrees that it is Customer's responsibility to ensure that Customer's use of the Script and Service complies with all Data Protection Laws applicable to the Customer (including, in particular, in respect of the

placing and use of cookies, upon which the Services rely, and the capturing of any consent to cookies required to be obtained from the relevant end user). Insofar as Qubit processes personal data on behalf of Customer pursuant to the Agreement, Qubit shall be the data processor and shall:

(a) undertake, to the extent possible, such processing in accordance with the Customer's reasonable written instructions and the Qubit privacy policy effective from time to time;

(b) process such personal data only to the extent, and in such manner, as is necessary for the provision, development and improvements of the Services;

(c) have in place appropriate technical and organizational security measures against unauthorized or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data; and

(d) provide Customer with all reasonable assistance in dealing with subject access requests pursuant to the Data Protection Laws and promptly inform Customer of any request which it receives for disclosure of personal data directly from a data subject. Customer shall respond to all such information requests in accordance with Data Protection Laws.

5   ADDITIONAL SERVICES PURCHASED ON A TIME AND MATERIAL

Qubit shall make available to the Customer an appropriately trained staff member to carry out such Services as mutually agreed between the parties in a Sales Order Form on a time and material basis. Such individual shall be provided on the number of Days agreed in the Sales Order Form. A **"Day"** means 7.5 working hours on a Business Day.

6   CHARGES AND PAYMENT

6.1   Fees will be invoiced in the manner agreed in the Sales Order Form in advance. In each case invoices are payable by the Customer as agreed in the Sales Order Form.

6.2   If Qubit has not received payment for undisputed Fees within 30 days after the invoice due date, as aforesaid, and without prejudice to any other rights and remedies of Qubit:

(a) Qubit may, without liability to the Customer cease to provide and/or disable the Customer's, Third Party's Users or Customer Affiliates' access to all or part of the Services and Qubit shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on such due amounts on a daily basis at the lesser of one and one half percent (1½%) per month or the maximum amount allowed by law commencing on the due date and continuing until fully paid, whether before or after judgment.

6.3   All amounts and Fees stated or referred to in this Agreement:

(a) shall be payable in the currency detailed in the Sales Order Form;

(b) are exclusive of sales, use, excise, value added, importation, or other applicable taxes, tariffs or duties , which shall be added to Qubit's invoice(s) at the appropriate rate; and

(c) All payments shall be of the gross amount specified in the Sales Order Form without deduction of any taxes, including any non-resident withholding tax which may be imposed on payments by the Customer to Qubit.

7   PROPRIETARY RIGHTS

7.1   The Customer acknowledges and agrees that Qubit and/or its licensors own all Intellectual Property Rights and any other rights in the Script, the Generally Applicable Know-How and the Services (including the Script). Except as expressly stated in this Agreement, this Agreement does not grant the Customer any Intellectual Property Rights or any other rights or licenses in respect of the Script, the Generally Applicable Know-How and the Services and the Customer shall not acquire or claim any rights in respect of the Script, the Generally Applicable Know-How or the Services by virtue of the rights granted under this Agreement.

7.2   Qubit acknowledges and agrees that Customer (or the Customer Affiliates as applicable) and/or its licensors own all Intellectual Property Rights and any other rights in the Customer Site. Except as expressly stated in this Agreement, this Agreement does not grant Qubit any Intellectual Property Rights or any other rights or licenses in respect of the Customer Site and Qubit shall not acquire or claim any rights in respect of the Customer Site by virtue of the rights granted under this Agreement.

8   CONFIDENTIALITY

8.1   Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Agreement.

8.2   Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Agreement.

8.3   Each party shall take all reasonable steps to provide that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Agreement.

8.4   Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

8.5   Recipient may disclose Confidential Information to the extent required by law, but that disclosure does not relieve recipient of its confidentiality obligations with respect to any other party.

8.6   The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute Qubit's Confidential Information.

8.7   This clause 10 shall survive termination of this Agreement, however arising.

9   INDEMNITY

9.1   Qubit shall, subject to clause 9.4, defend the Customer, its officers, directors and employees against any claim that the Services (including the Script) infringes any UK, EU or United States patent effective as of the Effective Date only or any other Intellectual Property Rights and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

        (a)   Qubit is given prompt written notice of any such claim;

        (b)   the Customer provides reasonable cooperation to Qubit in the defense and/or settlement of such claim, at Qubit's reasonable expense;

        (c)   Qubit is given sole authority to defend and/or settle the claim; and

        (d)   except with Qubit's prior written permission, the Customer makes no admission and takes no action which would compromise Qubit's defense and/or settlement of the claim or any counterclaim by Qubit.

9.2   In the defense or settlement of any claim, Qubit's sole obligation shall be to: procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on two (2) Business Days' notice to the Customer without any additional liability or obligation to pay damages or other additional costs to the Customer.

9.3   In no event shall Qubit, its employees, agents and sub-contractors be liable to the Customer under the indemnity at clause 9.1 to the extent that the alleged infringement is based on:

        (a)   a modification of the Services (including the Script) by anyone other than Qubit; or

        (b)   the Customer's use of the Services (including the Script) in a manner contrary to the reasonable instructions given to the Customer by Qubit; or

        (c)   the Customer's use of the Services (including the Script) after notice of the alleged or actual infringement from Qubit or any appropriate authority; or

        (d)   the Customer's combination of services, software or other materials with the Services (including the Script) in a manner inconsistent with the Agreement.

10   LIMITATION OF LIABILITY

10.1   Subject to the provisions of clause 10.3, this clause 10 sets out the entire financial liability of either party (including any liability for the acts or omissions of either party's employees, agents and sub-contractors) to the other in respect of:

        (a)   any breach or provision of the Agreement; and

(b)   any use made by the Customer, Third Party Users or Customer Affiliates of the Services (including the Script) or any part of them; and

(c)   any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with the Agreement.

10.2   Subject to clause 10.3 and except as expressly and specifically provided in the Agreement, the Customer assumes sole responsibility: (a) for results obtained from the use of the Services by the Customer, Third Party Users or Customer Affiliates and for conclusions drawn from such use; and (b) for installation and integration of the Script with its IT systems (including Customer's hardware, software, websites and apps). Qubit shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Qubit by the Customer in connection with the Services, or any actions taken by Qubit at the Customer's direction.

10.3   Nothing in this Agreement excludes the liability of either party for:

(a)   gross negligence or willful misconduct; or

(b)   any other liability which may not be limited or excluded by applicable law.

10.4   Subject to clause 10.3, neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any: (a) loss of profits or opportunity costs; (b) loss of business; (c) depletion of goodwill and/or similar losses; (d) loss or corruption of data or information; (e) pure economic loss; or (f) for any special, indirect, punitive or consequential loss, costs, damages, charges or expenses however arising under the Agreement.

10.5   Subject to clause 10,3, either party's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to a sum equating to: (i) the average monthly Subscription Fee paid by the Customer to Qubit on the date on which the first such claim arose, multiplied by a factor of 12; or (ii) two hundred and fifty thousand dollars ($250.000) whichever is greater.

11.   TERM AND TERMINATION

11.1   Unless otherwise agreed in a Sales Order Form and subject always to either party's entitlement to terminate pursuant to this clause 11: (a) the Agreement shall commence on the Effective Date and shall continue for the Initial Subscription Term; and (b) after the Initial Subscription Term, the Agreement shall automatically renew for successive periods of 12 months (each a "**Renewal Period"**) unless either party gives written notice to the other to terminate the Agreement not less than 60 days before the end of the Initial Subscription Term or any Renewal Period (as the case may be), in which case the Agreement shall terminate at the end of the Initial Subscription Term or Renewal Period (as applicable). The Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "**Subscription Term**".

11.2   Without prejudice to any other rights or remedies which the parties may have, Qubit may terminate the Agreement without liability to the Customer immediately on giving written notice to the Customer if the Customer fails to pay any undisputed amount due under the Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.3   Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Agreement without liability to the other immediately on giving written notice to the other if:

(a)   (i) the other party is in material breach of the Agreement where the breach is incapable of remedy; or (ii) the other party is in material breach of the Agreement   where the breach is capable of remedy and fails to remedy that breach within fourteen (14) days after receiving written notice of such breach; or

(b)   the other party enters into an arrangement or composition with or for the benefit of its creditors, goes into administration, receivership or administrative receivership, is declared bankrupt or insolvent or is dissolved or otherwise ceases to carry on business; or

(c)   any analogous event happens to the other party in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

11.4   On termination of the Agreement for any reason:

(a)   all licences granted by Qubit under the Agreement shall immediately terminate;

(b)   each party shall (and the Customer shall procure that any applicable Customer Affiliate and Third Party User shall) return or destroy as directed by the other party and make no further use of any equipment, property, Confidential Information, the Services (including the Script) and other items (and all copies of them) belonging to the other party; and

(c)   the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving or coming into effect after termination, shall not be affected or prejudiced.

11.5   For the avoidance of doubt, if the Customer has entered into more than one Agreement with Qubit, termination of one Agreement shall not, unless the parties otherwise mutually agree in writing, terminate the other Agreements.

12   GENERAL

12.1   Neither party shall have any liability to other under or in connection with the Agreement if it is prevented from, or delayed in performing, its obligations under the Agreement or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of either party to the Agreement or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

12.2   The Customer recognises that Qubit is always innovating and finding ways to improve the Service with new features and functions. The Customer agrees that Qubit may therefore change the Service without notice provided such changes do not materially affect the nature or quality of the Service. Where changes will materially affect the nature or quality of the Service, Qubit may only make such changes with the Customer's prior written consent, which shall not be unreasonably withheld or delayed and by providing at least 1 month's notice of any change. Subject to the preceding sentence, no variation of the Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties.

12.3   A waiver of any right under the Agreement is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this Agreement or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and do not exclude rights provided by law.

12.4   If any provision of the Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected. If a provision of the Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.5   An Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this Agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in this Agreement. Each party acknowledges that in entering into the Agreement it has not relied upon any oral or written statements, collateral or other warranties, assurances, representations or undertakings which were made by or on behalf of the other party in relation to the subject-matter of the Agreement at any time before its signature (together **"Pre-Contractual Statements"**), other than those which are set out in the Agreement. Each party waives all rights and remedies which might otherwise be available to it in relation to such Pre-Contractual Statements.

12.6   Either party may assign any of its rights or obligations under the Agreement without the prior written consent of the other to an entity of good standing capable of complying with the rights and obligations under the Agreement.

12.7   Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.8   A person who is not a party to the Agreement shall not have any rights under or in connection with it.

12.9   All notices must be in English, in writing, addressed to the other party's primary contact and sent to their then current postal address or email address or other address as either party has notified the other in accordance with this clause. All notices shall be deemed to have been given on receipt as verified by written or automated receipt or electronic log (as applicable).

12.10   This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the laws of the State of New York. The parties irrevocably agree and unconditionally consent to the exclusive jurisdiction and venue of the courts of New York, whether federal or state, having jurisdiction in New York County, to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claim). **EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY**