



Master Platform as a Service Agreement

This Master Platform as a Service Agreement (“Agreement”) is between Xenia Retail, Inc., a Delaware corporation, and the entity whose name appears on the signature page of this Agreement as the Client and is made effective as of the date signed by Xenia on the signature page of this Agreement (once signed by both parties) (“Effective Date”). Xenia and Client agree that the provisions of this Agreement apply to Xenia’s grant of access to Client with respect to Xenia’s Platform, Professional Services and license of the Software to Client, as applicable, except as otherwise provided in an Order placed pursuant to this Agreement.

DEFINITIONS

In this Agreement, the following terms have the meanings specified below:

“Authorized Users” means your employees, subcontractors, agents, consultants and customers.

“Client”, “you”, “your”, and the like each mean the entity named on the signature page of this Agreement as the Client.

“Client Customization” means any software application, extension and other program that interacts and/or interfaces with our Platform and Software, or components thereof, but which do not modify, publish, reproduce, create derivative works based on, redistribute, perform, display or in any way exploit our Platform or Software, content or materials provided by Xenia.

“Deliverable” means that certain item expressly designated as a Deliverable in an applicable Order.

“Documentation” means documentation (whether printed or displayed) created or published by Xenia, which may include use guides, manuals and release notes.

“Order” means our standard form for ordering our Platform, Software licenses and/or Professional Services, each of which reference, is incorporated into and made part of this Agreement, and is made effective as of the date specified therein when signed by both parties.

“Platform” means our *Modern Retail Framework*™ software platform offerings, including our Software, services, applications, utilities and databases, as may be configured, deployed and utilized pursuant to this Agreement and an applicable Order.

“Professional Services” or “Services” means our professional services specified by the parties in an applicable Order containing a detailed description of and fees for such professional services.

“Software” means all software (including related integration, implementation and configuration coding from Xenia as part of Professional Services we provide to you) and Updates obtained from Xenia as described in an Order or otherwise and the related Documentation.

“Update” means any update, patch, new release and/or new version of our Platform and Software.

“Xenia”, “we”, “us”, “our”, and the like each mean Xenia Retail, Inc.

PLATFORM AND SOFTWARE

1. PLATFORM ACCESS; LICENSE GRANT

(a) Subject to the terms of this Agreement, we grant to you a non-exclusive, non-transferrable right of access to use our Platform in the geographic locations, configurations and deployment plans designated in an applicable Order, solely for your internal business purposes by your Authorized Users. In particular, your right of access to use our Platform, exercisable by your Authorized Users, is a non-exclusive, non-transferrable right solely to:

(i) access and use the Platform, including in operation with other software, hardware, systems, networks, and services, for processing retail purchase transactions and related activities permitted hereunder;

(ii) generate, print, copy, upload, download, store, and otherwise process all data and displays, and other content and output, as may result from any access to or use of our Platform; and

(iii) access and use our Platform for all such non-production uses and applications as may be necessary or useful for the effective use of the Platform as permitted hereunder and as designated in an applicable Order, including for purposes of analysis, development, configuration, integration, testing, training, maintenance, support and repair (collectively, the “Permitted Activities”).

(b) Depending on the configuration and deployment of our Platform designated in an applicable Order, and subject to the terms of this Agreement, we may grant to you a non-exclusive, non-transferrable license to use our Software in object code form solely for your internal business purposes by Authorized Users solely to engage in the Permitted Activities.

(c) If designated in an applicable Order, such right of access to our Platform and license to our Software solely to engage in the Permitted Activities may extend to each of your subsidiaries’ and affiliates’ for its or their internal business purposes by its or their Authorized Users. You and your authorized subsidiaries and affiliates are responsible for the acts and omission of all Authorized Users with respect to their use of the Platform and licensed Software, as applicable, in compliance with this Agreement, and all such acts or omissions will be deemed acts or omissions on your part.

(d) Access to our Platform and/or a license to our Software under this Agreement does not automatically entitle you to services such as installation, implementation or training. Such services are available to you as specified in an applicable Order.

(e) If an applicable Order designates that our Software will be installed on equipment that you own or control on site at or servicing one or more of your identified geographic locations in such Order (“On Premises”), you may only use our Software in accordance with the applicable license type designated in the applicable Order, which are more fully described as follows:

(i) Cloud License: A “Cloud” Software license is a Software license that authorizes you to deploy our Software and use it for the Permitted Activities subject to this Agreement on one or more cloud-based service provider platforms from which you obtain cloud-based services.

(ii) Server License: A “Server” Software license is a Software license that authorizes you to install our Software and use it for the Permitted Activities subject to this Agreement on one computer, server or other processing device that you own or control (“Server”). Other than in the case of a Cloud License, you may install one copy of the Server License Software on a single Server for each Software license acquired, as designated in an applicable Order.

(f) Notwithstanding anything to the contrary contained herein, certain third party software supplied by Xenia are subject to end user license agreements separately issued by the third party suppliers as indicated on an Order. In such cases, this Agreement does not grant you any rights to and Xenia assumes no liability with respect to such third party software. Your use of such third party software is subject to the terms and conditions of the license accompanying such third party software.

2. OWNERSHIP; REVERSE ENGINEERING; RESTRICTIONS

(a) We grant you access to our Platform and we license to you our Software, as applicable. Neither our Platform nor our Software are sold to you. Your access to our Platform and license to our Software are for the limited purpose(s) designated in the applicable Order and solely for your

internal business purposes. Xenia and its licensors retain all title and ownership to our Platform and Software. Xenia and its licensors reserve all rights in the patents, copyrights, trade secrets and other intellectual property in our Platform and Software. If you receive a license to our Software in an applicable Order, you may make a reasonable number of copies of the Software for archival purposes. You may not: (i) rent, lease, lend, sell, sublicense, transfer, distribute or otherwise use our Platform or Software to provide services for any person other than an Authorized User or at locations outside those specified in an applicable Order, except as expressly permitted by this Agreement; or (ii) use our Platform or Software in any manner or for any purpose that violates any applicable law.

(b) You may copy the Documentation solely to facilitate your use of our Platform or Software in accordance with, and subject to, the terms and conditions contained herein.

(c) You understand that our Platform, Software, Documentation and the terms and pricing under this Agreement constitute valuable properties and trade secrets of Xenia, which are proprietary and confidential. You agree to maintain the confidentiality of such information and to protect the information as a trade secret by preventing any unauthorized copying, use or disclosure of such information. In doing this you agree to maintain at least the same procedures that you maintain with respect to your own confidential information, which shall not be less than commercially reasonable care. You may not disclose our Platform, Software or Documentation to a competitor of ours without Xenia's prior written approval.

(d) You may not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within our Platform, Software or Documentation. You acquire no rights of any kind in or to any trademark, trade name, logo or product designation under which our Platform or Software was or is marketed and you may not make any use of the same for any reason.

(e) You agree not to reverse engineer, modify, decrypt, extract, disassemble, copy, or decompile our Platform or Software, or permit anyone else to do the same.

(f) You will promptly notify us upon becoming aware of any unauthorized use of our Platform, any of our Software or our Documentation.

3. SERVICE LEVELS AND DISCLAIMERS

(a) When designated in an applicable Order that we will host, manage, operate and maintain our Platform and Software for you in a cloud environment that we control and manage ("Hosted Services"), such Hosted Services will be available and operable for access and use by your Authorized Users in conformity with the specifications set forth in the applicable Order (the "Availability Requirements"), excluding only the time the Platform and Software are not available as a result of one or more Exceptions (defined below). No period of Hosted Services degradation or inoperability will be included in calculating availability to the extent that such downtime or degradation is due to any of the following ("Exceptions"):

- (i) any misuse of the Hosted Services;
- (ii) failures of Client's or any Authorized Users' internet connectivity;
- (iii) internet or other network traffic problems;
- (iv) Client's or any Authorized Users' failure to meet any minimum hardware or software requirements set forth in the specifications set forth in the applicable Order;
- (v) Scheduled Downtime as set forth in Section 3(b);
- (vi) any period during which our Software licensed to you for use On Premises provides redundant services to the Hosted Services; or
- (vii) such other exception(s) as may be set forth in the applicable Order.

(b) Except for outages initiated by the cloud-service provider outside of our control, we will notify you at least 10 days in advance of all scheduled outages of the Hosted Services in whole or in part ("Scheduled Downtime"). All Scheduled Downtime will last no longer than seven hours and be scheduled during the time period designated in our notice; provided that you may request alternative periods of Scheduled Downtime and we

will reasonably attempt to accommodate such requests by working with the cloud-serve provider.

(c) As our sole liability to you in the case of a breach of the foregoing Availability Requirements shall be as set forth in the applicable Order.

(d) You agree to give us prompt notice of any issue with availability of the Hosted Services and to reasonably cooperate with us in our assessment and remediation of an issue, including preserving archive processing data in your possession that may provide us with vital diagnostic information.

(e) We reserve the right to make changes to the Hosted Services as we deem necessary or useful to: (i) maintain or enhance the quality, efficiency, performance or delivery of the Hosted Services; or (ii) to comply with applicable laws, rules or regulations. Notwithstanding any changes we make to the Hosted Services, the Hosted Services will remain in substantial conformity with the written specifications for such Hosted Services in the applicable Order.

(f) EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND AN APPLICABLE ORDER, OUR PLATFORM AND SOFTWARE (INCLUDING HOSTED SERVICES) ARE PROVIDED "AS IS" AND, TO THE FULLEST EXTENT PERMITTED BY LAW, XENIA AND ITS LICENSORS EXCLUDE ALL OTHER EXPRESS AND IMPLIED TERMS, WARRANTIES OR REPRESENTATIONS REGARDING OUR PLATFORM AND SOFTWARE ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. WE PROVIDE NO WARRANTY OF ANY KIND FOR ANY THIRD PARTY HARDWARE OR SOFTWARE THAT MAY BE SUPPLIED BY US OR USED BY YOU IN CONNECTION WITH YOUR USE OF OUR PLATFORM OR SOFTWARE. ANY WARRANTY OF THIRD PARTY HARDWARE OR SOFTWARE IS PROVIDED BY THE THIRD PARTY OWNER AND/OR LICENSOR OF SUCH HARDWARE OR SOFTWARE AND WE ARE NOT RESPONSIBLE FOR ANY RISK WITH RESPECT TO ITS QUALITY AND PERFORMANCE.

4. PLATFORM ACCESS AND SOFTWARE LICENSE TERM AND TERMINATION

(a) Your access rights to our Platform and to each Software license granted to you under this Agreement and an applicable Order will begin on the effective date in the applicable Order and will continue for the period specified in the applicable Order or until earlier terminated with respect to such access rights to our Platform and/or license to our Software hereunder or in the applicable Order. Either party may terminate this Agreement, including access to our Platform and Software license(s) granted, in addition to any other remedies it may have, if the other party is in default of a material obligation under this Agreement and fails to cure such default within 30 days following its receipt of written notice of the default.

(b) Upon the termination or expiration of this Agreement or the applicable Order for any reason or no reason, whether terminated by you or us, (i) all authorizations and licenses granted hereunder will immediately terminate and the respective parties shall cease all activities concerning, including in the case of Client, all use of, the expired or terminated Platform, Software and related Documentation, and (ii) you will pay to us all undisputed charges and amounts due and payable to us, if any, under any such terminated or expired Order.

(c) Promptly (but in any event within 30 days) following the termination or expiration of this Agreement or the applicable Order for any reason or no reason, whether terminated by you or us, each party, at the written request of the other party will return or destroy and erase from all systems it directly or indirectly uses or controls, all originals and copies of all documents, materials, and other embodiments and expressions in any form or medium that contain, reflect, incorporate, or are based on the Confidential Information of the other party. At the request of the party whose Confidential Information is to be returned or destroyed, the other party will deliver to it a written certificate signed by an authorized representative verifying compliance with this Section. Notwithstanding any provision in this Section to the contrary, a party shall not be required to return, destroy, or erase any Confidential Information of the other party to the extent that any applicable law, rule or regulation prevents it from doing so, in which case the party shall retain, in its then current state, all such Confidential Information then within its right of control or possession in accordance with

the confidentiality, security, and other requirements of this Agreement and perform its obligations under this Section promptly when such law, rule or regulation no longer prevents it from doing so.

5. SUPPORT

Payment of the fees specified in an applicable Order entitles you to receive the following support for our Platform and Software, as applicable, which we may modify upon advance written notice to you, but which we may not materially reduce in coverage during the term of the applicable Order under this Agreement:

(a) Support Center: We will provide you with telephone and e-mail support to answer general Platform and Software questions and to identify and diagnose issues between the hours of 8:00 a.m. and 4:00 p.m., Central Time, seven days a week, excluding our company holidays. We also will provide support with respect to our Platform and Software to address business outage issues you may experience that arise during our company holidays. Xenia agrees that it will use its commercially reasonable efforts in the performance of its support services hereunder and will have qualified and trained personnel knowledgeable of our Platform and the Software to provide such support services.

(b) Updates: We will make available to you (without additional fees) patches, bug fixes and incremental releases ("Updates") for the Platform or Software that you license from us, as applicable, if and when commercially released by us during the term of your current support plan as specified in an applicable Order. In order for you to receive a new version of any third party software acquired from us, you must also then have a valid subscription to any support plan of the third party licensor. Updates do not include any of our major releases or modifications that have been made to our Platform or Software or our new Software modules. Licenses to use such major releases and modifications and new Software may be purchased under the terms of a new Order.

PROFESSIONAL SERVICES

6. SCOPE OF SERVICES

(a) Subject to the terms of this Agreement, Xenia will provide the Professional Services to Client and Client will pay to Xenia the applicable Professional Services fees as described in the applicable Order. As designated in an Order, Xenia may provide you with configuration, implementation and integration, customization, training and other Professional Services.

(b) The applicable Order delineates what is included in the Professional Services we will provide and the related fees. One or more statements of work signed by authorized representatives of both parties may be written under an Order to provide the parties with detailed specifications regarding the Professional Services to be provided. Any item not specifically included in the Order, or any item that is explicitly excluded from the Professional Services in an Order, is considered "out of scope". Any requests for non-standard services beyond those described in the applicable Order will be provided on an individual case basis and at an additional cost to Client. All fee rates and descriptions for such additional services will be agreed to in writing by both parties.

(c) This Agreement, including any Order entered into in connection herewith, contains the entire agreement and understanding with respect to the Professional Services provided and supersedes all prior agreements, proposals, negotiations, letters of intent or other correspondence, whether written or oral relating to the provision of the Professional Services by Xenia.

(d) Client will appoint a senior representative to be the point of contact for Xenia with regards to the Professional Services to be delivered by Xenia under the applicable Order, to provide the technical direction and approval of the delivered Professional Services. Client agrees to provide all equipment and all technical or other information reasonably required by Xenia to perform the Professional Services or as otherwise described in the Order. If the Professional Services are performed at the Client's facilities, Client further agrees to provide access to such facilities and suitable workspace.

(e) Xenia will assume sole responsibility for the supervision of its staff assigned to perform the Professional Services. If a Xenia staff member resigns or is unable to complete any part of the Professional Services for any reason, or if Client requests replacement of a staff member, Xenia will replace such staff member with another staff member of substantially

equivalent qualifications under the same terms and conditions as are set forth in the applicable Order.

7. OWNERSHIP; RESTRICTIONS

(a) As specified in an applicable Order, we may provide Professional Services to you to create certain Client Customizations that you will purchase from us as a Deliverable. Alternatively, if specified in an applicable Order, we may train and support your qualified personnel to engage in Client Customization independently, with development Software that we license to you in an Order. In either instance, you will have full and exclusive title, rights and ownership in such Client Customizations. Notwithstanding the foregoing sentence, nothing herein shall or be deemed to be a transfer or assignment by us to you of any title, right or ownership in or to the Platform or our Software.

(b) If we conceive of any intellectual property rights during the course of providing Professional Services that may be embodied in or used to create new software or derivative works of our Platform or Software, Xenia retains full and exclusive title, rights and ownership in such intellectual property rights and/or proprietary rights therein, provided that our rights do not include your Confidential Information.

(c) During the course of performing Professional Services, we may use enhancements, processes, methods, designs and know-how whether or not copyrightable or patentable that we conceived during the course of other engagements, but which do not include or use the confidential information of our other customers. In addition, we may independently develop enhancements, processes, methods, designs or know-how during the term of this engagement that we may embody in or use to create derivative works of our Platform and Software, and you acknowledge that we may use such enhancements, processes, methods, designs and know-how in our business operations with other customers, provided that such usage does not utilize any of your Confidential Information.

(d) You may not remove, alter or destroy any proprietary, trademark or copyright notices placed upon or contained within any Deliverable used with or provided as a result the Professional Services. You acquire no rights of any kind in or to any trademark, trade name, logo or product designation under which the Professional Services are or were marketed and you may not make any use of the same for any reason.

8. LIMITED SERVICES WARRANTY

(a) Xenia warrants that (i) we have full power and authority to enter into the Agreement and perform the Professional Services contemplated in the applicable Order, (ii) each of our employees or contractors assigned to perform such Professional Services will have the proper skill, training, and background so as to be able to perform the Professional Services in a competent and professional manner in all material respects, and (iii) that all Professional Services will be performed consistent with generally accepted industry standards.

(b) EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN CLAUSE (A) OF THIS SECTION AND SUBJECT TO CLAUSE (C) OF THIS SECTION, THE PROFESSIONAL SERVICES ARE PERFORMED AND ALL DELIVERABLES PROVIDED "AS IS, AND, TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXCLUDE ALL OTHER EXPRESS AND IMPLIED TERMS, CONDITIONS, WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES AND DELIVERABLES ARISING BY LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED TERMS OF MERCHANTABILITY, SATISFACTORY QUALITY, REASONABLE SKILL AND CARE AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

(c) Nothing in this Agreement will operate to exclude the liability of a party for the fraudulent acts of such party or for death or personal injury resulting from the gross negligence of such party.

9. PROFESSIONAL SERVICES TERM AND TERMINATION

(a) With respect to Professional Services, the term of this Agreement will commence on the Effective Date and, unless earlier terminated as provided below, will continue for five years; provided, however, that a term of this Agreement in combination with each Order will continue through the duration of the Professional Services subject to such Order. This Agreement will terminate automatically on written notice by a party to the

other party if the notified party presents a petition or has a petition presented by a creditor for its winding-up or it convenes a meeting to pass a resolution for voluntary winding-up, or enters into any liquidation (other than for the purposes of a bona fide reconstruction for amalgamation), or has a receiver of all or any of its undertakings or assets appointed, or is deemed by the relevant statutory provisions under the applicable law to be insolvent or unable to pay its debts.

(b) In the event of any breach of any term or provision of this Agreement by either party, the other party may terminate the Agreement and/or applicable Order by giving 30 days prior written notice thereof; provided, however, that this Agreement and/or the Order, as the case may be, will not terminate at the end of the 30-day notice period if the party in breach has cured the breach to the reasonable satisfaction of the other party prior to the expiration of the 30-day period.

(c) You may terminate this Agreement and/or any Order under this Section without cause upon 30 days prior written notice to us. In such case, you are responsible for payment of all Professional Services rendered, and costs incurred by us in connection with such Professional Services, prior to the date of termination. We may terminate this Agreement and/or any Order under this Section without notice or stop rendering Professional Services to you if any undisputed invoice is unpaid for a period greater than 30 days following its due date. An invoice will be considered undisputed within 60 days following its issuance, unless you provide to Xenia written notice containing a detailed description of the dispute.

(d) Termination or expiration of this Agreement or any Order under this Section will not (i) affect the provisions relating to the payments of amounts due, which will become due immediately, in addition to Xenia's cost of collection (including reasonable attorneys' fees) (ii) automatically result in termination of an existing Software license granted under this Agreement, unless the Software license also is terminated based on other provisions in this Agreement.

GENERAL TERMS

10. CUSTOMER DATA

(a) Xenia acknowledges and agrees that you exclusively owns all right, title and interest in and to all information, data and other content, in any form or medium, that is collected, downloaded or otherwise received, directly or indirectly from your Authorized Users by or through the Hosted Services or that incorporates or is derived from the processing of such information, data or content by or through the Hosted Services (collectively, "Client Data"). Client Data includes information reflecting the access or use of the Hosted Services by or on behalf of you or your Authorized Users other than Resultant Data (defined below). For purposes of this Agreement, "Resultant Data" means information, data and other content that is derived by or through the Hosted Services from processing Client Data and is sufficiently different from such Client Data that such Client Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further processing of such information, data or content.

(b) We will not disclose Client Data to law enforcement unless required by law. If law enforcement contacts us with a demand for Client Data, we will attempt to redirect the law enforcement agency to request that data directly from you or the customer. If compelled to disclose Client Data to law enforcement, we will promptly notify you and provide a copy of the demand unless we are legally prohibited from doing so.

(c) Nothing in this Agreement conveys to Xenia any rights or interest in the Client Data. Except as expressly permitted in an applicable Order, Xenia may not use, edit, modify, create derivatives, combinations or compilations of, combine, associate, synthesize, reverse engineer, reproduce, display, distribute, disclose, or otherwise process Client Data other than as may be necessary to provide the Hosted Services.

(d) Xenia hereby assigns and transfers to Client any right, title or interest that Xenia may acquire in or to Client Data upon creation thereof. The foregoing shall not be construed to assign or transfer any intellectual property rights in our Platform, Software, Deliverables or in the proprietary tools, source code, templates, libraries, know-how, techniques and expertise (collectively, "Tools") used by us to deliver any of the foregoing or to develop any Updates, enhancements, derivative works of or new inventions, and to the extent such Tools are delivered with or as part of our

Platform, Software or Deliverables they are licensed, not assigned, to Client, on the same terms as set forth in Section 1 above.

11. CONFIDENTIALITY

(a) Pursuant to this Agreement, the parties may have access to information that is confidential and/or proprietary to one another ("Confidential Information"). For purposes of this Agreement, "Confidential Information" means and includes any confidential or proprietary information and/or data of a party disclosed after the date of this Agreement, including, without limitation, any kind of business, commercial or technical information and data concerning the party's business prospects, strategy, business objectives, business transactions, financial arrangements, operations, systems and organization, methods, standards, specifications, concepts, ideas, plans, projects, programs or procedures, trade secrets, know-how, lists, notes, drawings, reports, software, databases, development methods, system design or any other information of or relating to its business, in any tangible medium of expression, disclosed in connection with this Agreement. Confidential Information further includes copies or abstracts made thereof as well as any modules, samples, prototypes or parts thereto. Confidential Information does not include any information that (i) is already known to the recipient or its affiliates or received by any of them from a third party, free of any obligation to keep it confidential; (ii) is or becomes publicly known through no wrongful act of the recipient or its affiliates; (iii) is independently developed by the recipient or its affiliates without reliance on or access to the Confidential Information of the other party; or (iv) is approved for release by prior written authorization of the disclosing party.

(b) Each receiving party agrees to maintain the confidentiality of the Confidential Information of the disclosing party and to protect as a trade secret any portion of the disclosing party's Confidential Information by preventing any unauthorized copying, use, distribution, or transfer of possession of such information. Each receiving party agrees to maintain at least the same procedures regarding the Confidential Information of a disclosing party that it maintains for its own Confidential Information, but in no event will such procedures be less than commercially reasonable. Without limiting the generality of the foregoing, neither party will permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by a disclosing party and the receiving party will not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. One party's Confidential Information may only be used by the other party and its representatives in order to fulfill its obligations under the Agreement.

(c) Notwithstanding anything to the contrary in this Section, a receiving party may disclose the Confidential Information of a disclosing party as required by law, including by a court of competent jurisdiction or government body or regulatory authority; provided however, that in the event of a proposed disclosure the receiving party will promptly notify the disclosing party (if legally permitted) of its disclosure obligation, and will cooperate with the disclosing party to obtain an appropriate protective order to preserve the confidential nature of such information prior to making such disclosure, and the parties will cooperate in good faith regarding the timing and the content of any required disclosure.

(d) Both parties acknowledge that any use or disclosure of the other party's Confidential Information by a receiving party in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure. The terms and provisions of this Section shall survive any termination of this Agreement for any reason for a period of five years.

12. INDEMNIFICATION

At our expense we will defend, indemnify and hold you harmless against any third party claim that the Platform, Software, Professional Services and/or any Deliverable infringes any registered United States patent, trademark or copyright in accordance with this Agreement. We will pay all costs, damages and attorney's fees that a court finally awards or by settlement as a result of such claim. But you must give us prompt written notice of the claim (which will not be less than 10 business days from you becoming aware of the claim), cooperate fully with us in its defense, and give us sole authority to control the case and any related settlement negotiations. We will not be responsible for or have any obligation to pay costs, damages or

attorney's fees for any settlement made without our written consent. Our obligations under this Section do not apply: (a) to any settlement made without our written consent; or (b) if a claim is based on the use of a superseded or altered version of the alleged infringing intellectual property if infringement would have been avoided by your use of the latest unaltered version of the same made available by us to you; or (c) to the extent that a claim is based on the combination, operation or use of the Platform, Software, Professional Services and/or Deliverable with any hardware, software, product, data, apparatus or other tangible or intangible item not specified or provided by Xenia under this Agreement, if the claim would have been avoided had such combination, operation or use not occurred. In the event that the Platform, Software, Professional Services or Deliverable supplied by or through Xenia in connection with this Agreement becomes, or in Xenia's reasonable opinion is likely to become, the subject of a third party claim of infringement, or if a third party infringement claim is sustained in a final judgment from which no further appeal is taken or possible, Xenia may, at its sole option: (i) procure your right to continue to use the affected Platform, Software, Professional Services or Deliverable in accordance with this Agreement; (ii) re-perform the Professional Services in a non-infringing manner or replace or modify the Platform, Software or Deliverable to make it non-infringing while retaining substantially the same functionality; or (iii) if clauses (i) and (ii) are not reasonably feasible, terminate this Agreement with respect to the affected Platform, Software, Professional Services and/or Deliverable, without further liability or obligation to Client, and refund to you the fees paid by you for such affected Platform, Software, Professional Services and/or Deliverable in an amount equal to such fees paid by you for the same in the 12 months immediately preceding the cessation of your right to use the same and/or promptly reimburse any prepayments received by Xenia for the affected Platform, Software or Professional Services, as the case may be, not provided as a result of termination under this Section. Other than as provided in this Section, you and your affiliates and subsidiaries shall have no other remedy against us arising from a claim of actual or alleged infringement of intellectual property rights respecting our Platform, Software, Professional Services or Deliverables.

13. LIMITATION OF LIABILITY

THE PARTIES AGREE THAT, TO THE FULLEST EXTENT PERMISSIBLE UNDER LAW, IN NO EVENT SHALL A PARTY (AND IN THE CASE OF XENIA, INCLUDING ITS LICENSORS AND SUPPLIERS) BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOSS OF USE OR LOSS OF DATA) ARISING OUT OF OR RELATED TO THIS AGREEMENT OR WITH RESPECT TO THE INSTALLATION, USE OR OPERATION OF THE PLATFORM, SOFTWARE, PROFESSIONAL SERVICES OR DELIVERABLE WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHER FORM OF ACTION EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES SPECIFICALLY AGREE THAT, EXCEPT FOR AMOUNTS PAYABLE TO XENIA HEREUNDER, THE TOTAL LIABILITY OF XENIA TO YOU FOR DAMAGES UNDER THIS AGREEMENT WILL NOT EXCEED THE SUM OF ALL FEES RELATED TO THE PLATFORM OR SOFTWARE OR THE SUM OF ALL PROFESSIONAL SERVICE FEES (DEPENDING ON WHETHER THE PLATFORM OR SOFTWARE OR PROFESSIONAL SERVICES GAVE RISE TO THE DAMAGE) ACTUALLY PAID BY YOU TO XENIA HEREUNDER IN THE 12-MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE DAMAGE. NOTWITHSTANDING THE FOREGOING, XENIA'S TOTAL LIABILITY TO YOU FOR DAMAGES RELATING TO ANY THIRD-PARTY HARDWARE OR SOFTWARE WE RESELL TO YOU WILL NOT EXCEED THE PURCHASE PRICE OR LICENSE FEES YOU PAID TO US FOR SUCH HARDWARE OR SOFTWARE.

14. ASSIGNMENT

You may not license, sublicense, assign, sell, rent, lease, or otherwise transfer the Platform, Software, a Deliverable or this Agreement without our prior written consent, which will not be unreasonably withheld or delayed. For purposes of this Agreement, an assignment includes a change in your ownership or control pursuant to a merger, consolidation or acquisition of all or substantially all of your assets. Any permitted assignee must agree to be bound by this Agreement as a condition to any consent to an

assignment provided by us, which agreement must be evidenced in a writing acceptable to Xenia and signed by the permitted assignee.

15. GOVERNING LAW; FORUM SELECTION

This Agreement shall be governed and construed in accordance with the laws of the State of Delaware without giving effect to any choice of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware. Any legal suit, action or proceeding arising out of or related to this Agreement or the licenses granted hereunder shall be brought exclusively in the state or federal courts in Wilmington, Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action or proceeding. Service of process, summons, notice or other document sent by mail to the principal business address of a party to this Agreement will be effective service of process for any legal suit, action or proceeding brought in any such court. The parties hereto expressly waive the application of the United Nations Convention on Contracts for the International Sale of Goods to the terms of this Agreement.

16. OTHER TERMS

(a) We are acting as an independent contractor under this Agreement, including any Order. Neither party is, or shall be deemed for any purpose to be, an employee or agent of the other and neither party shall have the power or authority to bind the other party to any contract or obligation.

(b) Any failure by either party to enforce at any time or for any period of time the provisions of this Agreement shall not be construed as a waiver of such provision, or of the right to enforce that provision. In the event any part of this Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions.

(c) The headings of each provision of this Agreement are for reference purposes only. This Agreement, including any fully signed Order and/or Order, may not be modified unless the modification is in a writing signed by authorized representatives of both parties. This Agreement, including any fully signed Order and/or Order, is complete and constitutes the entire agreement between us with respect to the subject matter hereof and supersedes all prior agreements, proposals, negotiations, letters of intent or other correspondence, whether written or oral.

(d) This Agreement is for the sole benefit of the parties hereto and their respective permitted successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Any notice or other communication required or permitted in this Agreement will have legal effect only if it is in writing and addressed to a party at its commonly known principal business address. Notices are deemed to have been duly given on the day of service if served personally, by facsimile transmission with confirmation, e-mail transmission to an authorized representative of the party with confirmation, or three days after mailing if mailed by First Class mail, registered or certified, postage prepaid.

(f) On our written request, no more frequently than annually, you shall provide us with a signed certification (i) verifying that the Platform and Software are being used pursuant to the terms of this Agreement, including any use limitations, and (ii) listing the locations, types and serial numbers of the hardware on and at which the Software is being used. You agree to grant us reasonable access to all relevant locations, systems and networks and provide reasonable cooperation, upon prior notice during normal business hours, to allow us to audit the use of the Platform and Software.

(g) The parties agree not to solicit for employment or hire any employees or independent contractors of the other party who perform services in connection with this Agreement, other than through a public general advertisement or third-party recruiting firm not directed to solicit such employees or consultant, without the written consent of the other party during the term of this Agreement and for a period of one year from the date of its termination. However, nothing contained in this paragraph will apply to any such person who (i) approaches a party of his or her own accord, or (ii) responds to a general solicitation or recruiter who has not been directed to target a party, its employees or the particular person.

(h) If our performance of this Agreement is prevented or interfered with by any event or condition beyond our reasonable control (including, without limitation, governmental action, international or domestic terrorism, riots,

disturbance, war, strikes, lockouts, slowdowns, prolonged shortage of energy or other supplies, epidemics, fire, explosion, flood, hurricane, earthquake or other act of God), we will be excused from such performance only for so long as and to the extent that such a force prevents or interferes with our performance and provided that we give notice to you and use diligent efforts to remedy such event or condition

(i) Any right, obligation or provision under this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any expiration or termination of this Agreement.

(j) This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

Each party has caused this Master Platform as a Service Agreement to be executed by its duly authorized representative.

XENIA RETAIL, INC.

[Client]

(signature)

(signature)

(name)

(name)

(title)

(title)

(Effective Date)

Address: