



## TERMS OF SERVICE AGREEMENT

### RECITALS

WHEREAS, Subscriber requires third-party hosted “software as a service” (the “Services” as further described herein) with respect to certain of its business management needs;

WHEREAS, Subscriber requested a proposal from STENTORIAN TECHNOLOGIES for such Services;

WHEREAS, STENTORIAN TECHNOLOGIES has experience and expertise in the business of providing the Services;

WHEREAS, STENTORIAN TECHNOLOGIES submitted a proposal to Subscriber to perform such Services on behalf of Subscriber;

WHEREAS, based on STENTORIAN TECHNOLOGIES’s knowledge and experience relating to such Services, Subscriber has selected STENTORIAN TECHNOLOGIES to provide and manage the Services;

WHEREAS, STENTORIAN TECHNOLOGIES wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of Subscriber’s data (“Subscriber Data,” as further described herein) are critical to the operation of Subscriber’s business; and,

WHEREAS, STENTORIAN TECHNOLOGIES has agreed to provide the Services to Subscriber,

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services. This Agreement sets forth the terms and conditions under which STENTORIAN TECHNOLOGIES agrees to license to Subscriber certain hosted software and provide all other services necessary for productive use of such software (the “Services”) as further set forth on an Exhibit A (sequentially numbered) in the form of the Exhibit A attached hereto or in other statements of services containing substantially similar information and identified as an Exhibit A. The Agreement shall remain in effect unless terminated as provided for herein.
    - 1.1 Authorized Users; Authorized Uses. Unless otherwise limited on an Exhibit A, STENTORIAN TECHNOLOGIES grants Subscriber a renewable, irrevocable (unless as provided for herein), nonexclusive, royalty-free, and worldwide right for any Subscriber employee, contractor, or agent, or any other individual or entity authorized by Subscriber, (each, an “Authorized User”) to access and use the Services. Other than those limitations expressly described in an Exhibit A, Authorized Users will have no other limitations on their access to or use of the Services.
    - 1.2 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the parties acknowledge and agree that this Agreement constitutes a license grant of intellectual property in software form to Subscriber by STENTORIAN TECHNOLOGIES.
    - 1.3 Changes in Number of Authorized Users. The Services are provided on a tiered basis, such tiers as further described in an Exhibit A. Subscriber agrees to license the initial number of Authorized Users described in such Exhibit A (the “Minimum Commitment”). Subscriber is entitled to increase or decrease the number of Authorized Users on an as-requested basis; provided, however, that Subscriber shall maintain the Minimum Commitment unless the parties otherwise agree to adjust the Minimum Commitment. Should Subscriber elect to change the number of Authorized Users, STENTORIAN TECHNOLOGIES shall reduce or increase Authorized Users to the corresponding tier described in the Exhibit A and adjust the prospective Services Fees accordingly.
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- 1.4 Control and Location of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of STENTORIAN TECHNOLOGIES, giving due consideration to the requests of Subscriber. Except as otherwise specified in an Exhibit A, the Services (including data storage), shall be provided solely from within the continental United States and on computing and data storage devices residing therein.
- 1.5 Storage. The Services shall include the applicable allocation of base data storage described in an Exhibit A. STENTORIAN TECHNOLOGIES shall immediately notify Subscriber when Subscriber has reached eighty percent (80%) of Subscriber's then-current data storage maximum. Within five (5) calendar days of Subscriber's request, STENTORIAN TECHNOLOGIES shall make additional data storage available to Subscriber at the rates described in the Exhibit A.
- 1.6 Changes in Functionality. During the term of an Exhibit A, STENTORIAN TECHNOLOGIES shall not reduce or eliminate functionality in the Services. STENTORIAN TECHNOLOGIES may, from time to time, improve functionality and/or Services without an increase in the cost of that functionality or those Services. STENTORIAN TECHNOLOGIES may also, from time to time, offer additional Services to the Subscriber for an additional fee.

## 2. Service Levels.

- 2.1 Service Levels; Time is of the Essence. For the term of an Exhibit A, STENTORIAN TECHNOLOGIES shall provide the Services, force majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Level Standards, each as described in the Exhibit A, time being of the essence.

## 3. Support; Maintenance; Additional Services.

- 3.1 Technical Support Description. STENTORIAN TECHNOLOGIES will provide to Subscriber ticket and email support twenty-four (24) hours per day, seven (7) days per week, three-hundred-sixty-five (365) days per year; live support will be provided Monday through Friday 8 a.m. to 5 p.m. (Mountain Time). Technical Support will include any research and resolution activity performed by STENTORIAN TECHNOLOGIES.
- 3.2 Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing STENTORIAN TECHNOLOGIES's Technical Support staff or by submitting a request via STENTORIAN TECHNOLOGIES's customer service web portal. Authorized User is responsible for providing adequate information to STENTORIAN TECHNOLOGIES to facilitate resolution of the reported issue.
- 3.3 The Technical Support staff shall respond to support requests in a timely manner and shall strive to resolve the support request as quickly as possible, staying in communication with Subscriber throughout the resolution process.
- 3.4 Maintenance. STENTORIAN TECHNOLOGIES shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Exhibit A and the Documentation; and (c) the Service Level Standards can be achieved. The Services Fees shall be inclusive of the fees for maintenance.
  - 3.4.1 Required Notice of Maintenance. Unless as otherwise agreed to by Subscriber on a case-by-case basis, STENTORIAN TECHNOLOGIES shall provide prior written



notice to Subscriber of all non-emergency maintenance to be performed on the Services. For emergency maintenance, STENTORIAN TECHNOLOGIES shall provide as much prior notice as commercially practicable to Subscriber.

3.5 Customization/Integration Services. STENTORIAN TECHNOLOGIES shall provide the Customization / Integration Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Customization / Integration Services.

3.6 Training Services. STENTORIAN TECHNOLOGIES shall provide the Training Services, if any, described in an Exhibit A. The Services Fees shall be inclusive of the fees for the Training Services.

#### 4. Audit Rights of STENTORIAN TECHNOLOGIES.

4.1 Subscriber shall maintain a written, up to date list of current Authorized Users and provide such list to STENTORIAN TECHNOLOGIES within [5] Business Days of the Supplier's written request at any time or times;

4.2 Subscriber shall permit STENTORIAN TECHNOLOGIES to audit the Services in order to establish the username of each Authorized User. Such audit may be conducted no more than once per quarter, at STENTORIAN TECHNOLOGIES' expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Subscriber's normal conduct of business;

4.3 If any of the audits referred to in clause 4.2 reveal that access has been provided to any individual who is not an Authorized User, then without prejudice to STENTORIAN TECHNOLOGIES' other rights, Subscriber shall promptly disable such access and Subscriber shall not issue any new passwords to any such individual; and

4.4 If any of the audits referred to in clause 4.2 reveal that Subscriber has underpaid Subscription Fees to STENTORIAN TECHNOLOGIES, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Exhibit A within [10] Business Days of the date of the relevant audit.

5. Change Control Procedure. Subscriber may, upon written notice, request changes to the scope of the Services under an Exhibit A. If Subscriber requests an increase in the scope, Subscriber shall notify STENTORIAN TECHNOLOGIES, and, not more than five (5) business days (or other mutually agreed upon period) after receiving the request, STENTORIAN TECHNOLOGIES shall notify Subscriber whether or not the change has an associated cost impact. If Subscriber approves, Subscriber shall issue a change control, which will be executed by STENTORIAN TECHNOLOGIES.

#### 6. Term and Termination; Renewals.

6.1 Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement or an Exhibit A is terminated earlier in accordance with the terms set forth herein, the term of an Exhibit A (the "Initial Term") shall commence on the Start Date and continue until the End Date. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, an Exhibit A shall automatically renew for successive one (1) year terms (each, a "Renewal Term") until such time as a party provides the other party with written notice of termination; provided, however, that: (a) such notice be given no fewer than thirty (30) calendar days prior to the last day of the then-current term; and,



(b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term.

- 6.2 Termination for Convenience. Without limiting the right of a party to terminate this Agreement or an Exhibit A as provided for in this Agreement, a party may terminate this Agreement for convenience upon prior written notice to the other party provided that there is no Exhibit A then in effect.
- 6.3 Termination for Cause. Without limiting the right of a party to immediately terminate this Agreement or an Exhibit A for cause as provided for in this Agreement, if either party materially breaches any of its duties or obligations hereunder and such breach is not cured, or the breaching party is not diligently pursuing a cure to the non-breaching party's satisfaction, within thirty (30) calendar days after written notice of the breach, the non-breaching party may terminate this Agreement or an Exhibit A for cause as of a date specified in such notice.
- 6.4 Payments upon Termination. Upon the termination of this Agreement or an Exhibit A, Subscriber shall pay to STENTORIAN TECHNOLOGIES all undisputed amounts due and payable hereunder, if any, and STENTORIAN TECHNOLOGIES shall pay to Subscriber all amounts due and payable hereunder, such as Performance Credits and prepaid fees, if any.
- 6.5 Return of Subscriber Data. Upon the termination of this Agreement or an Exhibit A, STENTORIAN TECHNOLOGIES shall, within one (1) business week following the termination of this Agreement or an Exhibit A and resolution of all current fees due, provide Subscriber with the option to do a final export of all imported Subscriber data. Further, STENTORIAN TECHNOLOGIES shall certify to Subscriber the destruction of any Subscriber Data within the possession or control of STENTORIAN TECHNOLOGIES but such destruction shall occur only after the Subscriber Data has been returned to Subscriber. This Section shall survive the termination of this Agreement.
7. Transition Services. Provided that this Agreement or an Exhibit A has not been terminated by STENTORIAN TECHNOLOGIES due to Subscriber's failure to pay any undisputed amount due STENTORIAN TECHNOLOGIES, STENTORIAN TECHNOLOGIES will provide to Subscriber and / or to the STENTORIAN TECHNOLOGIES selected by Subscriber (such STENTORIAN TECHNOLOGIES shall be known as the "Successor STENTORIAN TECHNOLOGIES") assistance reasonably requested by Subscriber to effect the orderly transition of the Services, in whole or in part, to Subscriber or to Successor STENTORIAN TECHNOLOGIES (such assistance shall be known as the "Transition Services") following the termination of this Agreement or an Exhibit A, in whole or in part. The Transition Services shall be provided on a time and materials basis and may include: (a) developing a plan for the orderly transition of the terminated Services from STENTORIAN TECHNOLOGIES to Subscriber or Successor STENTORIAN TECHNOLOGIES; (b) if required, transferring the Subscriber Data to Successor STENTORIAN TECHNOLOGIES; (c) using commercially reasonable efforts to assist Subscriber in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by STENTORIAN TECHNOLOGIES in connection with the Services; (d) using commercially reasonable efforts to make available to Subscriber, pursuant to mutually agreeable terms and conditions, any third-party services then being used by STENTORIAN TECHNOLOGIES in connection with the Services; and, (e) such other activities upon which the parties may agree. This Section shall survive the termination of this Agreement.
8. Fees; Billing. Subscriber shall be responsible for and shall pay to STENTORIAN TECHNOLOGIES the fees as further described in an Exhibit A, subject to the terms and conditions contained in this Agreement and such Exhibit A. Any sum due STENTORIAN TECHNOLOGIES for the Services for which payment is not otherwise specified shall be due and payable thirty (30) business days after receipt by Subscriber of an invoice from STENTORIAN TECHNOLOGIES.
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- 8.1 Billing Procedures. Unless otherwise provided for under an Exhibit A, STENTORIAN TECHNOLOGIES shall bill to Subscriber the sums due pursuant to an Exhibit A by STENTORIAN TECHNOLOGIES's invoice, which shall contain: (a) Subscriber's purchase order number, if any, and STENTORIAN TECHNOLOGIES's invoice number; (b) description of Services for which an amount is due; (c) the fees or portion thereof that are due; (d); taxes, if any; (e); any Performance Credits or other credits; and, (f) total amount due. STENTORIAN TECHNOLOGIES shall forward invoices in hardcopy format to [Subscriber Accounts Payable Address].
- 8.2 Taxes. STENTORIAN TECHNOLOGIES represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. STENTORIAN TECHNOLOGIES agrees that Subscriber is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for STENTORIAN TECHNOLOGIES. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by STENTORIAN TECHNOLOGIES.
- 8.3 Credits. Any amounts due to Subscriber, such as a Performance Credit, from STENTORIAN TECHNOLOGIES may be applied by Subscriber, at the sole election of Subscriber, against any current or future fees due to STENTORIAN TECHNOLOGIES. Any such amounts that are not so applied by Subscriber shall be paid to Subscriber by STENTORIAN TECHNOLOGIES within thirty (30) calendar days following Subscriber's request. This Section shall survive the termination of this Agreement.
- 8.4 Non-binding Terms. Any terms and conditions included in a Subscriber purchase order or a STENTORIAN TECHNOLOGIES invoice, as the case may be, shall be deemed to be solely for the convenience of the respective party, and no such term or condition shall be binding upon the parties.
- 8.5 Auditable Records. STENTORIAN TECHNOLOGIES shall maintain accurate records of all fees billable to, and payments made by, Subscriber in a format that will permit audit by Subscriber for a period of no less than three (3) years from when a fee was incurred or a payment was made. The foregoing obligation of STENTORIAN TECHNOLOGIES shall survive the termination of this Agreement.
- 8.6 No Suspension of Services. STENTORIAN TECHNOLOGIES shall not suspend any part of the Services where: (a) Subscriber is reasonably disputing any amount due to STENTORIAN TECHNOLOGIES; or, (b) any unpaid but undisputed amount due to STENTORIAN TECHNOLOGIES is less than sixty (60) days in arrears.
- 8.7 Late Fees. A late fee of 15% will be assessed for each monthly payment that is late as defined in Exhibit A.

## 9. Representations and Warranties.

- 9.1 Mutual. Each of Subscriber and STENTORIAN TECHNOLOGIES represent and warrant that:
- 9.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
  - 9.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
  - 9.1.3 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability
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thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

9.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,

9.1.5 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

9.2 By STENTORIAN TECHNOLOGIES. STENTORIAN TECHNOLOGIES represents and warrants that:

9.2.1 it is in the business of providing the Services;

9.2.2 the Services are fit for the ordinary purposes for which they will be used;

9.2.3 it is possessed of superior knowledge with respect to the Services;

9.2.4 it acknowledges that Subscriber is relying on its representation of its experience and expert knowledge, and that any substantial misrepresentation may result in damage to Subscriber;

9.2.5 it knows the particular purpose for which the Services are required by Subscriber;

9.2.6 it is the lawful licensee or owner of the Services (excluding any Subscriber Data therein) and has all the necessary rights in the Services to grant the use of the Services to Subscriber;

9.2.7 the Services and any other work performed by STENTORIAN TECHNOLOGIES hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement;

9.2.8 it shall disclose any third-party (which shall, for purposes of this Agreement, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of the applicable Exhibit A;

9.2.9 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;

9.2.10 it will use its best efforts to ensure that no computer viruses, malware, or similar items (collectively, a "Virus") are introduced into Subscriber's computing and network environment by the Services.

9.2.11 in the case of Subscriber's reasonable dispute of any STENTORIAN TECHNOLOGIES invoice, it shall not withhold the performance of Services, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of Subscriber Data; and,

9.2.12 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Exhibit A and the Documentation.

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10. Subscriber Data.

10.1 Ownership. Subscriber's data ("Subscriber Data," which shall also be known and treated by STENTORIAN TECHNOLOGIES as Confidential Information) shall include: (a) Subscriber's data imported, used, processed, or stored; and, (b) personally identifiable information ("PII") imported, used, processed, or stored using the Services, including, without limitation, any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Subscriber Data is and shall remain the sole and exclusive property of Subscriber and all right, title, and interest in the same is reserved by Subscriber. This Section shall survive the termination of this Agreement.

10.2 STENTORIAN TECHNOLOGIES Use of Subscriber Data. STENTORIAN TECHNOLOGIES is provided a limited license to Subscriber Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display Subscriber Data only to the extent necessary in the providing of the Services. STENTORIAN TECHNOLOGIES shall: (a) keep and maintain Subscriber Data in strict confidence, using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose Subscriber Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, the applicable Exhibit A, and applicable law; and, (c) not use, sell, rent, transfer, distribute, or otherwise disclose or make available Subscriber Data for STENTORIAN TECHNOLOGIES's own purposes or for the benefit of anyone other than Subscriber without Subscriber's prior written consent. This Section shall survive the termination of this Agreement.

11. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section shall survive the termination of this Agreement.

11.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving party without an obligation of confidentiality; (b) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (c) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Agreement, in all cases and for all matters, Subscriber Data shall be deemed to be Confidential Information.

11.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

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11.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

11.4 Remedies for Breach of Obligation of Confidentiality. Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of Subscriber, at the sole election of Subscriber, the immediate termination, without liability to Subscriber, of this Agreement or any Exhibit A corresponding to the breach or threatened breach.

11.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or an Exhibit A, in whole or in part, each party shall, within five (5) calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that STENTORIAN TECHNOLOGIES shall return Subscriber Data to Subscriber following the timeframe and procedure described further in this Agreement. Should STENTORIAN TECHNOLOGIES or Subscriber determine that the return of any non-Subscriber Data Confidential Information is not feasible, such party shall destroy the non-Subscriber Data Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other party.

## 12. Data Privacy and Information Security.

12.1 Undertaking by STENTORIAN TECHNOLOGIES. Without limiting STENTORIAN TECHNOLOGIES's obligation of confidentiality as further described herein, STENTORIAN TECHNOLOGIES shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of the Subscriber Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Subscriber Data; (c) protect against unauthorized disclosure, access to, or use of the Subscriber Data; and (d) ensure the proper disposal of Subscriber Data.

## 13. Proprietary Rights.

13.1 Pre-existing Materials. Subscriber acknowledges that, in the course of performing the Services, STENTORIAN TECHNOLOGIES may use software and related processes, instructions, methods, and techniques that have been previously developed by STENTORIAN TECHNOLOGIES (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of STENTORIAN TECHNOLOGIES.

13.2 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

13.3 The provisions of this Section shall survive the termination of this Agreement.

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14. Indemnification; Limitation of Liability; Insurance.

- 14.1 General Indemnification. STENTORIAN TECHNOLOGIES agrees to indemnify, defend, and hold harmless Subscriber and its officers, directors, agents, and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, negligence, or misconduct of STENTORIAN TECHNOLOGIES, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) any payment required to be paid to subcontractors, if any, of STENTORIAN TECHNOLOGIES; (c) any material misrepresentation or breach of warranty of any representation or warranty set forth in this Agreement; or, (d) any material breach of any covenant set forth in this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of an Indemnitee.
- 14.2 Proprietary Rights Indemnification. STENTORIAN TECHNOLOGIES agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that STENTORIAN TECHNOLOGIES is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that Subscriber is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then STENTORIAN TECHNOLOGIES shall, at its expense: (a) obtain for Subscriber the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by Subscriber; or, (c) in the event that STENTORIAN TECHNOLOGIES is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, STENTORIAN TECHNOLOGIES shall reimburse to Subscriber any prepaid fees and the full cost associated with any Transition Services.
- 14.3 Indemnification Procedures. Promptly after receipt by Subscriber of a threat, notice, or filing of any Claim against an Indemnitee, Subscriber shall give notice thereof to STENTORIAN TECHNOLOGIES, provided that failure to give or delay in giving such notice shall not relieve STENTORIAN TECHNOLOGIES of any liability it may have to the Indemnitee except to the extent that STENTORIAN TECHNOLOGIES demonstrates that the defense of the Claim is prejudiced thereby. STENTORIAN TECHNOLOGIES shall have sole control of the defense and of all negotiations for settlement of a Claim and Subscriber shall not independently defend or respond to a Claim; provided, however, that: (a) Subscriber may defend or respond to a Claim, at STENTORIAN TECHNOLOGIES's expense, if Subscriber's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) Subscriber shall have the right, at its own expense, to monitor STENTORIAN TECHNOLOGIES's defense of a Claim. At STENTORIAN TECHNOLOGIES's request, Subscriber shall reasonably cooperate with STENTORIAN TECHNOLOGIES in defending against or settling a Claim; provided, however, that STENTORIAN TECHNOLOGIES shall reimburse Subscriber for all reasonable out-of-pocket costs incurred by Subscriber (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.
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14.4 Third-Party Beneficiaries. For the purposes of this Section and STENTORIAN TECHNOLOGIES's obligations hereunder, non-party Indemnitees are third-party beneficiaries of this Agreement in accordance with its terms. Any action or consent taken by Subscriber on its own behalf is binding upon the non-party Indemnitees for the purposes of this Section. Other than as provided for in this Section, this Agreement is for the sole benefit of the signatories hereto and their permitted successors and assigns. Nothing, express or implied, in this Agreement is intended to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor non-party Indemnitees.

14.5 Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND / OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID OR PAYABLE UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR, (C) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. This Section shall survive the termination of this Agreement.

15. General.

15.1 Relationship between Subscriber and STENTORIAN TECHNOLOGIES. STENTORIAN TECHNOLOGIES represents and warrants that it is an independent contractor with no authority to contract for Subscriber or in any way to bind or to commit Subscriber to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of Subscriber. Under no circumstances shall STENTORIAN TECHNOLOGIES, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of Subscriber. In recognition of STENTORIAN TECHNOLOGIES's status as an independent contractor, Subscriber shall carry no Workers' Compensation insurance or any health or accident insurance to cover STENTORIAN TECHNOLOGIES or STENTORIAN TECHNOLOGIES's agents or staff, if any. Subscriber shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither STENTORIAN TECHNOLOGIES nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of Subscriber.

15.2 Third-Party Software. Any issues regarding Subscriber's operating system or other third-party software not developed by STENTORIAN TECHNOLOGIES, including bugs, security issues, or other defects, are the responsibility of the Subscriber. No part of this agreement shall be construed to give STENTORIAN TECHNOLOGIES responsibility or liability for any third-party software not developed by STENTORIAN TECHNOLOGIES that was purchased by Subscriber or resident on Subscriber's computers or such software's interaction with the STENTORIAN TECHNOLOGIES client or impact on Subscriber's data.

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- 15.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Utah and the federal laws of the United States of America. STENTORIAN TECHNOLOGIES hereby consents and submits to the jurisdiction and forum of the state and federal courts in the Utah in all questions and controversies arising out of this Agreement.
- 15.4 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one party either seeks to enforce this Agreement or seeks a declaration of any rights or obligations under this Agreement, the non-prevailing party shall pay the prevailing party's costs and expenses, including but not limited to, reasonable attorneys' fees.
- 15.5 Compliance with Laws; Subscriber Policies and Procedures. Both parties agree to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable. STENTORIAN TECHNOLOGIES shall comply with Subscriber policies and procedures where the same are posted, conveyed, or otherwise made available to STENTORIAN TECHNOLOGIES.
- 15.6 Cooperation. Where agreement, approval, acceptance, consent, or similar action by either party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld. Each party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each party may properly accomplish its obligations and responsibilities hereunder. STENTORIAN TECHNOLOGIES will cooperate with any Subscriber supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to Subscriber, including, without limitation, the Successor STENTORIAN TECHNOLOGIES. STENTORIAN TECHNOLOGIES agrees to cooperate with such suppliers, and shall not commit or permit any act which may interfere with the performance of services by any such supplier.
- 15.7 Force Majeure; Excused Performance. Neither party shall be liable for delays or any failure to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. The delayed party must notify the other party promptly upon the occurrence of any such event, or performance by the delayed party will not be considered excused pursuant to this Section, and inform the other party of its plans to resume performance. In no event shall any of the following constitute a force majeure event: (a) failure, inadequate performance, or unavailability of STENTORIAN TECHNOLOGIES's subcontractors, if any; or, (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by STENTORIAN TECHNOLOGIES that result in an outage or inability for Subscriber to access or use the Services.
- 15.7.1 For clarity, downtime caused directly or indirectly by any of the following shall not be considered a breach of this Agreement:
- (a) a Force Majeure Event;
  - (b) a fault or failure of the internet or any public telecommunications network;
  - (c) a fault or failure of the Customer's computer systems or networks;
  - (d) any breach by the Customer of this Agreement; or
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(e) scheduled maintenance carried out in accordance with this Agreement

- 15.8 Advertising and Publicity. STENTORIAN TECHNOLOGIES shall not refer to Subscriber directly or indirectly in any advertisement, news release, or publication without prior approval from Subscriber.
- 15.9 No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's right to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision.
- 15.10 Notices. Any notice given pursuant to this Agreement shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid to the addresses appearing at the end of this Agreement, or as changed through written notice to the other party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee.
- 15.11 Assignment of Agreement. This Agreement and the obligations of STENTORIAN TECHNOLOGIES hereunder are personal to STENTORIAN TECHNOLOGIES and its staff. Neither STENTORIAN TECHNOLOGIES nor any successor, receiver, or assignee of STENTORIAN TECHNOLOGIES shall directly or indirectly assign this Agreement or the rights or duties created by this Agreement, whether such assignment is effected in connection with a sale of STENTORIAN TECHNOLOGIES's assets or stock or through merger, an insolvency proceeding or otherwise, without the prior written consent of Subscriber. In the case of an assignment by STENTORIAN TECHNOLOGIES, STENTORIAN TECHNOLOGIES represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. Subscriber, at Subscriber's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of Subscriber's business.
- 15.12 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. The parties agree that a facsimile signature may substitute for and have the same legal effect as the original signature.
- 15.13 Entire Agreement. This Agreement and its attached exhibits constitute the entire agreement between the parties and supersede any and all previous representations, understandings, or agreements between Subscriber and STENTORIAN TECHNOLOGIES as to the subject matter hereof. This Agreement may only be amended by an instrument in writing signed by the parties. This Agreement shall be construed without regard to the party that drafted it. Any ambiguity shall not be interpreted against either party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

Executed on the dates set forth in the applicable Exhibit A by the authorized representative of Subscriber and STENTORIAN TECHNOLOGIES to be effective as of the Effective Date as set forth in Exhibit A.

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