TERMS AND CONDITIONS

These **TERMS AND CONDITIONS** (the "Terms" and together with any applicable FOCUSIT Application Access Agreement, the "Agreement") are made and entered into by FOCUSIT, Inc. an Arizona corporation and the entity agreeing to these terms ("Client"). From time to time herein, FOCUSIT and Client shall collectively be referred to as "parties," and individually, each as a "party."

This Agreement is effective on the earlier of (i) the date Client clicks to accept the Agreement, or (ii) the date the two parties execute a written agreement (the "Effective Date"). If you are accepting on behalf of Client, you represent and warrant that: (i) you have full legal authority to bind Client to this Agreement; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of Client, to this Agreement. If you do not have the legal authority to bind Client, please do not click to accept. This Agreement governs Client's access to and use of the FOCUSIT Applications.

1. SAAS FOCUSIT APPLICATIONS AND SUPPORT

1.1. Subject to the terms of this Agreement, FOCUSIT will use commercially reasonable efforts to provide Client the FOCUSIT Applications defined in the Fee Estimate Proposal according to the terms of this Agreement. As part of the registration process, Client will identify an administrative user name and password for Client's FOCUSIT account. FOCUSIT reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

1.2. Subject to the terms hereof, FOCUSIT will provide Client with the FOCUSIT Applications defined and detailed on the Fee Estimate Proposal.

1.3 CLIENT AGREES AND ACKNOWLEDGES THAT CLIENT IS SOLELY RESPONSIBLE FOR ALL END USERS' ACTS AND OMISSIONS AND WILL INFORM ALL END USERS OF THIS AGREEMENT'S APPLICABLE PROVISIONS AND REQUIRE THEM TO COMPLY.

2. DEFINITIONS

"Authorized Requester" means a permitted person that manages the relationship between FOCUSIT and all End Users. Client grants Authorized Requester the ability to add Permitted Users to Client's User Account.

"Client's Account" means an account established by Client to utilize FOCUSIT Applications that will include such information as username, password, other login credentials, and other user information as determined by FOCUSIT.

"Client Content" means the Client Data and information specific to the Client, its Permitted Users, and any of their customers (including, but not limited to, any personal identifiable information of Client, its Permitted Users, and any of their customers), or the

Client's trademark or logo, which an End User has allowed to be uploaded or otherwise disseminated through the FOCUSIT Application or FOCUSIT Site.

"Client Data" means the data hosted in accordance with this Agreement.

"End User" means the individuals that are permitted by Client or Permitted User to use the Applications.

"End User Account" means an account established by an End User as part of a Client's Account or a Permitted User Account to utilize the FOCUSIT Applications that will include such information as username, password, other login credentials, and other user information as determined by FOCUSIT.

"FOCUSIT Application" means only those FOCUSIT proprietary client relationship management, workflow, and drip marketing solution applications and programs which have been identified in the Fee Estimate Proposal as being part of service to be provided to Client.

"FOCUSIT Server" shall mean the computer software or hardware that serves the FOCUSIT Site to users across the Internet, and which hosts pages, scripts, programs, and multimedia files and serves them using a protocol designed to send files to users.

"FOCUSIT Site" or "Site" means FOCUSIT's internet website at https://[customer name].pulsedashboard.net.

"Permitted User" means an authorized user approved by the Authorized Requester of Client to have access to the FOCUSIT Applications. Such Permitted User will have the ability to add other End Users to such Permitted User's account without further approval from Authorized Requester or Client.

"Permitted User Account" means an account established by Permitted User pursuant to Authorized Requester's approval of Permitted User as an End User of Client's Account to utilize the FOCUSIT Applications that will include such information as username, password, other login credentials, and other user information as determined by FOCUSIT. Permitted User may add other End Users to the Permitted User Account.

3.   **SERVICE LEVELS**

3.1.   Subject to the terms and conditions of this Agreement, FOCUSIT will use commercially reasonable efforts to make the FOCUSIT Applications available with at least ninety-nine and nine hundred ninety hundredths percent (99.99%) of total uptime, excluding regularly scheduled maintenance by FOCUSIT (the "Service Level Commitment").

3.2.   FOCUSIT will answer at least ninety-five percent (95%) of all inbound support calls to the Help Desk within thirty (30) minutes between the hours of 5:00 a.m. to 10:00 p.m. Pacific Standard Time.

3.3.   All traffic on the FOCUSIT Server will have not more than 120 milliseconds of latency, excluding issues with problems affecting Client's local side network.

3.4.   In the event of any failure to meet the Service Level Commitment (a "Service Level Failure"), FOCUSIT shall issue a credit in the pro-rata amount to be commercially reasonably calculated by FOCUSIT equal to the downtime caused by the Service Level Failure (each, a "Pro-Rata Refund"), subject to the following:

(a)   FOCUSIT has no obligation to issue any Pro-Rata Refund unless Client (i) reports the Service Level Failure to FOCUSIT on becoming aware of it; and (ii) requests such Pro-Rata Refund in writing within seven (7) days of the Service Level Failure; and

(b)   FOCUSIT has conducted an investigation of such Service Level Failure and determined that it is commercially reasonable to allow Client to receive a Pro-Rata Refund.

4.   DATA

4.1. Data Backup. The FOCUSIT Systems are programmed to perform routine data backups once per twenty-four (24) hour period and each such daily backup is retained for seven (7) days. FOCUSIT reserves the right to first charge any additional fees for any data restoration and will need Client's written acceptance of these additional fees to perform such data restoration. Upon subscription cancellation, FOCUSIT will provide to Client a copy of the Client Data that is accessible for a period of thirty (30) days. After such thirty (30) days, FOCUSIT reserves the right to destroy or erase Client Data from the FOCUSIT Systems.

4.2.   Access to Client Data.   Client agrees that the Client Data belongs solely to the Client entity, not any particular individual owner, member, or employee of Client.   Upon a request for access to or a copy of the Client Data, FOCUSIT will make Client Data available to Client for electronic retrieval and/or provide a copy of Client Data to, in FOCUSIT's sole discretion: (a) the Client Contact; (b) a CRM super user; (c) the CEO, President, or Manager of Client; or (d) the Calyx PointCentral software license owner. In the event of a Client disagreement regarding the Client Data, and only upon prompt notification to FOCUSIT of such disagreement, FOCUSIT will freeze and archive the Client Data and only make the Client Data available only in accordance with a court order or a fully executed settlement agreement.   FOCUSIT reserves the right to hold Client Content and any other Client data pending final payment from Client.   Once account is current, FOCUSIT will provide Client all of the Client Content via a secure download or on a Client provided media.

4.3. Data Storage. Client Data is stored in the United States using the Amazon S3 Glacier backup and archival storage service. Unless Client instructs FOCUSIT in writing, Client Data backups may be stored indefinitely within Amazon S3 Glacier.   Client may access a copy of the Client Data backup as set forth in Section 4.1.

5. AUDIT RIGHTS

5.1.   During the Term of this Agreement and for a minimum of three (3) years thereafter, Client shall: (a) maintain reasonably detailed books and records relating to its activities under this Agreement (including its list of all End Users, security measures taken, and security related problems); and (b) make such books and records available to FOCUSIT (or its designated auditor) for the purpose of verifying Client's compliance with this Agreement. FOCUSIT shall conduct any such audit upon reasonable and advance written notice to Client, during Client's normal business hours, and using reasonable efforts to minimize any disruptions to Client's business. Client shall cooperate fully with FOCUSIT with respect to any audit permitted or required under this Agreement.

5.2.   If an audit reveals that Client has underpaid any amounts due to FOCUSIT, Client shall, promptly following the completion of the audit, pay such underpaid amount at the then-current prices plus interest at the rate as detailed in Section 8. If the underpaid amounts exceed five percent (5%) of the total amounts that were otherwise due, then Client agrees to also pay FOCUSIT's reasonable costs of conducting the audit.

6. RESTRICTIONS AND RESPONSIBILITIES

6.1.   With respect to any Software that is distributed or provided to Client for use on Client premises or devices, FOCUSIT hereby grants Client a limited, non-exclusive, non-transferable, non-sublicensable license to use such Software (as defined below) during the Term only in connection with the FOCUSIT Applications.

6.2.   Client will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the FOCUSIT Applications or any software, documentation or data related to the FOCUSIT Applications (the "Software"); modify, translate, or create derivative works based on the FOCUSIT Applications or any Software (except to the extent expressly permitted by FOCUSIT or authorized within the FOCUSIT Applications); use the FOCUSIT Applications or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third; or remove any proprietary notices or labels.

6.3.   Further, Client may not remove or export from the United States or allow the export or re-export of the FOCUSIT Applications, Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or

commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

6.4.   Client represents, covenants, and warrants that Client and its End Users will use the FOCUSIT Applications only in compliance with this Agreement, the Terms of Use, the User Access Agreement and all applicable laws and regulations. Client hereby agrees to indemnify and hold harmless FOCUSIT against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Client's use of FOCUSIT Applications. Although FOCUSIT has no obligation to monitor Client's use of the FOCUSIT Applications, FOCUSIT may do so and may prohibit any use of the FOCUSIT Applications it believes may be (or alleged to be) in violation of the foregoing.

6.5.   Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the FOCUSIT Applications, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, the "Equipment"). Client shall also be responsible for maintaining the Client account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Client account or the Equipment with or without Client's knowledge or consent.

6.6.   Client shall be solely responsible for and shall provide for the physical and electronic security for all of its computer systems in its possession or control that Client and End Users use to access the FOCUSIT Application and FOCUSIT Site, and shall ensure that only authorized personnel are allowed to access and use the FOCUSIT Application and FOCUSIT. The security measures employed by Client shall not be less than those employed in the industry to protect information of a similar kind or nature. Pursuant to Section 5, FOCUSIT shall have the right to audit Client's security, in coordination with Client, to assess the adequacy of Client's security measures under this Agreement.

6.7.   Client is responsible for maintaining the confidentiality of all Client Content, all other information about Client and its End Users, including all Permitted User Accounts. Client shall be responsible for all uses of such User Accounts, regardless of whether the actual uses are authorized by Client. Client agrees to promptly notify FOCUSIT of any unauthorized use, access, or disclosure of any of its Client Account or Permitted User Accounts. Without limiting any of the foregoing, Client is responsible for all access to and use of the FOCUSIT Application and FOCUSIT Site by all of its End Users, and shall assure compliance with this Agreement (and any end user agreement consented to by that End User) by each such End User provided access to the FOCUSIT Application and FOCUSIT Site through Client. Any act or omission by any such third party shall be deemed to be committed by Client for purposes of this Agreement.

7. CONFIDENTIALITY AND SECURITY

7.1.   <u>Confidential Information</u>. In connection with this Agreement each party (as the "<u>Disclosing Party</u>") may disclose or make available Confidential Information to the other party (as the "<u>Receiving Party</u>"). Subject to <u>Section 7.2</u>, "<u>Confidential Information</u>" means information in any form or medium (whether oral, written, electronic or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party's technology, trade secrets, know-how, business operations, plans, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as "confidential".

7.2.   <u>Exclusions</u>. Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information's being disclosed or made available to the Receiving Party in connection with this Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its representatives' noncompliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

7.3.   <u>Protection of Confidential Information</u>. As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall:

(a)   Not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement.

(b)   except as may be permitted by and subject to its compliance with <u>Section 7.4</u>, not disclose or permit access to Confidential Information other than to its representatives who: (i) need to know such Confidential Information for purposes of the Receiving Party's exercise of its rights and performance of its obligations under and in accordance with this Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this <u>Section 7.3</u>; and (iii) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this <u>Section 7.3</u>;

(c)   safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its similarly sensitive information and in no event less than a reasonable degree of care; and

(d)   ensure its representative's compliance with, and be responsible and liable for any of its Representatives' non-compliance with, the terms of <u>Section 7</u>.

7.4.   <u>Compelled Disclosures</u>. If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall: (a) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the

Disclosing Party can seek a protective order or other remedy or waive its rights under Section 7.3; and (b) provide reasonable assistance to the Disclosing Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing notice and assistance required under this Section 7.4, the Receiving Party remains required by law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of Confidential Information that, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

7.5.　Notwithstanding anything to the contrary, FOCUSIT shall have the right collect and analyze data and other information relating to the provision, use and performance of various aspects of the FOCUSIT Applications and related systems and technologies (including, without limitation, information concerning Client Data and data derived therefrom), and FOCUSIT will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the FOCUSIT Applications and for other development, diagnostic and corrective purposes in connection with the FOCUSIT Applications and other FOCUSIT offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

7.6.　System Security Breach. If there is a security breach, for any reason, of the FOCUSIT Applications, FOCUSIT Server, or FOCUSIT Site which results in the disclosure of any Client Content or any other Confidential Information of Client, including, but not limited to, any personal identifiable information of Client, its End Users, or any of their customers (hereinafter collectively referred to as a "System Security Breach"), then the following shall govern Client's rights and remedies arising out of such System Security Breach:

　　　　(a)　FOCUSIT's sole and exclusive obligation to Client arising out of such System Security Breach is to provide notice to Client (within a commercially reasonable time after FOCUSIT's President learns of such System Security Breach) containing only the following information: (i) notification of the occurrence of the System Security Breach; and (ii) the name(s) of any of its End Users whose personal identifiable information may have been disclosed as a result of such System Security Breach; and

　　　　(b)　Client acknowledges and agrees that FOCUSIT is not responsible for any security breach of any type, including without limitation any System Security Breach, cause by Client or any of its End Users.

　　　　(c)　Client further acknowledges and agrees that FOCUSIT's sole liability resulting from or arising out of any such System Security Breach is specifically limited as set forth in Section 6.2 of the Terms of Use.

8. PAYMENT OF FEES

8.1.   As a condition to Client's continued use of the FOCUSIT Applications, Client hereby agrees to pay FOCUSIT the all fees, including, without limitation, all installation fees, maintenance fees, and ongoing access fees, set forth in, and in accordance with the Fee Estimate Proposal for the FOCUSIT Applications and Implementation Services and the up to date pricing available at (the "<u>Fees</u>"):

- PointCentral: <u>https://www.focusitinc.com/hosted-pointcentral/</u>

- Pulse Mortgage CRM: <u>https://www.focusitinc.com/pulse-mortgage-crm/</u>

- SecureShare: <u>https://www.focusitinc.com/secureshare/</u>

If Client's use of the FOCUSIT Applications exceeds the Service Capacity set forth on the Fee Estimate Proposal or otherwise requires the payment of additional fees (per the terms of this Agreement), Client shall be billed for such usage and Client agrees to pay the additional fees in the manner provided herein. All users added above the Service Capacity shall be charged a pro-rated fee until the following subscription cycle or until the end of the Initial Service Term or current Term. FOCUSIT reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or thencurrent subscription cycle or Term, upon thirty (30) days prior notice to Client (which may be sent by email). If Client believes that FOCUSIT has billed Client incorrectly, Client must contact FOCUSIT no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to FOCUSIT's customer support department. Client hereby acknowledges and agrees that:

(a)   FOCUSIT reserves the right to make amendments at any time, and from time to time, during the Term of this Agreement to any of the Fees (including the pricing available at the links above) or to any of the other terms and conditions set forth in Part II of the Fee Estimate Proposal upon thirty (30) calendar days prior notice to Client.

(b)   upon the expiration of said thirty (30) calendar day period, all such amendments shall automatically become effective and, specifically, Attachment 1 to the FOCUSIT ACCESS APPLICATION AGREEMENT shall automatically be deemed to be amended to reflect all such amendments. Notwithstanding any contrary provision herein, Client agrees that: (i) FOCUSIT has the right to audit all applicable Fees as of the last day of the previous month for the next subscription cycle and that any additions, removals or modifications made by the Client to its level of service, including, but not limited to, any additions or removals of Client Users ("<u>Client Service Changes</u>") must be delivered by Client to FOCUSIT prior to the first day of the next subscription cycle; and

(c)   if Client delivers its Client Service Changes on or after the first day of the next subscription cycle, then FOCUSIT, in its sole discretion, will determine whether or not to grant Client any credits for that subscription cycle. FOCUSIT shall not issue any credit or refund for any removal of users, use below the Service Capacity, or

any other Client Service Changes.

8.2.   No Refund Policy. Unless otherwise explicitly stated to the contrary in the Part II of the Fee Estimate Proposal, all Fees are nonrefundable. FOCUSIT reserves the right to make adjustments in any Fee structure at any time, and from time to time, during the Term of this Agreement pursuant to the provisions of this Section 8. Any and all payments including, without limitation, any of the Fees for access and use of the FOCUSIT Application and FOCUSIT Site by Client or by any other End User shall be paid by Client only to FOCUSIT and to no other party whatsoever.

8.3.   Client's account is audited monthly pursuant to Section 5 of this Agreement by FOCUSIT and pricing is based on the maximum number of End Users that month.

8.4.   Invoices for all Fees are billed forward (i.e. in advance for the following month) and are generated on or before the fourth day of each month.

8.5.   Client must provide a credit card, electronic check approval, or ACH prior to the first month of using the Applications. If Client submits a payment for the entire year in advance, Client may receive a five percent (5%) discount for that year. FOCUSIT will allow payment by check if Client submits a payment for the entire year in advance. If payment is declined, FOCUSIT has the option, in its sole discretion:

        (a)   to suspend all Access Rights and all other services to Client and all its Users and/or immediately terminating this agreement; or

        (b)   to send the Client an email notification and requesting new/ updated payment information. At that time, a second attempt to process payment will be made on the 15th of the month. If the second attempt is unsuccessful, a fee of $25.00 for returned ACH payments or $15.00 for declined credit card payments will be charged. A third attempt will be made on the 20th of the month. Following an unsuccessful third attempt to process payment, a final email and request for new/updated payment will be sent to the customer with the notification that they have five days to respond with new information or their account will be disabled. If payment is not received by the 25th of the month for any Client who has not responded to the final notice with new information, then FOCUSIT has the right to suspend all Access Rights and all other services to Client and all its Users and/or immediately terminating this Agreement; Notwithstanding the foregoing provisions of this subsection (b), FOCUSIT reserves it rights to charge any of the fees described in Section 2 below in this Part IV

8.6.   If FOCUSIT decides to suspend Client from use of the Applications due to non-payment, a forty-five dollar ($45) processing fee will be assessed to Client's account each time Client is suspended from use of the Applications.

8.7.   If Client has any dispute or problem regarding the Applications or this Agreement, Client must bring such dispute or problem to FOCUSIT's attention within forty-five (45) days of the problem or issue occurring. If Client fails to bring such problem or dispute to

FOCUSIT's attention within forty-five (45) days, Client waives the right to bring a dispute or complaint through Client's credit card company, bank or other electronic payment source.

8.8.   Full payment of every Fee is due upon receipt of the invoice.   Should billing disputes arise, payment is due on undisputed fees while invoice corrections, changes, or explanations are provided. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Client shall be responsible for all taxes associated with FOCUSIT Applications other than U.S. taxes based on FOCUSIT's net income.

8.9.   Travel and expenses are not included in any of the Fees.   These costs will be billed with normal invoice cycles and payment for such costs is due upon receipt unless otherwise agreed upon in writing.   Costs for travel outside the Metro Phoenix area include mileage, hotel, airfare, and employee per diem. Mileage is calculated at thirty-seven cents ($0.37) per mile; hotel and airfare are calculated based on actual charges; and employee per diem is calculated at forty dollars ($40) per day.

9.   TERM AND TERMINATION

9.1.   Subject to earlier termination as provided below, the subscription cycle of this Agreement is month to month unless an Initial Service Term is otherwise specified in the Fee Estimate Proposal, and shall be automatically renewed for the same term length (collectively, the "Term"), unless either party requests termination as otherwise set forth herein.

9.2.   Termination Procedures. Either Party may terminate this agreement before the next subscription cycle. To terminate this Agreement, Client must send an email to cs@focusitinc.com and indicate Client's request to terminate before the next subscription cycle. Such request is not deemed received by FOCUSIT until FOCUSIT replies to such email indicating receipt thereof. In the event Client does not receive a reply email, Client shall call FOCUSIT at 480-406-8053 to resubmit the request to terminate. Client has five (5) calendar days to rescind a request to terminate once received by FOCUSIT (the "Request Cancelation Period"). Upon expiration of the Request Cancelation Period, this Agreement shall terminate at the end of the current Term or at the end of the Initial Service Term. FOCUSIT shall terminate this Agreement as set forth in Sections 9.4 and 9.5. Once FOCUSIT has received the request to terminate, FOCUSIT shall not offer any extensions of this Agreement or of the Request Cancelation Period.

9.3.   In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Client will pay in full for the FOCUSIT Applications up to and including the last day on which the FOCUSIT Applications are provided.

9.4.   Obligations Upon Termination. Upon termination, expiration or cancellation of this Agreement (i) all rights (including, without limitation, all Access Rights for Client, its Permitted Users and any other End Users) granted to Client hereunder shall immediately terminate; (ii) Client must pay within ten (10) days to FOCUSIT any and all outstanding amounts due under this Agreement; and (iii) Client and all of its Users must promptly cease any and all use of the FOCUSIT Application and FOCUSIT Site and of any other FOCUSIT IP Assets in its possession or control and, as instructed by FOCUSIT, destroy or return the same to FOCUSIT. At FOCUSIT's request, Client shall certify in writing its completion of the foregoing steps.

9.5.   Effect of Termination. Upon any termination and only upon instructions from the Client Contact listed in the Cover Sheet, FOCUSIT will make all Client Data available to Client for electronic retrieval for a period of thirty (30) days after termination, but thereafter FOCUSIT may, but is not obligated to, delete stored Client Data. Client agrees that upon termination of this Agreement, the Client Data belongs solely to Client entity, not any particular individual owner, member, or employee of Client.   In the event of a Client disagreement regarding the Client Data, and only upon prompt notification to FOCUSIT of such disagreement, FOCUSIT will freeze and archive the Client Data and only make the Client Data available only in accordance with a court order or a fully executed settlement agreement. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

10.   WARRANTY AND DISCLAIMER

FOCUSIT shall use reasonable efforts consistent with prevailing industry standards to maintain the FOCUSIT Applications in a manner which minimizes errors and interruptions in the FOCUSIT Applications and shall perform the Implementation FOCUSIT Applications in a professional and workmanlike manner. FOCUSIT Applications may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by FOCUSIT or by third-party providers, or because of other causes beyond FOCUSIT's reasonable control, but FOCUSIT shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.   HOWEVER, FOCUSIT DOES NOT WARRANT THAT THE FOCUSIT APPLICATIONS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE FOCUSIT APPLICATIONS.   EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE FOCUSIT APPLICATIONS AND IMPLEMENTATION FOCUSIT APPLICATIONS ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

11. INDEMNITY

11.1. <u>Client Obligations</u>. Client hereby agrees to indemnify, defend and hold harmless FOCUSIT, its affiliates, officers, directors, employees, shareholders, agents, representatives, and licensors, from and against any and all claims, damages, losses, liabilities, costs and expenses of any kind or nature (including reasonable costs and fees of attorneys and other professionals) arising from or related to:

      (a)   Client's breach of this Agreement;

      (b)   any use of, or access to, the FOCUSIT Application or FOCUSIT Site by Client or any of its End Users that is not expressly permitted by this Agreement;

      (c)   any other unauthorized use of, or access to, the FOCUSIT Application, FOCUSIT Site or any FOCUSIT IP Assets by Client or any of its End Users;

      (d)   the violation by any End User of this Agreement; or

      (e)   the infringement by Client or any of its End Users of any intellectual property or other right of any person or entity.

11.2. FOCUSIT Obligations. FOCUSIT shall hold Client harmless from liability to third parties resulting from infringement by the Applications of any third party United States patent or any copyright or misappropriation of any trade secret, provided FOCUSIT is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; FOCUSIT will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Applications (i) not supplied by FOCUSIT, (ii) made in whole or in part in accordance with Client specifications, (iii) that are modified after delivery by FOCUSIT, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Client's use of the Applications is not strictly in accordance with this Agreement. If, due to a claim of infringement, the FOCUSIT Applications are held by a court of competent jurisdiction to be or are believed by FOCUSIT to be infringing, FOCUSIT may, at its option and expense (a) replace or modify the Applications to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Client a license to continue using the Applications, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the Applications.

12. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, FOCUSIT APPLICATIONS OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CLIENT TO FOCUSIT FOR THE FOCUSIT APPLICATIONS UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FOCUSIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. GOVERNING LAW

This Agreement shall be construed and controlled exclusively by the laws of the State of Arizona. The laws of the State of Arizona will govern any dispute arising from the terms of this Agreement or a breach of this Agreement. Client agrees to exclusive personal jurisdiction by the state and federal courts sitting in the State of Arizona in Maricopa County.

14. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Client except with FOCUSIT's prior written consent. FOCUSIT may transfer and assign any of its rights and obligations under this Agreement without consent. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Client does not have any authority of any kind to bind FOCUSIT in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by

certified or registered mail, return receipt requested.