



3. Admitted that AAA Mid-Atlantic, Inc. is a Delaware corporation with its principal place of business at One River Place, Wilmington, Delaware 19801. TST is without knowledge to admit or deny the remaining allegations contained in paragraph 3 and therefore denies the same.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

**FACTUAL BACKGROUND**

9. Denied as stated. Admitted that Digital Commerce, LLC (“Digital”) and certain Auto Clubs (as defined in TST’s Verified Complaint for Injunctive and Monetary Relief (the “Verified Complaint”)) met and subsequently entered into a Professional Services Agreement on or about April 9, 2007, pursuant to which Digital would provide services to be more fully detailed in subsequent Work Authorization Agreements, relating to the development of the software Product (as defined in TST’s Verified Complaint). Except as thus stated, denied.

10. Denied as stated. Admitted that on or about April 9, 2007 Digital and the Auto Clubs entered into the Professional Services Agreement. Except as thus stated, denied.

11. Denied as stated. Admitted the Professional Services Agreement contemplated that Digital would provide services to be more fully detailed in subsequent Work Authorization Agreements, relating to the development of the software Product. Except as thus stated, denied.

12. Denied as stated. Admitted that the Professional Services Agreement provides for termination with or without cause upon thirty (30) days written notice. Admitted that the quoted

language appearing in paragraph 12 is an accurate excerpt of the Professional Services Agreement. The Court is referred to the Professional Services Agreement, which speaks for itself. Any statements in paragraph 12 which are contrary to the terms of the Professional Services Agreement are denied. Except as thus stated, denied.

13. Denied as stated. Admitted that the Professional Services Agreement provides in § 1 that “In the event of a conflict between the terms of this Agreement and the Work Authorization Agreement, the terms of this Agreement shall govern unless the particular provision of this Agreement which the Parties intend to modify is specifically identified as being modified in the Work Authorization Agreement and such Work Authorization Agreement is signed by a duly authorized office of Consultant and by a duly authorized officer of the Customer.” The Court is referred to the Professional Services Agreement, which speaks for itself. Any statements in paragraph 13 which are contrary to the terms of the Professional Services Agreement are denied. Except as thus stated, denied.

14. Admitted that paragraph 14 accurately quotes § 13 (entitled “Agreement Not to Solicit Employees”) of the Professional Services Agreement. The Court is referred to the Professional Services Agreement, which speaks for itself.

15. Admitted that the PSA grants all intellectual property to TST. Admitted that paragraph 15 accurately quotes an excerpt of § 7 (entitled “Ownership of Intellectual Property”) of the Professional Services Agreement. The Court is referred to the Professional Services Agreement, which speaks for itself.

16. Denied as stated. Admitted that a number of Work Authorization Agreements were entered into beginning in or around April 2007, which were attached to the Verified

Complaint as Exhibit D. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

17. Denied as stated. Admitted that paragraph 17 accurately quotes an excerpt of a Work Authorization Agreement, which were attached to the Verified Complaint as Exhibit D. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

18. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 14 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

19. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 15 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

20. Admitted. The Court is referred to the Assignment of Professional Services Agreement (attached as Exhibit B to the Verified Complaint), which speaks for itself.

21. Denied as stated. Admitted that on or about June 12, 2008, presentations were made on the development of the Product to the TST Steering Committee and the TST Steering Committee unanimously approved development of the Product on the basis of Fuzebox and Digital's estimate of a \$4.5 million total cost and completion by March 31, 2010, and subject to the completion of a "Connectivity Analysis Phase" by September of 2008. Except as thus stated, denied.

22. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof, including the items described in paragraph 22. Except as stated, denied.

23. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Fuzebox and Digital were required to develop the Product and various components thereof, including the items described in paragraph 23. TST had hired Digital and later Fuzebox to the develop the Product for TST and relied on Digital's and Fuzebox's purported expertise to assist TST in determining the proper manner and sequence of development of the Product, and to complete the product by March 31, 2010 at a total cost of \$4.5 million. Except as stated, denied.

24. Denied as stated. Admitted that no final MSA was ever agreed to between the parties. Admitted that the development of a long-term Maintenance and Support Agreement was contemplated after completion of the final Product and that it was understood and acknowledged by Fuzebox, including Fuzebox employee Glenn Martin, that such long-term

maintenance and support could be provided by entities other than Fuzebox. Further admitted that Fuzebox was unable to deliver a final Product either by March 31, 2010 or indeed at any time prior to the termination of the Professional Services Agreement. Further admitted that Fuzebox's inability to provide a completed final Product as required by the Professional Services Agreement precluded any chance of Fuzebox being awarded a long-term Maintenance and Support Agreement. Except as thus stated, denied.

25. Denied as stated. Admitted that Section 5.0 of Work Authorization Agreement 4 provided that "In no event will Project Fees... exceed the amounts set forth in subsection 5.1, below, by more than 10%. In addition, no Project Fees shall exceed those set forth in subsection 5.1 by any amount without the prior written approval of Customer." Further admitted that Section 5.1 of Work Authorization Agreement 4 provided a total cost of \$4.5 million, for completion of six separate Increments of the Product. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Further admitted that Fuzebox exceeded the amount provided for in Section 5.1, and was paid substantially in excess of \$4.5 million, yet failed to deliver a completed final Product. Further admitted that TST contracted to retain a hold-back of \$250,000 which was later expanded to \$700,000 after continual cost overruns and delays by Fuzebox, and payment of the hold-back was expressly conditioned upon delivery of a completed final Product, which Fuzebox never provided. Except as thus stated, denied.

26. Denied as stated. Admitted that in or around September of 2008 TST was committed to the development of the Product and that no material delays were caused by TST. Further admitted that substantial delays and cost overruns were caused by Fuzebox. Admitted

that the Product was intended to replace existing systems of AAA National so as to operate as a separate Product. Except as thus stated, denied.

27. Denied.

28. Denied as stated. Admitted that on or around October 1, 2008 the parties agreed to a Novation which substituted TST for the Auto Clubs. The Court is referred to the Novation (attached as Exhibit C to the Verified Complaint), which speaks for itself. Admitted that Work Authorization Agreement 4 required Fuzebox to deliver six Increments of the Product. Denied that TST directed Fuzebox to follow a specific plan as TST hired Fuzebox to produce the Product, which Fuzebox failed to do, and relied on Fuzebox's purported expertise within this industry to do so. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

29. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 29 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

30. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which

Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 30 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

31. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 31 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Further admitted that Work Authorization Agreement 4, section 1.2 Scope Summary, specifically contemplated among other things as “In Scope”: “Scheduled and a reasonable number of ad-hoc demonstrations, meetings and conference calls as required to ensure quality of the final deliverables.” Except as thus stated, denied.

32. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Admitted that an agreement for the period June 15, 2009 through October 31, 2009 was reached, was signed on



September 2, 2009 and, as Fuzebox admits, TST “fully performed under this agreement.” Except as thus stated, denied.

33. Denied as stated. Admitted that pursuant to the Professional Services Agreement and the Work Authorization Agreements, Digital and later Fuzebox were required to develop the Product and various components thereof. Admitted that from time to time certain work performed by Digital and Fuzebox was undertaken under separate understandings, for which Digital and Fuzebox have been fully paid. Denied that the work described in paragraph 33 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

34. Denied as stated. Admitted that during 2009 TST was approached by Fuzebox, who in turn claimed to have been approached by non-travel companies, including insurance call centers, that were interested in using the dashboard concept being developed as part of the Product. Admitted that it was discussed that any such efforts should be through a separate corporate entity. Except as thus stated, denied.

35. Denied as stated. Admitted that on or about November 1, 2009, TST and Fuzebox entered into a Work Authorization Agreement. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

36. Denied as stated. Admitted that in or around February 2010, approximately one month before the initial completion deadline of March 2010, it was clear that Fuzebox would be unable to provide a completed final Product by March 2010, had been unable to deliver completed components of the Product as required by the Professional Services Agreement and

the Work Authorization Agreements, and that the Product was already substantially over budget. Admitted that as a result TST again attempted to work with Fuzebox to reach a plan by which the Product could be completed in a timely and cost-effective manner. Denied that the work described in paragraph 36 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. Further denied that Fuzebox delivered a completed, functional customer UI by August 15, 2010. Except as thus stated, denied.

37. Denied as stated. Admitted that in or around March 2010, TST accepted a beta release of the SHP, which had limited functionality, had poor product quality, and received substantial negative feedback, and as a result the entire beta test had to be pulled. Except as thus stated, denied.

38. Denied as stated. Admitted that in or around March 2010, TST accepted a beta release of the SHP (the Agent B2B), which had limited functionality, had poor product quality, and received substantial negative feedback. Admitted that as a result the entire beta test had to be pulled, and that Fuzebox was unable to achieve acceptable performance or functionality for a production ready Agent B2B component. Admitted that in April 2010, one month after the original completion deadline specifically contemplated by Work Authorization Agreement 4, Fuzebox had been unable to deliver a working product for the first component of the Product. Admitted that as a result TST again attempted to work with Fuzebox to reach a plan by which the Product could be completed in a timely and cost-effective manner, despite the fact that according to prior timelines presented by Fuzebox the B2C component should already have been complete. Except as thus stated, denied.

39. Denied as stated. Admitted that on or after April 2010, after the original completion deadline, Fuzebox had been unable to deliver a working product for the first

component of the Product. Admitted that as a result TST again attempted to work with Fuzebox to reach a plan by which the Product could be completed in a timely and cost-effective manner, despite the fact the entire Product should have been complete. Denied that any “accelerated timeframe” was required as indeed the entire Product was already late, and any need for additional resources, increased budget, or scheduling changes were the result of Fuzebox’s failure to meet the original deadline and budget. Further denied that the work described in paragraph 39 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. Except as thus stated, denied.

40. Denied as stated. The development of the B2B and B2C components contemporaneously was the result of Fuzebox’s failure to meet the original timeline. Except as thus stated, denied.

41. Denied.

42. TST is without knowledge to admit or deny the allegations contained in paragraph 39 and therefore denies paragraph 42.

43. Denied as stated. Admitted that schedules were adjusted as a result of Fuzebox’s failure to meet the original timeline. Except as thus stated, denied.

44. Denied as stated. Denied that there was any “new B2C and B2B SHP work”. Further denied that the work described in paragraph 44 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. Except as thus stated, denied.

45. Denied as stated. Denied that TST required any increase in staff, office space, equipment or resources; any need for staff, office space, equipment or resources were the result of Fuzebox’s failure to meet the original deadline and budget. Except as thus stated, denied.

46. The first sentence of paragraph 46 is admitted. Except as thus stated, denied.

47. Denied as stated. Denied that TST required any increase in staff, office space, equipment or resources; any need for staff, office space, equipment or resources were the result of Fuzebox's failure to meet the original deadline and budget. Admitted that as of July 16, 2010, Fuzebox was already more than three months past the original deadline for completion of the entire project, the Product was substantially over budget and Fuzebox had yet to deliver the Product. Further admitted that Fuzebox committed to completion of the Product by November 30, 2010. Further admitted that Fuzebox failed to meet the November 30, 2010 deadline. Further admitted that after continual cost overruns and delays by Fuzebox, TST contracted to increase the hold-back amount from \$250,000 to \$700,000, payment of which was expressly conditioned upon delivery of a completed final Product, which Fuzebox never provided. Denied that the "July 2010 Reset" is as described in Fuzebox's Counterclaims. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which constitute the agreement between the parties and speak for themselves. Except as thus stated, denied.

48. Denied as stated. Admitted that the TST BOM accepted Fuzebox's commitment to complete the Product by November 30, 2010. Further admitted that Fuzebox failed to meet the November 30, 2010 deadline. Denied that the "July 2010 Reset" is as described in Fuzebox's Counterclaims. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which constitute the agreement between the parties and speak for themselves. Except as thus stated, denied.

49. TST is without knowledge to admit or deny the allegations contained in the first sentence of paragraph 49 and therefore denies the same. Admitted that TST acknowledged that Fuzebox's failure to meet the original deadline and budget resulted in additional costs for Fuzebox which would not have been required had Fuzebox completed the Product in a timely

fashion. Denied that the “July 2010 Reset” is as described in Fuzebox’s Counterclaims. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which constitute the agreement between the parties and speak for themselves. Except as thus stated, denied.

50. Denied as stated. Admitted that Computer Aid, Inc. was hired as a project manager to supervise the development of the Product. Except as thus stated, denied.

51. Denied as stated. Admitted that Joel Ruff informed the AAA Steering Committee of Fuzebox’s commitment to completion of the Product by November 30, 2010. Denied that the “July 2010 Reset” is as described in Fuzebox’s Counterclaims. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which constitute the agreement between the parties and speak for themselves. Except as thus stated, denied.

52. Admitted that Fuzebox hired Jayant Chaudhary at some time to work on the Product. TST is without knowledge to admit or deny the additional allegations contained in paragraph 52 and therefore denies the same.

53. Denied as stated. Admitted that a summary document was distributed following the conclusion of the TST Steering Committee’s August meeting, but denied that it was a quarterly scope of effort and SOW and further denied that it was presented for review and signature. Further denied that the work described in paragraph 53 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. Except as thus stated, denied.

54. Denied as stated. Admitted that following July 2010, Fuzebox worked on the Product on a monthly basis and had committed to completion by November 30, 2010. Admitted

that TST regularly communicated with Fuzebox and Fuzebox personnel regarding the development of the Product. Except as thus stated, denied.

55. Denied as stated. Admitted that a meeting between Fuzebox and TST representatives occurred on or about November 11, 2010. Except as thus stated, denied.

56. Denied as stated. Admitted that following July 2010, Fuzebox worked on the Product on a monthly basis and had committed to completion by November 30, 2010. Further admitted that Fuzebox failed to complete the Product by November 30, 2010. Except as thus stated, denied.

57. Denied.

58. Denied as stated. Admitted that on December 6, 2010 Natalie Rudow presented a training session on the Agile methodology, which Fuzebox strongly advocated, to the TST team. Further admitted that at the December 6, 2010 meeting Fuzebox personnel (Jayant Chaudhary) also presented and Fuzebox principle Les Ottolenghi attended. Admitted that the TST Steering Committee supported the “releases” method, but did not formally approve it. Except as thus stated, denied.

59. Denied as stated. Admitted that penalties for Fuzebox’s failure to meet the November 30, 2010 deadline were assessed in December 2010 and were imposed in February 2011 and further admitted that Fuzebox signed a letter acknowledging such penalties. Except as thus stated, denied.

60. Denied as stated. Admitted that Fuzebox failed to complete the Product by November 30, 2010. Further admitted that as a result of Fuzebox’s failure to meet the November 30, 2010 deadline, TST was forced yet again to adapt the scope and timeline of

development of the Product. Admitted that TST continued to pay Fuzebox on a monthly basis. Except as thus stated, denied.

61. Denied as stated. Admitted that based on the expectation that Fuzebox would deliver the 1A Red release as required, TST requested a SOW for the next release. Further admitted that due to Fuzebox's failure to deliver the 1A Red release the SOW for the next release was never finalized. Denied that the work described in paragraph 61 was outside the scope of the Professional Services Agreement and Work Authorization Agreements. The last sentence of paragraph 61 is admitted. Except as thus stated, denied.

62. Denied that any agreement precluded termination pursuant to Section 16 of the Professional Services Agreement. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

63. Denied that any agreement precluded termination pursuant to Section 16 of the Professional Services Agreement. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as thus stated, denied.

64. Denied as stated. Denied that TST caused any delay. Admitted that despite Fuzebox being significantly behind schedule on being able to undertake the work contemplated by the requirements at issue because of its delays on predicate work, TST delivered one of the two requirements by the required date and delivered the second requirement three days thereafter (December 3, 2010). Admitted that Fuzebox never began work on those components at that time or at any prior to the termination of the Professional Services Agreement, nor even reviewed the requirements until months after they were delivered by TST. Admitted that the

parties, with substantial input from Fuzebox, decided to adopt a different methodology. Except as thus stated, denied.

65. Denied as stated. Admitted that following July 2010, Fuzebox worked on the Product on a monthly basis and had committed to completion by November 30, 2010. Further admitted that Fuzebox failed to complete the Product by November 30, 2010. Further admitted that TST and Fuzebox communicated regularly. Except as thus stated, denied.

66. Denied as stated. Admitted that Joel Ruff attended a meeting with Fuzebox at Fuzebox's offices in or about February 2011 to discuss the development of the Product. Except as thus stated, denied.

67. Denied as stated. TST is without knowledge to admit or deny the allegations contained in paragraph 67 directed to AAA Mid-Atlantic and therefore denies the same. By way of further response, paragraph 67 references and quotes from a document referenced as "Exhibit A," but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 67 speaks for itself. TST denies that Fuzebox was not aware of consilium1's involvement in the Product and further denies that AAA Mid-Atlantic's hiring of consilium1 has any relevance to Fuzebox's Amended Counterclaims. By way of further response, Fuzebox, including through Mr. Chaudhary an officer of Fuzebox whose knowledge is imputed to Fuzebox, was fully aware of the agreement between AAA Mid-Atlantic and consilium1, was directly involved in the hiring of Mr. Goldblatt, and was directly involved the placement of Mr. Goldblatt at Fuzebox's office, where various other TST project management office resources were also located with Fuzebox's knowledge throughout the product development process. Except as thus stated, denied.



68. Denied as stated. TST is without knowledge to admit or deny the allegations contained in paragraph 68 directed to AAA Mid-Atlantic and therefore denies the same. By way of further response, paragraph 68 references and quotes from a document referenced as “Exhibit A,” but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 68 speaks for itself. TST denies that Fuzebox was not aware of consilium1’s involvement in the Product and further denies that AAA Mid-Atlantic’s hiring of consilium1 has any relevance to Fuzebox’s Amended Counterclaims. By way of further response, Fuzebox, including through Mr. Chaudhary an officer of Fuzebox whose knowledge is imputed to Fuzebox, was fully aware of the agreement between AAA Mid-Atlantic and consilium1, was directly involved in the hiring of Mr. Goldblatt, and was directly involved the placement of Mr. Goldblatt at Fuzebox’s office, where various other TST project management office resources were also located with Fuzebox’s knowledge throughout the product development process. Except as thus stated, denied.

69. Denied as stated. TST is without knowledge to admit or deny the allegations contained in paragraph 69 directed to AAA Mid-Atlantic and therefore denies the same. By way of further response, paragraph 69 references and quotes from a document referenced as “Exhibit A,” but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 69 speaks for itself. TST denies that Fuzebox was not aware of consilium1’s involvement in the Product and further denies that AAA Mid-Atlantic’s hiring of consilium1 has any relevance to Fuzebox’s Amended Counterclaims. By way of further response, Fuzebox, including through Mr. Chaudhary an officer of Fuzebox whose knowledge is imputed to Fuzebox, was fully aware

of the agreement between AAA Mid-Atlantic and consilium1, was directly involved in the hiring of Mr. Goldblatt, and was directly involved the placement of Mr. Goldblatt at Fuzebox's office, where various other TST project management office resources were also located with Fuzebox's knowledge throughout the product development process. Except as thus stated, denied.

70. Denied as stated. By way of further response, paragraph 70 references and quotes from a document referenced as "Exhibit B," but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. Admitted that Ms. Rudow for TST and Mr. Chaudhary for Fuzebox coordinated the hiring of Mr. Goldblatt, that Mr. Chaudhary, an officer of Fuzebox, was fully aware of his retention and role, and that Mr. Chaudhary's knowledge is imputed to Fuzebox. TST denies that Fuzebox was not aware of consilium1's involvement in the Product and further denies that AAA Mid-Atlantic's hiring of consilium1 has any relevance to Fuzbeox's Amended Counterclaims. By way of further response, Fuzebox, including through Mr. Chaudhary an officer of Fuzebox whose knowledge is imputed to Fuzebox, was fully aware of the agreement between AAA Mid-Atlantic and consilium1, was directly involved in the hiring of Mr. Goldblatt, and was directly involved the placement of Mr. Goldblatt at Fuzebox's office, where various other TST project management office resources were also located with Fuzebox's knowledge throughout the product development process. Except as thus stated, denied.

71. Denied as stated. Admitted that Berni Koch met with Fuzebox on or about March 18, 2011 in Charlotte, North Carolina, during which the knowledge transfer from Fuzebox to TST was discussed. Denied that the "July 2010 Reset" is as described in Fuzebox's Counterclaims. The Court is referred to the Professional Services Agreement and the Work

Authorization Agreements, which constitute the agreement between the parties and speak for themselves. Except as thus stated, denied.

72. Denied as stated. Admitted that a meeting took place with the TST Steering Committee and an update on the development of the Product was provided by the entire TST strategy team. Except as thus stated, denied.

73. Denied.

74. Denied as stated. Admitted that representatives of TST met with Fuzebox in late March and early April, 2011 and discussed executing a time and materials contract. Except as thus stated, denied.

75. Denied as stated. Admitted that on or around April 10, 2011 Joel Ruff correspondence with Fuzebox. Admitted that TST continued to seek a workable commercial relationship with Fuzebox to complete the development of the Product. Admitted that on or about April 11, 2011 representatives of TST met with Fuzebox. Except as thus stated, denied.

76. Denied as stated. By way of further response, paragraph 76 references and quotes from a document referenced as "Exhibit C," but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 76 speaks for itself. TST admits that TST and consilium1 entered into an agreement on or about April 20, 2011, which agreement speaks for itself. TST denies that Fuzebox was not aware of consilium1's involvement in the Product and further denies that TST's hiring of consilium1 has any relevance to Fuzebox's Amended Counterclaims. Except as thus stated, denied.

77. Denied as stated. By way of further response, paragraph 77 references and quotes from a document referenced as "Exhibit C," but which was not attached to the Amended

Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 77 speaks for itself. TST admits that TST and consilium1 entered into an agreement on or about April 20, 2011, which agreement speaks for itself and that pursuant to such agreement Mr. Ford worked on the Product. TST denies that Fuzebox was not aware of consilium1's or Mr. Ford's involvement in the Product and further denies that TST's hiring of consilium1 or Mr. Ford's work on the Product has any relevance to Fuzebox's Amended Counterclaims. Except as thus stated, denied.

78. TST is without knowledge to admit or deny the allegations contained in paragraph 78 and therefore denies the same.

79. Denied as stated. Admitted that in early May 2011 TST informed Fuzebox that if a time and materials agreement could not be reached by May 9, 2011, TST would terminate the Professional Services Agreement. Except as thus stated, denied.

80. TST is without knowledge to admit or deny the allegations contained in paragraph 71 and therefore denies the same.

81. Denied as stated. Admitted that Fuzebox representatives suggested a "buy out" agreement after proposing time and materials rates which were outside of industry norms. Except as thus stated, denied.

82. Denied as stated. Admitted that the TST and Fuzebox engaged in negotiations to amicably terminate the Professional Services Agreement. Admitted that when those negotiations failed, TST terminated the Professional Services Agreement pursuant to section 16 of the Professional Services Agreement. Except as thus stated, denied.

83. TST is without knowledge to admit or deny the allegations contained in paragraph 74 and therefore denies the same. Specifically denied that TST was recruiting employees from Fuzebox.

84. TST is without knowledge to admit or deny the allegations contained in the first sentence of paragraph 84 and therefore denies the same. The second sentence of paragraph 84 is admitted. TST is without knowledge to admit or deny the allegations contained in the last sentence of paragraph 84 and therefore denies the same.

85. TST is without knowledge to admit or deny the allegations contained in paragraph 85 and therefore denies the same. Specifically denied that Mr. Chaudhary was working for TST prior to June 3, 2011.

86. TST is without knowledge to admit or deny the allegations contained in paragraph 86 and therefore denies the same.

87. Denied as stated. By way of further response, paragraph 87 references and quotes from a document referenced as "Exhibit D," but which was not attached to the Amended Counterclaims filed with the Court and docketed as D.I. 38. By way of further response, the agreement referenced in paragraph 87 speaks for itself. Admitted that negotiations for an amicable termination of the Profession Services Agreement took place, including on May 23, 2011. Admitted that Fuzebox attempted to characterize these negotiations as a "buy-out". Admitted that a Memorandum of Understanding was signed by the parties, which included in Fuzebox's initial draft TST's right to engage Mr. Chaudhary immediately upon his resignation/termination from Fuzebox. Except as thus stated, denied.

88. The first sentence of paragraph 88 is admitted. Except as thus stated, denied.

89. Denied as stated. Admitted that with Fuzebox's express permission through Mr. Ottolenghi, Mr. Ruff visited Fuzebox's Alpharetta, Georgia office and, again with Mr. Ottolenghi's express permission, met with Fuzebox's employees and subcontractors. When asked by such employees and subcontractors where job postings related to the Product would be listed, Mr. Ruff responded that TST would post future job postings to www.linkedin.com. TST denies it hired as employees any former Fuzebox employees, contractors and subcontractors. Through www.linkedin.com applications, TST contracted with certain independent contractors. Except as thus stated, denied.

90. Admitted that TST contracted with Valtech after the termination of Fuzebox's services. Except as thus stated, denied.

91. Denied.

92. Denied.

### **COUNTERCLAIM I**

#### **BREACH OF THE JULY 2010 RESET AGREEMENT**

93. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-92 of Fuzebox's Counterclaims as if fully set forth herein.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

### **COUNTERCLAIM II**

**BREACH OF THE PSA**

100. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-99 of Fuzebox's Counterclaims as if fully set forth herein.

101. Admitted.

102. Admitted. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

**COUNTERCLAIM III**

**PROMISSORY ESTOPPEL**

107. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-106 of Fuzebox's Counterclaims as if fully set forth herein.

108. Denied.

109. Denied.

110. Denied.

111. Denied.

112. Denied.

113. Denied.

114. Denied.

115. Denied.

116. Denied.

**COUNTERCLAIM IV**

**BREACH OF CONTRACT: BREACH OF THE PSA'S  
COVENANT NOT TO SOLICIT EMPLOYEES**

117. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-116 of Fuzebox's Counterclaims as if fully set forth herein.

118. Admitted.

119. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as stated, denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied.

**COUNTERCLAIM V**

**BREACH OF CONTRACT: BREACH OF THE PSA'S  
COVENANT NOT TO SOLICIT SUBCONTRACTORS**

126. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-125 of Fuzebox's Counterclaims as if fully set forth herein.

127. Admitted.

128. The Court is referred to the Professional Services Agreement and the Work Authorization Agreements, which speak for themselves. Except as stated, denied.

129. Denied.

130. Denied.

131. Denied.



132. Denied.

133. Denied.

134. Denied.

**COUNTERCLAIM VI**

**TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS**

135. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-134 of Fuzebox's Counterclaims as if fully set forth herein.

136. TST is without knowledge to admit or deny the allegations contained in paragraph 136 and therefore denies the same.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

**COUNTERCLAIM VII**

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS**

143. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-142 of Fuzebox's Counterclaims as if fully set forth herein.

144. TST is without knowledge to admit or deny the allegations contained in paragraph 144 and therefore denies the same.

145. Denied.

146. Denied.

147. Denied.

148. Denied.

149. Denied.

150. Denied.

**COUNTERCLAIM VIII**

**TORTIOUS INTERFERENCE WITH BUSINESS  
RELATIONSHIP WITH VALTECH**

151. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-150 of Fuzebox's Counterclaims as if fully set forth herein.

152. TST is without knowledge to admit or deny the allegations contained in paragraph 152 and therefore denies the same.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

157. Denied.

158. Denied.

**COUNTERCLAIM IX**

**TORTIOUS INTERFERENCE WITH BUSINESS  
RELATIONSHIP WITH VALTECH**

159. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-158 of Fuzebox's Counterclaims as if fully set forth herein.

160. TST is without knowledge to admit or deny the allegations contained in paragraph 160 and therefore denies the same.

161. Denied.

162. Denied.

163. Denied.

164. Denied.

165. Denied.

166. Denied.

**COUNTERCLAIM X**

**BREACH OF THE IMPLIED COVENANT OF  
GOOD FAITH AND FAIR DEALING**

167. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-166 of Fuzebox's Counterclaims as if fully set forth herein.

168. Admitted that there is an implied covenant of good faith and fair dealing in the Professional Services Agreement. Except as stated, denied.

169. Denied.

170. Denied.

171. Denied.

172. Denied.

173. Denied.

174. Denied.

**COUNTERCLAIM XI**

**ATTORNEYS' FEES AND COSTS PURSUANT TO SECTION 22 OF THE PSA**

175. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-174 of Fuzebox's Counterclaims as if fully set forth herein.

176. Denied.

**COUNTERCLAIM XII**

**TORTIOUS INTERFERENCE WITH BUSINESS RELATIONS WITH TST**

177. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-176 of Fuzebox's Counterclaims as if fully set forth herein.

178. Admitted.

179. TST is without knowledge to admit or deny the allegations contained in paragraph 179 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 179 to the extent they pertain to TST.

180. TST is without knowledge to admit or deny the allegations contained in paragraph 180 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 180 to the extent they pertain to TST.

181. TST is without knowledge to admit or deny the allegations contained in paragraph 181 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 181 to the extent they pertain to TST.

182. TST is without knowledge to admit or deny the allegations contained in paragraph 182 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 182 to the extent they pertain to TST.

183. Denied.

**COUNTERCLAIM XIII**

**TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS WITH TST**

184. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-183 of Fuzebox's Counterclaims as if fully set forth herein.

185. Admitted.

186. TST is without knowledge to admit or deny the allegations contained in paragraph 186 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 186 to the extent they pertain to TST.

187. TST is without knowledge to admit or deny the allegations contained in paragraph 187 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 187 to the extent they pertain to TST.

188. TST is without knowledge to admit or deny the allegations contained in paragraph 188 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 188 to the extent they pertain to TST.

189. TST is without knowledge to admit or deny the allegations contained in paragraph 189 as they pertain to AAA Mid-Atlantic and therefore denies the same. TST denies all aspects of paragraph 189 to the extent they pertain to TST.

190. Denied.

#### **COUNTERCLAIM XIV**

##### **MISAPPROPRIATION OF FUZEBOX'S INDUSTRIAL PROPERTY**

191. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-190 of Fuzebox's Counterclaims as if fully set forth herein.

192. Denied that any intellectual property (regardless of being titled "Industrial Property" by Fuzebox) relating to the Product is Fuzebox's as the PSA clearly and unequivocally grants all intellectual property to TST. Further denied that Fuzebox's alleged "Industrial Property" had any significant value within the industry as Fuzebox continually failed to meet deadlines, failed to meet budgets and failed to deliver the Product it had contracted to

provide. TST is without knowledge to admit or deny the remaining allegations contained in paragraph 192 and therefore denies the same. Except as thus stated, denied.

193. Denied.

194. Denied.

195. Denied.

196. Denied.

### **COUNTERCLAIM XV**

#### **CIVIL CONSPIRACY**

197. TST hereby adopts and incorporates by reference its responses to the allegations set forth in paragraphs 1-196 of Fuzebox's Counterclaims as if fully set forth herein.

198. Denied.

199. Admitted that AAA Mid-Atlantic, with Fuzebox's knowledge, entered into a contract with consilium1. Except as thus stated, denied.

200. Admitted that TST, with Fuzebox's knowledge, entered into a contract with consilium1. Except as thus stated, denied.

201. Denied.

Answering the Prayer for Relief following paragraph 201 of the Counterclaim, TST denies that Fuzebox is entitled to any relief, and specifically denies that Fuzebox is entitled to the relief requested in paragraphs (A) through (D).

TST denies each and every allegation of the Amended Counterclaims to which TST has not otherwise made a specific response in this Amended Answer and Defenses to Fuzebox, LLC's Counterclaims.

### **FIRST AFFIRMATIVE DEFENSE**

The Counterclaims fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrines of acquiescence, ratification, release and/or waiver.

**THIRD AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrine of unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrine laches.

**FIFTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred by Fuzebox's failure to mitigate its damages.

**SIXTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred by the doctrine of estoppel.

**SEVENTH AFFIRMATIVE DEFENSE**

Fuzebox's claims for punitive or exemplary damages, including in Counts IV, V, VI, VII, VIII, IX, X, XII and XIII, fail to state a claim upon which relief can be granted.

**EIGHTH AFFIRMATIVE DEFENSE**

Fuzebox's claims for punitive or exemplary damages, including in Counts IV, V, VI, VII, VIII, IX, X, XII and XIII, are barred or reduced by applicable law or statute, or in the alternative, are unconstitutional insofar as they violate the due process protections afforded by the United States Constitution, the excessive fines clause of the Eighth Amendment of the United States Constitution, the Commerce Clause of the United States Constitution, the Full Faith and Credit Clause of the United States Constitution, and applicable provisions of the Constitution of the State of Delaware. Any law, statute, or other authority purporting to permit the recovery of

punitive damages in this case is unconstitutional, facially, and as applied, to the extent that, without limitation, it (1) lacks constitutionally sufficient standards to guide and restrain the jury's discretion in determining whether to award punitive damages and/or the amount, if any; (2) is void for vagueness because it fails to provide adequate advance notice as to what conduct will result in punitive damages; (3) unconstitutionally may permit recovery of punitive damages based on out-of-state conduct, conduct that complied with applicable law, or conduct that was not directed at Fuzebox or did not proximately cause harm, if any, to Fuzebox; (4) unconstitutionally may permit recovery of punitive damages in an amount that is not both reasonable and proportionate to the amount of harm, if any, to Fuzebox, and to the amount of compensatory damages, if any; (5) unconstitutionally may permit jury consideration of net worth or other financial information relating to TST; (6) lacks constitutionally sufficient standards to be applied by the trial court in post-verdict review of any punitive damages award; (7) lacks constitutionally sufficient standards for appellate review of punitive damages awards; and (8) otherwise fails to satisfy Supreme Court precedent, including without limitation Pacific Mutual Life Ins. Co. v. Haslip, 499 U.S. 1 (1991); TXO Production Corp. v. Alliance Resources, Inc., 509 U.S. 443 (1993); BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996); and State Farm Ins. Co. v. Campbell, 538 U.S. 408 (2003).

#### **NINTH AFFIRMATIVE DEFENSE**

The Due Process Clause of the United States Constitution must govern any award of punitive damages, and the profits of TST outside of the State of Delaware may not be brought into consideration.



**TENTH AFFIRMATIVE DEFENSE**

Fuzebox's claims are barred in whole or in part because punitive or other exemplary damages are not recoverable, including in Counts IV, V, VI, VII, VIII, IX, X, XII and XIII, set forth in the Counterclaim, or in the alternative, the allegations of Counts IV, V, VI, VII, VIII, IX, X, XII and XIII in the Counterclaim are legally insufficient to support a claim for punitive or exemplary damages as to each cause of action.

**ELEVENTH AFFIRMATIVE DEFENSE**

Fuzebox's claims are barred in whole or in part because TST did not act with the requisite level of conduct to be subjected to, or that would otherwise support, any punitive or exemplary damages award, including in Counts IV, V, VI, VII, VIII, IX, X, XII and XIII. Accordingly, any award of punitive or exemplary damages under Counts IV, V, VI, VII, VIII, IX, X, XII and XIII would be improper under the United States Constitution and the common law and public policies of the State of Delaware.

**TWELFTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred and/or any breach by TST of the agreement between the parties is excused by Fuzebox's prior material breaches of the agreement.

**THIRTEENTH AFFIRMATIVE DEFENSE**

The Counterclaims are barred and/or any breach by TST of the agreement between the parties is excused by Fuzebox's prior material breaches of warranties.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Fuzebox's Counterclaims are predicated on the existence of an outstanding work authorization agreement upon termination and no such outstanding work authorization existed.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Fuzebox's claims for punitive or exemplary damages, including in Counts IV, V, VI, VII, VIII, IX, X, XII and XIII, are barred by the PSA, including section 15.

WHEREFORE, TST respectfully requests that this Honorable Court:

- A. Dismiss the Counterclaims with prejudice;
- B. Enter a judgment in favor of TST and against Fuzebox and Digital;
- C. Award to TST its costs and reasonable attorneys' and paralegals' fees incurred in connection with this action; and
- C. Award to TST any such other and further relief as the Court deems equitable and just.

Dated: June 11, 2012

Respectfully submitted,

MCCARTER & ENGLISH, LLP

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