



## ***Master Service Agreement***

This Master Service Agreement (the “Agreement”) is between Castra Managed Services LLC, (the “Company”) and the organization listed on the Statement of Work. (the “Customer”). This Agreement is effective upon the date of execution of the Statement of Work (the “Commencement Date”) between the Company and the Customer.

### **Background Statement**

Customer has licensed technology defined in the Statement of Work (SOW) designed to detect threats to Customer’s networks and devices. This Agreement covers the terms under which the Company will provide managed services for the Customer (the “Managed Services”). The services included and devices covered in this Agreement are outlined in detail in the applicable SOW. The purpose of Managed Services is for the Company to support and enhance the Customer’s ability to detect threats to networks and devices of the Customer’s choosing, with the specific goal of maintaining and enhancing the utility of one or more SIEM/SOAR/MDR/XDR applications installed in Customer-controlled environments (Customer data center, Customer controlled cloud based environments (AWS, Azure, GCP, etc), or Customer premise or offices..) and managed by the Customer.

### **Agreement**

In consideration of the mutual obligations contained in this Agreement, Company and Customer hereby agree, for themselves, their successors and assigns as follows:

#### **1. DEFINITIONS**

Certain terms are defined when used in the SOW or this Agreement. In addition to terms defined throughout this Agreement and in each SOW, the following terms shall have the following meanings:

- a. “Company Default” means (i) the Company fails to perform a material obligation under this Agreement, and fails to cure that failure within 30 calendar days after receiving written notice from the Customer of such failure, (ii) the Company’s insolvency or liquidation as a result of which the Company ceases to do business, or (iii) the Company materially breaches any representation or warranty made by the Company in this Agreement, and fails to cure that breach within 30 calendar days after receiving written notice from the Customer of such breach. For clarity, a violation of the Service Level Objective is not a Company Default hereunder.
- b. “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. Without limitation, the following will be deemed to be “Confidential Information”: all information regarding this Agreement or any SOW or Service Level Objective, the Company’s products or business, the Company’s physical security systems, specialized recovery equipment, techniques, audit and security reports, server configuration designs, data center designs, cloud architecture, data flow, or customer lists and names of customers. The above notwithstanding, “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.

- c. “Customer Default” means (i) the Customer fails to pay, when due, any fees or charges owed to the Company under this Agreement, provided that the first such nonpayment or late payment in any calendar year shall not be a Customer Default unless the Customer fails to pay such amount within 10 calendar days after written notice from the Company of such nonpayment or late payment; (ii) the Customer materially breaches any representation or warranty made by the Customer in this Agreement, and fails to cure that breach within 30 calendar days after receiving written notice from the Company of such breach; (iii) the Customer fails to comply with any material obligations under this Agreement (other than payment or security deposit obligations) and fails to cure that failure within 30 calendar days after receiving written notice from the Company of such failure; (iv) the Customer’s insolvency or liquidation as a result of which the Customer ceases to do business or the Company’s reasonably held belief that the Customer may be unable to pay its debts as they become due; (v) the Customer filing for bankruptcy, reorganization, or failure to discharge an involuntary bankruptcy petition within 60 calendar days after such involuntary petition is filed; or (vi) the occurrence of an event (including an attack on or unauthorized access to Customer Equipment or data by a third-party) with respect to which the Company reasonably believes that the suspension of Service Products is necessary to protect the Company or the Company’s other customers, in which case the Company will provide advance notice of 12 hours unless the Company determines in its reasonable judgment that shorter or contemporaneous notice is necessary to protect the Company or its other customers from imminent and significant operational or security risk.
- d. “Customer Equipment” means all Customer owned or leased hardware, equipment and devices that are used by Company in connection with providing Service Products hereunder, whether located in any data center, cloud hosted environment, or on Customer’s premises, or in any other location and as may be more fully described in the applicable SOW.
- e. “Default” means either a Company Default or a Customer Default.
- f. “Deployment Phase” means the first 60 days following the Commencement Date.
- g. “Derivative Work” means a revision, enhancement, modification, translation, abridgment, condensation or expansion of Software or any other form in which such Software may be recast, transferred or adapted, which, if used without the consent of the Company or the Software Owner would constitute a copyright infringement.
- h. “Documentation” means any guides, manuals, specifications or other materials provided to the Customer that describe the structure and/or use of the Software regardless of whether the information is hard copy or digital and regardless of how the information is transmitted.
- i. “File(s)” means files and file systems designated by the Customer.
- j. “On-Demand” means contacting the SOC to request the next available consultation session with a SOC or Implementation team member. The SOC has up to 4 hours, during normal operating hours, to schedule the first available Tier 3 team member. “Platform” refers to the device or devices used to provide contracted services to the Customer.



- k. “Quote” means the written proposal(s) of pricing provided by a duly authorized representative or employee of Company to Customer for Managed Services or other work.
- l. “Scheduled Performance Review” means a teleconference up to 2 hours in length, requested at least 3 weeks in advance by the Customer and scheduled at a time and method agreed upon by the Customer and the Company. A limited number of performance reviews are included in the Service Product at no additional charge.
- m. “Security Operations Center” or “SOC” means one or more personnel, employed by the Company, responsible for responding to customer requests, and monitoring automated notifications, and taking proactive steps to promote and enhance the functionality of the covered system(s).
- n. “Service Level Objective” means the Company’s Service Level Objective, as defined in SOW and incorporated herein by reference
- o. “Service Product” means a service, group of services, or combination of goods and services that the Company publishes and sells to customers for a stated per-product rate or charge. Service Products purchased by Customer are reflected in a SOW.
- p. “Software” means the license associated with product purchased through Castra, or directly from Vendor, the Documentation, and all related third-party software that is designed to detect threats to Customer’s networks and devices and listed on the applicable SOW as being part of the Software to be supported, as well as any future Updates or Derivative Works of such Software created for or provided to the Customer.
- q. “Software Owner” means Vendor or Creator of third party that owns Software, whether the Software is directly licensed to the Customer by that third party, or licensed to the Company and sublicensed to the Customer hereunder.
- r. “Sublicensed Software” means any Software that Company has licensed through Castra or directly from Vendor or other third parties and sublicensed and delivered to the Customer hereunder.
- s. “Stored Files” means File retention and transaction logs stored, regardless of location, in Customer-controlled environment.
- t. “Statement of Work” or “SOW” means the written document(s) agreed to by both Customer and Company setting out the Managed Services and Service Products that Company will provide to Customer and the terms by which the Company will provide those Managed Services.
- u. “Managed Detection and Response Services” or “MDR” or “MDR Pro” or “MDR Core” means those services explicitly set out in the SOW and accompanying the specific Sublicensed Software(s) solution(s) only. Managed Detection and Response Services does not mean and does not include any platform, technology, or service that is not explicitly defined in the SOW.
- v. “Managed eXtended Detection and Response Services” or “MXDR” or “MXDR+” or “MXDR Enterprise” means those services explicitly set out in the SOW and accompanying the specific Sublicensed Software(s) solution(s) only. Managed eXtended Detection and Response Services does not mean and does not include any platform, technology, or service that is not explicitly defined in the SOW.
- w. “SIEM” means the security information event management tool listed in the SOW.
- x. “SOAR” means the security orchestration automated response tool listed in the SOW.



- y. “XDR” means the extended detection and response tool listed in the SOW.
- z. “Threat Intelligence” means the threat intelligence tool listed in the SOW.
- aa. “Cloud Hosted Environment” means the hosting of data and/or delivery of services via the Internet rather than on-premises server(s).
- bb. “Commencement Date” means the date the Customer signs the SOW.

Unless otherwise clear, a stated time of day refers to exactly the stated time, as measured by a commonly accepted standard timekeeper, in the State of North Carolina, adjusted for Daylight Savings Time as applicable according to federal and North Carolina law.

## **2. SERVICES**

### **2.1 Service Products.**

The Company will provide to the Customer the Service Products listed or described in each applicable SOW. Service Products may be more fully described in an exhibit, schedule, or amendment to this Agreement.

### **2.2 Software.**

Unless otherwise agreed by the parties, the Customer shall be responsible for licensing all required Software directly from the Software Owners at the Customer’s sole expense, and for complying with all of the terms and conditions in the Software licenses. Should the parties agree in any SOW for the Customer to license any Sublicensed Software from the Company as part of the Service Products, the Customer must pay the Company the agreed upon licensee fees and must comply with all of the terms and conditions in the Software licenses, as well as any additional terms and conditions in the Company’s sublicense, copies of which are available at the Customer’s request. In either event, the Customer may use the Software solely as part of the Service Products and for no other purpose and may not transfer any of the Software outside the Service Products or to any other person or entity. The Customer acknowledges that the Software Owners are not responsible for providing any support in connection with the Service Products or the Software.

### **2.3 XDR.**

The Company shall not be liable for any damages, losses, or injuries arising out of or in connection with the actions taken by the XDR tool. The Customer acknowledges and agrees that the use of the XDR tool and any actions taken by it are at their own risk. The Company shall not be responsible for any consequences, damages, or losses resulting from the use or reliance on the tool. The Company does not guarantee the effectiveness, accuracy, or reliability of the XDR tool or the outcomes of its actions. The Customer acknowledges that the tool may not be error-free and that false positives or false negatives may occur. The Customer agrees to indemnify and hold the Company harmless from any claims, liabilities, costs, or expenses arising from or related to the use of the XDR tool and any actions taken by it. The Company disclaims any warranties, representations, or guarantees of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. The Company shall not be liable for any direct, indirect, incidental, consequential, or special damages arising out of or in connection with the use of the XDR tool, including but not limited to lost profits, business interruption, or data loss.

### **2.4 SOAR.**

The Company shall not be liable for any damages, losses, or injuries arising out of or in connection with the actions taken by the SOAR tool. The Customer acknowledges and agrees that the use of the SOAR tool and any actions taken by it are at their own risk. The Company shall not be responsible for any consequences, damages, or losses resulting from the use or reliance on the tool. The Company does not



guarantee the effectiveness, accuracy, or reliability of the SOAR tool or the outcomes of its actions. The Customer acknowledges that the tool may not be error-free and that false positives or false negatives may occur. The Customer agrees to indemnify and hold the Company harmless from any claims, liabilities, costs, or expenses arising from or related to the use of the SOAR tool and any actions taken by it. The Company disclaims any warranties, representations, or guarantees of any kind, whether express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and non-infringement. The Company shall not be liable for any direct, indirect, incidental, consequential, or special damages arising out of or in connection with the use of the SOAR tool, including but not limited to lost profits, business interruption, or data loss.

### **3. FEES AND BILLING**

#### **3.1 Fees and Charges.**

The Customer shall pay the fees specified in the applicable SOW during the term specified in the SOW. The terms of the quote shall renew automatically unless a written request to terminate is received by the Company within 30 days of the end of the period set out in the Quote. In addition, the Customer will be fully responsible for any charges, costs, expenses (other than those included in the Service Products), and third-party claims that may result from its use of, or access to, the Service Products. The Company reserves the right to increase charges for third-party services or licenses at any time, if the cost of third-party services or licenses to the Company is increased.

#### **3.2 Commencement of Billing.**

The Customer's payment obligations for Service Products shall begin on the Commencement Date, unless otherwise specified in the applicable SOW and regardless of whether the Customer has commenced use of the Service Products, procured the necessary services from third-party vendors required to operate the Service Products, or is otherwise prepared to operate the Service Products. The Company shall process and send invoices, per the schedule agreed upon in the Sales Contract.

#### **3.3 Taxes.**

All fees and charges for the Service Products 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 Service Products hereunder ("Taxes") now in force or enacted in the future, all of which the Customer will be responsible for and will pay in full.

#### **3.4 Billing and Payment Terms.**

Annual recurring fees are invoiced in advance and varying, or usage-based Service Products fees are invoiced annually in arrears. The Customer shall pay all fees within 30 calendar days after the date of each invoice. Any payment that is not paid when due will accrue interest for the period of time that it is overdue, calculated at the rate of 2.5% per month. The Customer shall pay the Company's reasonable costs of collection of payments due under this Agreement, including collection agency fees, reasonable attorneys' fees, and court costs.

#### **3.5 Disputed Invoices.**

All invoice dispute claims must be delivered in writing to the Company within 30 calendar days after the invoice date. The Customer waives the right to dispute any invoices not disputed within 30 calendar days after the received date. All amounts payable by the Customer under this Agreement shall be made without setoff or counterclaim and without deduction. If Customer disputes a portion of the charges on an invoice, the undisputed amount remains due and payable to Company in accordance with this Agreement.

#### **3.6**

#### **Price Increase.**





Unless otherwise agreed in a writing signed by Customer and the Company, when a Quote from a SOW issued by the Company renews for a new term pursuant to Section 3.1, above, the fees payable to the Company will increase by two-and-one-half percent (2.50%) from the quoted fees from the preceding year.

#### **4. RIGHTS AND OBLIGATIONS**

##### **4.1 Acceptable Use.**

The Customer acknowledges that the Company exercises no control whatsoever over the content of information passing through the Customer Equipment utilized in connection with the Service Products, and that it is the Customer's sole responsibility to ensure that the information it transmits and receives complies with all applicable laws and regulations.

##### **4.2 Cooperation.**

The Customer shall cooperate with the Company and the Company's designees and agents to facilitate the Company's performance and delivery of Service Products, and shall provide the Company with reasonable access to any information, including system and platform designs, network architecture, IP addresses, hardware and software specifications ("Customer Information"), that is reasonably necessary for the Company to provide the applicable Service Products. The Customer acknowledges and agrees that it is essential to the Company's performance hereunder that the Company has reasonable access to Customer Information, and that a degradation in the performance of the Service Products may result if the Customer fails to provide the Customer Information. The Customer shall configure, at its own cost, any of the Customer Equipment according to the technical specifications reasonably provided by the Company. The Customer shall obtain any licenses or consents necessary for the Company to monitor or access Customer Equipment to perform or deliver the Service Products. If the Customer modifies Customer Information or Customer Equipment in a manner that necessitates a change to the Service Products, then the Customer shall pay for the time and materials that the Company incurs to troubleshoot, modify, and make repairs necessary to adapt to Customer modifications. Unless specified otherwise in the applicable SOW, the 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 remain in working order through the Term and the Company shall not be responsible for any delay or failure by the Customer to purchase or maintain such coverage.

##### **4.3 Customer Security.**

The Customer agrees to use reasonable security precautions in connection with the use of the Service Products (including encrypting any information that is subject to legal or regulatory security requirements and that is transmitted to or from, or stored by the Customer on, any Customer storage device that is supported by the Service Products) and to require its customers and end users to use appropriate security precautions. The Company agrees to perform and deliver only the specific Service Products described in the applicable SOW. The Customer is otherwise responsible for the security of the Customer Equipment. The Customer shall be responsible for unauthorized use of the Service Products by any person, unless such unauthorized use results from the Company's failure to perform its obligations hereunder.

##### **4.4 Equipment.**

The Customer agrees to adhere to the Company's reasonable quality standards for Customer Equipment. The Company has the right to relocate its management and/or monitoring from the location described in the applicable SOW or reconfigure Customer Equipment with prior written notice to the Customer. The Company will not arbitrarily or discriminatorily make such changes and will work in good faith to minimize disruption to the Service Products.

##### **4.5 Customer's Failure to Comply.**

The Company shall be excused from compliance with the Service Level Objective and its other obligations associated with the Service Products under this Agreement to the extent that the Customer's failure to



comply with the Customer's obligations in this Agreement result in a material degradation of the Service Products.

4.6

Customer Consent.

Customer consents to being a reference for the Company and to providing online reviews, participating in business case studies, and recording video testimonials. The Customer agrees to allow the Company to publish such materials on its website or any other promotional channels, including but not limited to social media platforms and third-party review sites.

## **5. SERVICE LEVEL OBJECTIVE**

The Company's obligation to provide Service Products is limited by the terms of the Service Level Objective, and Customer's sole remedy for the interruption of Service Product is detailed in the Service Level Objective. The Company shall comply with the terms and conditions of the Service Level Objective in connection with providing Managed Services, except that the Company shall have no obligation under any Service Level Objective in the event of any Customer Default or if the Customer is not current in its payment obligations under this Agreement. The Company may amend the Service Level Objective periodically provided that (i) the Customer is informed in advance of any changes, and (ii) the amendment does not materially alter the provision of Service Products.

## **6. SCOPE OF PERMITTED USE**

### 6.1 Limitations on Use.

The Customer's right to use the Software is subject to the terms and conditions of the Software Owner's license, the terms and conditions of any sublicense from the Company, the specific restrictions and limitations set forth herein, and the terms of the open source licenses governing any open source components included in the Software, and any additional licensing restrictions and limitations specified in the applicable Documentation. Unless otherwise agreed by the parties in the applicable SOW, the Software shall reside solely on the Customer's own servers either located on-premises or in a cloud environment.

### 6.2 Restrictions on Use.

Subject to the terms of the open source licenses governing the open source components referred to in Sections 8.2, Customer shall not (i) allow third parties to use, or develop methods for third parties to use the Software; (ii) except as provided by applicable law, decompile, disassemble, or reverse engineer the Software, in whole or in part, nor attempt to obtain in any other manner any Software source code, nor carry out any action to the detriment of the Company's or any Software Owner's intellectual property rights; (iii) make copies, execute, publish, or reproduce Software or Documentation, unless expressly authorized in this Agreement (and all copies must maintain the Company's or the Software Owner's copyright notices); (iv) develop any Derivative Works or any type of software program based on Software, the Documentation or any other Confidential Information of the Company or the Software Owner; (v) make available, reveal or disclose the Software to third parties, without the prior written consent of the Company; (vi) alter or modify the Software without the prior written consent of the Company; (vii) reject, avoid, elude, remove, deactivate, or evade, in any way, any protection mechanism of the Software, including without limitation any mechanism used to restrict or control Software functions; (viii) provide or offer access to any third parties to any restricted online access keys or authentication passwords provided by the Company or the Software Owner for downloading Software; or (ix) disclose to any third party any benchmarking or comparative study involving the Software or Documentation or (x) allow access or use of the Software by



any user that any Software Owner reasonably considers to be a competitor. This provision is only applicable if Customer is purchasing Software from Company as a reseller.

## **7. DEFAULT AND REMEDIES**

### **7.1 Default.**

If a party commits a Default that is not timely cured pursuant to the terms of the Agreement, the non-defaulting party will be entitled to exercise any one or more of the following remedies: (a) to recover damages, subject to the limitations in Section 11, below; or (b) to immediately terminate the affected SOW.

### **7.2 Customer Default.**

In the event of a Customer Default, in addition to and without waiving any other remedies for Default available to the Company hereunder, the Company may, without liability and without notice beyond the initial notice required for the Customer Default (i) suspend or discontinue Service Products or the Company's performance under this Agreement, and (ii) collect liquidated damages as set forth in Section 13.2 for any terminated SOW. In the event of suspension or discontinuance of Service Products due to a Customer Default, the Customer's rights with respect to the Service Products shall immediately cease, but if the Customer continues to use any such Service Products, it shall continue to be liable for all fees and charges for such Service Products. Should the Customer Default be cured and the Company agree to reinstall the Service Products, in addition to all other fees due and payable, the Customer must pay the Company's then-current implementation fee. If Customer has made an annual payment before the Customer Default and the Customer Default occurs during the period of time for which the Customer has paid the Company, then the Company may retain the full annual payment, in addition to any other remedies to which it is entitled pursuant to this Agreement.

### **7.3 Remedies.**

The remedies expressly provided for in this Agreement shall be cumulative and concurrent, 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. The remedies expressly provided for in this Agreement are the sole and exclusive remedies of the parties.

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1 Ownership.**

The Software, Documentation and Updates, and all patents, copyrights, trade secrets and other worldwide proprietary and intellectual property rights in or related thereto are and will remain the exclusive property of the Company and the Software Owners. The Company and the Software Owners will own all rights in any copy or Derivative Works of the Software, including any improvement or development thereof. The Customer may not remove any titles, trademarks or trade names, copyright notices, legends, or other proprietary markings in or on the Software or Documentation. The Customer shall promptly notify the Company in writing upon discovery of any unauthorized use of the Software or Documentation or infringement of the Company's or the Software Owner's proprietary rights in the Software or Documentation. Customer shall not sell, transfer, license, distribute, or share Company's intellectual property with any person or entity that is not subject to this Agreement. By entering into this Agreement, Company does not give up and fully retains all of its rights to its intellectual property. The Customer will retain the right to use Castra generated Intellectual Property in perpetuity, only within or relating to the platform with which it was created. Customer may not sell or otherwise transfer Company's Intellectual Property to any other person or entity without Company's express written permission.

### **8.2 Open Source and Third-Party Components.**

The Company shall have no liability for the Customer's use of any open source or other third-party software.



## **9. CONFIDENTIALITY**

### **9.1 Protection of Company Confidential Information.**

Each party shall maintain the confidentiality of the Confidential Information of the other party and 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. Each party may use Confidential Information of the other party solely in accordance with this Agreement and for the purpose of performing its obligations under this Agreement. The above notwithstanding, the Customer acknowledges and agrees that (a) the Company may use any contact information (e.g., name, email address, phone number of Customer personnel) the Customer provides to the Company for its reasonable business purposes, including product support and development; and (b) the Software may include a monitoring capability that sends anonymous statistics about performance, device utilization and network size remotely to the Software Owner, who will have the right to freely use such information so long as it does not use technical information in a form that personally identifies the Customer.

### **9.2 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. Either party may disclose Confidential Information to the extent disclosure is required by law or by order of a court or governmental agency; provided, that the receiving party promptly notifies the disclosing party prior to any disclosure in order to afford the disclosing party the opportunity to object to the disclosure request or seek a protective order. In the event of any disclosure or loss of Confidential Information, the receiving party shall notify the disclosing party as soon as possible

### **9.3 Injunctive Relief.**

Each party acknowledges that any breach of any provision of this Section 9 by it, 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.

### **9.4 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. Any destruction of Confidential Information by the receiving party shall be certified in writing to the disclosing party by an officer of the receiving party.

### **9.5 Duration.**

The obligations of confidentiality set forth herein shall take effect as of the Commencement Date and continue in full force and effect throughout the Term and continue for five years thereafter or as long as permitted under applicable law, whichever is longer.

## **10. WARRANTIES**



#### 10.1 Customer Warranties.

The Customer represents and warrants that (i) the Customer has the legal right and authority to place and use the Customer Equipment, (ii) the Customer is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the SOW and any other documents on behalf of the Customer is authorized to do so, and upon the Customer signing the initial SOW, this Agreement is legally binding on the Customer, (iv) the Customer's and the Customer's end users' use of the Service Products and of the Customer Equipment does not, as of the Commencement Date, and will not, during the Term, violate applicable laws or regulations or infringe the rights of any third-parties, and (v) all information provided to the Company is accurate and complete.

#### 10.2 Company Warranties.

The Company represents and warrants that (i) the Company has the legal right and authority to provide the Service Products, (ii) the Company is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder, (iii) the person signing the SOW and other documents that comprise this Agreement on behalf of the Company is authorized to do so.

#### 10.3 Software Warranties.

The Software Owners may be extending certain warranties to the Customer with respect to the Software. If so, these will be included in the applicable Software licenses. As between the Company and the Customer, however, the Software is provided on an "as-is" basis without warranty of any kind, either express or implied. The Company does not warrant that the Software will meet the Customer's requirements or that the operation thereof will be uninterrupted or error free. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE SOFTWARE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

### 11. **LIMITATION OF LIABILITY**

#### 11.1 Disclaimer of Incidental and Consequential Damages.

Except for a party's indemnification obligations hereunder or a party's breach of Section 9, neither party, nor any Company Indemnitee or Customer Indemnitee, shall be liable to the other party for any incidental, consequential, exemplary, or punitive 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.

#### 11.2 Cap on Direct Damages.

Except for a party's indemnification obligations hereunder or a party's breach of Section 9, neither party, nor any Company Indemnitee or Customer Indemnitee, 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 the Customer to the Company for the Service Products in the twelve (12) full calendar months immediately preceding the month in which the event giving rise to the claim occurred.

#### 11.3 Damage to Customer Equipment.

The Company shall not be liable for any damage to, or loss of, any Customer Equipment resulting from any cause other than the Company's sole negligence or willful misconduct. To the extent the Company is liable for any damage to, or loss of, Customer Equipment for any reason, such liability will be limited to the lesser of (a) the then-current book value of the Customer Equipment so damaged based on the Customer's



financial statements, tax returns, or other applicable records, or (b) the damage cap specified in Section 11.2, whichever is lower. Neither party has any obligation to insure the equipment of the other party.

#### 11.4 Unauthorized Access or Use.

The Company shall have no liability to the Customer for any unauthorized access or use, corruption, deletion, destruction, or loss of any data or applications. The Company is not responsible for any defects or damages to Customer Equipment, any data center, cloud hosted environment, or Service Products resulting from (i) the Customer's, Customer's agents', or Customer's employees' mishandling, abuse, misuse, or accident, (ii) a Force Majeure Event, or (iii) the Customer's use or provisioning of Customer Equipment electrically or mechanically with incompatible services or services of inferior quality. Under no circumstances shall the 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.

#### 11.5 Service Suspension.

The Company shall have no liability whatsoever for any damages that the Customer may incur as a result of any Service Product suspension permitted in this Agreement or the Service Level Objective.

#### 11.6 Statute of Limitations.

No claim may be asserted by either party to this agreement against the other party with respect to any event, act, or omission occurring more than two (2) years prior to the date that any such claim is asserted against the other party in writing or the applicable statute of limitation or statute of repose, whichever is shorter.

### 12. **INDEMNIFICATION**

12.1 Each party agrees to defend the other party, its directors, officers, representatives, agents and employees from and against any third-party claim, action or liability that may arise against such indemnified party for: (a) injuries or property damage caused by the indemnifying party; (b) the indemnifying party's failure to comply with all laws and regulations applicable to the provision of Managed Services under this Agreement; (c) the indemnifying party's infringement or misappropriation of a third party's intellectual property (including, without limitation, patents, trademarks, copyrights or trade secrets) or violation of Section 8; and (d) any unauthorized disclosure of the other party's Confidential Information pursuant to Section 9 (each such third party claim, a "**Claim**"). The indemnifying party will pay any damages, costs and expenses finally awarded against the indemnified party by a court of competent jurisdiction or payable pursuant to a settlement agreed to by the indemnified party, including reasonable attorneys' fees arising from such Claim. The indemnifying party shall have the right to exercise reasonable control over any litigation within the scope of this indemnity; provided, however, that the indemnified party shall have the right to participate in any such litigation insofar as it concerns claims against it. That right to participate includes the indemnified party's right to select and retain counsel to represent it at the indemnified party's own expense.

12.2 Neither party shall have any obligation to defend or indemnify the other party pursuant to this Section 12 if the party for whom indemnity is sought is not notified in promptly in writing of the Claim and is materially prejudiced thereby. The party being indemnified shall reasonably cooperate to the extent necessary in the defense of any Claim within the scope of these indemnities.

### 13. **TERM AND TERMINATION**

#### 13.1 Term.

The term of this Agreement shall commence on the Commencement Date and shall remain in effect for so long as any SOW is in effect. The term of a SOW begins on the Commencement Date described in the SOW and shall continue during the Initial Term set forth on the SOW (the "Initial Term"), unless earlier



terminated as provided herein. The term of the SOW 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 the Company no fewer than 90 calendar days prior to the expiration of the then-current Term. For any Renewal Term, the Company may increase the fees by providing notice to Customer at least 90 calendar days prior to the commencement of such Renewal Term. The Initial Term and any Renewal Term are cumulatively referred to herein as the “Term”.

#### 13.2 Liquidated Damages.

The Customer acknowledges that the amount of the fee for Service Products is based on the Customer’s agreement to pay the full fee or the recurring fees for the entire Term of each SOW, as set out in each SOW. The Customer acknowledges that the Company’s damages from any termination of a SOW prior to the end of the Term are difficult to ascertain. For that reason, notwithstanding any termination of any SOW, the Company and the Customer acknowledge and agree that upon any early termination of a SOW by Customer or as a result of termination by the Company associated with a Customer Default that has not been cured, the Customer shall pay 100% of the remaining charges and any charges due and payable under any applicable SOW that would otherwise have been payable for the remainder of the then-current Term. The Customer also agrees to pay 100% of any third-party termination or cancellation charges that the Company incurs as a result of the Customer’s early termination of any SOW. Both parties acknowledge and agree that this provision establishes liquidated damages and is not intended as, and does not constitute, a penalty. Other than as set forth herein, this liquidated damages provision does not waive or alter any remedies available to the Company under this Agreement SOW. Notwithstanding the foregoing, this liquidated damages provision shall not apply in the event the Customer terminates the SOW or this Agreement as a result of the Company’s Default.

### 14. EXPORT CONTROLS

The Customer hereby represents, certifies and warrants that it is now and will remain in the future compliant with all export control statutes, regulations, decrees, orders, guidelines and policies of the United States Government and the Government of any country in which the Customer conducts business pursuant to this agreement including but not limited to the Export Administration Regulations (“EAR”) (15 C.F.R. Parts 730-774) of the U.S. Department of Commerce; the U.S. anti-boycott regulations and guidelines, including those under the EAR and U.S. Department of the Treasury regulations; the various economic sanctions regulations and guidelines of the U.S. Department of the Treasury, Office of Foreign Assets Control (“OFAC”), and the USA Patriot Act (Title III of Pub. L. 107-56, signed into law October 26, 2001), as amended; and restrictions against dealings with certain prohibited, debarred, denied or specially designated entities or individuals under statutes, regulations, orders, and decrees of various agencies of the United States Government. The Customer certifies that it: (1) is not a Person described or designated in the Specially Designated Nationals and Blocked Persons List of OFAC; (2) does not engage in any prohibited dealings or transactions with any such Person and; (iii) does not engage in any dealings or transactions which would cause the Company to be in violation of any economic sanctions regulations and guidelines of OFAC. The Customer shall indemnify and hold the Company harmless arising out of a breach by the Customer of this Section. Customer further understands and agrees that Company does not have the ability to transfer Customer’s data without Customer’s direction and that Company has no control over the physical location of any of the persons who may access, alter, delete, download, manipulate, review, or transfer the Customer’s data.

### 15. ADDITIONAL PROVISIONS

#### 15.1 Assignment.



Customer shall not assign this Agreement, in whole or in part, without Company's prior written consent. 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 assigns.

15.2 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

15.3 Third-party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any entity other than the parties hereto and their respective permitted assigns. There are no third-party beneficiaries of this Agreement.

15.4 Independent Contractors.

In entering this Agreement, each party does so as an independent contractor and not as an agent or partner of the other party, or as part of any kind of joint venture with 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.

15.5 Waiver.

No waiver of satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

15.6 Severability.

If any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded. If an unenforceable provision is modified or disregarded in accordance with this Section 15.6, the rest of the agreement is to remain in effect as written. Any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

15.7 Force Majeure.

In this agreement, "Force Majeure Event" means, with respect to a party to this agreement, any unforeseen circumstances or any events or causes beyond that party's reasonable control, including cyber-attacks, acts of God, declared or undeclared war, epidemic or pandemic, natural disaster, civil disturbances or governmental action. If a Force Majeure Event prevents a party from complying with one or more obligations under this agreement (other than a payment obligation), that inability to comply will not constitute a breach if (a) the noncomplying party promptly notifies the other party in writing of the occurrence of that Force Majeure Event, its effect on performance, and a reasonable estimate of how long the noncomplying party expects the period of non-compliance to last; (b) thereafter the noncomplying party updates that information as reasonably necessary; and (c) the noncomplying party uses reasonable efforts to limit damages to the other party and to resume its performance under this agreement as soon as reasonable possible. A Force Majeure Event will not excuse any party's payment obligations.

15.8 Governing Law, Venue and Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to its choice or conflict of law rules. Any suit, action or proceeding arising out of or relating to this Agreement shall only be instituted in the State of North Carolina, County of Durham, or The United States District Court for the Middle District of North Carolina. OR Any suit, action or proceeding arising out of or relating to this Agreement shall only be instituted in the Delaware Court of Chancery. Each party waives any objection which it may have now or hereafter to venue of such action or proceeding in these courts OR this Court and irrevocably agrees these courts have OR this Court has





jurisdiction over any dispute arising from this Agreement and irrevocably submits to the jurisdiction of such court in any such suit, action or proceeding.

15.9 Entire Agreement.

This Agreement, along with Quote(s), SOW(s) and any Service Level Objective constitutes the entire agreement between the parties, and supersedes all prior agreements, representations and understandings of the parties, written or oral.

15.10 Attachments Incorporated.

The SOW, Service Level Objective 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) SOW; (ii) Service Level Objective; (iii) any addendum to this Agreement; (iv) this Agreement.

15.11 Notices

All notices required or permitted hereunder shall be in writing, delivered personally, by certified or registered mail, or by nationally recognized overnight courier (e.g., FedEx, UPS) at the parties' respective addresses set forth in the SOW. Copies of all notices to Customer shall be sent to Customer. All notices shall be deemed effective upon personal delivery or when received if sent by certified or registered mail or by overnight courier.

15.12 Survival.

The rights, duties and obligations of the parties and the provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion, or expiration of this Agreement shall survive and continue as valid and enforceable rights, duties and obligations.

15.13 Amendment.

This Agreement may be amended in a writing signed by authorized representatives of both parties. This Agreement may also be amended by the Company at any time by providing written notice to the Customer in accordance with Section 15.11 or by including modifications in a SOW. Within five calendar days after receipt of such notice, the Customer may object with written notice pursuant to Section 15.11 to the proposed amendment to the Agreement, at which point the parties will negotiate in good faith concerning such proposed amendment. If the Customer fails to object to any such amendment within such five-calendar-day period, such amendment shall take effect immediately upon the expiration of such five-calendar-day period.

15.14 Construction.

The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not strictly for or against either party. The words "herein", "hereof", "hereunder" and other compounds of the word "here" shall refer to the entire Agreement and not to any particular provision hereof. 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."