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## NTM Master Services Agreement

Last Updated: April 10, 2017

This master services agreement is between **SR PARTNERS, LLC** d/b/a NATIONAL TECHNOLOGY MANAGEMENT, a Michigan limited liability company (the “**Service Provider**”), and **You**, the individual or entity ordering the services (the “**Customer**”).

The Service Provider has the capability and capacity to provide certain information technology services.

The Customer wants to retain the Service Provider to provide certain information technology services.

The parties therefore agree as follows:

### 1. Definitions

**As used in this agreement, the following definitions apply:**

- 1.1 “**Additional Services**” means any Services provided other than an Included Service. Additional Services may include any work that is or becomes necessary due to: (1) the Customer’s use of any third-party hardware, software, information, or materials not approved by the Service Provider; (2) hackers or other malicious or accidental destruction of systems or data, including destruction by the Customer’s employees or representatives; (3) the Customer’s performance of technical support functions or the Customer’s unauthorized modification or repair of software; (4) any event beyond the Service Provider’s or the Customer’s control including fire, water damage, power failure, malfunction of affiliated equipment, natural disaster, building modifications, or other events of a magnitude or type for which precautions are not generally taken in the IT service provider industry; and (5) the Customer’s failure to comply with other obligations under this agreement, including notifying the Service Provider of known system malfunctions. Any service that the Service Provider considers necessary because of the occurrence of the foregoing events may be treated as an Additional Service regardless of whether it would otherwise be an Included Service.
- 1.2 “**Customer**” means the individual or company who has signed a Service Order or accepted it online.
- 1.3 “**Included Services**” means the specific Services specified in the Service Order the Customer signed or accepted.



- 1.4 **“Monthly Recurring Fees”** means the recurring fees billed each month for the Included Services. The Monthly Recurring Fees are determined in accordance with the applicable Service Order the Customer signed.
- 1.5 **“Service Order”** means any service order, proposal, quote, sales orders, and statement of work that describes any Included Services to be provided by the Service Provider, all which may be referred to in this agreement as the Service Order.
- 1.6 **“Service Provider”** means SR Partners, LLC d/b/a National Technology Management, a Michigan limited liability company.
- 1.7 **“Services”** means all services the Service Provider provides to the Customer as set out in a signed Service Order or otherwise.

## 2. **Effective Date and Enforceability**

- 2.1 This agreement is effective on the Customer’s signing of a Service Order with the Service Provider (the **“Effective Date”**). The Customer acknowledges that the person accepting or signing a Service Order is the authorized agent of the Customer identified in that Service Order, and by that signing legally binds the Customer and the Customer’s employees and agents to this agreement.
- 2.2 All Service Orders are specifically incorporated in and made a part of this agreement. If there is a conflict between a specific term of this agreement, any applicable exhibit, and the Service Orders, the applicable Service Order prevails followed by the exhibit, then this agreement. The signing or approval of a Service Order is also a statement that the Customer have reviewed and approved this agreement. Accordingly, the Customer is estopped from denying the terms in this agreement once the Customer signs or approves a Service Order.

## 3. **Term**

**This agreement begins on the Effective Date and will remain in effect during any current Service Order term or until terminated by either party as set out in section 10.**

## 4. **Confidentiality**

### 4.1 **Maintaining Confidentiality**



For as long as it remains Confidential Information, the Receiving Party will not (a) disclose that Confidential Information except as contemplated in this agreement, or (b) use that Confidential Information other than for purposes of this agreement.

#### 4.2 **Permitted Disclosure**

The Receiving Party will disclose Confidential Information to only those of its representatives who

- (a) require the Confidential Information to perform under this agreement (but to the extent practicable, only the part that is required);
- (b) are informed in writing by the Receiving Party of the confidential nature of the Confidential Information; and
- (c) agree in writing to be bound by the obligations of this section 4.

#### 4.3 **Precautions against Unauthorized Disclosure or Use**

The Receiving Party will take precautions to prevent disclosure or use of Confidential Information other than as authorized in this agreement. Those precautions must be at least as effective as those taken by the Receiving Party to protect its own Confidential Information or those that would be taken by a reasonable person in the position of the Receiving Party, whichever are greater. If the Receiving Party complies with its obligations under this section 4.3, the Receiving Party will not be liable for any losses or liabilities of the Disclosing Party arising out of misappropriation of Confidential Information from the Receiving Party by any third party.

#### 4.4 **Unauthorized Disclosure or Use by Representatives**

If any one or more representatives of the Receiving Party disclose or use Confidential Information other than as authorized in this agreement, the Receiving Party will be liable to the Disclosing Party for that disclosure or use to the same extent that it would have been had the Receiving Party disclosed or used that Confidential Information.

#### 4.5 **Notification of Unauthorized Disclosure or Use**



If the Receiving Party becomes aware of disclosure or use of Confidential Information other than as authorized in this agreement, the Receiving Party will promptly notify the Disclosing Party of that disclosure or use and will cooperate with the Disclosing Party in mitigating any adverse consequences to the Disclosing Party of that disclosure or use.

#### 4.6 **Nondisclosure of Agreement**

During this agreement and afterwards until that information becomes public other than because of breach of this section 4.6, each party will not disclose to any other person the existence of this agreement and the nature of the relationship, except to the extent disclosure is required by law. If disclosure is required by law, that disclosure will not constitute a breach of the party in question's obligations under this section 4.6, on condition that it has complied with section 4.8, as if section 4.8 applied to that disclosure besides disclosure of Confidential Information.

#### 4.7 **Return of Confidential Information**

On the termination of this agreement, the Receiving Party will promptly, but no later than 30 days after the termination of this agreement:

- (a) Return to the Disclosing Party all copies of Confidential Information that, on disclosure, the Disclosing Party had instructed the Receiving Party to return on the termination of this agreement; and
- (b) Destroy all remaining copies of Confidential Information disclosed to the Receiving Party under this agreement.

#### 4.8 **Disclosure Required by Law**

- (a) If any proceeding is brought to compel the Receiving Party or any of its representatives to disclose Confidential Information, or if the Receiving Party or any of its representatives is otherwise required by law to disclose any Confidential Information, the Receiving Party will do the following:

- (i) Unless by doing so the Receiving Party would violate any law or an order of a Government Body, notify the Disclosing Party of that proceeding or that requirement, as the case may be, promptly after learning of it, taking into account for purposes of determining the Receiving Party's promptness any time constraints that the Disclosing Party would face in bringing a proceeding to prevent that disclosure or to protect the confidentiality of any information that is disclosed; and*

- (ii) At the Receiving Party's expense, cooperate with the Disclosing Party in*



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*any proceeding that the Disclosing Party brings to prevent that disclosure or to protect the confidentiality of any information that is disclosed.*

- (b) It will not constitute a breach of the Receiving Party's obligations under this section 4 for the Receiving Party or any of its representatives to disclose Confidential Information as required by law, on condition that the Receiving Party has complied with its obligations under section 4.8(a) for that disclosure and has delivered to the Disclosing Party a written opinion of the Receiving Party's legal counsel prepared at the Receiving Party's expense stating that the disclosure is required by law and that opinion is reasonably acceptable to the Disclosing Party.

#### 4.9 **Nondisclosure of Restricted Information**

The Disclosing Party will not disclose to the Receiving Party or any of its representatives any information if doing so would cause the Disclosing Party to breach a duty to any other person to keep that information confidential or would cause the Disclosing Party to violate any law or any order of a Government Body.

#### 4.10 **Export Controls**

The Receiving Party will not export or re-export any Confidential Information, directly or indirectly, without first obtaining any license required under any export control laws.

#### 4.11 **No License**

The Disclosing Party's disclosure of Confidential Information will not constitute a grant to the Receiving Party or any of its representatives of a license to, or any other interest in, any intellectual property of the Disclosing Party unless stated in this agreement.

#### 4.12 **No Statement about Accuracy**

The Disclosing Party is not making in this agreement any statement about accuracy of any Confidential Information. The Receiving Party acknowledges that because it has not relied on, and will not be relying on, any statements made by the Disclosing Party to the Receiving Party about accuracy of any Confidential Information, the Receiving Party will have no basis for bringing any claim for fraud about those statements.

#### 4.13 **Reverse Engineering**



The Receiving Party will not reverse engineer, disassemble, or create other works from any software or hardware constituting or included in any Confidential Information.

#### 4.14 Residual Information

Use of Residual Information for the Receiving Party's benefit by any representatives of the Receiving Party to whom Confidential Information was disclosed in accordance with this section 4 will not constitute a breach of the Receiving Party's obligations under this section 4, on condition that the Receiving Party did not have its representatives intentionally commit to memory the Confidential Information in question and on condition that the Receiving Party complies with its obligations under section 4.7.

#### 4.15 Duration of Confidentiality Obligations

The parties' obligations under this section 4 will terminate three years after the termination of this agreement, except that any Confidential Information that constitutes a trade secret remains subject to this section 4 for so long as that information constitutes a trade secret. This section 4 will survive the termination of this agreement.

#### 4.16 Definitions

For purposes of this section 4, the following definitions apply:

(a) **"Confidential Information"** means the following:

- (i) *Information (other than Excluded Information) relating to the Disclosing Party and its business that the Disclosing Party discloses to the Receiving Party during this agreement (including specifications, samples, patterns, designs, plans, drawings, documents, data, source code, object code, any other computer or programming code, business operations, customer lists, pricing, discounts, rebates, and information about the Disclosing Party's products, services, marketing plans, and technical environment); and*
- (ii) *Derived Information.*

(b) **"Derived Information"** means information (including notes, analyses, compilations, and summaries) that is in writing or embodied in an electronic medium and that the Receiving Party or any of its representatives derive, in whole or in part, from any information described in section 4.16(a)(i).

(c) **"Excluded Information"** means information that comes within any of the



following categories, with the Receiving Party having the burden of establishing that any information constitutes Excluded Information:

- (i) *Other than personally identifiable information, information that is or becomes public other than as a result of breach of any obligation under this agreement;*
  - (ii) *Information that, when it is disclosed, is already in the possession of the Receiving Party or any of its representatives as the result of disclosure by a person that was not under an obligation to the Disclosing Party to keep that information confidential;*
  - (iii) *Information that, after it is disclosed under this agreement, is disclosed to the Receiving Party or any of its representatives by a person that was not then under an obligation to the Disclosing Party to keep that information confidential; and*
  - (iv) *Information that the Receiving Party develops independently before the Disclosing Party discloses equivalent information to the Receiving Party.*
- (d) **“Government Body”** means (i) the government of a country or of a political subdivision of a country; (ii) an instrumentality of any government; (iii) any other individual, entity, or organization authorized by law to perform any executive, legislative, judicial, regulatory, administrative, military, or police functions of any government; or (iv) an intergovernmental organization.
- (e) **“Person”** means an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity or organization, or Government Body.
- (f) **“Representative”** means, as to an entity, any of that entity’s directors, officers, employees, agents, consultants, advisors, and other representatives.
- (g) **“Residual Information”** means, as to any individual, any Confidential Information that the individual remembers without any need to refer to that Confidential Information as fixed in a tangible medium.

## 5. Billing and Payment

- 5.1 The rates and fees for any Services provided to the Customer by the Service Provider under this agreement will be as set out in the applicable Service Order. Changes in the Service (including changes in the volume of the Services) and changes in the rights or obligations of the parties under this agreement may result



in adjustments to the fees if in those circumstances the change requires the Service Provider to perform additional work.

- 5.2 In the first quarter of each calendar year, the Service Provider may, in its sole discretion, on a per Customer basis, increase its rates, “per unit” charges, and monthly fees up to 5% as a cost adjustment. The annual increase will not apply to agreements that have been in place for six months or less.
- 5.3 The Service Provider may (1) refuse to support any IT related changes the Customer has made or (2) propose a change in per unit rates and fees for any specific Service on any Service Order. If the Customer and the Service Provider are not able to reach agreement on the revised rates and fees within 30 days of the proposal, either the Customer or the Service Provider may, at the end of the 30-day period, immediately terminate the specific Service on the applicable Service Order. This termination remedy is only applicable to this section 5.3. From 30 days after the proposed change until the termination date, the new proposed fees will apply. Termination of a Service as a result of this disagreement does not constitute a breach of this agreement by either party.
- 5.4 Any quoted setup and transition Services fees will be billed when the Customer accepts or signs a Service Order.
- 5.5 The Service Provider will invoice the Customer for and the Customer will pay the Service Provider, the Monthly Recurring Fees and one time fees for the Services as described in the applicable Service Order in accordance with this agreement. For Services billed on a flat-rate basis, the Service Provider will invoice the Customer in advance for these Services and the Customer will pay for all these Services in advance before the Services are rendered. For Services billed on a metered or measured basis, the Service Provider will invoice the Customer after the Service is rendered.
- 5.6 The minimum number of Monthly Recurring Fee invoices the Customer is obligated to pay under a Service Order equals the number of months stated in the Contract Term (“**Term**”) of the Service Order. If the Service Order is silent, the minimum number of Monthly Recurring Fee invoices is 36 months.
- 5.7 The fees for Services within any Service Order include only the items specified in the Service Order (the Included Services). The Service Provider will bill the Customer in quarter hour (.25) increments for any Additional Services at the then current hourly rate.
- 5.8 Unscheduled requested Additional Services outside the normal service hours may



be billed at 1.5 times the then current hourly rate.

- 5.9 If the original Monthly Recurring Fee set out in the Service Order is based on a “unit” quantity, the Customer acknowledges that the quantity of “units” affects the recurring billing amount. Therefore, the billing amount is a variable based on coverage or unit usage for any given month. Any increase in unit usage or coverage for any given month establishes a new Minimum Monthly Recurring Fee for the duration of the Service Order (and becomes the ongoing contract rate). These additional quantities will be billed according to the rates specified in the Service Order or this agreement.
- 5.10 All prices are exclusive of all applicable county, provincial, state, and local governmental surcharges and fees including applicable telecommunication charges and sales, use, value added, excise, privilege, franchise, and similar taxes (“**Assessments**”).
- 5.11 The Customer is responsible for paying all Assessments that apply to the Services. These Assessments, which will be separately stated on the invoices, may change in the future and the Customer acknowledges that the Customer will pay them at the same time as all other charges set out on the invoices.
- 5.12 Unless otherwise stated in the Service Order, the Customer will pay all invoices no later than 30 days from the date of the invoice. Failure to pay all amounts when due is a Customer Default and a breach of this agreement and the Service Provider may exercise any of its remedies under this agreement.
- 5.13 The Service Provider may charge late charges of 1.5% per month on all past due amounts. The Service Provider may also assess a fee for any payment transaction returned for insufficient funds or not paid when presented for payment.
- 5.14 The Customer will reimburse the Service Provider for all costs incurred in collecting any overdue payments and related interest, including attorneys’ fees, legal costs, court costs, and collection agency fees.
- 5.15 If the Customer reasonable and in good faith disputes any part of the Service Provider’s invoice, the Customer will, within 30 days of the payment date, submit written notice to the Service Provider of the dispute, identifying in specific detail the reason for the dispute and the amount being disputed. If the Customer does not deliver written notice within 30 days of the payment date, the invoice will be deemed correct and the Customer will have waived its rights to dispute the invoice. The Customer’s dispute as to any part of the invoice will not excuse the Customer’s obligation to pay the undisputed part of the invoice on time. The



parties will negotiate in good faith to resolve any disputes within 30 days after the Service Provider's receipt of the Customer's timely written notice. Any amounts that the Service Provider determines to be in error will be adjusted on the next month's invoice, or if the disputed amount has already been paid, a credit will be posted to the Customer's account. Any disputed amounts that the Service Provider determines to be correct as billed will be payable by the Customer, along with any interest charges that the Service Provider may impose in accordance with this agreement. On the Customer's written request, the Service Provider will provide the Customer with documentation supporting its determination for the resolution of the dispute, and if the Customer does not agree with the Service Provider's determination, the Customer may proceed with any other available remedy.

- 5.16 All the Customer's accounts with the Service Provider must be current and in good standing to ensure continued delivery of the Services from the Service Provider.
- 5.17 The Customer authorizes the Service Provider to obtain the Customer's credit and financial information as the Service Provider considers appropriate and necessary to evaluate the Customer's creditworthiness.
- 5.18 The Service Provider may require a deposit at any time as a condition to providing or continuing to provide Services. Deposits may be used to cover costs, expenses, service fees, or any other charge that is payable under this agreement. Unused Customer deposits will be refunded after the termination of this agreement.

## 6. Remediation Expenses

**The Service Provider is not required to provide services necessitated by vandalism, theft, misuse, neglect, acts of third parties, fire, water, casualty, acts of God, mob violence, labor disputes, malfunction of affiliated equipment, electrical failure, accidents, unauthorized material modification of the Customer's IT environment or repair of software, or from other causes unrelated to the ordinary operation of hardware or software. Any services performed as a result of these events is deemed an Additional Service and is out of scope of this agreement.**

## 7. Telephone Call Recordings

**The Service Provider may record the Customer's telephone calls for quality, training, and forensic purposes. By entering into the Service Order agreements with the Service Provider, the Customer consents to these recordings and acknowledges that it is the Customer's responsibility to notify all members of the Customer's staff that these**



recordings are occurring.

## 8. Expectations of Service Provider and Service Provider Default

8.1 The Service Provider will perform the Services and the Service Provider's responsibilities related to any contracted Service in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

8.2 In the event of a Service Provider Default:

(a) The Customer may terminate this agreement subject to 30 days' advance written notice to the Service Provider.

(b) The Customer may, either additionally or in the alternative, elect to terminate one or more of the Services for which a Service Provider Default has occurred.

8.3 For purposes of section 8.2, a "**Service Provider Default**" is deemed to have occurred on the occurrence of a material breach by the Service Provider of this agreement if that failure has not been remedied within 30 days after the Customer has delivered written notice to the Service Provider that sets out with specificity the problems complained of and the specific remedial measures required to solve the identified problems. But if the failure is not capable of being cured within the 30-day period with the exercise of reasonable diligence, the cure period will be extended for an additional reasonable period in the Service Provider's sole discretion (not to exceed 90 days). The Service Provider will exercise reasonable diligence to cure the failure and provide the Customer reasonable notice of the status of the remedy.

## 9. Expectations of Customer and Customer Default

9.1 The Customer will perform the Customer's responsibilities related to any contracted Service.

9.2 The Customer will pay all invoices for the Services on time as set out in this agreement.

9.3 The Customer states that it has purchased a sufficient number of licenses for the Service Provider's use in providing the Services as required by EULAs (End User License Agreements) on all servers, desktops, and laptops and if these software licenses do not exist, the Customer is solely responsible for timely acquiring any currently needed licenses and any licenses for additional servers, desktops, and laptops that are added. The Customer further states that the Customer has not



violated any licensing agreements or laws. The Customer will indemnify the Service Provider for any installation, configuration, or use of software that is not appropriately licensed and for defense of the Service Provider or remediation necessitated by the Customer's action or nonaction. The Customer acknowledges that is solely responsible and liable for all licensing of software that the Customer purchases or uses.

- 9.4 The Customer will use software/hardware in a manner as specified in the instruction manual and to abide by all EULAs and Acceptable Use Policies of the third-party vendor (such as Microsoft, Citrix, VMWare, eFolder, Adobe, Cisco products, and the like) for any third-party vendor products provided to the Customer for the performance of the Services on the applicable Service Order.
- 9.5 The Customer will maintain appropriate backup services for the Customer's data.
- 9.6 In the event of a Customer Default:
- (a) The Service Provider may terminate this agreement on a Customer Default subject to 30 days' advance written notice to the Customer.
  - (b) The Service Provider may, either additionally or in the alternative, elect to terminate one or more of the Services for which a Customer Default has occurred.
- 9.7 A "**Customer Default**" is deemed to have occurred on the occurrence of any of the following:
- (a) the Customer's failure to make, when due, any payment required under this agreement;
  - (b) the Customer's failure to fulfill the Customer's responsibilities for each contracted Service;
  - (c) the Customer's failure to perform the expectations specified under this section 9; or
  - (d) any other material breach of this agreement by the Customer.
- 9.8 In addition, the Service Provider may terminate this agreement immediately in the event of the following Customer Defaults:
- (a) the Customer becomes insolvent or admits its inability to pay its debts generally as they become due;



- (b) the Customer becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within 45 days after filing;
  - (c) the Customer is dissolved or liquidated or takes any corporate action for that purpose;
  - (d) the Customer makes a general assignment for the benefit of creditors;
  - (e) the Customer has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material part of its property or business; or
  - (f) the Customer merges with or into, or reorganizes, amalgamates, consolidates, or enters into any other transaction in which substantially all the Customer's assets are transferred to another individual or entity that fails on request to assume in writing all the Customer's obligations under this agreement.
- 9.9 If the Customer is in Customer Default, in addition and without prejudice to the Service Provider's right to terminate as set out above, the Service Provider may, without giving the Customer notice, suspend the performance of all or part of the Services under this agreement for so long as the Customer Default is continuing. The Customer accepts full responsibility for any loss, cost, and expense the Customer may incur due to that suspension and acknowledge that the limitations of liability provisions set out in this agreement specifically apply to this situation.

## 10. Termination; Early Termination Charges

- 10.1 The Service Provider will give the Customer 30 days' notice of intent to terminate any Service Order if it wishes to terminate Services at the end of any current Term.
- 10.2 The Customer will give the Service Provider 30 days' notice of intent to terminate any Service Order if the Customer wishes to terminate Services at the end of any current Term.
- 10.3 If the Customer terminates any Services ordered under this agreement before the expiration of the Term specified on the applicable Service Order for any reason other than a Service Provider Default, or if the Service Provider terminates this agreement due to the Customer's default, the Customer is liable for all past due fees and all the following early termination charges that are payable at the time of termination: (i) the balance attributable to payments for any software or



equipment purchased for the Customer's account, (ii) any third-party cancellation charges that the Service Provider incurs for services purchased on the Customer's behalf, and (iii) 100% of the then current Minimum Monthly Recurring Fee multiplied by the number of months remaining in the current Term of the relevant Service Order.

- 10.4 On termination of this agreement due to Customer Default or for any other reason, the Service Provider will provide and the Customer will pay for offboarding services. The Service Provider has no responsibility or liability for assisting the Customer in transferring any services or providing any separation services or environment information until the Customer pays all past due amounts due under this agreement (including any early termination charges) and pay the agreed-on amount for offboarding services. If the Customer or another provider change elements of the Customer's IT environment during the offboarding period, the Customer assumes responsibility for all administration, associated support, and any interruption of services related to the changes. The Service Provider assumes no liability to support changes started outside of the Service Provider.

## 11. Equipment

- 11.1 If the Service Provider provides and installs any telephony, computer, or network equipment (the "**Equipment**") at the Customer's location that the Customer did not pay for, the Equipment will remain the sole property of the Service Provider regardless of where located or attached. The Customer will not rearrange or move or disconnect the Equipment and is responsible for any damage to or loss of the Equipment that the Customer, the Customer's agents, end users, or invitees cause. The Customer will obtain and maintain (a) all-risk insurance against loss of and damage to the Equipment for not less than its full replacement value, and (b) combined public liability and property damage insurance. At any time, on one day's advance written notice by the Service Provider to the Customer—whether oral, written, or electronic—the Customer will provide the Service Provider physical access to the Equipment for maintenance and other operational issues, and, in the event of termination of this agreement or a Customer Default, the Customer will either return the Equipment to the Service Provider in good repair, condition, and working order, ordinary wear and tear resulting from proper use excepted, by delivering the Equipment, at the Customer's expense, to the Service Provider's address specified in section 21.6(b) or grant access to allow the Service Provider to remove the Equipment. The Customer will pay the Service Provider the replacement value of any lost, stolen, misappropriated, seized, damaged, or unreturned Equipment.

- 11.2 If the Service Provider allows the Customer to colocate the Customer's computer



or network equipment (“**Colocated Equipment**”) within any area owned or controlled by the Service Provider under a Colocation Service Order, the Customer states that the Customer owns all Colocated Equipment and that Equipment is not owned, leased, or controlled by a third party. The Customer is responsible for obtaining insurance in reasonable amounts for any Colocated Equipment within any area owned or controlled by the Service Provider. The Customer must provide a certificate of insurance to the Service Provider naming the Service Provider as an additional insured. The Service Provider will not be liable for any loss or damage related to Colocated Equipment other than loss or damage arising out of the willful misconduct or gross negligence of the Service Provider or its agents. The Customer accepts all liability and responsibility for any damages and losses arising out of any malfunction or other issue with the Customer’s Colocated Equipment.

- 11.3 The Customer acknowledges that the Service Provider may change the location of the Customer’s equipment or the Service Provider’s Data Center facilities in the Service Provider’s sole discretion.
- 11.4 If the Customer has Colocated Equipment in any area owned or controlled by the Service Provider, and if the Customer fails to remove that Colocated Equipment from that area within ten days after the expiration of the applicable Service Order or if a Customer Default occurs, the Service Provider may immediately, without notice or demand and in addition to any other right or remedy available at law or equity, declare the Colocated Equipment abandoned and take possession of the Colocated Equipment, without being guilty of trespass or misappropriation. The Service Provider may use all force necessary to affect the entry or to remove all the Customer’s Colocated Equipment from any areas and store them, all at the Customer’s expense. Any removed Colocated Equipment may be stored in any public warehouse or elsewhere at the Customer’s cost, and the Service Provider is not responsible for the care of safekeeping of the Colocated Equipment. The Customer expressly waives all claims for loss, destruction, damage, or injury that may be occasioned by loss, destruction, damage, or injury. **The Customer releases and waives any claims, causes of action, or damages against the Service Provider related in any way to the Customer’s data and information that is within or on the Colocated Equipment.** Any Colocated Equipment so removed will be returned to the Customer on payment in full of all storage costs, past due fees, and charges. If within ten days after notice of the Colocated Equipment removal, the Customer has not requested the return of the Customer’s Colocated Equipment and paid any sums owed, the Service Provider may exercise all rights of ownership over that Colocated Equipment including the right to sell it and retain possession of any sale proceeds. The Service Provider’s exercise of any remedies provided for in this section 11 will be without prejudice to any other remedies the Service Provider may have provided for in this agreement or by applicable law.



12. **Proprietary Information**

The Customer acknowledges that the working information, processes, reports, and associated raw source data that the Service Provider compiles and uses to provide the Services under any Service Order (the “*Proprietary Information*”) belong solely to the Service Provider. Proprietary Information includes logins, configurations data, licensing, and service ticket history contained in the Service Provider’s professional services automation software; the software, database, and reports contained in monitoring tools; server and network logs; and recordings of calls and remote support sessions.

13. **Third-Party Products and Warranties**

The Customer acknowledges that the Service Provider does not manufacture hardware or software, or provide power or Internet services. All hardware and software is provided on an “as is” basis except as expressly stated in this agreement. “*Third-Party Products*” means any third-party hardware, services, or software. Some manufacturers’ warranties or service contract terms and conditions for Third-Party Products may become void if the Service Provider or anyone else, other than the manufacturer or its authorized representative, provides services for or works on the hardware or software (such as providing maintenance and repair services). The Service Provider does not take responsibility for third-party warranties or for any effect that the Services may have on those warranties. Except as agreed to in writing between the Customer and the Service Provider, Third-Party Products are exclusively subject to terms and conditions between the third party and the Customer. The Service Provider has no liability for Third-Party Products and the Customer must look exclusively to the third party for any damages or liability with respect to the provision of Third-Party Products. Except as otherwise specifically agreed to in a Service Order, the Customer authorizes the Service Provider (or otherwise obtains the right for the Service Provider) to copy, install, and modify, when necessary and as required by the Service Order, all Third-Party Products, including software, to be used in the Services or to be copied or stored for later reinstallation of a backup system or data. The Customer states to the Service Provider that the Customer has obtained any licenses, consents, regulatory certifications, or approvals required to give the Service Provider and its subcontractors or employees the rights or licenses to access, copy, distribute, use, or modify (including creative derivative works) or install any Third-Party Products to be used in the Services, without infringing the ownership or license rights (including patent and copyright) of the providers or owners of the Third-Party Products.

14. **Assumption of Risk / Compliance**



- 14.1 The Service Provider will not be liable to the Customer and the Customer assumes all risk for any loss or damage arising in whole or in part from or relating to: (a) use of any third-party hardware, software, information, or materials not approved or recommended by the Service Provider; (b) viruses, hackers, or other malicious or accidental destruction of systems or data, including destruction by the Customer or the Customer's employees or representatives, although the Service Provider will make every commercially reasonable effort to proactively minimize exposure to these risks; (c) any event beyond the Service Provider's or the Customer's control including power failure, natural disaster, building modifications, or other events of a magnitude or type for which precautions are not generally taken in the IT service provider industry; and (d) the Customer's failure to perform one or more of the Customer's obligations set out in this agreement or any Service Order. The Customer has full and exclusive responsibility for understanding and ensuring compliance with any regulatory, legal, or contractual obligations related to data created, generated, or held by the Customer (including all data held or backed up on the Customer's behalf by the Service Provider).
- 14.2 The Customer acknowledges that the disclaimers in this agreement apply to any alleged damages or claims related to data loss, data corruption, or breaches of the Customer's network security arising out of or occurring simultaneously with the provision of any Services by the Service Provider. Accordingly, the Customer states to the Service Provider that the Customer has obtained all the necessary insurance policies that can fully reimburse the Customer for any data loss occurrences and that the Customer will not suffer any unreimbursed financial damages related to the loss or damage of the Customer's data.
- 14.3 In some cases, the Service Provider may be transporting the Customer's hardware that contains the Customer's data. The Service Provider is unable to obtain insurance to cover loss of data during transit of the Customer's equipment containing this data. Therefore, if the Service Provider moves or has equipment moved on the Customer's behalf, the Customer states to the Service Provider that the Customer has obtained all the necessary insurance policies that can fully reimburse the Customer for any data loss occurrences and that the Customer will not suffer any unreimbursed financial damages related to the loss of or damage to the Customer's data.

## 15. **Customer Data and Network Security**

- 15.1 The Customer accepts ultimate responsibility and liability for the protection and preservation of the Customer's data and computer network through the creation and supervision of a company-wide network security operational plan. The Service



Provider is an advisor only. The Customer acknowledges that the Service Provider is neither a bailee nor a fiduciary of the Customer's data, and that network security is the Customer's principal and fundamental responsibility and is dependent on the education, training, and cooperation of every one of the Customer's employees, agents, and contractors who have access to the Customer's network.

- 15.2 **Viruses and spyware may not be able to be removed without deletion of certain files. During the rendition of Services, the Service Provider will inform the Customer before the deletion of data, if possible. Once any data has been deleted from the network system, the data may be considered completely unrecoverable by any means. Backups should be stored in a location other than an onsite area being repaired or upgraded. The Service Provider can back up data for the Customer for an additional charge under a separate service order.**
- 15.3 **The Service Provider is not responsible for any loss or damage to the Customer's electronic data resulting from, arising out of, or related in any way to how the Customer backed up the electronic data.**
- 15.4 The Customer acknowledges that "backing-up" data is not the same as "archiving data." Data archiving is the process of moving data that is no longer actively used to a separate data storage device for long-term retention. Data archives consist of older data that is still important and necessary for future reference, as well as data that must be retained for regulatory compliance. Data archives are indexed and have search capabilities so that files and parts of files can be easily located and retrieved. Data archives are often confused with data backups, which are copies of data. Data backups are used to restore data in case it is corrupted or destroyed. In contrast, data archives protect older information that is not needed for everyday operations but may occasionally need to be accessed. The Customer assumes complete responsibility and control for archiving the Customer's data. The Service Provider can provide data backup on request, but until there is a signed Service Order making this the responsibility of the Service Provider, the Customer assumes complete responsibility and control for backing-up the Customer's data.
- 15.5 If the Service Provider provides data backup or management of the Customer's backup systems, the Service Provider will make commercially reasonable efforts to complete each backup occurring within any area owned or controlled by the Service Provider. Backed-up data is like a snapshot of files at a specific point in time and that snapshot is retained for a period of at least seven days unless otherwise specified. A restoration from a backup will replace only the files contained in the then current retention period. For backups performed outside of the Service Provider's Data Centers, the Customer will complete all recommended



and necessary steps to ensure successful data backup. Certain exceptions, including backup exceeding time window, files open, backup client not accessible, backup system failure, or inability to restore from backup, may from time-to-time cause interruption to any backup service. Accordingly, the Service Provider does not warrant the validity or availability of the data that is being backed up.

16. **Statement of Facts**

The Customer states that all approvals and consents for purchasing products or performing the Services that the Customer authorize have been obtained or will be obtained at the Customer's expense. The Customer and the Service Provider state that the following facts are accurate: (i) each is financially solvent and has the ability to perform its obligations under this agreement; (ii) each has the right to use any intellectual property that it provides to fulfill this agreement and related Service Orders; (iii) each is in compliance with laws and regulations applicable to its business; and (iv) each will perform all its obligations under this agreement on time. Each party states that it has full power and authority to enter into this agreement and all necessary legal action has been taken to authorize the individual signing this agreement on its behalf.

17. **Nonsolicitation**

During this agreement and for one year after the last date of service from the Service Provider, neither the Customer, its affiliates, its subsidiaries, nor any employees or representatives of the foregoing will, without first obtaining the Service Provider's advance written consent, directly or indirectly, for itself or on behalf of another individual or entity, solicit for employment or otherwise induce, influence, or encourage to terminate employment with the Service Provider, any employee of the Service Provider, or any person employed by the Service Provider as a third-party contractor or consultant with whom the Customer has had more than incidental contact or who became known to the Customer in connection with the Service Provider's provision of the Services. The Customer acknowledges that these restrictions are reasonable and that money damages would not be a sufficient remedy for any breach of this section 17 by the Customer and that in addition to all other remedies it may be entitled to, the Service Provider will be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach of this section 17.

18. **Disclaimers, Waivers, and Limitations of Liability**

18.1 **Disclaimer**



The Service Provider is not making any warranty that the Services provided will cause the Customer's network and computer systems (including computer hardware, computer software, and connected and integrated devices) to function without error or interruption. The Customer acknowledges that there are inherent risks in operating a network connected to the Internet that could result in loss of the Customer's privacy, confidential information, and property. The Customer further acknowledges the risk that any monitoring software or device installed by the Service Provider may not detect system failures and failure of covered devices until after they occur. To the extent permitted by applicable law, the Service Provider is not making any warranty not expressly stated in this agreement including implied warranties of merchantability, fitness for a particular purpose, and noninfringement. The Customer is solely responsible for the suitability of the services chosen.

#### 18.2 Warranties

All warranties related to the Services are as specifically set out in this agreement. Except as provided in this agreement, no other warranty is expressed or implied. Therefore, the warranties set out in this agreement are given in lieu of all other warranties, express or implied, in fact or by law, or arising by of custom or usage in the trade or by course of dealing, any warranty relating to Third-Party Products or third-party services, any warranty with respect to the suitability or performance of any hardware or software used in conducting Services, or any warranty concerning the results to be obtained from the Services or the results of any recommendation, advice, or information, whether oral or written, the Customer obtained from the Service Provider.

#### 18.3 Limitation of Damages



The Customer's sole remedy for the Service Provider's breach of a Service Order or this agreement is as set out in this agreement. The Service Provider is not liable for any other alleged breach of contract damages that the Service Provider could not have reasonably foreseen on the Effective Date. Further, the Service Provider is not liable to the Customer for any consequential, indirect, exemplary, special, statutory, incidental, expectancy, reliance, or restitutionary damages; nor is the Service Provider liable to the Customer for lost business, lost profits due to any alleged contract breach, or any other special damages such as cost of remediation or repair, replacement of lost data, lost data damages, business interruption damages, substitute vendors, attorneys' fees, or any other out of pocket costs and expenses claimed to arise out of an alleged Service Provider contract breach. All limitations of liability stated in this agreement are applicable in this section 18.3. No claim may be asserted by either party against the other with respect to any event, act, or omission that occurred more than one year before the claim being asserted.

#### 18.4 Aggregate Liability

The Service Provider's aggregate liability for all claims of liability arising out of, or in connection with any service provided under this agreement will not exceed the amounts the Customer paid for the specific services giving rise to the claim during the prior six-month period. The Customer acknowledges that these limitations apply even if the Customer has advised the Service Provider of the possibility of these damages or the remedies fail of their essential purpose, that they reflect the allocation of risk set out in this agreement, and that the Service Provider would not enter into this agreement without these limitations on its liability or the fee for the services provided being substantially higher.

### 19. Indemnification

#### 19.1 In General

- (a) The Customer will pay the Service Provider for any loss of the Service Provider's that is caused by the Customer's: (i) breach of this agreement; (ii) violation or infringement of third-party rights; (iii) violation of applicable law; or (iv) tortious act or omission. But the Customer is not required to pay if the loss was caused solely by the Service Provider's negligence or intentional misconduct.
- (b) The Service Provider will pay the Customer for any loss of the Customer's



that is caused by the Service Provider's: (i) breach of this agreement; (ii) violation or infringement of third-party rights; (iii) violation of applicable law; or (iv) tortious act or omission. But the Service Provider is not required to pay if the loss was caused solely by the Customer's negligence or intentional misconduct.

## 19.2 Definitions

- (a) **"Loss"** means an amount that the injured party is legally responsible for or pays in any form. Amounts include, for example, a judgment, a settlement, a fine, damages, injunctive relief, staff compensation, a decrease in property value, and expenses for defending against a claim for a loss (including fees for legal counsel, expert witnesses, and other advisers). A loss can be tangible or intangible; can arise from bodily injury, property damage, or other causes; can be based on tort, breach of contract, or any other theory of recovery; and includes incidental, direct, and consequential damages.
- (b) A loss is **"caused by"** an event if the loss would not have occurred without the event, even if the event is not a proximate cause of the loss.

## 19.3 Duty to Notify

The injured party will notify the indemnifying party before the 15th business day after the injured party knows or should reasonably have known of a claim for a loss that the indemnifying party might be obligated to pay. The injured party's failure to give the indemnifying party timely notice does not terminate the indemnifying party's obligation, except to the extent that the failure prejudices the indemnifying party's ability to defend the claim or mitigate losses.

## 19.4 Legal Defense of a Claim

### (a) Injured Party's Control

The injured party has control over defending a claim for a loss (including settling it), unless the injured party directs the indemnifying party to control the defense.

### (b) Direction to Control

If the injured party directs the indemnifying party to control the defense, each of the following applies:

- (i) *The indemnifying party may choose and retain legal counsel.*



- (ii) *The injured party may retain its own legal counsel at its expense.*
- (iii) *The indemnifying party will not settle any litigation without the injured party's written consent if the settlement (1) imposes a penalty or limitation on the injured party, (2) admits the injured party's fault, or (3) does not fully release the injured party from liability.*

(c) **Good Faith**

The indemnifying party and the injured party will cooperate with each other in good faith on a claim.

19.5 **No Exclusivity**

The injured party's rights under this section 19 do not affect other rights that the injured party might have.

20. **Dispute Resolution**

20.1 **Litigation Election**

Either party may elect to litigate the following type of case or controversy: (a) an action seeking injunctive relief, or (b) a suit to compel compliance with this section 20.

20.2 **Negotiation**



Each party will give the other a reasonable opportunity to comply before it claims that the other has not met its obligations under this agreement. The parties will first meet and negotiate with each other in good faith to try to resolve all disputes between the parties arising out of, or relating to the subject matter of, this agreement. The party raising a dispute will submit to the other party a written notice and supporting material describing all issues and circumstances related to the dispute (a “**dispute notice**”). A primary representative designated by each party will try to resolve the dispute. If the parties’ primary representatives fail to resolve the dispute no later than 15 days after receiving a dispute notice, a vice president (or higher-level officer) of each party will try to resolve it.

### 20.3 **Mediation**

If the vice presidents (or higher-level officers) of the parties are unable to resolve the dispute no later than 30 days after receiving the dispute notice, either party may, by notice to the other party and the American Arbitration Association, demand mediation under the Commercial Mediation Rules of the American Arbitration Association. Mediation will take place in Oakland County, Michigan. Each party will bear its own costs in mediation and the parties will share equally between them all third-party mediation costs unless the parties agree otherwise in writing. Each party will participate actively and constructively in mediation proceedings once started and will attend at least one joint meeting between the mediator and the parties. Any party may terminate mediation at any time after an initial meeting between the mediator and the parties.

### 20.4 **Arbitration**

- (a) If the parties cannot fully settle a dispute through mediation, the parties will settle any unresolved dispute arising out of this agreement or relating to the subject matter of this agreement by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve all disputes arising out of or relating to the interpretation, enforceability, or formation of this agreement, including any claim that all or any part of this agreement is void or voidable.
- (b) A single arbitrator will preside over the arbitration. The arbitrator will be empowered to grant whatever relief would be available in a court under law or in equity, except that the arbitrator will not award punitive or exemplary damages, or damages otherwise limited or excluded in this agreement. The arbitrator will issue a final award on all issues submitted



to the arbitrator. The arbitrator's award will be binding on the parties and judgement on the award rendered in the arbitration may be entered in any court having jurisdiction.

- (c) Arbitration will take place in Oakland County, Michigan. Except as provided in section 20.6, the parties will bear equally the costs of arbitration, including the fees and expenses of the arbitrator, and each party will bear the costs associated with its case.
- (d) Unless required by law, neither a party nor the arbitrator will disclose the existence, content, or results of any arbitration under this agreement without the advance written consent of both parties.

## 20.5 Jurisdiction and Venue

- (a) If a party brings any court proceeding authorized under this agreement, that party will bring that court proceeding only in the United States District Court for the Eastern District of Michigan or in any state court in Michigan, and each party hereby submits to the exclusive jurisdiction and venue of those courts for purposes of any court proceeding, except that judgement on an award rendered in arbitration may be entered in any court of competent jurisdiction.
- (b) Each party hereby waives any claim that any court proceeding brought in accordance with section 20.5(a) has been brought in an inconvenient forum or that the venue of that court proceeding is improper.

## 20.6 Recovery of Expenses

- (a) In any proceedings between the parties arising out of this agreement or relating to the subject matter of this agreement, the prevailing party will be entitled to recover from the other party, in addition to any other relief awarded, all expenses that the prevailing party incurs in those proceedings, including legal fees and expenses.
- (b) For purposes of section 20.6(a), "**prevailing party**" means, for any proceedings, the party in whose favor an award is rendered, except that if in those proceedings the award finds in favor of one party on one or more claims or counterclaims and in favor of the other party on one or more other claims or counterclaims, neither party will be the prevailing party. If any proceedings are voluntarily dismissed or are dismissed as part of settlement of that dispute, neither party will be the prevailing party in those proceedings.



## 20.7 Jury Trial Waiver

Each party hereby waives its right to a trial by jury in any proceedings arising out of, or relating to the subject matter of, this agreement. Either party may enforce this waiver up to and including the first day of trial.

## 20.8 Limited Time to Bring Claims

A party will not bring a claim arising out of, or related to the subject matter of, this agreement more than one year after the cause of action arose. Any claim brought after one year is barred.

## 21. General

### 21.1 Entire Agreement

This agreement, together with any related Service Order, exhibits, schedules, attachments, and appendices, constitutes the entire agreement of the parties with respect to the subject matter of this agreement. It supersedes all earlier written or oral discussions, negotiations, proposals, undertakings, understandings, and agreements between the parties concerning the transactions contemplated in this agreement.

### 21.2 Amendment

The parties may amend this agreement only by a written agreement of the parties that identifies itself as an amendment to this agreement.

### 21.3 Assignment and Delegation



The Customer will not assign any rights or delegate any performances under this agreement without the Service Provider's advance written consent. The Service Provider may assign its rights or delegate its performances under this agreement without the Customer's written consent. Any purported assignment of rights or delegation of performance in breach of this section 21.3 is void. No assignment or delegation will relieve the Customer of any of its obligations under this agreement.

#### 21.4 **Waivers**

The parties may waive any provision in this agreement only by a writing signed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy, or in requiring the satisfaction of any condition, under this agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

#### 21.5 **Severability**

The parties intend as follows:

- (a) that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
- (b) that if modifying or disregarding the unenforceable provision would result in failure of an essential purpose of this agreement, the entire agreement will be held unenforceable;
- (c) that if an unenforceable provision is modified or disregarded in accordance with this section 21.5, then the rest of the agreement will remain in effect as written; and
- (d) that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

#### 21.6 **Notices**

- (a) All notices and other communications between the parties will be in writing.



- (b) All notices will be given by (i) personal delivery; (ii) a nationally-recognized, next-day courier service; (iii) first-class registered or certified mail, postage prepaid; or (iv) electronic mail to the following addresses (or any other address either party may specify in writing):

**Service Provider:**

SR Partners, LLC

Attn: Kelly Siegel

24901 Northwestern Hwy Ste. 201

Southfield, Michigan 48075

[ksiegel@trustntm.com](mailto:ksiegel@trustntm.com)

**Customer:**

Contact information identified on  
the Service Order.

- (c) All notices will be effective on receipt by the party to which notice is given, or on the fifth day after mailing or emailing, whichever occurs first.

## 21.7 Governing Law

The laws of the state of Michigan—without giving effect to its conflicts of law principles—govern all matters arising out of or relating to this agreement, including its validity, interpretation, construction, performance, and enforcement.

## 21.8 Force Majeure

- (a) If a force majeure event prevents a party from complying with any one or more obligations under this agreement, that inability will not constitute a breach if (1) that party uses reasonable efforts to perform those obligations, (2) that party's inability to perform those obligations is not due to its failure to (A) take reasonable measures to protect itself against events or circumstances of the same type as that force majeure event or (B) develop and keep a reasonable contingency plan to respond to events or circumstances of the same type as that force majeure event, and (3) that party complies with its obligations under section 21.8(c).
- (b) For purposes of this agreement, "**force majeure event**" means, for any party, any event or circumstance, whether or not foreseeable, that was not caused by that party (other than a strike or other labor unrest that affects only that party, an increase in prices or other change in general economic conditions, a change in law, or an event or circumstances that results in that party's not having sufficient funds to comply with an obligation to pay



money) and any consequences of that event or circumstance.

- (c) If a force majeure event occurs, the noncomplying party will promptly notify the other party of occurrence of that force majeure event, its effect on performance, and how long the noncomplying party expects it to last. From then on, the noncomplying party will update that information as reasonably necessary. During a force majeure event, the noncomplying party will use reasonable efforts to limit damages to the other party and to resume its performance under this agreement.

#### 21.9 **No Third-Party Beneficiaries**

This agreement does not, and the parties do not intend it to, confer any rights or remedies on any person other than the parties to this agreement.

#### 21.10 **Relationship of the Parties**

The parties intend that their relationship will be that of independent contractors and not business partners. This agreement does not, and the parties do not intend it to, create a partnership, joint venture, agency, franchise, or employment relationship between the parties and the parties expressly disclaim the existence of any of these relationships between them. Neither of the parties is the agent for the other, and neither party has the right to bind the other on any agreement with a third party.

#### 21.11 **Successors and Assigns**

This agreement binds and inures to the benefit of the parties and their respective successors and assigns. This section 21.11 does not address, directly or indirectly, whether a party may assign its rights or delegate its obligations under this agreement. Section 21.3 addresses these matters.

#### 21.12 **Further Assurances**

The parties will take any further actions, or sign any further documents, as may be necessary to implement and carry out the intent of this agreement.

#### 21.13 **Export**



The Customer and the Service Provider will not knowingly export or re-export any personal computer system, part, technical data, or sub-elements under this agreement, directly or indirectly, to any destinations prohibited by the United States Government. The term “**technical data**” in this context, means that data as are defined as technical data by United States export regulations.

#### 21.14 **Acceptable Use**

The Customer and all third parties obtaining access to the Services through the Customer will comply with the Service Provider’s Acceptable Use Policy (the “**AUP**”). The current, complete AUP is located at [www.trustntm.com](http://www.trustntm.com). The Service Provider may amend the AUP on one or more occasions and to suspend the affected Services immediately on a violation of the AUP. The Customer will be responsible to ensure compliance on the part of its employees, its contractors, and all other third parties obtaining access to the Services through the Customer, and will indemnify, defend, and hold harmless the Service Provider against any losses arising out of or relating to any alleged or actual violation of the AUP by the Customer or any user or other third party obtaining access to the Services through the Customer.

#### 21.15 **Counterparts**

The parties may sign this agreement in any number of counterparts. The parties will consider each counterpart an original, and all counterparts, when taken together, will form the same agreement.

#### 21.16 **Signatures; Electronic Signatures**

The parties may sign this agreement by fax or electronically instead of an original signature. The parties will consider fax or electronic signatures as original signatures that bind them to this agreement.

#### 21.17 **Voluntary Agreement**

The parties have signed this agreement voluntarily and for valid reasons. The parties acknowledge that they (i) have carefully read this agreement, (ii) discussed it with their attorneys or other advisors, (iii) understand all the terms, and (iv) will comply with it. The parties have relied on the advice of their attorneys or other advisors about the terms of this agreement and waive any claim that the terms should be construed against the drafter.

#### 21.18 **No Reliance**



Each party acknowledges that in signing this agreement, that party does not rely and has not relied on any statement by the other party or its agents, except those statements contained in this agreement.

#### 21.19 Usages

In this agreement, the following usages apply:

- (a) Actions permitted under this agreement may be taken at any time and on one or more occasions in the actor's sole discretion.
- (b) References to a statute will refer to the statute and any successor statute, and to all regulations promulgated under or implementing the statute or successor, as in effect at the relevant time.
- (c) References to numbered sections in this agreement also refer to all included sections. For example, references to section 6 also refer to 6.1, 6.1(a), etc.
- (d) References to a governmental or quasi-governmental agency, authority, or instrumentality will also refer to a regulatory body that succeeds to the functions of the agency, authority, or instrumentality.
- (e) "A or B" means "A or B or both." "A, B, or C" means "one or more of A, B, and C." The same construction applies to longer strings.
- (f) "Including" means "including, but not limited to."