

Dell Technologies Managed Services

General Terms and Conditions

Effective Date: July 26, 2021

These Dell Technologies Managed Services general terms and conditions (“Terms”) apply to Services provided to Customer by Provider. Any inconsistency or incompatibility in or between these Terms and any other documents referenced with these Terms will be resolved in accordance with Section 3. Provider reserves the right to update these Terms in Provider’s sole discretion.

1. **Definitions.**

Certain defined terms used in these Terms are as set forth below. Other terms will be given the meaning in the context in which they are used.

1.1 “Affiliate” means an entity that Controls, is Controlled by or is under common Control with a party.

1.2 “Approved Auditor” means Customer’s auditors, with the exception of auditors that compete directly or through affiliates with Provider, that execute a non-disclosure agreement in a form acceptable to Provider.

1.3 “Asset” means the hardware, software and related assets installed at a Customer Service Location and used to provide the Services or such hardware, software or related assets upon which the Services are being delivered. Unless otherwise stated in a service description, quote, order or SOW, Assets are typically owned by Provider and coupled with the overall Services delivery (e.g., in an “as-a-Service” model).

1.4 “Assumptions” has the meaning given in Section 6.5.

1.5 “Claim” has the meaning set forth in Section 16.1.

1.6 “Confidential Information” means the information set out in Section 18.1, below.

1.7 “Control” means the ownership of more than fifty percent (50%) of an entity’s stock or other voting interest.

1.8 “Customer” means the party that has purchased Services under a quote, order, SOW or other purchasing mechanism.

1.9 “Customer Marks” means Customer’s trade name, trademarks and logos.

1.10 “Customer Material” means hardware, software, and any other materials and information to which Provider has been provided access in connection with the Services.

1.11 “Customer Supplied Products” means the products provided by Customer to enable Provider to deliver the Services.

1.12 “Customer Representatives” means contractors and agents of Customer.

- 1.13 “Customer Service Location” means the Customer’s location where Services will be delivered and where Assets may be located.
- 1.14 “Customer Software” means software Customer develops or owns, and software Customer uses licenses or leases from a third party.
- 1.15 “Customer Work Place Policies” has the meaning given in Section 5.2.
- 1.16 “Disengagement Period” means the period during which Disengagement Services are delivered.
- 1.17 “Disengagement Plan” means the plan detailing the method and schedule of delivery of Disengagement Services, and the associated Fees, if any.
- 1.18 “Disengagement Services” means the services delivered by Provider to assist Customer in disengaging from the Services.
- 1.19 “Due Date” has the meaning given in Section 6.1.
- 1.20 “Employee” means those employees on Provider’s payroll who are allocated by Provider to perform the Services pursuant to these Terms.
- 1.21 “End Users” mean Customer’s employees, contractors, agents or any other third parties who utilize or access the Services.
- 1.22 “Excused Event” means an event that shall not result in Provider’s failure to meet any Service Level or otherwise fail to deliver the Services including: (i) force majeure events, (ii) Customer or Customer representatives’ acts or omissions, (iii) infringements of third party rights, (iv) failure of customer or third party software or hardware, (v) failure to provide the Services while executing a BCP or DR plan, (vi) failure by customer to implement corrective measures (either at the direction/advice of provider or consistent with reasonable industry practices) or (viii) any other event outside the reasonable control of Provider.
- 1.23 “Fees” means the charges for the Services and any other amounts payable.
- 1.24 “Personnel” means Employees, agents, subcontractors, consultants and representatives provided or to be provided by Provider to perform the Services pursuant to these Terms.
- 1.25 “Proprietary Rights” mean all patents, copyrights, trademarks, trade secrets or other intellectual property rights of a party. “Provider Products” means collectively: (a) “Equipment” (which is the Provider-branded hardware that Provider provides to Customer under the applicable quote or order); and (b) “Software” (which is Provider’s Provider-branded generally available application, microcode, firmware and operating system software that Provider licenses to Customer as part of the Services); and (c) Independent Software (which is Provider’s Provider-branded software that can operate on hardware other than Equipment). Provider Products exclude Services and Third Party Products.
- 1.26 “Provider” means the Dell Technologies entity providing the Services to Customer. Generally, for business located in North America, Provider shall mean Dell Marketing, L.P. or EMC Corporation or, if located outside North America, the local Affiliate of the applicable Dell Technologies entity providing Services.

1.27 “Provider Proprietary Software” means any and all versions of software Provider or Provider Affiliate uses to deliver the Services, including, and not limited to, any tools, scripts or code. Provider Proprietary Software does not include Third Party Products.

1.28 “Provider Service Location” means the Provider locations from where Provider will deliver the Services.

1.29 “Provider Support Services” means services for the support and maintenance of Provider Products.

1.30 “Provider Third Party Hardware” means hardware provided by Provider and manufactured by a third party that is used in connection with the Services.

1.31 “Provider Third Party Software” means any and all versions of software that is licensed by Provider from a third party that is used in connection with the Services.

1.32 “Required Data” means any data reasonably required by Provider from Customer to support Provider’s performance of the Services.

1.33 “Service Level” or “SLA” means a target performance standard applicable to Provider’s delivery of the Services.

1.34 “Services” means the services specifically defined within, as applicable, a service description, SOW, quote or order.

1.35 “Services Term” means the duration of the Services and includes any renewals as set forth in, as applicable, a service description, SOW, quote or order.

1.36 “Tax” has the meaning given in Section 6.2.

1.37 “Third Party Products” means any hardware, software or services that are not “Dell” branded, “EMC” branded or “Dell EMC” branded.

2. Participation Agreements. For any Services performed or received outside of the country where Customer or Supplier is located, the parties agree to generally purchase on a “local to local” basis via Customer and Supplier Affiliates by execution of a Participation Agreement. The terms of a Participation Agreement will be substantially the same as the terms of this Agreement, subject to modifications to those terms that are necessary for each party’s compliance with the laws of the applicable jurisdiction and/or other modifications the parties mutually agree upon, including with respect to commercial terms specific to that transaction. Until such date that the relevant Participation Agreement is fully executed, Provider nor the applicable Provider Affiliate shall be required to provide such additional Services. If Provider, in its sole discretion, determines that an alternative method of procurement is required, then Provider shall advise Customer of such alternative methods of procurement of such Services, if available. Notwithstanding the foregoing, nothing contained in this Agreement shall be construed as requiring Affiliates of Provider and Customer to enter into Participation Agreements.

3. Order of Precedence.

Any conflict or inconsistency between any provisions of the applicable documents shall be resolved in accordance with the following order of precedence: (a) a service description (if any); (b)

the Terms; (c) a quote or order (if any); and (d) an SOW (if any).

4. **Provision of Services.**

4.1 Services, Generally

Provider shall not be required to use any particular combination of Assets, Personnel and/or other resources to perform the Services, and Provider reserves the right in its discretion to designate and make changes to the standards, operating procedures, allocation and quantity of system resources utilized at any time, so long as any such change does not adversely affect the Services, Service Levels and Fees.

4.2 Service Levels

Provider shall perform the Services in accordance with the Service Levels (if any). Provider shall not be responsible for the failure to meet any Service Level to the extent that any such failure is attributable to any Excused Events.

4.3 Reserved

4.4 Changes in Customer Laws

Customer shall promptly identify and notify Provider of any changes in Customer law, including regulatory requirements, that may relate to Customer's use or Provider's delivery of the Services. The parties shall work together to identify the impact of such changes on how Customer uses, and Provider delivers, the Services. In the event that a change in law results in Provider being unable to deliver the Services, or results in an increase in the cost of providing the Services that Customer declines to pay, Provider may suspend its obligation to provide the affected Services with no further liability, and Customer shall be responsible for any losses arising from any non-compliance by Customer with any law relating to Customer's use or consumption of the affected Services. If a change in law prevents or delays Provider from performing its obligations under these Terms, the parties shall endeavor to develop and implement such changes to the Services as may be required in order to comply with changes in law; provided that Customer shall be responsible for any additional fees for the Services and costs incurred by Provider in connection with the changes to Services, at Provider's then-current rates. Until such changes are implemented, provider shall be exempt from any Service Levels failures.

4.5 Disengagement Services

Solely to the extent applicable to the underlying Services, in the event of termination or expiration of the Services, Customer and Provider shall use commercially reasonable efforts and may agree on a Disengagement Plan (a) at least sixty (60) days prior to the expiration of the Services; or (b) in the event of termination, within thirty (30) days immediately following notice of such termination. The Terms will continue to apply during any Disengagement Period except to the extent mutually agreed to in the Disengagement Plan (again, as applicable).

5. **Provider Personnel.**

5.1 Generally

In connection with its performance of the Services, Provider shall provide for and pay the

compensation of Provider's Employees and shall pay all taxes, contributions, and benefits (such as, but not limited to, workers' compensation benefits) which an employer is required to pay relating to the employment of Employees. Customer shall not be liable to Provider or to any Employee for Provider's failure to perform its compensation, benefit, or tax obligations as described above. Provider shall comply with all laws and governmental regulations with respect to Provider's Employees, including the filing of all necessary reports and returns.

5.2 Personnel Conduct

While at a Customer Service Location, Provider shall cause its Personnel to comply with Customer's reasonable standard processes regarding physical security, safety and health ("Customer Work Place Policies") as applicable to the Services when Provider is present at a Customer Service Location, provided that (i) such Customer Work Place Policies are provided in writing to Provider prior to enforcement of such Customer Work Place Policies against Provider; (ii) such Customer Work Place Policies do not inhibit or otherwise interfere with Provider's ability to perform its obligations; and (iii) compliance with such policies does not result in the disclosure of any Provider proprietary information (including any information or material owned by third parties but used or relied upon by Provider to perform the Services). If Customer notifies Provider that particular Personnel are not conducting themselves in accordance with this Section 5.2, Provider shall, in its reasonable discretion, promptly (a) investigate the matter and take appropriate action which may include (i) removing the applicable Personnel from the Services and providing Customer with prompt notice of such removal and (ii) replacing the applicable Personnel with a similarly qualified individual, or (b) take other appropriate disciplinary action to prevent a recurrence. In the event of multiple violations of this Section 5.2 by particular Personnel, Provider shall promptly remove the individual from providing the Services.

5.3 Provider Service Manager

During the Services Term, Provider may maintain an individual who shall serve as the primary Provider representative. This individual shall have overall responsibility for managing and coordinating the performance of Provider's obligations.

5.4 Personnel Safety

If, in the performance of the Services, Provider in good faith believes that the health or safety of Personnel is placed at unacceptable risk, Provider reserves the right to suspend performance of the Services (without incurring liability) for as long as such risk continues.

5.5 Cooperation with Third Party Service Providers

Upon Customer request and by mutual agreement of the parties, Provider shall cooperate on a commercially reasonable basis with third party service providers of Customer, provided, however, that (1) such cooperation does not adversely affect the Services or Provider's ability to meet the Service Levels, (2) Provider shall not be required to disclose any of (or allow use of) Provider's Confidential Information to (by) such third party service provider (or Customer to the extent not required to perform the Services) and (3) such cooperation does not result in Provider having to perform uncompensated services or incurring expenses that have not been agreed.

6. **Payment.**

6.1 Fees

Customer shall remit to Provider the Fees and all applicable Taxes. Unless otherwise set forth in a service description, SOW, quote or order, all payments are due in full within thirty (30) days after the date of the invoice (“Due Date”). If the Services are performed on a time and materials basis, Provider shall submit to Customer on a monthly basis an accounting of the number of hours of Services performed and expenses incurred during the previous month and a description, in reasonable detail, of the Services performed. Except as otherwise set forth in a service description, SOW, quote or order, (a) monthly recurring Fees will be billed monthly in advance beginning on the first day of the Services Term; (b) varying or usage-based Fees will be billed monthly in arrears with accrual beginning on the first day of the Services Term; and (c) one-time or non-recurring Fees shall be billed as set forth in the service description, SOW, quote or order. Any amount not received by the Due Date will be past due and subject to interest at the lesser of 1.5% per month or the highest rate permitted by applicable law.

6.2 Taxes

All Fees are exclusive of sales, use, excise, value added (“VAT”), goods and services (“GST”), import duties and other similar or related taxes or withholdings (collectively, the taxes referred to in this section shall be referenced as “Tax(es)”). Customer shall pay or reimburse Provider for all Taxes but shall specifically exclude any taxes based on Provider’s net income. In addition to the foregoing:

A. Unless Customer provides Provider with a valid and applicable exemption certificate, and to the extent that Provider is required by law to collect Taxes from Customer on any sum payable hereunder, then Provider shall timely collect and remit such Taxes to the appropriate taxing jurisdiction. Provider shall only collect Taxes that are required or permitted by law. Taxes shall be separately stated on the invoice as determined by the Provider for the type of Services.

B. Customer shall not be liable for any penalties, interest, fees, or other expenses, if any, incurred by Provider as the result of Provider’s failure to remit Taxes actually collected from Customer. In the event of an assessment of Taxes, Customer shall pay or reimburse Provider for such assessed Taxes. In the event that Customer provides Provider with an exemption certificate that is deemed to be invalid by the applicable taxing authority, then Customer shall be required to pay tax, penalty and interest assessed related to such invalid exemption certificate.

C. If Customer is required by law to make any deduction or to withhold from any sum payable to Provider hereunder, then the sum payable by Customer upon which the deduction or withholding is based shall be increased to the extent necessary to ensure that, after such deduction or withholding, Provider receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Provider would have received and retained in the absence of such required deduction or withholding.

D. If Customer is required by law to make any deduction or withholding from any sum payable to Provider, Customer shall promptly report and effect payment thereof to the applicable tax authorities. Upon Provider’s reasonable request, Customer shall promptly provide Provider with official tax receipts or other evidence issued by the applicable tax authorities sufficient to establish that the Taxes have been paid.

6.3 Payment Dispute

If Customer has a good faith dispute in relation to an invoice submitted by Provider, Customer may withhold payment of the amount in dispute, provided Customer continues to pay undisputed amounts. If such a dispute arises, Customer shall promptly notify Provider of the amount in dispute and describe in reasonable detail the nature of the dispute. Such notice shall be provided prior to the Due Date and all undisputed portions of the associated invoice shall be timely paid. Any dispute notice shall provide detailed written information concerning the nature of the dispute and a written assessment as to the proper Fees applicable in connection with the disputed invoice as determined by Customer. Customer shall remit all amounts it has deemed appropriate according to its own assessment of the dispute. In response to such notice and payment, Provider shall either: (1) accept the proposed payment amount and provide a revised/corrected invoice; or (2) dispute Customer's assessment and return a written explanation of the Fees, to the extent such Fees differ from Customer's assessment, and re-invoice Customer in accordance with its own re-assessment of the Fees. If the parties cannot resolve the dispute within fifteen (15) days of the Due Date for such invoiced amount, such dispute shall be resolved by the parties' participation in good faith negotiations designed to resolve such dispute. If the dispute remains outstanding for thirty (30) days past the Due Date, Provider may seek to resolve the dispute through the dispute resolution process set forth in Section 9.2. Nothing herein shall preclude Provider from good faith attempts to collect Fees due when payable, or from otherwise enforcing Provider's rights under these Terms so long as Provider has made a good faith effort to resolve the dispute as set forth herein.

6.4 Tracking of Usage Levels

For consumption-based Services, Provider shall monitor and/or audit the billable volumes in order to calculate the applicable Fees. Provider shall conduct such activity through the use of electronic means, remote access and/or on-site inspection by Provider's Personnel in order to authenticate Customer as the user of the Services and verify the Customer's billable volumes. Customer will take any actions reasonably required by Provider to permit such tracking of billable volumes and provide access to all necessary equipment. If Provider is unable to monitor billable volumes for any reason, Customer shall pay an amount for the affected Service period based on Customer's average billable volumes during the previous three (3) months. Provider shall promptly notify Customer of an inability to electronically and or physically access the Assets, as applicable, and work cooperatively to reestablish access. Once access is reestablished, then Provider shall provide a corrected invoice for the affected Service Period.

6.5 Adjustments to these Terms

The Services and Fees are based on circumstances, estimates, metrics, principles, financial data, standards and general information disclosed by Customer or used by Provider (collectively, "Assumptions"). Customer shall be responsible for the accuracy of any representation it made as part of the due diligence process and on which the Assumptions are based. In the event of any material deviation from the Assumptions, Provider may equitably adjust the applicable Fees and the Services, to be consistent with the intent of each of Provider and Customer.

7. **Audit.**

7.1 Audits Generally

Provider shall cooperate with Customer's reasonable audit requirements as such requirements

enable Customer and its Approved Auditors to conduct appropriate audits of the Services. Notwithstanding the foregoing, in no event shall Provider be obligated to (a) disclose confidential information of any third party to whom Provider owes a duty of confidentiality, or (b) disclose proprietary information regarding the means and methods by which Provider provides the Services. Further, if Provider determines in good faith that access to its systems, controls, equipment, or other materials may lead to a breach of any confidentiality obligation owed to a third party or unauthorized disclosure of Provider's confidential or proprietary information, Provider may elect to provide data or information responsive to applicable audit requirements rather than such access. In no event will Customer be granted access to any facilities, equipment, or materials that (a) are not directly and solely related to the provision of the Services for Customer and/or (b) contain the proprietary or confidential information of a third party or (c) disclose information, or provide access, that would violate Provider's policies. The results of any audit shall be considered the Confidential Information of Provider.

7.2 Audit Procedures

Subject to Section 7.1 above, upon request, at reasonable times during business hours, and upon at least thirty (30) business days' prior notice to Provider and no more than once per year, Customer and Approved Auditors shall have access to Customer's records within Provider's control and Provider records directly related to the Services in order to audit the accuracy of Provider's invoices, provided that no such information shall be taken offsite or otherwise disclosed to any third party. Notwithstanding anything herein, Customer and its Approved Auditors shall not have access to other Provider records, records of other Provider customers or suppliers, or records related to Provider's internal or third party costs or cost structure. Approved Auditors shall observe such procedures as Provider may reasonably require in Provider's sole discretion to protect any information disclosed to them, all of which shall be deemed to be Provider's Confidential Information.

7.3 Costs

If Provider is required to provide services or incur costs, other than of a routine nature, in connection with any audit performed pursuant to this Section 7, then Customer shall pay for such services and costs at Provider's then-current rates.

8. **Security and Privacy.**

Provider will comply with the Provider security framework, and any additional security requirements, as set forth in the applicable service description or SOW. Solely to the extent Provider is considered a data Processor (as such term is defined in Schedule 1, attached hereto) in relation to the nature of the Services being provided, the obligations set forth in Schedule 1 (Data Processing Schedule) shall apply.

9. **Relationship Management.**

9.1 Governance

Governance of the parties' relationship pursuant to these Terms may follow the guidelines and principles set out in the applicable service description or SOW. Each party will make management decisions, respond to the communications and perform the other governance responsibilities set forth in the applicable service description or SOW in a timely manner.

9.2 Dispute Resolution

Any dispute arising under these Terms shall be considered in person or by telephone by the parties within seven (7) business days of receipt of a notice from either party specifying the nature of the dispute; provided, however, that a dispute relating to Provider's Proprietary Rights or intellectual property rights shall not be subject to this section and Provider shall retain the right to pursue its rights and remedies in law and equity. Unless the parties resolve the dispute, such dispute will be escalated through the process described in the applicable service description or SOW.

10. Insurance.

Provider shall purchase and maintain in force and effect, throughout the Services Term, insurance coverage of the types and with limits of not less than those set forth below, with insurers having A.M. BEST ratings of at least A-VII.

A. Workers' Compensation with statutory limits and Employer's Liability with a limit of not less than \$100,000;

B. Commercial General Liability including coverage for Provider's vicarious liability for actions of independent contractors, damages arising from products or completed operations, blanket Contractual Liability insuring the indemnification provision of these Terms, Personal Injury Liability, and Property Damage Liability - Required limits for bodily injury and property damage combined are \$1 million per occurrence and \$2 million aggregate;

C. Automobile Liability including coverage for schedule, non-owned, and hired vehicles. Limits shall be no less than \$1 million combined single limit per accident for bodily injury and property damage. All legally required insurance shall be maintained on vehicles used in connection with work performed under these Terms;

D. Umbrella Liability above the Commercial General Liability, Employers Liability, and Automobile Liability. Limits shall be no less than \$5 million per occurrence and aggregate; and

E. Computer Services and Software Errors and Omissions Liability. Limits shall be no less than \$5 million per claim and in the aggregate.

11. Customer Obligations.

11.1 Use of Services

Unless set forth in the service description or SOW, the Services shall only be used for the internal use and benefit of Customer and Customer shall not permit any third party to access or use the Services. Customer will not use, and will not authorize any third party (other than Provider, if applicable), to use any open source software in connection with the Services in any manner that requires, pursuant to the license applicable to such open source software, that any Provider Confidential Information or Services be (i) disclosed or distributed in source code form, (ii) made available free of charge to recipients, or (iii) modifiable without restriction by recipients. Provider owns all intellectual property rights in the Services, or Provider has the intellectual property rights necessary to provide the Services. Except for the right to use the Services, these Terms do not grant Customer any rights to, or in, any intellectual property or any other rights or licenses in respect of the Services. Provider and its third party providers reserve all rights not expressly granted herein.

Provider owns any ideas, suggestions or other feedback that the Customer may provide to Provider with respect to the Provider business, products and/or services (including the Services), and Customer hereby assigns all right, title and interest to such feedback to Provider.

11.2 Customer Data and Licenses

Customer represents that it: (i) owns or has the right to use all Customer Materials, data and content which are processed by, stored on or used in relation to the Services; and (ii) has all necessary licenses and permissions for usage of any third party software to be supplied/provided by Customer to Provider and used with the Services. Customer hereby grants to Provider the right to use all such data, content and third party software for the purposes of the performance of Provider's obligations herein. Customer shall encrypt any data or content prior to storage or upload of such data or content into the Services.

11.3 Customer Managers

Customer may maintain an individual who shall serve as the primary Customer representative under these Terms. This individual shall: (a) have overall responsibility for managing and coordinating the performance of Customer's obligations and (b) be authorized to act for and on behalf of Customer with respect to all matters relating to the Services.

11.4 Customer Responsibilities

Customer shall, upon Provider's request: (1) make available to Provider, Customer technical personnel familiar with Customer's business requirements; (2) provide to Provider complete and accurate information regarding Customer's business requirements in respect of any work to be performed by Provider; (3) respond to requests for approvals, which approval shall not be unreasonably withheld or delayed, provided however approval shall be deemed to have been provided if Customer has not responded within the applicable time; (4) cooperate with Provider; (5) promptly notify Provider of any third party claims or invalid or nonexistent licenses that may have an impact on these Terms or the Services; (6) give Provider Personnel and its subcontractors access to the Customer Service Location to the extent reasonably necessary for them to perform the Services, including to effect the necessary adjustments, maintenance and repairs; (7) provide any Required Data, and (8) perform all other obligations of Customer described in these Terms, the service description or SOW. Customer shall not act in a way that affects or impacts the Assets or Services without Provider's prior written approval.

11.5 Remote Access

Customer shall provide to and maintain for Provider remote access for the purposes of providing the Services. Any equipment and software needed to enable electronic communications for the purposes of providing remote access shall be provided by Customer. Customer authorizes Provider to store at the Customer Service Location, or load onto the products used for electronic communications, such equipment and programming as may be needed by Provider to track usage levels or perform any repair or maintenance related services for the Assets.

11.6 Customer Resources

Customer shall provide to Provider, at no charge: (a) use of space for the Assets (if any), at a time on or before arrival of the Assets; (b) necessary power and cooling required to support the

Assets; (c) servers, power and network connectivity required to support the Assets and any related software; (d) access to any Customer Service Location(s) and related facilities and infrastructure that Provider reasonably requires for business purposes in connection with the performance of the Services; (e) full access to, and use of, the Customer Supplied Products, which Customer shall maintain in good repair and working and usable condition as required by Provider to provide the Services; and (f) such other resources specified in these Terms. Customer shall further provide Provider with the services, utilities, equipment and supplies reasonably necessary for Provider to provide the Services consistent with that which Customer provides to its own personnel, including office space, office furnishings, janitorial service, local telephone service, utilities (including air conditioning), office-related equipment, supplies, duplicating services, and premises security in the Customer Service Locations. At all Customer Service Locations at which Services will be provided, Customer will provide Provider access to and use of Customer's voice and data telecommunications equipment and transmission lines, including printers, terminals and cabling. Customer will give Provider access to such facilities twenty-four (24) hours a day, seven (7) days a week. Customer shall provide adequate storage space for spare parts and adequate working space including heat, light, ventilation, electrical current and outlets for the use by Provider's Personnel. These facilities will be within a reasonable distance from the Assets to be serviced. Customer shall maintain and repair all facilities accessible by Provider in compliance with all laws. Customer will be responsible for all reasonable leasehold improvements to the Customer Service Locations required for Provider to deliver the Services. Customer will also be responsible for all costs and expenses associated with any relocation of Provider's operations that are done at Customer's request, provided that nothing contained herein shall obligate Provider to relocate operations unless mutually agreed to by the parties. Customer shall ensure that Provider is legally authorized to use any resources provided by Customer.

11.7 Impeded Performance

In the event that Provider's performance of the Services requires or is contingent upon Customer's performance of an obligation and Customer delays or withholds such performance beyond the time period set forth in the service description or SOW (or beyond five (5) days, if a time period is not specified), the time for the performance of Provider's obligations shall be extended for the period of such delay in, or withholding of, performance.

12. **Proprietary Rights.**

12.1 Customer Software

To the extent necessary and applicable, Customer hereby grants to Provider, or undertakes to secure the necessary rights for Provider from the owner of the Customer Software on behalf of Provider as applicable, at no cost to Provider, a nonexclusive right to access and use, load, execute, store, transmit, display, copy, maintain, the Customer Software in connection with the provision of the Services. Upon the expiration or termination of the Terms, the rights granted to Provider in this Section 12.1 shall immediately terminate and Provider shall, at Customer's request, cease all use and make available for return to Customer, or at Provider's option, certify destruction of Customer Software (including copies) to Customer. Customer shall pay all costs and expenses with respect to the Customer Software, including the costs associated with maintenance, license payments, insurance, taxes and the consents. Customer is responsible for maintaining, upgrading, and replacing the Customer Software as necessary for Provider to deliver the Services. In the event that Customer does not comply with such obligations, Provider shall be excused from its obligation to perform the Services, including Provider's obligation to meet any Service Levels, to the extent that its inability to meet such obligations is caused by Customer's failure to comply

with its obligations under this Section 12.1.

12.2 Provider Proprietary Software

To the extent use by Customer of Provider Proprietary Software or other Provider proprietary information is authorized, Provider grants Customer a limited license to use the Provider Proprietary Software solely for Customer's internal use in connection with its receipt of Services for the Services Term unless sooner terminated or cancelled. The foregoing licenses shall be non-exclusive, non-transferable, non-sub licensable, revocable and subject to the restriction that the Provider Proprietary Software be used solely in the manner to receive the Services and for no other purpose. If authorized, the license contemplated herein shall solely apply to Provider Proprietary Software. Provider may terminate licenses, without liability, if Customer breaches this section, or if the Services are otherwise terminated or suspended. Upon any such termination Customer shall cease all use and if applicable, certify destruction or erasure of Provider Proprietary Software (including all copies). Customer shall not, without Provider's prior written consent, copy, provide, disclose or otherwise make available Provider Proprietary Software in any form to anyone other than Customer or Customer Representatives, who shall use Provider Proprietary Software solely to the extent necessary to receive the Services and solely for Customer's internal business purposes. In no event shall Customer's internal business purposes be construed to include use of the Provider Proprietary Software by Customer's customers.

12.3 Provider Third Party Software

Where Provider Third Party Software is licensed by Provider for use in the provision of Services, Provider will procure a license for Customer to access and use the Provider Third Party Software, solely to the extent necessary for the receipt of Services. By using or accessing the Provider Third Party Software, Customer agrees that such use or access is subject to the license that accompanies the software. The license insofar will terminate on the expiration or termination of the Services. Provider may be required to flow down terms related to Provider Third Party Software to Customer. In such event, Provider shall provide such additional terms and conditions to Customer and Customer shall accept such third party terms.

12.4 Deliverables

Provider shall retain ownership of all deliverables, work product and all other materials provided to Customer (Provider does not perform work for hire), provided that Customer shall retain ownership of its Confidential Information embedded (if any) in any such deliverables or other materials. Provider grants Customer for a period of one year following termination of the Services, a non-exclusive, non-sub licensable, non-transferable license to use such deliverables or other materials solely for Customer's internal business purposes and solely in conjunction with the Services or disengagement from the Services; Customer shall not provide or otherwise disclose deliverables or any Provider intellectual property to any third party, including any third party service suppliers or Provider competitors (as Provider reasonably determines) without prior written consent from Provider. The foregoing license grant to deliverables is subject to Customer's compliance with the Terms of this section, Customer's payment of applicable amounts due, and Provider's Proprietary Rights in any underlying intellectual property incorporated into any deliverables or used by Provider to perform the Services.

12.5 Ownership of Provider IP

No title to, or ownership of, the Provider Proprietary Software or documentation is transferred to

Customer. Neither Customer nor any of its agents, personnel, or independent contractors shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Provider Proprietary Software without Provider's prior written consent. The applicable terms shall govern any Provider Third Party Software. Provider does not convey nor does Customer obtain any right in programs, configurations, systems or materials utilized or provided by Provider in the ordinary course of business in the performance of the Services other than as described in these Terms. Provider may bring onto and store at Customer's premises certain manuals, tools and software which will be used by Provider to maintain the Assets, and Assets may have maintenance code loaded on them from time to time. Such manuals, tools and software, including maintenance code, are the property of Provider, regardless of whether or not such items contain any confidential markings, and Provider may remove all such manuals, tools and software at any time. To the extent required, Customer hereby grants Provider the right to execute Provider's maintenance-related software on the Assets and any host central processing unit to which such Assets are attached. Notwithstanding anything to the contrary in these Terms, Provider shall retain all right, title and interest in and to any and all ideas, concepts, know-how, development tools, developments, methodologies, processes, procedures, technologies or algorithms and tools which are based upon trade secrets or proprietary information of Provider, including all enhancements, modifications or improvements thereto. Provider retains all rights not expressly granted herein.

12.6 Reservation of Proprietary Rights

Each party reserves for itself all Proprietary Rights that it has not expressly granted to the other. Provider and/or its licensors own all intellectual property rights in the Services and any deliverables. Except as expressly stated herein, these Terms do not grant Customer any rights to, or in, any intellectual property or any other rights or licenses in respect of the Services. Provider shall not be limited in developing, using or marketing services or products which are similar to the deliverables or Services provided hereunder, or, subject to Provider's confidentiality obligations to Customer, in using the deliverables or performing similar Services for any other projects or customers.

13. **Term and Termination.**

13.1 Term

The applicable service description, SOW, quote or order shall set forth the Services Term. As set forth in the applicable service description, SOW, quote or order, upon occurrence of each renewal Services Term, the Fees for the Services are subject to change upon notice to Customer by Provider.

13.2 Termination

Either party may terminate the Services, upon thirty (30) days written notice to the other party in the event of a material breach of the Terms by such other party if such breach is not cured within such thirty (30) day period or an additional period of time as may be agreed to by the parties. Notwithstanding the foregoing, Provider may, in its sole option, suspend performance if Customer is unable to resolve any material breach and Provider shall have the right to seek immediate (without regard to any cure period) injunctive or other equitable relief in the event of any breach involving the unauthorized use or disclosure of any Provider Confidential Information or Provider proprietary information or materials. In addition, Provider may, subject to Section 6 above, suspend Services, upon fifteen (15) days' notice in the event of any payment default, if such default

is not cured within that period. If the Services are terminated by Provider for cause or by Customer other than for cause as permitted under these Terms, Customer shall pay any outstanding Fees and expenses owing through the end of the Services Term.

Provider may terminate the Services in whole or in part immediately by giving written notice to Customer in the event that (a) Customer undergoes a change of Control that; (i) results in a competitor of Provider Controlling Customer or (ii) is reasonably likely to adversely affect Provider's ability to perform its obligations, including where the change of Control results in a conflict of interest that may adversely affect the exercise of contractual obligations by Provider or (b) Customer becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidations, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations.

13.3 Effect of Termination or Expiration

In the event of termination or expiration of the Services, the parties shall comply with Section 4.5.

13.4 Survival

The following sections shall survive termination of the Terms indefinitely or to the extent set out therein: Sections 4.4, 6, 12, 13, 14, 15, 16, 18, 19, and 20.

14. **Warranties.**

14.1 Mutual

Each party hereby warrants to the other that: (a) it is an entity good standing under the laws of its state of doing business; (b) the receipt and delivery of Services has been duly authorized by the requisite action on the part of such party; (c) it has obtained (or will obtain) all licenses, authorizations, approvals or permits required to perform its obligations under the Terms, except to the extent the failure to obtain any such license, authorizations, approvals, consents or permits is, in the aggregate, immaterial; (d) it shall comply with all laws applicable to such party during the Services Term.

14.2 By Provider

Provider warrants that all Services provided will be delivered in a professional manner. Provider shall use commercially reasonable efforts to deliver the Services.

14.3 By Customer

Customer warrants that: (a) all Customer information systems, Customer Service Locations and Customer Supplied Products that are required to deliver the Services shall operate in accordance with their specifications; and (b) the Required Data is and shall be true and accurate.

14.4 Disclaimer

Provider does not warrant the accuracy of any advice, report, data or deliverables provided to customer that are produced with or from data or software provided by Customer. Such advice,

reports, data or deliverables are provided “as is”, and provider shall not be liable for any inaccuracy thereof. Other than as expressly set forth herein, the Services and any related equipment, software and other materials provided by Provider in connection with the Services are provided without any warranties or representations of any kind, whether statutory or implied, including but not limited to, warranties of title, non-infringement, merchantability, fitness for a particular purpose, accuracy, completeness or any results to be achieved here from. Provider makes no warranties or representations concerning the compatibility of software or equipment or any results to be achieved therefrom, or that any Services will be free from loss or liability arising out of any third party technology, any third party action, or any act or omission of customer, and provider shall have no responsibility therefor. Provider expressly disclaims any warranty or liability with respect to compliance with laws, regulations, or other official government releases applicable to Customer, which shall be the sole responsibility of Customer.

15. **Limitation of Liability.**

15.1 Limitations on Damages.

The limitations, exclusions and disclaimers stated below apply to all disputes. The terms of this section are agreed allocations of risk constituting part of the consideration for Provider’s sale of Services to Customer and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities.

A. Subject to the foregoing, Provider’s liability to Customer for damages arising from or relating to the Services shall be limited to proven direct damages and shall not exceed the Fees Customer actually paid to Provider in the 12 month period immediately preceding the event which is the subject of the claim against Provider. This limitation of liability applies regardless of whether liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, failure of essential purpose of the Services (or these Terms) or otherwise or any other legal theory.

B. Disclaimer of Certain Other Damages. Except for Customer’s payment obligations and violation of Provider’s intellectual property rights, neither Provider nor Customer has liability to the other for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data, loss of use or procurement of substitute products or services.

15.2 Limitation Period.

Except as stated in this section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

15.3 Exclusions and Limitations.

The limitations or exclusions of liability specified in this section are not applicable to the obligation or failure of Customer to make payments due or past due. In addition, in no event shall Provider be liable for any damages if, and to the extent, caused by Customer’s failure to perform its responsibilities.

15.4 Regular Backups.

Customer is solely responsible for its data. Customer must backup its data before Provider performs any remedial, upgrade or other work on Customer's systems. If applicable law prohibits exclusion of liability for lost data, then Provider will only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from Customer's last available backup.

16. Indemnification.

16.1 Provider Indemnity.

A. Provider will: (a) defend Customer against any third party claim that the Provider Products, Provider Proprietary Software or Provider Support Services provided to Customer (but excluding Third Party Products and open source software) infringe that party's patent, copyright or trade secret enforceable in the country where Customer purchased the Provider Product from Provider ("Claim"); and (b) indemnify Customer by paying: (1) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third party Claim; or (2) the amounts stated in a written settlement negotiated and approved by Provider.

B. In addition, should any Provider Product, Provider Proprietary Software or Provider Support Service become, or in Provider's opinion be likely to become, the subject of such a Claim, Provider may, at its expense and in its discretion: (a) obtain a right for Customer to continue using the affected Provider Product, Provider Proprietary Software or Provider Support Service; (b) modify the affected Provider Product, Provider Proprietary Software or Provider Support Service to make them non-infringing; (c) replace the affected Provider Product, Provider Proprietary Software or Provider Support Service with non-infringing substitutes; (d) provide a reasonable depreciated or pro rata refund for the affected Provider Product; or (e) discontinue the Provider Support Services and refund the portion of any prepaid Provider Support Service fees that correspond to the period of Provider Support Services discontinuance. Except as otherwise provided by law, this Section 16 states Customer's exclusive remedies for any third party intellectual property claim relating to Provider Product, Provider Proprietary Software or Provider Support Services, and nothing in these Terms or elsewhere will obligate Provider to provide any greater indemnity.

16.2 Exclusions from Indemnity.

A. Provider has no obligation under Section 16.1 above: (a) if Customer is in material breach of these Terms; or (b) for any Claim resulting or arising from:

(1) Any combination, operation or use of a Provider Product, Provider Proprietary Software or Provider Support Services with any other products, services, items or technology, including Third Party Products and open source software;

(2) Use for a purpose or in a manner for which the Provider Product, Provider Proprietary Software or Provider Support Service was not designed, or use after Provider notifies Customer to cease such use due to a possible or pending Claim;

(3) Any modification to the Provider Product, Provider Proprietary Software or Provider Support Service made by any person other than Provider or its authorized representatives;

(4) Any modification to the Provider Product, Provider Proprietary Software or

Provider Support Service made by Provider pursuant to instructions, designs, specifications or any other information provided to Provider by or on behalf of Customer;

(5) Use of any version of a Provider Product or Provider Proprietary Software when an upgrade or newer iteration of the Provider Product, Provider Proprietary Software or Provider Support Service made available by Provider would have avoided the infringement;

(6) Services provided by Customer (including Claims seeking damages based on any revenue Customer derives from Customer's services); or

(7) Any data or information that Customer or a third party records on or utilizes in connection with the Provider Products, Provider Proprietary Software or Provider Support Services.

16.3 Customer Indemnity.

Customer will defend and indemnify Providers and its Affiliates against any third party claim resulting or arising from:

A. Customer's failure to obtain any appropriate license, intellectual property rights, or other permissions, regulatory certifications or approvals associated with technology or data that Customer provides to Providers or its Affiliates, or with non-Provider software or other components that Customer directs or requests that Providers or its Affiliates use with, install, or integrate as part of the Service or product;

B. Customer's violation of Provider's or its Affiliates' Proprietary Rights;

C. Customer's misrepresentation of facts regarding an export license or any allegation made against any Provider or its Affiliates due to Customer's violation or alleged violation of applicable export laws; or

D. Customer's transfer or provision of access to Excluded Data to any Provider or its Affiliates.

16.4 Mutual Indemnity.

Each party shall defend and indemnify the other party against any third party claim or action for personal bodily injury, including death, to the extent directly caused by the indemnifying party's gross negligence or willful misconduct in the course of performing its obligations.

16.5 Indemnification Process.

A party's duty to defend and indemnify under this section is contingent upon the party seeking indemnity: (a) sending prompt written notice of the Claim to the party providing indemnity and taking reasonable steps to mitigate damages; (b) granting to the party providing indemnity the sole right to control the defense and resolution of the Claim; and (c) cooperating with the party providing indemnity in the defense and resolution of the Claim and in mitigating any damages.

16.6 Excluded Data.

“Excluded Data” means: (a) data that is classified, used on the U.S. Munitions list (including software and technical data) or both; (b) articles, services, and related technical data designated as defense articles and defense services; and (c) ITAR (International Traffic in Arms Regulations) related data. Customer acknowledges that products and services provided are not designed to process, store, or be used in connection with Excluded Data. Customer is solely responsible for reviewing data that will be provided to or accessed by Providers to ensure that it does not contain Excluded Data. Furthermore, products in their default configurations may not be optimized to process, store or transmit personally identifiable information that is subject to heightened security requirements as a result of Customer’s internal policies or practices or by law. Customer is solely responsible for compliance with heightened security requirements mandated by its own internal policies and by law.

17. Third Party Products.

17.1 Provider shall have no responsibility for the provision of Third Party Products. Notwithstanding anything herein to the contrary, Customer shall comply with all terms and conditions applicable to such Third Party Products as included with the products and such terms and conditions shall supersede any conflicting terms in these Terms with regard to Customer’s use of or access to the Third Party Products.

17.2 With respect to any Third Party Products provided by Provider under these Terms, Provider shall pass through to Customer, to the extent possible under Provider’s agreement with the relevant vendor, the applicable indemnification rights it obtains from such vendor for such Third Party Products that may by its own terms be extended to Customer without additional payment or liability by Provider and Provider shall have no indemnification obligations with respect to such Third Party Products.

18. Confidentiality and Publicity.

18.1 Definition.

“Confidential Information” means all confidential and proprietary information of either party (“Disclosing Party”) that is disclosed to the other party (“Receiving Party”), including but not limited to, each party’s and its Affiliates: (i) pricing proposals, financial and other business information, data processes and plans; (ii) research and development information, analytical methods and procedures, hardware design, technology; (iii) business practices, know-how, marketing or business plans; (vi) these Terms and related documentation or materials; (vii) any other information identified in writing as confidential or information that the receiving party knew or reasonably should have known was confidential, and (viii) information that, by its nature, would reasonably be considered confidential or proprietary.

18.2 Obligation.

During the Services Term, each party may have access to Confidential Information of the other party. Confidential Information shall be used solely for each party’s performance under these Terms and the exercise of its rights hereunder. Neither party shall, without the prior written consent of the other party, use or disclose the Confidential Information of the other party during the Services Term and for five (5) years following the expiration or termination hereof. Each party will take all reasonable precautions to protect the other party’s Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own Confidential Information but in no event less than reasonable care. Notwithstanding the foregoing, a party may

disclose Confidential Information: (i) to any consultants, contractors and counsel who have a need to know in connection with the Services and have executed a reasonably protective non-disclosure agreement with the Disclosing Party, or (ii) pursuant to legal process; provided that, the Disclosing Party shall, unless legally prohibited, provide the non-disclosing party with reasonable prior written notice sufficient to permit it an opportunity to contest such disclosure. Confidential Information shall not include information which the recipient can prove: (i) is or becomes public knowledge through no breach of the Terms by the Receiving Party, (ii) is received by recipient from a third party not under a duty of confidence, or (iii) is already known or is independently developed by the Receiving Party without use of the Confidential Information.

18.3 Marketing.

Each party shall not, and shall not authorize or assist another to, originate, produce, issue or release any written publicity, news release, marketing collateral or other publication or public announcement, relating in any way to the Services, without the prior written approval of the other, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, Provider may identify Customer as a user of the Services. Customer hereby grants to Provider the non-exclusive right and license to use Customer's Marks in its internal and external materials. Such usage shall be limited to use on Provider's website and in its marketing collateral, case studies and other marketing materials. Provider must use the Customer Marks only in the form in which Customer makes them available to Provider and not in any manner that disparages Customer or its Affiliates, or that otherwise dilutes any of the Customer Marks. Other than Provider's limited right to use Customer's Marks as provided in these Terms, Customer retains all right, title, and interest in and to the Customer Marks. Provider agrees that it will not at any time now or in the future challenge or assist others to challenge the validity of the Customer Marks, or attempt to register confusingly similar trademarks, trade names, service marks or logos. Provider will follow Customer's trademark guidelines as those guidelines may change from time to time. Provider must immediately discontinue use of any Customer Mark as specified by Customer at any time in writing. Notwithstanding anything else to the contrary, Provider may issue a press release indicating that Customer has become a Customer of Provider as well as a general description of the services and products to be provided by Provider to Customer; provided that Provider will in no event disclose any Confidential Information of Customer in connection with the foregoing usage, without the prior, written consent of Customer. Upon mutual agreement of the parties, Customer may agree to provide references to potential customers of Provider that are in advanced stages of evaluating the procurement of services from Provider that are similar to the Services.

19. **Choice of Law; Dispute Resolution.**

19.1 Governing Law.

The laws of the Commonwealth of Massachusetts, excluding its choice of law rules, shall govern the Services. For any Services provided to customers outside the United States, the local law of the applicable Provider Affiliate shall govern. The parties specifically exclude from application to the Services the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

19.2 Attorney's Fees.

The prevailing party shall be entitled to recover its reasonable costs and attorney's fees in connection with any dispute between the parties under any of the provisions of these Terms. If a court

determines that neither party has substantially prevailed in its claim against the other party, each party shall pay its own attorney's fees. Any reasonable costs and fees incurred by Provider in the performance of its obligations by virtue of its role as the provider of the Services, including compliance with subpoenas, court orders, discovery requests, and disputes arising solely between Customer and any third party, including, disputes concerning a release of the material or Confidential Information shall, unless adjudged otherwise agreed, shall be paid by Customer.

20. **Miscellaneous.**

20.1 Notices.

All legal notices required to be given hereunder shall be in writing and deemed given if sent either (a) by prepaid registered or certified mail, return receipt requested, three days after such mailing; or (b) by national overnight courier service, the next business day. All other notices (e.g., notice reminder of non-payment) may be sent via facsimile or email and will be deemed given on the day such notice is delivered.

20.2 Assignment and Subcontracting.

Customer shall not assign all or any part of these Terms without the prior written consent of Provider, which consent will not be unreasonably withheld or delayed. Provider may, upon notice to Customer, assign the Terms to an Affiliate or to a third party that acquires all or substantially all of its assets or voting securities. Provider may, without notice and at its absolute discretion, subcontract performance of any or all of its obligations so long as such subcontractor agrees to terms no less restrictive than these Terms.

20.3 Entire Agreement.

These Terms and related documentation constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede any and all prior or contemporaneous written or oral communications between the parties; provided, however, that any agreement whose principal purpose is to provide for confidentiality of information that has been entered into between the parties prior to the date hereof shall survive to the extent that it is not inconsistent with the terms and conditions of these Terms. Variance from or additions to the terms and conditions of these Terms in any purchase order or other written notification or documentation, from Customer or otherwise, will be of no effect. Each party acknowledges that it does not rely on, and neither party shall have any right or remedy in respect of, any statement or representation other than as expressly set out in these Terms.

20.4 Reserved.

20.5 No Waiver.

The failure to require performance of any provision shall not affect a party's right to require performance at any time thereafter; nor shall waiver of a breach of any provision constitute a waiver of the provision itself.

20.6 Severability.

If any provision is adjudged by a court of competent jurisdiction to be unenforceable, invalid or otherwise contrary to law, such provision shall be interpreted so as to best accomplish its intended

objectives and the remaining provisions shall remain in full force and effect.

20.7 Independent Contractors.

The parties hereto are and shall remain independent contractors and nothing herein shall be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party shall be deemed to be an employee or legal representative of the other nor shall either party have any right or authority to create any obligation on behalf of the other party.

20.8 No Third Party Beneficiaries.

These Terms are not intended to benefit, nor shall it be deemed to give rise to, any rights in any third party.

20.9 Force Majeure.

Neither party shall be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, civil unrest, riots, earthquake, fire, flood, pandemics or other acts of God, power failures, industry-wide supply shortages, and Internet disturbances; provided that such excusal from performance shall last only so long as such condition exists or so long as the excused party has had a reasonable opportunity to mitigate and/or eliminate the effect of such condition, whichever period is shorter.

20.10 Successors.

The Terms shall be binding on and inure to the benefit of each of the parties and their respective permitted successors and assigns.

20.11 Section Headings.

The various section headings are inserted for convenience only and shall not affect the meaning or interpretation of these Terms or any section thereof.

20.12 Injunctive Relief.

Notwithstanding anything else in these Terms, if a party believes that injunctive relief is necessary to preserve the status quo or prevent further harm (for example, breach of confidentiality, infringement of intellectual property rights, or other similar harm), then a party may pursue such relief in addition to or instead of using the informal dispute resolution procedures described in these Terms.

Schedule 1

Data Processing Schedule

This Data Processing Schedule (“Schedule”) to the Terms shall apply where the provision of Services by Provider to Customer involves the processing of Personal Data which is subject to Privacy Laws and Provider acts as Processor on behalf of the Customer as the Controller. This Schedule does not apply where Provider is the Controller. In the event of conflict between this Schedule and the Terms, this Schedule shall control with respect to its subject matter.

1. **Definitions.**

Terms not defined herein have the meanings set forth in the Terms. The following words in this Schedule have the following meanings:

1.1 “Controller” means an entity which, alone or jointly with others, determines the purposes and means of the processing of the Personal Data.

1.2 “GDPR” means the General Data Protection Regulation (EU) 2016/679.

1.3 “Model Clauses” means the Standard Contractual Clauses for the transfer of personal data to Processors (Decision 2010/87/EU) as they may be amended or replaced from time to time.

1.4 “Personal Data” means any information relating to an identified or identifiable natural person which is processed by Provider in the performance of the Terms.

1.5 “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise processed under this Schedule.

1.6 “Privacy Laws” means any data protection and privacy laws to which a party to these Terms is subject and which are applicable to the Services provided, including where applicable, GDPR.

1.7 “Processing” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.8 “Processor” means an entity which processes the Personal Data on behalf of the Controller.

1.9 “Sub-processor” means any Processor engaged by Provider for the provision of the Services.

2. **Processing of Personal Data.**

2.1 Roles of the Parties.

Provider may process Personal Data under the Terms as a Processor acting on behalf of the Customer as the Controller.

2.2 Instructions.

Provider may process Personal Data in accordance with Customer's documented instructions. Customer agrees that this Schedule, the Terms and any subsequent services provided, and any configurations by Customer or its authorized users, comprise Customer's complete instructions to Provider regarding the Processing of Personal Data. Any additional or alternate instructions must be agreed between the parties in writing, including the costs (if any) associated with complying with such instructions. Provider is not responsible for determining if Customer's instructions are compliant with applicable law. However, if Provider is of the opinion that a Customer instruction infringes applicable Privacy Laws, Provider shall notify Customer as soon as reasonably practicable and shall not be required to comply with such infringing instruction.

2.3 Details of Processing.

Details of the subject matter of the Processing, its duration, nature and purpose, and the type of Personal Data and data subjects are as specified in the Terms.

2.4 Compliance.

Customer and Provider agree to comply with their respective obligations under Privacy Laws applicable to the Personal Data that is Processed in connection with the Services. Customer has sole responsibility for complying with Privacy Laws regarding the lawfulness of the Processing of Personal Data prior to disclosing, transferring, or otherwise making available, any Personal Data to Provider.

3. **Sub-Processors.**

3.1 Use of Sub-processors.

Provider may use Sub-processors with the Customer's general or specific written consent. Customer agrees that Provider may appoint and use Sub-processors to process the Personal Data in connection with the Services provided that Provider puts in place a contract in writing with each Sub-processor that imposes obligations that are: (i) relevant to the services to be provided by the Sub processors and (ii) materially similar to the rights and/or obligations imposed on Provider under this Schedule. Sub-processors may include third parties or any member of the Provider group of companies. Where a Sub-processor fails to fulfil its data protection obligations as specified above, Provider shall be liable to the Customer for the performance of the Sub-processor's obligations.

3.2 List of Sub-processors.

Provider will provide a list of Sub processors that it engages to support the provision of the Services upon written request by the Customer or as otherwise made available by Provider on its website. Provider shall notify Customer of any changes to its list of Sub-processors. If Customer legitimately objects to the addition or removal of a Sub-processor on data protection grounds and Provider cannot reasonably accommodate Customer's objection, the parties will discuss Customer's concerns in good faith with a view to resolving the matter.

4. **Security.**

4.1 Technical and organizational security measures.

Taking into account industry standards, the costs of implementation, the nature, scope, context and purposes of the Processing, and any other relevant circumstances relating to the Processing of the Personal Data on Provider systems, Provider shall implement appropriate technical and organizational security measures to ensure security, confidentiality, integrity, availability and resilience of processing systems and services involved in the Processing of the Personal Data are commensurate with the risk in respect of such Personal Data. The parties agree that the technical and organizational security measures described in Annex 1 (“Information Security Measures”) provide an appropriate level of security for the protection of Personal Data to meet the requirements of this clause. Provider will periodically (i) test and monitor the effectiveness of its safeguards, controls, systems and procedures and (ii) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of the Personal Data, and ensure these risks are addressed.

4.2 Technical Progress.

The Information Security Measures are subject to technical progress and development and Provider may modify these provided that (i) such modifications do not degrade the overall security of the Services provided under the Terms.

4.3 Access.

Provider shall ensure that persons authorized to access the Personal Data (i) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and (ii) access the Personal Data only upon documented instructions from Provider, unless required to do so by applicable law.

5. **Personal Data Breach.**

Provider will notify the Customer without undue delay after becoming aware of a Personal Data breach in relation to the Services provided by Provider under the Terms and will use reasonable efforts to assist the Customer in mitigating, where possible, the adverse effects of any Personal Data breach.

6. **International Transfers.**

Provider is authorized, in connection with the provision of the Services, or in the normal course of business, to make worldwide transfers of Personal Data to its affiliates and/or Sub-processors. When making such transfers, Provider shall ensure appropriate protection is in place to safeguard the Personal Data transferred under or in connection with these Terms. Where the provision of Services involves the transfer of Personal Data from the European Economic Areas (“EEA”) to countries outside the EEA (which are not subject to an adequacy decision under Privacy Laws) such transfer shall be subject to the following requirements: (a) Provider has in place intra-group agreements with its affiliates which may have access to the Personal Data, which agreements shall incorporate the Model Clauses and (b) Provider has in place agreements with its Sub-processors that incorporate the Model Clauses as appropriate.

7. **Deletion of Personal Data.**

Upon termination of the Services (for any reason) and if requested by Customer in writing, Provider shall, as soon as reasonably practicable, return or delete the Personal Data on Provider systems unless applicable law requires storage of the Personal Data. Provider may defer the

deletion of the Personal Data to the extent and for the duration that any Personal Data or copies thereof cannot reasonably and practically be expunged from Provider's systems. For such retention the provisions of this Schedule shall continue to apply to such Personal Data. Provider reserves the right to charge Customer for any reasonable costs and expenses incurred by Provider in deleting the Personal Data pursuant to this clause. Provider also reserves the right to require additional terms related to such deletion.

8. **Cooperation.**

8.1 Data Subject Requests. Provider shall promptly inform Customer of any requests from individuals exercising their data subject rights under Privacy Laws. Customer is responsible for responding to such requests. Provider will reasonably assist Customer to respond to data subject requests to the extent that Customer is unable to access the relevant Personal Data in the use of the Services. Provider reserves the right to charge Customer for such assistance if the cost of assisting exceeds a nominal amount.

8.2 Third party requests. If Provider receives any requests from third parties or an order of any court, tribunal, regulator or government agency with competent jurisdiction to which Provider is subject relating to the Processing of Personal Data under the Terms, Provider will promptly redirect the request to the Customer. Provider will not respond to such requests without Customer's prior authorization unless legally compelled to do so. Provider will, unless legally prohibited from doing so, inform the Customer in advance of making any disclosure of Personal Data and will reasonably co-operate with Customer to limit the scope of such disclosure to what is legally required.

8.3 Privacy Impact Assessment and Prior Consultation. To the extent required by Privacy Laws, Provider shall provide reasonable assistance to Customer to carry out a data protection impact assessment in relation to the Processing of Personal Data undertaken by Provider and/or any required prior consultation(s) with supervisory authorities. Provider reserves the right to charge Customer a reasonable fee for the provision of such assistance.

9. **Demonstrating Compliance.**

Provider shall, upon reasonable prior written request from Customer (such request to be made in accordance with the terms of the Terms), provide to Customer such information as may be reasonably necessary to demonstrate compliance with Provider's obligations under this Schedule and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by Customer.

Annex 1

Information Security Measures

Provider takes information security seriously. This information security overview applies to Provider's corporate controls for safeguarding personal data which is processed and transferred amongst Provider group companies. Provider's information security program enables the workforce to understand their responsibilities.

1. **Security Practices.**

Provider has implemented corporate information security practices and standards that are designed to safeguard the Provider's corporate environment and to address: (1) information security; (2) system and asset management; (3) development; and (4) governance. These practices and standards are approved by the Provider CIO and undergo a formal review on an annual basis.

2. **Organizational Security.**

It is the responsibility of the individuals across the organization to comply with these practices and standards. To facilitate the corporate adherence to these practices and standards, the function of information security provides:

2.1 Strategy and compliance with policies/standards and regulations, awareness and education, risk assessments and management, contract security requirements management, application and infrastructure consulting, assurance testing and drives the security direction of the company.

2.2 Security testing, design and implementation of security solutions to enable security controls adoption across the environment.

2.3 Security operations of implemented security solutions, the environment and assets, and manage incident response.

2.4 Forensic investigations with security operations, legal, data protection and human resources for investigations including eDiscovery and e-Forensics.

3. **Asset Classification and Control.**

Provider's practice is to track and manage physical and logical assets. Examples of the assets that Provider IT might track include:

- Information assets, such as identified databases, disaster recovery plans, business continuity plans, data classification, archived information.
- Software assets, such as identified applications and system software.
- Physical assets, such as identified servers, desktops/laptops, backup/archival tapes, printers and communications equipment.

The assets are classified based on business criticality to determine confidentiality requirements.

Industry guidance for handling personal data provides the framework for technical, organizational and physical safeguards. These may include controls such as access management, encryption, logging and monitoring, and data destruction.

4. **Personnel Security.**

As part of the employment process, employees undergo a screening process applicable per regional law. Provider's annual compliance training includes a requirement for employees to complete an online course and pass an assessment covering information security and data privacy. The security awareness program may also provide materials specific to certain job functions.

5. **Physical and Environmental Security.**

Provider uses a number of technological and operational approaches in its physical security program in regard to risk mitigation. The security team works closely with each site to determine appropriate measures are in place and continually monitor any changes to the physical infrastructure, business, and known threats. It also monitors best practice measures used by others in the industry and carefully selects approaches that meet both uniqueness's in business practice and expectations of Provider as a whole. Provider balances its approach towards security by considering elements of control that include architecture, operations, and systems.

6. **Communications and Operations Management.**

The IT organization manages changes to the corporate infrastructure, systems and applications through a centralized change management program, which may include, testing, business impact analysis and management approval, where appropriate.

Incident response procedures exist for security and data protection incidents, which may include incident analysis, containment, response, remediation, reporting and the return to normal operations.

To protect against malicious use of assets and malicious software, additional controls may be implemented, based on risk. Such controls may include, but are not limited to, information security practices and standards; restricted access; designated development and test environments; virus detection on servers, desktops and notebooks; virus email attachment scanning; system compliance scans; intrusion prevention monitoring and response; logging and alerting on key events; information handling procedures based on data type, e-commerce application and network security; and system and application vulnerability scanning.

7. **Access Controls.**

Access to corporate systems is restricted, based on procedures to ensure appropriate approvals. To reduce the risk of misuse, intentional or otherwise, access is provided based on separation duties and least privileges.

Remote access and wireless computing capabilities are restricted and require that both user and system safeguards are in place.

Specific event logs from key devices and systems are centrally collected and reported on an exceptions basis to enable incident response and forensic investigations.

8. **System Development and Maintenance.**

Publicly released third party vulnerabilities are reviewed for applicability in the Provider environment. Based on risk to Provider's business and customers, there are pre-determined timeframes for remediation. In addition, vulnerability scanning and assessments are performed on new and key applications and the infrastructure based on risk. Code reviews and scanners are used in the development environment prior to production to proactively detect coding vulnerabilities based on risk. These processes enable proactive identification of vulnerabilities as well as compliance.

9. **Compliance.**

The information security, legal, privacy and compliance departments work to identify regional laws and regulations applicable to Provider corporate. These requirements cover areas such as intellectual property of the company and our customers, software licenses, protection of employee and customer personal information, data protection and data handling procedures, trans-border data transmission, financial and operational procedures, regulatory export controls around technology, and forensic requirements.

Mechanisms such as the information security program, the executive privacy council, internal and external audits/assessments, internal and external legal counsel consultation, internal controls assessment, internal penetration testing and vulnerability assessments, contract management, security awareness, security consulting, policy exception reviews and risk management combine to drive compliance with these requirements.