

## **BNA MASTER LICENSE AGREEMENT ACADEMIC CUSTOMERS**

This Master License Agreement is between THE BUREAU OF NATIONAL AFFAIRS, INC., 1231 25th Street, N.W., Washington, D.C. 20037, and/or a wholly-owned subsidiary of BNA including TAX MANAGEMENT INC., and BNA INTERNATIONAL, INC., referred to collectively as “BNA,” and UNIVERSITY OF AKRON SCHOOL OF LAW (“Customer”).

This Agreement sets forth the terms and conditions applicable to Customer’s access to, and use of, the BNA publications listed on the Order Form (referred to as “Licensed Products”), including all databases, software, and/or materials contained within the Licensed Products and accompanying documentation and/or manuals.

Access to and/or use of the Licensed Products will constitute acceptance of all terms and conditions. If you do not agree with the terms and conditions stated herein, immediately contact BNA to discontinue access (Customer Relations, telephone: 1-800-372-1033, e-mail: [customercare@bna.com](mailto:customercare@bna.com)). Renewal of any subscription for any Licensed Product following any changes to this Master License Agreement will constitute acceptance of those changes.

1. **License.** Customer has purchased the type of license specified in the Order Form (or may have access to the Licensed Products under an agreement with a third party information provider, the terms of which are incorporated herein). BNA grants to Customer a non-exclusive, non-transferable, limited right to access and use the Licensed Products according to the terms and conditions of this Agreement. This license shall be effective during the term of Customer’s subscription to the Licensed Products as set forth on the Order Form. Customer is solely responsible for selecting, purchasing, installing and maintaining the hardware, equipment, and other software necessary to use the Licensed Products, and for access and similar charges incurred under third party information provider subscription agreements (e.g., Westlaw<sup>®</sup>, LexisNexis<sup>™</sup>).

2. **Customer.** The terms and conditions of this Agreement shall apply to Customer and each Authorized User. Customer will use best efforts to inform all Authorized Users of the terms and conditions of this Agreement. Customer will cooperate with any investigation into possible breach of terms and conditions of use.

3. **Authorized Users.** The term “Authorized Users” shall include full-time and part time, current, or visiting members of the faculty, library staff and currently enrolled students, who are permitted to access the Customer’s secure computer network system (“Network”), regardless of physical location of such person(s). Authorized Users shall also include other persons, e.g., walk-ins, who are permitted to use the Customer’s library and access the Network from computer terminals located on the library premises.

CUSTOMER SHALL NOTIFY ALL AUTHORIZED USERS OF THE TERMS OF THIS MASTER LICENSE AGREEMENT THROUGH EITHER A “CLICK-THROUGH” LICENSE THAT APPEARS ONLINE EACH TIME THE LICENSED PRODUCTS ARE ACCESSED, OR OTHER MEANS THAT WILL NOTIFY USERS THAT USE IS SUBJECT TO THE TERMS OF THIS AGREEMENT.

#### 4. Payment.

a. Unless otherwise specified in the Order Form or agreed to in writing by BNA, at the beginning of the Term, BNA will send an invoice to Customer to one (1) designated billing address. If Customer upgrades a subscription (e.g., increases the number of maximum authorized Users), BNA will invoice Customer for additional license fees for such Users at the prices in effect at the time of the change, on a pro rated basis over the remainder of the current subscription term as specified on the Order Form

b. Within sixty (60) days after agreeing to a new subscription, Customer must notify BNA of any existing BNA subscription that needs to be cancelled as a result of the new subscription. If Customer gives timely notice, BNA will apply any payments made by Customer on the unfulfilled portion of the existing subscription to amounts owed with respect to the new subscription.

c. All subscription fees listed on the Order Form are exclusive of taxes and charges for replication, telecommunication, software, hardware, and other equipment. It is the responsibility of the Customer to promptly provide BNA with its tax exemption documentation.

d. Payment is due to BNA within forty-five (45) days of the invoice date. After sixty-five (65) days, interest will be assessed at the rate of 1% per month. BNA also may terminate Customer's access to the Licensed Products without further notice if payment, or written notice of a payment dispute has not been acknowledged by Customer, is not received within sixty (60) days of the invoice date.

5. **Renewals.** BNA reserves the right to revise its renewal prices at any time and without notice; renewal prices will be included on the renewal invoice. Customer's payment of the renewal invoice will constitute acceptance of the renewal price and the renewal subscription, which will continue to be otherwise governed by the terms of the applicable Order Form and this Agreement unless both parties agree to any further changes. The conditions of payment described in section 4 shall apply to payment of renewal invoices.

#### 6. Copyright.

a. The Licensed Products contain proprietary material of BNA that is protected by copyright and other laws respecting proprietary rights. The Licensed Products also may contain similarly protected licensed proprietary material of NextPage, FirstDoor, or other suppliers ("Licensors"). BNA retains all rights in the Licensed Products, including (without limitation) all copyright and other proprietary rights worldwide in all media. Customer and all Authorized Users may not use the Licensed Products except as expressly permitted under this Agreement, the BNA Copyright Guidelines, and under U.S. copyright laws. Any routine and/or systematic redistribution of any portion of the Licensed Products is expressly prohibited other than agreed upon in this contract. On or before the subscription start date, BNA agrees to make the BNA Copyright Guidelines, as amended from time to time, available to all Authorized Users within the organization through its website, <http://www.bna.com/corp/copyright>. BNA reserves the right to revise the BNA Copyright Guidelines at any time.

b. Authorized Users may access the Licensed Products for their individual use, i.e., may view the Licensed Products on screen; may download or save the Licensed Products to a computer disk for individual convenience and later reference; and may print paper copies for individual, educational, or research use only. If BNA is properly credited, Authorized Users may, on an

occasional basis, reproduce and use small portions of material in the Licensed Products for internal or interoffice use, coursework for educational or research use, court filings by student legal clinics and/or classroom use as provided for under United States copyright law fair use provisions. Unless otherwise authorized by BNA, any routine or systematic distribution of any portion of the Licensed Products is strictly prohibited.

c. The rights granted here are an expansion of the rights granted under the Copyright Act and do not include any rights to reproduce in its entirety any portion of the Licensed Products or materials contained therein. No part of the Licensed Products may be duplicated in any medium or format beyond the express

terms of this Agreement without prior written authorization from BNA, 1231 25th St., N.W., Washington, D.C. 20037, Attention: Permissions Manager (e-mail: [permissions@bna.com](mailto:permissions@bna.com)). Nothing in this license shall exclude, modify or affect any of the licensee rights under the U.S. copyright law.

d. The Licensed Products may be used for purposes of research, education or other non-commercial use as follows:

Display. Customer and Authorized Users shall have the right to electronically display the Licensed Products.

Digitally Copy. Customer and Authorized Users may download and digitally copy the Licensed Products as permitted under section 6.b. of this Agreement.

Print Copy. Customer and Authorized Users may print the Licensed Products as permitted under section 6.b. of this Agreement.

Recover Copying Costs. Customer may charge a reasonable fee to cover costs of copying or printing portions of Licensed Products for Authorized Users.

Archival/Backup Copy. Upon request of Customer, Customer may receive from BNA and/or create one (1) copy of the entire set of Licensed Products for the sole purpose of maintaining an archival copy of the Licensed Products.

Course Packs. Customer and Authorized Users may use a reasonable portion of the Licensed Products in the preparation of Course Packs.

Electronic Reserve. Customer and Authorized Users may use a reasonable portion of the Licensed Products for use in connection with specific courses of instruction offered by Customer.

Electronic Links. Customer may provide electronic links to the Licensed Products from Customer's web page(s), and is encouraged to do so in ways that will increase the usefulness of the Licensed Products to Authorized Users.

Caching. Customer and Authorized Users may make such local digital copies of the Licensed Products as are necessary to ensure efficient use by Authorized Users by appropriate browser or other software.

Scholarly Sharing. On an occasional basis, Authorized Users may transmit to a third party colleague in hard copy or electronically, minimal, insubstantial amounts of the Licensed Products for personal use or scholarly, educational, or scientific research or professional use but in no case

for re-sale, broad distribution, or on a routine or systematic basis. In addition, Authorized Users have the right to use, with appropriate credit, figures, tables and brief excerpts from the Licensed Products in the Authorized User's own scientific, scholarly and educational works.

Interlibrary Loan. Customer may fulfill requests from other institutions, a practice commonly called Interlibrary Loan. Customer agrees to fulfill such requests in compliance with Section 108 of the United States Copyright Law (17 USC § 108, "Limitations on exclusive rights: Reproduction by libraries and archives") and clause 3 of the Guidelines for the Proviso of Subsection 108(g)(2) prepared by the National Commission on New Technological Uses of Copyright Works. Customer agrees to provide the copy in print form and not electronically.

e. Customer acknowledges that the Licensed Products are highly proprietary in nature and that unauthorized copying, transfer or use may cause BNA or its licensors irreparable injury that cannot be adequately compensated for by means of monetary damages. Customer agrees that any breach of this Agreement by Customer, or any subscriber or Authorized User, may be enforced by BNA by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other available rights and remedies.

f. The Licensed Products may incorporate the search and retrieval software "Views" and/or the Internet display software "siteDirector." Views and siteDirector are proprietary products of NextPage which has made its software available under license to BNA. Use of Views and siteDirector is subject to all terms and conditions in this Agreement.

## **7. Restrictions.**

a. Customer may not and may not permit others to: reproduce, publish, distribute, sell, or otherwise access or use any material retrieved from or contained in the Licensed Products in any manner whatsoever that may infringe any copyright or proprietary interest of BNA or its licensors; distribute the information contained in the Licensed Products to other users not duly authorized to receive the Licensed Products; distribute, rent, sublicense, lease, transfer, assign or otherwise make commercial use of the Licensed Products or Agreement; decompile, disassemble, or otherwise reverse-engineer these Licensed Products, or alter, translate, modify, or adapt it to create derivative works. The use of "framing" or other means of redirecting content is specifically prohibited by the foregoing. Unauthorized reproduction, transfer, and/or use may be a violation of criminal as well as civil law.

b. Except as expressly permitted under this Agreement, Customer is expressly prohibited from placing or installing any portion of the Licensed Products on any electronic media, including, but not limited to, individual desktop computers, local or wide area networks, timesharing services, multiple processing units, multiple site arrangements, service or software rental bureaus, list servers, online services, electronic bulletin boards or forums, World Wide Web sites or any other server that is Internet enabled, without written authorization by BNA.

c. Unauthorized Use. Customer shall not knowingly permit anyone other than Authorized Users to use the Licensed Products.

d. Modification of Licensed Products. Customer shall not modify or create a derivative work of the Licensed Products without the prior written permission of BNA.

e. Removal of Copyright Notice. Customer may not remove, obscure or modify any copyright or other notices included in the Licensed Products.

f. Commercial Purposes. Customer may not use the Licensed Products for commercial purposes, including, but not limited to, the sale of the Licensed Products or bulk reproduction or distribution of the Licensed Products in any form.

## **8. BNA Performance Obligations**

a. Availability of Licensed Products. Within fifteen (15) days of execution of this Agreement, BNA shall make the Licensed Products available to Customer and Authorized Users.

b. Support. BNA will offer its standard activation or installation support. BNA will offer its standard continuing support to assist Customer and Authorized Users in use of the Licensed Products.

c. Training. BNA will provide appropriate training to Customer staff relating to the use of the Licensed Products and any BNA software.

d. Quality of Service. BNA shall use reasonable efforts to ensure that the BNA's server or servers have sufficient capacity and rate of connectivity to provide the Customer and its Authorized Users with a quality of service comparable to current standards in the on-line information provision industry in the Customer's locale.

e. If the Licensed Products fail to operate in conformance with the terms of this Agreement, Customer shall immediately notify BNA, and BNA shall use reasonable efforts to restore access to the Licensed Products as soon as practical or extend the subscription term accordingly. In the event that BNA fails to repair the nonconformity in a reasonable time, BNA shall, in its sole discretion, reimburse Customer in an amount that the nonconformity is proportional to the total fees owed by Customer under this Agreement, or appropriately extend the subscription term.

f. Notification of Modifications of Licensed Products. Customer understands that from time to time the Licensed Products may be added to, modified, or deleted from by BNA and/or that portions of the Licensed Products may migrate to other formats. BNA shall give the same notice of any such changes to Customer as it does with the other subscribers.

g. Compliance with Americans with Disabilities Act. BNA shall comply with the Americans with Disabilities Act (ADA).

## **9. Customer Performance Obligations**

a. Provision of Notice of License Terms to Authorized Users. Customer shall provide Authorized Users with appropriate notice of the terms and conditions under which access to the Licensed Products is granted under this Agreement including, in particular, any limitations on access or use of the Licensed Products as set forth in this Agreement.

b. Protection from Unauthorized Use. Customer shall use reasonable efforts to protect the Licensed Products from any use that is not permitted under this Agreement. In the event of any unauthorized use of the Licensed Products by an Authorized User, (i) BNA may terminate such Authorized User's access to the Licensed Products, (ii) BNA may terminate the access of the Internet Protocol ("IP") address(es) from which such unauthorized use occurred, and/or (iii) Customer shall terminate such Authorized User's access to the Licensed Products upon BNA's request. BNA shall take none of the steps described in this paragraph without first providing

reasonable notice to Customer (in no event less than thirty (30) days) and cooperating with the Customer to avoid recurrence of any unauthorized use.

c. **Maintaining Confidentiality of Access Passwords.** Where access to the Licensed Products is to be controlled by use of passwords, Customer shall issue log-on identification numbers and passwords to each Authorized User and use reasonable efforts to ensure that Authorized Users do not divulge their numbers and passwords to any third party. Customer shall also maintain the confidentiality of any institutional passwords provided by BNA.

## **10. Mutual Performance Obligations**

a. **Confidentiality of User Data and Pricing.** BNA and Customer agree to maintain the confidentiality of any data relating to the usage of the Licensed Products by Customer and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Products and may only be provided to third parties in aggregate form. Raw usage data, including but not limited to information relating to the identity of specific users and/or uses, shall not be provided to any third party. Customer agrees to keep the pricing terms of this Agreement strictly confidential and agrees to not disclose, either directly or indirectly, the pricing terms of this Agreement.

b. **Implementation of Developing Security Protocols.** Customer and BNA shall cooperate in the implementation of security and control protocols and procedures as they are developed during the term of this Agreement.

## **11. Termination for Cause**

a. In the event that either party believes that the other materially has breached any obligations under this Agreement, or if BNA believes that Customer has exceeded the scope of the License, such party shall so notify the breaching party in writing. The breaching party shall have thirty (30) days from the receipt of notice to cure the alleged breach and to notify the non-breaching party in writing that cure has been effected. If the breach is not cured within the thirty (30) days, the non-breaching party shall have the right to terminate the Agreement without further notice.

b. Upon termination of this Agreement for cause, online access to the Licensed Products by Customer and Authorized Users shall be terminated. Authorized print copies of Licensed Products may be retained by Customer or Authorized Users and used subject to the terms of this Agreement.

c. In the event of termination by Customer for cause, Customer shall be entitled to a refund of any fees or pro-rata portion thereof paid by Customer for any remaining period of the Agreement from the date of termination.

**12. Disclaimer of Professional Advice.** The information provided through the Licensed Products is not a substitute for legal and other professional advice where the facts and circumstances warrant. If any User in Customer's organization requires legal advice or other professional assistance, each such user should always consult his or her own legal or other professional advisors and discuss the facts and circumstances that apply to the User.

### **13. Limited Warranty.**

a. BNA warrants that it has the right to license the rights granted under this Agreement to use Licensed Products and that it has obtained any and all necessary permissions from third parties to license the Licensed Products. While BNA and its licensors attempt to include accurate and complete content in the Licensed Products and error-free software, occasional errors or omissions may occur in the Licensed Products. BNA will make reasonable efforts to correct these errors or omissions or cause the appropriate licensors to correct these errors or omissions. NEVERTHELESS, NEITHER BNA NOR SUCH OTHER PARTIES CAN MAKE ANY REPRESENTATION REGARDING THE ACCURACY OR COMPLETENESS OF THE CONTENT PROVIDED OR THE ERROR-FREE NATURE OF THE SOFTWARE PROVIDED. EXCEPT AS SPECIFICALLY PROVIDED IN THIS MASTER LICENSE AGREEMENT, THE LICENSED PRODUCTS ARE PROVIDED TO THE CUSTOMER AND USERS "AS IS." BNA, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS MAKE NO OTHER WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED. BNA, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS DO NOT WARRANT THE ACCURACY, COMPLETENESS, PERFORMANCE, CURRENCY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE LICENSED PRODUCTS OR THE INFORMATION THEY CONTAIN OR THE METHOD OF DELIVERING THAT INFORMATION TO USERS.

b. BNA, ITS LICENSORS, AND SUPPLIERS OF CONTENT AND SOFTWARE FOR THE LICENSED PRODUCTS DISCLAIM ALL RESPONSIBILITY FOR ANY LOSS OR CLAIM OF ANY KIND RESULTING FROM, ARISING OUT OF, OR ANY WAY RELATED TO (A) ERRORS IN OR OMISSIONS FROM ANY LICENSED PRODUCT AND ITS CONTENT, INCLUDING TECHNICAL INACCURACIES AND TYPOGRAPHICAL ERRORS, (B) ANY THIRD PARTY WEB SITES OR CONTENT THEREIN DIRECTLY OR INDIRECTLY ACCESSED THROUGH HOT LINKS IN ANY LICENSED PRODUCT, (C) THE UNAVAILABILITY OF ANY LICENSED PRODUCT, (D) ANY USE OF ANY LICENSED PRODUCT, (E) ANY USE OF ANY EQUIPMENT OR SOFTWARE IN CONNECTION WITH ANY LICENSED PRODUCT, OR (F) ANY RELIANCE ON THE INFORMATION CONTAINED IN THE LICENSED PRODUCTS OR IN ANY CUSTOMER SUPPORT INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### **14. Indemnification**

a. Subject to the Limited Warranty stated above, BNA will indemnify and hold Customer harmless and will defend or settle any claim, suit or proceeding brought against Customer that is based upon a claim that the content contained in the Licensed Products infringes a United States copyright or violates an intellectual or proprietary right protected by United States law ("Claim"), but only to the extent the Claim arises directly out of the use of the Licensed Products. Customer shall notify BNA in writing of any Claim within ten (10) calendar days after Customer first receives notice of the Claim, and Customer shall provide to BNA at no cost with such assistance and cooperation as BNA may reasonably request from time to time in connection with the defense of the Claim. BNA shall have sole control over any Claim (including without limitation the selection of counsel and the right to settle on behalf of Customer on any terms BNA deems desirable in the sole exercise of its discretion). Customer may, at its sole cost, retain separate counsel and participate in the defense or settlement negotiations. BNA shall pay actual damages and costs awarded against Customer (or payable by Customer pursuant to a settlement agreement) in connection with a Claim. If the Licensed Products or their use becomes the subject of a Claim

or their use is enjoined, or if in the opinion of BNA's legal counsel the Licensed Products are likely to become the subject of a Claim, BNA shall attempt to resolve the Claim by using commercially reasonable efforts to modify the Licensed Products or obtain a license to continue using the Licensed Products. If in the opinion of BNA's legal counsel the Claim, injunction, or potential Claim cannot be resolved through reasonable modification or licensing, BNA, at its own election, may terminate the Agreement without penalty, and will refund to Customer on a pro rata basis any fees paid in advance by Customer to BNA. BNA shall have no obligation under this provision, if the Claim is based on a combination of material, content, Licensed Products or software not provided by BNA. THE FOREGOING CONSTITUTES BNA'S SOLE AND EXCLUSIVE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT.

b. Customer agrees to indemnify, defend, and hold BNA and the suppliers of Content and technology for the Licensed Products harmless from and against any and all Claims and Losses arising out of or in any way related to any use of the Licensed Products, or of any content, data or documentation received through the Licensed Products by Customer or any of its Users, regardless of the form of action.

c. IN NO EVENT MAY CUSTOMER OR USER BRING ANY CLAIM OR CAUSE OF ACTION AGAINST BNA MORE THAN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES.

#### **15. Limitations on Damages**

a. IN NO EVENT SHALL BNA OR ITS OFFICERS, DIRECTORS, EMPLOYEES, SHAREHOLDERS, AGENTS OR REPRESENTATIVES BE LIABLE TO ANY USER, ANY CUSTOMER, OR ANY OTHER PERSON FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOSS OF GOODWILL IN ANY WAY ARISING FROM OR RELATING TO THIS MASTER LICENSE AGREEMENT OR RESULTING FROM THE USE OF OR INABILITY TO USE ANY LICENSED PRODUCT OR THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATIONS UNDER THIS MASTER LICENSE AGREEMENT, INCLUDING THE FAILURE OF ESSENTIAL PURPOSE, EVEN IF SUCH USER, CUSTOMER, OR OTHER PERSON HAS BEEN NOTIFIED OF THE POSSIBILITY OF LIKELIHOOD OF SUCH DAMAGES OCCURRING. SOME STATES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO ALL CUSTOMERS OR THEIR RESPECTIVE USERS.

b. IF THE FOREGOING LIMITATIONS ARE HELD TO BE UNENFORCEABLE, BNA'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT TO CUSTOMER, ANY USER, OR ANY OTHER PERSON OR ENTITY SHALL IN ANY EVENT NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER FOR THE LICENSED PRODUCTS.

**16. Discontinuation of Publication.** Occasionally BNA may discontinue a publication, or add/delete specific publications from a package of combined publications. Customers who have individual subscriptions to the discontinued publication (i.e., do not subscribe to a package of publications) will be offered a comparable publication, if available. If no comparable publication is available, or if Customer chooses not to accept the offer of a comparable publication, BNA will provide, at its option, either a pro rata credit against subsequent subscription fees, or a pro rata refund of the unused portion of the subscription fees paid for such discontinued publication.

## 17. **Additional Matters.**

a. **Governing Law.** This Master License Agreement shall for all purposes be governed, interpreted, construed, and enforced solely and exclusively in accordance with the law of the District of Columbia without regard to its choice-of-law rules, unless otherwise provided under applicable state law, in which case this Agreement shall be governed by and construed in accordance with the laws of the Customer's state.

b. **Dispute Resolution.** In the event any dispute or controversy arising out of or relating to this Agreement, the parties agree to exercise their best efforts to resolve the dispute as soon as possible. The parties shall, without delay, continue to perform their respective obligations under this Agreement that are not affected by the dispute.

i. Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association. The parties shall endeavor to select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the arbitrators in turn shall select a third arbitrator. The arbitration shall take place at a location that is reasonably centrally located between the parties, or otherwise mutually agreed upon by the parties.

ii. All documents, Products, and information in the possession of each party that are in any way relevant to the claim(s) or dispute(s) shall be made available to the other party for review and copying no later than sixty (60) days after the notice of arbitration is served.

iii. The arbitrator(s) shall not have the authority, power, or right to alter, change, amend, modify, add, or subtract from any provision of this Agreement or to award punitive damages. The arbitrator shall have the power to issue mandatory orders and restraining orders in connection with the arbitration. The award rendered by the arbitrator shall be final and binding on the parties, and judgment may be entered thereon in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall continue to perform their respective obligations under this Agreement.

c. **Force Majeure.** BNA shall not be liable for failure to perform any part of this Master License Agreement where such failure is due to fire, flood, power outages, strikes, labor troubles or other industrial disturbances, inevitable accidents, war (declared or undeclared), acts of terror, commercially unreasonable hostile acts by a Third Party with respect to the Products (including a denial of service attack), embargoes, blockages, legal restrictions, governmental regulations or orders, riots, insurrections, or any cause beyond the control of such party. However, BNA shall use diligent efforts to resume performance. This Master License Agreement shall not be regarded as terminated or frustrated as a result of such failure of performance that does not exceed six (6) months, and the parties shall proceed under this Master License Agreement when the causes of such non-performance have ceased or have been eliminated.

d. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

e. Amendment. No modification or claimed waiver of any provision of this Agreement shall be valid except by written amendment signed by authorized representatives of BNA and Customer.

f. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

g. Waiver of Contractual Right. Waiver of any provision herein shall not be deemed a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement.

h. Notices. All notices given pursuant to this Agreement shall be in writing and may be hand delivered, or shall be deemed received within 5 business days after mailing if sent by registered or certified mail, return receipt requested. If any notice is sent by facsimile, confirmation copies must be sent by mail or hand delivery to the specified address. Either party may from time to time change its Notice Address by written notice to the other party.

i. Assignment. Customer may not assign or sublicense this Agreement without BNA's prior written consent.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the subscription start date.