

## ARID Software as a Service Agreement

This Software as a Service Agreement (the “**Agreement**”), effective as of the date you accept these terms by reading the terms of this Agreement and clicking “I Agree” at the bottom of the Agreement terms (the “**Effective Date**”), is by and between Microdesk, Inc., a Massachusetts corporation with offices located at 10 Tara Blvd, Suite 420, Nashua, New Hampshire (“**Microdesk**”) and you, both individually and on behalf of your organization (you and your organization are referred to collectively herein as “**Customer**”).

**WHEREAS**, Microdesk provides access to its ARID™ equipment asset management software-as-a-service offering to its customers;

**WHEREAS**, Customer desires to access the ARID software-as-a-service offering described in this Agreement, and Microdesk desires to provide Customer access to its ARID online software, subject to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### 1. Definitions.

“**Access Credentials**” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the Services.

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning set forth in the preamble.

“**Authorized Users**” means Customer’s employees, consultants, contractors, and agents (a) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement; (b) for whom access to the Services has been purchased hereunder; and (c) in the case of consultants, contractors, and agents, have entered into a written agreement with Customer as provided for in Section 2.2.

“**Availability Requirement**” has the meaning set forth in Section 5.1.

“**Available**” has the meaning set forth in Section 5.1.

## ARID Software as a Service Agreement

“**Confidential Information**” has the meaning set forth in Section 9.1.

“**Customer**” has the meaning set forth in the preamble.

“**Customer Data**” means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Customer or an Authorized User by or through the Services. For the avoidance of doubt, Customer Data does not include Resultant Data or any other information reflecting the access or use of the Services by or on behalf of Customer or any Authorized User.

“**Customer Failure**” has the meaning set forth in Section 4.2.

“**Customer Indemnitee**” has the meaning set forth in Section 12.1.

“**Customer Systems**” means the Customer’s information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services.

“**Disclosing Party**” has the meaning set forth in Section 9.1.

“**Documentation**” means any manuals, instructions, or any manuals, instructions or any other materials that Microdesk provides to Customer that the Microdesk provides or makes available to Customer in any form or medium and which describe the functionality, components, features, or requirements of the Services or Microdesk Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.

“**Effective Date**” has the meaning set forth in the preamble.

“**Exceptions**” has the meaning set forth in Section 5.1.

“**Fees**” has the meaning set forth in Section 8.1.

“**Force Majeure Event**” has the meaning set forth in [Section 15.9](#).

“**Harmful Code**” means any software, hardware, or other technology, device, or means, including any virus, worm, malware, or other malicious computer code, the purpose or effect of which is to (a) permit unauthorized access to, or to destroy, disrupt, disable, distort, or otherwise harm or impede in any manner any (i) computer, software, firmware, hardware, system, or network; or (ii) any application or function of any of the foregoing or the security, integrity, confidentiality, or use of any data Processed thereby; or (b) prevent Customer or any Authorized User from accessing or using

## ARID Software as a Service Agreement

the Services or Microdesk Systems as intended by this Agreement. Harmful Code does not include any Microdesk Disabling Device.

“**Indemnitee**” has the meaning set forth in Section 12.3.

“**Indemnitor**” has the meaning set forth in Section 12.3.

“**Initial Term**” has the meaning set forth in Section 14.1.

“**Intellectual Property Rights**” means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“**Law**” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“**Losses**” means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“**Permitted Use**” means any use of the Services by an Authorized User for the benefit of Customer in the ordinary course of its internal business operations.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“**Process**” means to take any action or perform any operation or set of operations that the Services are capable of taking or performing on any data, information, or other content. “**Processing**” and “**Processed**” have correlative meanings.

“**Microdesk**” has the meaning set forth in the preamble.

“**Microdesk Disabling Device**” means any software, hardware, or other technology, device, or means (including any back door, time bomb, time out, drop dead device, software routine, or other disabling device) used by Microdesk or its designee to disable Customer's or any Authorized User's access to or use of the Services automatically with the passage of time or under the positive control of Microdesk or its designee.

## ARID Software as a Service Agreement

“**Microdesk Indemnitee**” has the meaning set forth in Section 12.2.

“**Microdesk Materials**” means the Services, Specifications, Documentation, and Microdesk Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Microdesk or any Subcontractor in connection with the Services or otherwise comprise or relate to the Services or Microdesk Systems. For the avoidance of doubt, Microdesk Materials include Resultant Data and any information, data, or other content derived from Microdesk’s monitoring of Customer’s access to or use of the Services, but do not include Customer Data.

“**Microdesk Personnel**” means all individuals involved in the performance of Services as employees, agents, or independent contractors of Microdesk or any Subcontractor.

“**Microdesk Systems**” means the information technology infrastructure used by or on behalf of Microdesk in performing the Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Microdesk or through the use of third-party services.

“**Order**” means a service order that the customer has placed with Microdesk for ARID in the form at [hypertext link to order form].

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Receiving Party**” has the meaning set forth in Section 9.1.

“**Reimbursable Expenses**” has the meaning set forth in Section 8.7.

“**Renewal Term**” has the meaning set forth in Section 14.2.

“**Representatives**” means, with respect to a party, that party’s and its Affiliates’ employees, officers, directors, agents, independent contractors, service providers, subcontractors, and legal advisors.

“**Resultant Data**” means data and information related to Customer’s use of the Services that is used by Microdesk in an aggregate and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Services.

“**Scheduled Downtime**” has the meaning set forth in Section 5.3.

## ARID Software as a Service Agreement

“**Service Allocation**” has the meaning set forth in Section 3.2.

“**Service Credit**” has the meaning set forth in Section 5.2.

“**Service Level Failure**” has the meaning set forth in Section 5.1.

“**Service Period**” has the meaning set forth in Section 5.1.

“**Services**” has the meaning set forth in Section 2.1.

“**Support Exhibit**” has the meaning set forth in Section 5.4.

“**Support Services**” has the meaning set forth in Section 5.4.

“**Term**” has the meaning set forth in Section 14.2.

“**Third-Party Materials**” means materials and information, in any form or medium, including any software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Microdesk.

### 2. Services.

2.1 **Access and Use.** Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, Microdesk hereby grants Customer a non-exclusive, non-transferable (except in compliance with Section 15.8) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer’s internal use. “Services” for purposes of this Agreement means Microdesk’s ARID software-as-a-service platform and the functionalities made available at that platform. Microdesk shall provide to Customer the Access Credentials within a reasonable time following the Effective Date.

2.2 **Access to Services By Consultants, Contractors or Agents as Authorized Users.** Microdesk may allow access to and use of the Services by non-employees provided that:

- (a) Customer shall ensure by obtaining written assurances from each non-employee Authorized User that he or she will comply with all relevant terms of this Agreement;
- (b) Customer shall be deemed responsible and liable for any and all acts and omissions of each non-employee Authorized User to the same extent as if such acts or omissions were by Customer; and
- (c) any noncompliance by any non-employee Authorized User with the provisions of this Agreement or any Order will constitute a breach by Customer.

## ARID Software as a Service Agreement

- 2.3 Documentation License.** Microdesk hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except in compliance with Section 15.8) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- 2.4 Service and System Control.** Except as otherwise expressly provided in this Agreement, as between the parties:
- (a) Microdesk has and will retain sole control over the operation, provision, maintenance, and management of the Microdesk Materials; and
  - (b) Customer has and will retain sole control over the operation, maintenance, and management of, and all access to and use of, the Customer Systems, and sole responsibility for all access to and use of the Microdesk Materials by any Person by or through the Customer Systems or any other means controlled by Customer or any Authorized User, including any: (i) information, instructions, or materials provided by any of them to the Services or Microdesk; (ii) results obtained from any use of the Services or Microdesk Materials; and (iii) conclusions, decisions, or actions based on such use.

Notwithstanding anything to the contrary in this Agreement, all Services, including all Processing of Customer Data by or on behalf of Microdesk shall be provided solely from within, and on computers, systems, networks, and other infrastructure located in, the United States.

- 2.5 Reservation of Rights.** Nothing in this Agreement grants any right, title, or interest in or to (including any license under) any Intellectual Property Rights in or relating to, the Services, Microdesk Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All right, title, and interest in and to the Services, the Microdesk Materials, and the Third-Party Materials are and will remain with Microdesk and the respective rights holders in the Third-Party Materials.
- 2.6 Service Management.** Each party shall, throughout the Term, maintain within its organization a service manager to serve as such party's primary point of contact for day-to-day communications, consultation, and decision-making regarding this Agreement. Each service manager shall be responsible for providing all day-to-day consents and approvals on behalf of such party under this Agreement. Each party shall ensure its service manager has the requisite organizational authority, skill, experience, and other qualifications to perform in such capacity. Each party shall use commercially reasonable efforts to maintain the same service manager in place throughout the Term. If either party's service manager ceases to be employed by such party or such party otherwise wishes to replace its service manager, such party shall promptly name a new service manager by written notice to the other party.
- 2.7 Changes.** Microdesk reserves the right, in its sole discretion, to make any changes to the Services and Microdesk Materials that it deems necessary or useful to:
- (a) maintain or enhance: (i) the quality or delivery of Microdesk's services to its

## ARID Software as a Service Agreement

customers; (ii) the competitive strength of or market for Microdesk's services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable Law. Without limiting the foregoing, either party may, at any time during the Term, request in writing changes to the Services. The parties shall evaluate and, if agreed, implement all such requested changes in a manner to be mutually agreed-upon by the parties.. No requested changes will be effective unless and until memorialized in a written change order signed by both parties.

**2.8**        **Suspension or Termination of Services.** Microdesk may, directly or indirectly, and by use of a Microdesk Disabling Device or any other lawful means, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other Person's access to or use of all or any part of the Services or Microdesk Materials, without incurring any resulting obligation or liability, if: (a) Microdesk receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Microdesk to do so; or (b) Microdesk believes, in its reasonable discretion, that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement or in any manner that does not comply with any instruction or requirement of the Specifications; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iii) this Agreement expires or is terminated. This Section 2.7 does not limit any of Microdesk's other rights or remedies, whether at law, in equity, or under this Agreement.

**2.9**        **System Revisions.** Microdesk may revise System features and functions or the SLA at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the System materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding.

### **3. Use Restrictions; Service Usage and Data Storage.**

**3.1**        **Use Restrictions.** Customer shall not, and shall not permit any other Person to, access or use the Services or Microdesk Materials except as expressly permitted by this Agreement and, in the case of Third-Party Materials, the applicable third-party license agreement. For purposes of clarity and without limiting the generality of the foregoing, Customer shall not, except as this Agreement expressly permits:

- (a)            copy, modify, or create derivative works or improvements of the Services or Microdesk Materials;
- (b)            rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any Services or Microdesk Materials to any Person,

## ARID Software as a Service Agreement

including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service;

- (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Services or Microdesk Materials, in whole or in part;
- (d) bypass or breach any security device or protection used by the Services or Microdesk Materials or access or use the Services or Microdesk Materials other than by an Authorized User through the use of his or her own then valid Access Credentials;
- (e) input, upload, transmit, or otherwise provide to or through the Services or Microdesk Systems, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- (f) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Services, Microdesk Systems, or Microdesk's provision of services to any third party, in whole or in part;
- (g) remove, delete, alter, or obscure any trademarks, Specifications, Documentation, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any Services or Microdesk Materials, including any copy thereof;
- (h) access or use the Services or Microdesk Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any third party (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other Microdesk customer), or that violates any applicable Law;
- (i) access or use the Services or Microdesk Materials for purposes of competitive analysis of the Services or Microdesk Materials, the development, provision, or use of a competing software service or product or any other purpose that is to the Microdesk's detriment or commercial disadvantage;
- (j) access or use the Services or Microdesk Materials in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the Services could lead to personal injury or severe physical or property damage; or
- (k) otherwise access or use the Services or Microdesk Materials beyond the scope of the authorization granted under this Section 3.1.

#### 4. Customer Obligations.



## ARID Software as a Service Agreement

- 4.1 Customer Systems and Cooperation.** Customer shall at all times during the Term: (a) set up, maintain, and operate in good repair and in accordance with the Specifications all Customer Systems on or through which the Services are accessed or used; (b) provide Microdesk Personnel with such access to Customer's premises and Customer Systems as is necessary for Microdesk to perform the Services in accordance with the Availability Requirement and Specifications; and (c) provide all cooperation and assistance as Microdesk may reasonably request to enable Microdesk to exercise its rights and perform its obligations under and in connection with this Agreement.
- 4.2 Effect of Customer Failure or Delay.** Microdesk is not responsible or liable for any delay or failure of performance caused in whole or in part by Customer's delay in performing, or failure to perform, any of its obligations under this Agreement (each, a "**Customer Failure**").
- 4.3 Corrective Action and Notice.** If Customer becomes aware of any actual or threatened activity prohibited by Section 3.1, Customer shall, and shall cause its Authorized Users to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and Microdesk Materials and permanently erasing from their systems and destroying any data to which any of them have gained unauthorized access); and (b) notify Microdesk of any such actual or threatened activity.
- 5. Service Levels and Credits.**
- 5.1 Service Levels.** Subject to the terms and conditions of this Agreement, Microdesk will use commercially reasonable efforts to make the Services Available at least ninety-eight percent (98%) of the time as measured over the course of each calendar month during the Term (each such calendar month, a "**Service Period**"), excluding unavailability as a result of any of the Exceptions described below in this Section 5.1 (the "**Availability Requirement**"). "**Service Level Failure**" means a material failure of the Services to meet the Availability Requirement. "**Available**" means the Services are available for access and use by Customer and its Authorized Users over the Internet and operating in material accordance with the Specifications. For purposes of calculating the Availability Requirement, the following are "**Exceptions**" to the Availability Requirement, and neither the Services will be considered un-Available nor any Service Level Failure be deemed to occur in connection with any failure to meet the Availability Requirement or impaired ability of Customer or its Authorized Users to access or use the Services that is due, in whole or in part, to any: (a) act or omission by Customer or any Authorized User; (b) Customer Failure; (c) Customer's or its Authorized User's Internet connectivity; (d) Force Majeure Event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Microdesk pursuant to this Agreement; (f) Scheduled Downtime; or (g) disabling, suspension, or termination of the Services pursuant to Section 2.8.

## ARID Software as a Service Agreement

- 5.2 Service Level Failures and Remedies.** In the event of a Service Level Failure, Microdesk shall issue a credit to Customer equivalent to the daily service rate for the period of time that the service was unavailable subject to the following:
- (a) Microdesk has no obligation to issue any Service Credit unless: (i) Customer reports the Service Failure to Microdesk immediately on becoming aware of it; and (ii) requests such Service Credit in writing within five (5) days of the Service Level Failure; and
  - (b) in no event will a Service Level Credit for any Service Period exceed one hundred percent (100%) of the total Fees that would be payable for that Service Period if no Service Level Failure had occurred.

Any Service Credit payable to Customer under this Agreement will be issued to Customer in the calendar month following the Service Period in which the Service Level Failure occurred. This Section 5.2 sets forth Microdesk's sole obligation and liability and Customer's sole remedy for any Service Level Failure.

- 5.3 Scheduled Downtime.** Microdesk will use commercially reasonable efforts to give Customer prior notice of all scheduled outages of the Services ("**Scheduled Downtime**").

- 5.4 Service Support.** The Services include Microdesk's standard customer support services ("**Support Services**") in accordance with the Microdesk service support schedule then in effect, a current copy of which is attached as **Exhibit E** (the "**Support Exhibit**"). Microdesk may amend the Support Exhibit from time to time in its sole discretion. Customer may purchase enhanced support services separately at Microdesk's then current rates.

- 6. Data Backup.** The Services do not replace the need for Customer to maintain regular data backups or redundant data archives. PROVIDER HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

### **7. Security.**

- 7.1 Information Security.** Microdesk will employ security measures in accordance with Microdesk's data privacy and security policy as amended from time to time, a current copy of which is set forth in **Exhibit C**.

- 7.2 Data Breach Procedures.** Microdesk maintains a data breach plan in accordance with the criteria set forth in **Exhibit C** and shall implement the procedures required under such data breach plan on the occurrence of a data breach (as defined in such plan).

- 7.3 Customer Control and Responsibility.** Customer has and will retain sole responsibility for: (a) all Customer Data, including its content and use; (b) all

## ARID Software as a Service Agreement

information, instructions, and materials provided by or on behalf of Customer or any Authorized User in connection with the Services; (c) Customer's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Customer or through the use of third-party services ("**Customer Systems**"); (d) the security and use of Customer's and its Authorized Users' Access Credentials; and (e) all access to and use of the Services and Microdesk Materials directly or indirectly by or through the Customer Systems or its or its Authorized Users' Access Credentials, with or without Customer's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

**7.4**        **Access and Security.** Customer shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the Services; and (b) control the content and use of Customer Data, including the uploading or other provision of Customer Data for Processing by the Services.

### **8. Fees and Payment.**

**8.1**        **Fees.** Customer shall pay Microdesk the fees set forth in **Exhibit A ("Fees")** in accordance with this Section 8.

**8.2**        **Taxes.** All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Microdesk's income.

**8.3**        **Payment.** Customer shall pay all Fees and Reimbursable Expenses on or prior to the due date set forth in Arid.Microdesk.com/pricing. Customer shall make all payments hereunder in US dollars by [payment method]. Customer shall make payments to the address or account specified in Arid.Microdesk.com/pricing or such other address or account as Microdesk may specify in writing from time to time.

**8.4**        **Late Payment.** If Customer fails to make any payment when due and then, in addition to all other remedies that may be available:

**8.5**        if such failure continues for ninety (90) days following written notice thereof then Microdesk, in addition to all other remedies that may be available, may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension.

**8.6**        **No Deductions or Setoffs.** All amounts payable to Microdesk under this Agreement shall be paid by Customer to Microdesk in full without any setoff,

## ARID Software as a Service Agreement

recoupment, counterclaim, deduction, debit, or withholding for any reason (other than Service Credits issued pursuant to Section 5.2 or any deduction or withholding of tax as may be required by applicable Law).

**8.7** **Fee Increases.** Microdesk may increase Fees after the first or second contract year of the Initial Term or after any Renewal Term by providing written notice to Customer at least sixty (60) calendar days prior to the commencement of that contract year.

**8.8** **Audits.** Microdesk or its nominee (including its accountants and auditors) may, on reasonable request, inspect and audit Customer's use of the Services under this Agreement at any time during the Term of this Agreement.

### **9. Confidentiality.**

**9.1** **Confidential Information.** In connection with this Agreement each party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other party (as the "**Receiving Party**"). Subject to Section 9.2, "**Confidential Information**" 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". Without limiting the foregoing: all Microdesk Materials and the terms of this Agreement are the Confidential Information of Microdesk.

**9.2** **Exclusions.** 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, to the Receiving Party's knowledge, was not 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.

**9.3** **Protection of Confidential Information.** 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;

## ARID Software as a Service Agreement

- (b) except as may be permitted by and subject to its compliance with Section 9.4, 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 or 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 Section 9.3; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 9;
- (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;
- (d) promptly notify the Disclosing Party of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to prevent further unauthorized use or disclosure; and
- (e) ensure its Representatives' compliance with, and be responsible and liable for, any of its Representatives' non-compliance with the terms of this Section 9.
- (f) Notwithstanding any other provisions of this Agreement, the Receiving Party's obligations under this Section 9 with respect to any Confidential Information that constitutes a trade secret under any applicable Law will continue until such time, if ever, as such Confidential Information ceases to qualify for trade secret protection under one or more such applicable Laws other than as a result of any act or omission of the Receiving Party or any of its Representatives.

**9.4** **Compelled Disclosures**. 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 9.3; and (b) provide reasonable assistance to the Disclosing Party[, at the Disclosing Party's sole cost and expense,] in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the Disclosing Party waives compliance or, after providing the notice and assistance required under this Section 9.4, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose only that portion of the Confidential Information that[, on the advice of the Receiving Party's [outside] legal counsel,] the Receiving Party is legally required to disclose [and, on the Disclosing Party's request, shall use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment].

## ARID Software as a Service Agreement

### 10. Intellectual Property Rights.

10.1 **Microdesk Materials.** All right, title, and interest in and to the Microdesk Materials, including all Intellectual Property Rights therein, are and will remain with Microdesk and, with respect to Third-Party Materials, the applicable third-party providers own all right, title, and interest, including all Intellectual Property Rights, in and to the Third-Party Materials. Customer has no right, license, or authorization with respect to any of the Microdesk Materials except as expressly set forth in Section 2.1 or the applicable third-party license, in each case subject to Section 3.1. All other rights in and to the Microdesk Materials are expressly reserved by Microdesk. In furtherance of the foregoing, Customer hereby unconditionally and irrevocably grants to Microdesk an assignment of all right, title, and interest in and to the Resultant Data, including all Intellectual Property Rights relating thereto.

10.2 **Customer Data.** As between Customer and Microdesk, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in Section 10.3.

10.3 **Consent to Use Customer Data.** Customer hereby irrevocably grants all such rights and permissions in or relating to Customer Data as are necessary or useful to Microdesk, and the Microdesk Personnel to:

- (a) enforce this Agreement, exercise Microdesk's and the Microdesk Personnel's rights and perform Microdesk's and the Microdesk Personnel's obligations hereunder.
- (b) use the Customer Data, including in aggregated form, for Microdesk's internal business purposes, including to improve the Services.

### 11. Representations and Warranties.

11.1 **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 under the Laws of the jurisdiction of its incorporation or other organization;
- (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

## ARID Software as a Service Agreement

- (d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

### 11.2 **Additional Microdesk Representations, Warranties, and Covenants.**

Microdesk represents, warrants, and covenants to Customer that Microdesk will perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement.

### 11.3 **Additional Customer Representations, Warranties, and Covenants.**

Customer represents, warrants, and covenants to Microdesk that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data so that, as received by Microdesk and Processed in accordance with this Agreement, they do not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable Law.

### 11.4 **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 11.1 AND SECTION 11.2, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED “AS IS.” PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, PROVIDER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR PROVIDER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED “AS IS” AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## 12. **Indemnification.**

### 12.1 **Microdesk Indemnification.** Microdesk shall indemnify, defend, and hold harmless Customer and Customer's officers, directors, employees, agents, successors, and assigns (each, a “**Customer Indemnitee**”) from and against any and all Losses incurred by Customer Indemnitee resulting from any Action by a third party (other than an Affiliate of a Customer Indemnitee) that Customer's use of the Services (excluding Customer Data and Third-Party Materials) in accordance with this

## ARID Software as a Service Agreement

Agreement (including the Specifications) infringes or misappropriates such third party's U.S. Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

- (a) Third-Party Materials or Customer Data;
- (b) access to or use of the Microdesk Materials in combination with any hardware, system, software, network, or other materials or service not provided by Microdesk or specified for Customer's use in the Documentation;
- (c) modification of the Microdesk Materials other than: (i) by or on behalf of Microdesk; or (ii) with Microdesk's written approval in accordance with Microdesk's written specification;
- (d) failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Customer by or on behalf of Microdesk; or
- (e) act, omission, or other matter described in Section 12.2(a), Section 12.2(b), Section 12.2(c), or Section 12.2(d), whether or not the same results in any Action against or Losses by any Microdesk Indemnitee.

**12.2 Customer Indemnification.** Customer shall indemnify, defend, and hold harmless Microdesk and its Subcontractors and Affiliates, and each of its and their respective officers, directors, employees, agents, successors, and assigns (each, a "**Microdesk Indemnitee**") from and against any and all Losses incurred by such Microdesk Indemnitee resulting from any Action by a third party (other than an Affiliate of a Microdesk Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

- (a) Customer Data, including any Processing of Customer Data by or on behalf of Microdesk in accordance with this Agreement;
- (b) any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Customer or any Authorized User, including Microdesk's compliance with any specifications or directions provided by or on behalf of Customer or any Authorized User to the extent prepared without any contribution by Microdesk;
- (c) allegation of facts that, if true, would constitute Customer's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or
- (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Customer, any Authorized User, or any third party on behalf of Customer or any Authorized User, in connection with this Agreement.



## ARID Software as a Service Agreement

**12.3**        **Indemnification Procedure.** Each party shall promptly notify the other party in writing of any Action for which such party believes it is entitled to be indemnified pursuant to Section 12.1 or Section 12.2, as the case may be. The party seeking indemnification (the “**Indemnitee**”) shall cooperate with the other party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel reasonably acceptable to the Indemnitee to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action without the Indemnitee’s prior written consent. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee’s failure to perform any obligations under this Section 12.3 will not relieve the Indemnitor of its obligations under this Section 12, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

**12.4**        **Mitigation.** If any of the Services or Microdesk Materials are, or in Microdesk’s opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Customer’s or any Authorized User’s use of the Services or Microdesk Materials is enjoined or threatened to be enjoined, Microdesk may, at its option and sole cost and expense:

- (a)            obtain the right for Customer to continue to use the Services and Microdesk Materials materially as contemplated by this Agreement;
- (b)            modify or replace the Services and Microdesk Materials, in whole or in part, to seek to make the Services and Microdesk Materials (as so modified or replaced) non-infringing, while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Services and Microdesk Materials, as applicable, under this Agreement; or
- (c)            by written notice to Customer, terminate this Agreement with respect to all or part of the Services and Microdesk Materials, and require Customer to immediately cease any use of the Services and Microdesk Materials or any specified part or feature thereof, provided that if such termination occurs prior to two (2) years after the Effective Date, subject to Customer’s compliance with its post-termination obligations set forth in Section 14.4, Customer will be entitled to a refund of one month subscription fees.

**12.5**        **Sole Remedy.** THIS SECTION 12 SETS FORTH CUSTOMER’S SOLE REMEDIES AND PROVIDER’S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES AND PROVIDER MATERIALS OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE

## ARID Software as a Service Agreement

VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

### 13. Limitations of Liability.

13.1 **EXCLUSION OF DAMAGES.** IN NO EVENT WILL PROVIDER OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES, OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PURSUANT TO SECTION 5.2; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

13.2 **CAP ON MONETARY LIABILITY.** IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF PROVIDER ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED TWO (2) TIMES THE TOTAL AMOUNTS PAID TO PROVIDER UNDER THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

### 14. Term and Termination.

14.1 **Initial Term.** The initial term of this Agreement commences as of the Effective Date and, unless terminated earlier pursuant any of the Agreement's express provisions, will continue in effect for one (1) year from such date (the "**Initial Term**").

14.2 **Renewal Term.** This Agreement will automatically renew for up to three (3) additional successive one (1) year terms unless earlier terminated pursuant to this Agreement's express provisions or either party gives the other party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term

## ARID Software as a Service Agreement

(each a “**Renewal Term**” and, collectively, together with the Initial Term, the “**Term**”).

**14.3**        **Termination.** In addition to any other express termination right set forth elsewhere in this Agreement:

- (a)            Microdesk may terminate this Agreement, effective on written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder, and such failure continues more than ninety (90) days after Microdesk's delivery of written notice thereof; or (ii) breaches any of its obligations under Section 3.1, Section 4.3, Section 7.3, Section 8, or Section 9;
- (b)            either party may terminate this Agreement, effective on written notice to the other party, if the other party [materially] breaches this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured [30/[NUMBER]] days after the non-breaching party provides the breaching party with written notice of such breach; and
- (c)            either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

**14.4**        **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as expressly otherwise provided in this Agreement:

- (a)            all rights, licenses, consents, and authorizations granted by either party to the other hereunder will immediately terminate;
- (b)            Customer’s account and access to the system shall be terminated. notwithstanding anything to the contrary in this Agreement, with respect to information and materials then in its possession or control: (i) the Receiving Party may retain the Disclosing Party’s Confidential Information; (ii) Microdesk may retain Customer Data; (iii) Customer may retain Microdesk Materials (in the case of each of subclause (i), (ii) and (iii) in its then current state and solely to the extent and for so long as required by applicable Law); (iv) Microdesk may also retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course; and (v) all information and materials described in this Section 14.4(d) will remain subject to all confidentiality, security, and other applicable requirements of this Agreement;

## ARID Software as a Service Agreement

- (c) Microdesk may disable all Customer and Authorized User access to the Microdesk Materials;
- (d) if Customer terminates this Agreement pursuant to Section 14.3(b), Customer will be relieved of any obligation to pay any Fees attributable to the period after the effective date of such termination and Microdesk will: (i)] refund to Customer Fees paid in advance for Services that Microdesk has not performed as of the effective date of termination;
- (e) if Microdesk terminates this Agreement pursuant to Section 14.3(a) or Section 14.3(b), all Fees that would have become payable had the Agreement remained in effect until expiration of the Term will become immediately due and payable, and Customer shall pay such Fees, together with all previously-accrued but not yet paid Fees and Reimbursable Expenses, on receipt of Microdesk's invoice therefor; and
- (f) if Customer requests in writing at least ten (10) days prior to the effective date of expiration or termination, subject to Section 14.4(d), Microdesk shall, within thirty (30) days following such expiration or termination, deliver to Customer the then most recent version of Customer Data maintained by Microdesk, provided that Customer has at that time paid all Fees and Reimbursable Expenses then outstanding and any amounts payable after or as a result of such expiration or termination, including any expenses and fees, on a time and materials basis, for Microdesk's services in transferring such Customer Data.

**14.5 Surviving Terms.** The provisions set forth in the following sections, and any other right or obligation of the parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement: Section 3.1, Section 9, Section 11.4, Section 12, Section 13, Section 14.4, this Section 14.5, and Section 15.

### **15. Miscellaneous.**

**15.1 Further Assurances.** On a party's reasonable request, the other party shall, at the requesting party's sole cost and expense, execute and deliver all such documents and instruments, and take all such further actions, as may be necessary to give full effect to this Agreement.

**15.2 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.

**15.3 Notices.** Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") in writing and addressed to the other party at the addresses set forth on the

## ARID Software as a Service Agreement

first page of this Agreement (or to such other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees prepaid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party and (b) if the party giving the Notice has complied with the requirements of this Section.

**15.4 Interpretation.** For purposes of this Agreement: (a) the words “include,” “includes,” and “including” are deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole; (d) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (e) words denoting any gender include all genders. Unless the context otherwise requires, references in this Agreement: (x) to sections, exhibits, schedules, attachments, and appendices mean the sections of, and exhibits, schedules, attachments, and appendices attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

**15.5 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**15.6 Entire Agreement.** This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement, the related exhibits, schedules, attachments, and appendices (other than an exception expressly set forth as such therein) and any other documents incorporated herein by reference, the following order of precedence governs: (a) first, this Agreement, excluding its exhibits, schedules, attachments, and appendices; (b) second, the exhibits, schedules, attachments, and appendices to this Agreement as of the Effective Date; and (c) third, any other documents incorporated herein by reference.

**15.7 Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or

## ARID Software as a Service Agreement

otherwise, without Microdesk's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation, or reorganization involving Customer (regardless of whether Customer is a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations, or performance under this Agreement for which Microdesk's prior written consent is required. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section 15.8 is void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

### 15.8 **Force Majeure.**

- (a) **No Breach or Default.** In no event will Microdesk be liable or responsible to Customer, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by any circumstances beyond Microdesk's reasonable control (a "**Force Majeure Event**"), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date of this Agreement, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation. Either party may terminate this Agreement if a Force Majeure Event continues substantially uninterrupted for a period of sixty (60) days or more.
- (b) **Affected Party Obligations.** In the event of any failure or delay caused by a Force Majeure Event, Microdesk shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

15.9 **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15.10 **Amendment and Modification; Waiver.** No amendment to or modification of or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set

## ARID Software as a Service Agreement

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 rights, remedy, power, or privilege arising from this Agreement will 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.

**15.11 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 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.

**15.12 Governing Law; Submission to Jurisdiction.** This Agreement is governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Massachusetts. Any legal suit, action, or proceeding arising out of this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Massachusetts in each case located in the city of Boston and County of Suffolk, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. 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.

**15.13 Equitable Relief.** Customer acknowledges and agrees that a breach or threatened breach by Customer of any of its obligations under Section 9 or, in the case of Customer, Section 3.1, Section 4.3, or Section 7.3, would cause Microdesk irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, Microdesk will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.