

Effective October 7, 2024. This Master Services Agreement supersedes and replaces all prior versions.

## **Master Services Agreement**

This Master Services Agreement (the “MSA”) is between Provider and the Client found on the applicable quotation, estimate, statement of work, proposal or order, (the “Order”) and, together with the Order, the terms and conditions, and relevant Service Attachments forms the Agreement between the parties (the “Terms”). Client accepts these Terms by signing an Order, using the services, or continuing to use the services after being notified of a change to these Terms. If there is a conflict between the Order, this Master Services Agreement, any Service Attachment, or Exhibit, the Order will control.

**The parties agree as follows:**

### **STATEMENT OF SERVICES**

#### **Service Attachments**

The services to be delivered by Provider (the “Services”) and the fees for those Services, and the specific terms applicable to those Services are described in the Order or in one or more Service Attachments referencing this Agreement.

Except for Supplemental Services or Project Services (described below), and unless otherwise agreed in writing, the services Provider will deliver to Client are limited to those Services specifically identified in the Order and described in the Service Attachments. In the event of any conflict between the terms of a Service Attachment and this Agreement, the terms in the Service Attachment control. In the event of any conflict between the terms of this Agreement and of an Order and any Service Attachment, the terms of the Order control.

Provider may decline to perform any services requested by Client that are in violation of any applicable law or that are beyond the scope of Services ordered.

#### **Supplemental Services**

“Supplemental Services” include additional services and equipment Client may need on a “one-off” or emergency basis that are not included within the scope of the Services described in an Order or the applicable Service Attachments. You will incur additional Service Fees for the ordered Supplemental Services. We will notify Client of any such additional Service Fees and will obtain Client’s approval prior to providing them. However, Provider has no obligation to determine the need for or to provide any Supplemental Services. All Supplemental Services are provided on an “as-is” basis and include no warranties of any kind, whether express or implied. In addition, if Provider determines that any additional services Client requests would be inappropriate for treatment as Supplemental Services under this paragraph, Provider may deliver to Client a proposed Service Attachment for Project Services or a Proposal prior to

providing Supplemental Services.

### **Project Services**

In some cases, Client may ask Provider to deliver services outside the scope of any Order or Service Attachment and inappropriate for treatment as Supplemental Services. Examples of such services include major system upgrades, new computer, machine or device setup, network changes, datacenter moves or setups, or installations. In those cases, Provider will prepare a separate Service Attachment for Project Services describing the proposed scope of those services and Provider's fee to deliver them. Installation dates are estimates only. Client shall be responsible for preparation and maintenance of the site for such Project Services or installations, including, but not limited to, providing necessary electrical power and communication lines and proper air conditioning and humidity control.

### **Subcontractors**

"Subcontractor" means third-party to whom Provider contracts to provide specified services to complete the services indicated in the applicable Order.

## **FEES FOR SERVICES | PAYMENT TERMS**

### **Service Fees**

Fees for Services are set forth in Order. Unless otherwise indicated in writing, all Services will be performed on a time-and-materials basis at Provider's then-current rates.

### **Adjustments to Service Fees**

Except as may be specified in an Order, Provider may adjust the Service Fees charged under this Agreement as follows:

- **End-User or Network Growth.** During the term of an Order, if the number of users or devices in Client's environment or the Service or Equipment types or quantities to be covered within the scope of the Order exceeds the numbers, types or quantities previously ordered, Provider may apply a pro rata adjustment to the total Service Fees. You shall pay all Service Fees owed as they become due following any such adjustment.

Similarly, during the term of an Order, if the number of users or devices in Client's environment or the Service or Equipment types or quantities to be covered within the scope of the Order is less than the numbers, types or quantities previously ordered, upon request, Provider will apply a pro rata adjustment to the total Service Fees. You shall pay all Service Fees owed as they become due following any such adjustment. However, under no circumstances may any such adjustments result in a number of users or devices in Client's environment or in any Service or Equipment types or quantities to be

covered within the scope of the Order that is less than the numbers, types or quantities ordered at the time Client signed that Order.

For purposes of accounting, "End User" means Client's employees, consultants, contractors or agents who are authorized to use the Service and have been authorized by Client to access Provider's Services. End Users do not include any customers of Client or other third parties.

"Device" means any equipment included in the Services, whether owned by Client or provided by Provider for Client's use, including, but not limited to computers, printers, servers, routers, and mobile or handheld microcomputers as well as the software necessary to operate such equipment.

- **Service Fee Rate Increases.** At any time after the parties sign an Order, Provider may elect to raise the fees that it charges under that Order. If the increase is greater than 10% annually, Provider shall give Client no less than thirty (30) days' notice of any such increase in fees to be charged. Within 30 days following Client's receipt of such notice, Client may terminate the Order without incurring any additional charges or penalties, if any, that Client ordinarily would incur for such termination.
- **Surcharges.** At any time after the parties sign an Order, Provider may adjust its rates and charges or impose additional rates and charges to recover amounts required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds or programs. You shall pay all Service Fees owed as they become due following any such adjustment.
- **Third-Party Services.** Client understands and agrees that Provider uses third-party solutions and service providers to perform some or all of the managed services offered to Client ("Third-Party Service Providers"). **PROVIDER IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF THIRD-PARTY SERVICE PROVIDERS. CLIENT'S RIGHTS, OBLIGATIONS, AND CLAIMS AGAINST THIRD-PARTY SERVICE PROVIDERS SHALL BE GOVERNED BY SUCH SERVICE PROVIDER'S END USER LICENSE AGREEMENT OR TERMS AND CONDITIONS.** Provider's current Third-Party Service providers and the governing terms and conditions related to those services are listed on the Schedule of Third-Party Services which may be updated by Provider without further notice to Client and is incorporated by reference as if fully set forth in this Agreement.
- **Off-Boarding.** Client's cancellation, termination, or transition of the Services to Client's control or to another service provider ("Off-Boarding") may trigger a billable project. Any Off-Boarding projects will be subject to a separate Order, which will be billed at Provider's then-prevailing rates.

- **Client Delay.** If Provider is unable to commence delivery of the Services on the service start date because of any failure on Client's part including but not limited to the failure to provide access to Client's resources in a timely manner, Client nonetheless will begin to incur Service Fees, which Client shall pay in accordance with the Order, the Service Attachment and the Master Services Agreement.

### **Payment Terms**

Client shall pay the full amount reflected on any invoice as owed to Provider on or before the due date listed in the invoice (the "Payment Deadline"). Provider may charge a late fee of one-and one-half percent (1.5%) per month or the maximum lawful rate, whichever is less, for all invoiced amounts not paid by the Payment Deadline.

If Client disputes in good faith all or any portion of the amount owed to us, or if Client otherwise requests any adjustment to an invoiced amount, Client must notify Provider in writing, prior to the Payment Deadline, of the nature and basis of the dispute and/or adjustment. If Provider is unable to resolve the dispute prior to the Payment Deadline, Client nevertheless shall pay the entire invoiced amount by the Payment Deadline. If Provider ultimately determines that such amount should not have been paid, Provider shall apply a credit equal to such amount against any Service Fees owed for the following month.

Special rates may apply for services requested outside of normal business hours or on holidays. Special rates are one-and-one-half (1.5) times normal hourly rates, with a one-hour minimum. Holiday hour rates are two (2) times normal hourly rates, with a one-hour minimum.

### **Reimbursable Expenses**

Client shall pay Provider's reasonable out-of-pocket expenses, including incremental third-party service fees, travel expenses, lodging, meals, or other similar expenses, which may be incurred by Provider in performing Services.

### **Suspension of Service**

If Client fails to pay all amounts owed under this Agreement when due, then upon at least ten (10) business days' prior written notice, and in addition to any other remedies available to Provider, Provider may suspend Services and withhold Confidential Information (defined below) under this Agreement until full payment is made. Following any suspension of service under this provision, and after Client makes full payment to Provider, Provider may restore the Services after validating that all components to be monitored and/or managed under any applicable Order or Service Attachment comply with Provider's level of security, updates, and best practices. Client shall pay a "Reactivation Fee" for such restoration equal to one month of the Service Fees. Provider's right to suspend Services under this section is in addition to Provider's right to terminate this Agreement.

## **TERM AND TERMINATION**

### **Term**

This Agreement commences on the Order Effective Date, and it will remain in effect

until either party terminates it as permitted below.

### **Month-to-Month Services**

If the Order specifies no Initial Term with respect to any or all Services, then Provider will deliver those Services on a month-to-month basis until one party provides written notice to the other party of its intent to terminate those Services, in which case Provider will cease delivering those Services at the end of the next calendar month following receipt of such written notice by the other party.

### **Termination**

Either party may terminate this MSA for any reason or no reason upon at least thirty (30) days advance, written notice given to the other party. However, termination of this MSA will not, by itself, result in the termination of any Order or Service Attachments, and this MSA will remain in effect notwithstanding any notice of termination unless and until all Orders and/or Service Attachments are terminated or expire according to their terms.

### **INDEPENDENT CONTRACTOR**

Unless otherwise agreed, Provider will perform all Services solely as an independent contractor and not as an employee, agent, or representative of Client.

### **INTELLECTUAL PROPERTY RIGHTS**

#### **Provider Works**

Unless specifically identified in a separate Statement of Work, any writing or work of authorship, regardless of medium, created or developed by Provider for Client in the course of performance under this Agreement and related to existing works owned by Provider is a "Provider Work," is not to be deemed a "work made for hire," and is and will remain the sole, exclusive property of Provider. To the extent any Provider Work for any reason is determined not to be owned by Provider, Client hereby irrevocably assigns and conveys to Provider all of its copyright in such Provider Work. Client further hereby irrevocably assigns to Provider all of its patent, copyright, trade secret, know-how, and other proprietary and associated rights in any Provider Work.

#### **License to Provider Works**

If any Provider Work is located on hardware or equipment owned by Client, Provider hereby grants Client a perpetual, non-exclusive, revocable, royalty-free license to use any Provider Work during the term of this Agreement ("Limited License"). The Limited License will be immediately and automatically revoked without the need for notice in the event that either party terminates the Services or this Agreement.

#### **License Restrictions**

You shall not:

- Modify, copy, or create derivative works based on the Services or on the Provider Technology;
- Build a product or service using similar ideas, features, functions, or graphics of the Service, or
- Copy any ideas, features, functions, or graphics of the Service.

Additional license restrictions may be set forth in the Service Attachments.

### **Improvements to Services**

Client hereby assigns to Provider any and all suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by Client or Client's users relating to any proposed improvements of or modifications to the Services.

## **NON-DISCLOSURE AND CONFIDENTIALITY**

### **Confidential Information**

During the course of performance under this Agreement, either party may be exposed to or may acquire the other's proprietary or confidential information. Each party shall hold all such "Confidential Information" in strict confidence and shall not disclose any such information to any third party.

Confidential Information includes but is not limited to: (a) with respect to Provider, Provider's unpublished prices for Services, audit and security reports, server/network configuration designs, firewall and other hardware configurations, passwords, all business plans, technical information or data, product ideas, methodologies, calculation algorithms and analytical routines, and other proprietary technology, (b) with respect to Client, content transmitted to or from, or stored by Client on, Provider's servers, and (c) with respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure.

### **Non-Confidential Information**

Notwithstanding the preceding provision, Confidential Information does not include:

- Information that at the time of disclosure is, without fault of the recipient, available to the public by publication or otherwise;
- Information that either party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the other;
- Information received from a third party with the right to transmit same without violation of any secrecy agreement with the other party; and
- Information that must be disclosed pursuant to court order or permitted by law.

### **Agreement Confidentiality**

No copy of the Order, this MSA, any Service Attachment, discussions, negotiations, terms or conditions relating to the Order, the MSA, Service Attachment, or any other

information relating to the Order, this MSA, or any Service Attachment may be disclosed to any third party, except by reason of legal, accounting or regulatory requirements, without the prior written consent of the parties hereto.

### **Information Releases**

Notwithstanding the preceding provisions, Provider may publicly refer to Client, orally and in writing, as a Client of Provider. Any other reference to Client by Provider may be made only pursuant to a written agreement between the parties.

### **PROVIDER-SUPPLIED EQUIPMENT**

“Equipment” means any computer, networking or telephony equipment, racking, or associated hardware, or other equipment (if any) that Provider installs on Client’s premises or that Provider ships to Client’s location to facilitate the delivery of Services. Equipment does not include any hardware or devices that Provider may sell to Client or that Provider procures on Client’s behalf.

Provider is and will remain the sole owner of any Equipment, which is provided on a rental or temporary basis only. This agreement transfers to Client no Equipment ownership rights of any kind.

Provider retains sole discretion to determine the appropriate Equipment and associated software and/or technology, if any, to be used at Client’s location, provided that Provider’s determination does not materially impair the availability or delivery of services under this Agreement. Provider also retains sole discretion to determine the necessity of maintenance, repairs, and/or improvement of the Equipment.

Except as otherwise may be specified in an applicable Service Attachment, Provider makes no independent representations or warranties with respect to the Equipment. Any third-party warranties are Client’s exclusive remedies with respect to such Equipment.

Client shall take reasonable care of the Equipment and shall not damage it, tamper with it, move or remove it, attempt to repair it, or attempt to install any software on it. TO THE EXTENT PROVIDERS OWN INSURANCE DOES NOT COVER A CLAIM THEN Client is financially responsible, up to the full replacement value of all Equipment, for all damage to or loss of the Equipment used at Client’s location. Client is responsible for providing the necessary power, network connection, and appropriate environment to support the Equipment.

Client shall not remove any sign, label, or other marking on the Equipment identifying Provider as the owner of the Equipment. Client does not acquire and will not acquire any rights of ownership in the Equipment by virtue of this Agreement, and Client does not have and will not have, by operation of law or otherwise, any lien or other similar right over or in relation to the Equipment.

On termination of any Agreement pursuant to which Client obtained any Provider-owned Equipment, Client shall allow Provider and its employees and contractors reasonable

access to its premises to remove the Equipment. Alternatively, upon Provider's request, Client shall return the Equipment to Provider via the carrier of Provider's choice, for which Provider will pay all applicable shipping charges. Upon termination, Client is responsible for removing all Client Data from the equipment. Upon pickup or return of equipment to Provider, Provider will not be responsible for lost Client Data.

### **Network Devices, Hardware and Systems**

Provider shall only be responsible for providing services to network devices, hardware and systems identified by Client and Provider and set forth in the relevant Orders and covered by Remote Management Monitoring (Hereafter referred to as RMM.) Provider may, in its sole discretion, deny requests to add additional devices, hardware or systems. Client shall bear the responsibility to isolate and protect the system by not allowing additional devices, hardware or system on the system unless approved by Provider. Provider shall have no responsibility for any devices, hardware or systems or damage resulting therefrom that are added to the System without Provider's approval. Provider shall have the right to cancel this contract if devices, hardware or systems are added without their approval. If Client obtains new devices, hardware or systems and wishes to request Provider's services to extend to new devices, hardware or systems, said extension shall not take effect unless and until Provider agrees and the Device is added to the RMM.

### **PROVIDER-SUPPLIED SOFTWARE**

"Software" means all and any software installed on the Equipment or provided by Provider for installation on Client's computer equipment to facilitate the delivery of the Services.

This Agreement does not transfer any right, title, or interest in the Software to Client. Client's use of the Software is subject to all applicable terms of any end-user license agreement pertaining to the Software, a copy of which will be made available to Client, upon request.

You shall not, and shall not permit any third party, to:

- distribute or allow others to distribute copies of the Software or any part thereof to any third party,
- tamper with, remove, reproduce, modify, or copy the Software or any part thereof,
- provide, rent, sell, lease, or otherwise transfer the Software or any copy or part thereof or use it for the benefit of a third party, or
- reverse assemble, reverse compile or reverse engineer the Software or any part thereof, or otherwise attempt to discover any Software source code or underlying proprietary information except as may be permitted by law.

### **CLIENT COVENANTS AND OBLIGATIONS**

#### **Assistance**

Client shall provide in a timely and professional manner, and at no cost to Provider, assistance, cooperation, complete and accurate information and data, equipment,



access to applicable computer and telecommunications facilities, networks, firewalls, servers, programs, files, documentation, passwords, a suitable work environment, and other resources requested by Provider to enable it to perform the Services (collectively, "Assistance"). Provider shall not be liable for any deficiency in performing the Services if such deficiency results from Client's failure to provide full Assistance as required hereunder. Assistance includes, but is not limited to, designating a project manager or contact person to interface with Provider during the course of Services.

**Authorized Contact(s).** Client understands and agrees that Provider will be entitled to rely on any directions or consent provided to Provider by any of Client Authorized Contacts, as indicated in an applicable Order. If no Authorized Contact is identified in an applicable Order then Client Authorized Contact will be the person(s) who signed the Order" If Client desires to change Client Authorized Contact(s), please notify Provider of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

### **Shared Administrator Credentials**

If Client has access to server, network, or software application administrative credentials, Client agrees not to share the access or credentials with any third party without Provider's consent. Provider will not supply network administrative access or credentials to Client or provide consent for a third-party's access unless and until Client accepts the terms of Provider's Service Attachment for Co-Managed Services or otherwise terminates the Agreement, pays all Service and Termination Fees, and provides a written release of any and all claims.

### **Software Licensing**

Unless specifically otherwise agreed to in an applicable Order, Client represents and warrants that Client has title to or has a license or the right to use or modify the Software and has a license or right to permit Provider to use, access, or modify any software that Client has requested Provider to use, access, or modify as part of the Services.

It is the Client's responsibility to independently ensure that **ALL** software in use by Client is properly licensed, and Client agrees to maintain records of applicable licenses. Provider will not promote the use of, or knowingly support software which is not properly licensed by Client. Assistance with software audits or licensing compliance matters are billable at Provider's then-prevailing hourly rates.

### **Unsupported Software**

Provider shall not be responsible or liable to Client for any consequences from the use of software no longer under manufacturer product support or no longer supported by the software publisher ("Unsupported Software"). **THEREFORE, CLIENT AGREES TO INDEMNIFY AND HOLD PROVIDER HARMLESS FROM ANY LOSS, INJURY, OR DAMAGE TO CLIENT OR ANY HARDWARE, SOFTWARE, AND/OR COMPUTER DATA OF CLIENT CAUSED BY ANY USE OF UNSUPPORTED SOFTWARE.**

### **Provider Access**

Client shall supply Provider necessary access to its personnel, appropriate documentation and records, and facilities in order for Provider to timely perform the Services.

Broadband Internet access must be provided. Provider must be provided with remote access (via VPN or other reasonable remote access) to covered equipment. Appropriate cabling to all covered computers and devices must be provided. Appropriate air conditioning and ventilation for all covered computers and devices must be provided, in order to maintain temperature and air quality as specified by the applicable hardware manufacturers. Power surge protection must be provided for all covered computers and devices. Provider must be allowed convenient and timely access to the Equipment covered under this Agreement, adequate working space and facilities within a reasonable distance of the equipment, and access to and use of all information, internal resources, and facilities determined necessary to service the equipment. Client may be required to conduct preliminary diagnostic steps or provide additional information related to a support request, prior to a technician being dispatched to Client's facility. Client must agree to assign Authorized Contact(s) to Provider in order to make communications between both parties effective.

### **Remote Access**

Client grants to Provider the explicit right to remotely access Client's network systems without the need to obtain expressed permission or consent each time remote access is established.

### **Third-Party Service Provider Fees**

Unless expressly undertaken by Provider in writing, Client is responsible for any Third-Party Service Provider service fees, charges and to arrange for disconnection or termination and payment of charges related to the disconnection or termination of any related services with Client's current carrier(s) or service provider(s).

### **Network Security and Malicious Events**

Unless specifically otherwise agreed to in an applicable Order, it is Client's sole responsibility to determine whatever actions deemed necessary to make Client's data and voice networks and circuits secure from unauthorized access. Hardware firewall must be in place. Wireless data traffic in the environment must be securely encrypted. Provider is not responsible for the security of Client's network and circuits from third parties, or for any damages that may result from any unauthorized access to Client's network.

Client has an affirmative obligation to protect Client's network environment, and to train its employees for spam, malware, phishing, virus protection, and prevention from criminal acts of third parties. **Provider is not responsible for criminal acts of third parties, including but not limited to hackers, phishers, crypto-locker, and any network environment subject to ransom.**

If a security system for Client's network is included within the Services to be provided by

Provider, Provider agrees to use its best efforts to protect Client's network from malicious attacks by computer viruses, computer worms, and/or computer hackers (collectively, "malicious activities"). However, Client understands that no security system can guarantee complete protection against malicious activities as such attacks often involve the intentional action by third parties to invade and injure computer systems.

**THEREFORE, CLIENT AGREES TO INDEMNIFY AND HOLD PROVIDER HARMLESS FROM ANY LOSS, INJURY, OR DAMAGE TO CLIENT OR ANY HARDWARE, SOFTWARE, AND/OR COMPUTER DATA OF CLIENT CAUSED BY SUCH MALICIOUS ACTIVITIES.**

### **Third-Party Criminal Activity**

Provider is not responsible for criminal acts of third parties, including but not limited to intrusions or unauthorized access of any kind, hackers, phishers, crypto-locker, and any network environment subject to ransom. **CLIENT AGREES TO HOLD PROVIDER HARMLESS FOR ANY ACTIVITY AFFECTING NETWORK SECURITY ON CLIENT'S ENVIRONMENT RELATED TO THIRD-PARTY CRIMINAL ACTIVITY, NETWORK SECURITY, OR PRIVACY.** Any costs or fees to rebuild or service machines will be billed at provider's then-prevailing hourly rates.

### **Theft of Service**

Client shall notify Provider immediately, in writing, by electronic mail or by calling the Provider customer support line, if Client becomes aware at any time that the Services are being stolen or used fraudulently. Failure to do so in a timely manner may result in the immediate termination of the Services and additional charges billed to Client. Client will be liable for all use of the Service using Equipment stolen from Client and any and all stolen Service or fraudulent use of the Services. Credits will not be issued for charges resulting from fraud that arises out of third parties hacking into any Equipment. This includes, but is not limited to, modem hijacking, wireless hijacking, or other fraud arising out of a failure of Client's internal/corporate procedures. Provider will not issue credit for invoiced charges for fraudulent use resulting from Client's negligent or willful acts or those of an authorized user of Client's service. **THEREFORE, CLIENT AGREES TO INDEMNIFY AND HOLD PROVIDER HARMLESS FROM ANY LOSS, INJURY OR DAMAGE TO CLIENT, OR ANY THEFT OF SERVICE CAUSED BY SUCH THEFT OF SERVICE.**

### **Hardware Equipment**

Client Equipment must be in working order and maintained under a manufacturer's warranty or maintenance contract. All fees, warranties, and liabilities against Provider assumes equipment is under manufacturer's warranty or maintenance contract and is in working order.

Provider in its reasonable opinion and supported by manufacturer information, may designate certain equipment as obsolete or defective, and therefore exclude it from coverage under this Agreement.

### **Physical Security**

Client is responsible for the physical security of its on-premises hardware and software systems.

### **Independent Backup**

Unless specifically otherwise agreed to in an applicable Order or Service Attachment, Client must maintain an independent backup of all files that are sent to either the cloud or a data backup service. A backup solution must be in place, with backup copies stored off-site. It is the Client's responsibility to verify that backups are made regularly, as well as the integrity of the backups. Provider shall not be held liable in the event of data loss, backup software failure, backup selection, backup hardware failure, backup media failure, or backup system failure even in the event that Provider was tasked to perform additional backups. Client will be solely responsible for all lost data.

### **Onboarding Process**

Client acknowledges and agrees that Provider will have no responsibility for any deficiencies in the current operating systems and infrastructure until Provider has had a reasonable opportunity to conduct a review of the current system and to provide Client with its recommendations, and Client has accepted and implemented same. Further Provider shall have no liability for claims including incurred but not reported preceding the date onboarding is complete and the RMM is fully deployed.

### **Malware**

An anti-malware solution must be in place, and updated with a valid update subscription. Provider is not responsible for any harm that may be caused by Client's access to third-party application programming interfaces or the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, Trojan horses, worms, viruses, and similar mechanisms. Any costs or fees to rebuild or service machines are provided and sold separately by Provider.

### **Hardware and Software Configurations**

All Hardware and Software Configurations implemented by Provider shall belong to Provider, and shall constitute Provider's Confidential Information.

### **Client Data Security & Privacy**

In addition to its other confidentiality obligations under an applicable Service Attachment, Provider shall not use, edit, or disclose to any party other than Client any Client Data (defined below), except as otherwise requested by Client, or required by court order or applicable law. For purposes of this provision, all data stored on the virtualized machines assigned to Client, including locally stored personal data of individual employees, will be considered Client Data by Provider.

As between Provider and Client, all Client Data is owned exclusively by Client. Client Data constitutes Confidential Information subject to the Terms. Provider may access Client's User accounts, including Client Data, solely to respond to service or technical problems or otherwise at Client's request.

## **Security and Regulatory Recommendations**

Although it is under no obligation to do so, from time to time, Provider may provide Client with specific advice, recommendations, and directions related to the Services, regulatory compliance, safety, and security related to Client's network and practices (e.g., multi-factored authentication). If Client fails to adopt or implement the recommended protocols, Client hereby acknowledges that it is responsible and will indemnify and hold Provider harmless for any and all damages related to regulatory, security, privacy, or data protection, including but not limited to fines, data breach notification, malware or ransomware costs, restoration, forensic investigation, restoring backups, or any other costs or damages related to Client's refusal to implement the recommended protocols. If Client's failure to follow or implement Provider's advice renders part or all of the Services economically or technically unreasonable, Provider may terminate the applicable Order.

## **Critical Deficiency**

During the course of the provision of the designated services Provider may identify critical deficiencies of IT System that must be corrected. If there is a system failure or compromise caused by Client not timely implementing the recommendations to correct the deficiencies, Client agrees to protect, defend, indemnify, release, and hold Provider and its related parties harmless from liability against all third-party claims or losses (including reasonable attorneys' fees) brought against Provider which relate in any way to any Services or materials provided by Provider.

## **PROVIDER REPRESENTATIONS AND WARRANTY**

### **Internal Network Security Compromise Policy**

Provider monitors the availability and performance of its internal firewall and network security. This process involves monitoring for intrusion attempts and potential security breaches. In order to minimize a possible compromise of security, all services and applications exposed to the Internet on Provider's servers are updated with all commonly available security hotfixes and best practices. As appropriate, Provider proactively evaluates, investigates, and reports security-related incidents to the appropriate authorities. Provider also monitors and proactively manages the anti-virus protection of its servers and applications using industry-recognized anti-virus software systems.

### **Service Warranty**

We warrant that the Services will be performed in a professional and workmanlike manner and as described in an applicable Service Attachment. All Services will be deemed to be accepted unless Client notifies Provider in writing within ten (10) working days after performance that the Services did not conform to this warranty. Provider promptly will correct any non-conformities and will notify Client in writing that the non-conformities have been corrected.

## **DISCLAIMER OF WARRANTY**

## **PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED**

ERROR-FREE OR UNINTERRUPTED, THAT PROVIDER WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICE WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE TEMPORARY LOSS OF SERVICE AVAILABILITY. PROVIDER IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION, OR SECURITY OF THE SERVICES THAT ARISE FROM CLIENT'S CONTENT OR THIRD-PARTY CONTENT, OR SERVICES PROVIDED BY THIRD PARTIES. PROVIDER SHALL HAVE NO OBLIGATION WITH RESPECT TO A WARRANTY CLAIM (i) IF NOTIFIED OF SUCH A CLAIM AFTER THE WARRANTY PERIOD OR (ii) IF THE CLAIM IS THE RESULT OF THIRD-PARTY HARDWARE OR SOFTWARE FAILURES, OR THE ACTIONS OF CLIENT OR A THIRD PARTY.

FOR ANY BREACH OF THE SERVICES WARRANTY, CLIENT'S EXCLUSIVE REMEDY AND PROVIDER'S ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF PROVIDER CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY END THE DEFICIENT SERVICES AND PROVIDER WILL REFUND TO CLIENT THE FEES FOR THE TERMINATED SERVICES THAT CLIENT PRE-PAID TO PROVIDER FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

TO THE EXTENT NOT PROHIBITED BY LAW, CLIENT ACKNOWLEDGES THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS BY THE PROVIDER OR ANY THIRD-PARTY VENDORS INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS, OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE, AND THAT THOSE THIRD-PARTY VENDORS DISCLAIM ANY AND ALL LIABILITY, WHETHER DIRECT, INDIRECT, OR CONSEQUENTIAL, ARISING FROM THE SERVICES.

PROVIDER MAY LINK TO OR OFFER THIRD-PARTY SERVICES OR PRODUCTS FOR RESALE. ANY PURCHASE, ENABLING, OR ENGAGEMENT OF THIRD-PARTY SERVICES OR PRODUCTS, INCLUDING BUT NOT LIMITED TO IMPLEMENTATION, CUSTOMIZATION, CONSULTING SERVICES, E-MAIL, WEB HOSTING, SERVER HOSTING, PHONE SERVICE, AND ANY EXCHANGE OF DATA BETWEEN CLIENT AND ANY THIRD-PARTY SERVICE OR PRODUCT, IS SOLELY BETWEEN CLIENT AND THE APPLICABLE THIRD-PARTY PROVIDER. SUCH PURCHASE, ENABLING, OR ENGAGEMENT OF THIRD-PARTY SERVICES IS SUBJECT TO THE TERMS AND CONDITIONS OF SUCH THIRD-PARTY PROVIDER. PROVIDER DOES NOT WARRANT THIRD-PARTY SERVICES OR PRODUCTS AND IS NOT RESPONSIBLE OR LIABLE FOR SUCH SERVICES OR

**PRODUCTS OR ANY LOSSES OR ISSUES THAT RESULT FROM CLIENT'S USE OF SUCH SERVICES OR PRODUCTS.**

**IF CLIENT PURCHASES, ENABLES, OR ENGAGES ANY THIRD-PARTY SERVICE OR PRODUCT, CLIENT ACKNOWLEDGES THAT PROVIDER MAY ALLOW THIRD-PARTY PROVIDERS TO ACCESS CLIENT DATA USED IN CONNECTION WITH THE SERVICES AS REQUIRED FOR THE INTEROPERATION OF SUCH THIRD-PARTY SERVICES OR PRODUCTS WITH THE SERVICES. CLIENT REPRESENTS AND WARRANTS THAT CLIENT'S USE OF ANY THIRD-PARTY SERVICE OR PRODUCT SIGNIFIES CLIENT'S INDEPENDENT CONSENT TO THE ACCESS AND USE OF CLIENT'S DATA BY THE THIRD-PARTY PROVIDER, AND THAT SUCH CONSENT, USE, AND ACCESS IS OUTSIDE OF PROVIDERS'S CONTROL. PROVIDER WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY DISCLOSURE, MODIFICATION, OR DELETION OF DATA RESULTING FROM ANY SUCH ACCESS BY THIRD-PARTY SERVICE PROVIDERS.**

**COMPLIANCE WITH LAWS**

Provider shall comply with all laws applicable to Provider in its role as a Managed IT Provider. For the avoidance of doubt, unless otherwise provided in an Order, Provider is not responsible for complying with the laws applicable to Client or Client's industry. Client shall comply with all laws applicable to Client or in Client's industry.

Although it is under no obligation to do so, from time to time, Provider may make recommendations regarding legal requirements and regulatory compliance protocols related to Client's network and practices. If Client fails to adopt or implement the recommended legal requirements or regulatory compliance protocols AFTER REVIEW OF SAME BY THEIR OWN QUALIFIED COUNSEL, Client is responsible for any and all damages related to legal and regulatory compliance. Even if Client does take Provider's advice regarding legal requirements and regulatory compliance protocols, Provider does not take responsibility for any legal requirements and regulatory compliance protocols or audits.

**NO HIRING**

Neither party shall solicit for employment any employee of the other party during the Term of this Agreement and for twelve (12) months following termination of this Agreement.

Each party acknowledges that injury resulting from any breach of this provision would be significant and irreparable and that it would be extremely difficult to ascertain the actual amount of damages resulting from such breach. Therefore, in the event of a violation of this provision, in addition to any other right the non-hiring party may have at law or in equity, the hiring party Client shall make a one-time payment to Provider in the amount of one hundred percent (100%) of the affected employee's base salary for one year, which accurately reflects the reasonable value of the employee's time and costs. The parties agree that such amount is not intended as a penalty and is reasonably

calculated based upon the projected costs the injured party would incur to identify, recruit, hire, and train suitable replacements for such personnel.

## **DISPUTE RESOLUTION**

### **Arbitration Procedures**

Each party shall attempt to settle amicably by mutual discussions any disputes, differences, or claims related to this Agreement within sixty (60) days of the date any such dispute arises. Failing such amicable settlement, any such dispute, including claim related to the existence, validity, interpretation, performance, termination, or breach of this Agreement, is to be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in English and will have one (1) arbitrator. The Arbitrator will not have the authority to award punitive damages to either party. Each party will bear its own expenses, but shall share equally the expenses of the Arbitration Tribunal and the AAA. Any arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. The arbitration will be held in the city where Provider's headquarters are located, or at another location upon which the parties may agree. Notwithstanding the foregoing, Provider may make claims for injunctive relief and for Client's failure to pay for Services in a state or federal court in the United States with jurisdiction over the subject matter and parties.

### **Period for Bringing Claim**

No claims may be made more than six (6) months after the date by which the fault or failure should reasonably have been discovered; failure to make such a claim within the six (6) month period shall forever bar the claim.

### **Continued Service**

Unless Provider is bringing an action for Client's failure to make payments for Services not otherwise in dispute, Provider will continue to provide Services under this Agreement, and Client shall continue to make payments to us, in accordance with this Agreement, during the period in which the parties seek resolution of the dispute.

### **Attorneys' Fees**

In the event that there is any dispute, difference, or claim related to this Agreement that is resolved either through arbitration or through litigation, the prevailing party will be entitled to an award of reasonable attorneys' fees incurred while defending or prosecuting such dispute, difference, or claim.

## **INDEMNIFICATION**

### **By Client**

Client shall defend, indemnify, and hold Provider harmless against all costs and expenses, including reasonable attorney's fees, associated with the defense or



settlement of any claim that:

- Provider's use, access, or modifications of any software that Client has requested that Provider use, access, or modify as part of the Services infringes any patent, copyright, trademark, trade secret, or other intellectual property right;
- Any claim by any Third-Party Service Provider in any way related to Client's use of any third-party software or service;
- Any claim arising from Client's breach of this agreement or any act or omission of Client;
- Any claim related to software licensing and software licensing compliance; or
- Any claim related to any federal, state, or international law or regulation involving data privacy, data protection, or data breach to which Client is subject.

Client shall pay any judgments or settlements based on any such claims.

### **By Provider**

Subject to the limitation of liability set forth in the section titled LIMITATION OF LIABILITY, Provider agrees to indemnify and hold Client harmless from and against all loss, liability, and expense including reasonable attorney's fees caused by Provider's:

- negligent act, error, omission, or misrepresentation;
- breach of any contractual term implied by law;
- other act, error, or omission giving rise to civil liability arising out of business activities performed for Client.

**THE PRECEDING INDEMNIFICATION OBLIGATIONS ARE CONDITIONED ON ANY OF THE INDEMNIFIED PARTIES: (I) NOTIFYING THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF SUCH ACTION; (II) REASONABLY COOPERATING AND ASSISTING IN SUCH DEFENSE; AND (III) GIVING SOLE CONTROL OF THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS TO THE INDEMNIFYING PARTY WITH THE UNDERSTANDING THAT THE INDEMNIFYING PARTY MAY NOT SETTLE ANY CLAIM IN A MANNER THAT ADMITS GUILT OR OTHERWISE PREJUDICES THE INDEMNIFIED PARTY, WITHOUT CONSENT.**

### **LIMITATION OF LIABILITY**

**EXCEPT AS MAY BE DESCRIBED IN AN ORDER, OR IN CASES OF PROVIDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, PROVIDER'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT WILL NOT EXCEED THE SERVICE FEES FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF ANY SUCH CLAIM.**

**IN NO EVENT IS EITHER PARTY TO BE HELD LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES OR CLAIMS, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SAVINGS, LOST PRODUCTIVITY, LOSS OF DATA, LOSS FROM INTERRUPTION OF BUSINESS, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, THE SERVICES NOT MEETING CLIENT'S REQUIREMENTS OR EXPECTATIONS, OMISSIONS, TRANSLATIONS AND SYSTEM WORDINGS, FUNCTIONALITY OF FILTERS, MIGRATION ISSUES, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, HARDWARE FAILURES, UNAVAILABILITY OF BACKUPS, ERRORS, DEFECTS, DELAYS IN OPERATION, TRANSMISSION, SECURITY BREACH, OR THIRD-PARTY SERVICE FAILURES, EVEN IF PREVIOUSLY ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER THE FORM OF ACTION IS IN CONTRACT, TORT, OR OTHERWISE. PROVIDER WILL NOT BE LIABLE FOR ANY KIND OF AUTHORIZED ACCESS OR ANY HARM THAT MAY BE CAUSED BY CLIENT'S ACCESS TO THIRD-PARTY APPLICATION PROGRAMMING INTERFACES OR THE EXECUTION OR TRANSMISSION OF MALICIOUS CODE OR SIMILAR OCCURRENCES, INCLUDING WITHOUT LIMITATION, DISABLING DEVICES, DROP DEAD DEVICES, TIME BOMBS, LOGIC BOMBS, TRAP DOORS, TROJAN HORSES, WORMS, VIRUSES, HACKERS, PHISHERS, CRYPTO-LOCKERS, RANSOMWARE, AND SIMILAR MECHANISMS.**

**CLIENT ACKNOWLEDGES AND AGREES THAT PROVIDER WOULD NOT ENTER INTO THIS AGREEMENT FOR THE CONSIDERATION GIVEN BY CLIENT BUT FOR THE LIMITATIONS OF LIABILITY AND DAMAGES CONTAINED IN THIS AGREEMENT. CLIENT ACKNOWLEDGES AND AGREES THAT THE RIGHT TO RECEIVE THE SERVICES IN EXCHANGE FOR THE LIMITATIONS IN THIS AGREEMENT AND THE OTHER CONSIDERATION GIVEN BY CLIENT FOR THE SERVICES CONSTITUTES A BARGAIN THAT IS FAIR AND REASONABLE.**

**THE PARTIES ACKNOWLEDGE AND REPRESENT THAT THEY HAVE READ, ARE FAMILIAR WITH, AND UNDERSTAND THE RIGHTS PROVIDED BY CALIFORNIA CIVIL CODE SECTION 1542, AND SHALL BE DEEMED TO HAVE EXPRESSLY WAIVED ANY AND ALL PROVISIONS, RIGHTS, AND BENEFITS CONFERRED BY CALIFORNIA CIVIL CODE SECTION 1542 AND ANY STATUTE, RULE, AND LEGAL DOCTRINE SIMILAR, COMPARABLE, OR EQUIVALENT TO CALIFORNIA CIVIL CODE § 1542, WHICH READS AS FOLLOWS:**

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”**

## **INSURANCE**

### **PROVIDER INSURANCE**

Provider will maintain at its own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

Provider shall have Client included in the Professional Liability policy as an additional insured. Such status will provide protection, subject to the policy terms and conditions, where liability is imposed on Client as a result of the wrongful act of Provider.

### **CLIENT INSURANCE**

#### **Commercial Property Insurance**

Client shall secure at Client own cost and expense Property Insurance for Client equipment that is part of the provisions of the service agreement.

#### **Cyber and Privacy Insurance**

Client acknowledges that Client is solely responsible for obtaining and maintaining, for the duration of this Agreement, its own Cyber and Privacy Liability Insurance to adequately insure its cyber exposures. Client acknowledges that Provider does not provide Client with any form of Cyber and Privacy Liability or other insurance coverage in connection with the Services and that Client's use of the Services does not, in any way: (i) replace a Cyber and Privacy Liability policy, (ii) mitigate Client's need for Cyber and Privacy Liability insurance coverage or (iii) relieve Client's responsibility for obtaining its own Cyber and Privacy Insurance coverage.

#### **Mutual Waiver of Subrogation**

**TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW) AND EMPLOYERS LIABILITY, PROFESSIONAL LIABILITY, GENERAL LIABILITY, PROPERTY INSURANCE, COMMERCIAL UMBRELLA/EXCESS, CYBER AND PRIVACY OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD PROVIDER ITS SUBCONTRACTORS AND/OR THIRD-PARTY SERVICE PROVIDERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT CLIENT INSURANCE POLICIES REFERENCED ABOVE PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THE TERMS OF SERVICE.**

### Insurance Applications

Upon request by Client, Provider may assist Client with: 1) the preparation of applications for insurance; or 2) provide technical assistance to Client in connection with providing information for the underwriting of insurance. Client acknowledges and agrees that Client is solely responsible for reviewing the information for accuracy and Client will be solely responsible for adverse actions taken by insurance carriers in connection with underwriting or claims administration.

## **DATA PRIVACY & PROTECTION**

### **Client Data**

Provider agrees that any electronic data or personal information submitted by Client to Provider as a part of the Service ("Client Data") remains the property of Client and/or its end-user or other third party. Provider agrees that it will comply with United States data privacy and data security laws that the Services applicable to Provider as stated herein.

### **Compliance with Privacy and Data Security Laws**

Client agrees not to provide any consumer or other third-party data subject to privacy regulation under international, federal, state, or local laws ("Regulated Data") to Provider including but not limited to HIPAA, GLBA, GDPR, CCPA, etc. the California Consumer Privacy Act ("CCPA") without first entering into an appropriate Order with Provider that specifically references the Regulated Data and the law to which the Client Data is subject.

### **Data Processing Agreement**

For Clients who require the processing of Regulated Data, Client must enter into an applicable Order with Provider, together with a data processing agreement (the "Data Processing Agreement" or "DPA"). Each data privacy or data protection regulation may contain its own separate addendum (or combined addendum) depending on Provider or Client's regulated activities.

## **GENERAL**

### **Observed Holidays**

Provider reserves the right to identify observed holidays and adjust its holiday schedules from time to time. When a holiday falls on a weekend, Provider may close on the closest business day in observance of that holiday. After-hours emergency support is still available during these times, and Client will be charged for Services at Provider's then-prevailing Holiday support rates.

### **Notices**

Except as otherwise provided under this Agreement, all notices, demands or requests to be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person, or sent via fax, courier service, electronic mail, or on the date of the third business day after deposit, postage prepaid,

in the United States Mail via Certified Mail, return receipt requested, and addressed as set forth on the applicable Order.

The address to which such notices, demands, requests, elections or other communications are to be given by either party may be changed by written notice given by such party to the other party pursuant to this Section.

### **Force Majeure**

Provider will not be liable for any failure of performance of the Services due to causes beyond its reasonable control, including, but not limited to, fire, flood, electric power interruptions, national or regional emergencies, epidemics, pandemics, public health emergencies, stay-at-home orders, furloughs, quarantines, or other restriction or prohibition, civil disorder, acts of terrorism, riots, strikes, Acts of God, or any law, regulation, directive, or order of the United States government, or any other governmental agency, including state and local governments having jurisdiction over Provider or the Services provided hereunder (the "Affected Performance").

Any party whose performance is so affected shall give written notice to the other party describing the Affected Performance. The parties promptly shall confer, in good faith, to agree upon equitable, reasonable action to minimize the impact on both parties of such condition. If the delay caused by the force majeure event lasts for a period of more than thirty (30) days, the parties shall attempt to negotiate an equitable modification to the Agreement pertaining to the Affected Performance. If the parties are unable to agree upon an equitable modification, then either party may serve thirty (30) days' written notice of termination on the other party with respect only to the portion of the Agreement relating to the Affected Performance. Client shall pay Provider for that portion of the Affected Performance that was completed or that was in the process of being completed through the effective termination date of the Affected Performance.

### **Waiver**

No delay in exercising, no course of dealing with respect to, and no partial exercise of, any right or remedy hereunder will constitute a waiver of any right or remedy, or future exercise thereof.

### **Assignment**

Neither party may assign this Agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of the other party. However, Provider may assign or otherwise transfer its rights, interests, and obligations under this Agreement without Client's consent in the event of a change in control of 50% or more of the equity of Provider, the sale of substantially all the assets of Provider, or the restructuring or reorganization of Provider or its affiliate entities. If Client transfers its rights, interests, and obligations under this Agreement without Provider consent, then such assignment will not be valid, and Client shall remain responsible for all Fees under this Agreement and any Attachment regardless of whether Client continues to derive any benefit from the Services. In addition, unless otherwise agreed, Provider may contract with third parties to deliver some or all of the Services, and no such third-party

contract is to be interpreted as an assignment of this Agreement. However, Provider will use commercially reasonable efforts to ensure that any and all such third parties abide by all of the terms of this Agreement, and, except as otherwise agreed, Provider will remain solely responsible for the fulfillment of all of Provider's obligations under this Agreement. This Agreement is binding upon the parties, their successors, and permitted assigns.

### **Marketing**

Client hereby grants Provider the right to reference Client's name, industry, logo, and URLs in its marketing literature, website, and/or correspondence to potential new clients, so as to identify Client as a customer of Provider for marketing purposes and for Provider's benefit. Such information is not considered Confidential Information subject to non-disclosure.

### **Notifications and Alerts**

Client hereby grants Provider the right to utilize Client information to send alerts, notifications, news, and general correspondence to Client to provide the Services.

### **Survival**

The parties' respective duties and obligations with respect to proprietary rights, intellectual property rights, and non-disclosure and confidentiality will survive and remain in effect, notwithstanding the termination or expiration of this Agreement.

### **Amendment**

Provider may, from time to time, in its sole discretion, and for any reason, amend the Order, the Master Services Agreement and any Service Attachments, Schedules, or other terms and conditions posted on Provider's web page.

### **Governing Law**

This MSA is to be governed by and construed in accordance with the laws of the state in which the Provider resides.

### **Severability**

If any term or provision of this agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions will remain unimpaired, and the invalid terms or provisions are to be replaced by such valid terms and provisions that most nearly fulfill the parties' intention underlying the invalid term or provision.

### **Third-Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein is to be construed to give any person or entity, other than the parties hereto and their respective successors and permitted assigns, any legal or equitable rights hereunder.

### **No Disparagement**

Neither Party, nor any of its respective partners, principals, shareholders, members,

officers, directors, employees, affiliates, subsidiaries, agents, or representatives, shall initiate or participate in any action or conduct tending to injure, bring into disrepute, ridicule, damage, or destroy the goodwill of Provider or Client, or the others' affiliates. The foregoing shall not be construed to prevent or prohibit a Provider or Client, or any of its respective partners, principals, shareholders, members, officers, directors, employees, affiliates, subsidiaries, agents, or representatives, from: (i) exercising its rights under this Agreement; (ii) complying with a legal obligation or a professional responsibility; or, (iii) reporting, providing, or disclosing information to federal, state, municipal, or local government agencies, authorities, or officials in the ordinary course of business or as required by law. Further, in the event Provider or Client or any of its respective partners, principals, shareholders, members, officers, directors, employees, affiliates, subsidiaries, agents, or representatives breach this Section, the non-breaching party and its respective partners, principals, shareholders, members, officers, directors, employees, affiliates, subsidiaries, agents, and representatives shall no longer be bound by the obligations set forth under this Section.

### **Entire Agreement**

This Master Services Agreement, the Order, the Service Attachments or Descriptions, and any other attachments thereto (collectively, the "Agreement") set forth Provider's entire understanding with respect to the subject matter hereof and are binding upon both parties, their successors, and their permitted assigns, in accordance with the terms of the Agreement. There are no understandings, representations, or agreements other than those set forth herein. Each party, along with its respective legal counsel, has had the opportunity to review this agreement. Accordingly, in the event of any ambiguity, such ambiguity will not be construed in favor of, or against either party.