



Hosted Solutions

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is between Hosted Solutions Acquisition LLC, a Delaware limited liability company (“**Company**”)

and the entity who executes the Sales Order with Company to which this Agreement is hereby attached and incorporated (“**Customer**”). By entering into a Sales Order, Customer hereby agrees to be bound by and abide with the terms and conditions of this Agreement. This Agreement is effective upon the execution of a Sales Order between Company and Customer (the “**Effective Date**”) and shall remain in effect for so long as each Sales Order is in effect. All capitalized terms not defined herein shall have the meanings set forth in Exhibit A attached hereto and incorporated herein by reference. In consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Company and Customer hereby agree as follows:

### 1. SERVICES

- a. Services. Company will provide to Customer the services described in each applicable Sales Order (“**Services**”) which may be more fully described in an exhibit, schedule, or amendment to this Agreement.
- b. Customer Area and Equipment. Customer may be granted a license pursuant to the terms of this Agreement to use the Customer Area to install, maintain, use, operate, monitor, repair and replace certain Customer Equipment. Customer is solely responsible for the maintenance and operation of Customer Equipment. Customer may not use the Customer Area for any purpose other than as disclosed to and permitted by Company and shall use the Customer Area subject to all of the then-applicable rules, regulations and access requirements imposed by Company from time to time. Customer acknowledges and agrees that it is not granted, and specifically disclaims, any possessory, leasehold, or other real property interest in the Customer Area, the Data Center, or any other portion of the building or premises in which the Data Center is located. Customer has no rights whatsoever under Company’s lease, sublease, or license for the Data Center. Customer accepts the Customer Area “as is,” “where is” and “with all faults.”
- c. Third-Party Software As Part of Services. As part of the Services, Customer may be allowed to use certain software and related documentation developed and owned by Company’s third-party software licensors. This software is neither sold nor distributed to Customer and Customer may use it solely as part of the Services and for no other purpose. Customer may not transfer such third-party software outside the Services or to any other person or entity. Company’s third-party software licensors are not responsible for providing any support in connection with the Services or the third-party software. Customer’s use of any such third-party software is governed by the third party software licensor’s terms, copies of which are available at Customer’s request. Customer covenants to comply with the terms of such licenses during the Term as if it were the licensee.

### 2. FEES AND BILLING

- a. Commencement of Monthly Billing. Customer’s payment obligations for Services shall begin on the Implementation Date, unless otherwise specified in a Sales Order and regardless of whether Customer has commenced use of the Services, procured the necessary services from third-party vendors required to operate the Services, or is otherwise prepared to operate the Services. Except for Customer’s initial payment, Customer will be invoiced for all non-recurring charges, and the monthly recurring charges for the then-current month (pro-rated) and the following month, including the initial setup fee.
- b. Charges. All fees and charges for the Services are exclusive of any sales or use taxes and other federal, state, municipal, or other governmental taxes or levies applicable to the sale or use of Services hereunder (“**Taxes**”) now in force or enacted in the future, all of which Customer will be responsible for and shall pay in full. Customer will be fully responsible for any charges, costs, expenses (other than those included in the Services), and third-party claims that may result from its use of, or access to, the Services, Data Center and the Equipment. Unless otherwise set forth in the applicable Sales Order billing and payment terms for Services shall be as set forth in this Section 2 (Fees and Billing). Company reserves the right to increase power charges, at any time, if the cost of power to Company is increased.
- c. Billing and Payment Terms. Monthly recurring fees are invoiced one (1) month in advance, and varying or usage-based Services fees are invoiced monthly in arrears. Customer shall pay all fees within thirty (30) calendar days after the date of each invoice. Any payment that is not paid in

accordance with this Section 2(c) (Billing and Payment Terms) will accrue interest at the rate of one and one-half percent (1½%) per month, or the highest rate allowed by applicable law. In addition to all of its other rights at law or in equity, if Customer is late in any payments hereunder Company may, upon written notice to Customer, require a Security Deposit or other assurances from Customer that Company deems necessary to secure Customer’s future payment obligations. Customer shall pay Company’s costs of collection of payments due under this Agreement, including collection, agency fees, reasonable attorneys’ fees and court costs.

- d. Disputed Invoices. All invoice dispute claims must be delivered in writing to Company within thirty (30) calendar days after the invoice date. Customer waives the right to dispute any invoices not disputed within the time frame set forth herein. All amounts payable by Customer under this Agreement shall be made without setoff or counterclaim and without deduction.
- e. Credit Approval; Security Deposit. Customer shall provide Company with credit information as requested, and delivery of Services is subject to credit approval by Company. If Customer is required to pay Company a security deposit (“**Security Deposit**”), Company may, without further notice to Customer and without prejudice to Company’s other remedies, apply part or all of the Security Deposit toward the cure of any Customer Default. In such event, Customer shall, within five (5) business days after written demand, pay Company an amount equal to the amount so applied to restore the Security Deposit to its original amount. Company may deposit the Security Deposit in an account with its own funds. Customer shall not be entitled to receive interest on the Security Deposit. Any part of the Security Deposit not used by Company shall be returned to Customer within sixty (60) calendar days after this Agreement expires or is terminated, after Company applies the Security Deposit to any outstanding amounts due and payable to Company.

### 3. RIGHTS AND OBLIGATIONS

- a. Access Control. Customer will provide the Access List to the Company of the Permitted Individuals. Company shall have the right to limit Customer’s access to the Data Center solely to the Permitted Individuals that are specified on the Access List. If Company receives conflicting Access Lists from different Customer representatives, Company shall comply with the last Access List that was provided by Customer. Customer shall release, indemnify, defend and hold Company harmless from and against any exposure, lawsuits, claims, demands, and liability for complying with the most recent Access List provided to Company by Customer.
- b. Acceptable Use. Customer’s use of the Services shall comply with the AUP, as such AUP may be modified by Company from time-to-time. As of and after the Effective Date, Customer shall have access to the AUP, by password, at Customer’s portal. Customer acknowledges that Company exercises no control whatsoever over the content of information passing through the Customer Equipment or Company Equipment utilized in connection with the Services, and that it is Customer’s sole responsibility to ensure that the information it transmits and receives complies with all applicable laws and regulations.
- c. Restrictions on Use. Customer shall not and shall not permit others, including its employees and agents, to reproduce, reverse engineer, decompile, disassemble, alter, translate, modify, adapt, market, resell, or sublease any Services, unless expressly permitted by this Agreement. Other than as specified in this Agreement, no license, title, or right is granted or transferred to Customer in or to any service marks, trademarks, copyrights, patents, trade secrets, or any other intellectual property rights of Company (“**Proprietary Information**”), and Customer shall not have any right to use any Proprietary Information, or any Company software or hardware. Customer may not, directly or indirectly, resell, or permit the resale of, cabinet space, the Customer Area, or any custom floor or equipment space within the Data Center, or roof space associated with the Data Center premises, without Company’s prior written consent which may be withheld in Company’s sole and exclusive discretion. Customer may not directly connect Equipment with equipment of a third-party within the Data Center or any other Company facility without the prior written consent of the Company. Company reserves the right to take any action necessary to prevent harm to the Services, Data Center, Company space, personnel, or Company’s property (and that of its affiliates, vendors and customers) or other persons.
- d. Solicitation of Company’s Customers and Employees. During the Term and thereafter in perpetuity, Customer agrees to not (i) target or solicit Company’s customers (to provide services similar to the Services) or employees or those of its subsidiaries, affiliates and joint ventures, as such, on behalf of itself or any third-party or (ii) commit any other act or assist others to commit any other act which might injure the business of Company. Customer agrees that it will not use or sell to others, lists

containing information obtained while receiving Services about any Company customers or employees. Nothing contained herein shall preclude Customer from providing services to any Company customer who (x) independently contacts Customer, (y) responds to a general solicitation of Customer, or (z) is contacted by Customer based on information independently derived by Customer.

- e. **Cooperation.** Customer shall reasonably, timely and in good faith cooperate with Company and Company's designees and agents to facilitate Company's performance of Services and shall provide Company with reasonable access to necessary information, including system and platform designs, network architecture, IP addresses, hardware and software specifications ("**Customer Information**"), to provide the Services described in this Agreement. It is essential to Company's performance hereunder that Company has reasonable access to Customer Information and Customer acknowledges and agrees that a degradation in the performance of the Services may result if Customer fails to provide the Customer Information. Customer shall (i) configure the Customer Equipment, and if applicable for the Services, any of Customer's Equipment not located in the Data Center, according to the technical specifications reasonably provided by Company, and (ii) maintain any necessary licenses associated with the Customer's Equipment. Company has no responsibility to obtain from Customer's licensees necessary licenses or consents to monitor or access Customer Equipment to perform the Services. If Customer modifies its Customer Information or Customer Equipment in a manner that necessitates a change to the Services, then Customer shall pay for the time and materials that Company incurs to troubleshoot, modify, and make repairs necessary to adapt to Customer modifications. Unless specified otherwise in the Sales Order, Customer is responsible for purchasing and maintaining all manufacturer warranties, updates, patches, upgrades and service plans reasonably required to ensure that the Customer Equipment and Customer Information remains in working order through the Term and Company shall not be responsible for any delay or failure by Customer to purchase or maintain such coverage.
- f. **Customer Security.** Customer agrees to use reasonable security precautions in connection with the use of the Services (including encrypting any information that is subject to legal or regulatory security requirements and that is transmitted to or from, or stored by Customer on, the services or storage devices used by Customer) and require its customers and end users to use appropriate security precautions. Company agrees to perform only the specific security services described in the Sales Order. Customer is otherwise responsible for the security of the Equipment. Customer shall be responsible for unauthorized use of the Services by any person, unless such unauthorized use results from Company's failure to perform its obligations hereunder.
- g. **Equipment.** Customer agrees to adhere to Company's reasonable quality standards for Customer Equipment. For cloud Services, Customer's servers will be virtual servers that run on physical servers which may host virtual servers for other Company customers. For dedicated hosting Services, Company has the right to relocate Equipment from the location described in the Sales Order or reconfigure the Equipment with prior written notice to Customer. Company will not arbitrarily or discriminatorily make such changes and will work in good faith to minimize disruption to the Services.
- h. **Customer's Failure to Comply.** Company shall be excused from compliance with the Service Level Agreement (as defined herein) and its other obligations associated with the Services under this Agreement to the extent that Customer's failure to comply with Customer's obligations in this Section 3 (Rights and Obligations) result in a degradation of the Services.
- i. **Damage to Company's Facilities.** Company shall repair, or cause to be repaired, at Customer's own cost, any and all damage to Company's facilities including Company's Data Center, buildings, grounds, equipment and furniture, caused by Customer or employees or agents of Customer. Customer shall notify Company immediately of any and all damages. All costs incurred by Company, as determined by Company, for such repairs shall be repaid by Customer by cash payment upon demand.

#### 4. CONFIDENTIALITY

- a. **Protection of Confidential Information.** Each party shall:
- (i) maintain the confidentiality of the Confidential Information of the other party;
- (ii) use the same care to prevent disclosure of the Confidential Information of the other party to third-parties as it employs to avoid disclosure, publication, or dissemination of its own information of a similar nature, but in no event less than a reasonable standard of care; and
- (iii) use the Confidential Information of the other party solely for the purpose of performing its obligations under this Agreement.
- b. **Disclosure of Confidential Information.** Each party may disclose Confidential Information of the other party to its employees, officers,

agents, subcontractors and independent contractors who have: (i) a need to know such Confidential Information in order to perform their duties; and (ii) a legal duty to protect the Confidential Information. A party receiving Confidential Information of the other party assumes full responsibility for the acts and omissions of its employees, officers, agents, subcontractors and independent contractors with respect to such Confidential Information.

- c. **Required Disclosures.** Either party may disclose Confidential Information to the extent disclosure is required by law or by order of a court or governmental agency.
- d. **Notification.** In the event of any disclosure or loss of Confidential Information, the receiving party shall notify the disclosing party as soon as possible.
- e. **Injunctive Relief.** Each party acknowledges that any breach of any provision of this Section 4 (Confidentiality) by either party, or its employees, officers, agents, subcontractors, or independent contractors, may cause immediate and irreparable injury to the other party, and in the event of such breach, the injured party shall be entitled to seek and obtain injunctive relief to the extent provided by a court of applicable jurisdiction, without bond or other security, and to any and all other remedies available at law or in equity.
- f. **Return of Confidential Information.** Unless it is expressly authorized by this Agreement to retain the other party's Confidential Information, a party shall promptly return or destroy, at the other party's option, the other party's Confidential Information, including materials prepared in whole or in part based on such Confidential Information to the extent it contains Confidential Information, and all copies thereof, at the other party's request.
- g. **Duration.** The obligations of confidentiality set forth herein shall take effect as of the Effective Date and continue in full force and effect throughout the Term and indefinitely or for so long as permitted under applicable law.

#### 5. WARRANTIES

- a. **Customer Warranties.** Customer represents and warrants that (i) Customer has the legal right and authority to place and use the Customer Equipment, (ii) Customer is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the Sales Order and any other documents on behalf of Customer is authorized to do so, and upon Customer signing a Sales Order, this Agreement is legally binding on Customer, (iv) Customer's and Customer's end users' use of the Services and of the Customer Equipment does not, as of the Implementation Date, and will not during the Term, violate applicable laws or regulations or infringe the rights of any third-parties, (v) Customer has read the AUP, and Customer and Customer's end users are in compliance with and shall continue to comply with the AUP during the Term, and will promptly disclose to Company, Customer's content and use for the Services promptly after requested by Company, (vi) Customer will use the Services only for Internet and data transmission, and (vii) all information provided to Company is accurate and complete.
- b. **Company Warranties.** Company represents and warrants that (i) Company has the legal right and authority to provide the Services, (ii) Company is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the Sales Order and other documents that comprise this Agreement on behalf of Company is authorized to do so, and (iv) the Services supplied to Customer under this Agreement do not, as of the Implementation Date, and will not during the Term, violate applicable laws or regulations. Company's service commitment and remedy for interruption of service are detailed at, and Customer has read, understood, and agrees to, the Service Level Agreement described in Section 10 (Service Level Agreement).
- c. **No Other Warranties.** CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY AND USE OF THE SERVICES THAT COULD RESULT IN THE LOSS OF CUSTOMER PRIVACY, CONFIDENTIAL INFORMATION, DATA AND PROPERTY. COMPANY DOES NOT AND CANNOT CONTROL THE FLOW OF INFORMATION TO OR FROM COMPANY'S NETWORK AND OTHER PORTIONS OF THE INTERNET. COMPANY HAS NO OBLIGATION TO PROVIDE SECURITY OR PROTECTION FOR CUSTOMER'S PRIVACY, CONFIDENTIAL INFORMATION, OR DATA OTHER THAN AS SPECIFICALLY STATED IN THIS AGREEMENT. EXCEPT FOR THE EXPRESS WARRANTIES SET OUT IN SECTION 5(b) (COMPANY WARRANTIES), THE DATA CENTER, EQUIPMENT AND SERVICES ARE PROVIDED ON AN "AS IS," "WHERE IS" AND "WITH ALL FAULTS" BASIS, AND CUSTOMER'S USE OF THE DATA CENTER, EQUIPMENT AND SERVICES IS AT ITS OWN RISK. COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES

ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. COMPANY DOES NOT WARRANT THAT THE SERVICES WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE. CUSTOMER IS SOLELY RESPONSIBLE FOR THE SUITABILITY OF THE SERVICES CHOSEN. NEITHER PARTY SHALL MAKE ANY REPRESENTATIONS OR WARRANTIES ON THE OTHER PARTY'S BEHALF. COMPANY MAKES NO WARRANTY CONCERNING COMPATIBILITY OF SOFTWARE OR EQUIPMENT OR ANY RESULTS TO BE ACHIEVED THEREFROM.

## 6. LIMITATION OF LIABILITY

- a. Disclaimer of Consequential Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES OR COSTS (INCLUDING LOST PROFITS, LOST REVENUES, LOST DATA, LOSS OF SECURITY, LOSS OF PRIVACY, COSTS OF RECREATING LOST DATA, COST OF PROCURING OR TRANSITIONING TO SUBSTITUTE SERVICES, OR LOSS OF USE) RESULTING FROM ANY CLAIM OR CAUSE OF ACTION BASED ON BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE (INCLUDING STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, EVEN IF EITHER OR BOTH OF THEM KNEW, OR SHOULD HAVE KNOWN, OF THE POSSIBILITY THEREOF.
- b. Cap on Direct Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON OR ENTITY FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO COMPANY FOR THE AFFECTED SERVICES THAT GIVES RISE TO THE CLAIM IN THE SIX (6) FULL CALENDAR MONTHS IMMEDIATELY PRECEDING THE MONTH IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURRED.
- c. Data Center. EACH REPRESENTATIVE AND ANY OTHER PERSONS VISITING THE DATA CENTER DOES SO AT SUCH PERSON'S OWN RISK AND COMPANY ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO SUCH PERSONS RESULTING FROM ANY CAUSE OTHER THAN COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT RESULTING IN PERSONAL INJURY TO SUCH PERSONS DURING SUCH A VISIT.
- d. Damage to Customer Equipment. COMPANY ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS RELATING TO, CUSTOMER'S BUSINESS RESULTING FROM ANY CAUSE WHATSOEVER. CERTAIN EQUIPMENT MAY BE DIRECTLY ACCESSIBLE BY OTHER CUSTOMERS. COMPANY ASSUMES NO LIABILITY FOR ANY DAMAGE TO, OR LOSS OF, ANY CUSTOMER EQUIPMENT OR TO OTHER DAMAGES CAUSED BY OR RELATED TO CUSTOMER'S USE OF THE SERVICES RESULTING FROM ANY CAUSE OTHER THAN COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. TO THE EXTENT COMPANY IS LIABLE FOR ANY DAMAGE TO, OR LOSS OF, CUSTOMER EQUIPMENT FOR ANY REASON, SUCH LIABILITY WILL BE LIMITED SOLELY TO THE THEN-CURRENT BOOK VALUE OF THE CUSTOMER'S EQUIPMENT SO DAMAGED. THE LIMITATIONS OF LIABILITY PROVIDED IN THIS AGREEMENT SHALL EXTEND TO THE BENEFIT OF COMPANY INDEMNIFIED PARTIES. EACH PARTY IS RESPONSIBLE FOR THE INSURING THE EQUIPMENT AND PROPERTY IT OWNS WITH COVERAGE CONSISTENT WITH INDUSTRY STANDARDS. NEITHER PARTY HAS ANY OBLIGATION TO INSURE THE EQUIPMENT OR PROPERTY OF THE OTHER.
- e. Unauthorized Access or Use. COMPANY SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY UNAUTHORIZED ACCESS OR USE, CORRUPTION, DELETION, DESTRUCTION, OR LOSS OF ANY DATA OR APPLICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DEFECTS OR DAMAGES TO EQUIPMENT, ANY DATA CENTER, OR SERVICES RESULTING FROM (I) CUSTOMER'S, CUSTOMER'S AGENTS', OR CUSTOMER'S EMPLOYEES' MISHANDLING, ABUSE, MISUSE, OR ACCIDENT, (II) FORCE MAJEURE, OR (III) CUSTOMER'S USE OR PROVISIONING OF CUSTOMER EQUIPMENT ELECTRICALLY OR MECHANICALLY INCOMPATIBLE WITH SERVICES OR OF INFERIOR QUALITY. UNDER NO CIRCUMSTANCES SHALL COMPANY BE RESPONSIBLE FOR ANY THIRD-PARTY EQUIPMENT OR THIRD-PARTY SOFTWARE OR DAMAGES THAT ARISE AS A RESULT OF DEFECTS OR ISSUES RELATED TO THE THIRD-PARTY EQUIPMENT OR SOFTWARE.

- f. Service Suspension. Company shall have no liability whatsoever for any damages that Customer may incur as a result of any Service suspension permitted in this Agreement or the Service Level Agreement.
- g. Company's Liability. At Company's option, Company may provide Customer with a credit for future services at the end of the Term equal to any Company liability that has arisen during the Term, in lieu of any required cash payment. At Company's option, Company may also offset any amounts Company owes to Customer against any amounts owed by Customer to Company.
- h. Statute of Limitations. No claim may be asserted by either party against the other party with respect to any event, act, or omission for which a claim accrued more than two (2) years prior to such claim being asserted.

## 7. INDEMNIFICATION

- a. General Indemnification. Each party (the "**Indemnifying Party**") shall indemnify, defend and hold the other party, including, in the case of Company, Company's landlord, and each party's affiliates, directors, shareholders, officers, agents, third-party vendors, licensors, lenders, independent contractors, employees, successors and assigns (each, an "**Indemnified Party**" or collectively, "**Indemnified Parties**") harmless from and against any and all claims, damages, costs, liabilities, losses and expenses (including reasonable attorneys' fees and out-of-pocket expenses) ("**Losses**") resulting from any claim, suit, action, demand, or proceeding (each, an "**Action**") brought by any third-party against the Indemnified Party (i) alleging or arising from the gross negligence or willful misconduct of the Indemnifying Party or its employees, agents, contractors, or invitees, in the performance or non-performance of its obligations hereunder or upon access to the Data Center, (ii) arising from any failure by the Indemnifying Party or its employees, agents, contractors, or invitees, to comply with the AUP or applicable law, and (iii) arising from or connected with any claims of ownership or superior rights to Customer Equipment or Company Equipment or other intellectual property by a third-party.
- b. Customer Indemnification. Customer shall indemnify, defend and hold Company and Company's Indemnified Parties harmless from and against any and all Losses resulting from or arising out of any Action brought by or against Company or Company's Indemnified Parties alleging (i) any damages arising from the Equipment, Customer's business or Customer's use of the Services or Customer content, or (ii) any damage or destruction to a Data Center or Company Equipment or the equipment of any other Company customer by Customer or its representatives or designees.
- c. Obligations. If any legal action covered by this Section 7 (Indemnification) is commenced against either party (i) the party seeking indemnification shall provide prompt written notice to the Indemnifying Party upon receipt of written notice of an Action for which the Indemnified Party seeks to be indemnified, (ii) the Indemnified Party shall permit the Indemnifying Party to control the defense of such Action and any related settlement discussions, provided that the Indemnified Party may participate in such defense, at its own expense, with counsel of its own choosing, and (iii) the Indemnified Party shall reasonably cooperate with the Indemnifying Party, at the Indemnifying Party's request and expense. No settlement of a claim that involves a remedy other than the payment of money from the Indemnified Party shall be entered into without the consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

## 8. TERM AND TERMINATION

- a. Term. This Agreement shall remain in effect for so long as any Sales Order is in effect. The term of a Sales Order begins on the Implementation Date described in the Sales Order and shall continue during the Initial Term set forth on the Sales Order (the "**Initial Term**"), unless earlier terminated as provided herein. The term of the Sales Order shall automatically renew for successive terms of equivalent length to the Initial Term (each a "**Renewal Term**"), unless notice of non-renewal is provided to Company no fewer than ninety (90) calendar days prior to the expiration of the then-current Term. For any Renewal Term, Company may increase the fees by providing notice to Customer at least thirty (30) calendar days prior to the commencement of such Renewal Term. Any such increase shall not exceed the greater of: (i) five percent (5%) of the fees charged during the preceding Term; or (ii) an amount equal to the percentage change in the Consumer Price Index ("**CPI**") during the preceding calendar year. For purposes of the foregoing, the CPI shall be the index compiled by the United States Department of Labor's Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U) having a base of 100 in 1982-1984, using that portion of the index that appears under the caption "Other Goods and Services." (For reference, the CPI is currently posted on the website of the Bureau of Labor Statistics at [www.bls.gov](http://www.bls.gov)). The percentage change in the CPI shall be calculated by comparing the annual CPI figures and expressing the increase in the CPI as a percentage. If the CPI is no longer published, or the CPI currently published is materially changed, Company and Customer



will negotiate, in good faith, revisions to this Section to reflect and account for such changes in the CPI.

- b. **Removal of Customer's Equipment.** Subject to Section 9 (Default and Remedies), immediately upon expiration of the Term or promptly upon earlier termination of this Agreement for any reason, Customer shall remove all of the Customer Equipment from the Data Center. Upon termination or expiration of this Agreement for any reason, Company shall have the option to store Customer Equipment and charge Customer storage costs or to dispose of the Customer Equipment as set forth in Section 9 (Default and Remedies) herein. Upon the removal of Customer Equipment, Customer shall ensure that the Customer Area is in the same condition as when Customer first occupied the space, normal wear and tear excepted. Customer shall promptly reimburse Company for the cost of all repairs required to restore the Customer Area to its original condition.
- c. **Cancellation and Renewal Notice.** To avoid confusion, any form of notice by Customer other than (i) for early termination not associated with a Company Default, cancellation notice as set forth on [www.hostedsolutions.com/legal/cancel.php](http://www.hostedsolutions.com/legal/cancel.php), or (ii) for nonrenewal at the end of a Term, notice of non-automatic renewal of the Term as set forth on [www.hostedsolutions.com/legal/nonautorenewal.php](http://www.hostedsolutions.com/legal/nonautorenewal.php), shall be ineffective as evidence of notice of cancellation or non-renewal of a Sales Order.
- d. **Extended Term for Holdovers.** Customer's failure to remove Customer Equipment at the end of the Term after notifying Company of non-renewal or cancellation of the Term as required in Section 8(a) (Term), shall result in all applicable Sales Orders automatically renewing for successive extended terms of thirty (30) calendar days each (each an "Extended Term"), and all monthly recurring charges shall be increased by thirty percent (30%) during the Extended Term, until such time as the Customer Equipment is removed from the Data Center.
- e. **Liquidated Damages.** Customer acknowledges that the amount of the monthly recurring fee for Services is based on Customer's agreement to pay the monthly recurring fees for the entire Term of each Sales Order. Customer acknowledges that Company's damages from any termination of a Sales Order prior to the end of the Term is difficult to ascertain. For that reason, notwithstanding any termination of any Sales Order, Company and Customer acknowledge and agree that upon any early termination of a Sales Order (including termination by the Company associated with a Customer Default), Customer shall pay one hundred percent (100%) of the remaining monthly recurring charges and any charges due and payable under any applicable Sales Orders that would otherwise have been payable for the remainder of the then-current Term. Customer also agrees to pay one hundred percent (100%) of any third-party termination or cancellation charges that Company incurs as a result of Customer's early termination of any Sales Order. Both parties acknowledge and agree that this provision establishes liquidated damages and is not intended as a penalty. Other than as set forth herein, this liquidated damages provision does not waive or alter any remedies available to Company under this Agreement for Customer's Default or early termination of this Agreement or any Sales Order.

## 9. DEFAULT AND REMEDIES.

If a party commits a Default, the non-defaulting party will be entitled to exercise any one or more of the following remedies, as applicable, then or at any time thereafter: (a) to exercise any remedy for such Default set forth elsewhere in this Agreement; or (b) to immediately terminate this Agreement or any Sales Orders. In the event of a Customer Default, in addition to and without waiving any other remedies for Default available to Company hereunder, Company may, without liability and without notice beyond the initial notice required for the Customer Default (i) suspend or discontinue Services or Company's performance under this Agreement, (ii) collect liquidated damages as set forth in Section 9 (Default and Remedies), (iii) treat as abandoned, dispose of, or retain and use, free of any rights or claims thereto from Customer or anyone claiming by, through, or under Customer, any or all of the Customer Equipment after Customer has been notified of the Customer Default and failed to promptly cure the Customer Default, and then only after twenty (20) calendar days prior written notice to Customer, and (iv) restrict Customer's physical and electronic access to the Data Center and Equipment except for the limited purpose of removal of the Customer Equipment after payment in full of any and all amounts owed to Company. In the event of suspension or discontinuance of Services due to a Customer Default, Customer shall continue to be liable for all fees and charges for any Services that are still in use by Customer and, in addition to all other fees due and payable, agrees to pay Company's then-current reinstallation fee. Notwithstanding the foregoing, all of Customer's rights with respect to the Services shall be terminated during any period of suspension following a Customer Default. Each remedy of the non-defaulting party as provided for in this Section 9 (Default and Remedies), or now or hereafter existing at law or in equity, or by statute or otherwise, shall be cumulative and concurrent and shall be in addition to every other remedy (A) provided for in this Agreement, and (B) except as otherwise limited in this

Agreement, now or hereafter existing at law or in equity, or by statute or otherwise, and the exercise or beginning of the exercise by the non-defaulting party of any one or more of such remedies shall not preclude the simultaneous or later exercise by the non-defaulting party of any or all such other remedies.

## 10. SERVICE LEVEL AGREEMENT

The Company's Service Level Agreement is defined in the Sales Order and is incorporated herein by reference ("**Service Level Agreement**"). The performance credits contained in the Service Level Agreement are Customer's sole and exclusive remedy for Company's provision of, or failure to provide or install, Services to Customer. Notwithstanding the foregoing or the contents of the Service Level Agreement, Company shall have no obligation to compensate Customer under any Service Level Agreement in the event of any Customer Default or if Customer is not current in its payment obligations under this Agreement. Company may amend the Service Level Agreement periodically provided that (i) Customer is informed in advance of any changes, and (ii) the amendment does not materially alter the provision of Services.

## 11. ADDITIONAL PROVISIONS

- a. **Assignment.** Customer shall not assign this Agreement, in whole or in part, without Company's prior written consent, which will not be unreasonably withheld. Any assignment in violation of the foregoing restriction will be void. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective, permitted successors and assigns.
- b. **Limited Background Checks.** Customer agrees that Company has the right to require Customer and Customer's personnel to submit to, and Customer hereby authorizes Company to conduct a reference, fingerprint, or other criminal background investigation, provided that, nothing in this Section shall be construed as an obligation or duty to perform such an investigation. Customer also acknowledges and agrees that at Company's request, Customer shall require the same of any of its employees or contractors who shall perform any services to the Customer Equipment onsite at the Data Center or any other Company facility.
- c. **Third-Party Beneficiaries.** This Agreement is for the sole and exclusive benefit of the parties hereto, and except as expressly provided herein, nothing in this Agreement shall be construed to give rights to any other party.
- d. **Independent Contractors.** In entering this Agreement, each party does so as an independent contractor and not as an agent, partner, or joint venturer of the other party. Except as may be expressly permitted hereunder, neither party has any right or authority, nor shall such party hold itself out as having any right or authority, to assume, create, or enter into any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon, the other party.
- e. **Waiver.** Failure of either party to enforce any of its rights hereunder will not be deemed to constitute a waiver of its future enforcement of such rights or any other rights.
- f. **Severability.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable under present or future laws, such provisions will be struck from the Agreement or amended, but only to the extent of their invalidity, illegality, or unenforceability. In such an event, the parties shall remain legally bound by the remaining terms of this Agreement, and this Agreement will be deemed reformed in a manner as consistent as reasonably possible with the original intent of the parties as expressed herein.
- g. **Force Majeure.** Either party will be excused from any delay or failure in performance hereunder, other than the payment of money, caused by reason of any occurrence or contingency beyond its reasonable control, including acts of God, terrorism, significant failure of the Internet, significant failure of a part of the power grid, earthquake, labor disputes and strikes, riots, war, governmental acts or requirements and other events of a magnitude or type for which precautions are not generally taken in the industry.
- h. **Governing Law and Jurisdiction.** This Agreement shall be deemed to be executed and entered into in the State of North Carolina. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina, without regard to conflict or choice of law principles. Company and Customer hereby consent and submit to the personal jurisdiction of the state and federal courts in North Carolina for any actions arising from, related to, or in any way connected with this Agreement.
- i. **Entire Agreement.** This Agreement expresses the complete and final understanding of the parties with respect to the subject matter hereof, and supersedes all prior communications between the parties, whether written or oral with respect to the subject matter hereof. The parties acknowledge and agree that the terms and provisions of any Customer purchase order or other Customer ordering document are null and void and of no effect, regardless of whether signed by the parties.
- j. **Attachments Incorporated.** The Sales Orders, AUP, Service Level Agreement and any executed addendum or modification to this Agreement

shall be attached hereto and incorporated and made a part hereof as if fully set forth herein. In the event of any conflict or inconsistency between this Agreement and any exhibit or attachment to this Agreement, the documents will govern in the following order and priority: (i) Sales Order; (ii) Service Level Agreement; (iii) any addendum to this Agreement; (iv) this Agreement; and (v) the AUP.

- k. Notices. All notices required or permitted hereunder shall be in writing, delivered personally, by facsimile, by electronic mail, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx) at the parties respective addresses set forth in the Sales Order. All notices shall be deemed effective upon personal delivery or confirmation of delivery of electronic mail; or on the business day following receipt by telephonic facsimile; or when received if sent by certified or registered mail or by overnight courier.
- l. Survival. The rights, duties and obligations of the parties and the provisions of this Agreement which by their nature are intended to survive the Term, termination, cancellation, completion, or expiration of this Agreement shall survive and continue as valid and enforceable rights, duties and obligations, including the rights, duties and obligations set forth in the following Sections: 2 (Fees and Billing), 3 (Rights and Obligations), 4 (Confidentiality), 6 (Limitation of Liability), 7 (Indemnification), 8(b) (Removal of Customer's Equipment), 8(d) (Extended Term for Holdovers), 8(e) (Liquidated Damages), 9 (Default and Remedies) and 11 (Additional Provisions) and Exhibit A (Definitions).
- m. Amendment. This Agreement may be amended in a writing signed by authorized representatives of both parties. This Agreement may also be

amended by Company at any time by providing written notice to Customer in accordance with Section 11(k) (Notices) or by including modifications in a Sales Order. Within five (5) calendar days after receipt of such notice, Customer may object with written notice pursuant to Section 11(k) (Notices) to the proposed amendment to the Agreement, at which point the parties will negotiate in good faith concerning such proposed amendment. If Customer fails to object to any such amendment within such five (5) calendar day period, such amendment shall take effect immediately upon the expiration of such five (5) calendar day period.

- n. Publicity. Customer agrees that Company may publicly disclose that Company is providing Services to Customer and may include Customer's name in promotional materials, including press releases.
- o. Construction. The Section headings in this Agreement are for convenience of reference only, will not be deemed to be a part of this Agreement and will not be referred to in connection with the construction or interpretation of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."
- p. Remedy. Except as provided otherwise herein, the rights and remedies of the parties will be cumulative (and not alternative). In the event of any litigation between the parties relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, expert witness fees and court costs from the other party.

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## EXHIBIT A

### DEFINITIONS

In addition to terms defined throughout this Agreement and in each Sales Order, the following terms shall have the following meanings:

- a. **“Acceptable Use Policy”** or **“AUP”** is defined in the Sales Order and is hereby incorporated into this Agreement by reference.
- b. **“Access List”** means the written list of Permitted Individuals provided by Customer to Company.
- c. **“Company Default”** means (i) Company fails to perform a material obligation under this Agreement after receiving fifteen (15) calendar days advance written notice from Customer of such failure, (ii) Company’s insolvency or liquidation as a result of which Company ceases to do business, or (iii) the material breach of any representation or warranty made by Company in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Company Default unless such breach is not cured by Company within fifteen (15) calendar days after receiving written notice from Customer of such breach. A violation of the Service Level Agreement is not a breach of a representation or warranty or a Company Default hereunder.
- d. **“Confidential Information”** means any information, whether oral, written, electronic, or in any other format, and whether technical or business in nature, information regarding a party’s products, services, marks, software, intellectual property, composition, packaging, distribution methods, manufacturing processes, equipment, pricing, marketing and business plans, other information not generally known to the public and any other information received under circumstances reasonably interpreted as imposing an obligation of confidentiality; provided that, if in writing, “Confidential Information” shall be specifically and obviously marked as “confidential” by the disclosing party at the time of disclosure, or if disclosed orally, shall be designated as confidential and thereafter identified as confidential by written notice to the receiving party within a reasonable time; further provided that, “Confidential Information” shall not include any of such information which: (i) was publicly available at the time of disclosure by the disclosing party; (ii) became publicly available after disclosure through no fault of the receiving party; (iii) was known to the receiving party prior to disclosure by the disclosing party; or (iv) was rightfully acquired by the receiving party after disclosure by the disclosing party from a third-party who was lawfully in possession of the information and was under no legal duty to the disclosing party to maintain the confidentiality of the information. The parties acknowledge that notwithstanding anything herein to the contrary, the following will be deemed to be “Confidential Information”: all information regarding this Agreement or any Sales Order or Service Level Agreement, Company’s products or business, Company’s physical security systems, specialized recovery equipment, techniques, audit and security reports, server configuration designs, Data Center designs, customer lists or names of customers and Proprietary Information.
- e. **“Company Equipment”** means all Company owned, leased, or developed hardware, software, equipment, machinery, tools and devices (i) located in any Data Center, except for Customer Equipment, or (ii) located on Customer’s premises to provide Services hereunder, and as may be more fully described in any Sales Order, this Agreement, or amendments thereto and hereto.
- f. **“Customer Area”** means the locations within a Data Center that Company designates for placement of Customer Equipment and Company Equipment, as applicable.
- g. **“Customer Default”** means (i) Customer fails to pay, when due, any fees or charges owed to Company under this Agreement, provided that the first such nonpayment or late payment in any calendar year shall not be a Customer Default unless Customer fails to pay such amount within three (3) business days after written notice from Company of such nonpayment or late payment; (ii) Customer fails to promptly pay (or repay) any or all of a Security Deposit and does not cure such failure within five (5) business days after written notice thereof; (iii) the material breach of any representation or warranty made by Customer in this Agreement, except to the extent such breach is susceptible to cure, in which case there shall be no Customer Default unless such breach is not cured by Customer within fifteen (15) calendar days after receiving written notice from Company of such breach; (iv) Customer fails to comply with any material obligations under this Agreement (other than payment or security deposit obligations) after receiving fifteen (15) calendar days advance written notice from Company of such failure; (v) Customer’s insolvency or liquidation as a result of which Customer ceases to do business or if Company has a reasonably held belief that Customer may be unable to pay its debts as they become due; (vi) Customer’s filing for bankruptcy, reorganization, or failure to discharge an involuntary bankruptcy petition within sixty (60) calendar days; or (vii) there occurs an event (including an attack on or unauthorized access to Customer Equipment or data by a third-party) for which Company reasonably believes that the suspension of Services is necessary to protect Company or Company’s other customers, in which case Company will provide advance notice of twelve (12) hours unless Company determines in its reasonable judgment that shorter or contemporaneous notice is necessary to protect Company or its other customers from imminent and significant operational or security risk. For purposes of this Agreement, any violation by Customer of the AUP shall be considered a failure to comply with a material obligation.
- h. **“Customer Equipment”** means equipment owned or controlled by Customer associated with a Sales Order, and any equipment, tools, devices, supplies and materials brought into the Data Center by Customer.
- i. **“Data Center”** means a Company data center facility or facilities.
- j. **“Default”** means either a Company Default or a Customer Default as required by the context.
- k. **“Equipment”** means, collectively, Company Equipment and Customer Equipment.
- l. **“File(s)”** means files and file systems designated by Customer.
- m. **“Implementation Date”** means the later of (i) the date specified as the implementation date on the Sales Order, if any or (ii) the date on which the applicable Service is ready for Customer’s use.
- n. **“Permitted Individuals”** means those people who are designated by Customer as being authorized to have access to the Customer Area.
- o. **“Sales Order”** means any agreement or document that itemizes the Services and charges for such Services purchased by Customer. Customer acknowledges and agrees that this Agreement shall be attached to and incorporated into each Sales Order, and by agreeing to a Sales Order Customer is agreeing to the terms and conditions of this Agreement.
- p. **“Stored Files”** means File retention and transaction logs stored on media.
- q. **“Term”** means, collectively, the Initial Term, each Renewal Term and each Extended Term.