

MSA – Tier 1 – Terms & Conditions

Section 1: Service Agreement Terms:

Initial Term: **Tier 1 MSA Agreements** initial terms are set at 36 months unless otherwise outlined on the signed “Quote of Services”. The 36-month term will initiate on the date of signing the Quote of Services. As described in the Quote of Services, CUSTOMER agrees to be bound by the Terms and Conditions of this agreement

Scope of Included Services: Quote of Services.

Monthly Base Rate: Initial agreement monthly fee per month. – **See Quote Form** –

1. **Definitions.**
 - COMPANY refers to CorKat Data Solutions, LLC.
 - CUSTOMER refers to the CUSTOMER receiving services from CorKat Data Solutions, LLC.

2. **Engagement.** CUSTOMER hereby engages CorKat Data Solutions, LLC. (“COMPANY”) to provide “Tier 1” level services in support of CUSTOMER’s computer, electronic and information technology systems (“IT Services”) located at the CUSTOMER Service Address. Unless specified on the Quote of Services, the initial set terms of 36 months will commence on the date of the initial monthly invoice. Upon expiration of the initial term, and upon expiration of each successive term, this Agreement shall be automatically renewed and extended for an additional 12-month term unless one of the parties hereto serves written notice upon the other of intent not to renew the Agreement at least thirty (30) days prior to the renewal date. If CUSTOMER request a “month to month” term after the initial term expires, the CUSTOMER may lose any credits / discounts associated with annual terms.

3. **Scope of Included Services.** COMPANY will perform **Tier 1 level Support**: Support agents will be installed on all listed computers, laptops, servers.

Tier I Support

This level of support is designed for businesses who have full time IT staff. COMPANY works alongside their IT department by providing proactive desktop monitoring as a service. By leveraging our automation capabilities built into our Remote Monitoring and Management Platform, COMPANY reduces system failures, performance issues and virus infections by proactive monitoring of the system state and automating patch management, alerts, disk scans, log cleanup, and virus scans. This support frees the IT department to focus on the end-user and server management. If the CUSTOMER does not have internal IT staff, the CUSTOMER can utilize the COMPANY support staff at our normal hourly rate, by utilizing our ticketing system.

Service Includes: HIPAA/PCI compliant management agent, virus protection license.

Workstation Services	Included Services
<ul style="list-style-type: none"> • Security <ul style="list-style-type: none"> ○ Antivirus Software Definitions ○ Automated Virus Scans ○ Windows Patch Management ○ Support Software Updates (Adobe Reader, Microsoft Office, etc....) 	Included
<ul style="list-style-type: none"> • Performance 	Included

<ul style="list-style-type: none">○ Hard Drive File Fragmentation○ Hard Drive MFT Fragmentation○ Low Memory Detection○ High CPU Usage Detection○ Startup/Background Processes	
<ul style="list-style-type: none">● Proactive Reliability○ Hard Drive Error Monitoring○ Hard Drive SMART Stats Monitoring○ Hard Drive Free Space○ Hardware/Software Raid Failure Monitoring○ Windows File Corruption○ Bad Process Detection	Included

Responsibilities:

COMPANY: Our HIPAA/PCI compliant agent configured and scripted to proactively perform, Patch Management, System Maintenance, System Alerts and monthly reports. Automatic virus definition updates and nightly scans. Alerts and system errors are reported to the CUSTOMER IT Department or Point of Contact (POC) for remediation.

CUSTOMER: When system errors/issues arise, COMPANY will notify the CUSTOMER point of contact (POC) for remediation of all system alerts, system errors, hardware and/or software failure, end-user helpdesk support, virus / adware / malware infections.

Services Not Included: *(available upon request per normal hourly rates)*

- Helpdesk / Ticketing System:
 - Access to our secure – agent and/or web-based ticketing system for end-users to report issues and/or requests. All tickets are received immediately and dispatched for remediation.
- Remote Control:
 - Leveraging our Remote-Control feature, COMPANY can quickly and securely access any workstation or server, minimizing response time.
- Emergency Support:
 - Emergency support access to our 24/7 Network Operations Center
- Professional Services
 - On-site Network Admin when / if necessary to resolve technical issues due to hardware failure, internet outage or support requires physical presence. Out of state travel cost may apply
- Business Continuity
 - Disaster recovery, data backup, site replication
- vCIO / Project Management
 - Strategic planning & technology roadmap design - We bring vCIO expertise, thought leadership and planning to align your organization's goals and IT strategy. Tools such as technology roadmaps and strategic plans show measurable metrics such as a reduction in IT spend or creating competitive advantages.

COMPANY will decide whether to perform IT Services at the Service Address or off site. CUSTOMER agrees not to make unreasonable requests for services.

4. **Pricing; Additional Services.** The Monthly Base Rate set forth on the Quote of Services covers the cost of IT Services coming within the Scope of Included Services in addition to addendums, if any, to this document. Charges for additional services such as "Project Type" work, requested or required by CUSTOMER will be determined by agreement of the parties or, in the absence of agreement, will be charged at COMPANY's standard rates in effect at the time service is provided or adjustments to standard rates if defined in Appendix A. The Base Rate does not include the cost of any hardware, software, equipment, or supplies or any out-of-pocket expenses incurred by COMPANY unless specifically identified as included in the Appendix's or in an addendum.
5. **Billing & Payment Terms.** On the Effective Date CUSTOMER shall deliver payment for: (a) initial one-time installation and set-up charges if applicable. Billing shall commence on the Service Commencement Date, regardless of whether CUSTOMER: (a) has installed its CUSTOMER applications, domain/active directory setup (b) procured needed equipment or services from any other carrier(s) or vendor(s), or (c) is otherwise prepared to accept delivery of ordered Services from COMPANY.

COMPANY invoices in advance for Services to be provided during the current month. Invoices are issued on the first day of each month and are due by the 14th day of the current month. Professional service charges that are dependent upon usage of Service as specified in Attachment A, will be billed in arrears.

Equipment purchases: the cost of the equipment will be invoiced upon signed approval of the equipment quote. Any labor associated with the equipment installation or configuration will be invoiced upon completion of the project work.

Billing for the initial partial month or additional services are prorated based on a calendar month. All invoices are **due upon receipt**, and become past due thirty (30) days after the invoice date. Past due amounts bear a fee at a rate of 10% per month (prorated on a daily basis beginning on the date of invoice). Any expenses of collection (including, without limitation, attorney's fees, collection agency fees and disbursements) will be borne by the CUSTOMER. If CUSTOMER reasonably disputes any portion of a COMPANY invoice, CUSTOMER must pay the entire invoice and submit a written claim for refund of the disputed amount. All claims must be submitted to COMPANY within thirty (30) days of receipt of the invoice for those. If the dispute is resolved in favor of CUSTOMER, COMPANY shall refund or provide a credit of all amounts due to the CUSTOMER within ten (10) days of resolution.

5a. Payment Methods.

- ACH – COMPANY schedules ACH payments on the 14th and 28th of month invoices are due
 - Checks are permitted as payment. COMPANY reserves the right to enforce payment by ACH if CUSTOMER has two past due payments.
 - Credit Card – COMPANY does not include transaction and/or processing fees within our monthly invoices. Therefore, COMPANY will include a 3.5% processing fee for all payments made by Credit Card.
6. **Suspension of Services for nonpayment.** If the CUSTOMER fails to comply with the payment policy within **section 5**, COMPANY may suspend services provided to CUSTOMER under this agreement after ten (10) days written notice to cure past due invoices. The ten (10) days begins on the date of postmark. COMPANY reserves the right to enforce payment by ACH or Credit Card if CUSTOMER has two past due payments. Payment by Credit Card may require additional processing fees. The change in payment method does not constitute a breach on the agreement by the COMPANY. If the COMPANY suspends CUSTOMER services due to nonpayment, this does not constitute a breach in the agreement by COMPANY.
 7. **Suspension or Termination of Services.** COMPANY may terminate this Agreement or any Service Order hereunder, or suspend Services, with not less than ten (10) days prior written notice, upon (a) CUSTOMER's failure to pay any amounts as provided herein; (b) CUSTOMER's breach of any provision of this Agreement or any law, rule or regulation governing the Services; (c) any insolvency, bankruptcy assignment for the benefit of creditors, appointment of trustee or receiver or similar event with respect to CUSTOMER; or (d) any governmental prohibition or required alteration of the Services. COMPANY may

terminate or suspend Services without notice if: (x) necessary to protect COMPANY's Network; (y) COMPANY has reasonable evidence of CUSTOMER's fraudulent or illegal use of Services; or (z) required by legal or regulatory authority. Any termination shall not relieve CUSTOMER of any liability incurred prior to such termination, or for payment of unaffected Services. All terms and conditions of this Agreement shall continue to apply to any Services not so terminated, regardless of the termination of this Agreement. If the Service provided under any Service Order hereunder has been terminated by COMPANY in accordance with this section, and CUSTOMER wants to restore such Service, CUSTOMER first must pay all past due charges, a non-recurring charge, reconnection charge and a deposit equal to 2 months' recurring charges. If the COMPANY suspends CUSTOMER services due to nonpayment, this does not constitute a breach in the agreement by COMPANY.

8. **Termination for Cause.** If CUSTOMER believes the COMPANY has failed to meet its services outlined within the agreement, the CUSTOMER must provide written notice describing the areas of concern and allow COMPANY thirty (30) days to cure the written concerns. Either party may terminate this Agreement if: (i) the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice of the same, except in the case of CUSTOMER's failure to pay fees, which must be cured within five (5) days after receipt of written notice from COMPANY; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. CUSTOMER may also terminate this Agreement in accordance with the terms set forth in the Service Level Agreement
9. **Termination Liability.** If CUSTOMER terminates this Agreement or any Quote of Services(s) hereunder prior to the end of the term of such Agreement and/or Service Order(s) for any reason other than COMPANY's material breach of this Agreement that remains uncured after written notice and allowing COMPANY 30 day cure period, or under the provisions of this Agreement, CUSTOMER shall pay in full to COMPANY within 15 days of such termination all remaining monthly recurring charges associated with the Service(s) for the balance of the term of this Agreement and/or outlined in such Service Order(s). The monthly amount will be determined by the higher amount of the signed quote or last full monthly invoice.
10. **Price Adjustments.** COMPANY shall have the right to propose an adjustment to the Monthly Base Rate, as provided on Appendix B, in the event of equipment purchases, substantial changes in the demand for IT Services initiated by CUSTOMER, material increases in costs to COMPANY, or if CUSTOMER's demand for IT Services during any twelve-month period during the term of this Agreement should exceed the Adjustment Threshold. Additionally, COMPANY reserves the right to adjust, from time to time, the "SPLA" pricing set forth in the Service Order at any time during the term of the Agreement, to reflect the pricing of Microsoft. In such case, the COMPANY will notify the CUSTOMER a minimum of 30 days in advance of the SPLA cost increase going into effect and notify the CUSTOMER of the effective date of the increase, but in no event will said adjustment be effective prior to date of notice to CUSTOMER.
11. **Use of Software.** Authorization to use any software provided by COMPANY to the CUSTOMER provides a personal, non-exclusive, limited, non-transferable and temporary license. All rights are reserved. The CUSTOMER may not re-publish, transmit, or distribute the software, or make any unauthorized use of COMPANY materials. Modification of such materials or the use of such materials for any purpose not authorized by COMPANY is prohibited.
12. **Business Class Applications.** CUSTOMER acknowledges that the COMPANY cannot be expected to be experienced in all third party applications and/or business class software packages. Therefore, CUSTOMER agrees to maintain vendor and/or manufacturer software support subscriptions for their business critical software.
13. **Non-Diversion.** CUSTOMER agrees that during the term of this Agreement and for a period of two years following the termination of this Agreement, CUSTOMER will not recruit or hire any employee, agent, representative or subcontractor of the COMPANY, nor will CUSTOMER directly or indirectly contact or communicate with COMPANY employee's for the purpose of soliciting or inducing such COMPANY employee's (a) to accept employment with, or perform work for any person, firm, or entity other than COMPANY; or (b) to provide services to CUSTOMER or any other person, firm or entity except as an employee or representative of the COMPANY. CUSTOMER agrees that, in the event of a breach or threatened breach of this provision, in addition to any remedies at law, COMPANY, without posting any bond, shall be entitled to obtain equitable relief

in the form of specific performance, a temporary restraining order, a temporary or permanent injunction or any other equitable remedy which may then be available.

14. **Disclaimer of Warranties.** IT Services furnished under this Agreement are provided "as is" and, unless otherwise expressly stated in this instrument, without representations or warranties of any kind, either express or implied. To the fullest extent permitted by law, COMPANY disclaims all warranties, express, implied or statutory, including, but not limited to, implied warranties of title, non-infringement, merchantability, and fitness for a particular purpose. COMPANY does not warrant that use of software or products furnished by COMPANY will be uninterrupted, error-free, or secure, that defects will be corrected, or that products or the server(s) to which access is provided are free of viruses or other harmful components.
15. **Limitation of Liability.** CUSTOMER acknowledges and accepts full liability and/or responsibilities for the computer use behavior of its employees and will provide COMPANY with the CUSTOMER "Computer Use Policy". COMPANY is not liable for data loss, corruption, connectivity and/or financial damages caused by inappropriate or careless computer uses practices, viruses, malware, ransomware, infections or malicious attacks. In no event shall COMPANY be liable to the CUSTOMER or any other party for any special, exemplary, incidental, consequential, or direct damages, including but not limited to lost profits, whether arising out of contract, tort, and strict liability or otherwise. In no way is COMPANY responsible for any damages to the CUSTOMER or any other party including but not limited to lost profits due to; malicious attacks, viruses, malware, ransomware, data loss, the unavailability of or malfunctioning of any equipment, software, or service, whether provided by COMPANY or any party representing COMPANY or otherwise. COMPANY shall not be liable to CUSTOMER for any failure or delay caused by events beyond COMPANY's reasonable control, including, without limitation, CUSTOMER's failure to furnish necessary information, sabotage, failures, theft or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, equipment, technical failures, accessibility to work site, acts of God, or any other reason.
16. **Actions.** No action, regardless of form (including in contract, tort or otherwise), arising in connection with the performance of this Agreement may be brought by either party more than one (1) year after the date of the occurrence on which the action is based.
17. **Good Faith.** The parties hereto expressly assume an obligation to act in good faith toward one another in the performance of their obligations under this Agreement
18. **Access:** CUSTOMER agrees to maintain, where required, a full time, dedicated Internet connection and to allow the COMPANY access to the CUSTOMER's network via that Internet connection. CUSTOMER agrees to allow the COMPANY employees or subcontractors access to its facilities in order to perform services under this Agreement. CUSTOMER agrees to allow the COMPANY access to the covered equipment. Facility access may be denied for any reason at any time, however if access to facilities is denied, the CUSTOMER understands the COMPANY may be unable to perform their duties adequately and if such a situation should exist, the COMPANY will be held harmless. In the case of the CUSTOMER residing in a facility with access controlled by a third party, the CUSTOMER is responsible for obtaining proper and adequate permissions for the COMPANY to enter and operate on the premises designated as the CUSTOMER's work area. CUSTOMER agrees to allow the COMPANY to load any necessary management software on their systems. CUSTOMER agrees to furnish the COMPANY with Administrator-level password access for all covered equipment and servers, where necessary. The COMPANY agrees not to prevent CUSTOMER from accessing any equipment owned by the CUSTOMER or COMPANY.
19. **Limitations of Technology:** The CUSTOMER acknowledges that technologies are not universally compatible, and that there may be particular services or devices that the COMPANY may be unable to monitor, manage, or patch. The COMPANY agrees to inform the CUSTOMER when such a situation arises. The CUSTOMER agrees to correct the situation if applicable, and to hold the COMPANY harmless in any case. Patches and antivirus definitions are distributed by their respective software vendors, and as such, the COMPANY has no direct control over the effectiveness or lack thereof of the software being applied. The COMPANY shall not be held responsible for interruptions in service due to patches released by software vendors.
20. **Authority:** CUSTOMER signatory represents and warrants that it has full corporate power and authority to execute this Agreement to bind their COMPANY. Only individuals with title of Chief Executive, Chief Financial Officer, Owner or any person designated by any of those individuals shall have power and authority to bind CUSTOMER.

21. **Miscellaneous.** This instrument, with attached Appendix's, contains the entire agreement of the parties and supersedes any previous agreement on the same subject matter between them. No amendments or variations of the terms and conditions of this agreement shall be valid unless the same are in writing and signed by all parties hereto. COMPANY is an independent contractor and nothing herein shall be construed as inconsistent with that relationship or status. If any one or more of the provisions contained in this Agreement is for any reason held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein. COMPANY shall not be liable to CUSTOMER for any failure or delay caused by events beyond COMPANY's control, including, without limitation, CUSTOMER's failure to furnish necessary information, sabotage, failures or delays in transportation or communication, failures or substitutions of equipment, labor disputes, accidents, shortages of labor, fuel, raw materials, or equipment, or technical failures, or accessibility to work site. The headings contained herein are for convenience of reference only, and are not to be used in interpreting this agreement. This agreement shall be construed and enforced pursuant to the laws of the State of Colorado. This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one document.

22. **21. LIMITATIONS OF LIABILITY.**

21a. THE LIABILITY OF COMPANY FOR ANY BREACH OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE RELATING TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND EXPRESSLY LIMITED TO THOSE REMEDIES SET FORTH IN THE SERVICE LEVEL AGREEMENT - ATTACHMENT B. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS OR OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT. NEITHER PARTY SHALL BE HELD LIABLE OR RESPONSIBLE TO THE OTHER PARTY, NOR BE DEEMED TO HAVE DEFAULTED UNDER OR BREACHED THIS AGREEMENT, FOR FAILURE OR DELAY IN FULFILLING OR PERFORMING ANY TERM OF THIS AGREEMENT TO THE EXTENT, AND FOR SO LONG AS SUCH DELAY IS CAUSED BY ANY FORCE MAJEURE EVENTS, PROVIDED THAT AND FOR SO LONG AS THE PARTY SO AFFECTED HAS USED AND CONTINUES TO USE COMMERCIALY REASONABLE EFFORTS TO PERFORM DESPITE THE FORCE MAJEURE EVENT.

21b. DAMAGE TO CUSTOMER EQUIPMENT. COMPANY assumes no liability for any damage to, or loss of, any CUSTOMER Equipment resulting from any cause other than the gross negligence or willful misconduct of COMPANY. To the extent COMPANY is liable for any damage to, or loss of, CUSTOMER Equipment for any reason, such liability will be limited solely to the replacement value of the CUSTOMER Equipment, excluding lost data, software and firmware.

21c. CONSEQUENTIAL DAMAGES WAIVER. Except for a breach of section 24 ("Confidential Information") of this Agreement, in no event will either party be liable or responsible to the other for any type of incidental, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability or otherwise.

22. INDEMNIFICATION. Each party shall, at its own expense, indemnify, defend, and hold harmless the other party, and such party's employees, directors, officers, members, managers, representatives, and agents (collectively referred to as the "Indemnified Parties") against any claim, suit, action, liabilities, costs, and expenses, including any other proceeding brought by a third party against the Indemnified Parties (collectively referred to as "Claims"), to the extent that such Claim is based on or arises from the breach of any representation, warranty, or covenant of the indemnifying party contained in this Agreement or arising out of or related to any damage to tangible property, personal injury or death caused by such party's negligence or willful misconduct. In addition, CUSTOMER shall indemnify, defend, and hold harmless the COMPANY Indemnified Parties against any Claim that the CUSTOMER infringed any Intellectual Property right of any third party, or any right of publicity or privacy, or is libelous or defamatory. The indemnifying party will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by the Indemnified Parties in connection with or arising from or attributable to any such Claim. The indemnifying party's obligations under this Section shall be subject to reasonably prompt notice of any such Claim and permitting the indemnifying party, through its counsel, to answer and defend such Claim. The Indemnified Parties, at their own expense, shall have the right to employ separate counsel and participate in the defense thereof. In no event may either party enter into any third-party

Agreements that would in any manner affect the rights of, or bind, the other party in any manner to such third party, without the prior written consent of the other party.

23. ARBITRATION.

Injunctive Relief. Any dispute arising out of or relating to this Agreement, including the breach, termination or validity hereof (excluding, however, a breach of the license in Section 15, and/or Section 24), shall be settled by arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. §. 1 et seq. The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules, but need not be administered by JAMS unless the Parties cannot otherwise agree upon the selection of an arbitrator within thirty (30) days of the receipt of a written demand for arbitration, In the event the Parties cannot reach Agreement on the selection of an arbitrator, either party may commence the arbitration process by filing a written demand for arbitration with JAMS, with a copy to the other party. The written demand for arbitration called for by this paragraph shall contain sufficient detail regarding the party's claims to permit the other party to understand the claims and identify witnesses and relevant documents.

The arbitrator may, upon good cause shown, expand the discovery permitted by the JAMS rules and extend any applicable deadlines. The arbitrator may decide a motion for summary disposition of claims or issues, either by Agreement of all interested Parties or at the request of one party, provided other interested Parties have reasonable notice to respond to the request. The arbitrator shall not have the authority to determine claims over which a regulatory agency has exclusive jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The arbitrator shall apply Colorado law, and shall be able to decree any and all relief of an equitable nature allowed by this contract including, but not limited to, such relief as a temporary restraining order, a preliminary injunction, a permanent injunction or replevin of COMPANY AND/OR COMPANY DESIGNATED AGENTS's property. The arbitrator shall also award any actual and compensatory damages in accordance with this contract. The Parties expressly waive and the arbitrator shall not have the authority to issue an award of any other form of damages, including punitive and exemplary damages, non-economic damages, such as for emotional distress, pain and suffering or loss of consortium. In addition, the arbitrator shall have no right or authority to declare any intellectual property to be invalid or void. The arbitrator's decision shall follow the plain meaning of this Agreement and shall be final, binding, and enforceable in a court of competent jurisdiction. The arbitrator shall issue an award no later than sixty (60) days after the commencement of the arbitration hearing unless the Parties agree otherwise. Each party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator. The arbitration proceedings shall occur in the Loveland, Colorado metropolitan area.

Should it become necessary to resort to court proceedings to enforce a party's compliance with the dispute resolution process set forth herein, and the court directs or otherwise requires compliance herewith, then all of the costs and expenses, including its reasonable attorney's fees, incurred by the party requesting such enforcement shall be reimbursed by the non-complying party to the requesting party. Venue shall be deemed proper in the federal, state and county courts in and for the City and County of Loveland, State of Colorado, and said courts shall have exclusive jurisdiction over any proceedings arising out of this Agreement.

Nothing in this provision shall prevent a party from at any time seeking temporary equitable relief, from AAA or any court of competent jurisdiction, to prevent irreparable harm pending the resolution of the arbitration. The Parties acknowledge that a breach by CUSTOMER of Sections 15, and/or 24 hereof shall cause irreparable harm to COMPANY. Accordingly, if CUSTOMER breaches Sections 15, and/or 24 hereof, COMPANY shall be entitled to immediate and permanent injunctive relief in addition to all of the rights and remedies it may have, it being agreed that the damages which COMPANY would sustain upon such violation are difficult or impossible to ascertain in advance. If COMPANY is required to take legal action to enforce the covenants contained in Sections 15, and/or 24, or to enjoin CUSTOMER from violating Sections 15, and/or 24; (a) COMPANY shall be entitled to recover, as part of its damages, its reasonable legal costs and expenses for bringing and maintaining any such action; and (b) posting of any bond shall not be required as a pre-condition to the issuance of the relief sought. Venue shall be deemed proper in the federal, state and county courts in and for the City and County of Loveland, State of Colorado, and said courts shall have exclusive jurisdiction over any proceedings arising out of this Agreement.

24. CONFIDENTIAL INFORMATION. Each party agrees that the following materials and information and all copies thereof of whatever nature are confidential and are the proprietary information and trade secrets of the disclosing party: (i) the computer software and algorithms possessed by either party and all source documents relating to such software and algorithms; (ii) proprietary information of either party (including, without limitation, the names and addresses of

CUSTOMERS, Content providers, and suppliers), and information that either party does not generally make available to the public; (iii) the methods, means, personnel, equipment, and software by and with which CUSTOMER provides its products and services and by and with which COMPANY provides the COMPANY network and its other products and services; (iv) the terms of this Agreement; and (v) any other information that either party reasonably designates, by notice in writing delivered to the other party, as being confidential or proprietary Confidential Information"). Except as expressly permitted herein, neither party shall use the Confidential Information of the other party and each party shall keep the Confidential Information of the other party secret to the degree such party keeps secret its own confidential or proprietary information, and in any case using no less than reasonable care.

Confidential Information of the disclosing party shall not be disclosed by the party who receives such information except: (i) to a party's accountants, auditors, agents, legal counsel, and parent companies; *provided, however*, that such Parties agree to be bound by these confidentiality provisions; or (ii) as may be required by any legal process, court order, or governmental agency, in which event the party making such disclosure shall so notify the other as promptly as practicable prior to making such disclosure and shall seek confidential treatment of such information. No information that would otherwise be Confidential Information shall be subject to the restrictions on disclosure in the event and to the extent that: (i) such information is in, or becomes part of, the public domain otherwise than through the fault of the receiving party; (ii) such information was known to the receiving party prior to the execution of the Agreement as proven by the receiving party's written records; (iii) such information was revealed to the receiving party by a third party having no obligation to hold such information confidential; or (iv) such information is developed independently of any of the disclosing party's Confidential Information by the receiving party. This paragraph shall be in addition to and not supersede any separate confidentiality or non-disclosure Agreement executed by the Parties. In the event of a conflict between this paragraph and any such Agreement, the provisions of such Agreement shall prevail.

25. ASSIGNMENT. Neither party may assign this Agreement, in whole or in part, without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement and its rights and obligations hereunder with thirty (30) days prior written notice to the other party, with or without consent, upon the happening of one or more of the following events: (a) in the event the COMPANY and/or its affiliates is sold to a third party; or (b) in the event there is a sale or transfer of all or substantially all of the COMPANY and/or its affiliate's assets to a third party; or (c) in the event of a merger or consolidation of the COMPANY and/or its affiliate's with another COMPANY at any time during the term of this Agreement. This Agreement will be binding upon and inure to the benefit of party's successors and assigns. The successor or assignee shall execute such documents as reasonably required by the COMPANY to effectuate same. Additionally, COMPANY shall notify CUSTOMER of any material adverse change in the financial condition of the COMPANY or a change of ownership within a reasonable time after the COMPANY has knowledge of same.

26. NOTICES. All notices under this Agreement or with respect thereto shall be in writing. Any notices hereunder shall be given by personal delivery, telecopy, facsimile, U.S. registered or certified mail (postage prepaid), or by overnight courier to the appropriate party at the address set forth in the Service Order and shall be deemed given on the date of such personal delivery, or the date telecopied or faxed, or a date two (2) business days after the date mailed if mailed in the United States or five (5) business days after the date mailed if mailed outside the United States. If such notice is sent by overnight courier, notice shall be deemed given twenty-four (24) hours after delivery to such overnight courier service.

27. PARTIAL INVALIDITY. In the event that any portion of this Agreement is invalid or unenforceable, the remaining terms and conditions shall nevertheless remain in full force and effect as though the invalid or unenforceable portion were not included.

28. CAPTIONS FOR CONVENIENCE. All headings or captions used herein are for convenient reference only and shall not be used in any way in connection with the interpretation, construction or enforcement of this Agreement.

29. NO WAIVER. Neither the failure of COMPANY to insist upon CUSTOMER's performance of any of CUSTOMER's obligations hereunder nor the waiver of any provision of this Agreement or of any default hereunder shall effect COMPANY's rights thereafter to enforce such provision or any other provision hereunder nor shall the failure of COMPANY to exercise any right

or remedy which COMPANY may have hereunder or under the law be construed as a waiver of any other right or remedy which COMPANY may have hereunder or under the law.

30. FORCE MAJEURE. Neither party shall be liable for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including but not limited to: acts of God, acts of civil or military authority, fires, floods, earthquakes, riots, wars, terrorism, sabotage, network failures, error in the coding of electronic files, software limitations, inability to obtain telecommunications services, or governmental actions, *provided, however,* that such affected party takes commercially reasonable efforts to mitigate the effects of such causes.

31. RELATIONSHIP OF PARTIES. Neither this Agreement, nor any terms and conditions contained herein may be construed as creating or constituting a partnership, joint venture, or agency relationship between the Parties. Neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

32. CUMULATIVE REMEDIES. All rights and remedies belonging to a party hereunder or under the law shall be deemed cumulative and not exclusive of one another and the exercise by a party of any right or remedy shall not preclude COMPANY from exercising or enforcing any other right or remedy it may have.

33. MODIFICATION. This Agreement, including these TERMS and CONDITIONS can only be modified by an instrument in writing signed by the Parties.

34. CONTROLLING DOCUMENTS. In the event any of the terms and provisions of this Attachment C to the COMPANY Master Services Agreement are contrary to or conflict with any other terms and conditions of any other Attachments to the Master Services AGREEMENT including Attachment B, then the terms and conditions of this Attachment C Agreement shall at all times supersede and control.