

NOYNIM IT Solutions | General Terms and Conditions

(Last revised: June 17, 2024)

These General Terms and Conditions (these “**Terms**”) set forth the terms and conditions for the sale of products and services by NOYNIM LLC (“**Service Provider**”), and you (“**Customer**”), as more particularly described in the Master Services Agreement between Service Provider and Customer (the “**MSA**”) and the SOWs and POs executed by Service Provider and Customer pursuant to the MSA.

These Terms constitute a binding contract between Customer and Service Provider. Customer accepts these Terms by making a purchase from, placing an order with, or otherwise requesting products from Service Provider or engaging Service Provider to perform or procure any Services. These Terms are subject to change without prior notice, except that the Terms posted on Service Provider’s website as of the date of the Agreement shall govern such Agreement unless otherwise agreed by Customer and Service Provider in writing. The MSA and these Terms are collectively referred to herein as this “**Agreement**”.

1. Applicability; Joinder of Affiliates.

(a) Applicability. These Terms shall be deemed incorporated into the MSA and each SOW and PO, and each SOW and PO shall be subject to the terms of these Terms. These Terms, the MSA, the SOW(s), and PO(s) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between these Terms and the SOW or the PO, these Terms shall govern, unless the SOW or PO expressly states that the terms and conditions of the applicable SOW or PO shall control. These Terms and the SOW shall prevail over any of Customer’s general terms and conditions, or any terms and conditions included in any Customer purchase order, request for proposal, etc., regardless whether or when Customer has submitted its request for proposal, purchase order, order, or such terms. Fulfillment of Customer’s order and/or provision of Services to Customer does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend these Terms, the MSA or any SOW.

(b) No Minimum. Nothing contained in these Terms alone shall constitute a commitment by Customer to purchase, or Service Provider to provide, Services. Such a commitment shall arise only from a SOW or PO signed by the Parties.

2. Services; Hardware and Equipment.

(a) Service Provider shall provide the services to Customer as described in the SOW (the "Services") in accordance with this Agreement and the SOW(s).

(b) Customer acknowledges and agrees that Service Provider does not manufacture any hardware, equipment or other goods. In connection with the Services, Service Provider may order third party hardware, equipment, software, and other goods selected by Customer ("Third Party Products") for Customer. Any Third Party Products ordered or resold by Service Provider on behalf of or to Customer shall be pursuant to a separate PO executed by Service Provider and Customer. All POs are subject to this Agreement. Customer shall be solely responsible for the entire purchase price, all applicable shipping, delivery, and processing fees, and all applicable sales, use, VAT, and other taxes charged with respect to any Third Party Products. Service Provider shall not be liable for any delivery delays with respect to Third Party Products. All tangible Third Party Products shall be new unless otherwise expressly set forth in the applicable PO. All tangible Third Party Products are shipped FOB Origin, and risk of loss passes to Customer at origin. If Service Provider is to use any software or other material licensed or sublicensed to Customer by a third party in connection with Service Provider's performance of Services, such use shall be subject to any restrictions in the applicable license agreement. Customer shall execute any addendum required by Service Provider in order to comply with Service Provider's obligations to such third party licensor. During the Term of this agreement, rates and fees shall be subject to increase on a pro rata percentage basis in accordance with the rates and increases incurred by NOYNIM from its suppliers.

(c) Customer shall not (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of any Third Party Products or any data related to the Third Party Products (except to the extent such prohibition is contrary to applicable law that cannot be excluded by the agreement of the parties); (ii) modify, translate, or create derivative works based on any Third Party Products; (iii) share, rent, lease, lend, resell, sublicense, distribute, use or otherwise transfer any Third Party Products for timesharing or service bureau purposes or for any purpose not explicitly permitted by this Agreement or the underlying license or other agreement with respect to such Third Party Product; (iv) remove, replace, modify or obscure any trademarks, trade names, copyright notices or other proprietary marks or notices within the Third Party Products; (v) use the Third Party Products other than in accordance with this Agreement, any license agreement and/or terms and conditions governing the Third Party Products; or (v) use the Third Party Products other than in compliance with all applicable laws, rules, and regulations.

(d) Service Provider shall comply with all laws, rules, and regulations applicable to Service Provider in connection with its performance of the Services. Service Provider will require Service Provider personnel to follow all lawful policies and procedures of Customer while performing Services under this Agreement on-site at Customer's location, provided Customer has notified Service Provider of such policies and procedures in advance and in writing.

3. Performance Dates.

Service Provider shall use commercially reasonable efforts to meet any performance dates and milestone deadlines specified in the SOW, but any such dates shall be estimates only.

4. Customer's Obligations.

Customer shall:

- (a)** cooperate with Service Provider in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Service Provider, for the purposes of performing the Services;
- (b)** respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of this Agreement and the applicable SOW;
- (c)** provide such Customer materials or information as Service Provider may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects;
- (d)** where applicable, prepare Customer's site for performance of the Services by Service Provider;
- (e)** if Service Provider provides an update to any software included in connection with the Services, promptly install such update;
- (f)** obtain and maintain all necessary permits, licenses and consents and comply with all applicable federal, state and local laws and government regulations applicable to its business; and
- (g)** any additional Customer obligations set forth in a SOW or PO.

5. Customer's Acts or Omissions.

If Service Provider's performance of its obligations under this Agreement or any SOW or PO is

prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Service Provider shall not be deemed in breach of its obligations under this Agreement, the applicable SOW or PO or otherwise be liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

6. Change Orders.

(a) If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other Party in writing. Service Provider shall, within a reasonable time after such request, provide a written estimate to Customer of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the Services arising from the change; (iii) the likely effect of the change on the Services; and (iv) any other impact the change might have on the performance of the applicable SOW. Service Provider may, at its option, charge for the time it spends assessing and documenting a change request from Customer on a time and materials basis in accordance with the SOW.

(b) All changes to the Services shall be evidenced by a written change order executed by Customer and Service Provider (a "Change Order"). Neither Party shall be bound by any Change Order unless mutually agreed upon in writing.

(c) Notwithstanding Section 6(a) and Section 6(b), Service Provider may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the SOW.

(d) Any changes to any PO for Third Party Products shall be in writing and shall be subject to the terms and conditions of sale imposed by the applicable seller, licensor, or manufacturer of such Third Party Products.

7. Term and Termination.

(a) Term of Agreement. The term of the MSA shall commence on the Effective Date and will remain in full force and effect until the date which is 60 days following the expiration or termination of all SOWs and POs in accordance with this Agreement and such SOWs and POs.

(b) Term of SOWs. Each SOW shall commence as of the commencement date specified in such SOW and shall continue (i) for the term set forth in such SOW or (ii) with respect to non-recurring, project based SOWs, until the completion of the Services and payment therefore by Customer (the "SOW Term"). The term SOW Term shall include any renewal

terms under such SOW.

(c) Termination of SOWs. In addition to any other termination rights that may be provided under this Agreement or under the applicable SOW, a SOW may be terminated as follows: (a) by mutual written agreement of Service Provider and Customer; (b) by Service Provider, with or without cause, upon 30 days written notice to Customer; (c) by Customer, in the event that Service Provider breaches the SLA covenants set forth in the SOW for 3 consecutive months and/or otherwise materially breaches its other obligations under the SOW and fails to cure such breach within 90 days of written notice from Customer; or (d) by either Party to the SOW, if the other Party becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

(d) Effect of and Duties upon Expiration or Termination of SOWs. Termination of a SOW shall not constitute a termination of any remaining SOWs. Termination of any SOW shall not limit either Party from pursuing any other remedies available to it pursuant to this Agreement and such SOW. Upon termination or expiration of any SOW for any reason, Customer will pay Service Provider for all Services performed and all sums due under any PO through the date of termination in accordance with this Agreement and such SOW. Termination of any POs or other contracts for Third Party Products shall be subject to the notice and termination provisions applicable to such Third Party Products pursuant to any applicable agreement with such third parties, and, notwithstanding the termination of this Agreement or any SOW, Customer shall be responsible for all fees and charges due to such third parties for Third Party Products (e.g. restocking fees, shipping, early termination fees, (e) below, all Customer files, information, data, and backups are possessed by and performed by third-party services providers. In the event of termination of this Agreement, it is Customer's responsibility to obtain such files, information, data, and backups from the applicable service provider.

8. Fees and Expenses; Payment Terms; Interest on Late Payments.

(a) In consideration of the provision of the Services by Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees and charges set forth in the SOW and PO, as applicable. Fees for Services may increase as set forth in the SOW. Customer agrees that, unless otherwise expressly provided in the SOW, the fees and charges for the Services shall be subject to annual increases. Service Provider shall provide Customer with notice of any annual increases to the fees and charges for the Services via email at least thirty (30) days prior to the date such increase will go into effect.

(b) Customer agrees to reimburse Service Provider for travel expenses (including transportation costs, meals and lodging), and other out of pocket and third party expenses

reasonably incurred in connection with the performance of the Services.

(c) Customer shall pay all invoiced amounts due to Service Provider within 21 days from the date of Service Provider's invoice at the address designated on the applicable invoice. All fees shall be invoiced and be payable in advance. Customer must raise any objection to the invoice in writing to Service Provider, before the payment due date or the objection is waived. Customer shall make all payments hereunder in US dollars.

(d) In the event payments are not received by Service Provider within 21 days after becoming due, Service Provider may, in addition to any other rights and remedies of Service Provider:

(i) charge interest on any such unpaid amounts at a rate of 1.5% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and **(ii)** suspend the delivery of any Third Party Products or performance of any Services and stop Third Party Products in transit if Customer fails to pay any amounts when due hereunder and such failure continues for 3 days following written notice thereof.

(e) Customer shall be responsible for and reimburse Service Provider for all costs incurred in collecting any and all late payments from Customer, including, without limitation, attorneys' fees, in addition to all other remedies available under these Terms or at law (which Service Provider does not waive by the exercise of any rights hereunder) that Service Provider shall be entitled to.

9. Taxes.

Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer this Agreement, any SOW, and/or any PO.

10. Intellectual Property.

Except for any Confidential Information (as defined below) of Customer, all intellectual property rights, including copyrights, patents, patent disclosures, software, source code, object code, methodologies, and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or any SOW or prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in the SOW (collectively, the "Deliverables") shall be owned by Service Provider. Service Provider hereby grants Customer a license to use the Intellectual Property

Rights incorporated into the Deliverables free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicensable, fully paid-up, and royalty-free basis solely to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

11. Confidentiality.

(a) In connection with this Agreement, each Party (the “Disclosing Party”) may disclose or make available Confidential Information to the other Party (the “Receiving Party”). “Confidential Information” means information in any form or medium (whether oral, written, electronic, or other) that the Disclosing Party considers confidential or proprietary, including information consisting of or relating to the Disclosing Party’s technology, trade secrets, know-how, business operations, plans, source code, software, methodologies, strategies, customers, and pricing, and information with respect to which the Disclosing Party has contractual or other confidentiality obligations, in each case whether or not marked, designated or otherwise identified as “confidential”; provided, however, Confidential Information does not include information that: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information’s being disclosed or made available to the Receiving Party by Disclosing Party; (b) was or becomes generally known by the public other than by the Receiving Party’s or any of its Representatives’ non-compliance with this Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that, to the Receiving Party’s knowledge, was not or is not, at the time of such receipt, under any obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information, as documented by contemporaneous written records. The Confidential Information of a Disclosing Party remains the exclusive property of Disclosing Party.

(b) A Receiving Party shall (i) not disclose or permit access to Receiving Party's Confidential Information other than to its employees, officers, directors, subcontractors, consultants, and legal advisors ("Representatives") who: (A) need to know such Confidential Information for purposes of the Receiving Party’s performance of its obligations under and in accordance with this Agreement; and (B) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section; (ii) not use Disclosing Party’s Confidential Information for any purpose whatsoever except as expressly permitted by this Agreement in connection with the Services; and (iii) ensure its Representatives’ compliance with, and be responsible and liable for any of its Representatives’ noncompliance with, the terms of this Section. Without limiting the foregoing, Customer will use particular care to ensure that the Confidential Information of Service Provider does not become known to those who are engaged in activities competitive with those of Service Provider.

(c) If the Receiving Party or any of its Representatives is compelled by applicable law to disclose any Confidential Information of the Disclosing Party then, to the extent permitted by applicable law, the Receiving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order or other remedy. If the Receiving Party remains required by applicable law to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall disclose only that portion of the Confidential Information of the Disclosing Party that the Receiving Party is legally required to disclose.

(d) Service Provider and Customer acknowledge and agree that any unauthorized use or disclosure of a Party's Confidential Information by the other Party or the other Party's Representatives would cause irreparable harm, and therefore, in addition to any other remedy available in law, each Party shall be entitled to immediate injunctive relief, without showing any actual damages sustained, to prevent such disclosure or unauthorized use or threatened disclosure or unauthorized use. Nothing herein contained shall be construed to prohibit a Party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of money damages.

12. Warranties.

(a) Service Provider represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services that exist at the time the Services are performed and shall devote adequate resources to meet its obligations under this Agreement and the SOW(s). Such warranty shall survive for a period of 90 days following completion of the applicable Services.

(b) Service Provider shall not be liable for a breach of the warranty set forth in in paragraph (a) of this Section unless Customer gives written notice of the defective Services, reasonably described, to Service Provider within 15 days of the time when Customer discovers or ought to have discovered that the Services were defective and prior to the expiration of the warranty period set forth in paragraph (a) of this Section.

(c) Subject to paragraph (b) of this Section, Service Provider shall, in its sole discretion, either: (i) repair or re-perform such Services (or the defective part); or (ii) credit or refund the price of such Services at the pro rata contract rate.

(d) THE REMEDIES SET FORTH IN PARAGRAPH (C) OF THIS SECTION SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SERVICE PROVIDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN PARAGRAPH (A) OF THIS SECTION AND/OR ANY ADDITIONAL WARRANTY THAT MAY BE EXPRESSLY SET FORTH IN ANY SOW OR PO.

(e) In the event the Services include backups of Customer information and files, Customer acknowledges and agrees that Service Provider uses third-party software systems for all backups and that the data from backups is stored on third-party servers that are not operated or controlled by Service Provider. Service Provider generally sets backups to occur once per day and retention of backups is defaulted to 24 days. Service Provider is not responsible for operational or security failures of third-party software or storage systems. Customer shall look solely to the third-party manufacturer or service provider for all redress due to the failure of any third-party product or service. Other examples include, without limitation, failure of computer hardware to operate as intended, or failure of anti-virus or internet security service to adequately protect Customer's data or connections.

13. Disclaimer of Warranties.

EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 12(a) ABOVE, SERVICE PROVIDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; OR (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY OF TITLE; OR (D) ANY WARRANTY THAT ANY SOFTWARE OR DOCUMENTATION WILL OPERATE WITHOUT INTERRUPTION; OR (E) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ALL OF THE FOREGOING BEING EXPRESSLY DISCLAIMED.

SERVICE PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY THIRD PARTY PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CUSTOMER'S SOLE AND EXCLUSIVE WARRANTY WITH RESPECT TO THIRD PARTY PRODUCTS SHALL BE THE WARRANTY, IF ANY, PROVIDED BY THE MANUFACTURER, LICENSOR, OR DEVELOPER OF SUCH THIRD-PARTY PRODUCTS. CUSTOMER SHALL BE SUBJECT TO THE TERMS AND CONDITIONS OF SALE OR LICENSE, AS APPLICABLE, IMPOSED BY THE MANUFACTURER OR DEVELOPER OF ALL THIRD-PARTY PRODUCTS.

14. Limitation of Liability.

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT; LOSS OF DATA; DIMINUTION IN VALUE; LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY SOFTWARE OR OPEN SOURCE COMPONENTS OR OTHER THIRD PARTY MATERIALS; CORRUPTED, MISAPPROPRIATED, OR MISDIRECTED DATA; NETWORK DOWNTIME; REPLACEMENT PROCUREMENT; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, ENHANCED, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT

(INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. (b) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE LESSER OF (I) TWO TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER FOR THE SERVICES PURSUANT TO THE APPLICABLE SOW GIVING RISE TO THE CLAIM, AND (II) THE TOTAL AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER FOR THE SERVICES UNDER THE SOW GIVING RISE TO THE CLAIM DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THAT A CLAIM OR CAUSE OF ACTION ACCRUED. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE LIMITATION OF LIABILITY SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY TO LIABILITY RESULTING FROM SERVICE PROVIDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

15. Data Breaches.

Customer acknowledges and agrees that the Services are being provided in an industry that is ever-changing and high-risk in nature as the result of highly sophisticated third-parties (including but not limited to third-parties who are commonly known as "hackers") actively attempting to penetrate servers and IT systems such as those of Customer, with the goal of disrupting Customer's business, obtaining Customer's confidential or proprietary information, obtaining unauthorized access to Customer's data, deleting Customer's files and other information, attempting to extort payment after freezing or otherwise denying Customer access to its electronic files, and other similarly destructive acts (collectively, "Security Breaches"). Customer understands that in the event of the aforementioned Security Breaches, it is possible that Customer may lose access to its computer systems and/or servers.

The Parties agree that any such loss of access is a loss of data or access, not property damage. Based on the foregoing, Service Provider expressly disclaims any liability for losses arising out of a Security Breach, and Customer acknowledges and agrees that Customer is solely liable and responsible for any and all losses that may arise as a result of a Security Breach, or other event resulting in the unauthorized access to protected data, including, but not limited to any special, indirect, incidental, consequential, punitive, or exemplary damages, unless such Security Breach was caused solely by the gross negligence or willful misconduct of Service Provider. Customer also acknowledges that it has been advised to obtain and maintain a cyber-insurance policy and/or data breach insurance to further protect its data and other electronic assets and information. Should Client become aware of a Security Breach or other incident resulting in the unauthorized access to protected data, Customer will inform Service Provider of the breach as soon as practicable, but no later than one week after discovery so that Service Provider can take any steps necessary and appropriate. Unless otherwise expressly included in the Services, Customer is solely responsible for maintaining and following prudent data backup and data privacy protocols and precautions, which may include the

procurement of Errors and Omissions Insurance to cover any losses from a Security Breach.

16. Reserved.

17. Indemnification.

(a) Service Provider shall indemnify, defend, and hold harmless Customer and its affiliates, agents, managers, directors, principals, officers and employees from and against all lawsuits and claims or any other proceedings brought by a third party, arising from any infringement of any patent, copyright, trademark, trade secret, or intellectual property right, by Service Provider or any of its agents, contractors or employees in the performance of Services under this Agreement and the SOWs. The obligations of Service Provider as set forth in this paragraph are subject to the dollar and other limitations set forth in Section 14 above. Nothing in this Agreement shall require Service Provider to indemnify, defend, or hold harmless Customer from Customer's own acts or omissions.

(b) Customer shall indemnify, defend, and hold harmless Service Provider, its affiliates, agents, managers, directors, principals, officers, contractors and employees from and against: (i) all lawsuits and claims or any other proceedings brought by Customer or a third party, arising from any breach of this Agreement by Customer, or any act or omission of Customer; (ii) all lawsuits and claims or any other proceedings brought by a third-party that relate to or arise from the Services provided by Service Provider, and which claim is not solely the result of a breach of this Agreement or any SOW or PO by Service Provider; (iii) any negligence or intentional tortious act by Customer or its employees or agents during the course of Service Provider's performance of Services under this Agreement.

(c) The obligations of the Parties as set forth in the section shall survive termination of this Agreement and/or any SOW or PO.

18. Independent Contractor.

The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever. Service Provider and Customer shall be solely responsible for payment of all compensation owed to their respective employees, including all applicable federal, state, and local employment taxes.

19. Non-Solicitation.

To the fullest extent permitted by applicable law, during the term of the MSA and for a period of twelve (12) months after termination or expiration of the last SOW in effect under the MSA, Customer shall not, and shall not assist any other person or entity to, whether directly or indirectly, (a) recruit or solicit (other than by general advertisement not directed specifically to any person or posted for the purposes of avoidance of its obligations under this Section) for employment or engagement as an independent contractor any person employed or engaged by Service Provider or its affiliates, or (b) hire, employ or engage any person employed or engaged by Service Provider or any person who was employed or engaged by Service Provider or its affiliates within six (6) months prior to such person's engagement by Customer. If Customer or one of its affiliates hires any employee of Service Provider or its affiliates in violation of this Section, as an employee or contractor, Customer agrees to pay to Service Provider, within thirty (30) days of the hiring date, an amount equal to the person's annual compensation at Service Provider at the time of his or her departure from Service Provider. The Parties agree that (a) at the time this Agreement is entered into, the anticipated damages in case of breach of this Section are difficult to ascertain; (b) the Parties mutually intend to liquidate them in advance; and (c) the amount of liquidated damages, when viewed as of the time this Agreement is made, is a reasonable estimate of the potential actual damages the breach would cause.

20. Non-Disparagement.

Service Provider and Customer hereby agree that neither Party shall disparage or comment negatively, directly nor indirectly, about the other Party, its officers and management, and/or current or former employees and/or contractors. Disparagement shall be defined as any disparaging remarks, comments or statements that impugn the character, honesty, integrity, morality or business acumen or abilities in connection with any aspect of the operation a Party's business.

21. Governing Law; Dispute Resolution.

(a) This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado without giving effect to principles of conflict of law thereof that would require the application of the law of any other state.

(b) TO THE FULLEST EXTENT PERMITTED BY LAW, SERVICE PROVIDER AND CUSTOMER BOTH KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT TO A JURY TRIAL IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY SOW OR ANY PO.

(c) Any dispute, controversy, or claim arising out of or related to this Agreement (including the arbitrability of the Dispute) or the interpretation, application, breach, termination, or validity thereof ("Dispute") shall be resolved by binding arbitration administered by JAMS (www.jamsadr.com) before a single arbitrator (the "Arbitrator") pursuant to the Streamlined Arbitration Rules and Procedures of JAMS then in effect (the "JAMS Rules"), except where

the JAMS Rules conflict with this paragraph (c), in which case this paragraph (c) shall control. Either Party may commence arbitration pursuant to this paragraph (c) by written notice to the other Party. The arbitration shall be conducted in Denver, Colorado. The Final Offer Arbitration Option offered under the JAMS Rules (Rule 28 as of the date hereof) shall be used to resolve the Dispute. The Arbitrator shall be jointly selected by the Parties; provided, however, that if the Parties are unable to jointly select an arbitrator within twenty (20) days after commencement of the arbitration, then the Arbitrator shall be appointed by JAMS in accordance with the JAMS Rules. The Arbitrator shall conduct the arbitration as expeditiously as possible and issue a decision not later than one hundred twenty (120) days after the Arbitrator has been appointed. The Parties are entitled to apply for and receive equitable relief from the Arbitrator, including, without limitation, injunctions and orders of specific performance.

Additionally, the Parties adopt and agree to implement the JAMS Optional Arbitration Appeal Procedure (as it exists on the effective date of this Agreement) with respect to any final award in an arbitration arising out of or related to this Agreement. The award of the Arbitrator shall be final and binding on both Parties and may be entered as a judgment, under seal, and enforced in any appropriate jurisdiction. All proceedings pursuant to this paragraph shall be confidential, and the Parties will execute any commercially reasonable document prepared by or approved by the Arbitrator ensuring the confidentiality of the Dispute and proceedings.

(d) No action or claim regarding the Services or Deliverables, other than with respect to payments due to Service Provider hereunder, may be brought more than one (1) year after the first to occur of either (a) the conclusion of Services and delivery of any Deliverables under the applicable SOW, or (b) the claimant party's knowledge of the event giving rise to such cause of action.

(e) Notwithstanding paragraph (c) above, either Party may choose to resolve disputes involving \$7500 or less exclusively in Colorado small claims court.

22. Notices.

Except as otherwise expressly set forth in this Agreement, all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement shall be in writing and addressed to a Party at its address set forth on the first page to this Agreement or applicable Joinder (or to such other address or such other person that such Party may designate from time to time in accordance with this Section). Notices sent in accordance with this Section shall be deemed effectively given: (a) when received, if delivered by hand; (b) when received, if sent by a nationally recognized overnight courier; (c) when sent, if by email, (with confirmation of transmission), if sent during the addressee's normal business hours, and on the next business day, if sent after the addressee's normal business hours; and (d) on the third day after the date mailed by

certified or registered mail, return receipt requested, postage prepaid.

23. Force Majeure.

No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement or any SOW or PO, for any failure or delay in fulfilling or performing any term of this Agreement or SOW or PO (except for any obligations of Customer to make payments to Service Provider), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's ("Impacted Party") control, including, without limitation, the following force majeure events ("Force Majeure Event(s)"):

(a) acts of God; (b) flood, fire, earthquake, hurricane, tornado, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns or other industrial disturbances; (h) shortage of adequate power or transportation facilities; and (i) other similar events beyond the control of the Impacted Party.

The Impacted Party shall give notice within 15 days of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

24. Waiver.

No waiver by either Party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

25. Non-Discrimination.

Federal and other laws prohibit employment discrimination or harassment based on specific protected characteristics, which most commonly include race, color, religion, sex, age, national origin, disability, veteran status, genetic or family medical history, but also include any other characteristic protected by law such as marital status, sexual orientation, gender identity, or gender expression. Neither Service Provider nor Customer will unlawfully discriminate against employees or applicants on the basis of protected characteristics.

26. Advertising and Publicity.

Neither Service Provider nor Customer shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement or any SOW or, unless expressly permitted under this Agreement, otherwise use the other Party's trademarks, services marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed.

27. Assignment.

Except as otherwise set forth in the MSA, neither Service Provider nor Customer may assign this Agreement or any SOW or PO without the prior written consent of the other Party. Notwithstanding the foregoing, Service Provider and Customer may assign the MSA and any SOW or PO thereunder without consent of the other Party: (i) to any successor entity in connection with a merger, consolidation or other reorganization of such Party, or (ii) to any purchaser of all or substantially all of such Party's assets or equity interests; provided that such assignee assumes all obligations of the assigning Party in writing. The assigning Party shall provide notice to the other Party upon any assignment permitted under this Section. Service Provider may subcontract its obligations under this Agreement and any SOW or PO.

28. Miscellaneous.

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. If any provision of this Agreement, any SOW, or any PO is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement, SOW, or PO or invalidate or render unenforceable such term or provision in any other jurisdiction. The provisions of this Agreement, which by their terms or their nature are intended to survive the expiration or termination of this Agreement shall survive any termination or expiration of this Agreement, including, but not limited to, the following provisions: Intellectual Property, Confidentiality, Governing Law, Non-Solicitation, Non-Disparagement, and Governing Law; Dispute Resolution.