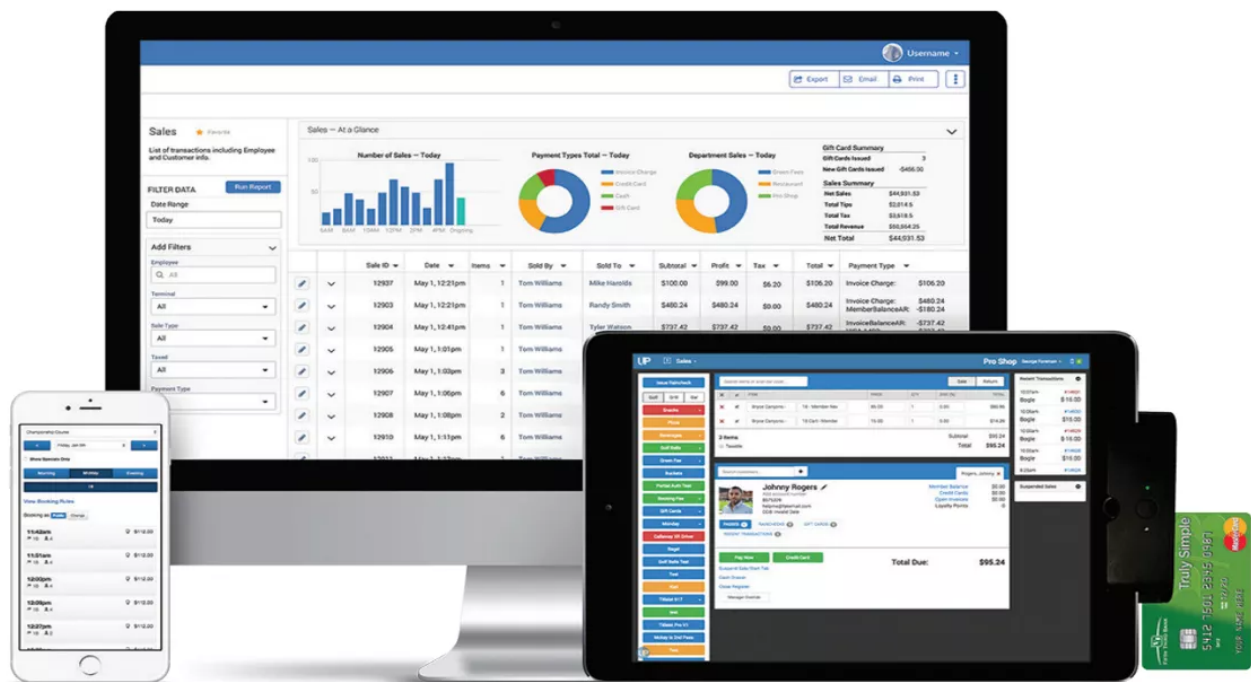


Proposal prepared for:

Veronica Myers

Ascarate Golf Course -Ascarate

foreUP



Proposal created by:

Will Moore

foreUP Golf Software

Products and Services

Tee Sheet

- Cloud Based Tee Sheet, Anywhere Access
- Text & Email Golfers Anytime From Tee Sheet
- Live Online Web Booking, Configurable by Player Type
- Event, League, Outing Management, Cart Signs
- Automated Player Reminders
- Easy Point/Click, Drag/Drop Interface

Point of Sale

- Customer Dashboard w/ Photo ID & Sales History
- Seamless Management of All Pro Shop & Bar/Grill Sales
- Pre-Authorization of Credit Cards to Hold Tabs
- Integrated, Tiered Loyalty Program, Customizable by Item/Dept
- Layered Tournament/Shop Credit Capability
- Complex Pass Program with Customizable Parameters
- Integrated Time & Attendance (Time Clock Mgmt)

Email / Text Marketing

- Easily Design and Send Email AND Text Message Campaigns
- Full Marketing Automation
- Fully Integrated Email and Texting Based on Play & Purchase Behavior Patterns
- Pre-Built Templates for Ease of Use
- Full Send and Open Analytics, Google Analytics Compatible

Website

- Dedicated Website Support Line
- Full Website Build
- All Builds are Completely Computer, Tablet, and Mobile Friendly
- Website Hosting
- Regular Updating and Monitoring of Website

Member Billing

- Easily Manage Automatic Member/Dues Payments and A.R
- Ability to Auto-Bill to Card on File OR Checking Account (ACH – 1% Fee)
- Multiple Layers of Billing (Daily, Weekly, Monthly, Quarterly, Ann)
- Customizable Food & Beverage Minimum Tracking
- Easy Online Member Bill Pay / Statement Viewing

Food & Beverage

- Optimized for Tablet/Tablesides (Apple or Android)
- Easily Split Tabs, Split Shareable Items
- Custom Menus with Timed Events (Happy Hours)
- Customization of Buttons/Layers (Colors, Etc)
- Customizable Table Mapping
- Pre-Authorization of Credit Cards to Hold Open Tabs

Implementation

- Includes Full System Setup/Buildout
- Includes Full Data Migration from Previous System
- UNLIMITED Training Sessions Over Time

Proposal/Pricing

Name	Price	Discount
<div>Advanced Food & Beverage (Pro)<ul style="list-style-type: none">Optimized for Tablet/Tablesides (Apple or Android)Easily Split Tabs, Split Shareable ItemsCustom Menus with Timed Events (Happy Hours)Customization of Buttons/Layers (Colors, Etc)Customizable Table MappingPre-Authorization of Credit Cards to Hold Open Tabs</div>	\$120.00	-\$12.00
<div>Email / Text Marketing (Pro)<ul style="list-style-type: none">Easily Design and Send Email AND Text Message CampaignsFull Marketing Automation, Unlimited SendsFully Integrated Email and Texting Based on Play & Purchase Behavior PatternsPre-Built Templates for Ease of UseFull Send and Open Analytics, Google Analytics Compatible</div>	\$90.00	-\$9.00

Member Billing (Pro) <ul style="list-style-type: none">Easily Manage Automatic Member/Dues Payments and A.RAbility to Auto-Bill to Card on File OR Checking Account (ACH – 1% Fee)Multiple Layers of Billing (Daily, Weekly, Monthly, Quarterly, Ann)Customizable Food & Beverage Minimum TrackingEasy Online Member Bill Pay / Statement Viewing	\$60.00	-\$6.00
Tee Sheet (Pro) <ul style="list-style-type: none">Cloud Based Tee Sheet, Anywhere AccessLive Online Web Booking, Configurable by Player TypeEvent, League, Outing Management, Cart SignsAutomated Player RemindersEasy Point/Click, Drag/Drop Interface	\$180.00	-\$18.00

Point of Sale (Pro) <ul style="list-style-type: none">Customer Dashboard w/ Photo ID & Sales HistorySeamless Management of All Pro Shop & Bar/Grill SalesPre-Authorization of Credit Cards to Hold TabsIntegrated, Tiered Loyalty Program, Customizable by Item/DeptLayered Tournament/Shop Credit CapabilityComplex Pass Program with Customizable ParametersIntegrated Time & Attendance (Time Clock Mgmt)	\$190.00	-\$19.00
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Subtotal	\$576.00
Discount	\$0.00
Total	\$576.00

Name	Price
Professional Services One Time Set Up Fee	\$1,000.00

Subtotal	\$1,000.00
Discount	\$0.00
Total	\$1,000.00

Agreement

****Please Select One of the Payment Options Below****

Select Your Pricing Option	Terms
<input type="checkbox"/> Monthly Cash Payment	\$576.00 / Mo
(See Section 6.1)	Hardware cost \$7000 for year 1 due up front
<input type="checkbox"/> Hybrid (Cash/Inventory Exchange)	1 Tee Time / Day + \$375.00 / Mo
(See Section 6.2)	Hardware fee is \$3000 in this plan due up front
<input type="checkbox"/> Inventory Exchange	2 Tee Times / Day
(See Section 6.3) <ul style="list-style-type: none">• Max 4 players per trade sold each day (1-4 possible)• Max 30% discount on trade times• Only sold on course website in shopping cart (not promoted)• No accumulation/rollover if unsold for a given day	Hardware fee is \$1500 in this plan due up front

License Agreement

This License Agreement (this “**Agreement**”) is made and entered into effective as of the date of the last signature set forth below (the “**Effective Date**”), by and between Golf Compete, Inc., a Delaware corporation doing business as Licensor (“**Licensor**”) and Veronica Myers, the manager or operator (the “**Manager**”) of Ascarate Golf Course -Ascarate (the “**Course**,” also referred to herein as “**Licensee**”).

Term: 36 Months

Billing Start Date:

This License Agreement is subject to the foreUP License Terms and Conditions, which are attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the Effective Date.

Signature Page

LICENSOR:
GOLF COMPETE, INC.

LICENSEE: Ascarate Golf Course -Ascarate

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Needed Payment Information:

Payment amount dues are billed on the 1st of each month. A confirmation of each payment will be emailed to provided customer email; (email address). foreUP only takes payment in two forms; Credit Card or ACH. Please fill in either CC or ACH:

Credit Card:

ACH:

Card Number:

Bank Name:

Exp: /

Account Number:

CVV:

Routing Number:

Facility/Location Address(es) including City, State and Zip Code: 6900 Delta Drive

☐ I have read and agree to the terms and conditions associated with this proposal and agreement.

foreUP License Terms and Conditions

NOW, THEREFORE, in consideration of the foregoing and upon the terms and conditions set forth below, the parties hereto agree as follows:

1. DEFINITIONS

"Agreement" means the Cover Page and these foreUP Terms and Conditions

"Approved Locations" means Licensee's and Licensor's website and mobile applications.

"Cover Page" means the Initial Page to this Agreement, titled "License Agreement."

"Improvement" means any improvement made by either of the parties hereto, bug fixes, modification, enhancement or any other derivative work of the Licensed Technology created after the Effective Date.

"Licensee's Business" means Licensee's operation and management of the Course.

"Licensed Technology" means the Software and the Materials.

"Materials" means any instructions, manuals or other documentation and materials, including, without limitation, source code for the Software and related comments, white papers, error reports and help files, related to the development, installation, maintenance or use of the Software existing as of the Effective Date.

"Software" means Licensor's proprietary software product, including both source code and executable format, in the version that exists as of the Effective Date that is designed to offer one retail product at a time via a web interface which displays the next product in the database queue upon the trigger of a definable event. The term "Software" also includes Improvements and custom modifications to the Materials.

"Services" means the individual products (i.e. "Tee Sheet", "Point of Sale", etc..) associated with the licensed technology.

2. LICENSE. Licensor hereby grants to Licensee a nonexclusive, year-to-year, nontransferable, worldwide license to use the Licensed Technology.

3. LOCATIONS; USE

3.1. Approved Locations. Licensee shall use the Licensed Technology only at the Approved Locations. Licensee may temporarily transfer the Licensed Technology to a different website for testing purposes but in no case for more than twenty-four (24) hours unless Licensee provides Licensor advance notice, in writing, identifying the location of the test site. Licensee acknowledges and agrees that it will purchase an additional license from Licensor if Licensee desires to use the Licensed Technology for commercial purposes on a different site. Any additional licenses required by Licensee will be entered into on terms and conditions negotiated and specified in a separate license agreement between Licensor and Licensee.

3.2. Restrictions on Use. Licensee agrees to use the Licensed Technology only for Licensee's Business. Licensee shall not (a) permit any parent, subsidiaries, affiliated entities or third parties to use or have access to the Licensed Technology, (b) process or permit to be processed the data of any other party captured through any site other

Software to use such data for the display, offer, or sale of any retail goods, except that Licensee shall be permitted to push data to third parties whose services are used to facilitate Licensee's Business, which services may include, but are not limited to, merchant processing, product shipping, web analytics, state sales tax reporting or the like or (d) permit, give, or authorize any other party to possess the Licensed Technology source code or executable code, except that Licensee, its employees, and its software programming contractors are permitted to possess, view, and modify the Licensed Technology source code to debug or create Improvements to the Licensed Technology.

4. PROPRIETARY RIGHTS.

4.1. Licensor. Licensee acknowledges and agrees that as between Licensee and Licensor, except for the license granted under this Agreement, Licensor retains all right, title and interest in and to the Licensed Technology and any Improvement created by or for Licensor, including any Improvements created by Licensee after the Effective Date, and all copyright, trade secret, trademark, patent and other intellectual property rights therein.

4.2. General. Each party hereto hereby reserves all intellectual property rights not expressly granted hereunder. Except as expressly provided otherwise herein, this Agreement will not be construed to assign or transfer from either party hereto to the other party any intellectual property rights developed or acquired after the Effective Date.

5. TECHNICAL TRANSFER. Within three (3) business days after the Effective Date, unless otherwise specified by either Licensor or Licensee, Licensor shall deliver to Licensee the suite of Services purchased by the Licensee.

6. LICENSE FEE; Payment Options.

6.1. Cash Payment Option. The terms of this [Section 6.1](#) apply to all Licensees that have selected the "Cash" payment option on the Cover Page.

6.1.1. As consideration for the license granted in [Section 2](#), Licensee shall pay Licensor the Monthly or Annual Fee set forth on the Cover Page (the "License Fee"). Monthly Fees shall be due and payable in advance each month during the Term, beginning on the Billing Start Date. Annual Fees shall be due and payable in advance each year during the Term, beginning on the Billing Start Date.

6.2. Hybrid Payment Option. The terms of this [Section 6.2](#) apply to all Licensees that have selected the "Hybrid" payment option in the License Agreement.

6.2.1 Base Fee. As partial consideration for the license granted in [Section 2](#), Licensee shall pay Licensor the Monthly or Annual Fee set forth on the Cover Page. Monthly Fees shall be due and payable in advance on the first day of each month during the Term, beginning on the Billing Start Date. Annual

than the Approved Locations, (c) permit any other party to create any

foreUP License Terms and Conditions

Fees shall be due and payable in advance each year during the Term, beginning on the Billing Start Date.

6.2.2. Inventory Exchange Fees. In addition to the Monthly Fee, and as partial consideration for the license granted in Section 2, Licensors may retain the fees it collects (including but not limited to greens fees, cart fees, and related fees) for the first tee time(s) booked and paid for each day during the Term through each Approved Location (such fees, “**Collected Fees**,” and together with the Monthly or Annual Fee, the “**License Fee**”), beginning on the Billing Start Date. With respect to Collected Fees, Licensors may, in its sole discretion, (a) allow such tee time to be filled with between one (1) to four (4) players including cart fees; and (b) discount the greens fees, cart fees, and other fees associated with that tee time. Except for the Collected Fees, any amount collected by Licensors through the Approved Locations shall be remitted to Manager. In connection with the Collected Fees, Licensors will utilize commercially reasonable efforts to promote the Program, the Course and the Course’s participation in the Program.

6.2.3. The foreUP online booking portal for Licensee’s website must be activated within 30 days of the Effective Date (if course conditions allow for play) or by Licensee’s opening day. If not activated within 30 days, the Monthly Fee shall be increased by two hundred and fifty dollars (\$250.00) until the foreUP online booking portal is activated. Licensee shall make commercially reasonable efforts to keep the tee sheet and online booking methods open while Licensee is open for play.

6.3. Inventory Exchange Payment Option. The terms of this Section 6.3 apply to all Licensees that have selected the “Inventory Exchange” payment option on the Cover Page.

6.3.1. As consideration for the license granted in Section 2, Licensors may retain the fees it collects (including but not limited to greens fees, cart fees, and related fees) for the first tee time(s) booked and paid for each day during the Term through each Approved Location (such fees, “**Collected Fees**,” and collectively, the “**License Fee**”), up to the Number of Daily Collected Fees set forth on the Cover Page, beginning on Billing Start Date. With respect to Collected Fees, Licensors may, in its sole discretion, (a) allow such tee time to be filled with between one (1) to four (4) players including cart fees; and (b) discount the greens fees associated with that tee time. Except for the Collected Fee, any amount collected by Licensors through the Approved Locations shall be remitted to Manager. In connection with the Collected Fees, Licensors will utilize commercially reasonable efforts to promote the Program, the Course and the Course’s participation in the Program.

6.3.2 The foreUP online booking portal for Licensee's website must be activated within 30 days of the Effective Date (if course conditions allow for play) or by Licensee's opening day. If not activated within 30 days, Licensee shall pay Licensors a two hundred and fifty dollar (\$250.00) monthly fee, which shall be included in the License Fee, until the foreUP

online booking portal is activated. Licensee shall make commercially reasonable efforts to keep the tee sheet and online booking methods open while Licensee is open for play.

6.4. Taxes; Late Payments. All License Fees payable under this Section 6 are exclusive of, and Licensee shall pay and hold Licensors harmless from, any local, state or federal sales, use, value-added, excise or similar taxes that may be imposed by any jurisdiction (other than taxes on the net income of Licensors). Licensors reserves the right to charge a monthly interest rate of 3% monthly on all License Fees and other fees due hereunder that are fifteen (15) or more days late. Licensee agrees to pay all collection fees, including associated commission and legal fees.

7. CONFIDENTIAL INFORMATION.

7.1. Obligations. The parties hereto acknowledge and agree that proprietary or nonpublic information disclosed by one party (the “**Disclosing Party**”) to the other party (the “**Receiving Party**”), directly or indirectly, which information is marked as “proprietary” or “confidential” or, if disclosed orally, is designated as confidential or proprietary at the time of disclosure and is summarized in writing within thirty (30) days of disclosure, constitutes the confidential and proprietary information (“**Confidential Information**”) of the Disclosing Party. The Receiving Party shall retain in confidence and not disclose to any third party any Confidential Information of the Disclosing Party without the Disclosing Party’s express written consent, and the Receiving Party shall not use such Confidential Information except to exercise the rights and perform its obligations under this Agreement. Without limiting the foregoing, each party shall use at least the same procedures and degree of care which it uses to protect its own Confidential Information of like importance, and in no event less than reasonable care.

7.2. Exceptions. Notwithstanding the foregoing, Confidential Information will not include information to the extent that, in each case, such information, as demonstrated by written documentation:

7.2.1 was already known by the Receiving Party, to the extent such information was so known by the Receiving Party without an obligation of confidentiality, at the time of disclosure hereunder;

7.2.2 was generally available to the public or otherwise part of the public domain at the time of its disclosure to the Receiving Party hereunder;

7.2.3. became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of the Receiving Party in breach of this Agreement; or

7.2.4. was subsequently lawfully disclosed to the Receiving Party after the Effective Date by a person other than a party or

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developed by the Receiving Party without reference to any information or materials disclosed by the Disclosing Party.

7.3. Required Disclosure. Nothing in this Agreement shall prohibit either party from disclosing Confidential Information of the other party if legally required to do so by judicial or governmental order or by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process in a judicial or governmental proceeding ("**Required Disclosure**"); provided that the disclosing party shall (a) give the other party prompt written notice of such Required Disclosure prior to disclosure, (b) cooperate with the other party in the event that it elects to contest such disclosure or seek a protective order with respect thereto and (c) in any event only disclose the exact Confidential Information, or portion thereof, specifically requested by the Required Disclosure.

7.4. No Licenses or Warranties for Confidential Information. All Confidential Information shall remain the property of the respective Disclosing Party. Except as otherwise provided in this Agreement, no license under any intellectual property right is granted or implied by the conveying of Confidential Information to Receiving Party. None of the Confidential Information which may be disclosed by Disclosing Party shall constitute any representation, warranty, assurance, guarantee, or inducement by Disclosing Party of any kind and, in particular, with respect to the non-infringement of any intellectual property rights, or other rights of third persons or of Disclosing Party.

7.5. Injunctive Relief. In the event of breach of this [Section 7](#), the non-breaching party may have no adequate remedy at law and will be entitled to seek immediate injunctive and other equitable relief, without the necessity of showing actual money damages.

8. COVENANTS OF THE PARTIES.

8.1. Mutual. The parties hereto covenant and agree with respect to the following matters during the Term of this Agreement:

8.1.1. No Restrictions on Other Activities. Except as otherwise specifically provided herein, neither party hereto is restricted from engaging into relationships with other clients or customers or from generating revenue from advertising on its website or mobile applications and, except as specifically provided herein, all revenues generated by each party will be retained by such party.

8.1.2. Indemnification. Manager agrees to defend, indemnify and hold harmless Licensor and its affiliates, officers, directors, agents and employees, from and against any claims, lawsuits, investigations, penalties, damages, losses or expenses arising out of or relating to the use by golfers of the Software, it being understood that the Manager is to bear

all risks associated with Course conditions and risks associated with golfers playing the Course.

8.1.3. Manager will provide Licensor with live access to the Course's tee sheet, so that users of Licensor's website and/or mobile applications can view available tee times at the Course by accessing such website and/or mobile applications.

8.2. Licensor. Licensor represents and warrants to Licensee, each of which is true and correct as of the Effective Date and shall continue to be true and correct at all times during the Term of this Agreement (as set forth in [Section 10.1](#)):

8.2.1. No Conflicting Agreements. Licensor is not currently obligated nor will it assume any future obligation under any contract (including without limitation any license, covenant or commitment of any nature) or other agreement, instrument or arrangement that could conflict with its material obligations under this Agreement.

8.2.2. Right to License. Licensor owns all right, title and interest in and to the Licensed Technology. Licensor has the full right to grant to Licensee the license granted under this Agreement, and Licensee's right to exercise such license will be unrestricted (except by the terms of the license). The Licensed Technology provided to Licensee under this Agreement is the most current version of the Licensed Technology and is comprehensive of all available materials related to the Software.

8.2.3. No Infringement. The Licensed Technology does not and will not infringe or violate any copyright, trade secret, patent, trademark or other proprietary right of any third party. There are no liens, encumbrances or claims pending or threatened against Licensor or, to Licensor's knowledge, anyone else, that relate to the Licensed Technology.

8.3. Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, LICENSOR DOES NOT MAKE ANY OTHER WARRANTIES WHATSOEVER, EITHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE LICENSED TECHNOLOGY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

9. LEGAL RIGHTS

9.1. Limitation on Liability. Licensor shall not be liable to Licensee for indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from Licensee's use or inability to use the Licensed Technology, arising from any cause of action whatsoever, including contract, warranty,

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strict liability or negligence, even if Licensor has been notified of the possibility of such damages.

9.2. Limitation on Recovery. Under no circumstances shall the liability of Licensor to Licensee, under this Agreement, exceed the amounts paid by Licensee to Licensor under this Agreement.

9.3. Indemnification. Licensor shall indemnify and hold harmless Licensee from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by the Licensed Technology. Licensee agrees to notify Licensor of any such claim promptly in writing and to allow Licensor to control the proceedings. Licensee agrees to cooperate fully with Licensor during such proceedings. Licensor shall defend and settle at its sole expense all proceedings arising out of the foregoing. In the event of such infringement, Licensor may replace, in whole or in part, the Licensed Technology with a substantially compatible and functionally equivalent computer program or modify the Licensed Technology to avoid the infringement.

9.4. Prosecution of Infringers. During the Term of this Agreement, Licensor and Licensee shall give each other written notice of any acts of infringement related to the Licensed Technology of which Licensor or Licensee has knowledge.

9.5. Sole Remedy. Licensor's performance under this [Section 9](#) shall be Licensee's sole and exclusive remedy in the event of infringement or misappropriation of any copyright, patent, trademark, trade secret or any other intellectual property rights of any third party by the Licensed Technology.

10. TERM AND TERMINATION.

10.1. Term. This Agreement will be effective as of the Effective Date and will continue in full force and effect until the number of months set forth on the Cover Page have elapsed following the Billing Start Date (the "**Initial Term**"). Unless Licensee provides written notice of termination to Licensor at least sixty (60) days prior to the end of the then- current Term, this Agreement will automatically renew for an additional one (1) year term (each such term a "**Renewal Term**," and together with the Initial Term, the "**Term**"), at the end of each then-current Term, and will continue in full force and effect unless and until this Agreement is otherwise terminated as provided in [Section 10.2](#) below. Licensee's obligation to pay the annual License Fee becomes absolute fifty-nine (59) days prior to the then end of the then-current Term.

10.2. Termination. Each party hereto shall have the right to terminate this Agreement and the license granted herein upon the occurrence the following events (each, an "**Event of Default**"):

10.2.1. In the event the other party hereto violates any material provision of this Agreement;

10.2.2. In the event that Licensee decides to terminate this Agreement, Licensee shall pay remaining dues, determined by Licensor (but not exceeding that of the current full value of this Agreement if paid through the end of the Term including automatic renewals), to satisfy the Terms and License Fee of this Agreement;

10.2.3. In the event that Licensee decides to remove one (or more) Services from this Agreement, Licensee shall pay remaining fees associated with such Service, as determined by Licensor in its sole discretion (but not exceeding that of the current full value of that Service in this Agreement, if paid through the end of the Term including automatic renewals), to satisfy term and License Fee for aforementioned Service, (removal of one or more services may affect allocated discounts on remaining services, as determined by Licensor in its sole discretion);

10.2.4. In the event the other party hereto (i) terminates or suspends its business, (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, (iii) becomes insolvent or subject to direct control by a trustee, receiver or similar authority;

10.2.5. In the event the other party has wound up or liquidated, voluntarily or otherwise, or had a change of management;

10.2.6. In the event of a sale of the facility, or change in management, licensee agrees to deliver appropriate documentation verifying the sale/management change as soon as available to Licensor and to (i) transfer this Agreement to new facility owners or operators, or (ii) pay remaining dues, determined by Licensor (but not exceeding that of the current full value of this Agreement if paid through the end of Term, including automatic renewals), to satisfy term and License Fee of agreement; or

10.2.7. In the event that Licensor determines that Licensor cannot continue to provide the Licensed Technology to Licensee for any reason at any time during this Agreement, Licensor may terminate this Agreement by providing at least four (4) weeks' written notice to Licensee.

10.3. Effect of Termination. Upon any termination or expiration of this Agreement for any reason, Licensee will pay to Licensor any fees due and owing under this Agreement as of the effective date of termination. All delinquent accounts will be charged an interest rate of 3% monthly. In the event any balance is not paid as agreed, Licensee agrees to pay all collection fees, including associated commission and legal fees.

10.4. Notice and Opportunity to Cure. Upon the occurrence of an Event of Default, the non-defaulting party shall deliver to the defaulting party a Notice of Intent to Terminate that identifies in reasonable detail the Event of Default. If the Event of Default remains uncured for thirty (30) days, the non-defaulting party may terminate this Agreement and the

foreUP License Terms and Conditions

license granted herein by delivering to the defaulting party a Notice of Termination that identifies the effective date of the termination, which date shall not be less than thirty (30) days after the date of delivery of the Notice of Intent to Terminate.

10.5. Proration and Refunds. Upon the occurrence of any Event of Default caused by Licensor, Licensor shall refund to Licensee an amount equal to the Licensee Fee paid for the then-current Term divided by 365 days, multiplied by the number of days remaining in the then-current Term as of the license termination date. No refund shall be issued to Licensee for any Event of Default caused by Licensee.

10.6. Procedure. Within ten (10) days after termination of the license, Licensee shall return to Licensor, at Licensee's sole expense, the Licensed Technology and all copies thereof, delete or destroy all other copies of the Licensed Technology, and deliver to Licensor a certification, in writing signed by an officer of Licensee, that the Licensed Technology has been returned, all copies deleted or destroyed, and its use discontinued.

11. GENERAL PROVISIONS.

11.1. Notices. Any notice to be given under this Agreement shall be in writing and may be effected by personal delivery or by e-mail or facsimile that provides confirmation of delivery, or by next day delivery through Federal Express or other reputable, overnight courier service, in each case delivered or addressed as set forth.

11.2. No Assignment. Neither this Agreement, nor any rights under this Agreement, may be assigned or otherwise transferred by either party, in whole or in part, whether voluntarily, or by operation of law, without the prior written consent of the other party; however, Licensor may assign, without such consent, all its rights and obligations under this Agreement to a wholly-owned subsidiary, or to an entity that succeeds to substantially all of the business or assets of Licensor through merger, acquisition or similar transaction. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their respective successors and assigns.

11.3. Independent Contractors. In performing this Agreement, each of the parties will operate as, and have the status of, an independent contractor. This Agreement does not create any agency, employment, partnership, joint venture, franchise or other similar or special relationship between the parties. Neither party will have the right or authority to assume or create any obligations or to make any representations, warranties or commitments on behalf of the other party or its affiliates, whether express or implied, or to bind the other party or its affiliates in any respect whatsoever.

11.4. Governing Law. This Agreement shall be governed by and construed under, and the legal relations between the parties hereto shall be determined in accordance with, the laws

of the State of Utah, without giving effect to such state's conflicts of law principles. The parties hereto hereby submit to the personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement shall only be brought in federal and state courts located in Salt Lake City, Utah as the case may be.

11.5. Severability. If any provision of this Agreement or portion thereof is determined by a court of competent jurisdiction, or declared under any law, rule or regulation of any government having jurisdiction over the parties hereto, to be invalid, illegal or otherwise unenforceable, then such provision will, to the extent permitted by the court or government not be voided but will instead be construed to give effect to its intent to the maximum extent permissible under applicable law, and the remainder of this Agreement will remain in full force and effect according to its terms.

11.6. Entire Agreement; Modification; Waiver

This Agreement constitutes the entire agreement of the parties concerning its subject matter and supersedes any and all prior or contemporaneous, written or oral negotiations, correspondence, understandings and agreements, between the parties respecting the subject matter of this Agreement. No supplement, modification or amendment to this Agreement shall be binding unless evidenced by a writing signed by the party against whom it is sought to be enforced. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

11.7. Execution; Counterparts. This Agreement shall not be binding in whole or in part upon the parties unless and until duly executed by or on behalf of both parties hereto, in which event this Agreement shall be effective as of the Effective Date. This Agreement may be executed in counterparts, each of which shall be deemed to be an original instrument enforceable in accordance with its terms and all of which shall constitute but one and the same agreement of the parties.