

INTELLECTUAL PROPERTY LICENSE AGREEMENT

THIS INTELLECTUAL PROPERTY LICENSE AGREEMENT (“**License Agreement**”) between Cold Fusion Industries, Inc. (“**Cold Fusion**”), and Third Circle Marketing, Inc. (“**Third Circle Marketing**”), is effective as of the ___ day of _____ 20___ (“**Effective Date**”).

WHEREAS, Cold Fusion wishes to grant certain intellectual property rights to Third Circle Marketing;

WHEREAS, Third Circle Marketing wishes to obtain those intellectual property rights from Cold Fusion according to the terms and conditions of this License Agreement; and

WHEREAS, Cold Fusion and Third Circle Marketing further wish to establish a contractual mechanism pursuant to which Third Circle Marketing may obtain, from time to time, certain services, resources, and other support from Cold Fusion in connection with the evaluation, understanding, implementation, exercise, use, and commercial exploitation by Third Circle Marketing of the intellectual property rights licensed by Third Circle Marketing from Cold Fusion according to the terms and conditions of this License Agreement set forth below.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, Cold Fusion and Third Circle Marketing agree as follows:

THE AGREEMENT

1. TERM; DEFINITIONS.

1.1 Term.

The term of this License Agreement shall commence on the Effective Date and shall continue indefinitely without any right of termination or revocation for any reason.

1.2 Definitions.

“**Acquire**” or “**Acquisition**” with respect to any Entity shall mean (except where such terms are used as part of other defined terms):

(i) If the Entity has voting shares or other voting securities, an acquisition of an Entity in which more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority for such Entity becomes owned or controlled directly or indirectly by another Entity; or

(ii) If the Entity does not have voting shares or other voting securities, an acquisition of an Entity in which more than fifty percent (50%) of the ownership interest representing the right to make decisions for such Entity becomes owned or controlled directly or indirectly by another Entity; or

(iii) An acquisition of all or substantially all of the assets of an Entity directly or indirectly by another Entity.

“Affiliate(s)” of a Party shall mean any Entities, now or in the future, and for so long as the following ownership and control exists, that: (i) own or control, directly or indirectly, the Party; (ii) are owned or controlled by, or under common control with, directly or indirectly, the Party; or (iii) are owned or controlled, directly or indirectly, by a Parent Company. For purposes of the preceding sentence, “own or control” shall mean:

(i) If the Entity has voting shares or other voting securities, ownership or control (directly or indirectly) of more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or other similar managing authority for such Entity; or

(ii) If the Entity does not have voting shares or other voting securities, ownership or control (directly or indirectly) of more than fifty percent (50%) of the ownership interest representing the right to make decisions for such Entity.

“Beneficial Owner” shall mean an entity that directly or indirectly is the “beneficial owner” of securities (as determined pursuant to Rule 13d-3 and Rule 13d-5 of the General Rules and Regulations under the Exchange Act); or any entity that directly or indirectly, has the right or obligation to acquire securities (whether such right or obligation is exercisable or effective immediately or only after the passage of time or the occurrence of an event), pursuant to any agreement or arrangement or upon the exercise of conversion rights, exchange rights, other rights, warrants or options, or otherwise.

“Cold Fusion” shall mean Cold Fusion and its Parent Companies and Affiliates (whether Acquired prior to, on or after the Effective Date).

“Cold Fusion After-Acquired Intellectual Property” shall mean (a) any information, materials, patents, patent rights, technologies, trade secrets, or other intellectual property of any kind of any Entity that is Acquired by Cold Fusion after the Effective Date or that Acquires Cold Fusion (or any intermediate or ultimate Parent Company of Cold Fusion) after the Effective Date, each as of the date of such Acquisition, and (b) corrections, modifications, improvements, updates and upgrades thereto created after the Effective Date (**“After-Acquired Modifications”**).

“Cold Fusion Direct Competitors” shall mean the Entities as may be listed on Exhibit C to this License Agreement. From time to time during the IP Support Period, Cold Fusion may give

written notice to Third Circle Marketing of additions or other changes to Exhibit C necessary to reflect the acquisition of any Cold Fusion Direct Competitor by any third party or to identify any new Entity that has become a material competitor to Cold Fusion since the Effective Date for the services in which the Cold Fusion Intellectual Property is a material differentiator. In such event, the Parties shall meet in good faith to make such changes to Exhibit C as are reasonable under the circumstances and mutually acceptable to both Parties. Notwithstanding the foregoing, any sublicensing arrangement or activity with a Cold Fusion Direct Competitor that began prior to the date such Entity was designated to be a Cold Fusion Direct Competitor will not be deemed a violation of the restriction set forth in Section 2.2(a) of the License Agreement.

“Cold Fusion Intellectual Property” shall mean (a) Cold Fusion Rights, Cold Fusion Patents, Cold Fusion Technology and Cold Fusion Materials, excluding, however, any Cold Fusion After-Acquired Intellectual Property and any After-Acquired Modifications, (b) corrections, modifications, improvements, updates and upgrades thereto owned or controlled by Cold Fusion at any time during the IP Support Period (**“Modifications”**), and (c) any other information, materials, patents, patent rights, technologies, trade secrets or other intellectual property of any kind owned or controlled by Cold Fusion at any time during the IP Support Period, including any Cold Fusion After-Acquired Intellectual Property and any After-Acquired Modifications, but only to the extent that such other information, materials, patents, patent rights, technologies, trade secrets or other intellectual property are, during the IP Support Period, embedded in or made integral to the use of any Cold Fusion Intellectual Property previously licensed under this License Agreement. The Parties acknowledge that, as of the Effective Date, Cold Fusion Intellectual Property includes, but is not limited to, the non-exhaustive list of certain specific Cold Fusion Intellectual Property as may be set forth in Exhibit D to this License Agreement. Any Cold Fusion Intellectual Property that exists during the IP Support Period shall, for purposes of this License Agreement, continue to be deemed Cold Fusion Intellectual Property even if the Entity that owns or controls such Cold Fusion Intellectual Property ceases to be an Affiliate of Cold Fusion. In addition, all rights in Cold Fusion Intellectual Property held by an Entity that constitutes an Affiliate of Third Circle Marketing at any time during the term of this License Agreement, including any Modifications, whether created before or after divestiture of such Third Circle Marketing Entity, shall, for purposes of this License Agreement, continue in effect with regard to such Entity (in accordance with and subject to all terms and conditions herein), even after such Entity ceases to be an Affiliate of Third Circle Marketing; *provided*, such Entity shall not independently be entitled to any rights or benefits under Section 3 or Section 4 of this License Agreement arising after it ceases to be an Affiliate of Third Circle Marketing (i.e., it shall not be entitled to receive any support directly from Cold Fusion and it may not contract for Services pursuant to the terms of this License Agreement).

“Cold Fusion Materials” shall mean tangible, electronic or other embodiments or representations of the Cold Fusion Rights, Cold Fusion Patents or Cold Fusion Technology, as

maintained by or on behalf of Cold Fusion in the ordinary course of business.

“Cold Fusion Patents” shall mean any and all classes and types of patents, patent applications, and patent rights recognized anywhere in the world that are owned or controlled by Cold Fusion as of the Effective Date, the title or right to enforce or grant licenses, rights, releases, covenants, or immunities in respect thereof, all patents related thereto, and all patents claiming benefit, in whole or in part, of any of their filing dates including extensions, divisionals, continuations, continuations-in-part, reissues, reexaminations, substitutions and foreign counterparts of any of the foregoing. In addition, Cold Fusion Patents shall include all other patents, patent applications, and patent rights that comprise subject matter developed or conceived by Cold Fusion during the IP Support Period that is used in the same field of use as Cold Fusion Patents previously licensed under this License Agreement, including, without limitation, patents, patent applications, and patent rights that comprise subject matter that is supplemental to, in replacement of, or makes obsolescent any subject matter covered by then existing Cold Fusion Patents.

“Cold Fusion Rights” shall mean any and all intellectual property rights owned or controlled by Cold Fusion as of the Effective Date, whether or not perfected and whether or not patentable or copyrightable. Cold Fusion Rights shall further include, but not be limited to, any and all of Cold Fusion’s trademarks, service marks, and other designations of origin owned or controlled by Cold Fusion as of the Effective Date. In addition, Cold Fusion Rights shall include all intellectual property developed or conceived by Cold Fusion during the IP Support Period that is used in the same field of use as Cold Fusion Rights previously licensed under this License Agreement, including, without limitation, intellectual property that is supplemental to, in replacement of, or makes obsolescent any then existing Cold Fusion Rights.

“Cold Fusion Technology” shall mean any and all technology owned or controlled by Cold Fusion as of the Effective Date, including software (and source code in electronic form), products, tools, processes, designs, schematics, methodologies, and all related documentation. In addition, Cold Fusion Technology shall include all technology developed or conceived by Cold Fusion during the IP Support Period that is used in the same field of use as Cold Fusion Technology previously licensed under this License Agreement, including, without limitation, technology that is supplemental to, in replacement of, or makes obsolescent any then existing Cold Fusion Technology.

“Control” means (a) the legal or Beneficial Ownership, directly or indirectly, of (i) at least 50% of the aggregate of all equity securities of an entity or (ii) equity securities having the right to at least 50% of the profits of an entity or, in the event of dissolution, to at least 50% of the assets of an entity; (b) the right to appoint, directly or indirectly, a majority of the board of directors (or other comparable managers); or (c) the right to control, directly or indirectly, the management or policies of the entity, whether through the ownership of voting securities, by contract or otherwise.

“**Copyleft**” means a licensing model that permits anyone to use, modify, or redistribute software, subject to a condition of use, modification, and/or distribution of such software, whereby such software and/or any other software incorporated into such software, derived from or distributed with such software be (i) disclosed or distributed in source code form to the public, (ii) licensed to the public for the purpose of making derivative works or (iii) re-distributed to anyone at no charge.

“**Entity**” means a corporation, association, partnership, business trust, joint venture, limited liability company, proprietorship, unincorporated association, individual, or other entity that can exercise independent legal standing.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**IP Support Period**” means the period commencing on the Effective Date and terminating three (3) years after the Effective Date. The Parties may renew or extend the term of the IP Support Period at any time for such additional periods and on such terms as the Parties may mutually agree upon in writing.

“**Parent Company(ies)**” means any Entity that owns or controls (directly or indirectly) more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of a Party.

“**Party**” or “**Parties**” mean either Third Circle Marketing or Cold Fusion, or both, as the context indicates.

“**Pre-existing IP**” means, with respect to each of Cold Fusion and Third Circle Marketing and solely for the purposes of the Standard Services Terms & Conditions, any intellectual property (i) owned by Cold Fusion or Third Circle Marketing, respectively, prior to entering into this License Agreement; (ii) developed or acquired by Cold Fusion or Third Circle Marketing, respectively, other than in the course of performing services under this License Agreement; and (iii) derivatives, improvements or modifications of the foregoing.

“**Standard Services Terms & Conditions**” means the terms and conditions as may be set out in Exhibit B to this License Agreement.

“**Third Circle Marketing**” means Third Circle Marketing and its Parent Companies and Affiliates (whether Acquired prior to, on or after the Effective Date).

“**Third Circle Marketing Data**” means Third Circle Marketing’s Confidential Information as well as all Customer Data and Personal Data and all other Data under and as defined in the Third Circle Marketing Information Privacy and Security Schedule Addendum.

“**Third Circle Marketing Information Privacy and Security Schedule Addendum**”

means the Addendum so entitled executed by Third Circle Marketing and Cold Fusion contemporaneously with the execution of this License Agreement.

“**Third Circle Marketing Released Parties**” means all Entities comprising Third Circle Marketing, together with all of their respective current and former predecessors, successors, agents, attorneys, insurers, servants, distributors, retailers, resellers, manufacturers, suppliers, employees, officers, directors, users, and customers.

“**Third Circle Marketing U.S. Site Security and Environmental, Health, and Safety Addendum**” means the Addendum so entitled executed by Third Circle Marketing and Cold Fusion contemporaneously with the execution of this License Agreement.

2. **GRANT.**

2.1 License.^{8,9} Subject to the terms and conditions contained herein, Cold Fusion grants to Third Circle Marketing a perpetual, irrevocable, fully-paid, nonexclusive, worldwide license, with no duty to account, to the Cold Fusion Intellectual Property for unrestricted use for any purpose, either individually or in combination and both separately and as integrated into other capabilities, including without limitation the right to sublicense or otherwise authorize, implicitly or explicitly, third parties to exercise any or all such rights.

2.2 Restrictions.

(a) Notwithstanding anything to the contrary, Third Circle Marketing will not sublicense components of the Cold Fusion Intellectual Property to any Cold Fusion Direct Competitor during the IP Support Period in a manner that would enable such Cold Fusion Direct Competitor to independently use such components of the Cold Fusion Intellectual Property in direct competition with Cold Fusion in the markets Cold Fusion operates at the time of such sublicense.

(b) In the case of any trademarks, trade names, service marks, trade dress, logos and other indicia of origin included in the Cold Fusion Intellectual Property (collectively, “**Trademarks**”) and in the event such Trademarks are used commercially by Third Circle Marketing in the external marketplace in the exercise of its rights under this License Agreement, Third Circle Marketing agrees to reasonably cooperate with Cold Fusion in facilitating its monitoring of the nature and quality of the products and services for which the Trademarks are so used by Third Circle Marketing. Third Circle Marketing understands and agrees that all goodwill associated with the Trademarks will inure to the benefit of Cold Fusion.

2.3 Irrevocable Grant.⁴ In no event will the rights granted in this Section be subject to termination, revocation or any further limitation, in whole or in part, for any reason, and all such rights shall remain perpetual, unlimited, and irrevocable under all circumstances.

2.4 Construction. Cold Fusion and Third Circle Marketing acknowledge and agree that the restrictions set forth in Section 2.2 of this License Agreement are intended to be narrowly construed. Without limiting the generality of the foregoing, nothing in Section 2.2 will preclude, limit, restrict or otherwise constrain in any way the exercise by Third Circle Marketing of any rights in the Cold Fusion Intellectual Property granted hereunder in connection with (i) the provision of any services, resources or other support by Third Circle Marketing in support of any Cold Fusion Direct Competitor or any of its customers, or (ii) the provision of any services, resources or other support by any Cold Fusion Direct Competitor in support of Third Circle Marketing or any of its customers.

2.5 Other Intellectual Property. Except for the license expressly granted to Third Circle Marketing in Section 2.1 with respect to the Cold Fusion Intellectual Property, nothing contained in this License Agreement shall be construed as conferring (by implication, estoppel or otherwise) to Cold Fusion or Third Circle Marketing any right or license to or to otherwise use any copyright, patent, patent application, trademark, service name, service mark, trade dress, trade secret or other intellectual property belonging to the other party, and each of Cold Fusion and Third Circle Marketing shall retain all rights, title and interests in its respective intellectual property.

2.6 Government. If, as a result of the rights granted pursuant to this License Agreement or the exercise thereof, any user of any software or documentation within the Cold Fusion Intellectual Property is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of such software or related documentation of any kind, including technical data and manuals, is restricted by the terms and conditions of this License Agreement as referenced in FAR 12.212 for civilian agencies and DFARS 227.7202 for military agencies. Such software is commercial computer software and all related documentation delivered with or relating to this software is commercial computer software documentation, developed at private expense.

3. IP SUPPORT PERIOD.

3.1 Materials. Cold Fusion shall deliver to Third Circle Marketing or otherwise provide to Third Circle Marketing (or such other Third Circle Marketing Entity specified by Third Circle Marketing) the Cold Fusion Materials within a reasonable period of time after the Effective Date and as otherwise reasonably requested by Third Circle Marketing from time to time during the IP Support Period.

3.2 Updates. Updates to Cold Fusion Materials shall be provided to Third Circle Marketing (or such other Third Circle Marketing Entity specified by Third Circle Marketing) upon completion

or release of any major update, upgrade, enhancement or other improvement to the Cold Fusion Intellectual Property during the IP Support Period. Prior to the termination of the IP Support Period, if it has not already done so, Cold Fusion shall provide to Third Circle Marketing (or such other Third Circle Marketing Entity specified by Third Circle Marketing) the then most current and complete versions of all Cold Fusion Materials.

3.3 Technical Support.³ During the IP Support Period, Cold Fusion will provide to Third Circle Marketing, at no additional expense to Third Circle Marketing, commercially reasonable access to Cold Fusion's engineers, developers, and other support personnel to assist Third Circle Marketing, as reasonably requested by Third Circle Marketing from time to time during the IP Support Period, in the deployment and use of the Cold Fusion Intellectual Property. At Third Circle Marketing's reasonable request from time to time during the IP Support Period, Cold Fusion will provide training to Third Circle Marketing on a "train the trainer" basis. Third Circle Marketing acknowledges and agrees that technical support provided under this Section 3.3 may be limited to availability acknowledging Cold Fusion's other obligations. Cold Fusion will notify Third Circle Marketing in writing if Third Circle Marketing's support or training requests become unreasonably burdensome and Cold Fusion and Third Circle Marketing shall promptly meet to resolve any such issues in good faith.

3.4 IP Support Period Payments. During the IP Support Period, Third Circle Marketing shall pay to Cold Fusion a total maintenance and support fee of \$_____ (_____ United States Dollars), which amount will be payable in ____ (___) equal _____ installments of \$_____ (_____ United States Dollars) each, which shall be payable as follows:

- (a) The first such installment shall be invoiced, and paid, within ten (10) days of the Effective Date;
- (b) The second such installment will be invoiced, and paid, on or after _____;
- (c) The third such installment will be invoiced, and paid, on or after _____;
- (d) The fourth such installment will be invoiced, and paid, on or after _____;
and
- (e) The fifth such installment will be invoiced, and paid, on or after _____.

Third Circle Marketing will issue to Cold Fusion an approved Third Circle Marketing PO for each such annual installment of the maintenance and support fee payable pursuant to this Section 3.4 in the amount of five hundred thousand United States dollars (\$500,000.00 U.S.), the first such approved Third Circle Marketing PO to be issued as soon as reasonably practical after the Effective

Date and each of the next four (4) approved Third Circle Marketing POs to be issued no later than thirty (30) days prior to the respective first, second, third, and fourth installment due dates.

All invoices provided to Third Circle Marketing for payments pursuant to this Section 3.4 will be accumulated, upon receipt, for a period from the 6th day of a month to the 5th day of the following month (the “**Accumulation Period**”). Third Circle Marketing will pay invoices received during the Accumulation Period net thirty (30) days from the end of the Accumulation Period. Each such payment shall be net of all taxes or duties, and Cold Fusion will be responsible for any duties, taxes, and/or levies to which it is subject as a result of any payment hereunder. All amounts due under this Section 3.4 shall be paid in full, without credit, set-off, counterclaim or deduction against any amount that Cold Fusion may owe to Third Circle Marketing. In addition, Cold Fusion may suspend performance of any services under this Section 3 during any period(s) when any amount payable pursuant to this Section 3.4 is past due (other than amounts disputed in good faith by Third Circle Marketing in writing prior to the applicable due date).

4. OTHER SERVICES.

4.1 Other Services. As mutually agreed upon by Cold Fusion and Third Circle Marketing from time to time during the IP Support Period and in addition to the support services to be provided to Third Circle Marketing by Cold Fusion set forth in Section 3 of this License Agreement, Third Circle Marketing may obtain certain specific services, resources and other support (collectively, “**Services**”) from Cold Fusion in connection with the evaluation, understanding, implementation, exercise, use and commercial exploitation by Third Circle Marketing of the Cold Fusion Intellectual Property licensed by Third Circle Marketing from Cold Fusion hereunder, all as mutually agreed upon by Cold Fusion and Third Circle Marketing in writing as provided in this Section 4.

4.2 Statements of Work. Services provided to Third Circle Marketing by Cold Fusion pursuant to this Section 4 will be documented in separate statements of work executed by both Cold Fusion and Third Circle Marketing (each, a “**Statement of Work**”). Each Statement of Work will reference this License Agreement and will set out, as applicable, the duration, scope, pricing and other terms relevant to the Services to be provided pursuant to that Statement of Work.

4.3 Standard Services Terms & Conditions. Each Statement of Work will also be subject to the Standard Services Terms & Conditions, which Standard Services Terms & Conditions will be deemed incorporated into each Statement of Work for all purposes. The Standard Services Terms & Conditions will apply to, and will govern the performance of, each of the Statements of Work, but neither the Statements of Work nor the Standard Services Terms & Conditions will have any force or effect with respect to the other rights, remedies and obligations of either Cold Fusion or Third Circle Marketing under this License Agreement, including without limitation the rights, remedies and

obligations of either Cold Fusion or Third Circle Marketing pursuant to this License Agreement with respect to the Cold Fusion Intellectual Property.

Third Circle Marketing PO(s). Services provided to Third Circle Marketing by Cold Fusion pursuant to each Statement of Work will also be subject to the issuance by Third Circle Marketing of one or more purchase orders (each, a “**Third Circle Marketing PO**”) authorizing the specific Services set forth in that Statement of Work. Cold Fusion shall not provide Third Circle Marketing with any Services, and Third Circle Marketing shall not be obligated to pay for any Services, unless Third Circle Marketing has issued a Third Circle Marketing PO(s) for the applicable Services.

4.4 Local Country Addendum. For purchases of Services outside of the United States, the Third Circle Marketing PO(s) will be issued by the applicable local Third Circle Marketing entity to Cold Fusion, or to such other Cold Fusion Affiliate designated by Cold Fusion. All Third Circle Marketing PO(s) will be governed by the terms and conditions of this License Agreement and the applicable Statement of Work and collectively shall be deemed a separate agreement between the applicable Third Circle Marketing entity and Cold Fusion Affiliate. To the extent the applicable Cold Fusion and Third Circle Marketing Affiliates require additional or alternative terms and conditions than those contained in this License Agreement in order to comply with local country law or business practices, such alternative or additional terms shall be set forth in the applicable Statement of Work.

4.5 Order of Precedence. In the event of any conflict between this License Agreement, the Standard Services Terms & Conditions, and any Statement of Work and/or Third Circle Marketing PO, the order of precedence shall be as follows: (i) this License Agreement, (ii) the Standard Services Terms & Conditions, (iii) the Statement of Work, and then, (iv) the Third Circle Marketing PO. Notwithstanding the order of precedence above, if a Statement of Work explicitly identifies a provision in the Standard Services Terms & Conditions, (other than those that involve indemnification or limitation of liability) that Cold Fusion and Third Circle Marketing intend to be superseded or modified by a provision in the Statement of Work, the provision in the Statement of Work shall prevail for purposes of such Statement of Work only, but only if the Statement of Work is signed by a Third Circle Marketing Vice President or above. Notwithstanding anything herein or in a Statement of Work to the contrary, nothing in a Statement of Work or the Standard Services Terms & Conditions shall apply to amend, limit, alter or abridge in any way the rights, remedies and obligations of either Cold Fusion or Third Circle Marketing pursuant to this License Agreement with respect to the Cold Fusion Intellectual Property.

4.6 Third Circle Marketing Policy and Procedure Addenda. Contemporaneously with the execution of this License Agreement, Third Circle Marketing and Cold Fusion have executed the Third Circle Marketing U.S. Site Security and Environmental, Health, and Safety Addendum and the

Third Circle Marketing Information Privacy and Security Schedule Addendum, each of which is incorporated into this License Agreement by this reference, will be governed by and construed in accordance with the terms of this License Agreement, and will be applicable to all services provided by Cold Fusion pursuant to this License Agreement, including without limitation services provided pursuant to Section 3 of this License Agreement and Services provided pursuant to all Statements of Work. Cold Fusion will execute such additional policy and procedure addenda, including updates to existing policy and procedure addenda previously executed by Cold Fusion, as Third Circle Marketing may reasonably request from time to time, provided such additional policy and procedure addenda are generally made applicable to other Third Circle Marketing suppliers.

5. REPRESENTATIONS, WARRANTIES, LIMITED LIABILITIES AND RELEASE.

5.1 Authority. Each Party represents and warrants that the individuals signing this License Agreement have full authority or authorization to execute this License Agreement for, and on behalf of, and to bind the Parties, and that, when signed, this License Agreement will be binding and enforceable according to its terms.

5.2 No Breach. Each Party represents and warrants that the execution, delivery, and performance by it of its obligations hereunder will not result in any violation of or default of (i) its certificate of incorporation or by-laws, (ii) any contract to which it or any of its subsidiaries is a party or, with respect to Cold Fusion, by which any Cold Fusion Intellectual Property is bound.

5.3 Right and Title. Cold Fusion represents and warrants to Third Circle Marketing that:

(a) Except with respect to any third party rights in the Cold Fusion Intellectual Property which may be disclosed on Exhibit D to this License Agreement, Cold Fusion owns all rights, title, and interest in and to the Cold Fusion Intellectual Property and that no other third party owns any right to recover for infringement of or to assert any right in or to the Cold Fusion Intellectual Property;

(b) Cold Fusion has the right to grant the licenses, rights, releases, covenants, and immunities of the full scope set forth in this License Agreement with respect to all Cold Fusion Intellectual Property;

(c) Cold Fusion has not granted and will not grant any licenses or other rights that would restrict, impair, conflict with or prevent the full and complete exercise of the licenses and rights granted to Third Circle Marketing hereunder; and

(d) There are no liens, conveyances, mortgages, assignments, encumbrances, or other agreements that would prevent or impair the full and complete exercise of the licenses and rights granted to Third Circle Marketing under this License Agreement.

5.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS LICENSE AGREEMENT, ALL COLD FUSION INTELLECTUAL PROPERTY AND SERVICES ARE PROVIDED “AS IS” WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. COLD FUSION DOES NOT WARRANT THAT THE COLD FUSION INTELLECTUAL PROPERTY OR SERVICES WILL FUNCTION IN ANY ENVIRONMENT, SATISFY ANY REQUIREMENTS, RESULT IN ANY OUTCOME OR BE ERROR-FREE OR UNINTERRUPTED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, COLD FUSION HEREBY DISCLAIMS (FOR ITSELF AND ITS LICENSORS) ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF INTEGRATION, ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

5.5 LIMITATION OF LIABILITY. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IN SECTION 5.2 (RIGHT AND TITLE) OF THIS LICENSE AGREEMENT, THE OBLIGATIONS AND LIABILITIES UNDER SECTION 7 (INDEMNIFICATION) OF THIS LICENSE AGREEMENT AND/OR THE OBLIGATIONS FOR A BREACH OF SECTION 6 (CONFIDENTIALITY) OF THIS LICENSE AGREEMENT, (A) COLD FUSION WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY TYPE INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOST SALES, ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THIRD CIRCLE MARKETING ASSERTS OR ESTABLISHES A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT, AND (B) COLD FUSION WILL NOT BE LIABLE FOR ANY DIRECT DAMAGES IN EXCESS OF THREE MILLION UNITED STATES DOLLARS (\$3,000,000.00 U.S.), IN THE AGGREGATE. EXCEPT FOR ANY SUBLICENSE OF COLD FUSION INTELLECTUAL PROPERTY BY THIRD CIRCLE MARKETING TO A COLD FUSION DIRECT COMPETITOR IN VIOLATION OF SECTION 2.2(A) OF THIS LICENSE AGREEMENT, THIRD CIRCLE MARKETING WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES OF ANY TYPE INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND LOST SALES, ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF COLD FUSION ASSERTS OR ESTABLISHES A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY

PROVIDED IN THIS AGREEMENT. THIRD CIRCLE MARKETING WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR PUNITIVE DAMAGES OF ANY TYPE ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT EVEN IF ADVISED OR AWARE OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF COLD FUSION ASSERTS OR ESTABLISHES A FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. THIRD CIRCLE MARKETING WILL NOT BE LIABLE FOR ANY DAMAGES, DIRECT, CONSEQUENTIAL OR OTHERWISE, IN EXCESS OF THREE MILLION UNITED STATES DOLLARS (\$3,000,000.00 U.S.), IN THE AGGREGATE. IN THE CASE OF ANY SUBLICENSE OF COLD FUSION INTELLECTUAL PROPERTY BY THIRD CIRCLE MARKETING TO A COLD FUSION DIRECT COMPETITOR IN VIOLATION OF THE RESTRICTION SET FORTH IN SECTION 2.2(A) OF THIS LICENSE AGREEMENT, THIRD CIRCLE MARKETING AGREES THAT (IN ADDITION TO ANY ALLOWABLE REMEDY COLD FUSION MAY HAVE AGAINST THIRD CIRCLE MARKETING HEREUNDER) NOTHING IN THIS LICENSE AGREEMENT SHALL BE DEEMED TO LIMIT COLD FUSION'S LEGAL RIGHTS AND REMEDIES AGAINST THE APPLICABLE COLD FUSION DIRECT COMPETITOR AND ANY SUCH SUBLICENSE SHALL BE NULL AND VOID TO THE EXTENT OF SUCH VIOLATION.

Cold Fusion Release. Cold Fusion, on behalf of itself and its successors and assigns, hereby releases, acquits and forever discharges the Third Circle Marketing Released Parties from any and all actions, causes of action, claims or demands, liabilities, losses, damages, attorneys' fees, court costs, or any other form of claim or compensation for known and unknown acts of infringement by any Third Circle Marketing Released Party of any right in or to Cold Fusion Intellectual Property that happened prior to the Effective Date, and Cold Fusion covenants not to sue or threaten to sue (or cooperate with, instruct, encourage, or aid a third party to sue or threaten to sue) any Third Circle Marketing Released Party on account of any such claim.

5.6 Remedies. Notwithstanding anything to the contrary in this License Agreement, the exclusive remedy for Cold Fusion with respect to any breach, alleged breach or threatened breach of this License Agreement by Third Circle Marketing shall be limited to monetary damages.

6. CONFIDENTIALITY.²

6.1 Scope. The term "Confidential Information" means, to the extent previously, presently or subsequently disclosed by or for Cold Fusion to Third Circle Marketing or Third Circle Marketing to Cold Fusion, all financial, business, legal and technical information of either Party or any of its Affiliates, suppliers, customers and employees (including information about research, development, operations, marketing, transactions, discoveries, inventions, methods, processes, materials, algorithms, software, specifications, designs, drawings, data, strategies, plans, prospects, know-how and ideas) 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 proprietary or confidential. Confidential Information shall not include any information that (a) was rightfully known by the receiving party without restriction before receipt from the disclosing party, (b) is rightfully disclosed to the receiving party by a third party without restriction, (c) is or becomes generally known to the public without violation of this License Agreement, (d) is independently developed by the receiving party without reliance on or reference to such information, or (e) is included within the scope of Cold Fusion Intellectual Property.

6.2 Restrictions. Cold Fusion and Third Circle Marketing agree (a) not to copy or use Confidential Information for any purpose but for the purposes of this License Agreement, (b) to maintain it as confidential, and exercise reasonable precautions to prevent unauthorized access, use or disclosure and (c) not to disclose the Confidential Information to any third party other than its employees, contractors, and sublicensees who have a legitimate need to know for the purposes contemplated by this License Agreement and who are bound by written agreements that are at least as protective of the Confidential Information as the restrictions herein. To avoid uncertainty, the obligations set forth in this section shall not apply to amend, limit, alter, or abridge in any way the rights of Third Circle Marketing under Section 2.1 (subject to restrictions in Section 2).

6.3 Compelled Disclosures. These restrictions will not prevent either party from complying with any law, regulation, court order or other legal requirement that purports to compel disclosure of any Confidential Information or the terms and conditions of this License Agreement. The receiving party will promptly notify the disclosing party upon learning of any such legal requirement, and cooperate with the disclosing party in the exercise of its right to protect the confidentiality of the Confidential Information before any tribunal or governmental agency. Each party may provide a copy of this License Agreement or otherwise disclose its terms and conditions in connection with any financing transaction or due diligence inquiry, subject to obligations of confidentiality applicable to the recipient. Prior to any disclosure of the License Agreement or its terms and conditions to a third party, the party planning such disclosure shall notify the other party and allow the other party an opportunity to recommend redactions of certain information, which recommendations shall not be unreasonably refused.

7. INDEMNIFICATION.

7.1 Intellectual Property. Cold Fusion will defend, indemnify, and hold harmless Third Circle Marketing Released Parties, from and against any and all third-party claims, actions, demands, and legal proceedings (collectively “**Claims**”) and any and all liabilities to third parties for damages, losses, judgments, authorized settlements, costs and expenses including, without limitation, reasonable attorneys’ fees (collectively “**Damages**”), arising out of or in connection with an allegation by a third party claiming any interest in, or any right to recover under, or assert any right in or to the Cold Fusion Intellectual Property.

7.2 Indemnification Procedures. The following procedures will apply with respect to indemnification for Claims arising in connection with this License Agreement:

(a) Promptly after receipt by Third Circle Marketing of written notice of the assertion or the commencement of any Claim, whether by legal process or otherwise, with respect to any matter within the scope of this Section 7, Third Circle Marketing will give written notice thereof to Cold Fusion and will thereafter keep Cold Fusion reasonably informed with respect thereto; provided, however, that the failure of Third Circle Marketing to give Cold Fusion such prompt written notice will not relieve Cold Fusion of its obligations hereunder except to the extent such failure results in prejudice to Cold Fusion's defense of such Claim. Within thirty (30) days following receipt of written notice from Third Circle Marketing relating to any Claim, but no later than ten (10) days before the date on which any response to a complaint or summons is due, Cold Fusion will notify Third Circle Marketing in writing that Cold Fusion will assume control of the defense and settlement of such Claim (the "**Notice**").

(b) If Cold Fusion delivers the Notice relating to any Claim within the required notice period, Cold Fusion will be entitled to have sole control over the defense and settlement of such Claim; provided, however, that Third Circle Marketing will be entitled to participate in the defense of such Claim and to employ legal advisers at its own expense to assist in the handling of such Claim. After Cold Fusion has delivered a Notice relating to any Claim in accordance with the preceding paragraph, Cold Fusion will not be liable for any legal expenses subsequently incurred by any Third Circle Marketing Released Party in connection with the defense of such Claim.

(c) If Cold Fusion fails to assume the defense of any such Claim within the prescribed period of time, then Third Circle Marketing may assume the defense of any such Claim, the reasonable costs and expenses of which shall be deemed to be Damages. Cold Fusion will not be responsible for any settlement or compromise made without its consent, unless Third Circle Marketing has tendered notice and Cold Fusion has then failed to provide Notice and it is later determined that Cold Fusion was liable to assume and defend the Claim.

(d) Third Circle Marketing will provide reasonable assistance to Cold Fusion (at Cold Fusion's expense), including reasonable assistance from Third Circle Marketing's employees, agents, independent contractors, and Affiliates, as applicable. Notwithstanding any provision of this Section 7.2 to the contrary, Cold Fusion will not consent to the entry of any judgment or enter into any settlement that provides for injunctive or other non-monetary relief affecting Third Circle Marketing without the prior written consent of Third Circle Marketing, which consent will not be unreasonably withheld or delayed.

7.3 Additional Obligations.⁵ If any Cold Fusion Intellectual Property becomes the subject of a claim of infringement, Cold Fusion will use reasonable efforts to (A) obtain for Third Circle Marketing the right to continue using such Cold Fusion Intellectual Property or (B) replace or modify such Cold Fusion Intellectual Property so that it becomes non-infringing without substantially compromising its principal function.

7.4 Cold Fusion shall have no liability or obligation to Third Circle Marketing or any other Third Circle Marketing Released Party under this Section 7 to the extent that any claim, action or suit arises out of or results from (i) modifications, combinations or extensions of the Cold Fusion Intellectual Property not created by Cold Fusion, (ii) Third Circle Marketing's or any other Third Circle Marketing Released Party's continuing allegedly infringing activity after being notified thereof or its continuing use of any version of the Cold Fusion Intellectual Property after being provided modifications that would have avoided the alleged infringement, or (iii) any intellectual property right in which Third Circle Marketing or any other Third Circle Marketing Released Party has an interest obtained otherwise than through this License Agreement.

8. MISCELLANEOUS.

8.1 Other Rights. Nothing contained in this License Agreement shall be construed as limiting the rights that Cold Fusion and Third Circle Marketing have outside the scope of the licenses, covenants, immunities, and releases granted hereunder, or contractually restricting the right of either Cold Fusion or Third Circle Marketing to make, have made, use, lease, license, sell, offer for sale, import, distribute or otherwise dispose of any particular product, including products not herein subject to the licenses, releases, immunities or covenants.

8.2 Notices. Any notice, request, demand, or other communication required or permitted hereunder shall be in writing and shall be deemed properly given when actually received or within seven (7) days of mailing by certified or registered mail, return receipt requested, postage prepaid, whichever first occurs,

to Cold Fusion at:

With a copy to (such copy shall not constitute notice):

to **Third Circle Marketing** at:

With a copy to (such copy shall not constitute notice):

Either Party may change its address for the purpose of this Agreement by giving notice to the other Party in accordance with Section 8.

8.3 Publicity and Use of Name. Subject to Section 6, neither Cold Fusion nor Third Circle Marketing shall, without the prior written consent of the other party, refer to this License Agreement or any of its provisions in any statements to the press or public. Nothing contained in this License Agreement shall be construed as conferring any right to use in advertising, publicity, or otherwise any trademark, trade name, or names or any contraction, abbreviation, or simulation thereof of Third Circle Marketing.

8.4 Non-solicitation. During the term of the IP Support Period and for a period of six (6) months thereafter, neither Cold Fusion nor Third Circle Marketing shall actively solicit for hire, nor knowingly allow its employees to solicit for hire, any employee of the other party actively involved with the performance of this License Agreement, including any Statement of Work entered into hereunder, during the preceding six (6) month period without the prior written consent of the other party. Notwithstanding the foregoing, Cold Fusion and Third Circle Marketing acknowledge and agree that this Section 8.4 will not prohibit (x) solicitations through general public advertising or other publications of general public circulation, or (y) the hiring of any employee either Cold Fusion or Third Circle Marketing who contacts the other party without such other party having solicited such employee.

8.5 Condition of Binding Agreement; Amendments. This License Agreement shall not be binding upon the Parties until it has been signed below by or on behalf of each Party. No amendment or modification hereof or consent hereunder shall be valid or binding upon the Parties or their Affiliates unless made in writing and signed by or on behalf of each Party.

8.6 Assignment.^{6,7} Neither Party shall assign or delegate this License Agreement in whole or in part, or any of the licenses, rights, covenants, immunities, releases, or duties under this License Agreement, by agreement, merger, reorganization, sale of all or substantially all of its assets, operation of law or otherwise, including in connection with the insolvency or bankruptcy of the Party, without the prior written consent of the other Party. Notwithstanding the foregoing, without consent, either Party may (i) assign their rights under this License Agreement among its Affiliates, and (ii) assign their rights and delegate their duties to (a) an acquirer of all or substantially all of the equity or assets of their business, or (b) the surviving entity in any merger, consolidation, equity exchange, or reorganization of their business. Any assignment failing to comply with the terms and conditions of this License Agreement shall be null and void. In addition, nothing in this Section 8.6 will be deemed to restrict, impair, conflict with or prevent the full and complete exercise of the licenses and rights granted to Third Circle Marketing under this License Agreement, including without limitation the right to sublicense any such licenses and rights.

8.7 Choice of Law; Venue. This License Agreement shall be construed, and the legal relations between the Parties shall be determined, in accordance with the federal law of the United States and the laws of the State of Delaware without regard to any existing conflict of law provisions.

8.8 Circumvention. Cold Fusion and Third Circle Marketing agree not to act through or in conjunction with third parties to circumvent or frustrate the purposes of this License Agreement. Furthermore, the parties agree not to structure future transactions where the effect of such transaction is to limit the licenses, rights, releases, covenants, or immunities provided for under this License Agreement.

8.9 Bankruptcy. The Parties acknowledge and agree that the Cold Fusion Intellectual Property is “intellectual property” as defined in § 101(35A) of the United States Bankruptcy Code (the “**Code**”), as the same may be amended from time to time, that have been licensed hereunder in a contemporaneous exchange for value. Cold Fusion acknowledges that if Cold Fusion, as a debtor in possession or a trustee in bankruptcy in a case under the Code, rejects this License Agreement, Third Circle Marketing may elect to retain its rights under this License Agreement as provided in § 365(n) of the Code. Upon written request from Third Circle Marketing to Cold Fusion or the bankruptcy trustee of Cold Fusion’s election to proceed under § 365(n), Cold Fusion or the bankruptcy trustee shall comply in all respects with § 365(n), including by not interfering with the rights of Third Circle Marketing as provided by this License Agreement.

8.10 Interpretation. The headings and designated sections of this License Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this License Agreement. All uses of “include” or “including” shall not be limiting. The Parties have participated jointly in the negotiation of this License Agreement. In the

event an ambiguity or question of intent or interpretation arises, this License Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this License Agreement.

8.11 Integration. This License Agreement contains the entire and only understanding between the Parties and their Affiliates with respect to the subject matter hereof and supersedes any prior or collateral agreements, negotiations, and communications in connection with the subject matter covered herein, whether oral or written, and any warranty, representation, promise, or condition in connection therewith not incorporated herein shall not be binding upon either Party or its Affiliates. Notwithstanding anything in that certain Non-disclosure Agreement, dated the 6th of October 2017, between Cold Fusion and Third Circle Marketing (the “**NDA**”) or any other agreement to the contrary, nothing in the NDA or any other agreement shall or shall be deemed to amend, supersede, limit, restrict, or contradict this License Agreement or any specific provisions hereof or any rights granted to Third Circle Marketing hereunder.

8.12 Non-Exclusivity.⁷ This License Agreement does not create any form of exclusive relationship between Cold Fusion and Third Circle Marketing and Cold Fusion and Third Circle Marketing remain free, at its sole discretion, to engage in any business or other activity independently and to exercise any and all rights granted pursuant to this License Agreement in connection with any such activity. Cold Fusion and Third Circle Marketing are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other party. Neither Cold Fusion nor Third Circle Marketing shall be liable for any debts, accounts, obligations, or other liabilities of the other party. Neither party is authorized to incur any debts or other obligations of any kind on the part of or as agent for the other party, except as may be expressly authorized in writing.

8.13 Waiver. No relaxation, forbearance, delay, or negligence by Cold Fusion or Third Circle Marketing in enforcing any of the terms and conditions of this License Agreement, or the granting of time by either Cold Fusion or Third Circle Marketing to the other party, shall operate as a waiver or prejudice, affect or restrict the rights, powers or remedies of either Cold Fusion or Third Circle Marketing.

8.14 Counterparts. This License Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Execution of a facsimile copy shall have the same force and effect as execution of an original, and a facsimile signature shall be deemed an original and valid signature.

8.15 Dispute Resolution. Prior to the commencement of any litigation relating to this License Agreement, the senior management of both Cold Fusion and Third Circle Marketing shall meet to attempt to resolve such disputes. If the senior management cannot resolve the disputes,

either Party may make a written demand for formal dispute resolution. Within thirty (30) days after such written demand, Cold Fusion and Third Circle Marketing agree to meet for one day with an impartial mediator and consider dispute resolution alternatives other than litigation. If an alternative method of dispute resolution is not agreed upon within thirty (30) days after the one-day mediation, either Cold Fusion or Third Circle Marketing may begin litigation proceedings.

8.16 Severability. If any section of this License Agreement is found by competent authority to be invalid, illegal, or unenforceable in any respect for any reason, the validity, legality, and enforceability of such section in every other respect and the remainder of this License Agreement shall continue in effect.

8.17 Export. Cold Fusion and Third Circle Marketing acknowledge that the transactions contemplated by this License Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States (“**U.S.**”) and may also be subject to the customs and export laws and regulations of other countries. Further, under U.S. law, services and products may not be sold, leased or otherwise transferred to restricted end-users or to restricted countries. Cold Fusion and Third Circle Marketing agree to abide by all such export and related laws and regulations in connection with the performance of this License Agreement and any services being provided hereunder.

IN WITNESS WHEREOF, the Parties have executed this License Agreement through their duly authorized representatives:

COLD FUSION

/s/ _____

Name: _____

Capacity: _____

Date: _____

THIRD CIRCLE MARKETING

/s/ _____

Name: _____

Capacity: _____

Date: _____

NOTES

1. Licenses can be more valuable when only one entity can use them. Licensees likely will pay more for an exclusive license. The licensor must decide whether he make more money with an exclusive or non-exclusive license.
2. A license agreement that conveys rights in a trade secret must impose a duty of confidentiality on the licensee to preserve the licensor's property rights in the trade secret. The licensor may also impose a confidentiality requirement on the licensee to protect the secrecy of "know-how," or technical information relating to the licensed IP owned by the licensor that may or may not have trade secret status. *See* 6 Del. Code ann. c. 20, § 2001(4) (defining "trade secret" as, "information, including a formula, pattern, compilation, program, device, method, technique or process: that derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."); *Smartmatic Int'l Corp. v. Dominion Voting Sys. Int'l Corp.*, LEXIS 110 (Del. Ch. 2013) (giving an example definition of "Licensed Technology" to mean all know-how, trade secrets, methodologies and other technical information owned or possessed by the licensor.).
3. To help the licensee implement the license agreement, the licensor may agree to provide assistance to the licensee in the form of documents, instruction to the licensee's personnel, access to the licensor's personnel familiar with licensed subject matter or even access to the licensor's facility.
4. While this agreement allows for no termination on any grounds, various grounds for termination of a license, like breach of a material provision, may be expressly provided for in the license agreement. Termination provisions typically include a requirement that the nonbreaching party give the breaching party notice of the default and an opportunity to cure within a specified period of time.
5. In the licensee's exercise of the licensed rights, it may give rise to an infringement claim by a third party. Also, the licensor may ignore infringing activity by a third party, which would diminish the value of the license to the licensee. The licensor may agree to indemnify the licensee and assume a duty to defend the licensee. The licensor may agree to take legal action against infringers or, in the case of exclusive licensees, agree to join in a suit brought by the licensee against the infringer.

6. The parties to an IP licensing agreement are usually concerned about the future identity of the other party to the contract. Consequently, a licensing agreement will typically detail under what conditions, if any, the agreement can be assigned by one of the parties to a third party.
7. As a matter of federal law, nonexclusive patent, copyright and trademark licenses are presumed to be unassignable by the licensee. *See Tech Pharm. Servs. v. RPD Holdings, LLC (In re Provider Meds, LLC)*, 2017 Bankr. LEXIS 166, **36–37 (Bankr. N.D. Tex. Jan. 18, 2017) (Chapter 7) (did not grant a second non-debtor any rights under the license for a number of reasons including the federal common law rule that a non-exclusive patent license is not assignable without the consent of the licensor) (citing *Cargill, Inc. v. Nelson (In re LGX, LLC)*, 2006 Bankr. LEXIS 635, **9–10 (B.A.P. 10th Cir. Jan. 13, 2006)); *Cincom Sys. v. Novelis Corp.*, 581 F.3d 431, 436 (6th Cir. 2009) (non-exclusive copyright license presumptively not assignable).
8. Scope is one of the first issues to consider. Does the licensor you want the licensee to have unrestricted use of the IP? Or can the licensee use the IP only in certain ways (e.g., for noncommercial purposes) for a limited amount of time (e.g., for one year)?
9. Some licensing agreements include a one-time license fee, paid at purchase. Others include recurring payments such as (e.g., royalties or monthly lease payments).