

# **DEVELOPMENT, LICENSE AND SERVICE AGREEMENT**

## **Section Overview**

1. THE LOAN PROGRAM
2. ACCESS AND LICENSE
3. DEVELOPMENT SERVICES
4. SECURITY SERVICES
5. FEES
6. REPRESENTATIONS AND WARRANTIES
7. COVENANTS
8. CONFIDENTIALITY
9. AUDIT RIGHTS
10. TERM AND TERMINATION
11. INDEMNITY AND LIABILITY
12. ADDITIONAL RIGHTS
13. MISCELLANEOUS

# DEVELOPMENT, LICENSE AND SERVICE AGREEMENT

THIS DEVELOPMENT, LICENSE AND SERVICE AGREEMENT (this “*Agreement*”) is dated as of by and between \_\_\_\_\_ LLC., a limited liability company incorporated under the laws of \_\_\_\_\_, having an office located at (“*Client*”) and Daric, Inc., a corporation incorporated under the laws of the State of Delaware, having an office located at 805 Veterans Blvd, Suite 309, Redwood City, CA 94063 (“*Daric*”). Each of Client and Daric shall be referred to hereafter as a “*Party*”, and collectively, the “*Parties*”. In consideration of the mutual covenants contained herein, the Parties agree as follows:

## 1. THE LOAN PROGRAM

1.1 **Advancement of the Loan Program.** Daric acknowledges and agrees that Client is a respected industry-leading lender that has designed a proprietary online lending program whereby potential borrowers (“*Applicants*”) may apply for a loan online (a “*Loan*”) to be originated by Client (the “*Loan Program*”). Daric shall, at Client’s direction, assist Client advance the Loan Program by performing certain services in accordance with the terms set forth herein. The Parties agree that the purpose of this Agreement is to grow, expand and improve the Loan Program.

1.2 **Use of the Core Systems.** To support and advance the Loan Program, Daric grants to Client the access rights and license set forth in Section 2 of this Agreement so that Client may develop one or more Front Ends and Alternative Sites to connect with the Core Systems (any form of such custom-developed integrated product accessible through one or more websites, collectively, the “*Lending Platform*”). Client shall have the right to, and Daric agrees to provide Client with a comprehensive, fully functional copy of the Core Systems hosted within Client’s native technology environment to ensure that Client is able at all times to access the Core Systems in order to maintain, operate, grow and improve the Loan Program. While the Parties intend for Client to use the Core Systems to support the Loan Program, the Parties nonetheless acknowledge and agree that the Loan Program (a) is separate from the Core Systems, (b) may be operated in connection with any other systems or platform as Client determines in its sole discretion and (c) shall at all times remain the sole and exclusive property of Client, it being understood that Daric shall not receive any rights in or to the Loan Program or the Lending Platform as a result of Client’s use of the Core Systems or of any integration of the Core Systems into any Front End or Alternative Site.

1.3 **Engagement of Daric as a Service Provider.** To support and advance the Loan Program, Client hereby engages Daric, and Daric hereby accepts such engagement, to provide the following services (collectively, the “*Services*”):

(a) The Development Services as described in Section 3 of this Agreement;

(b) The Security Services as described in Section 4 of this Agreement.

## **2. ACCESS RIGHTS AND LICENSE**

2.1 **Grant of Access.** Daric hereby grants to Client and its Authorized Users the non-exclusive right to access the Core Systems to support Client's Loan Program. This access right includes the right to (a) customize various Front Ends and Alternative Sites to integrate or otherwise interact with the Core Systems, (b) develop communications protocols with the Core Systems and/or Lending Platform to allow access through new devices and systems as identified by Client, (c) receive, recover or at Client's discretion modify any Client Data or Confidential Information stored or otherwise processed within the Core Systems or Lending Platform and (d) gain access to any component of the Core Systems or to any information related to Daric's business, in each case, that is required by Applicable Law or that is required for Client to demonstrate compliance with Applicable Law. The total number of Authorized Users, Front Ends and/or Alternative Sites shall not be subject to any restrictions or limitations.

2.2 **Grant of License.** Daric hereby irrevocably grants to Client (i) a non-exclusive right and license to use the Core Systems in connection with the Loan Program, (ii) the non-exclusive right and license worldwide into perpetuity to use any Daric Intellectual Property contained in any Work Product, (iii) the exclusive right and license worldwide into perpetuity to use any Daric Intellectual Property as integrated into any Deliverables in connection with Daric's performance of the Development Services and (iv) such other rights and licenses with respect to the Core Systems that will allow Client to use, enhance and grow the Lending Platform, in each case, without incurring any fees or costs to Daric or any other person other than the Fees explicitly set forth in this Agreement. In furtherance of, and without limiting, the foregoing, such rights and licenses shall (a) be worldwide, fully paid-up and royalty-free, (b) include the unlimited rights to use, reproduce, display and distribute the Lending Platform online, (c) allow Client to integrate various Front Ends and Alternative Sites with the Core Systems without limitation or charge, (d) allow Client to modify, improve and create derivative works of the Lending Platform at Client's sole discretion, (e) give Client the right to grant Applicants and other possible users of the Lending Platform a license to interact with and view the Lending Platform and (f) allow Client to make copies and alternative versions of the Lending Platform in connection with testing, disaster recovery, archiving and operation with any other software or systems. For the avoidance of doubt, Daric hereby irrevocably grants to Client the rights contained in this Section 2 along with the right to exploit the Lending Platform to support the Loan Program in any manner that Client determines to be in its best interest which shall include, without limitation, the right and

license throughout the world to grant access rights to the Lending Platform to any Applicant for the purpose of collecting applications as part of the Loan Program and providing information relevant to the Loan Program.

2.3 **Prohibited Acts**. Notwithstanding anything to the contrary, neither Client nor any Divested Business or Designee shall at any time use the Lending Platform to knowingly store or transmit malicious code or intentionally introduce into the Core Systems any functions or routines that will surreptitiously delete or corrupt data in such a manner as to interfere with the normal operation of Daric's internal network.

### **3. DEVELOPMENT SERVICES**

3.1 **Custom Development and Deliverables**. Daric agrees to develop the Lending Platform according to the Specifications and to otherwise customize the Core Systems to support the Loan Program consistent with the directions and reasonable requests of Client, all at no charge other than Daric's right to collect the Fees. Daric shall provide all Deliverables to Client on a timely basis and shall, in collaboration with Client, design and develop custom Front Ends that, at the direction of Client, will be fully integrated into the Core Systems in a manner that fully conforms to the Specifications (collectively with all of Daric's obligations set forth in this Section 3, the "***Development Services***"). Without limiting the foregoing, Daric agrees that: (a) all Deliverables shall be subject to Client's review and approval as set forth herein, including with respect to testing and acceptance procedures, (b) all Operating Manuals shall be provided in electronic form which Client may copy and customize and shall include such information as is reasonably necessary to enable Client's personnel to install, operate, use, maintain, update, enhance, grow and scale the Lending Platform and otherwise access and modify the Client Data therein and (c) all Deliverables, Operating Manuals and other custom work provided in connection with the Development Services is being provided to Client as Work Product.

3.2 **Ongoing Refinements and Enhancements**. From time to time, Daric shall provide such additional development and customization work as Client shall reasonably request. If necessary to clarify the desired output, modification, enhancement or project scope related to such desired work, the Parties shall mutually agree on a statement of work covering such request (a "***SOW***") and associated Fees to be paid to Daric. In addition to ongoing development work, Daric agrees to provide advice and support with technical issues relating to Client's use of the Services or Client's exploitation of the Lending Platform, including without limitation, with integrating any data output from the Lending Platform into (a) Client's other applications and (b) any external data warehouse solution identified by Client, in each case, at no cost to Client other than Daric's right to collect the Fees. Daric acknowledges and agrees that Daric shall receive no compensation for the Development Services other than the right to collect Fees and that Client reasonably relied on the promise of the Development Services including all

additional development work at no additional cost in connection with Client's decision to enter into this Agreement.

**3.3 Analytics Development.** Daric shall assist Client with the initial and ongoing administration of the Loan Program by developing and providing analytics and portfolio performance reporting on the Loans (or on the pools of Loans identified by Client if Client so chooses to segregate the Loans). Daric shall provide a key metrics report monthly, containing the information reasonably requested by Client and as other reasonably agreed between the Parties. Daric and Client shall participate in monthly conference calls to review portfolio performance, and the Parties shall discuss whether to implement changes to the Program Guidelines or to any part of the Lending Platform. As a result of its analysis of Loan data and performance metrics, Client may request that Daric provide Client with additional analytic services, all at no cost to Client, such as evaluating the efficiency of various Applicant retention strategies and prepayment mitigation strategies, and Daric hereby agrees to provide such additional service, all at no cost other than the right to collect the Fees as set forth herein. Daric shall maintain accurate records regarding the Services and Loans and shall have the ability to provide reports produced therefrom, on such regular basis as Client may reasonably request. Promptly upon request, Daric shall provide Client with all reports reasonably necessary to demonstrate Daric's adherence to the terms of this Agreement and compliance with all Applicable Law.

**3.4 Daric Personnel.** Prior to any Daric Personnel performing any Services hereunder, Daric shall require such Daric Personnel to execute written agreements in form and substance acceptable to Client that bind such Daric Personnel to confidentiality provisions that are at least as protective of Client's information as those contained in this Agreement and Intellectual Property ownership provisions that grant Client ownership rights in all Work Product consistent with the provisions hereof. Upon Client's request, Daric shall provide Client with a copy of the executed original of each such agreement.

**3.5 Operation of the Lending Platform.** Daric shall (a) install all appropriate software and enable Client to host the Lending Platform to ensure the consistent uptime, operation and accessibility of the Lending Platform to Client, Client's Authorized Users and potential Applicants, (b) maintain and provide electronic administrative access to the Lending Platform for Client and its Authorized Users, and (c) if Client requests, purchase, license or otherwise contract for hardware, software, storage space and other resources in order to configure the Lending Platform's environment so that it meets all the criteria set forth in the Specifications (collectively with all of Daric's obligations).

**3.6 Administrative Access and Control.** Client has the sole right to add, modify, delete, change or otherwise control any data, image or other content that is contained in the Client Data or Lending Platform. Daric shall provide Client with secure, password protected administrative access to the Lending Platform's environment to allow Client to transmit, upload, test and implement updates, upgrades, enhancements, additions and

deletions to the Lending Platform. Daric shall immediately notify Client if Daric becomes aware of any person or entity (other than Client or an Authorized User) gaining administrative access to the Lending Platform.

**3.7 Redundancy and Back-up.** Daric shall enable Client to host a complete and current version of the Lending Platform on a secondary hosting environment and Daric shall operate, monitor and maintain such secondary hosting environment so that at all times it is capable of being fully operational within three hours of activation. Daric shall back up the Lending Platform at the times and with the frequency set forth in Service Standards and shall store such back-ups at the locations set forth in the Service Standards.

**3.8 Maintenance.** At no cost to Client, Daric will assist as requested by Client to maintain the Lending Platform to optimize performance and ensure the Lending Platform meets or exceeds the Minimum Service Levels. Such Maintenance Services shall include: (a) implementing all necessary bug fixes prior to production release that are necessary to ensure operation of the Lending Platform (b) remaining aware of advances in technologies related to the use of website hosting and cloud-based-service-platforms, including those related to security; and (c) advising and assisting the implementation of such changes to the environment as are reasonably necessary to ensure the Lending Platform's continued operability and compatibility with new technologies and Client's security protocols. Prior to release of the Lending Platform into production, Daric shall correct all Service Errors in accordance with the Service Standards, including by providing defect repair, programming corrections and remedial programming; (b) provide unlimited telephone support during regular support hours as mutually agreed between Daric and Client; (c) provide online access to technical support bulletins and other user support information and forums, to the full extent Daric makes such resources available to its other customers; and (d) promptly respond to and resolve any support requests from Client. Upon Client request, Daric shall promptly investigate the root cause of any Service Error and provide to Client within five (5) business days an analysis of such root causes and a proposed written corrective action plan for Client's review, comment and approval, which, subject to and upon Client's written approval, shall be a part of, and by this reference is incorporated in, this Agreement as the parties' corrective action plan (the "**Corrective Action Plan**"). The Corrective Action Plan shall include, at a minimum: (a) Daric's commitment to Client to devote the appropriate time, skilled Personnel, systems support and equipment and other resources necessary to resolve and prevent any further occurrences of the Service Errors; (b) a strategy for developing any programming, software updates, fixes, patches, etc. necessary to remedy, and prevent any further occurrences of, such Service Errors; and (c) time frames for implementing the Corrective Action Plan.

**3.9 Availability Requirement.** Daric shall install all software to make the Lending Platform available, as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), at least ninety-nine and ninety five one

hundredths percent (99.95%) of the time (the "**Availability Requirement**" which is included in the Minimum Service Standards). For purposes of this Agreement, the Lending Platform shall be deemed "available" when the Lending Platform is fully operable for access and use by Client, its Authorized Users and Applicants over the Internet in full conformity with the Specifications. No period of Lending Platform inoperability will be included in calculating availability to the extent that any downtime or degradation is due to: (a) failures of Client's or its Authorized Users' internet connectivity; (b) Client's or any of its Authorized Users' failure to meet any minimum hardware or software requirements set forth in the Specifications; or (c) scheduled downtime as set forth in Section 5.4. Daric shall correct all Service Errors and respond to and resolve all support requests in accordance with the required times and other terms and conditions set forth in the Service Standards and Specifications in order to maintain the Availability Requirement.

3.10 **Audit Trail.** Daric shall provide Client with tools that allow Client to produce documentation to verify a full audit trail relating to Daric's provision of the Compliance Services in order to confirm that the Lending Platform complies with Applicable Law. Daric agrees to update and customize the audit reports consistent with the reasonable directions of Client and the requirements of Applicable Law. Any failure by Daric to provide the audit trail or to perform the activities tracked by the audit trail shall be a Service Error.

## **4. SECURITY SERVICES**

4.1 **Protection of Personal Information.** Daric acknowledge and understands that Personal Information is subject to the Privacy Requirements and other restrictions on disclosure. Daric agrees to maintain the confidentiality of such Personal Information and not to make any use whatsoever of such Personal Information without the consent of Client except as expressly permitted in this Agreement. Except as otherwise expressly set forth in this Agreement, all Personal Information in the possession of Daric other than information independently obtained by Daric without any reference to or knowledge of Client's Confidential Information, is and shall remain Confidential Information of Client. Daric shall not cause or permit any Personal Information to be processed in any manner or for any purpose other than the performance of the Services in compliance with the restrictions set forth in this Agreement and all Applicable Laws.

4.2 **Treatment of Personal Information.** As between Client and Daric, Client is and shall remain the sole and exclusive owner of all right, title and interest in and to Personal Information. Without limiting any other representation, warranty or obligation of Daric under this Agreement, Daric represents, warrants and covenants, and shall obtain the binding written representations, warranties and covenants of all Daric Personnel and Permitted Subcontractors involved in any aspect of the Services that during the Term and thereafter in perpetuity, Daric will not process or otherwise undertake any act with

respect to any Personal Information in any manner, including any actual or attempted processing thereof, except for the sole purpose of performing the Services and in compliance with this Agreement and Applicable Law (including all then current and applicable laws relating to spamming, privacy and consumer and data protection). Daric shall promptly notify Client in writing when Daric becomes aware of any unauthorized access, use or other act respecting Personal Information or if Daric becomes the subject of any government, regulatory or other investigation or proceeding relating to its data privacy, security or handling practices.

**4.3 Maintenance of a Security Program.** Daric shall maintain at all times a Security Program (collectively with all of Daric's obligations set forth in this Section 6, the "***Security Services***"). Daric shall provide Client with a copy of its Security Program upon request, and shall notify Client of any changes to its Security Program that could reasonably be expected to have an impact on the Services, the Lending Platform or the security of any Client Data. Daric shall assess, manage, and control risks relating to the security and confidentiality of Personal Information, and shall implement the standards relating to such risks in the manner set forth in the Security Program. Without limiting the scope of the above, Daric shall use at least the same physical and other security measures to protect all Client Data in Daric's possession or control, as Daric uses for its own confidential and most sensitive information. Daric shall employ security measures and a data breach plan at least as protective as industry standard security measures to ensure against unauthorized access to the Lending Platform, the Client Data or the Confidential Information.

**4.4 Unauthorized Access.** Daric shall not access, and shall not permit any unauthorized third-party access to, the Lending Platform, in whole or in part, whether through Daric's Systems or otherwise, without Client's express prior written authorization. Any access to the Lending Platform shall be solely in accordance with the terms and conditions of this Agreement and the Program Guidelines, and in no case shall exceed the scope of the Client's authorization which may be reduced or eliminated in Client's sole discretion.

**4.5 Process for Breaches.** Daric will provide information security so as to reasonably ensure that any Client Data and Confidential Information received by it is not lost, stolen, modified, disclosed to or accessed by any other party without the Client's prior written approval. Daric warrants that it will reasonably monitor, evaluate and adjust its information security systems and Security Program to relevant changes in technology and to any potential internal and external threats to information security that may arise from time to time. In the event that Daric knows or reasonably believes that there has been any security breach or any unauthorized access or a serious incident of attempted unauthorized access to the Client Data or the Confidential Information, Daric shall take the following actions: (a) promptly notify the Client of such unauthorized access or serious incident of attempted unauthorized access; (b) take reasonable steps to remedy the



circumstances that permitted any such unauthorized access to occur; (c) take reasonable steps to prohibit any further disclosure of Client Data or Confidential Information; (d) upon request, cooperate with Client or its designated agents to investigate the scope and content of the unauthorized access; and (e) take appropriate corrective action related to such disclosure, including by providing Client with a Corrective Action Plan.

**4.6 Data Encryption.** Daric represents and warrants that, to the extent Daric will be processing or retaining Client Data and Personal Information, Daric will encrypt with whole disk encryption all laptop computers maintaining such information on such devices. Other portable devices (including, but not limited to, thumb drives) must be encrypted and files on portable media (including, but not limited to, tapes and CDs) must be encrypted. All encryption must meet a minimum standard of Advanced Encryption Standard (AES) algorithm with a minimum key strength of 256-bit.

**4.7 Security Testing.** Daric agrees that security testing will emulate tactics used by outside attackers with and without knowledge of specific applications, and with malicious intent, however, no such tactic shall interrupt services. Client will use reasonable, industry-standard precautions to prevent or minimize any risks to the Lending Platform or the Core Systems that may be associated with such testing, and the Parties will cooperate in structuring the testing so as to avoid disrupting Client's use of the Lending Platform. Daric agrees to grant reasonable access to logs, policies, records, other materials, and Daric Personnel reasonably required for Client to perform any security testing. Client will reasonably determine the extent and methodology of the testing subject to the approval of Daric, such approval not to be unreasonably withheld

## **5. FEES**

**5.1 Fees.** In consideration for the Development Services as defined in SOW 1A and the grant of rights set forth herein, Client shall provide to Daric (a) the payment of a fee structure equivalent to \$125 per developer-hour for two onshore developers for an estimated four weeks of work, as well as \$45 per completed loan transaction after the production release of the Lending Platform. *[In consideration for the Development Services as defined in SOW 1B and the grant of rights set forth herein, Client shall provide to Daric (a) the payment of a fee structure equivalent to \$125 per developer-hour for two onshore developers for an estimated three weeks of work, as well as \$70 per completed loan transaction after the production release of the Lending Platform]* (collectively the "**Software Transaction Fees**") No increase in Fees is effective unless agreed to in writing between the Parties.

**5.2 Responsibility for Costs.** Except for any Reimbursable Expenses explicitly specified in a SOW and pre-authorized by Client in writing, Daric shall be responsible for all costs and expenses incurred in or incidental to the performance of Services, including all costs of any materials supplied by Daric, all fees, fines, licenses, bonds, or other

amounts required of or imposed against Daric, and all other of Daric's costs of doing business.

5.3 **Taxes.** Each Party herein shall be solely responsible for its own taxes due in connection with the performance of its obligations pursuant to this Agreement. The Parties shall reasonably cooperate to more accurately determine each party's tax liability and to minimize such liability to the extent legally permissible.

## **6. REPRESENTATIONS AND WARRANTIES**

6.1 **Work Product Confirmations.** Daric hereby represents and warrants that (a) the Work Product will be an original work of Daric and any person or entity that contributes directly or indirectly in any way to any Work Product will have executed an assignment of rights prior to being allowed to participate in the development of such Work Product; (b) the Work Product will fully conform to the Specifications, the Program Guidelines, the Service Standards and the requirements and terms set forth on the applicable SOW unless otherwise agreed to between the Parties in writing; (c) neither the Work Product nor any element thereof will infringe or misappropriate the Intellectual Property Rights of any third party; (d) neither the Work Product nor any element thereof nor any of the rights set forth herein to use such Work Product will be subject to any restrictions or to any mortgages, liens, pledges, security interests, or encumbrances; (e) Daric will not grant, directly or indirectly, any rights or interest whatsoever in the Work Product to any third parties; (f) Daric has an unqualified right to grant the license to the Core Systems as set forth in this Agreement; and (h) the delivery of the Work Product does not violate any Applicable Law or any obligation or duty Daric has to any other party, contractually or otherwise. For the avoidance of doubt, Daric hereby confirms and warrants that the Work Product (including all Deliverables and all Services and materials provided by Daric under this Agreement) will not infringe, misappropriate or otherwise violate any right of any third party. Daric warrants that Client's use of the Lending Platform and Work Product will be free and clear of all encumbrances, liens and security interests of any kind and will not require the provision of any payment or other consideration to any third party. Daric further represents and warrants that it has not granted and will not at any time grant any license or other contingent or non-contingent right, title or interest under or relating to the Lending Platform, the Work Product or the Deliverables. Daric confirms and represents that it is not aware of (and has no reason to believe that there exists) any information, facts or circumstances that in way could form the basis of any claim or allegation that any use of the Core Systems or the provision of any Services or Work Product does or would infringe, misappropriate or otherwise violate rights of any third party or otherwise violate Applicable Law.

6.2 **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its

jurisdiction of incorporation, organization or chartering; (b) it has the full right, power and authority to enter into this Agreement and perform its obligations hereunder; and (c) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms.

## **7. COVENANTS**

7.1 **Client Satisfaction.** Daric agrees to, at all times, perform the Services to the best of Daric's ability and to the reasonable satisfaction and approval of Client. Additionally, Daric agrees to inform Client of any cause or circumstance which renders or would reasonably be expected to render Daric unable to perform the Services as required or to deliver the Deliverables at the agreed-upon times.

7.2 **Project Management and Cooperation.** Client will be responsible for: (a) providing Daric with direction and guidance on defining the Deliverables in each SOW and refining the Deliverables throughout the Term, (b) providing the Client Data, Client Materials and such other resources as may be required in order for Daric to provide the Services and (c) participating in regularly scheduled meetings to discuss progress and to identify additional work that is desired to grow the Lending Platform. Each Party shall, throughout the Term, maintain within its organization a project manager to serve as such party's primary point of contact for day-to-day communications, consultation and decision-making regarding the Services hereunder. Each such project manager shall be responsible for providing or collecting all day-to-day consents and approvals. Each Party shall ensure its project manager has the requisite organizational authority, and necessary skill, experience and qualifications, to perform in such capacity. Until either Party notifies the other of a change, the project manager for Client shall be \_\_\_\_\_ and for Daric shall be **Vasant Ramachandran**.

7.3 **Daric Responsibilities.** Daric covenants and agrees to timely make all payments to Personnel and Permitted Subcontractors as may be required contractually or to otherwise to maintain the Services. Daric further covenants and agrees to take all such actions, and to refrain from all such other actions, that in each case are required to maintain the independent contractor relationship between Daric and Client.

7.4 **Accommodating Designees.** From time to time, Client may provide Daric with written notice of its desire to (a) have certain Services provided to one or more of its Affiliates, (b) allow an Affiliate to originate Loans using the Lending Platform, (c) delegate certain activities contained in this Agreement to an Affiliate or (c) have an Affiliate access or benefit from any Work Product, and in each such case, Daric agrees that such designated Affiliate (a "**Designee**") shall be treated as Client for purposes of this Agreement consistent with the terms of such designation as set forth in such written notice.

## 8. CONFIDENTIALITY

8.1 **Confidential Information.** "*Confidential Information*" means any information that is treated as confidential by one Party ("*Disclosing Party*") that is provided directly or indirectly to the other Party ("*Receiving Party*") and shall include, without limitation, trade secrets, computer programs and code, scripts, algorithms, features and modes of operation, inventions (whether or not patentable), techniques, processes, methodologies, schematics, testing procedures, software design and architecture, design and function specifications, analysis and performance information, documentation, details of its products and services, information relating to vendors, employees, consultants, customers and prospects, know-how, ideas, and technical, business, pricing information, financial and marketing information and strategies and any other information that pertains to business operations and strategies or that the Receiving Party reasonably should know is proprietary or confidential. Daric accepts and agrees that all information relating to the Protected Market, the Credit Algorithm or the Client Data is the Client's Confidential Information.

8.2 **Exclusions.** Confidential Information does not include any information or material that the Receiving Party can demonstrate: (a) is or becomes generally known other than through a breach of this Agreement or another confidentiality or non-disclosure agreement, obligation or duty, or other wrongful act, of or on behalf of the Receiving Party or any of its Representatives; (b) was already rightfully known by the Receiving Party, without restriction on use or disclosure, prior to being directly or indirectly disclosed by or on behalf of the Disclosing Party, or obtained by or on behalf of the Receiving Party; (c) has been or hereafter is rightfully received by or on behalf of the Receiving Party from a third party without restriction on use or disclosure and without breach of any agreement or obligation or duty of confidentiality; or (d) was or is independently developed by the Receiving Party without access, reference or exposure to any Confidential Information of the Disclosing Party. Notwithstanding the provisions this Agreement, none of the exclusions set forth above shall at any time apply to any Client Data, Client Intellectual Property, Client trade secrets or information related to the Protected Market.

8.3 **Confidentiality and Use.** The Receiving Party recognizes and agrees that the Confidential Information of the Disclosing Party is critical to the Disclosing Party's business and that neither party would enter into this Agreement without assurance that such information and its value will be protected as provided in this Agreement. The Receiving Party shall use, and ensure that its Representatives use, reasonable care that is at least as protective as the efforts it uses with respect to its own confidential information to safeguard the Disclosing Party's Confidential Information from use or disclosure other than as permitted under this Agreement. Without limiting the foregoing, the Receiving Party shall maintain in effect and enforce rules and policies to protect against access to or use or disclosure of Confidential Information other than in accordance with this

Agreement. As a condition to being provided with such Confidential Information, the Receiving Party agrees that it will (a) not use or permit the use of the Disclosing Party's Confidential Information other than as strictly necessary to exercise its rights or perform its obligations under this Agreement; (b) maintain the Disclosing Party's Confidential Information in strict confidence and not disclose or make available the Disclosing Party's Confidential Information to any person or entity without the Disclosing Party's prior written consent, provided, however, that the Receiving Party may disclose the Confidential Information to its Representatives who: (i) have a "need to know" for purposes of any performance, or exercise of any rights with respect to such Confidential Information, under this Agreement; (ii) have been informed in writing of the highly confidential nature of the Confidential Information and the limitations, procedures and obligations that apply to the access, use and disclosure of Confidential Information under this Agreement; and (iii) are themselves bound by written restricted use and nondisclosure agreements or obligations at least as restrictive as those set forth in this Agreement, provided, further, that the Receiving Party shall be responsible for ensuring its Representatives' compliance with, and shall be liable for any breach by its Representatives, of this Agreement and (c) notify the Disclosing Party in writing promptly of any unauthorized disclosure or use of the Disclosing Party's Confidential Information and cooperate with the Disclosing Party to protect the confidentiality and ownership of all Intellectual Property Rights, privacy rights and other rights therein.

**8.4 Compelled Disclosures.** If the Receiving Party becomes compelled by Applicable Law to disclose any Confidential Information, the Receiving Party shall, to the extent permissible by Applicable Law: (a) as soon as possible after becoming aware of such requirement and prior to disclosing Confidential Information pursuant thereto, notify the Disclosing Party in writing of such required disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy or waive its rights under this Agreement, (b) at the Disclosing Party's expense, use reasonable efforts not to release such Confidential Information pending the outcome of any measures taken by the Disclosing Party to contest, oppose or limit such compelled disclosure or any further disclosure or use of Confidential Information that may result therefrom; and (c) disclose only the portion of Confidential Information that it is legally required to produce to the minimum extent required by Applicable Law. No such compelled disclosure by the Receiving Party will otherwise affect the Receiving Party's obligations hereunder with respect to the Confidential Information so disclosed.

**8.5 Additional Client Protections.** Daric acknowledges that all Personal Information and Client Data is Client's Confidential Information and may be protected by federal and state law. Daric shall not collect, store, process, record, reproduce, transfer, disclose, use or perform any other acts, or cause, authorize or permit any person or entity to undertake any of the foregoing, with respect to any Client Data or Personal Information, other than as strictly necessary to perform the Services for the benefit of Client in accordance with the terms and conditions of this Agreement, the Security

Services and Applicable Law. Daric covenants, agrees and warrants that any person receiving access to the Credit Algorithm, any Personal Information or any Client Data shall be bound by written confidentiality agreements that are at least as protective as the provisions of this Agreement. Daric shall use all reasonable efforts, including through the Security Services, to protect the Credit Algorithm, the Client Data and the Personal Information from access by any person or entity other than those explicitly approved in writing by Client. The Parties agree that (a) the Client Data, the Loan Materials, the Personal Information and any other information that is processed by the Lending Platform, (b) the Lending Platform, the Deliverables, the Work Product and other custom work prepared at the direction of Client and (c) any information related to lending in the Protected Market, in each case, shall at all times remain the Confidential Information of Client and Daric shall not use or disclose any portion thereof without Client's written permission except as explicitly authorized pursuant to the terms hereof.

**8.6 Return or Destruction of Client's Confidential Information.** Notwithstanding anything to the contrary, upon Client's written request at any time and subject to any contrary obligations under Applicable Law, Daric shall at Client's direction promptly return or destroy and erase from all systems it directly or indirectly uses or controls (including the systems of its Personnel and Permitted Subcontractors) (a) all originals and copies of all documents, materials and other embodiments and expressions in any form or medium that contain, reflect, incorporate or are based on Client's Confidential Information, in whole or in part, or (b) solely such specific Client Data, databases or other collections or articles of Client's Confidential Information as Client may request, and provide a notarized written statement to Client certifying that it has complied with the requirements of this Agreement.

## **9. AUDIT RIGHTS**

**9.1 Special Regulatory Audits.** Daric agrees to cooperate fully with any examination or inquiry by any Governmental Authority at Client's expense. Daric further acknowledges that Client may be required to engage in ongoing oversight of its relationship with Daric and, in connection with any reasonable request from Client, Daric agrees to provide Client with any information that Client reasonably believes to be required in order to comply or be prepared to comply with Applicable Law. Daric agrees to notify Client promptly in writing in the event it experiences any material adverse change, including significant financial difficulty, or catastrophic event relative to its obligations under this Agreement, that in any way could interrupt the provision of the Services or challenge any of the rights transferred herein.

**9.2 Special Security Audits.** During the Term and during the Audit Period, Daric shall: (a) maintain complete and accurate records relating to its data protection practices and the security of any of Client Data and Client's Confidential Information, including any Backup, disaster recovery or other policies, practices or procedures and any other

information relevant to its compliance with this Agreement and (b) upon Client's request, make all such records, appropriate Personnel and relevant materials available during normal business hours for inspection and audit by Client or an independent data security expert designated by Client. Client may, but is not obligated to, perform such security audits, which shall, at Client's option and request, include penetration and security tests, of any and all Daric Systems and their housing facilities and operating environments.

9.3 **Access to Third Party Audits.** If Daric at any time engages a third party auditor to perform any form of audit of Daric's operations, security program or disaster recovery/business continuity plan, then Daric shall promptly provide a copy of the audit report and any recommendations from such auditor to Client after Daric's receipt of such report. Any such audit report shall be Daric's Confidential Information.

## **10. TERM AND TERMINATION**

10.1 **Term of Agreement.** This Agreement and the Services contemplated hereby shall commence on the date hereof and shall continue for a period of three years or until terminated pursuant to the provisions hereof (the “**Initial Term**”). After the Initial Term, this Agreement shall automatically renew for three year terms (each, a “**Renewal Term**” and collectively with the Initial Term, the “**Term**”) unless either Party notifies the other Party of a desire to terminate at least ninety days prior to the renewal of the then current Term.

10.2 **Termination for Force Majeure Event.** No Party hereto shall be responsible for, or in breach of, this Agreement if its performance is rendered impossible as a result of delays or failures that could not be reasonably foreseen and that are due to any cause beyond its control, howsoever arising, and not due to its own act or negligence and that cannot be overcome by the exercise of due diligence (such causes shall include riots, fires, earthquakes, floods, storms, epidemics, terrorist attacks, wars, civil disorder, or acts of God and each such event, a “**Force Majeure Event**”). Upon the occurrence of a Force Majeure Event, the Party declaring such event shall provide written notice thereof to the other Party as soon as practicable. In the event that a Force Majeure Event occurs, if either Party is prevented from performing (or its performance is rendered impracticable) for a period of at least five (5) days after notice of such event and inability to perform was provided, then the Party who is not prevented from performing may terminate this Agreement.

10.3 **Effect of Termination; Data Retention.** Upon and after the expiration or termination of this Agreement: (a) Client shall pay to Daric, subject to any set-off rights, all undisputed charges and amounts due and payable to Daric, if any, (b) Daric shall repay, on a pro rata basis, all fees, expenses and other amounts paid in advance and shall



reimburse Client for any amounts that may be due as a result of outstanding Service Credits or otherwise;

## **11. INDEMNIFICATION AND LIABILITY**

11.1 **Mutual Indemnity.** Each Party will indemnify, defend, and hold the applicable Indemnified Parties harmless from and against any and Damages incurred by such Indemnified Parties that arise out of or relate to any willful misconduct or fraud of the Indemnifying Party.

11.2 **Client Indemnity.** Client will indemnify, defend, and hold Daric's Indemnified Parties harmless from and against any and all Damages incurred by such Indemnified Parties that arise out of or relate to any third party claim that any Client Materials in the form provided to Daric by Client in connection with this Agreement infringe upon or otherwise violate such third party's rights.

11.3 **Daric Indemnity.** Subject to Sections 11.4 through 11.8, Daric will indemnify, defend, and hold Client's Indemnified Parties harmless from and against any and all Damages incurred by such Indemnified Parties that arise out of or relate to (a) any failure to provide the Security Services, (b) any misappropriation of Client's Intellectual Property, (c) any third-party claim that the Core Systems or any of the Services infringe upon or otherwise violate such party's rights (d) Daric's unauthorized suspension, termination or disabling of the Services or the Lending Platform, (e) any act or omission taken by Daric in connection with any principal and agent claim or any circumstances caused by Daric that invalidate, challenge, compromise, alter or otherwise put into doubt the independent contractor status of the relationship between the Parties or (f) any of Daric's representation or warranties being false at any time, or (g) any willful, knowing or intentional failure by Daric to perform any of the covenants or other obligations contained in this Agreement.

11.4 **Indemnity Considerations.** No Indemnified Party shall be entitled to indemnification to the extent that the fact and circumstances leading to such indemnification occurred as a result of or in connection with the willful misconduct or fraud of an Indemnified Party. For the avoidance of doubt, and without in any way limiting the foregoing, an Indemnifying Party shall reimburse each Indemnified Party for all costs incurred by them resulting from third party investigation of the acts and practices of the Indemnifying Party, its subsidiaries and/or Affiliates, including expenses related to compliance with any third party subpoena or with any other discovery proceeding. For purposes of any indemnity obligation, the acts or omissions of a Daric's Personnel and Permitted Subcontractors will be deemed the acts or omissions of Daric.

11.5 **Indemnity Procedures.** The indemnification obligations hereunder are conditioned upon the party seeking indemnification (a) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding specifying the nature of



such claim or demand and the amount or the estimated amount thereof to the extent feasible (which estimate the Parties agree shall not be conclusive of the final amount of such claims and demand); (b) granting sole control of the defense and settlement to the indemnifying party; (c) making no admissions or settlements without the indemnifying party's prior written consent; and (d) reasonably cooperating with indemnifying party at the indemnifying party's expense. The failure to provide notice to the indemnifying party promptly will not relieve the indemnifying party of any liability it may have, except to the extent that the indemnifying party demonstrates that the defense of such action is actually and materially prejudiced by the indemnifying party's failure to give such notice promptly. Notwithstanding the assumption by the indemnifying party of the defense of any action, the Indemnified Party shall be permitted to participate in such defense at its cost and expense.

**11.6 Payment.** Upon the determination of liability under this Section 13, the indemnifying party shall pay to the Indemnified Party within ten (10) days after such determination, the amount of any claim for indemnification made hereunder, subject to the limitations set forth in this Agreement. Upon payment in full of any claim, either by set off or otherwise, the entity making payment shall be subrogated to the rights of the Indemnified Party against any person, with respect to the subject matter of such claim. In the event that the Indemnifying Party reimburses the Indemnified Party with respect to any claim and the Indemnified Party subsequently receives reimbursement from another person with respect to that claim, then the Indemnified Party shall remit such reimbursement from such other person to the Indemnifying Party within fifteen business days of receipt thereof.

**11.7 Mitigation.** If Daric receives or otherwise learns of any threat, warning or notice alleging that all, or any component or feature, of the Services violates a third party's rights, Daric shall promptly notify Client of such fact in writing, and exercise its best efforts to ensure Client's continued right to access and use such Services and otherwise protect Client from any Damages in connection therewith. If any of the Services or any component or feature of the Lending Platform is ruled to infringe or otherwise violate the rights of any third party by any court of competent jurisdiction, or if any use of any Services or any component thereof is threatened to be enjoined, or is likely to be enjoined or otherwise the subject of an infringement or misappropriation claim, Daric shall, at Daric's sole cost and expense: (a) procure for Client the right to continue to access and use the Services to the full extent contemplated by this Agreement and the Specifications; or (b) modify or replace all components, features and operations of the Services that infringe or are alleged to infringe to make the Services non-infringing while providing equally or more suitable features and functionality, which modified and replacement services shall constitute Services and be subject to the terms and conditions of this Agreement.

11.8 **Limitations on Liability.** Notwithstanding the foregoing and except with respect to Sections 11.1, 11.2 and 11.3, in no event shall (a) any Party be liable for indirect, incidental, special, consequential, or exemplary or punitive damages (or any comparable category or form of such damages, howsoever characterized in any jurisdiction), regardless of the form of action, whether in contract, tort, strict liability or otherwise, and even if foreseeable or if such Party has been advised of the possibility of such damages or (b) either Party's liability under this Agreement exceed ten million dollars. The Parties agree that there shall be no cap on liability with respect to the indemnity obligations contained in Sections 11.1, 11.2 and 11.3 and that no exclusions and limitations shall apply to Damages arising out of or relating to Daric's unauthorized suspension, termination or disabling of the Services in breach of this Agreement.

## 12. GENERAL PROVISIONS

12.1 **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. Neither Party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other Party. The Parties agree that Daric, its Personnel and Permitted Subcontractors are not and shall not be agents or employees of Client and are not and shall not be entitled to the benefits provided by Client to its employees, including, but not limited to, fringe benefits, worker's compensation, health and unemployment insurance, and pension plans or any other employee benefit.

12.2 **Logo Usage.** Client agrees to allow Daric to reference and post Client's name, trade name and logo on Daric's website, within a standard "new Clients" press release and within email correspondence for the purpose of marketing. Client grants Daric a limited, nonexclusive, royalty free, license during the term of this Agreement to use its trademarks, logos and trade names for the foregoing purposes.

12.3 **Assignment and Delegation.** Daric shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement without Client's prior written consent. Client shall have the right, without Daric's consent, to assign or otherwise transfer this Agreement in part or its entirety to any Affiliate or any other party or entity that is not a direct competitor to Daric. Any purported assignment, delegation or transfer in violation of this Agreement is void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns, including with respect to Client, any of its Divested Businesses or Designees.

12.4 **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

12.5 **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall (a) negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible and (b) jointly request that any court of competent jurisdiction or any Governmental Authority evaluating the terms hereof to respect the terms hereof to the fullest extent possible and to preserve, and if necessary approximate, the intent of the Parties based on the terms contained herein.

12.6 **Governing Law.** This Agreement and all related documents, and all matters arising out of or relating to this Agreement, shall at all times be governed by, and construed in accordance with, the laws of the State of California, without regard to the conflict of law provisions thereof. The exclusive venue for any dispute relating to this Agreement shall be in the courts of California and the prevailing judgment shall be internationally enforceable. In the event it is necessary it to enforce this agreement in court or outside of the United States, the prevailing party is entitled to reasonable attorneys' fees and costs. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.

