

## TERMS OF SERVICE

These Terms of Service (“Terms”) govern the terms upon Fenom Digital, LLC, a Delaware limited liability company (“Consultant”), will provide services to a customer (“Customer”) that has executed a Statement of Work that incorporates these Terms.

**1. Terms.** These Terms shall govern and shall be incorporated by reference into any Statement of Work or other document that references these Terms. These Terms shall also be incorporated into any Statement of Work between Consultant and Customer executed subsequent to or prior to the Statement of Work referencing these Terms whether or not such Statement of Work references these Terms, and shall also apply to any services provided by Consultant to Customer without the execution of a Statement of Work. Notwithstanding the foregoing, in the event Consultant and Customer enter into a Master Services Agreement, the terms of the Master Services Agreement shall govern Statements of Work that are entered into after the date of the Master Services Agreement. In the event of any conflict between these Terms and the terms of any particular Statement of Work, the terms of the Statement of Work shall govern the project to which the Statement of Work relates. Materials and services provided by Consultant to Customer are referred to herein as “Services.”

**2. Payment for Services.** Customer agrees to pay Consultant in the amounts, at the rates, and on the terms set forth in each Statement of Work. If no payment terms are set forth in a Statement of Work, then the following terms shall apply. Consultant will invoice Customer on a time and materials basis at Consultant’s then applicable standard rates. Customer will reimburse Consultant for Consultant’s reasonable out of pocket expenses incurred in providing Services. Once each month, Consultant shall invoice Customer for the Services and expenses incurred during the prior one-month period. Invoices shall be payable within 30 days after receipt.

**3. Consultant Personnel.** Consultant shall be solely responsible for the compensation of its personnel, including the payment of salary, benefits and employment-related taxes and withholding. If Customer is dissatisfied with the performance of any of Consultant’s personnel assigned to provide Services, Customer shall notify Consultant of the details of the unsatisfactory performance. At the request of Customer, Consultant will immediately remove from a project any individual who is unsatisfactory to Customer and replace the unsatisfactory individual within a reasonable period of time. Consultant shall be permitted to use subcontractors to provide Services, provided that Consultant shall be responsible for the performance of its subcontractors.

**4. Confidentiality.** In the course of performing or receiving Services, Consultant or Customer (each, when receiving information, the “Receiving Party”) may be given or have access to, confidential and proprietary information of the other party (the “Disclosing Party”) and the Disclosing Party’s affiliates, subsidiaries, business partners, and licensors, including, but not limited to, pricing information, marketing strategies and tactics, research and development information, operation of its computer systems and/or data relating to the approval, administration, use or experience relating to any or all of the Disclosing Party’s products (whether marketed or in development), business proposals, manufacturing and distribution processes, customer lists, computer software and related documentation, financial information,

and employee data, whether tangible or intangible, and including all copies, analyses and derivatives thereof), that is marked or otherwise identified as proprietary or confidential at the time of disclosure, or which by its nature would be understood by a reasonable person to be sensitive, proprietary or confidential (collectively, "Confidential Information"). The Receiving Party shall not, without the Disclosing Party's prior written consent, disclose to any third party, any Confidential Information. The Receiving Party shall employ the same standard of care in protecting the Confidential Information as it would employ to protect its own confidential information, but shall in no event use less than reasonable care. The Receiving Party shall disseminate Confidential Information to its employees, agents and independent contractors only on a "need-to-know" basis. The Receiving Party shall cause each of its employees, agents and independent contractors who has access to Confidential Information to comply with the terms of this Section in the same manner as it is bound by this Section, with the Receiving Party remaining responsible for the actions and disclosures of any such employees, agents or independent contractors.

For purposes hereof, "Confidential Information" does not include information that (i) was rightfully in the Receiving Party's possession without restriction before disclosure hereunder, (ii) was or became public knowledge through no fault of the Receiving Party, (iii) was rightfully disclosed to the Receiving Party without restriction by a third party not bound by a confidentiality restriction, or (iv) was independently developed by the Receiving Party or its employees or agents without reliance on such information. The restrictions in this Section shall not prevent disclosures required by law, court order or other governmental order or demand; provided that the Receiving Party provides prompt written notice and assistance to Disclosing Party prior to such disclosure, so that the Disclosing Party may seek a protective order or other appropriate remedy to protect against or limit such disclosure.

**5. Intellectual Property Rights.** Information, data, software code, scripts, tools, utilities, materials, works of authorship, documents, abstracts and summaries thereof, concepts, reports, discoveries, processes, systems, methods, inventions, innovations or other intellectual property or know-how, whether or not patentable, copyrightable, or subject to other legal protection that is initially conceived, discovered, reduced to practice, made or developed by Consultant in the course of performing services for Customer is referred to in these Terms as "Work Product." Subject to the contrary terms of these Terms or any Statement of Work, Customer shall own all right, title and interest (including patent rights, copyright rights, trade secret rights, trademark rights, and all other intellectual and industrial property rights of any sort throughout the world) relating to any and all Work Product. All Work Product shall be work made for hire to the extent allowed by law and, in addition, Consultant hereby makes and agrees to make all assignments necessary to accomplish the foregoing ownership. Consultant shall assist Customer, at Customer's expense, to further evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce, and defend any rights assigned.

Customer acknowledges that Consultant may undertake projects for clients other than Customer, and in doing so, Consultant personnel may use general knowledge and experience developed in the course of providing Services without reference to any of Customer's Confidential Information. Notwithstanding any other provision of these Terms or any other agreement contemplated hereby, Customer agrees that to the extent that Work Product is of such

a nature that it would be subject to reuse, with or without modification, on Consultant's subsequent projects ("Generic Inventions"), such Generic Inventions shall be the property of Consultant, and Consultant shall grant Customer a nonexclusive, perpetual, non-transferable, royalty free license to use the Generic Inventions for Customer's internal business purposes. Consultant shall have the right to develop, use, market, and license any software or data processing material that is similar or related to Generic Inventions developed by Consultant for Customer.

Customer acknowledges that any tangible or intangible deliverable developed by Consultant prior to a Statement of Work governed by these Terms or for another party independent of Consultant's work for Customer remains the exclusive property of Consultant ("Existing Consultant Property"). If any Existing Consultant Property is incorporated in any of the deliverables provided to Customer, Consultant shall grant to Customer a nonexclusive, perpetual, non-transferable, royalty free license to use the Existing Consultant Property for Customer's internal business purposes. For the avoidance of doubt, in the event that Customer licenses from Consultant one or more of Consultant's software products or third party software products (collectively, "Consultant Software Products"), such Consultant Software Products shall be licensed to Customer under the terms of a separate software license agreement to be negotiated by Consultant and Customer, and the license under these Terms that relates to Existing Consultant Property shall not apply to such Consultant Software Products.

**6. Limited Warranty and Liability.** Consultant warrants that the Services provided hereunder will be of a professional quality conforming to generally accepted industry standards. In addition, Consultant represents and warrants that (a) none of the Services will be inconsistent with any obligation Consultant may have to others; (b) the Services or Work Product will not infringe, misappropriate or violate any intellectual property or other right of any person or entity (provided that this warranty will not apply (i) in the case of the infringement of a patent resulting from Consultant's compliance with Customer's instructions or specifications, or (ii) to the extent that the infringement claim is based upon the combination of the Services or deliverables with other hardware or software not provided by Consultant, or (iii) to the extent that the infringement relates to the use to which Customer puts the Work Product rather than to the Work Product itself); and (c) Consultant has the full right to provide Customer with the assignments and rights provided for herein (including without limitation, through execution of appropriate written agreements with its employees, agents and contractors).

In the event that under any Statement of Work Consultant is responsible for disseminating any Customer data or information to third parties, Customer shall be solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all data and information provided by Customer to Consultant ("Customer Data"). Customer shall also be solely responsible for insuring that all messages and other information that are sent or provided to third parties at the direction of Customer by or with the assistance of Consultant or Consultant's equipment or infrastructure will comply in all respects with applicable law, including the Can-Spam Act (15 USC 103), and Customer will indemnify and hold Consultant harmless from and against any and all expense or liability arising from any non-compliance with applicable law, which indemnification obligation shall not be subject to any dollar limitation on liability that may be set forth in these Terms or the applicable Statement of Work. Customer

shall use commercially reasonable efforts to prevent unauthorized access to, or use of, Consultant equipment or infrastructure, and notify Consultant promptly of any such unauthorized access or use. Customer shall be responsible for all damages and liability arising from unauthorized access to Consultant equipment or infrastructure that was permitted by the negligence or intentional misconduct or omission of Customer or its employees, officers, agents or subcontractors.

THE EXPRESS WARRANTIES SET FORTH HEREIN ARE PROVIDED IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY DISCLAIMED.

EXCEPT IN THE CASE OF INTELLECTUAL PROPERTY INFRINGEMENT, IN NO EVENT SHALL CONSULTANT OR CUSTOMER OR THEIR RESPECTIVE EMPLOYEES, AGENTS, OWNERS OR OFFICERS BE LIABLE TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AMOUNTS PAYABLE BY CUSTOMER TO CONSULTANT FOR SERVICES OR REIMBURSEMENT OF EXPENSES, AND EXCEPT IN THE CASE OF INTELLECTUAL PROPERTY INFRINGEMENT, THE LIABILITY OF CONSULTANT AND CUSTOMER AND THEIR RESPECTIVE EMPLOYEES, AGENTS, OWNERS AND OFFICERS SHALL BE LIMITED TO THE AMOUNT RECEIVED BY CONSULTANT FROM CUSTOMER UNDER THE RELATED STATEMENT OF WORK DURING THE TWELVE-MONTH PERIOD PRECEDING THE CLAIM. For staff augmentation or similar assignments in which Consultant personnel are working under the direction of Customer personnel, Consultant shall not have any liability for, and Customer shall indemnify Consultant from and against, any damages resulting from the compliance of Consultant personnel with the instructions of Customer personnel. No action, regardless of form, shall be brought against either party or its employees, agents, owners or officers more than one year after the occurrence of the circumstances giving rise to the cause of action became known to such party. The passage of thirty days from the delivery of Services or deliverables to Customer without written notice of non-acceptance from Customer or Customer's use of the Services or deliverables shall constitute final acceptance of the Services or deliverables.

**7. Term and Termination.** Each Statement of Work may be terminated by either party upon ten days prior written notice to the other party; provided, however, that with respect to managed Services and other periodic Services, Customer may only terminate such Statement of Work in accordance with the termination provisions set forth in the Statement of Work. Notwithstanding the foregoing, in the event that Customer does not pay any invoice within ten days of the date payment was due, Consultant shall have the right to suspend services under any or all outstanding Statements of Work.

If a Statement of Work is terminated in accordance with the terms hereof, Consultant shall stop work and act diligently to minimize further costs. Upon termination, Customer shall pay

Consultant for the Services delivered through the effective date of termination and the reasonable non-cancelable costs and expenses incurred by Consultant through the effective date of termination. The provisions of Sections 4-17 shall survive any termination or expiration of each Statement of Work.

**8. Non-Solicitation.** During the time Consultant is providing Services under any Statement of Work and for a period of one year thereafter, Customer shall not directly or indirectly Hire (as defined below), or solicit for Hire, Employees (as defined below) of Consultant who performed any Services under any Statement of Work. For purposes of these Terms, the term “Hire” shall mean hiring a person as an employee or directly or indirectly receiving services from such person as a consultant, agent or in any other capacity. For purposes of these Terms, the term “Employee” shall mean any current employee, agent or contractor of Consultant and any person who has been an employee, agent or contractor of Consultant during the prior one-year period.

**9. Governing Law.** All questions concerning the validity, operation, interpretation, and construction of these Terms and each Statement of Work will be governed by and determined in accordance with the substantive laws of the State of Delaware and the Federal laws of the United States, without giving effect to the conflicts of law provisions thereof.

**10. Waiver of Compliance.** Neither party shall by mere lapse of time, without giving notice or taking other action hereunder, be deemed to have waived any breach by the other party of any of the provisions of these Terms or any Statement of Work. Further, the waiver by either party of a particular breach of these Terms by the other shall not be construed as or constitute a continuing waiver of such breach or of other breaches of the same or other provisions of these Terms.

**11. Force Majeure.** If the performance of any obligation under any Statement of Work by either party (other than the obligation to pay amounts due hereunder) is prevented, restricted, or interfered with by reason of war, revolution, civil commotion, acts of public enemies, blockade, embargo, strikes, any law, order, proclamation, regulation, ordinance, demand, or requirement having a legal effect of any government or any judicial authority or representative of any such government, which is beyond the reasonable control of the party affected, then the party so affected shall, upon giving prior written notice to the other party, be excused from such performance to the extent of such prevention, restriction, or interference, provided that the party so affected shall use reasonable commercial efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder with reasonable dispatch whenever such causes are removed. Neither party shall be in default if any delay or failure to perform any obligation hereunder (other than the obligation to pay amounts due hereunder) that is caused by events beyond such party’s control.

**12. Partial Illegality.** It is intended that these Terms and each Statement of Work shall not violate any applicable law and the unenforceability or invalidity of any provision (other than the provisions obligating Customer to make payments to Consultant) shall not affect the force and validity of any other provision and such invalid provisions shall be deemed severed from

these Terms or the Statement of Work, and, if permissible, be replaced with terms which as closely as possible approximate the intent of such invalid provisions.

**13. Headings.** The headings contained in these Terms are for convenience of reference only and do not qualify or affect in any way the meaning or interpretation of these Terms.

**14. Entire Agreement.** The parties hereto acknowledge that these Terms, together with any Statements of Work to which it applies, is the complete and exclusive statement of agreement respecting the subject matter hereof and supersedes and renders null and void any and all agreements and proposals (oral or written), understandings, representations, conditions, and other communications between the parties relating hereto and shall constitute the only valid binding and enforceable agreement between them. These Terms and each Statement of Work may be amended only by a subsequent writing that specifically refers to these Terms or the Statement of Work. In no event will the terms of any purchase order or other document be of any legal effect if such purchase order or other document is not signed by both of the parties hereto, regardless of any terms set forth in any such purchase order or document stating that commencement of work under or payment of amounts due under any such purchase order or other document constitutes approval.

**15. Construction of Terms.** Each party represents that it has carefully read and fully understands the scope and effect of all the provisions of these Terms, and that it was offered such period as it deemed necessary to consider them. Consequently, any language deemed to be ambiguous contained herein shall not be construed in favor of one party over the other.

**16. Relationship.** Notwithstanding any provision hereof, for all purposes of these terms and any Statement of Work each party shall be and act as an independent contractor and not as partner, joint venturer, employer, employee or agent of the other and shall not bind nor attempt to bind the other to any contract. Consultant is an independent contractor and is solely responsible for all taxes, withholdings, and other statutory or contractual obligations of any sort relating to its employees, including, but not limited to, workers' compensation insurance.

**17. Remedies.** Each party acknowledges and agrees that in the event of any breach or threatened breach of Section 4 or 5, the other party will suffer irreparable damage for which it will have no adequate remedy at law. Accordingly, each party shall be entitled to injunctive and other equitable remedies to prevent or restrain, temporarily or permanently, such breach or threatened breach, without the necessity of posting any bond or surety, in addition to any other remedy that such party may have at law or in equity.