

**SECURITIES PURCHASE AGREEMENT**

*by and among*

**THE CORPORATION**

*and*

**CENTERSTATE CEO FOUNDATION, INC.**

*Dated: April, 2015*

**EACH APPLICANT SHOULD READ THIS AGREEMENT CAREFULLY BEFORE SUBMITTING THE APPLICATION. BY CLICKING TO ACCEPT OR AGREE TO THE TERMS AND CONDITIONS OF THE COMPETITION WHEN THIS OPTION IS MADE AVAILABLE TO THE APPLICANTS, HE, SHE OR THEY ACCEPT AND AGREE TO BE BOUND AND ABIDE BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.**

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## SECURITIES PURCHASE AGREEMENT

THIS **SECURITIES PURCHASE AGREEMENT** (this "**Agreement**"), dated as of the date of the submission of the Application (as hereinafter defined), is entered into by and between the Applicants (as hereinafter defined) and the Corporation set forth in the Application (the "**Corporation**"), with its principal address located at the address set forth in the Application; and **CENTERSTATE CEO FOUNDATION, INC.**, a New York Not-for-Profit Corporation, with its principal address located at 572 South Salina Street, Syracuse, New York 13202 ("**CenterState CEO**").

### W H E R E A S:

**A.** The Applicants are the founders, officers, directors, managers, members, employees, and/or any other Person associated with the Corporation (the "**Applicants**") and have applied, on behalf of the Corporation, to participate in the Germinator, a competition organized and administered by CenterState CEO (the "**Competition**").

**B.** Pursuant to the terms of the Competition, the Corporation will sell to CenterState CEO, and CenterState CEO will purchase from the Corporation certain shares of Capital Stock of the Corporation (the "**Shares**").

**C.** The parties wish to set forth in writing the terms and conditions for the purchase and sale of the Shares and related matters.

**NOW, THEREFORE**, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

The defined terms used in this Agreement (as indicated by the first letter of each word in the term being capitalized) shall, unless the context clearly requires otherwise, have the meanings specified in this Article I:

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Application**" means the application submitted by the Applicants on behalf of themselves and the Corporation to enter into the Germinator Competition.

**"Business"** means the primary operations and business conducted by the Corporation.

**"Business Day"** means any day except Saturday, Sunday or any other day on which commercial banks located in Onondaga County are authorized or required by Law to be closed for business.

**"Capital Stock"** means the number of shares authorized for issuance by the Corporation's Certificate or Articles of Incorporation, including both common stock and preferred stock.

**"Consolation Round"** shall have the meaning set forth in the Germinator Rules.

**"Contracts"** means all contracts, leases, deeds, mortgages, licenses, instruments, notes, loans, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

**"Dollars or \$"** means the lawful currency of the United States.

**"Encumbrance"** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**"Environmental Law"** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term "Environmental Law" includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**"Equity"** means ownership in the Corporation or such other entity which enters into the Competition.

**"Equity Event"** means a sale of substantially all of the assets of the Corporation, a sale of more than forty percent (40%) of the voting or dividend control of the Corporation, a

public offering of the Shares of the Corporation or the incurrence of debt by the Corporation convertible into more than forty percent (40%) of the voting or dividend control of the Corporation.

**"Event of Default"** means:

(a) the failure by a party to perform any material obligation required of it under any of the Transaction Documents;

(b) if any representation or warranty made by a party under any Transaction Document is proven to be false in any material respect; or

(c) the filing by or against the Corporation or any Applicant of a request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as a bankrupt, relief as a debtor or other relief under the bankruptcy, insolvency or similar laws of the United States or any state or territory thereof or any foreign jurisdiction, now or hereafter in effect.

**"GAAP"** means United States generally accepted accounting principles in effect from time to time.

**"Germinator Rules"** means the rules of the Germinator Competition or set by CenterState CEO and amended from time to time to the extent such rules are not inconsistent with the terms of this Agreement.

**"Governmental Authority"** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**"Governmental Order"** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**"Grand Prize Winner"** shall have the meaning set forth in the Germinator Rules.

**"Hazardous Materials"** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

**"Knowledge of the Corporation or the Corporation's Knowledge"** or any other similar knowledge qualification, means the actual or constructive knowledge of any director or officer of the Corporation, after due inquiry.

**"Law"** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**"Losses"** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided*, that **"Losses"** shall not include punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Authority or other third party.

**"Material Adverse Effect"** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to the business, results of operations, prospects, condition (financial or otherwise) or assets of the Corporation.

**"Permits"** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**"Person"** means an individual, corporation, partnership, joint venture, limited liability Corporation, Governmental Authority, unincorporated organization, trust, association or other entity.

**"Representative"** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**"Round"** shall have the meaning set forth in the Germinator Rules.

**"Taxes"** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**"Tax Return"** means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**"Transaction Documents"** means this Agreement, the Application and the Germinator Rules.

**"Twelve County Region"** means the geographic location which includes the following counties in New York State: Cayuga County, Cortland County, Herkimer County,

Jefferson County, Lewis County, Madison County, Oneida County, Onondaga County, Oswego County, Seneca County, St. Lawrence County and Tompkins County.

## **ARTICLE II PURCHASE AND SALE**

**Section 2.01 PURCHASE AND SALE.** Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated herein shall take place as follows:

(a) If the Corporation is selected to participate in the Competition, CenterState CEO shall purchase four percent (4%) of the Capital Stock or Equity of the Corporation for a purchase price of Ten Thousand Dollars and 00/100 (\$10,000.00).

(b) If the Corporation survives the first Round, CenterState CEO shall purchase an additional four percent (4%) of the Capital Stock of the Corporation for a purchase price of Twenty Thousand Dollars and 00/100 (\$20,000.00).

(c) If the Corporation survives the second Round, CenterState CEO shall purchase an additional four percent (4%) of the Capital Stock of the Corporation for a purchase price of Fifty Thousand Dollars and 00/100 (\$50,000.00).

(d) If the Corporation survives the third Round, CenterState CEO shall purchase an additional four percent (4%) of the Capital Stock of the Corporation for a purchase price of Seventy Thousand Dollars and 00/100 (\$70,000.00).

(e) If the Corporation is selected as the Grand Prize Winner, CenterState CEO shall purchase an additional four percent (4%) of the Capital Stock of the Corporation, for a purchase price of One Hundred Thousand Dollars and 00/100 (\$100,000.00).

(f) If the Corporation is the winner of a Consolation Round, CenterState CEO shall purchase an additional four percent (4%) of the Capital Stock of the Corporation for a purchase price of Fifty Thousand Dollars and 00/100 (\$50,000).

**Section 2.02 SELECTION.** The selection of participants, the winner of each Round, the Grand Prize Winner and the winner of the Consolation Round of the Competition shall be made in accordance with the Germinator Rules.

**Section 2.03 CLOSING; DELIVERIES.** Each purchase of Shares shall take place within ten (10) days of the announcement of the selection, survivors or winner (as the case may be) of each Round in accordance with the Germinator Rules (the "**Closing**"), at which time:

(a) CenterState CEO shall deliver to the Corporation:

(i) the purchase price set forth in Section 2.01 hereof, by wire transfer of immediately available funds to an account of the Corporation or other immediately available funds; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by CenterState CEO pursuant to this Agreement.

(b) The Corporation shall deliver to CenterState CEO:

(i) stock certificates evidencing the Shares; and

(ii) the Transaction Documents and all other agreements, documents, instruments or certificates required to be delivered by the Corporation pursuant to this Agreement.

### **ARTICLE III CONDITIONS TO EACH CLOSING**

**Section 3.01 CONDITIONS TO OBLIGATIONS OF CENTERSTATE CEO.** The obligations of CenterState CEO to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment and satisfaction of CenterState CEO or CenterState CEO's waiver, at or prior to each Closing (unless indicated otherwise), of each of the following conditions:

(a) All representations and warranties described herein shall be true and correct and no Event of Default shall exist.

(b) Prior to the Closing of the second purchase, the Applicants shall have filed a Certificate of Incorporation as a Delaware Corporation and provided CenterState CEO with a copy of the Certificate of Incorporation, the Bylaws and such other organizational documents in full force and effect.

(c) The acceptance of the purchase price by the Corporation as of each Closing shall constitute a representation by the Applicants and the Corporation that:

(i) all representations and warranties of the Corporation and the Applicants under the Transaction Documents are true and correct;

(ii) no Event of Default exists on the part of the Applicants or the Corporation;

(iii) all of the issued and outstanding shares of Capital Stock of the Corporation are duly authorized, validly issued, fully paid and non-assessable;

(iv) the names of the founders, directors and officers of the Corporation as set forth in the Application are true and correct;

(v) the persons set forth in the Application as the directors and officers of the Corporation remain authorized to sign this Agreement, the Transaction Documents and the other documents and agreements to be delivered hereunder and thereunder;



(vi) no S election has been made by the Applicants or the Corporation;  
and

(vii) there has been no change in capitalization, as set forth in the Application.

(d) Prior to the funding of each Closing, no Event of Default shall have occurred and is continuing with respect to the Corporation.

(e) The Corporation shall have fully complied with, or obtained appropriate consents or waivers with respect to, its obligations under each of the agreements or other documents, including with respect to any outstanding rights of first refusal, rights of first offer, pre-emptive rights or anti-dilution rights or redemption or repurchase rights.

#### **ARTICLE IV TERM; TERMINATION; RELOCATION; CLAWBACK**

**Section 4.01 TERM.** The term of this Agreement shall commence on the date of the submission of the Application and shall continue so long as CenterState CEO holds any Shares of the Corporation or Applicants (the "**Term**").

**Section 4.02 TERMINATION.** The Corporation may at any time elect to withdraw from the Competition, in which event:

(a) the Corporation shall have no further obligations to sell and CenterState CEO shall have no further obligations to purchase additional Shares;

(b) the Corporation shall have the right to redeem the Shares held by CenterState CEO for an amount equal to five (5) times the purchase price paid by CenterState CEO for the Shares; and

(c) all other obligations of the Corporation and CenterState CEO hereunder shall continue as set forth in Section 4.01 hereof.

**Section 4.03 RELOCATION.** In the event the Corporation violates the covenant set forth in Section 8.01(h) during the Competition or during the twenty-four (24) month period following the most recent Equity purchase by CenterState CEO, CenterState CEO may, at its option, require the Corporation to redeem the Shares held by CenterState CEO for an amount equal to five (5) times the purchase price paid by CenterState CEO for the Shares.

**Section 4.04 CLAWBACK.** If within one (1) year of a redemption of the Shares by the Corporation, there is an Equity Event, in which the value of the Capital Stock of the Corporation is greater than the redemption price paid to CenterState CEO, the Corporation and the Applicants will cause to be paid to CenterState CEO the difference between the per Share value of the consideration paid in the Equity Event and the redemption price actually paid to CenterState CEO for the Shares.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF THE APPLICANTS**

The Applicants represent and warrant to CenterState CEO that:

**Section 5.01 AUTHORITY RELATIVE TO AGREEMENTS.** The Applicants have the full right, power and legal authority, being at least eighteen years of age, to enter into this Agreement, the Transaction Documents and all other documents executed by the Applicants in connection herewith and to carry out his, her or their obligations hereunder and thereunder and to sell, assign, transfer and convey the Shares to CenterState CEO as contemplated hereby. This Agreement, the Transaction Documents and all other documents executed by the Applicants in connection herewith have been duly executed and delivered by the Applicants and constitute the legal, valid and binding agreements of the Applicants enforceable against the Applicants in accordance with their respective terms; subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and to general equity principles.

**Section 5.02 NON-CONTRAVENTION.** The execution and delivery by the Applicants of this Agreement, the Transaction Documents and all other documents executed by the Applicants in connection herewith does not and, subject to the consummation by the parties of the transactions contemplated on their part hereby, will not violate, or result (with the giving of notice or the lapse of time, or both) in a violation of any provision of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time, or both) any obligation under any lease, agreement, license, indenture, instrument, law, ordinance, regulation, order, arbitration award, judgment or decree to which the Applicants are a party or by which he, she or they are bound or affected.

**Section 5.03 APPROVAL; CONSENT.** All approvals, authorizations and consents not heretofore obtained which are necessary in connection with the execution and delivery of this Agreement, the Transaction Documents and all other documents executed and delivered in connection herewith by the Applicants or the performance of the Applicants' obligations hereunder or thereunder have been obtained or will be obtained prior to the first Round.

**Section 5.04 LITIGATION.** There is no claim, Action, suit or proceeding pending or, to the best of the Applicants' knowledge, threatened in writing against the Applicants affecting the transactions contemplated by this Agreement or the Transaction Documents, nor is there any judgment, decree, injunction, ruling or order of any court, governmental department, commission, agency, instrumentality or arbitrator outstanding against the Applicants that would affect the transactions contemplated by this Agreement or the Transaction Documents.

**Section 5.05 INTELLECTUAL PROPERTY.** All Intellectual Property owned by the Applicants has been assigned to the Corporation.

**ARTICLE VI**  
**REPRESENTATIONS AND WARRANTIES OF THE CORPORATION**

The Corporation and the Applicants represent and warrant to CenterState CEO that:

**Section 6.01 ORGANIZATION, QUALIFICATION AND AUTHORITY OF THE CORPORATION.** Effective no later than the second purchase, the Corporation is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has full corporate power and authority to (a) enter into this Agreement, the Transaction Documents, and all other documents to which the Corporation is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby; and (b) own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its Business as it has been and is currently conducted. The Corporation is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its Business as currently conducted makes such licensing or qualification necessary. The execution and delivery by the Corporation of this Agreement, the Transaction Documents, and all other documents to which the Corporation is a party, the performance by the Corporation of its obligations hereunder and thereunder and the consummation by the Corporation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Corporation. This Agreement has been duly executed and delivered by the Corporation, and (assuming due authorization, execution and delivery by CenterState CEO) this Agreement constitutes a legal, valid and binding obligation of the Corporation enforceable against the Corporation in accordance with its terms. When each other Transaction Document and all other documents to which the Corporation is or will be a party has been duly executed and delivered by the Corporation (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document and other documents will constitute a legal and binding obligation of the Corporation enforceable against it in accordance with its terms.

**Section 6.02 CAPITALIZATION.**

(a) The Application accurately sets forth the ownership of the Equity of the Corporation including the legal names of each holder of Equity and the number of Shares of the Corporation held by each.

(b) All of the issued and outstanding shares of Capital Stock of the Corporation are duly authorized, validly issued, fully paid and non-assessable and all of the issued and outstanding shares of Capital Stock of the Corporation are issued in compliance with all applicable federal and state securities Laws.

(c) None of the issued and outstanding shares of Capital Stock of the Corporation are issued in violation of any agreement, arrangement or commitment to which the Corporation or any of its Affiliates is a party or is subject to or in violation of any preemptive or similar rights of any Person.

(d) All of the Shares will have the rights, preferences, powers, restrictions and limitations set forth under the Delaware General Corporation Law.

(e) The Shares issuable in accordance with this Agreement have been duly reserved for issuance and, upon such issuance, such Shares will be (x) duly authorized, validly issued, fully paid and non-assessable; and (y) issued in compliance with applicable all federal and state securities Laws.

**Section 6.03 NO CONFLICTS; CONSENTS.** The execution, delivery and performance by the Corporation of this Agreement, the Transaction Documents and all other documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Certificate of Incorporation, Bylaws or other organizational documents of the Corporation; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to the Corporation; (c) require the consent or waiver of, notice to or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which the Corporation is a party or by which the Corporation is bound or to which any of its properties and assets are subject (including any Material Contract (as hereinafter defined)) or any Permit affecting the properties, assets or Business of the Corporation; or (d) result in the creation or imposition of any Encumbrance other than those that are disclosed to and approved by CenterState CEO prior to each Closing. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Corporation in connection with the execution and delivery of this Agreement, the Transaction Documents and all other documents and the consummation of the transactions contemplated hereby and thereby.

**Section 6.04 UNDISCLOSED LIABILITIES.** The Corporation has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"); *except* (a) those which have been disclosed to CenterState CEO prior to each Closing, and/or (b) those which have been incurred in the ordinary course of its Business, consistent with past practice.

**Section 6.05 ABSENCE OF CERTAIN CHANGES, EVENTS AND CONDITIONS.** Other than in the ordinary course of Business, consistent with past practice, or otherwise disclosed to and approved by CenterState CEO, there has not been and shall not be, during the Term hereof, with respect to the Corporation, any:

- (a) split, combination or reclassification of any shares of its Capital Stock;
- (b) issuance, sale or other disposition of any of its Capital Stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its Capital Stock;
- (c) declaration or payment of any dividends or distributions on or in respect of any of its Capital Stock or redemption, purchase or acquisition of its Capital Stock;

(d) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of its Business, consistent with past practice;

(e) transfer, assignment, sale or other disposition of any of the assets or cancellation, discharge or payment of any material debts, liens or entitlements;

(f) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property;

(g) any capital investment in, or any loan to, any other Person;

(h) acceleration, termination, material modification or amendment to or cancellation of any Contract (including, but not limited to, any Material Contract) to which the Corporation is a party or by which it is bound;

(i) any material capital expenditures;

(j) imposition of any Encumbrance upon any of the Corporation properties, Capital Stock or assets, tangible or intangible;

(k) adoption, modification or termination of any agreement with any current or former employee, officer, director, independent contractor or consultant, whether written or oral;

(l) entry into a new line of business or abandonment or discontinuance of existing lines of Business;

(m) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(n) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof; or

(o) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

**Section 6.06 MATERIAL CONTRACTS.** Each Material Contract is valid and binding on the Corporation in accordance with its terms and is in full force and effect. The Corporation nor, to the Corporation's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any

benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) shall be made available to CenterState CEO, upon its request. "**Material Contract**" shall mean a Contract that is material to the Corporation.

**Section 6.07 TITLE TO ASSETS.** The Corporation has good, marketable and valid title, in fee simple, to valid leasehold interests in, valid licenses to use, or other rights to use or operate, all real and personal property and assets necessary or used in the ordinary conduct of its Business. All such properties and assets are free and clear of Encumbrances.

**Section 6.08 LEGAL PROCEEDINGS.** There are no Actions, suits, proceedings or investigations pending or, to the Knowledge of the Corporation, threatened against the Corporation (or its Affiliates) or any basis therefor, which, if adversely determined, would, in any case or in the aggregate, adversely affect the property, assets, financial condition or Business of the Corporation or impair the right or ability of the Corporation to carry on its operations, respectively, substantially as now conducted.

**Section 6.09 COMPLIANCE WITH LAWS; PERMITS.** The Corporation has complied, and is now complying, with all Laws applicable to it or its Business, properties or assets and has performed all of its obligations under, has obtained all necessary approvals, permits, authorizations or other consents required by, and is not in material violation of, any applicable local, state or federal, health Law or Environmental Law, ordinance, rule, regulation or order. All Permits required for the Corporation to conduct its Business have been obtained by it and are valid and in full force and effect.

**Section 6.10 EMPLOYMENT MATTERS.** As of the date hereof, all compensation, including wages, commissions and bonuses, payable to employees, independent contractors or consultants of the Corporation for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of the Corporation with respect to any employment, compensation, commissions or bonuses.

**Section 6.11 TAXES.**

(a) The Corporation has timely filed all Tax Returns that it was required to file. All such Tax Returns were complete and correct in all respects. All Taxes due and owing by the Corporation (whether or not shown on any Tax Return) have been timely paid.

(b) The Corporation has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Corporation.

(d) All deficiencies asserted, or assessments made, against the Corporation as a result of any examinations by any taxing authority have been fully paid.

(e) The Corporation is not a party to any Action by any taxing authority. There are no pending or threatened Actions by any taxing authority.

**Section 6.12 BOOKS AND RECORDS; FINANCIAL STATEMENTS.**

(a) The minute books and stock record books of the Corporation shall be complete and correct and have been maintained in accordance with sound business practices.

(b) The financial statements, consisting of the balance sheet and related statements of income, retained earnings, stockholders equity and cash flow of the Corporation shall be complete and correct and have been maintained in accordance with GAAP and applied on a consistent basis throughout the period involved.

**Section 6.13 FULL DISCLOSURE.** No representation or warranty by the Corporation in this Agreement, the Transaction Documents or any other document furnished or to be furnished to CenterState CEO pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE VII  
REPRESENTATIONS AND WARRANTIES OF CENTERSTATE CEO**

CenterState CEO represents and warrants to the Corporation that the statements contained in this Article VII are true and correct during the Term of this Agreement:

**Section 7.01 ORGANIZATION AND AUTHORITY OF CENTERSTATE CEO.** CenterState CEO is a New York Not-for-Profit Corporation duly organized, validly existing and in good standing under the Laws of the State of New York. CenterState CEO has full corporate power and authority to enter into this Agreement, the Transaction Documents and all other documents to which CenterState CEO is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by CenterState CEO of this Agreement, the Transaction Documents and all other documents to which CenterState CEO is a party, the performance by CenterState CEO of its obligations hereunder and thereunder and the consummation by CenterState CEO of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of CenterState CEO. This Agreement has been duly executed and delivered by CenterState CEO, and (assuming due authorization, execution and delivery by the Corporation) this Agreement constitutes a legal, valid and binding obligation of CenterState CEO enforceable against CenterState CEO in accordance with its terms. When each Transaction Document and all other documents to which CenterState CEO is or will be a party has been duly executed and delivered by CenterState CEO (assuming due authorization, execution and delivery by each other party thereto), such Transaction Document and other documents will constitute a legal and binding obligation of CenterState CEO enforceable against it in accordance with its terms.

**Section 7.02 NO CONFLICTS; CONSENTS.** The execution, delivery and performance by CenterState CEO of this Agreement, the Transaction Documents and all other documents to which it is a party, and the consummation of the transactions contemplated hereby and

thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the Certificate of Incorporation, Bylaws or other organizational documents of CenterState CEO; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to CenterState CEO; or (c) require the consent, notice or other action by any Person under any Contract to which CenterState CEO is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to CenterState CEO in connection with the execution and delivery of this Agreement, the Transaction Documents and all other documents and the consummation of the transactions contemplated hereby and thereby.

**Section 7.03 INVESTMENT PURPOSE.** CenterState CEO is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. CenterState CEO acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

## **ARTICLE VIII COVENANTS**

**Section 8.01 AFFIRMATIVE COVENANTS.** The Corporation and the Applicants agree that during the Term of this Agreement:

- (a) **Applicable Laws; Permit.** The Corporation shall maintain:
  - (i) under the Laws of the State of Delaware, its valid corporate existence and good standing;
  - (ii) its due license and qualification to do business and good standing in each jurisdiction, and each other jurisdiction in which the properties owned or leased by it or the operation of its Business, makes such licensing or qualification necessary; and
  - (iii) all Permits necessary to the conduct of its Business.
- (b) **Compliance with Laws.** The Corporation shall comply with all Laws applicable to it or its Business, properties or assets, the violation of which would reasonably be expected to have a Material Adverse Effect.
- (c) **Contractual Obligations.** The Corporation and the Applicants shall comply with all contractual obligations as such obligations become due to the extent to which the failure to so comply would reasonably be expected to have a Material Adverse Effect, unless and to the extent such obligations are being contested in good faith by appropriate proceedings and adequate reserves (as determined in accordance with GAAP) have been established on its books and financial statements of the Corporation for such obligations.



(d) **Taxes.** The Corporation shall pay and discharge all Taxes due and owing by the Corporation before the same becomes delinquent and before penalties accrue thereon, unless and to the extent such Taxes are being contested in good faith by appropriate procedures and adequate accruals or reserves (as determined in accordance with GAAP) have been established on the books and financial statements of the Corporation for such Taxes. The Corporation shall pay when due all transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax), if any. Corporation shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and CenterState CEO shall cooperate with respect thereto as necessary). The Corporation shall deliver to CenterState CEO, upon its written request, copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Corporation for all Tax periods ending after December 2014.

(e) **Labor, Materials and Supplies.** The Corporation shall pay and discharge all claims for labor, material and supplies which, if unpaid and delinquent, would become under applicable Law a lien upon property of the Corporation, unless and to the extent such claims are being contested in good faith by appropriate procedures and adequate accruals or reserves (as determined in accordance with GAAP) have been established on the books and financial statements of the Corporation for such claims.

(f) **Insurance.** The Corporation shall maintain: (i) property and casualty and other insurance covering risks and hazards of such types and in such amounts as are customary for adequately-insured companies of similar size engaged in similar industries and lines of business; and (ii) directors and officers liability insurance in an amount and on terms and conditions reasonably satisfactory in all material respects to CenterState CEO. All current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors and officers' liability, fiduciary liability and other casualty and property insurance maintained by the Corporation (or its Affiliates) and relating to the assets, Business, operations, employees, officers and directors of the Corporation (collectively, the "**Insurance Policies**"), if any, shall be made to available to CenterState CEO upon its written request.

(g) **Books and Records; Financial Statements.** The minute books and stock record books of the Corporation shall be complete and correct and have been maintained in accordance with sound business practices. The Corporation shall keep adequate books, accounts and records in accordance with past custom and practice as used in the preparation of the financial statements, which books, accounts and records shall fairly present the financial condition and results of operations of the Corporation. All such minute books, stock record books, and accounts and records of the financial statements shall be made available to CenterState CEO upon its written request.

(h) **Geographic Restriction.** The Corporation shall maintain its Business and operations within the Twelve County Region.

(i) **Amendments.** Neither the Applicants nor the Corporation shall amend the Certificate of Incorporation or Bylaws of the Corporation in any manner, including without limitation, to increase the number of authorized shares of the Corporation.

(j) **Intellectual Property.**

(i) **"Intellectual Property"** means all of the following and similar intangible property and related proprietary rights, interests and protections, however arising, pursuant to the Laws of any jurisdiction throughout the world, including such property that is owned by the Corporation and that in which the Corporation holds exclusive or non-exclusive rights or interests granted by license from other Persons, including the Corporation:

(A) trademarks, service marks, trade names, brand names, logos, trade dress and other proprietary indicia of goods and services, whether registered or unregistered, and all registrations and applications for registration of such trademarks, including intent-to-use applications, all issuances, extensions and renewals of such registrations and applications and the goodwill connected with the use of and symbolized by any of the foregoing;

(B) internet domain names, whether or not trademarks, registered in any top-level domain by any authorized private registrar or Governmental Authority;

(C) original works of authorship in any medium of expression, whether or not published, all copyrights (whether registered or unregistered), all registrations and applications for registration of such copyrights, and all issuances, extensions and renewals of such registrations and applications;

(D) Confidential Information, formulas, designs, devices, technology, know-how, research and development, inventions, methods, processes, compositions and other trade secrets, whether or not patentable; and

(E) patented and patentable designs and inventions, all design, plant and utility patents, letters patent, utility models, pending patent applications and provisional applications and all issuances, divisions, continuations, continuations-in-part, reissues, extensions, reexaminations and renewals of such patents and applications.

(ii) The Corporation shall: (A) own, exclusively all right, title and interest in and to, or have a valid license for, and shall maintain all Intellectual Property necessary to the conduct of its Business, free and clear of Encumbrances; (B) enter into and maintain in full force and effect binding, written agreements with every employee and independent contractor (subsequent to the submission of the Application), whereby such employees and independent contractors (1) assign to the Corporation any ownership interest and right they may have in the Intellectual Property and (2) acknowledge the Corporation's exclusive ownership of all Intellectual Property; and (C) remain in full compliance with all legal requirements applicable to the Intellectual Property and the Corporation's ownership and use thereof.

(iii) The Applicants hereby take all action necessary to vest title to all such Intellectual Property in the Corporation and hereby assign, transfer and convey to the Corporation any and all right, title and interest he, she or they may have (including, without limitation, all patent, copyright, trade secret and other Intellectual Property rights) in and to any Inventions, Works and Work Product (each as defined below) arising out of the relationship with the Corporation and Inventions prepared on behalf of the Corporation prior to the submission of the Application and during the Term hereof, related to the Corporation and related technologies free and clear of all liens or Encumbrances. As used herein, (A) "Inventions" means all ideas, inventions, discoveries and improvements thereof, whether patentable or not, (B) "Works" means all copyrightable works of authorship, including without limitation computer software, books, manuals and derivative versions thereof, and (C) "Work Product" means all work product resulting from the personal efforts of the Applicant, independently or with others, including but not limited to all business plans, marketing and sales plans, customer and supplier lists, computer programs, files, renderings, sketches, schematics, photographs, notes, drawings, and all material created as part of the Work Product or as part of the process of creating the Work Product.

(k) **Confidential Information.**

(i) The Applicants acknowledge that he, she or they will be exposed and have access to certain proprietary and confidential information of and with respect to the Corporation including, but not limited to, information regarding the Corporation's customers and potential customers, as well as the Corporation's financial information, business plans and strategies, plans and systems, market research and data bases, pricing structures, methods of operations, trade secrets and other proprietary information (the "**Confidential Information**"). The Applicants covenant and agree that he, she or they will not at any time during or after the termination of his, her or their relationship with the Corporation disclose or use, except in the discharge of his, her or their duties, any Confidential Information without the express written consent of the Corporation. The obligation of confidentiality set forth herein shall not apply to any information: (A) required to be disclosed by Law or by the order of any Governmental Authority; (B) which shall be shown to have been generally known by others engaged in the trade or Business of the Corporation; (C) which is part of the public domain; or (D) which becomes available to the Applicants after the termination of this Agreement from a third party not under a duty of non-disclosure. To the extent any Confidential Information is sought pursuant to Law, court order or similar compulsion or in connection with any legal proceeding, the Applicants shall give the Corporation at least two (2) weeks' notice, if practicable, of the basis for any such request for Confidential Information, and shall reasonably cooperate with the Corporation to limit disclosure to the narrowest extent allowed by Law, and obtain suitable confidentiality protections, unless otherwise prohibited by applicable Law.

(ii) Upon termination of an Applicants' relationship with the Corporation or upon being relieved of all duties and responsibilities, the Applicants will promptly deliver to the Corporation, without copying or summarizing, all Confidential Information, as well as all material related to the Corporation's Business or its customers in his, her or their possession or control including, without limitation, all physical property, computer equipment and software, data, programs, security information including passwords, files, manuals, letters, notes, reports and keys. The Applicants further agree, upon termination or

upon being relieved of all duties and responsibilities, not to record, reproduce or regenerate from memory any Confidential Information, for his, her or their own use or that of a third party.

(l) **Non-competition; Non-solicitation**

(i) During the Term of this Agreement, neither the Corporation nor the Applicants shall, nor shall the Corporation or the Applicants permit any of their Affiliates to, directly or indirectly: (A) engage in or assist others in engaging in the Business of the Corporation within North America; (B) have an interest in any Person that engages directly or indirectly in the Business of the Corporation within North America in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (C) intentionally interfere in any material respect with the Business relationships (whether formed prior to or after the date of this Agreement) between the Corporation and customers or suppliers of the Corporation.

(ii) During the Term, neither the Corporation nor the Applicants shall, nor shall the Corporation or the Applicants permit any of their Affiliates to, directly or indirectly, hire or solicit any employee of the Corporation or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided*, that nothing in this Section shall prevent the Corporation or the Applicants or any of their Affiliates from hiring (A) any employee whose employment has been terminated by the Corporation; or (B) after one hundred eighty (180) days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(iii) During the Term, neither the Corporation nor the Applicants shall, nor shall the Corporation or the Applicants permit any of their Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Corporation or potential clients or customers of the Corporation for purposes of diverting their business or services from the Corporation.

(iv) The Applicants acknowledge that a breach or threatened breach of this subsection would give rise to irreparable harm to the Corporation and CenterState CEO, for which monetary damages would not be an adequate remedy, and hereby agree that in the event of a breach or a threatened breach by the Corporation or the Applicants of any such obligations, the Corporation and CenterState CEO shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

(v) The Applicants acknowledge that the restrictions contained in this subsection are reasonable and necessary to protect the legitimate interests of the Corporation and CenterState CEO and constitute a material inducement of CenterState CEO to enter into this Agreement and consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this subsection should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any

jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this subsection and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

(m) The Corporation shall perform and observe all of its obligations and covenants set forth in each of the Transaction Documents.

(n) Neither the Corporation nor the Applicants shall, without the prior written consent of CenterState CEO, take any actions described in Section 6.05 of this Agreement or enter into an Equity Event.

**Section 8.02 FURTHER ASSURANCES.** Each of the parties hereto shall, and shall cause their respective Affiliates, at any time during the Term of this Agreement, to execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

## **ARTICLE IX INDEMNIFICATION**

**Section 9.01 SURVIVAL.** Notwithstanding anything to the contrary contained herein or pursuant to applicable Law, the representations and warranties contained in this Agreement shall remain in full force and effect during the Term of this Agreement and for a period of two (2) years thereafter.

**Section 9.02 INDEMNIFICATION BY CORPORATION.** Subject to the other terms and conditions of this Article IX, the Corporation shall indemnify and defend CenterState CEO and its Affiliates and their respective Representatives (collectively, the "**CenterState CEO Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the CenterState CEO Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of the Corporation or the Applicants contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Corporation or the Applicants pursuant to this Agreement; or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Corporation or the Applicants pursuant to this Agreement.

**Section 9.03 DEFENSE.** If a third party commences any action or makes any demand against CenterState CEO Indemnitees for which CenterState CEO Indemnitees are entitled to indemnification under this Agreement, CenterState CEO Indemnitees will

promptly notify the Corporation in writing of such action or demand; *provided*, however, that if the CenterState CEO Indemnitees assume the defense of the Action and fail to provide prompt notice to the Corporation, such failure shall not limit in any way the Corporation's obligation to indemnify the CenterState CEO Indemnitees except to the extent that such failure materially prejudices the Corporation's ability to defend the action. The Corporation may, at its own expense and without limiting its obligation to indemnify the CenterState CEO Indemnitees, participate in the defense of such action with counsel reasonably satisfactory to the CenterState CEO Indemnitees, or the Corporation may, at its own expense and without limiting its obligation to indemnify the CenterState CEO Indemnitees, assume the defense of such action with counsel reasonably acceptable to the CenterState CEO Indemnitees. In any event, the party that has assumed the defense of such action shall provide the other party with copies of all notices, pleadings, and other papers filed or served in such action. Neither party shall make any settlement or adjustment without the other party's prior written consent, which consent (i) in the case of the Corporation will not be unreasonably withheld if the settlement or adjustment involves only the payment of money damages by the Corporation and (ii) in the case of the CenterState CEO Indemnitees may be withheld for any reason if the settlement or adjustment involves performance or admission by the CenterState CEO Indemnitees. The indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement, and it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

**Section 9.04 TAX TREATMENT OF INDEMNIFICATION PAYMENTS.** All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the purchase price of each Round for Tax purposes, unless otherwise required by Law.

**Section 9.05 EFFECT OF INVESTIGATION.** Neither the representations, warranties and covenants of the Corporation or the Applicants, nor the right to indemnification of any CenterState CEO Indemnitee making a claim under this Article IX with respect thereto, shall be affected or deemed waived by reason of any investigation made by or on behalf of an CenterState CEO Indemnitee (including by any of its Representatives) or by reason of the fact that an CenterState CEO Indemnitee or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of an CenterState CEO Indemnitee's waiver of any condition set forth in Section 3.01.

## **ARTICLE X MISCELLANEOUS**

**Section 10.01 EXPENSES.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the Transaction Documents, and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Corporation remains in the Competition.

**Section 10.02 NOTICES.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c)

on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses specified in the Application.

**Section 10.03 HEADINGS.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.04 SEVERABILITY.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.05 ENTIRE AGREEMENT.** This Agreement and the Transaction Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Transaction Documents, the statements in the body of this Agreement will control.

**Section 10.06 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors (including any entity formed by the Corporation hereafter) and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided*, that prior to each Closing, CenterState CEO may, without the prior written consent of the Corporation, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect subsidiaries or Affiliates. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.07 AMENDMENT AND MODIFICATION; WAIVER.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK IN EACH CASE LOCATED IN THE CITY OF SYRACUSE AND COUNTY OF ONONDAGA, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH IN THE APPLICATION SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**Section 10.09 SPECIFIC PERFORMANCE.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at Law or in equity.



**Section 10.10 COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**THIS AGREEMENT IS HEREBY MADE EFFECTIVE BETWEEN THE  
PARTIES BY APPLICANTS' SUBMISSION OF THE APPLICATION.**