

## MASTER SERVICE AGREEMENT

**CAREFULLY READ THESE TERMS AND CONDITIONS, AS THEY FORM A LEGALLY BINDING AGREEMENT BETWEEN YOU AND COMPANY. ONLY AN AUTHORIZED REPRESENTATIVE OF YOUR COMPANY MAY EXECUTE THIS AGREEMENT. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU DO NOT HAVE PERMISSION TO USE COMPANY SERVICES AND DO NOT HAVE ANY OTHER OF THE RIGHTS SET FORTH BELOW.**

This Company's Master Service Agreement (this "MSA") is entered into between Company ("Company") and customer ("You"). You are not required to purchase voice services from Company nor from any of its affiliates. If You elect to purchase voice services from an Company affiliate, please be advised of the following: (i) voice services will be provided through Company's affiliate; (ii) You will be required to sign separate Schedule(s) and to agree to related documents provided by Company's affiliate; and (iii) the terms and conditions of this MSA will apply to the services you receive from Company's affiliate as well as the terms and conditions in Company's affiliate's Schedules and related documents. If You instead choose to purchase voice services through an unrelated third party, this MSA will not govern the provision of any services provided by such third party, such third-party-provided voice services are used at Your sole risk and pursuant to the terms and conditions you enter into with such third party.

Any of the following actions constitutes Your agreement, without limitation or qualification, to be bound by, and to comply with, the terms of this Agreement: (i) registering for Service on Company's web page and selecting "I Accept" as part of the registration process, or (ii) ordering Service from Company's personnel and providing them with Your credit card number and billing information.

You agree to be bound by all of the terms and conditions of (i) this MSA and (ii) the following:

- Company's Privacy Policy (the "Privacy Policy");
- Company's product specific Service Level Agreement (the "SLA" or "Service Level Agreement");
- Company's Acceptable Use Policy ("AUP"); and
- Company's product specific Schedule ("Schedule"), (collectively, this "Agreement")

Each of the foregoing are expressly incorporated herein by reference and may updated from time-to-time by Company. Current copies of the MSA, Privacy Policy, SLA, AUP, and Schedules are located at <http://serverdata.net/legal>.

**DEFINITIONS.** For the purposes of this MSA, the following definitions apply:

"Access Information" means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to, Your Account number, login names, passwords, credit card or other financial information, security questions and their respective answers, and any other similar information. For the avoidance of doubt, Your Access Information will include any similar information for each of Your Users.

"Account" means the account created with Company in connection with this Agreement that relates to Your purchase or subscription to and use of Services by You and Your Users.

"Applicable Law" means any applicable foreign, federal, state or other laws, rules, regulations or interpretations of relevant Governmental Authorities or self-regulatory bodies.

"Beta Offerings" means any portion of the Services offered on a "beta" basis, as designated by Company, including but not limited to, products, plans, services, and platforms.

"Data" means all data submitted by Your Users to Company in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, software, Account Information and Account-related settings.

"Governmental Authority" means a government, regulatory organization, self-regulatory organization, court of competent jurisdiction or similar body.

"Company Parties" means Company's affiliates (including parents and subsidiaries), vendors, licensors and partners, and its officers, employees, agents and representatives.

"PHI" means Protected Health Information which is individually identifiable health information.

"Services" means Company's hosting and other services, software and products, as such services, software and products that are offered by Company from time-to-time in its discretion and subscribed to, purchased by, or used by You as set forth in a Schedule.

"Third-Party Service" means any service or product offered by a party that is not Company.

"User" means any of Your employees, consultants or independent contractors to whom You grant permission to access the Services in accordance with Company's entitlements procedures and this Agreement.

“You” and “Your” means the individual or Entity on whose behalf this Agreement is accepted.

**1. SCOPE; ACCESS; SECURITY.**

1.1. Access to Services. Subject to and in accordance with the terms of this Agreement, including any Schedules, Company grants You a non-exclusive, non-sublicensable, nontransferable, non-assignable, revocable license for the term of this Agreement to access and use the Services. Services may only be used by Your Users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement, including any Schedules, and with all applicable Company procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your Users with respect to the Services will be deemed to be actions by You and that any breach by any of Your Users of the terms of this Agreement, including any Schedule, will be deemed to be a breach by You.

1.2. Account Information and Ownership. You agree to maintain accurate Account information by providing updates to Company promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by Company to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any Company account or any portion thereof, including Your Account, Company will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, Company may immediately suspend, alter or terminate any relevant account, including Your Account, or any portion thereof. You will reimburse Company for any legal fees and other fees incurred with respect to any dispute regarding control or ownership of Your Account or Your Data or the same of another Company customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with Company, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.) and (ii) Company may request any documentation it requires to establish ownership and rights to Your Account and any related Data; provided that any User with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

1.3. Account Security and Activity. You acknowledge and agree that You are solely

responsible for (i) maintaining the confidentiality and security of Your Access Information, and (ii) all activities that occur in connection with Your Account, whether initiated by You, by others on Your behalf or by any other means. You will notify Company immediately of any unauthorized use of Your Account, Access Information or any other actual or potential breach of security. You acknowledge and agree that Company will not be liable for any loss that You may incur as a result of any party using Your Access Information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by Company, any Company Party, or another party due to any party using Your Access Information. Company strongly recommends that You keep Your Access Information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. **Company specifically disclaims all liability for any activity in Your Account, whether authorized by You or not.**

1.4. Failure of a Line Test. With respect to voice services, if a specific site fails a “VOIP line test” as part of the installation process, and You are unable or unwilling to upgrade the data circuit, router, switch, or faulty component responsible for the failure, Company reserves the right to cancel the order for such site.

**2. TERM AND TERMINATION.**

2.1. Term. This Agreement shall be effective from Your acceptance of this Agreement and shall continue until the expiration or termination of all Schedules (“Agreement Term”). The term of each Schedule (“Schedule Term”) shall be either the Initial Term or Renewal Term as defined herein.

(a) Monthly Plan Schedule Term. For a Monthly Plan with Company, the Initial Term of a Schedule is the period from the date of Your acceptance of the Schedule through the remainder of that calendar month. A Renewal Term for a Monthly Plan of a Schedule is defined as one (1) calendar month beginning at the end of the Initial Term and each subsequent calendar month thereafter.

(b) Annual Plan Agreement Term. For an Annual Plan with Company, the Initial Term of the Schedule is the period from the date of Your acceptance of the Schedule through the remainder of that calendar month and continuing through the next twelve (12) calendar months (for example, an Annual Plan that begins April 14th will continue until April 30th of the following year), unless the parties have agreed in writing to a longer term. A Renewal Term for an Annual Plan of a Schedule is defined as the twelve-month period beginning at the end of the Initial Term and each subsequent twelve-month period thereafter.

(c) Automatic Renewal. Each Schedule will renew automatically at the end of the then-current Schedule Term for a Renewal Term unless terminated in accordance with this Agreement by either You or Company.

2.2. Termination by You.

(a) Monthly Plan. For a Monthly Plan, You may terminate any Schedule for any reason by following the termination procedure located within the Account section of the administrative control panel prior to the beginning of any Renewal Term. If You terminate a Monthly Plan prior to the end of the then-current Term, Company will not be required to refund to You any fees already paid.

(b) Annual Plan. For an Annual Plan, You may terminate any Schedule for any reason by following the termination procedure located within the Account section of the administrative control panel at any time. If such a termination is effective prior to the end of the then-current Term, You will incur a fee that is the lesser of (a) two (2) months of the Minimum Package Fee from the end of the calendar month following the requested termination date, as defined on Your then-current plan; and (b) the Minimum Package Fee for the remainder of the then-current Term. The "Minimum Package Fee" is the monthly charge for Your base package excluding any additional items that You have purchased along with such base package.

(c) Refunds/Fees for Termination by You. Fees for non-recurring Services and set up fees will not be refunded. Any fees previously waived, discounts, or rebates applied may be reinstated if You terminate the account during the Schedule Term or if You breach this Agreement, including any Schedule.

2.3. Termination by Company.

(a) 15-Day Termination. Company may terminate this Agreement, including any Schedule, for any reason by providing fifteen (15) calendar days' notice. If Company terminates this Agreement pursuant to this Section 2.3(a), then all Schedules will terminate at the end of the fifteen (15) day notice period. If Company terminates any Schedule pursuant to this Section 2.3(a), then (i) for a Schedule with a Monthly Plan, if the effective termination date occurs prior to the end of the then-current Schedule Term, Company will refund (or refrain from charging You) the pro rata monthly fees for the month in which Services terminate and (ii) for a Schedule with an Annual Plan, Company will refund (or refrain from charging You) the monthly fees for the month in which Services terminate. For Schedules with either a Monthly Plan or an Annual Plan, if Company terminates this Agreement, including any Schedule, pursuant to this Section 2.3(a), Company will not charge You monthly fees for any month following the month in which Company terminates this Agreement, including any Schedule.

(b) Immediate Termination. Company may terminate this Agreement, including any Schedule, (or suspend Your Account) immediately and without prior notice for any of the following reasons:

(i) Any material breach of this Agreement, including any Schedule, by You, as determined by Company in its sole discretion, including, but not limited to, failure to make any payment when due, violation of the AUP or any other Company policy or procedure applicable to the Services as notified to You from time to time, which remains uncured beyond thirty (30) days' notice by Company; and

(ii) If Your use of the Services results in, or is the subject of, actual or potential legal action or threatened legal action, against Company or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit.

(c) Termination or Suspension of Users. In lieu of terminating or suspending Your entire Account, Company may suspend Your Account or terminate or suspend individual Users.

(d) No Refunds; Further Payment Due. If Company terminates this Agreement, including any Schedule, pursuant to Section 2.3(b), (i) Company will not refund to You any paid fees and (ii) You will be liable for any payment that would have been due had You terminated pursuant to section 2.2.

2.4. Following Termination. Termination will not cancel or waive any fees owed to Company or incurred prior to or upon termination. You agree that Company may charge such unpaid balance to Your Account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by Company in connection with the Services. All of Your Data may be irrevocably deleted within fourteen (14) calendar days of termination, including but not limited to, databases, contacts, calendars, e-mail, website content, and any Data hosted by Company. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. Company will not be responsible or otherwise liable for any loss of Your Data or any damages arising from the deletion of Your Data following termination of the Services.

**3. FEES, BILLING, TAXES, CHARGES.**

3.1. Fees. The fees initially charged upon ordering any Service will be effective for the Initial Term and each Renewal Term of a Schedule, provided, that Company will have the right to increase these fees at any time upon thirty (30) calendar days' notice to You. If You do not agree with such fee

increase, You will have the right to terminate the applicable Schedule immediately upon notice received within thirty (30) calendar days of date of notice of the fee increase. All payments made to Company shall be in US Dollars.

3.2. Billing and Payment Arrangements.

Company will bill You monthly for all established and recurring fees, and any applicable one-time fees in that month, including but not limited to interest, check paying program fees and returned check fees. Pro rata billing may occur throughout the course of a billing cycle for feature add-ons that You enable on your Account during any given month.

3.3. Payment by Automated Means.

(a) You may view and print an invoice for Your Account using the administrative control panel made available to You. On or about the first (1<sup>st</sup>) day of each month, Company will apply the current monthly charges to Your automated payment method, the relevant information of which You entered on the billing information page in the administrative control panel. Payment by automated means includes any form of automated payment accepted by Company from time-to-time, including credit card, debit card, direct debit or other means.

(b) You must provide Company with valid automated payment information as a condition to receive or use the Services. You are responsible for and agree to update Company with any changes to Your billing and/or automated payment information (e.g. new or updated credit card, credit card expiration date or other payment account information). **By providing Company with the automated payment information, You authorize Company to charge Your automated payment account for any amounts arising from or relating to the Services without further authorization from You.** It is Your responsibility to keep Your automated payment information up-to-date. If charges to Your automated payment account fail, Company will email a warning to Your Account billing contacts.

(c) If Company is unable to successfully process Your payment by automated means by the seventh (7<sup>th</sup>) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Company may suspend or terminate Your Account in accordance with Section 2.3(b)(i) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater of (i) interest calculated at the lesser of (x) eighteen percent (18%) and (y) the maximum amount permitted by law and (ii) twenty-five dollars (\$25). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all

collection costs incurred by Company (including, without limitation, reasonable attorneys' fees).

3.4. Payment by Check.

(a) If You apply for and are accepted into Company's check paying program, Company will issue You an invoice within the first five (5) calendar days of each calendar month. Each invoice will include an invoice processing fee of twenty-five dollars (\$25). Payment by check must be received by the fifteenth (15<sup>th</sup>) calendar day of each month. Acceptance into and continued participation in Company's check paying program will be at Company's sole discretion.

(b) Should Your check not be honored, a check fee of the lesser of (i) fifty dollars (\$50) and (ii) the maximum amount permitted by law, will be charged to Your Account. In addition, Company may require You to pay by cashier's check or money order.

(c) If Company does not receive payment by the fifteenth (15<sup>th</sup>) calendar day of the month for which the payment is due, Your payment will be considered late and not paid in full. Company may suspend or terminate Your Account in accordance with Section 2.3(b)(i) for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater of (i) interest calculated at the lesser of (x) eighteen percent (18%) and (y) the maximum amount permitted by law and (ii) twenty-five dollars (\$25). Such interest will accrue daily from the due date until the date of actual payment of the overdue amount, whether before or after judgment. You will pay the interest immediately on demand. You will pay all collection costs incurred by Company (including, without limitation, reasonable attorneys' fees).

3.5. Fees for Excess Use.

You agree to monitor and maintain Your Accounts within all Company-specified limits and in a manner that does not disrupt the activities of Company and other Company customers and users. If Your usage exceeds the limits for Your Account or may disrupt the activities of other Company customers, You agree that Company may immediately, in its sole discretion, (i) charge You for such excess usage via Your automated payment account, or by invoice if You have been accepted into Company's check paying program, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend Your Account or terminate Your Account upon notice To You. Usage and associated charges for excess usage will be determined based solely upon Company's collected usage information. Unused monthly allotments will not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

3.6. Taxes. In addition to Company's charges, You will be liable for all taxes, governmental fees and assessments related to fees and charges charged to You under this Agreement or otherwise in respect of Your use of the Services.

3.7. Fees for Additional Services. You agree to pay Company's then-current rates and expenses, including the cost of Company's vendors, for any requests related to information retrieval, subpoenas, consulting and advisory services, or similar work.

3.8. Bill Disputes. You will notify Company of any dispute relating to charges billed to Your Account by submitting a Billing Dispute Notification Form (available through Company's customer service) to Company within thirty (30) days of the date the disputed charges appeared on Your Account. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not disputed by written notice as required above.

3.9. Electronic Billing and Documentation. All billing and other documentation regarding the Services may be provided electronically ("Electronic Documentation"). You acknowledge and agree that You are able to view all Electronic Documentation and consent to receiving Electronic Documentation and decline to receive hard copies of any such materials.

**4. USE OF THE SERVICES.**

4.1. Internal Use. You will use the Services for Your own internal business, non-residential and non-personal use. You acknowledge and agree that You will not allow any third party, including Your vendors and service providers, to access or use the Services unless such third party is allowed access for the purpose of providing authorized customer support services.

4.2. Restricted Activities. You will not (A) use any Service for any purpose outside the Service's intended scope, features, and function set, (B) use any Service for third-party training, (C) use any Service as an application service provider or service bureau, unless You have entered into a separate written agreement with Company to provide such services, (D) use any Service for timesharing or rental, (E) use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties, (F) except with respect to Your Data, duplicate any portion of the Services or display, distribute, publish, or otherwise disclose any Service; (G) use any of the Services to interface with any other service or application that is outside the scope of intended use; (H) decompile, disassemble, or otherwise reverse engineer any portion of the Services; (I) make any modification or interface to any Service that is not

specifically authorized by Company without prior written consent of Company; (J) resell or sublicense any portion of the Services, and any purported resale or sublicense will be void; and (K) store, maintain, or use on or through the Service any "Protected Health Information" or "PHI" as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder, as each may be amended from time to time, unless a formal Business Associate Agreement has been executed between Company and You. You may not access the Services for purposes of monitoring their performance, availability, or functionality, or for any other benchmarking or competitive purposes, without Company's prior written consent. You may not, without Company's prior written consent, access the Services if You are a direct competitor of Company.

4.3. Applicable Law. You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services in contravention of, and will comply with, any Applicable Law. You represent that You and Your Users are not named on any Government Authority list of persons or entities prohibited from receiving exports, and (ii) You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction. You acknowledge and agree that that it is Your sole responsibility to use the Services in a lawful manner.

**5. YOUR DATA; FEEDBACK.**

5.1. Submission of Your Data. Any Data You provide to Company in connection with the Services must comply with the AUP. Any Data You provide to Company in connection with the Services shall not be PHI, unless a formal Business Associate Agreement has been executed between Company and You. Attempting to place or transmit, or requesting placement or transmission, of Data that does not comply with the AUP or is PHI will be a material breach of this Agreement. Company may, in its sole discretion, reject or remove Data that You have used or attempted to use with respect to the Services. Any Data used with respect to the Services by or through You will be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the Services or Company's servers. You hereby represent and warrant to Company that You have the right to use any patented, copyrighted, trademarked, proprietary or other material in connection with Data that You use, post, or otherwise transfer or transmit with respect to the Services.

5.2. Public Disclosure of Data. You are solely responsible for ensuring that You do not accidentally make any private Data publicly available. Any Data made public may be publicly accessible through the internet and may be crawled and indexed by search engines or other third parties. By making any Data publicly available on any of the Services You affirm that You have the consent, authorization or permission, as the case may be from every person who may claim any rights in such Data to make such Data available in such manner.

5.3. Data Takedown. By making any Data publicly available in the manner aforementioned, You expressly agree that Company will have the right to block access to or remove such Data made available by You, if Company receives complaints, inquiries or notices concerning any illegality or infringement of rights in such Data. You expressly consent to determination of questions of illegality or infringement of rights in such Data by the agent designated by Company for this purpose.

5.4. Filtering. Company may employ various filtering methods to reduce unwanted content, such as SPAM e-mail, from reaching Your Company Account. You acknowledge and agree that such methods may prevent legitimate content from reaching Your Account and that Company will not be liable therefor.

5.5. Control. Company is not obligated to exercise control over the content of information, including Your Data, passing through Company's network except any controls expressly provided in this Agreement.

5.6. Feedback. Any feedback, suggestions, testimonials, endorsements, information or materials conveyed to Company by You or Your Users in connection with the Services shall be collectively deemed "Feedback." You agree to grant and hereby grant to Company a non-exclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Feedback without restriction.

## 6. CONFIDENTIALITY AND PRIVACY.

6.1. Confidential Information. "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information will include Your Data. Company's Confidential Information will include the Services (and any portion thereof), the terms and

conditions of this Agreement and any Schedules, and all related Service order forms, as well as Company's business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by Company. Confidential Information will not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

6.2. Protection of Confidential Information. Except as otherwise permitted by this Agreement or in writing by the Disclosing Party, (i) the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations at least as protective of Disclosing Party and its Confidential Information as the provisions of this Agreement.

6.3. Use and Disclosure by Company. Notwithstanding the foregoing, Company may use or disclose Your Data (a) as expressly permitted in writing by You, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were "Information" as defined under the Privacy Policy), and (ii) to access Your Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. **You expressly consent to the foregoing use and disclosure.**

## 7. BETA OFFERINGS.

**The SLA does not apply to any Beta Offerings. Notwithstanding anything else set forth in this Agreement, Company does not make any representations or warranties regarding any Beta Offering or the integrity of any data stored in connection with any Beta Offering. You are strongly discouraged from using any Beta Offering in connection with sensitive data.** Company may, in its sole discretion, change or terminate any Beta Offering without notice and does not represent or warrant the result of any such action. Company may, in Company's sole discretion, convert any Beta Offering to a paid service upon notice to You . To avoid incurring increased charges following such a

conversion, You must terminate (i) the individual converted service (if possible) by contacting Company as directed in the conversion notice, or (ii) if You subscribe to no other services under Your Account, the entire Account, pursuant to section 2 of this MSA.

**8. LIMITED WARRANTY; LIMITATION ON LIABILITY; THIRD-PARTY SERVICES.**

8.1. Limited Warranty; Limitation on Liability. Company provides the Services and any related products on an “as is” basis. You expressly agree that use of the Services is at Your sole risk. Company and the Company Parties expressly disclaim all warranties of any kind, whether express, implied, statutory, or otherwise, oral or written, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement. You hereby agree that the terms of this Agreement, including any Schedule, will not be altered due to custom or usage or due to the parties’ course of dealing or course of performance under this Agreement, including any Schedule. Company and Company Parties will not be liable for any direct, indirect, incidental, special, punitive or consequential damages (including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like) that result from the use or inability to use the Services or from mistakes, the Services not meeting Your requirements or expectations, omissions, hardware failures, translations and system wordings, functionality of filters, migration issues, interruptions, deletion of files or directories, unavailability of backups, errors, defects, delays in operation, or transmission, regardless of whether Company or any Company Party has been advised of such damages or their possibility. Company will not be liable for any harm that may be caused by Your access to application programming interfaces or the execution or transmission of malicious code or similar occurrences, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, viruses and similar mechanisms. You agree that the total liability of Company and any Company Party and Your sole remedy for any claims regarding the Services under this Agreement, including any Schedule, or otherwise is limited to any applicable credits set forth in the Service Level Agreement.

8.2. Other Liability. None of the Company Parties is responsible to You for any warranty provided by Company.

8.3. Third-Party Services. Company may link to or offer Third-Party Services on Company’s website or otherwise through the Services. **Any purchase, enabling, or engagement of Third-Party**

**Services, including but not limited to implementation, customization, consulting services, and any exchange of Data between You and any Third-Party Service, is solely between You and the applicable Third-Party Service provider and is subject to the terms and conditions of such Third-Party Provider. Company does not warrant, endorse or support Third-Party Services and is not responsible or liable for such Services or any losses or issues that result as Your use of such services.** If You purchase, enable or engage any Third-Party Service for use in connection with the Services, You acknowledge that Company may allow providers of those Third-Party Services to access Your Data used in connection with the Services as required for the interoperation of such Third-Party Services with the Services. You represent and warrant that Your use of any Third-Party Service signifies Your independent consent to the access and use of Your Data by the Third-Party Service provider, and that such consent, use, and access is outside of Company’s control. Company will not be responsible or liable for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Service providers.

**9. OWNERSHIP AND CONTROL.**

9.1. No Transfer. Except for rights expressly granted in this Agreement, including any Schedules Company does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret and vested or potential trademark and patent rights, is solely the property of Company and its vendors and licensors. As between You and Company, all materials distributed by Company in connection with the Services will at all times remain the property of Company, and upon the request of Company or upon termination of this Agreement or any Schedule, You will promptly return any and all such materials.

9.2. Control. Company will have sole and complete control over, and reserves the right at any time to make changes to, the configuration, appearance, content and functionality of the Services. In addition, Company reserves the right, at any time, without prior notice, to the exercise of its sole discretion to suspend or terminate any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by Company.

9.3. Feedback License. Company will have a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You and Your Users to Company or any Company Party.

**10. INTELLECTUAL PROPERTY PROTECTION.**

Company will, at its own expense, defend or at its option settle, any claim brought against You by a third party on the issue of infringement of any copyright, patent, or trademark of that third party, in each case by the “Company Technology,” as defined below in this Section 10; provided that You provide Company with (a) prompt written notice of such claim; (b) control over the defense and settlement of such claim; and (c) proper and full information and assistance to settle and/or defend any such claim. In the event of any claim for which Company may be obligated to defend or settle in accordance with this Section 10, Company may at its sole option and expense, either: (i) procure the right to use the Company Technology as provided herein, (ii) replace the Company Technology with other non-infringing products with equivalent functionality; (iii) suitably modify the Company Technology so that it does not infringe, or (iv) terminate this Agreement. Company assumes no liability for infringement claims arising from: (1) any combination of the Company Technology with products or technology not provided by Company, if the infringement would not have occurred if the Company Technology had not been so combined; (2) any modification of the Company Technology, in whole or in part, by anyone other than Company, if the infringement would not have occurred but for such modification; (3) use by You of any Company Technology after Company notifies You that continued use may subject You to such claim of infringement, provided that Company provides You with a replacement release of the Company Technology; (4) any proprietary or intellectual property rights not expressly identified in this Section 10; or (5) any non-United States proprietary or intellectual property rights. “Company Technology” means the software of Company which is delivered to You in connection with Your use of the Services. This Section 10 sets forth the entire liability and obligations of Company, and Your exclusive remedy, with respect to any actual or alleged infringement of any intellectual property or proprietary right by the Services. The terms of this Section 10 are subject to the limitations of Section 8.

**11. HARDWARE, EQUIPMENT, AND SOFTWARE.**

Unless purchased from Company or one of its affiliates pursuant to a separate written agreement, You are responsible for and must provide all hardware, software, services and other components necessary to access and use the Services. Company makes no representations, warranties, or assurances that third party hardware, software, services and other components will be compatible with any Service.

Company reserves the right to change or upgrade any equipment or software that it uses to provide the Services without notice to You. Company will install security patches, updates, upgrades and service packs (“Updates”) as it determines in its sole discretion, and reserves the right, but not the obligation, to roll back any Updates. Updates may change system behavior and functionality and as such may negatively affect the Services used by You. Company cannot foresee nor be responsible or liable for service disruption or changes in functionality or performance due to Updates. Company is not responsible or liable for issues that may arise from incompatibilities between Your Data and use of the Services and any Update or hardware or software change or configuration, regardless of whether discretionary or requested.

**12. INDEMNIFICATION.**

You agree to defend, indemnify, save, and hold Company and the Company Parties harmless from any and all demands, liabilities, losses, costs, and claims, including reasonable attorneys’ fees, asserted against them that may arise or result from Your use of the Services, Your breach of this Agreement (or any Schedule), or Your negligence or willful misconduct.

**13. MODIFICATION OF TERMS.**

Company may update, amend, modify or supplement the terms and conditions of this Agreement, including any Schedules, the SLA, AUP and Privacy Policy, from time to time by giving You notice. Such changes will take effect immediately. Any such modification may be made without the consent of any third party beneficiaries of this Agreement. You can review the most current version of this Agreement at any time at: (<http://www.serverdata.net/legal/>). **Your continued use of Your Account or the Services after Company posts a new version of the Agreement will be conclusively deemed to be acceptance by You of any such new version.**

**14. MISCELLANEOUS.**

**14.1. Governing Law; Jurisdiction; Forum; Attorneys’ Fees.** This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of laws or its principles. Any claim or suit arising out of or relating to this Agreement will be brought in any court of competent jurisdiction located in Santa Clara County, California. In any action to enforce this Agreement, including, without limitation, any action by Company for the recovery of fees due hereunder, You agree to pay Company reasonable attorneys’ fees and costs in connection with such action if Company prevails in such action. You agree to waive the right to trial by jury with respect to any proceeding related to or arising out of this Agreement.



14.2. Written Communications and Notice. You accept that communication from Company may be electronic. Company may contact You by e-mail or provide You with information by posting notices on Company's website or to Your Account. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that Company provides to You electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery, (ii) the second (2<sup>nd</sup>) business day after mailing, (iii) the second (2<sup>nd</sup>) business day after sending by confirmed facsimile, or (iv) the first (1<sup>st</sup>) business day after sending by email or, if from Company to You, online posting. Notices to You may be addressed by Company to any e-mail address, postal address or facsimile number registered with Company, or through means of online posting through the Services. Notices to Company that are not expressly authorized by administrative control panel under this Agreement shall be mailed to Company.

14.3. Age and Capacity. You hereby represent and warrant that each User has reached the older of (i) the age of eighteen (18) and (ii) the age of majority in the User's jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

14.4. Severability. If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) will be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

14.5. Waiver. No waiver by either party of any breach by the other party of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing.

14.6. Remedies. The rights and remedies of the parties hereunder shall not be mutually exclusive, i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. The parties acknowledge, confirm and agree that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations

hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights at law or statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

14.7. No Assignment. No benefit or duty of You under this Agreement will, without the consent of Company, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. Company may assign this Agreement without Your consent and without notice.

14.8. Fair Interpretation, Headings. This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party based on draftsmanship of the Agreement or otherwise. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

14.9. Force Majeure. Except for monetary obligations, neither party shall be liable to the other for failure or delay in the performance of a required obligation hereunder if such inability or delay is caused by reason of Force Majeure Event. "Force Majeure Event" is any cause beyond a party's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond a party's reasonable control or anticipation.

14.10. Survival. The preamble, "Definitions" and Sections 2, 3, 4, 5, 6, 8, 9, 10, 12, 13 and 14 of this MSA will survive termination.

14.11. Independent Parties. Notwithstanding anything to the contrary herein, it is acknowledged, confirmed, and agreed that You shall be, and shall be deemed to be, an independent entity for all intents and purposes, including, without limitation, federal taxation. You shall pay all expenses in connection with performing Your obligations hereunder and shall not incur any indebtedness on behalf of Company in connection with such expenses. Neither party shall have or hold itself out as having any right, authority nor agency to act on behalf of the other party in any

capacity or in any manner, except as be specifically authorized in this Agreement.

14.12. Entire Agreement; Third Party Beneficiaries. This Agreement, including any Schedules, constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and Company with respect to the Services. You understand and agree that (a) Company and You may include, as the sole third party beneficiaries of this Agreement, the

Company Parties, and (b) in the event of any breach of this Agreement, including any Schedule, such Company Parties shall have all rights and remedies available to them as if they were parties to this Agreement, including claiming the benefit of Section 8 of this MSA.

14.13. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.