

Program Agreement

Cover Sheet

This Program Agreement (this "Agreement") is between The Achievement Network, LTD., a Massachusetts nonprofit corporation with a principal place of business at 225 Friend Street, Boston, Massachusetts 02114 ("ANet") and the member listed below ("Member"). Each of ANet and Member may be referred to herein individually as a "Party" or collectively as the "Parties." This Agreement includes, collectively, (1) this Cover Sheet, (2) the attached Program Description Page, (3) the attached Member Data Page, and (4) the attached Standard Terms and Conditions.

Member: East End Preparatory School	
Address: 1460 McGavock Pike Nashville TN 37216	
Phone: (615) 630-7470	Fax:

Billing contact / Title: Jim Leckrone Principal	Email: jleckrone@eastendprep.org
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Effective Date: The earlier of (a) the date this Agreement is last signed below, and (b) the provision of services by ANet to Member hereunder.

Program Dates: July 1, 2015 – June 30, 2016

Fees and Payment Schedule:

Program Fee:		\$20,000.00
Printing Option:	Self	
Printing Fee:		\$0.00
Assessment Format:	Paper-based Assessments	
Total Fees:		\$20,000.00
Total Payment:		\$20,000.00

Payments Information (Invoice)

Invoice Name	Date	Amount
East End Preparatory School - First Invoice	September 15, 2015	\$10,000.00
East End Preparatory School - Second Invoice	October 15, 2015	\$10,000.00



Each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representatives as of the Effective Date and agrees that an electronic signature of a duly authorized representative constitutes a valid signature for such Party.

East End Preparatory School		THE ACHIEVEMENT NETWORK, LTD.	
By:	<i>Jim Leckrone</i> <small>FF3DC1B35AD449D...</small>	By:	<i>Dr. Kia Young Tate</i> <small>55CCDE1214304A1...</small>
Name:	Jim Leckrone	Name:	Dr. Kia Young Tate
Title:	School Leader	Title:	Executive Director
Date:	9/19/2015	Date:	9/16/2015

Program Description:

ANet will provide:

1. RESOURCES

- a. Planning – Protocols and templates to facilitate planning, including the ANet Schedule of Assessed Standards
- b. Curriculum – Standards and Objectives Guides aligned to State Standards and Common Core Standards
- c. Lesson Planning – Plans and examples to facilitate re-teaching

2. PLATFORM

- a. Access for every teacher and administrator to online platform MyAchievementnetwork.org containing results from assessments, tools and network information

3. ASSESSMENT MATERIALS

- a. Quiz Tool access – Online re-assessment tool for teachers
- b. Online Quiz Tool access – Online assessment tool (if online quiz tool or online assessment access has been purchased by Member)
- c. 0 regularly scheduled interim assessments in Mathematics for grades 2;3;4
- d. 0 regularly scheduled interim assessments in English for grades 2;3;4

4. ANALYSIS, LOGISTICS & REPORTING

- a. Electronic delivery for all assessments materials and answer sheets
- b. Printing of assessments as determined by school (additional fees apply)
- c. Pick-up at school for assessment answer sheets (one pick-up per assessment administration)
- d. Scanning and scoring for multiple choice portions of assessment answer sheets
- e. Reports containing analysis of assessment results (the “Reports”), which include: (i) Member student summaries by whole school, class, grade and student level, (ii) item analysis by grade and (iii) Member Network comparisons and out of Network comparisons available through <https://my.achievementnetwork.org>. A “Network” includes all ANet member schools assigned to Member’s network. “Member’s Network” includes all schools sharing the same Schedule of Assessed Standards as Member.

5. TRAINING & COACHING

- a. Logistics training for key personnel at school site
- b. Orientation to ANet for administrators and teachers (if new school)
- c. Student goal setting support
- d. School-specific coaching/training sessions (as agreed to between coach and school) aligned to the following elements of the data cycles:
 - i. Annual and Pre-Cycle Planning
 - ii. Data Meeting
 - iii. Reflection Meeting
- e. School leader Mid-and-End-of-Year Meetings

6. NETWORK EVENTS

- a. School Leadership Team Network Meetings
- b. Other Network-specific events that may include: Learning Walks, Professional Learning Communities, workshops, and others.

7. MEMBER RESPONSIBILITIES

- a. Member will work with its information technology team to ensure that emails from ‘achievementnetwork.org’ are not blocked or filtered as spam.

Program Agreement**Member Data Page****Member Data:**

Member will provide the following information:

1. For the year prior to the Program Start Date, and all years during the Program:**a. To be provided when available:**

- i. State assessment outcomes (1) by student, including student demographic information and scale scores, and (2) by grade, including number of students at each proficiency band and total number of students tested.
- ii. Student outcomes when available, including (1) mobility rate, (2) retention rate (students “held back”), and (3) graduation or progression rate.

b. To be provided by the end of the applicable calendar year, or when available:

- i. School-level demographics, including (1) total enrollment, (2) percentage of students in each race/ethnic category, (3) percentage ELL/FEP/LEP/NEP, (4) percentage special education/students with disabilities, (5) percentage FRL, and (6) Title I status.

2. For all years during the Program:**a. To be provided within six (6) weeks of the beginning of the applicable school year:**

- i. Student information, including (1) name, (2) gender, (3) race/ethnicity, (4) FRL, ELL/FEP/LEP/NEP, special education status, (5) grade level. This information should be updated monthly with ANet’s NSA team to reflect changes in the student body.
- ii. Teacher information for all ANet-involved teachers, including (1) name, (2) grade and subject taught, and (3) email address, updated as necessary to reflect changes in the staffing structure.

b. To be provided by the end of the applicable calendar year:

- i. School-level targets for state assessments.

Program Agreement

Standard Terms and Conditions

BACKGROUND

ANet offers a program consisting of educational services and materials, including an online platform (the “Platform”), curriculum and teaching resources, assessment materials, assessment analysis, training and coaching and network events, as described on the Program Description Page (collectively, the “Program”). Member desires to use the Program in accordance with the terms and conditions set forth herein.

1. THE PROGRAM

1.1 Program: ANet agrees to implement the Program for Member during the Term. Member agrees to commit the resources and personnel necessary to fully participate in the Program.

1.2 Use Rights: Subject to the terms of this Agreement and effective as of the Program Start Date (as defined on the Cover Sheet), ANet hereby grants to Member the following use rights, during the Term:

(a) *Access to the Platform*: a non-exclusive, non-transferable right to access and use the Platform, solely for Member’s internal education-related purposes at Member’s facility in connection with the implementation of the Program.

(b) *Assessment Materials*: a non-exclusive, non-transferable license to use, reproduce and distribute solely to Permitted Users (as defined below) hard copies of the Assessment Materials (as defined on the Program Description Page) provided to Member during the Program, solely for Member’s internal purposes in connection with the implementation of the Program.

(c) *Resources*: a non-exclusive, non-transferable license to use and reproduce in hard copy form the Resources (as defined on the Program Description Page) provided to Member during the implementation of the Program, solely for Member’s internal, informational purposes related to Member’s educational mission.

(d) *Other Downloadable Content*: with respect to such additional content and materials that are owned by or licensed to ANet and made available for download by Member through proper use of the Platform (collectively, “Additional Content”, and together with the Assessment Materials and Resources, “ANet Content”), a non-exclusive license, non-transferable to download a copy of

any portion of such Additional Content, and use such Additional Content solely for Member’s internal purposes in connection with the implementation of the Program.

1.3 Permitted Users. “Permitted Users” shall mean the employees, board members and volunteers of Member with a professional need to know or need to access the Platform and ANet Content in connection with the implementation of the Program. ANet will either issue to Member or authorize a Member administrator to create and issue to each Permitted User, a user identification number and/or password for access to and use of the Platform. Member and its Permitted Users are responsible for maintaining the confidentiality of all user identification numbers and/or passwords and for ensuring that each user identification number and/or password is used only by the Permitted User to which it was issued. Member shall be solely responsible for the Permitted Users’ compliance with this Agreement, and for any and all activities that occur under Member’s account. Member will restrict Permitted Users from sharing passwords. Member will immediately notify ANet of any unauthorized use of Member’s account or any user identification number and/or password, or any other breach of security known to Member. Member will ensure that it has obtained any and all necessary and appropriate consents from students and parents to (a) provide student personally identifying information to ANet, and (b) establish student accounts and student access to the Platform. ANet will have no liability for any liability arising from Member’s failure to comply with the terms set forth in this Section.

1.4 Restrictions. The rights and licenses set forth in Section 1.2 are granted subject to the following restrictions:

(a) The Platform and ANet Content shall be used or accessed only by Permitted Users;

(b) Results of the Assessment Materials may not be used for the purposes of evaluating or determining the employment status of personnel of Member;

(c) Member shall not, directly or indirectly, and Member shall not encourage or assist, or knowingly permit any User to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code or source code of the Platform; (ii) modify, translate, or create derivative works based on any element of the Program or the Platform; (iii) license, sublicense, sell, resell, rent, lease, distribute, assign, or transfer its rights to use the Platform or any elements of the Program, or otherwise commercially exploit or make available to any third party any portion of the Platform or Program; (iv) use the

Program for timesharing purposes, to process data on behalf of third parties, or otherwise for the benefit of any person or entity other than for the benefit of Member and Permitted Users at Member's facility; (v) remove any proprietary notices from any materials furnished or made available to Member; (vi) publish any evaluation of the Platform without ANet's prior written consent; (vii) use the Platform for any purpose other than its intended purpose; (viii) use or access the Platform from or for the benefit of any facility or location other than the Member's primary facility; (ix) circumvent or otherwise interfere with any user authentication or security of the Platform, or disrupt the integrity or performance of the Platform; (x) attempt to gain unauthorized access to the Platform or its related systems or networks or any ANet Content; or (xi) use the Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious content or material, or to store or transmit content or material in violation of any rights of any third party.

1.5 Ownership; Reservation of Rights. Subject only to the rights expressly granted to Member under this Agreement, as between ANet and Member, all rights, title and interest in and to the Platform and the ANet Content, and any other ANet materials furnished or made available hereunder, and all modifications and enhancements thereof, including all copyright rights, patent rights and other intellectual property rights in each of the foregoing, will remain with and belong exclusively to ANet or ANet's licensors and providers, as applicable.

1.6 Feedback. The Parties acknowledge that Member or Permitted Users may, from time to time, provide to ANet ideas, feedback and suggestions about the Platform (collectively, "**Feedback**"). ANet and its licensors and providers shall be free to use such Feedback as they see fit without obligation of any kind to Member.

2. MEMBER MATERIALS; MEMBER DATA

2.1 Member Materials and Member Data. "Member Materials" means any and all information or materials provided to ANet by Member in connection with the implementation of the Program, including, without limitation, the Member Data (as defined on the Member Data Page).

2.2 Provision of Member Materials. Member agrees to provide ANet with all Member Materials necessary or desirable for ANet to implement the Program, including without limitation the Member Data. Such Member Materials shall be provided promptly when requested or otherwise agreed by the Parties, provided that the Member Data shall be provided in accordance with the timing set forth on the Member Data Page. Member acknowledges that timely

provision of such Member Materials is essential to the success of the Program. Member represents to ANet that it has all necessary rights to provide such Member Materials (including the Member Data) to ANet.

2.3 Access to Member Data Through State and Other Agencies. Member agrees to allow relevant agencies, including but not limited to the state education agency or local education agency to directly release registration, demographic and performance data for Member to ANet. This release covers data from 2007 to the present school year.

2.4 License to Member Materials. Subject to the terms and conditions of this Agreement, Member hereby grants to ANet a worldwide, non-exclusive, irrevocable, assignable, royalty-free, perpetual license to use, reproduce, distribute, display and create derivative works of Member Materials in connection with the implementation of the Program.

2.5 Reports. Member acknowledges and agrees that Member Data, and the Member's performance on the assessments at the grade, school and organizational level, may be disclosed, published, distributed and otherwise used by ANet in Reports (as defined on the Program Description Page) provided to Member. Such Reports shall comply at all times with Section 5 of this Agreement, as well as with the Family Educational Rights and Privacy Act of 1974 ("FERPA").

2.6 Aggregate Data. During or following the Term, ANet and its subcontractors shall have the right to disclose, distribute and use any Member Data and any other information input into the Platform by Member or Permitted Users ("Input Data"), as part of an aggregate set of data that does not identify any such data as being related to any specific Member student ("Aggregated Data"). Member acknowledges that ANet and its subcontractors may (a) compile Aggregated Data based on Member Data and Input Data, and (b) sell or otherwise distribute such Aggregated Data to third parties.

2.7 Use of Member Data. Except as otherwise set forth in this Agreement, ANet shall not disclose or distribute to third parties Member Data other than (a) as part of Aggregated Data, (b) to its subcontractors who require such information in connection with the implementation of the Program, or (c) to third parties for research and evaluation purposes. For clarity, the results of any research described in the foregoing clause (c) may be disclosed, published, distributed and otherwise used by ANet without restriction, provided that Member Data is not revealed in such disclosure, publication, distribution or use other than as part of Aggregated Data. Member hereby grants to ANet and its subcontractors a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify and distribute the Member

Data and Input Data in connection with the uses described in the foregoing clauses (a)-(c).

2.8 Student Records. With respect to any access by ANet to any “Education Records” (as such term is defined in FERPA held by Member under or in connection with this Agreement, ANet shall be acting as a legal agent and shall be deemed to be a “school official” (as such term is defined under FERPA) of Member. As between the Parties, any Education Records protected by FERPA submitted to ANet by Member in connection with this Agreement shall be deemed the Confidential Information of Member subject to Section 5. ANet agrees not to disclose any FERPA protected Education Record to any third party except as permitted by FERPA or as authorized or permitted by Member or this Agreement. ANet will implement or cause to be implemented technical and administrative security measures to protect the confidentiality, integrity and security of the Education Records as further detailed in Section 2.9 below.

2.9 Data Security. ANet certifies that it and, after reasonable investigation, diligence and inquiry, its vendors, consultants, contractors and other parties engaged by ANET in contact with Member Data have established, implemented, and will maintain comprehensive information security programs detailing administrative, technical, and physical safeguards designed to ensure the security and confidentiality of Member Data, protect against anticipated threats or hazards to the security and integrity of Member Data, protect against unauthorized access to or use of Member Data, and provide for the proper disposal of Member Data, all as required by applicable law and this Agreement. Member reserves the right to assess ANET’s controls and security practices to ensure compliance with these requirements one time per calendar year, upon 14 business days’ advance notice to ANet and during ANet’s normal business hours. All costs incurred by Member for such assessments shall be at Member’s expense.

3. FEES; PAYMENT TERMS

3.1 Fees; Payment Terms. All payments for fees as set forth on the Cover Sheet shall be made by Member or, if applicable and as set forth on the Cover Sheet, by a sponsoring entity on behalf of Member, to ANet in accordance with the payment schedule set forth on the Cover Sheet. Failure to pay the deposit by the above date may result in a revised payment schedule. Payments are non-refundable and cannot be pro-rated. ANet reserves the right to terminate services related to the Program and this Agreement if any payment is more than thirty (30) days past due.

3.2 Printing. Member is responsible for all printing and printing costs associated with duplicating the Assessment

Materials prior to the administration of each assessment, as set forth on the cover sheet.

4. TERM, TERMINATION

4.1 Term. Unless earlier terminated as described below, the term of the Agreement shall commence on the Effective Date and continue for the period set forth on the Cover Sheet (the “Term”).

4.2 Termination. Each Party may terminate this Agreement upon written notice in the event the other Party commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of such breach.

4.3 Obligations on Termination. Upon the expiration or termination of this Agreement, Member shall (a) cease using the Platform and all ANet Content, and (b) promptly return to ANet or, at ANet’s option, destroy, all copies of any ANet Content in Member’s possession or control.

4.4 Survival. The following Sections shall survive any expiration or termination of this Agreement: Sections 1.3, 1.4, 1.5, 2.4, 2.5, 2.6, 2.7, 2.8, 3, 4.3, 4.4, 5, 6, 7, 8, 9, 10, **Error! Reference source not found.** and 12.

5. CONFIDENTIALITY

5.1 Confidential Information.

(a) *Definition:* “Confidential Information” means any and all information or data, regardless of whether it is in tangible form, disclosed orally or in writing, by either Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), (a) that the Disclosing Party has identified as confidential or proprietary (either orally or in writing), and (b) such information which is reasonably understood by a reasonable person to be confidential or proprietary information of the Disclosing Party; provided, however, that in any event ANet’s Confidential Information shall include (i) all information relating to the Program, including without limitation the ANet Content and the Platform, and (ii) the terms of this Agreement, including without limitation pricing information.

(b) *Exclusions:* Information and data will not be deemed “Confidential Information” if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party directly or indirectly from a source other than one having

an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

(c) *Obligations*: The Parties shall use reasonable measures to protect the secrecy of, avoid disclosure and unauthorized use or reproduction of the other Party's Confidential Information. Without restricting or otherwise limiting the exercise by a Party of the rights and licenses expressly granted to it under this Agreement, Confidential Information may be disclosed to only (1) such employees and consultants of the Parties as may have a need to know such information in connection with the exercise of its rights and performance of its obligations under this Agreement, and (2) legal or financial advisors of the Parties, provided that such employees and consultants are bound by written agreements, and advisors are bound by ethical duties, in each case respecting such Confidential Information in accordance with the terms of this Section 5.1.

6. REPRESENTATIONS, WARRANTIES AND EXCLUSIONS

6.1 Representations and Warranties. ANet represents and warrants to Member that ANet shall implement the Program in a professional and workmanlike manner. Each Party represents and warrants to the other Party that such Party has the required rights, power and authority to enter into this Agreement and to grant all rights, authority and licenses granted hereunder.

6.2 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM AND ANET CONTENT) IS PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND AND ANET DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. MEMBER ACKNOWLEDGES THAT ANET DOES NOT WARRANT THAT THE PROGRAM (INCLUDING WITHOUT LIMITATION THE PLATFORM) WILL BE PROVIDED IN AN UNINTERRUPTED OR ERROR FREE FASHION AT ALL TIMES, OR THAT THE PROGRAM WILL MEET MEMBER'S REQUIREMENTS.

7. INDEMNIFICATION

7.1 Indemnification by ANet. ANet shall defend at its expense any claim, suit or proceeding (each, a "Claim") brought against Member by any third party to the extent such Claim is based upon a claim that Member's proper use of the Platform or any

ANet Content in accordance with the terms of this Agreement infringes such third party's rights under any United States patent or copyright, and ANet shall pay all costs and damages finally awarded against Member by a court of competent jurisdiction as a result of any such Claim. If Member's proper use of the Platform or any ANet Content in accordance with the terms of this Agreement constitutes or in ANet's opinion might be held to constitute infringement as set forth above, ANet may, at its option, (a) modify the Platform or ANet Content, as applicable, so as to avoid infringement or misappropriation; (b) procure the right for Member to continue to use the Platform or ANet Content, as applicable; or (c) terminate the Agreement and provide to Member a refund of the prorated fees. The foregoing indemnity shall not apply to any Claim based upon or arising from any use of the Platform or ANet Content outside the scope of this Agreement or in a manner for which it was not designed.

7.2 Indemnification by Member. Member shall defend at its expense any Claim brought against ANet by a third party to the extent such Claim is arising out of ANet's proper use of the Member Data in accordance with the terms of this Agreement, and Member shall pay all costs and damages finally awarded against ANet by a court of competent jurisdiction as a result of any such Claim.

7.3 Additional Terms. The foregoing obligations in this Section 7 are subject to the Party that is seeking indemnification (a) promptly notifying the other Party in writing of such Claim; (b) promptly giving the other Party the right to control and direct the investigation, preparation, defense and settlement of such Claim; and (c) giving assistance and full cooperation for the defense of same.

8. LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL ANET BE LIABLE TO MEMBER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, LOST PROFITS, LOST SALES OR BUSINESS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, LOST DATA, OR FOR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF ANET HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. ANET SHALL NOT BE LIABLE FOR ANY DAMAGES, COSTS, OR LIABILITIES IN EXCESS OF THE FEES PAID OR PROPERLY PAYABLE BY MEMBER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTHS PRECEDING THE TIME OF ANY CLAIM.

9. NON-SOLICITATION

During the Term and for one year thereafter, each Party agrees not to solicit, entice or persuade any employee or consultant of the other Party to leave the services of such other Party, provided that the foregoing shall not prevent any Party from employing or engaging such an employee who is responding to a general recruiting solicitation. Without limiting the foregoing, in the event that either Party plans on engaging or employing any person that such Party knows is or was an employee or consultant of the other Party during the Term, such Party must provide prior written notice to the other Party.

10. PUBLICITY

10.1 ANet shall be entitled to (a) identify Member as a customer of ANet, (b) use Member's name in any advertising, promotional or sales literature, or in any other form of publicity, and (c) publicize, by news release or other public announcements, the existence of an arrangement between the Parties.

10.2 Member hereby grants permission to take photographic, audio and video recordings of Member employees, contractors and consultants during sessions with Member and Member and Network events. ANet will use such photographic, audio and video recordings only for the purposes of education, advertising, promotion, marketing, and/or public relations. Member waives any right to royalties or other compensation arising or related to the use of such images and recordings. Member represents that it has all necessary rights to grant such permission to ANet including having acquired all related and necessary consents from its employees, contractors and consultants.

11. DISPUTES

11.1 Any controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled as follows: Members of the senior management of both Parties shall meet to attempt to resolve such disputes. If a dispute cannot be resolved within ten (10) business days, either party may make a written demand for mediation. Within thirty (30) days after such written notification, the parties shall meet for one (1) day with an impartial mediator. The costs and expenses of the mediator shall be shared equally by the parties. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in Boston, Massachusetts. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. The arbitrator may not award non-monetary or equitable relief of

any sort. The arbitrator shall have no power to award damages inconsistent with this Agreement. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the Party seeking discovery. All aspects of the arbitration shall be treated as confidential. Neither the parties nor the arbitrator may disclose the existence, content or results of the arbitration, except as necessary to comply with legal or regulatory requirements. Before making any such disclosure, a Party shall give written notice to all other parties and shall afford such parties a reasonable opportunity to protect their interests. The result of the arbitration shall bind the Parties, and judgment on the arbitrator's award may be entered in any court having jurisdiction. Each Party shall bear its own costs of the arbitration. The fees and expenses of the arbitrator shall be shared equally by the Parties.

12. GENERAL

12.1 Relationship. Nothing in this Agreement shall be construed to place the Parties in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party will have the authority to obligate or bind the other in any manner.

12.2 Governing Law, Jurisdiction. All disputes, claims or controversies arising out of this Agreement, or the negotiation, validity or performance of this Agreement, or the transactions contemplated hereby shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Subject to and without limiting Section **Error! Reference source not found.** of this Agreement, each of the Parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America located in the Commonwealth of Massachusetts (the "Massachusetts Courts") for any litigation among the Parties hereto arising out of or relating to this Agreement pursuant to Section 12.9.

12.3 No Assignment. Neither Party may assign this Agreement, in whole or in part, or, in the case of Member, sublicense any of the rights granted herein, in each case without the prior written consent of the other Party, provided, however, that either Party (the "Assigning Party") may assign this Agreement without the written consent of other Party (the "Non-Assigning Party") to an entity succeeding to all or substantially all the assets and business of the Assigning Party by merger or purchase, provided that such entity expressly assumes all of the terms and conditions of this Agreement.

Any attempted assignment, delegation or transfer by an Assigning Party in violation hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on the Parties and their successors and assigns. For clarity, ANet may subcontract any of its obligations hereunder to a third party.

12.4 Severability. In the event that any provision of this Agreement is found to be unenforceable, such provision will be reformed only to the extent necessary to make it enforceable, and such provision as so reformed (and all other provisions) will continue in effect, to the extent consistent with the intent of the Parties as of the Effective Date.

12.5 Force Majeure. ANet shall not be deemed in breach hereunder for any cessation, interruption or delay in the performance of its obligations due to causes beyond its reasonable control, including, without limitation, earthquake, flood, or other natural disaster, act of God, labor controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgment or decree.

12.6 Amendment; Waiver. This Agreement may not be amended or modified, in whole or part, except by a writing signed by duly authorized representative of both Parties. No provision or part of this Agreement or remedy hereunder may be waived except by a writing signed by a duly authorized representative of the Party making the waiver. Failure or delay by either Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

12.7 Notices. All notices under or related to this Agreement will be in writing and will reference this Agreement. Notices will be deemed given when: (i) delivered personally; (ii) sent

by confirmed telecopy or other electronic means; (iii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth on the Cover Sheet or such other addresses designated pursuant to this Section 12.7.

12.8 Entire Agreement. This Agreement constitutes the entire agreement between the Parties. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and prevails over any conflicting terms or conditions contained on printed forms submitted with purchase orders, sales acknowledgments or quotations.

12.9 Remedies. Each Party retains all rights not expressly granted hereunder and any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy available under this Agreement or otherwise. Because a breach of any obligations set forth in Sections 5 (Confidentiality), 1.5 (Ownership) and 9 (Non-Solicitation) will irreparably harm a party and substantially diminish the value of a Party's proprietary rights or its Confidential Information, the Parties agree that if either Party believes in good faith that the other Party has or intends to breach any of its obligations thereunder, the other Party shall, without limiting its other rights or remedies, be entitled to seek equitable relief (including, but not limited to, injunctive relief) to enforce its rights hereunder, including without limitation protection of its proprietary rights. The Parties agree that a Party need not invoke the procedures set forth in Section 11.1 in order to seek injunctive or declaratory relief.