

Master Purchase Agreement

Allegiant (“Allegiant, we or us”)	Customer (“Customer, you or your”)
Name: Allegiant Networks LLC Street Address: 12721 Metcalf Ave. Suite 104 City: Overland Park State/Province: KS Zip Code: 66213 Country: USA	Name: <u>&DH_SoldToCompany</u> Street Address: <u>&DH_SoldToAddress1</u> <u>&DH_SoldToAddress2</u> City: <u>&DH_SoldToCity</u> State/Province: <u>&DH_SoldToState</u> Zip Code: <u>&DH_SoldToPostalCode</u> Country: USA

Article I: Introduction & Definitions

1. **Agreement.** This Master Purchase Agreement is entered into between you and Allegiant for the purpose of setting forth the terms and conditions for your purchase of certain hardware, software and installation services from us. In the event you are financing or leasing any hardware or software from us or purchasing any other services, such terms and conditions shall be set forth in a separate agreement.
2. **Definitions.** In this Agreement the following definitions shall have the following meanings, and all other capitalized terms have the meanings given to them elsewhere in this Agreement.
 - 2.1. **“Allegiant, we or us”** means Allegiant Networks, LLC. DBA Allegiant Technology.
 - 2.2. **“Agreement”** means this Master Purchase Agreement together with any schedules or appendixes annexed hereto.
 - 2.3. **“Customer, you or your”** means the Customer as defined in this Agreement.
 - 2.4. **“Confidentiality”** means any information relating to the disclosing party (“Disclosing Party”) that is of a confidential or proprietary nature used in or otherwise relating to the Disclosing Party’s business, operations, customers or financial or other affairs, including the relations of a party with its customers, employees and service providers, and any such information of employees, customers, affiliates or representatives of a Disclosing Party, which is received by the receiving party (“Receiving Party”), whether communicated in written form, orally, visually, demonstratively, technically or by any other electronic form or other media, or committed to memory, and whether or not designated, marked, labeled or identified as confidential or proprietary, including any data or information described above which the Disclosing Party has obtained from a third party and which the Disclosing Party treats as proprietary or designates as Confidential Information, whether or not owned or developed by the Disclosing Party. Confidential Information also includes: the marketing of goods or services including, without limitation, existing and future customer names and lists and other details of existing and future customers; future products, business development or planning, commercial relationships and negotiations; information relating to the Products, and Allegiant’s Intellectual Property Rights; information received from third parties that a party is obligated to treat as confidential (including any Third Party Provider Intellectual Property Rights); all information disclosed or made available by a Disclosing Party to the Receiving Party hereunder in connection with this Agreement or the performance of obligations hereunder, whether marked as confidential or proprietary or disclosed orally, after the Effective Date; any personal information; and this Agreement.
 - 2.5. **“Disclosing Party”** has the meaning set forth in Article I: Section 2.4.
 - 2.6. **“Effective Date”** has the meaning set forth in Article I: Section 4.
 - 2.7. **“Fees”** means the Prices for the Products and all other fees and charges referenced in this Agreement.
 - 2.8. **“Hardware”** means any physical hardware (excluding Software).
 - 2.9. **“Indemnitior”** has the meaning set forth in Article III: Section 5.3.
 - 2.10. **“Installation Fees”** means the set-up fees for installing the Products.
 - 2.11. **“Installation Services”** means the installation of certain Products listed on a Purchase Order.
 - 2.12. **“Intellectual Property Rights”** means any and all proprietary rights provided under: patent law, copyright law, trade-mark law, design patent or industrial design law or any other statutory provision or common law principle applicable to this Agreement, including trade dress and trade secret law, which may provide a right in either ideas, formulae, algorithms, concepts, inventions, know-how or show-how generally, or the expression or use of such ideas, formulae, algorithms, concepts, inventions, know-how or show-how; and any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.
 - 2.13. **“Laws”** means all applicable statutes, laws, codes, ordinances, decrees, rules, regulations, by-laws, orders, decisions, rulings or awards, policies, permits, licenses, authorizations, directions, voluntary restraints, guidelines, or any provisions of the foregoing, including general principles of common and civil law and equity, binding on or affecting the party referred to in the context of which such word is used and “Law” means any one of the foregoing.
 - 2.14. **“Payment Schedule”** means an agreement (including related attachments) or other document between Allegiant and Customer that is attached to or is later executed by the parties and references this Master Purchase Agreement. A Payment Schedule identifies the Purchase Order it applies to, and any special payment terms and conditions applicable for that Purchase Order.
 - 2.15. **“Prices”** has the meaning set forth in Article II: Section 1.1.
 - 2.16. **“Products”** means any Hardware, Software or Installation Services as defined in this Agreement and on one or more Purchase Orders.
 - 2.17. **“Purchase Order”** means the documents that make up the agreement between Allegiant and Customer for the purchase of Products listed on a Quote.
 - 2.18. **“Receiving Party”** has the meaning set forth in Article I: Section 2.4.
 - 2.19. **“Software”** means any computer application or code in object (binary) form.
 - 2.20. **“Statement of Work”** means an agreement between Allegiant and Customer, which defines project-specific activities, deliverables and their respective

timelines.

2.21. **“Term”** has the meaning set forth in Article I: Section 4.

2.22. **“Termination Fees”** has the meaning set forth in Article III: Section 1.5.

2.23. **“Third Party End User License Agreement”** means an agreement between Customer and a Third Party Provider that Customer must agree to and sign in order to license and use the Software.

2.24. **“Third Party Products”** means any Hardware, Software, Installation Services or other service related Products not provided by, manufactured or created by Allegiant.

2.25. **“Third Party Provider”** means any third party that is a manufacturer and/or owner of the Intellectual Property rights in the Hardware, Software, Installation Services, or other service related Products.

2.26. **“Quote”** means an electronic or paper document which lists the estimated pricing and descriptions of the Products.

- 3. Addendums to this Agreement & Order of Precedence.** Certain Products may be provided to you in accordance with the terms of this Agreement (including any schedules or appendixes annexed hereto) and one or more Pricing Schedules and/or Statements of Work. Each Pricing Schedule and Statement of Work shall be incorporated hereto by referencing this Agreement and the applicable Purchase Order it applies to and shall be interpreted separately from any other Pricing Schedules or Statements of Work. In the event of a conflict or ambiguity between this Agreement and any Pricing Schedule or Statement of Work, the agreements shall be interpreted in the following order: (1) This Agreement, (2) The Payment Schedules, (3) The Statements of Work.
- 4. Term.** This Agreement shall become effective on the date of execution hereof, or in the absence of the forgoing, the date your Purchase Order is accepted by Allegiant (“Effective Date”), and will continue for a period of twelve (12) months (“Term”), at which point the Term will automatically renew on an annual basis. After the initial Term, either Party may provide thirty (30) days' written notice of termination for convenience, as long as any Purchase Orders or any other obligation of either party has expired or was terminated pursuant to the terms of this Agreement.

Article II: Terms of Sale

1. Prices; Quotes & Purchase Orders.

- 1.1. **Prices and Quotes.** The prices (“Prices”) for the Products shall be set forth in one or more Allegiant Quotes which shall be prepared for you upon request by us. Prices shall remain valid until the expiration date listed on the Quote (or if not listed, thirty (30) days from the Quote creation date listed in the top right corner of your Quote). Quoted Prices for Third Party Products are dependent upon availability at the time of sale. Allegiant is not responsible for pricing, typographical, or other errors contained in a Quote, and reserves the right to cancel Quotes arising from such errors.
- 1.2. **Purchase Orders.** During the Term of this Agreement, you may enter into one or more Purchase Orders with us for certain Products we offer by: signing and submitting to Allegiant a valid Quote together with any Payment Schedules and/or Statements of Work that correspond to the Products listed on your Quote. Purchase Orders you submit us are subject to our acceptance at our sole discretion, and upon our acceptance, shall create a legally binding contract between you and Allegiant. Each Purchase Order we accept is non-cancellable by you and shall be interpreted as a single agreement, independent of all other Purchase Orders.
- 1.3. **Changes to your Purchase Order.** If you request a change to the Products to be delivered or the scope of the Products provided on your Purchase Order, you shall submit details of the requested change to Allegiant in writing and upon Allegiant’s approval in Allegiant’s sole discretion, Allegiant shall, within a reasonable time, provide a written estimate to you of: the likely time required to implement the change; any variations to Allegiant’s Prices arising from the change; the likely effect of the change; and any other impact of the change on the terms of your Purchase Order. If you wish for Allegiant to proceed with the change, Allegiant has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to Allegiant’s pricing, and any other relevant terms of your Purchase Order to take account of due to the change.
- 1.1. **Additions to your Purchase Order.** If Allegiant provides additions to the Products you are currently receiving or any other Products to you, such additions and other Products will be agreed to in advance between Allegiant and you in writing as part of a separate Purchase Order.

2. Billing & Payment.

- 2.1. **Invoices.** Allegiant may invoice parts of a Purchase Order separately or together in one invoice. Except as otherwise defined in this Agreement and on your Purchase Order, invoices are due and payable by the date noted on the face of the invoice, or if not stated, within thirty (30) days from the date the invoice was issued.
- 2.2. **Credit Terms.** All Products provided to you and covered by this Agreement shall at all times be subject to credit approval or review by Allegiant. You will provide such credit information or assurance as is requested by Allegiant at any time. Allegiant, in its sole discretion and judgment, may discontinue credit at any time without notice or require a deposit.
- 2.3. **Late Payments.** Late payments shall accrue thirty (30) days after the invoice due date and will be subject to interest on the unpaid invoice amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable Law.
- 2.4. **Taxes.** Prices set forth in a Quote are exclusive of taxes and you shall pay all taxes (excluding those on Allegiant’s net income), surcharges, recovery fees, customs clearances, duties, levies, shipping charges and other similar charges (and any associated interest and penalties resulting from your failure to timely pay such taxes or similar charges) relating to the sale, transfer of ownership, installation, license, use or provision of the Products, except to the extent you provide us with a valid tax exemption certificate with a submitted Purchase Order.
- 2.5. **Billing Disputes.** You shall have the right to reasonably and in good faith dispute any invoice, or portion thereof provided that you: pays the undisputed portion within the invoice due date; provide Allegiant written notice of the dispute no later than thirty (30) days from the date of the invoice; and specify with reasonable detail, the amount disputed and the reason for the dispute. Following Allegiant’s notice of the results of its investigation of such a claim, payment of all properly due charges and properly accrued late payment Fees must be made within ten (10) days, and Allegiant will reverse any amounts including late payment Fees that were invoiced in error.

- 3. Shipping and Delivery.** Delivery of Hardware and physical copies of Software shall be by F.O.B. shipping point. If Software is provided to you by electronic download, delivery shall be by F.O.B. origin. Shipping and delivery dates are provided as estimates only and Allegiant is not responsible for shipping

delays unless expressly stated otherwise in writing in the documents that make up your Purchase Order.

- 4. Title; Risk of Loss and Security Interest.** Title to and risk of loss for Hardware you purchase from Allegiant shall pass to you upon shipment. Title to the Software shall remain with the Third Party Providers of such Software. Allegiant reserves the right upon notice to you to take a present and continuing security interest in any applicable Products, together with any accessories, additions, substitutions and replacements (and any proceeds thereof if the Products are sold), regardless of whether the Products are attached to real property, until Allegiant has been paid in full for the Products pursuant to the terms hereof. You agree to execute any documents, which may be necessary or appropriate to perfect Allegiant's security interest in the Products. Upon payment as provided herein, Allegiant will undertake to execute any releases reasonably required by you.
- 5. Sales & Returns.** All sales are final unless otherwise specified in writing in the documents that make up your Purchase Order. You must notify Allegiant in writing within thirty (30) days upon receiving the Products listed in your Purchase Order (in part or in whole) if there are any wrong, damaged, missing, or otherwise non-conforming Products.
- 6. Software.** Your use of Software is governed by the respective Third Party End User Licensing Agreements, applicable to such Software. Subject to your compliance with the terms and conditions contained in any Third Party End User License Agreements, Allegiant grants you a limited, revocable, non-transferable, non-exclusive right to use the Software for your own Internal use and for no other purpose.
- 7. Installation Services.**
 - 7.1. If Allegiant is providing you with Installation Services for Products listed in your Purchase Order, Allegiant will use reasonable efforts to install the Products within the estimated date(s) set forth in your Purchase Order, but Allegiant shall have no liability should there be any delay in installation of the Products caused by you or any Third Party Providers contracted to install the Products.
 - 7.2. You will be responsible for securing at your own cost, any necessary rights of entry (both remote and physical), licenses, permits or other permission necessary for Allegiant to install the Products on the pre-arranged installation date(s) and you will also be responsible for providing the adequate physical space, air conditioning, necessary power, electrical power outlets, network connections and environmental conditions to support the Products including, pre-drilling holes and wire ways through concrete, plaster, metal floors, walls or ceilings when required. If Allegiant is required to have physical access to your sites to install the Products, you will ensure that your sites are safe, secure, and in compliance with all applicable industry and OSHA standards.

Article III: General Terms & Conditions

1. Termination and Breaches of this Agreement.

- 1.1. **Material Breach.** If either party fails to perform or observe any material warranty, representation, term or condition of this Agreement, including non-payment of charges, and such failure continues un-remedied for thirty (30) days after receipt of notice, the aggrieved party may terminate the affected Purchase Order or Purchase Orders and, if the breach materially and adversely affects the entire Agreement, terminate the entire Agreement.
- 1.2. **Bankruptcy.** Either party can promptly terminate this Agreement if the other party is: declared or becomes insolvent or bankrupt; if a petition is filed in any court to declare the other party bankrupt or for a reorganization under bankruptcy law or any similar statute and such petition is not dismissed in ninety (90) days; or if a trustee in bankruptcy or a receiver or similar entity is appointed for the other party.
- 1.3. **Termination or Suspension for Non-Payment.** Allegiant, without waiving any other rights or remedies and without liability to you, may suspend or terminate any or all Purchase Orders and refuse additional Purchase Orders until all overdue amounts are paid in full, provided that Allegiant has supplied you prior notice and thirty (30) days' opportunity to cure such deficiency. Allegiant shall have the right to immediately terminate a Purchase Order without notice and without liability on Allegiant's part if you fail on more than two (2) occasions to pay any Fee due under the affected Purchase Order within the time period specified.
- 1.4. **Fraud or Abuse.** Allegiant may suspend, terminate, withdraw or discontinue all or a part of a Purchase Order immediately and without liability on its part by providing you with such advance notice as is reasonably practicable under the circumstances, when Allegiant reasonably believes: any part of the Purchase Order is prohibited by Law; you are involved in fraudulent or illegal activity; you are in violation of the terms of this Agreement and such violation may: expose Allegiant to sanctions, liability, prosecution or other adverse consequences under applicable Law if Allegiant were to allow the violation to continue; or otherwise presents an imminent risk of harm to Allegiant, Allegiant's customers or its respective employees.
- 1.5. **Termination Fees.** If Allegiant terminates a Purchase Order for cause in accordance with this Agreement following a breach by you of this Agreement. You shall be liable and will reimburse Allegiant for the cost of the Products Allegiant is unable to cancel with the Third Party Providers of such Products, any Installation Fees for prior work Allegiant has performed, and any third party charges resulting from the termination ("Termination Fees").
- 1.6. **Survival.** The provisions of Article III: Section 1, Article III: Section 4, Article III: Section 5 (including all Articles and Sections referenced therein), Article III: Section 18, and any provisions related to the payment obligations of the parties, will survive the termination of this Agreement and shall continue in full force and effect. Termination or suspension of a Purchase Order by either party does not waive any other rights or remedies a party may have under this Agreement and will not affect the rights and obligations of the parties regarding any other Purchase Order.

- ### 2. Representations and Warranties of the Parties.
- Each party hereby represents, warrants and covenants: that It is duly organized, validly existing and in good standing; It has the requisite power and authority, to execute and perform its obligations under this Agreement; It exists under the laws of its own jurisdiction and is not under any contractual obligation that would preclude it from entering into this Agreement; it shall at all times maintain all registrations and comply with all applicable Laws as may be necessary to perform its obligations under this Agreement; It will adhere to the terms and conditions of this Agreement.

- ### 3. Third Party Products.
- All Third-Party Products are sold by Allegiant "as is." Allegiant makes no independent representations, warranties or covenants with respect to the Third Party Products supplied under this Agreement. You chose any/all Third Party Providers based on your judgment. You may contact us or the Third Party Provider for a statement of the warranties, if any, that the Third Party Provider is providing. We assign to you any warranties given to us. Any Third Party Provider warranties are the exclusive remedies of you with respect to such Third Party Products. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, ALLEGIANT HAS NO DEFENSE, SETTLEMENT, INDEMNIFICATION OR OTHER OBLIGATION OR LIABILITY ARISING FROM THE ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY BASED ON HARDWARE, SOFTWARE AND SERVICES NOT MANUFACTURED OR CREATED BY ALLEGIANT.

4. Disclaimer of Warranties & Limitations of Liability. In addition to the disclaimer of warranties and limitations provided elsewhere in this Agreement, the following terms and conditions shall apply.

- 4.1. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, ALLEGIANT SPECIFICALLY DISCLAIMS ANY WARRANTY ARISING BY USAGE OF TRADE OR BY COURSE OF DEALING AND MAKES NO EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO ANY OF THE PRODUCTS, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT; FOR THE PERFORMANCE OF OR RESULTS TO BE OBTAINED FROM YOUR USE OF THE PRODUCTS; THAT THE PRODUCTS WILL OPERATE OR BE PROVIDED WITHOUT INTERRUPTION OR ERROR; FURTHER, ALLEGIANT MAKES NO REPRESENTATION OR WARRANTY THAT TELEPHONE CALLS OR OTHER TRANSMISSIONS WILL BE ROUTED OR COMPLETED WITHOUT ERROR OR INTERRUPTION (INCLUDING CALLS TO 911 OR ANY SIMILAR EMERGENCY RESPONSE NUMBER) AND MAKES NO GUARANTEE REGARDING NETWORK SECURITY, THE ENCRYPTION EMPLOYED BY ANY PURCHASED PRODUCT, THE INTEGRITY OF ANY DATA THAT IS SENT, BACKED UP, STORED OR SUBJECT TO LOAD BALANCING OR THAT ALLEGIANT'S SECURITY PROCEDURES WILL PREVENT THE LOSS OR ALTERATION OF OR IMPROPER ACCESS TO CUSTOMER'S OR ITS END USER'S DATA AND INFORMATION.
- 4.2. **Disclaimer of Liability.** IN NO CIRCUMSTANCES SHALL ALLEGIANT BE LIABLE FOR: INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF ANTICIPATED SAVINGS, LOSS OR CORRUPTED DATA, COST OF CAPITAL, HOWEVER CAUSED, EVEN IF SUCH DAMAGES WERE FORESEEABLE AND THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOR SHALL ALLEGIANT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR RELATING TO: INTEROPERABILITY, ACCESS OR INTERCONNECTION OF THE PRODUCTS WITH APPLICATIONS, DATA, HARDWARE, SERVICES, CONTENT OR NETWORKS PROVIDED BY CUSTOMER OR THIRD PARTIES; SERVICE DEFECTS, DELAYS OR ANY SERVICE ERROR OR INTERRUPTION, INCLUDING INTERRUPTIONS OR ERRORS IN ROUTING OR COMPLETING ANY 911 OR OTHER EMERGENCY RESPONSE CALLS OR ANY OTHER CALLS OR TRANSMISSIONS; UNAUTHORIZED ACCESS TO OR THEFT, ALTERATION, LOSS OR DESTRUCTION OF CUSTOMER'S OR ITS END USER'S (OR THEIR AFFILIATES', USERS' OR THIRD PARTIES') APPLICATIONS, CONTENT, DATA, PROGRAMS, INFORMATION, NETWORKS OR SYSTEMS; THE OCCURRENCE OF TOLL FRAUD; OR THE UNAUTHORIZED USE OF VOICE PROCESSORS AND VOICE MAIL SYSTEMS.
- 4.3. **Limitation of Liability.** NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, IN THE EVENT ALLEGIANT IS FOUND LIABLE FOR ANY BREACH UNDER THIS AGREEMENT, ALLEGIANT'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED: THE TOTAL FEES ACTUALLY PAID BY CUSTOMER TO ALLEGIANT FOR THE SPECIFIC PRODUCT OR PRODUCTS THAT GAVE RISE TO SUCH CLAIMS.
- 4.4. **Application.** THE LIMITATIONS SET FORTH IN THIS ARTICLE III: SECTION 4 AND THE LIMITATIONS SET FORTH ELSEWHERE IN THIS AGREEMENT, APPLY TO ANY CLAIMS AND CAUSES OF ACTION WHATSOEVER, REGARDLESS OF THE FORMS OF THE ACTIONS, AND WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY.

5. Indemnification.

- 5.1. **Customer Indemnification Obligations.** You will indemnify defend and hold harmless Allegiant and its affiliates, owners, officers, directors, employees, from any and all third party actions (including claims by your end users or their affiliates), liability, damages, costs and expenses: due to a breach by you of Article III: Section 2, Article III: Section 6, Article III: Section 7, and Article III: Section 8; arising from, relating to, or is covered by: Article III: Section 3; or otherwise arising from or relating to: any failure, breakdown, interruption or deterioration of the Products; modifications to the Products by you, your end users, or a third party without Allegiant's express written consent; your violation of any Third Party End User License Agreements governing Software furnished in connection with the Products; or otherwise resulting from your use of the Products in violation of this Agreement.
- 5.2. **Allegiant Indemnification Obligations.** Allegiant will indemnify defend and hold harmless you and your affiliates, owners, officers, directors, employees, from any and all third party actions, liability, damages, costs and expenses: due to a breach by Allegiant of Article III: Section 2, Article III: Section 6, Article III: Section 7, and Article III: Section 8; for a claim alleging that a Product provided to you under this Agreement infringes any patent, trademark, copyright or trade secret, but not where the claimed infringement arises out of or results from the exemptions listed above in Article III: Section 5.1 or from the combination of the Products with any non-Allegiant Products, and in such circumstances, Allegiant shall either procure the right for you to continue using the infringing Product(s), or replace or modify the Product(s) so that they are non-infringing.
- 5.3. Each party's indemnity obligations under this Article III: Section 5, are contingent on the other party promptly notifying the other party (the "Indemnitor") in writing of any claim or threat thereof, promptly tendering to the Indemnitor sole control of the defense and any settlement of such claim, and providing to Indemnitor (at Indemnitor's cost) any assistance necessary to such defense or settlement. The Indemnitor will not be responsible for any settlement it does not approve in writing.
- 5.4. This Article III: Section 5, sets forth both party's entire liability in regards to the indemnity obligations contained herein.

6. Confidentiality.

- 6.1. Each party agrees: to keep confidential all the other party's Confidential Information (whether written or oral) which it has obtained or received as a result of the discussions leading up to or the entering into, or obtains or receives in performance or during the term of, this Agreement; not to disclose the other party's Confidential Information in whole or in part to any third party without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this Agreement and who have a need to know the same and are bound to keep it confidential; to use the other party's Confidential Information solely in connection with the performance of the Agreement and not otherwise or for the benefit of any other third party.
- 6.2. The provisions of this Article III: Section 6, shall not apply to the whole or any part of Confidential Information which is: lawfully obtained free of any duty of confidentiality otherwise than directly or indirectly from the disclosing party; already in a party's possession other than as a result of a breach of this Article III: Section 6; in the public domain (other than as a result of a breach of this Article III: Section 6); or necessarily disclosed pursuant to a statutory obligation
- 6.3. Each party, upon the request of the other, shall: return all of the other party's Confidential Information and copies in its possession to the other party, or destroy such Confidential Information and copies as directed by the other party and provide to such party a certificate of an officer of the party certifying such destruction.
- 6.4. Each party acknowledges and agrees that: the restrictions set forth in this Article III: Section 6, are reasonable in the circumstances; a violation of any of the provisions of this Article III: Section 6 shall result in immediate and irreparable harm and damage to the Disclosing Party; and In the event of any violation of any provision of this Article III: Section 6, the Disclosing Party shall, in addition to any other right to relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to such other relief as any court of competent jurisdiction may deem just and proper.

- 7. Proprietary Rights.** Nothing in this Agreement shall be construed to give any ownership interest in or constitute an assignment or transfer of any such intellectual Property of the other party.
- 8. Mutual Non-Solicitation.** No party shall solicit for employment any employee of the other party during the term of this Agreement and for a period of (2) years following its expiration or termination. Any breach of this Article III: Section 9, by either party without express written consent of the non-breaching party will result in recovery of any and all training fees, recruiting fees, and an amount equal to two times the individuals' current salary at the time of the breach.
- 9. Privacy Laws.** Each party is responsible for complying with the privacy laws applicable to its business.
- 10. Import/Export Control.** Neither party will use, distribute, transfer or transmit any Hardware, Software or technical information provided under this Agreement (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.
- 11. Trademarks.** Each party agrees not to display or use, in advertising or otherwise, any of the other party's trade names, logos, trademarks, service marks or other indicia of origin without the other party's prior written consent, which consent may be revoked at any time by notice.
- 12. Independent Contractor.** The parties are independent contractors. Neither party will have any rights, power or authority to act or create an obligation on behalf of the other party except as specified in this Agreement. Neither party's employees, agents, nor consultants shall be considered under any circumstances to be employees of the other party.
- 13. Force Majeure.** Except for payment of amounts due, neither party will be liable for any delay, failure in performance, loss or damage due to fire, explosion, cable cuts, power blackout, earthquake, flood, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, acts of a public enemy, acts or omissions of carriers or suppliers, acts of regulatory or governmental agencies or other causes beyond such party's reasonable control.
- 14. Amendments and Waivers.** Any supplement to or modification of any provision of this Agreement must be in writing and signed by authorized representatives of both parties. The failure by either party to exercise or enforce any right conferred by the Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of any such right on any later occasion.
- 15. Assignment and Subcontracting.** Allegiant has the right to assign, subcontract, or delegate in whole or in part this Agreement, or any of its rights, duties, obligations or liabilities provided that if it subcontracts its duties, Allegiant shall remain responsible for the performance of such obligations under this Agreement. You may not assign this Agreement without Allegiant's permission.
- 16. Severability.** If any portion of this Agreement is found to be invalid or unenforceable or if applicable Law mandates a different interpretation or result, the remaining provisions will remain in effect and the parties will negotiate in good faith to substitute for such invalid, illegal or unenforceable provision a mutually acceptable provision consistent with the original intention of the parties.
- 17. Injunctive Relief.** Nothing in this Agreement is intended to or should be construed to prohibit a party from seeking preliminary or permanent injunctive relief in appropriate circumstances from a court of competent jurisdiction.
- 18. Legal Action.** Any legal action arising in connection with this Agreement must be filed within one (1) year after the cause of action accrues, or it will be deemed time-barred and waived. The parties waive any statute of limitations to the contrary. In the event of any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, the prevailing party shall be entitled to recover reasonable attorneys' Fees incurred in connection with any court proceeding.
- 19. Counterparts/Facsimile.** This Agreement may be executed by the parties in one or more counterparts, each of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each party and delivered to the other party. This Agreement may be delivered by facsimile, email or other functionally equivalent electronic means of transmission agreed upon in writing by the parties.
- 20. Notices.** Any required notices under this Agreement shall be in writing and shall be deemed validly delivered if made by hand (in which case delivery will be deemed to have been effected immediately), or by overnight mail (in which case delivery will be deemed to have been effected one (1) business day after the date of mailing), or by first class pre-paid post (in which case delivery will be deemed to have been effected five (5) days after the date of posting), or by facsimile or electronic transmission (in which case delivery will be deemed to have been effected on the day the transmission was sent). Any such notice shall be sent to the office of the recipient set forth on the cover page of this Agreement or to such other office or recipient as designated in writing from time to time.
- 21. Governing Law/Jurisdiction.** This Agreement shall be enforced subject to the laws of the State of Kansas. Both parties agree that any dispute relating to this Agreement shall be subject to a Kansas Court of appropriate jurisdiction for resolution.
- 22. Modifications.** Any modifications to this Agreement must be made in writing and signed by authorized representatives of both parties to this Agreement hereto.
- 23. No Third Party Beneficiaries.** This Agreement is for the benefit of Allegiant and Customer and does not provide any third party (including users) the right to enforce it or to bring an action for any remedy, claim, liability, reimbursement or cause of action or any other right or privilege.
- 24. Headings.** The headings in this Agreement are for convenience only and shall not in any way affect the interpretation or enforceability of this Agreement.
- 25. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and all oral or written agreements relating to the same subject matter and existing prior to the date of the Agreement are expressly cancelled. Except as otherwise stated in this Agreement, this Agreement supersedes all other agreements, proposals, representations, statements and understandings, whether written or oral, concerning the Products or the rights and obligations relating to the Products, and the parties disclaim any reliance thereon.