



MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is between Foortress, LLC ("Foortress", "we", or "our") and the Client ordering the Services, Software, or Products ("Client", "you", or "your") in the relevant statement of work or similar document that references this Agreement, and is agreed to or executed by the parties. The Effective Date of this Agreement is the date of the first statement of work or order form entered into between Foortress and Client, or is otherwise agreed to or executed by Client.

Foortress reserves the right to modify the terms of this Agreement and any other document at any time, and without notice. Using our Services (as defined above) after the changes become effective means you agree to the new terms. If you do not agree to the new terms, you must stop using our Services.

1. Scope of Work. Foortress will provide software and IT consulting, analysis, development, technical, project, and support services ("Services" or "services") as determined and agreed upon by Client or Client's designee from time to time in one or more statements of work mutually agreed to or executed by the Parties (each, a "Statement of Work," "SOW," "Estimate," or "Order Form"). "Services" include any products or services provided by Foortress or third parties. Foortress will perform such Services diligently, in a good, timely, workmanlike, and professional manner, per the generally recognized industry standards of care in Foortress's field.

2. Compensation and Payment.

a. Foortress's hourly rate for the services shall be set forth in the initial SOW. All hourly services are rendered on a Time and Materials basis only. The initial hourly rate shall not increase for the twelve (12) months subsequent to the Effective Date of this Agreement. Thereafter, Foortress may increase the hourly rate by up to ten percent (10%) of the then existing rate in each calendar year, and upon thirty (30) days advance written notice to Client. Client acknowledges entering into a Time and Materials contract because it is impossible to accurately estimate the scope or duration of Foortress's work when executing this agreement, or to anticipate the total costs to Client with any reasonable degree of confidence.

b. Foortress may invoice the Client for the time necessary for Foortress to conduct quality assurance reviews of its work, as well as for administrative overhead costs. For billing purposes, hours consumed will be measured in ¼-hour increments, with a minimum charge of ½ hour for each separate task, service incident, or case. For hourly services, Foortress will generate invoices on a weekly billing cycle, *i.e.*, Monday to Sunday ("Invoices"), and will submit the Invoices to Client via email to the Client's Billing Email Address by the fifth business day following the previous weekly cycle.

c. Payment Terms for all undisputed Invoices shall be Net 15 days from the Invoice date via ACH electronic transfer, without setoff, counterclaim, deduction, or withholding, unless Foortress



otherwise expressly agrees in writing. Client will be responsible for all bank, credit card, and currency exchange charges associated with its payment(s) to Foortress, Client shall not require the issuance of Client's purchase order to be obligated to pay Foortress's invoices. The pre-printed terms of Client's purchase order, other business form, or terms that Client provides to Foortress shall be void and of no effect.

d. Client will present all invoice disputes in writing to Foortress within ten (10) days of the invoice date. Foortress shall deem invoices accepted if Client does not provide written notice to Foortress within that period. All Client disputes must be reasonable and rendered in good faith. The Parties will have ten (10) business days to work in good faith to resolve the dispute. Undisputed Invoices not paid within five (5) days of the due date may be charged interest at the rate of 1.5% per month or the maximum rate permitted by law. Client's failure to pay any amount due to Foortress will constitute an event of default and be considered a material breach of this Agreement. In such an event, Foortress, in its sole discretion, and without waiving any other legal rights, may withhold any and all Services, including, without limitation, labor hours, products, software, system access and updates, and subscription products. Foortress will provide written (email) notice to Client at least five (5) business days prior to exercising its withholding rights under this section. The withholding of services under this Section 2(d) will not be considered or treated as a termination of this Agreement under Section 10 below. Client will be responsible for the payment of all undisputed services and software purchases rendered up to the point that Foortress ceases the work or services referenced herein.

e. In its sole discretion, Foortress may require Client to prepay for services, software, and/or hardware.

3. Software, Hardware, Hosting Services, and Telephony.

a. Hosting and IT services and software purchases are billed upon Client signing the applicable Statement of Work or Services order, unless stated otherwise, and are billed monthly in advance. (Labor hours regarding the implementation of Hosting and IT services will be invoiced as consumed). Payments are due on the first day of each month. Whether from Foortress or a third-party vendor, payment for software and hardware will be rendered in advance. Client will be solely responsible for its decision to purchase or not purchase any software, hardware, products, services, or telephony. Client forever waives all claims against Foortress regarding any such purchase decisions. Foortress will not be responsible for the ramifications resulting from any Services or hardware that Client chooses not to purchase after Foortress has recommended same. All such purchases are not returnable or refundable under any circumstances.

b. Charges will be based on the current counts of seats, devices, users, and other relevant metrics. Counts may be added at Client's request and will co-terminate with the previously purchased counts. For any additional seats, devices, users, or other metrics that Client may add mid-month, Client will be charged in full for the month the additions occurred. These additions



will not be pro-rated. Any increases in storage capacity or bandwidth usage beyond the tier's allowance will be invoiced for that month's utilization. Client may request a scope increase change order to adjust the design upon thirty (30) days written notice.

c. Foortress makes no representation or warranty regarding any Third-Party Software ("TPS"), hardware, products, services, or telephony that Foortress may recommend for Client's consideration. All Microsoft, Foortress, and third-party software are sold and used pursuant to, and governed by, the respective end-user license agreements. TPS license agreements are independent and separate from this Agreement. Foortress is not a party to, and is not responsible for the performance of any TPS, or any TPS vendor. All third-party hardware, products, services, and telephony are sold exclusively pursuant to the respective manufacturer's warranties. The purchase of third-party software, hardware, services, and telephony does not include any Foortress service or support hours, which, if requested, Foortress will invoice separately, along with any shipping or other costs charged by the vendor/manufacturer, as may be applicable. Client acknowledges that Foortress may be unable to support the items referenced in this section, other than Foortress-created software. Foortress will not be responsible for software that Client has not retained Foortress to support on an ongoing basis.

d. Foortress may increase the software, services, or telephony fees following the expiration of the initial purchase term or any renewal/auto-renewal term. If third-party software, services, or telephony fees increase, Foortress will increase such fees by the same percentage amount. If Client continues to use any software, service, or telephony following the termination of this Agreement, Client will be responsible for paying such fees at Foortress's then-current rates.

4. Microsoft Software. Client agrees to the following terms regarding the purchase of Microsoft NCE (New Commerce Experience) Subscription software:

Client will have two main subscription term commitment options: Monthly or Annual. Client can pay for the entire annual subscription upfront if Client chooses to receive a price discount.

a. Subscription licenses can be canceled up to 7 days (168 hours) after being provisioned. The charges will be prorated based on the time after the license is issued.

b. Client can add licenses at any time, but the license count can only be reduced at the end of the subscription term, and upon at least thirty (30) days written notice to Foortress prior to the renewal date.

c. Subscription licenses will automatically renew for subsequent terms unless the Client gives Foortress at least thirty (30) days written notice before the renewal date.

d. Client agrees to be solely responsible for the cost of the entire subscription license term, and to the terms of the software publisher's end user license agreement.



e. Foortress does not provide notice of automatic subscription renewals, whether for Microsoft or other software.

5. Taxes. Client will be responsible for all sales, use, and excise taxes imposed by any federal, state, or local governmental entity on any amounts payable by Client, applicable to the Services, software, and hardware hereunder, and properly itemized on an Invoice, provided that, in no event will Client pay or be responsible for any taxes imposed on, or regarding, Foortress's income, revenues, gross receipts, personnel, real or personal property, or other assets. Client will provide a certificate of exemption from such taxes acceptable to the appropriate taxing authority if Client asserts that it should not be charged sales tax.

6. Credit Limit. Client's credit limit will initially be \$10,000 and may increase from time to time without prior written notification to Client, but will only decrease upon prior written notice to Client. Client is not permitted to exceed its credit limit. If Client's total balance exceeds its credit limit, Client may be required to immediately pay the excess amount upon Client being informed that such payment is due.

7. Projects and Tasks.

a. All estimated hours, due dates, and statements of work provided by Foortress to Client are only approximate calculations and are valid for thirty (30) days from the date of the estimate or statement of work. All estimates are expressly based on Client's reasonable cooperation and participation in the task or project. Client agrees to disclose all project and task requirements correctly. Foortress does not provide fixed bids, quotes, or guarantees. Estimates are always subject to changes in time, *i.e.*, the length of time that the project or task may take and the scope. Specifically, Foortress's work for Client will often involve changes in requirements or the discovery of new conditions that may affect any estimate or scope of work. Project and task scopes and costs may vary materially, significantly, and/or dramatically from the original estimate. Foortress will communicate with Client and obtain Client's oral or written approval before continuing work to the extent that costs for a given project are expected to exceed twenty percent (20%) of the costs initially estimated and provided to Client.- Factors that may cause this variation include, without limitation, changes in the project/task scope, additional business process requirements, unknowable or unforeseeable events, and conditions, or requirements that Client did not disclose prior to Foortress preparing the estimate. Client acknowledges that any projects or tasks not expressly required by Client will automatically be outside the strict scope of Foortress's responsibility.

b. Foortress will bill Client for all hours worked, which may be more or less than those referenced in the estimate or statement of work. Estimates of hours or fees will not serve as a guarantee. Actual fees and costs may vary from the estimates given. Estimates and statements of work, as well as any other written or oral communications between Foortress and Client, do not form any contract or agreement that is separate from this Agreement.

c. Foortress does not promise or guarantee certain “go-live” dates or times to finish a project or task under any circumstances. Foortress will make reasonable efforts to meet any mutually agreed-upon go-live date. Foortress may withhold its consent to, and participation in, a go-live date for Client’s project or task for any reason, and in Foortress’s sole reasonable discretion. Circumstances beyond Foortress’s control may affect Foortress’s ability to participate in a go-live date that Client requests. For clarity, such circumstances may include, without limitation, acts or omissions of Client and third parties, unknowable or unforeseeable software, server infrastructure, hardware and personnel issues, and schedule slippage. Software development and implementations, and hardware configurations, are highly complex and evolving processes, and unforeseen and unforeseeable issues will arise. Foortress will provide as much prior written and/or oral notice as possible to Client should Foortress reasonably believe that a specific go-live date is not in Client’s best interests. Under no circumstances will Foortress be liable for any invoice credits or financial penalties due to a delayed go-live date.

d. A problematic project or task go live can result in severely adverse financial consequences for Client’s business, finances, and operations, including, without limitation, a complete shutdown of Client’s business. A delayed go-live is not the result of Foortress attempting to bill additional monies to Client for the project or task. Instead, a project or task is only ready to go live when all the conditions reasonably required by Foortress have been met. In some cases, a project or task may require more effort by Foortress to effectuate a go-live. Due to the nature of software development and implementation, and hardware installation and configuration, no project or task go live will be perfect, *i.e.*, without any issues or problems.

e. Any of Foortress’s work in progress, as requested by the Client, is always billable and valid, whether or not that work represents a completed task or project. Client’s concerns regarding work in progress will be addressed through the dispute resolution process referenced in Section 28 below.

f. Software and IT projects and tasks are inherently complex and must be considered as such by Client and its end users. Client acknowledges that no software runs flawlessly in all situations and combinations. Foortress does not warrant that any software will be uninterrupted or error-free. Inadvertent errors can and do occur. Further, Foortress has made no guarantees or warranties regarding the outcome of any project or task, nor has Foortress made any statements inconsistent with this Agreement’s terms. Foortress’s comments about the outcome of any task or project are an expression of opinion only.

g. Foortress will assign an internal Project Manager (“PM” or similar designation) that will be available for the duration of any project. This person will coordinate and assist in expediting all aspects of Client’s work. The PM will work with Client to schedule design and training sessions, minimize work interruptions for Client, monitor each step of the implementation plan, and work with Client to clearly define its issues and problems. Foortress personnel will work closely with Client to assist with the design, questions, modifications, reports, or any other needed items. Client’s first line of communication with Foortress will be with the PM. Client also agrees to submit all support requests to support@foortress.com.

h. In its sole discretion, Foortress retains the right to assign or not assign its personnel to Client's projects or tasks as Foortress sees fit, provided that such resource allocation is commercially reasonable and appropriate under the given circumstances. The personnel that Foortress assigns for Client's work may change at any time, for any reason, with oral and/or written notice to Client, and an explanation for such change. Notwithstanding the foregoing, the Parties will work together to find replacement personnel to meet Client's needs. Client acknowledges that Foortress may invoice Client for the commercially reasonable labor hours necessary to properly transition its personnel to work on Client's project or task.

i. Foortress will seek approval for support tasks, which Foortress estimates will take more than four (4) hours of billable time. Foortress will not seek the approval of estimated time for support tasks that Foortress envisions will take less than four (4) hours, which Client agrees are pre-approved upon Client's submission of such request, thus allowing Foortress to reduce Client's costs. Specifically, Foortress is not expending billable time to write an assessment or proposed statement of work for a task that Foortress anticipates will take less than four (4) hours to resolve.

j. Foortress will most likely need to ask many questions, at times on a repeated basis, concerning the issues that Client raises for any task or project. All questions from Foortress are due to the highly complex nature of implementing and developing software and IT systems. This process will allow all of Foortress's staff to understand Client's concerns and the Client's desired functionality.

8. Client Responsibilities.

a. Client agrees that Foortress will conduct all Client meetings via Microsoft Teams, that Foortress may electronically record meetings between Client and Foortress's personnel, in Foortress's sole discretion, and that Microsoft Copilot (artificial intelligence) will transcribe and summarize the recorded sessions.

b. Client will be solely responsible for correctly and completely communicating all project and task requirements, and the supporting details for same, to Foortress, and Foortress shall have no liability, nor bear any responsibility for, Client's failure to do so. Foortress will not be responsible for any undisclosed requirements, or for discovering unknowable or unforeseeable requirements through commercially reasonable efforts. Client forever waives any and all claims that Foortress should have discovered Client's requirements for a project or task based solely on Foortress's own efforts, and without any or sufficient input from Client. If Client changes the requirements for a project or task, the cost for that project or task may materially increase. Client and Foortress may agree to such change via a Change Order, email exchange, or verbal confirmation from Client to Foortress staff.

c. Foortress can only provide products and services based on the quality and accuracy of information and work specifications that Client supplies. Client warrants that all of the data



and information it will provide to Foortress will be truthful and accurate, to the best of Client's knowledge. Foortress shall not be responsible for inaccuracies in Client data and information.

d. Client will designate one of its personnel as its project manager, *i.e.*, the party responsible for Client's project or tasks. Foortress will report to that person and any other designated persons working on Client's behalf.

e. Client's personnel will actively and timely engage in testing and training sessions, promptly communicate any deficiencies, errors, questions, or comments, and "cross-train" other staff where necessary. Client will promptly notify Foortress of any problems that Client discovers with operating any software or IT system. Client will be responsible for defining and executing test cases. Client will thoroughly and timely test all software or system modifications and work performed by Foortress in a test database prior to Foortress placing the changes in Client's "live" production system database. The lack of this cooperation and participation will most likely result in a material increase to the hours estimate that Foortress has provided for the project or task. Client will be solely responsible for any costs associated with Client's failure to properly and timely any software or system modifications.

f. Client will be solely responsible for the validation and integrity of its data, and for any ramifications from its failure to do so.

g. Client will be responsible for providing written notice to Foortress regarding any needed user permissions.

h. Except for Foortress agreeing to perform IT services under a statement of work, Client will be solely responsible for all of Client's data, database and system backups, system security, including, without limitation, virus, malware, or ransomware attacks, and system performance issues. Foortress will not be responsible for any IT systems or data that Client has not retained Foortress to support. Additionally, if Client has retained Foortress to store or back up Client's data, Foortress will not be responsible for Client's data after Client fails to remit payment for such service, provided that Foortress will send written notice via email to the last known contact person(s) for Client regarding Foortress's intent to delete such data by a date certain. Foortress will provide five (5) days' notice of Client's opportunity to cure such a default, and after that, Foortress may irretrievably destroy Client's data, in Foortress's sole discretion.

i. Client agrees to remit payment on a timely basis for any of Client's software enhancement or other fees, as applicable. Moreover, Client agrees that annual or multi-year hosting services and software commitments that Client makes to Foortress may not be canceled or altered, except according to the terms of those purchases. For example, an annual commitment that automatically renews yearly may only be canceled by providing written notice to Foortress within the required timeframe. Whether or not Client is using the software or hosting services in question, Client will remain financially responsible until the end of the subscription term.



j. Client will provide timely access to Client's computer and software systems and financial information as Foortress may reasonably require to perform the services under this Agreement.

k. For Client projects or tasks requiring Foortress to assist with data migration, Client agrees to provide Foortress with remote access to Client's data sources. Foortress will not alter any of Client's financial or other data. Client will be solely responsible for the accuracy of its data that is the subject of Foortress's migration efforts.

l. Client acknowledges that specifications for hardware, systems, and platforms (the "System Requirements") may be provided to Client so that it can determine the sufficiency and compatibility of its systems for any Third-Party Equipment, Third-Party Software, and Foortress Software to be installed and implemented. Client further acknowledges that System Requirements are minimum requirements necessary for operation, but they may not be an optimal platform or configuration. Foortress does not warrant or guarantee any hardware, software, or other products implemented or installed will function at any particular speed or efficiency level. Client acknowledges that each computer system or hardware platform is complex and unique. Foortress cannot control all variables related to the operation of hardware, software, or other products on Client's hardware or computer system, and Foortress will not be liable or responsible for any failures of same.

m. Foortress is a reseller of Microsoft and other vendors' software and equipment. Client agrees to purchase any and all software licenses needed by Client directly from Foortress and not from any other software reseller. All software and equipment sold or resold by Foortress is solely subject to the respective end user license or warranty agreements that will be agreed upon by Client. In its sole reasonable discretion, and with prior notice to Client, Foortress may elect not to install or support software not published by Microsoft, or equipment that Foortress does not recommend. In that event, Client will be required to remit payment to, or on behalf of, the software or equipment vendor for installation and support services.

n. Client accepts sole responsibility for, and the risk-of-loss associated with, Client's use of third-party software, hardware, products, and/or services. Foortress is not responsible in any way for the software, equipment, or services of any third party vendor. Client accepts sole responsibility for all work product of, invoices from, communications with, and indemnifies and holds Foortress harmless from claims by, third-party software developers, personnel, vendors, contractors, and/or subcontractors. Client shall further indemnify and hold Foortress harmless from and against any claim and resulting loss that arise from, are the result of, or are caused by any malware introduced by Client or a third party into Client's software or system.

o. For Services where Foortress's access to the Client Configuration is necessary to perform the Services, Client agrees to grant Foortress a reasonable method to access the Client Configuration. Foortress will deploy our Privileged Access Management ("PAM") tool on Client's system to manage and secure our access to the Client Configuration. Foortress will install Remote Monitoring and Management ("RMM") software on Client's system for Foortress to load and use the PAM tool.

p. Client will cooperate with Foortress's reasonable investigation of outages, security problems, and any suspected breach of the Agreement.

q. Client agrees to comply with the following:

- i. Client's use of any Hosted System shall comply with Foortress's Acceptable Use Policy.
- ii. Client is responsible for keeping its account permissions, billing, and other account information current.
- iii. Client is responsible for determining the suitability of the Services, as well as Client's compliance with any applicable federal, state, and local laws and regulations.
- iv. Client is responsible for ensuring the integrity and security of Client Data, and for regularly backing up and validating the integrity of backups of Client Data on an environment separate from Client's system. Foortress will only back up data and provide disaster recovery, or any other services, to the extent stated on an executed Service Order.
- v. Client is responsible for understanding and complying with its contractual obligations to Foortress.
- vi. Client is responsible for notifying Foortress of technical or administrative contact information changes.
- vii. Client is responsible for maintaining its system(s) of record.
- viii. Client is responsible for ensuring the supervision, management, and control of its use of Foortress's services by Client's personnel.
- ix. Client is responsible for developing its own disaster recovery and business continuity plans that address the inability to access or utilize Foortress's services.
- x. Client is responsible for providing Foortress with a list of approvers for security and system configuration changes for data transmission.
- xi. Client is responsible for immediately notifying Foortress of any actual or suspected information security breaches, including compromised user accounts, including those used for integrations and secure file transfers.

r. Security. Client shall use reasonable security measures and precautions in connection with its use of the Services, including appropriately securing and encrypting in transit and at rest sensitive data stored on or transmitted using the Client configuration. Client shall take appropriate measures to prevent Foortress from accessing sensitive data where Foortress's access to the premises, systems, or networks managed or operated by Client may result in its exposure. Foortress shall not use or disclose Client Data except to perform the Services according to this Agreement or as required by law.

s. Client Provided Licenses. If Client uses any non-Foortress-provided software on the Client Configuration, Client represents and warrants to Foortress that Client has the legal right to use the software. If Foortress has agreed to install, patch, or otherwise manage software in reliance on Client's license with a vendor, then Client represents and warrants that it has a



written license agreement with the vendor that permits Foortress to perform these activities. Foortress's obligation to install, patch, or otherwise manage Client-provided software is strictly contingent on Client maintaining the original software vendor's support or similar authorized support that provides a services request escalation path, access to patching, and software upgrades, as applicable. Upon Foortress's request, Client shall certify in writing that Client is in compliance with the requirements of this section and any other software license restrictions that are part of this Agreement, and shall provide evidence of Client's compliance as Foortress may reasonably request. If Client fails to provide the required evidence of licensing to Foortress, and continues to use the software, Foortress may: (i) charge Client its standard fee for the use of the software in reliance on Foortress's licensing agreement with the vendor until the required evidence is provided, or (ii) suspend or terminate the applicable Services.

t. **Third-Party Software and Support.** Foortress may provide and rely on Third Party Software, and Vendor Support regarding that Software, for Client's use as part of the Services and to assist in the delivery of the Services. Unless otherwise permitted by the terms of the applicable license, Client may not: (1) assign, grant, or transfer any interest in the Third Party Software to another individual or entity; (2) reverse engineer, decompile, copy, or modify the Third Party Software; (3) modify or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Third Party Software; or (4) exercise any of the reserved Intellectual Property rights provided under the laws governing this Agreement. Client may only use Third Party Software provided for its use as part of the Services (identified on the Service Order) on the Client Configuration on which it was initially installed, subject to any additional restrictions identified in the Statement of Work. Client shall not be permitted to access any Third-Party Software that Foortress installs solely to assist Foortress's delivery of the Services. Upon termination of the Statement of Work, Client shall permit removal of any Third-Party Software installed by Foortress on the Client Configuration. Foortress makes no representation or warranty regarding Third-Party Software or Support except that Foortress has the right to use or provide the Third-Party Software and Support. The use of any software is governed by the applicable end-user license agreement(s) and this Agreement. Third-Party support services are governed by the Third-Party's services agreement(s).

u. **Infringement.** During the delivery of the Services, Foortress may determine that such Services infringe on the Intellectual Property of a third party, and that it is not reasonably or commercially practicable to obtain the right to use the infringing element, or modify the Services such that they do not infringe. In that case, Foortress may terminate the infringing Services upon thirty (30) days notice, and shall not have any liability on account of such termination except to refund amounts paid for unused Services (prorated as to portions of the Services deemed infringing).

9. Waiver of Liability for Granting Administrative Access. To perform the Services, Foortress requires administrative-level access to certain of Client's IT systems, software, applications, platforms, and/or networks (collectively, the "Client IT Environment"). This access may include, but is not limited to, system administrator, root, or other high-privilege credentials.



- a. Client understands and acknowledges that granting administrative access to a third party, including Foortress, inherently carries certain risks, including the potential for data loss, data corruption, system downtime, security breaches, and/or unauthorized access to sensitive information.
- b. Client has considered these risks and, upon its own informed decision, has chosen to grant Foortress administrative access to the Client IT Environment for the purpose of providing the Services.
- c. Client hereby grants Foortress administrative access, including any necessary credentials, accounts, or permissions, to the Client's IT environment. Client represents and warrants that it has all necessary rights and authority to grant such access.
- d. Foortress shall use the administrative access solely for the purpose of performing its obligations under this Agreement. Foortress agrees to use commercially reasonable efforts to secure and protect all credentials and to only allow authorized personnel to use such access.
- e. Client acknowledges and agrees that it is fully aware of the risks associated with granting administrative access to a third party. Client understands that any actions or inactions performed with such access, while intended to be for the benefit of the Services, could potentially lead to adverse outcomes, including without limitation: (a) data loss or corruption, (b) system or application unavailability or downtime, (c) security vulnerabilities or breaches, (d) unauthorized modification or deletion of data, files, or configurations, and (e) violations of data privacy regulations or internal policies.

10. Term of Agreement.

- a. Except for the issue of breach of Client's payment obligations under Section 2(d) above, this Agreement will remain in effect indefinitely but may be terminated by Client or Foortress at any time upon ninety (90) days written notice, and for any reason or no reason at all. For clarity, Foortress may cease all services after providing notice pursuant to Section 2(d) above. Client agrees to send the notice of termination to support@foortress.com, and to execute a separate account termination form. Only the Client's signing of the termination form will commence the ninety (90)-day period. The signed form must contain the services and products Client wants to terminate.
- b. All software, IT, and hosting statements of work, and other documents/orders are only cancellable upon their originally stated terms. For clarity, all Foortress-managed IT services, including, but not limited to, NOC Services, Service Desk, SOC Services, Database Management as a Service (DMaaS), and Data Warehouse as a Service (DWaaS) are all rendered based on three (3) year term commitments, and will renew for subsequent one (1) year terms unless otherwise stated, unless otherwise stated. Foortress's Business Technology Advisor ("BTA") program is a one (1) year auto-renewing term unless otherwise stated. These one-year and three-year commitments are not reducible or cancelable under any circumstances. All Services



or products may only be canceled in accordance with their original purchase terms, and Foortress must receive written notice at least ninety (90) days prior to any auto-renewal to cancel a product or service. Client will be responsible for the entirety of the charges for the remainder of the applicable term commitment upon early cancellation, including, without limitation, charges from third-party vendors related to Client's term commitment. Foortress may provide notice of renewal terms, but is not required to do so.

c. In its discretion, Client may require Foortress not to perform any services during the thirty (30) day termination period. Foortress will reasonably cooperate with Client regarding the transition of any services to the third party of Client's choice. Client agrees that if Foortress permits Client to perform certain activities after this Agreement ends, Client will do so under the terms of this Agreement, or as Foortress otherwise specifies.

d. Upon the termination of this Agreement (or at any time prior thereto), and Client's written request, Foortress will deliver a copy of the most recent version of Client's Data in Foortress's systems to Client. Client acknowledges that Foortress may be unable to provide the Data in the format that Client requests. Client will be responsible for Foortress's hourly fees for this service. Client acknowledges that the term "Data" does not include any Foortress Work Product as referenced in Section 12 below, and that the terms of said Section will remain in force and effect.

11. Information Security Measures and Data.

a. Foortress will establish, and at all times maintain, commercially reasonable administrative, organizational, technical, and physical security policies and procedures commensurate with reasonable and customary industry practices for protecting Client Confidential Information (collectively, the "Information Security Measures"). The Information Security Measures will be designed to (i) address the security and confidentiality of Client Confidential Information in possession of Foortress, including such Client Confidential Information maintained by Foortress on its systems as well as Client Confidential Information in possession of or under the control of Foortress; (ii) identify potential threats or hazards to the security or integrity of such Client Confidential Information; (iii) protect against anticipated threats or hazards, and (iv) protect against unauthorized access to or use of Client Confidential Information, including protection from malicious or harmful code. These Information Security Measures will implement network and data security measures consistent with information technology (IT) industry standards, including (A) policies and procedures to address network security, protection from malicious code, access controls, and encryption to protect Client Confidential Information in transit and at rest, change controls, monitoring and logging of network events, network segregation, and vulnerability assessments; (B) regular testing and auditing of all controls; (C) system and data back-up, disaster recovery, and business continuity plans; and (D) appropriate corrective action and incident response plans. If Foortress is directed to connect to the Client systems, Foortress will maintain all security measures and safeguards established by Client, follow any additional instructions, policies, or procedures provided by Client concerning the use of Client systems, and Foortress will not alter, circumvent, or take any other actions that compromise or reduce



the effectiveness of such security measures and safeguards. Foortress will comply with all applicable privacy, cybersecurity, and data protection laws that may apply to the data it processes on behalf of its clients.

b. Foortress prohibits its employees from using VPN connections to communicate with the Client's environment. Nevertheless, if Client insists on using a VPN for Foortress's work, Foortress will not be responsible for any security events or data issues that arise because Client directed the use of such VPN. Client forever waives any and all liability on the part of Foortress for using such VPN.

c. Upon request, but not more than annually during the term of this Agreement, and upon the request from Client, Foortress will deliver to Client a copy of its third-party (data center) provided SOC 2 Type 2 Certification evidencing the operating effectiveness of Foortress's Information Technology (IT) control environment. Upon request, Foortress will also provide summaries of its IT security and disaster recovery policies and make its senior IT personnel reasonably available for discussion upon request.

d. Protection of Client Data. To enable Foortress to provide certain Services, Client may provide to Foortress, or Foortress may be exposed to, Client Data. "Client Data" means data and information stored on Client's computer hardware, network, software systems, and infrastructure concerning Client's customers, personnel, suppliers, and/or vendors. "Client Data" does not include Foortress Work Product as referenced in Section 12 of this Agreement below. Foortress shall only access those systems, networks, applications, or Client Data that it is expressly authorized by Client to access, even if the technical controls in the system or application do not prevent Foortress from accessing that Client Data or functions outside Client's authorization. Foortress acknowledges that Client Data may comprise Confidential Information and/or Client's trade secrets. The obligations set forth in this section are in addition to and not in lieu of other duties applicable to Confidential Information and trade secrets under this Agreement. Foortress shall use Client Data to meet its obligations and provide the Services. Regardless of whether Client Data comprises Confidential Information and/or trade secrets, Client agrees that Foortress shall maintain all Client Data in strict confidence, and shall not, except as otherwise permitted herein or expressly directed in writing by Client, copy, disclose, or use, or permit any unauthorized person access to, any Client Data. In addition to complying with these confidentiality requirements, Foortress shall, concerning Client Data: (i) implement industry-standard security practices for information technology management to protect Client Data against unauthorized access, disclosure, or use; (ii) notify Client promptly upon becoming aware of any unauthorized access to Client Data or unauthorized disclosure or use of Client Data; and (iii) fully cooperate with Client in the investigation of any such unauthorized access, disclosure and/or use.

e. Notwithstanding the foregoing and any other terms in this Agreement or any other Agreement with Foortress, Client hereby grants to Foortress a limited, non-exclusive, royalty-free license to use Client Data solely to provide the Services. Client agrees that Foortress improves the Services by using Client Data and aggregated and anonymized Client Data.



Accordingly, and in compliance with applicable laws and this Agreement, Foortress may: (i) during the Term, use Client Data to develop, improve, support, and render the Services, except that any Client Data shared externally must be aggregated and anonymized and in a format that is not traceable back to Client; and (ii) improve the Services by using artificial intelligence (“AI”) models that include Client Data that has been de-identified, anonymized, and aggregated so that it does not identify Client, authorized users, or any other person or company. Foortress agrees that once the Client Data is converted to a de-identified, aggregated, and anonymized format (together “De-Identified Data”), that data cannot be re-identified. The terms of this Agreement will supersede any conflicting terms in any other agreement.

12. Work Product.

a. For purposes of this Agreement, the term “Work Product” shall mean all software code, deliverables, reports, documentation, or other tangible or intangible items Foortress is required to create or deliver as part of the SOW, provided that the term “Work Product” will not include software that Foortress may sell to Client pursuant to a separate End User Software License Agreement, or Client Data. Upon Client’s request or termination of this Agreement, Foortress will provide Client with the then-current version of any such Work Product in the possession or under the control of Foortress or any of its employees or personnel, provided that Client has rendered payment in full for such Work Product, and, if applicable, any other outstanding invoices then due by Client to Foortress.

b. Work-Made-For-Hire. Upon payment in full for Services rendered in the generation of Work Product, as well as payment in full for any other Foortress Services, Foortress hereby grants any and all rights, title, and interest in and to the Work Product to Client. For clarity, the rights, title, and interest in and to any Work Product will not transfer to Client until Client has fully satisfied any and all due or past due Foortress invoices, unless otherwise expressly agreed to in writing by the parties.

c. For clarity and the avoidance of doubt, Client will have no rights to any Work Product until Client has remitted payment in full for all outstanding or overdue Foortress invoices regarding such Work Product.

13. Accounting, Tax, and Legal Issues. Foortress does not render tax advice. Client is solely responsible for (a) determining what, if any, taxes apply to transactions that occur as a result of Client’s sales to its customers, and (b) collecting, reporting, and remitting the correct tax to the appropriate tax authorities. Foortress is not responsible for determining whether taxes apply to a transaction, or for collecting, reporting, or remitting any taxes arising from any transaction. Foortress may, from time to time, make available to Client certain tax calculation services offered by third-party providers. Such tax calculation services are third-party services, and Foortress is not responsible for their accuracy. Foortress recommends that Client retain the services of a certified public accountant to audit and remit all sales tax returns and defend any tax audits. Client will indemnify, defend, and hold Foortress, its officers, directors, consultants, employees, successors, and assigns harmless from all claims and liability arising from Client’s



failure to report or pay any such taxes, duties, or assessments. Foortress does not render legal, accounting, and auditing advice. Foortress is not licensed to render these services, and is not a law, accounting, or CPA firm.

14. Expenses. Foortress may incur expenses during the performance of its services to Client. Such costs shall be reimbursed by Client only if approved in advance by Client in writing. Foortress will submit all expenses in the form of an invoice, which is net due within 15 days following the date of said invoice and must be accompanied by copies of receipts or other applicable documentation as requested by Client. Expenses may include, but are not limited to, travel time at one-half (1/2) of the specified hourly rate, airfare, car rental, parking, meals, taxi/train fare, and hotel fees. Foortress will be entitled to, and responsible for, the booking of, and reasonable choices regarding, airlines/airfares, hotels, rentals cars, and meal allowances. Foortress shall reasonably comply with the U.S. G.S.A. published per diem rates for these costs where possible.

15. Equipment. Foortress shall furnish, at Foortress's own expense, the equipment, supplies, and other materials used to perform the Services. Client will provide Foortress with access to its premises, equipment, software systems, and network environment to the extent necessary for the performance of the Services.

16. Onsite Compliance. While on the Client's premises or using the Client's equipment, Foortress personnel shall comply with all applicable policies of the Client relating to business and office conduct, health and safety, and use of the Client's facilities, supplies, information technology, equipment, networks, and other resources.

17. Insurance. During the Term, Foortress shall maintain in force adequate workers' compensation, commercial general liability, errors and omissions, and other forms of insurance, with minimum policy limits of \$1,000,000 to protect the Client and its affiliates, and each of their officers, directors, agents, employees, subsidiaries, partners, members, controlling persons, and successors and assigns, from losses resulting from Foortress's conduct, acts, or omissions or the conduct, acts, or omissions of Foortress's agents, Foortress's, servants, or employees, pursuant to the terms of this Agreement, and as agreed to by Foortress's insurance providers.

18. Relationship of the Parties. This Agreement, or any other past relationship between the Parties hereto, shall not be construed to create any employment, association, partnership, joint venture, employee, agency, or fiduciary relationship between the Client and Foortress or any other person or entity for any purpose. Foortress has no authority (and shall not hold itself out as having authority) to bind the Client. Foortress shall not make any agreements or representations on the Client's behalf without the Client's prior written consent.

19. Non-Solicitation. Neither Party will, directly or indirectly, during the term of this Agreement and for one (1) year after the date of the termination of this Agreement, recruit, or attempt to recruit, discuss employment with, or otherwise utilize the services in any capacity of

any person who is or was an employee or contracted personnel of the other Party during the term, unless the Parties agree otherwise in writing. The Parties agree that these provisions are necessary and reasonable to protect each Party's legitimate business interests in protecting substantial investments in such employees and contractors.

20. Non-Disparagement. Each party shall not, at any time during the term of this Agreement, and thereafter, make any statements or representations, or otherwise communicate, directly or indirectly, in writing, orally, or otherwise, or take any action which may, directly or indirectly, disparage the other party or any of its respective affiliates or managers, officers, directors, employees, advisors, personnel, businesses, or reputations. Notwithstanding the foregoing, nothing in this Agreement shall preclude a party from making truthful statements required by applicable law, regulation, or legal process. Each party acknowledges and agrees that the other party would be damaged irreparably if any of the covenants regarding disparagement in this section are breached. Accordingly, each party agrees that in addition to any other remedy to which such party may be entitled at law or in equity, the complaining party shall be entitled to seek temporary or permanent injunctive relief to enforce the covenants contained in this section restraining the other party from engaging in the activities prohibited by this section, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach, and without the necessity of posting a bond. For the avoidance of doubt, the restrictions in this section shall prohibit a Party from making disparaging or defamatory statements on the Internet, and to the press or on social media, including but not limited to, the following social media sites: on LinkedIn (<https://www.linkedin.com>), Facebook (<https://www.facebook.com/>), Instagram (<https://www.instagram.com/>), Twitter (<https://www.twitter.com/>) or X (formerly Twitter) (<https://www.x.com/>), YouTube (<https://www.youtube.com/>), their successors, or on any pages within any of those or related URL's.

21. Client Feedback. To the extent Client provides Foortress with any ideas or other suggestions, whether or not patentable, that directly concern enhancements, improvements, or other changes to Foortress's Services or Software (such ideas or suggestions, "Feedback"), Foortress shall have all right, title, and interest in and to such Feedback. Client hereby assigns and agrees to assign to Foortress all right, title, and interest in and to such Feedback.

22. Limitation of Liability:

a. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, ENHANCED, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ANY LOSS OF REVENUE OR PROFITS, INTERRUPTION OF BUSINESS, OR LOSS OF DATA OR DATA USE, OR SIMILAR DAMAGES THAT A PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. FOORTRESS WILL ACT IN GOOD FAITH AND USE COMMERCIALY REASONABLE CARE TO COMPLY WITH ITS INTERNAL IT POLICIES. FOORTRESS WILL EVIDENCE ITS COMPLIANCE WITH THESE POLICIES THROUGH ANNUAL SOC 2 TYPE 2 COMPLIANCE ATTESTATIONS.

NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, FOORTRESS WILL NOT BE LIABLE TO CLIENT FOR ANY UNINTENTIONAL ERRORS OR OMISSIONS RELATED TO THE TERMS OF THIS AGREEMENT AND FOORTRESS'S INTERNAL POLICIES AND PROCESURES, INCLUDING BUT NOT LIMITED TO, SECURITY AND SYSTEMS ACCESS PROTOCOLS, DATA HANDLING AND BACKUP PROCEDURES, SOFTWARE UPDATES, ETC. FOR THE SAKE OF CLARITY, THE WORD "UNINTENTIONAL" IN THIS CONTEXT MEANS AN ACCIDENTAL OR INADVERTENT OVERSIGHT, MISTAKE, OR CIRCUMSTANCE THAT WAS NOT FORESEEN OR INTENDED. UNINTENTIONAL DOES NOT MEAN NEGLIGENCE, I.E., AN ACT THAT FALLS BELOW THE COMMERCIALY REASONABLE STANDARD OF CARE.

c. FOORTRESS'S MAXIMUM COLLECTIVE AGGREGATE LIABILITY FOR ANY DIRECT, COMPENSATORY, OR ANY OTHER DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, WILL NOT EXCEED THE REMEDIATION CAP SPECIFIED THE APPLICABLE SERVICE LEVEL AGREEMENT, OR THE TOTAL MONIES ACTUALLY PAID BY CLIENT TO FOORTRESS IN THE THREE (3) MONTHS IMMEDIATELY PRIOR TO THE CLAIM ARISING, OR THE SUM OF TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). FOORTRESS WILL HAVE THE SOLE DISCRETION TO DETERMINE THE APPROPRIATE REMEDY. ANY DAMAGE AWARD IN FAVOR OF CLIENT SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CLIENT AND SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY STATED HEREIN. DESPITE THE FOREGOING, THE TOTAL LIABILITY OF FOORTRESS FOR DAMAGES ARISING FROM A COVERED EVENT SHALL NOT EXCEED THE LIMITS OF LIABILITY UNDER THE INSURANCE POLICY IN EFFECT AT THE TIME OF THE CLAIM OR SUCH EVENT, AS APPLICABLE.

d. THE LIMITATION OF LIABILITY UNDER THIS AGREEMENT SHALL NOT APPLY TO ERRORS OR OMISSIONS THAT RESULT FROM FOORTRESS'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR BREACH OF APPLICABLE LAW.

e. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN FOORTRESS AND CLIENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE OR FOORTRESS SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS HEREIN APPLY TO ANYTHING OR ANY CLAIMS OR SERVICES RENDERED UNDER THE TERMS OF THIS AGREEMENT.

f. FOORTRESS WILL NOT BE LIABLE FOR ANY FAILURE TO COMPLY WITH ITS OBLIGATIONS IN THIS AGREEMENT OR ITS POLICIES TO THE EXTENT THAT SUCH FAILURE ARISES FROM A FAILURE OF CLIENT TO ABIDE BY ITS OBLIGATIONS UNDER THIS AGREEMENT.

g. FOORTRESS A WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM CLIENT'S FAILURE OR REFUSAL TO ACCEPT FOORTRESS'S REASONABLE RECOMMENDATIONS REGARDING ANY SOFTWARE OR IT ISSUE, OR FROM CLIENT'S DECLINATION OF ANY FOORTRESS SERVICES.



h. FOORTRESS WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM SERVICES THAT CLIENT DECLINED TO PAY FOR, OR FOR THE RAMIFICATIONS THEREFROM.

i. FOORTRESS WILL NOT BE LIABLE FOR ANY FAILURES ARISING FROM ITS USE OF ADMINISTRATIVE ACCESS TO CLIENT'S IT ENVIRONMENT, INCLUDING WITHOUT LIMITATION, ANY CLAIMS FOR DATA LOSS, SYSTEM FAILURE, SECURITY BREACHES, BUSINESS INTERRUPTIONS, LOSS OF PROFITS OR REVENUE, REGARDLESS OF THE CAUSE.

23. Disclaimer of Warranties.

a. Except as expressly provided herein, Foortress Software, Foortress SaaS Software, and software provided by third parties in the third-party licenses or warranties associated with the Third-Party Equipment or Third-Party Software, the Services, Third-Party Equipment, and Third-Party Software, are furnished to Client "AS IS." Foortress is not responsible or liable, and will not be held responsible or liable, for hardware, software, other products or services, and the functionality or implementation, or lack of functionality, of same, that have been written, produced, or provided by third parties. All Third-Party Equipment and Third-Party Software are subject to the originator's license agreements and have a warranty only to the extent the originator provides one. Foortress does not provide any additional implied or express product(s) warranty. Client will be responsible for the shipping costs associated with equipment warranty claims.

b. EXCEPT AS EXPRESSLY STATED HEREIN AND RESTRICTED BY APPLICABLE LAW, FOORTRESS MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO YOUR USE OF THE SERVICES, EQUIPMENT, OR SOFTWARE, THEIR COMPATIBILITY TO CLIENT'S HARDWARE OR SOFTWARE, THEIR PERFORMANCE, QUALITY, MERCHANTABILITY, CORRECTNESS, FITNESS FOR ANY PARTICULAR PURPOSE, NONINFRINGEMENT, SECURITY OF YOUR DATA, AVAILABILITY OR UPTIME, OR OTHERWISE. FOORTRESS DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SERVICES, HARDWARE, OR SOFTWARE WILL BE FREE FROM BUGS OR ERRORS, THAT CLIENT'S USE OF THE HARDWARE OR SOFTWARE WILL BE UNINTERRUPTED, OR AS TO THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CLIENT ACKNOWLEDGES THAT COMPUTER HARDWARE, SOFTWARE, AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND THAT OCCASIONAL PERIODS OF DOWNTIME OCCUR. CLIENT UNDERSTANDS THAT USE OF THE SERVICES IS AT CLIENT'S OWN RISK AND THAT FOORTRESS PROVIDES THE SERVICES ON AN "AS IS" BASIS WITH ALL "FAULTS" AND "AS AVAILABLE." CLIENT BEARS THE ENTIRE RISK OF USING THE SERVICES. CLIENT MAY HAVE CERTAIN RIGHTS UNDER THE LAW. NOTHING IN THESE TERMS IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE.

c. NO ORAL OR WRITTEN STATEMENTS MADE BY FOORTRESS OR ITS EMPLOYEES OR AGENTS, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, APPLICABILITY, AVAILABILITY, OR PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR AS TO THE SERVICES, SHALL BE DEEMED A WARRANTY OR A REPRESENTATION BY FOORTRESS FOR



ANY PURPOSE NOR GIVE RISE TO ANY LIABILITY OR OBLIGATION OF FOORTRESS. FOORTRESS DOES NOT WARRANT THAT CLIENT'S USE OF ANY OF FOORTRESS'S PRODUCTS OR SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

24. Defense of Third-Party Claims. The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the exclusive right to control the defense and any settlement thereof. The recipient party shall give such assistance and information as the defending party may reasonably require at the defending party's expense. This section describes the parties' sole remedies and entire liability for such claims.

a. By Foortress. Foortress will defend Client against any third-party claim solely to the extent it alleges that a Product or Services Deliverable made available by Foortress for a fee that has been paid in full by Client and used within the scope of the services and products provided under this Agreement (unmodified from the form supplied by Foortress and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Foortress is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Services Deliverable with a functional equivalent or (2) terminate Client's software license and refund any license fees, including amounts paid in advance for unused consumption and for any usage period after the termination date. Foortress will not be liable for any claims or damages due to Client's continued use of a Product or Services Deliverable after being notified to stop due to a third-party claim.

b. By Client. To the extent permitted by applicable law, Client will defend Foortress against any third-party claim to the extent it alleges that: (1) Client's business operations, data, or software misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; (2) Client's use of any Product or Services Deliverable, alone or in combination with anything else, violates the law or any representation or warranty of Client contained in this Agreement; and (3) any third party Claims that arise out of, relate to or result from any act or omission of Client, in each case whether or not caused in whole or in part by the negligence of Foortress, or any other Indemnified Party, and whether or not the relevant Claim has merit.

c. Neither Party's defense obligations under this Agreement will apply or will be comparatively reduced to the extent the underlying allegation arises from the Indemnitee's fraud, gross negligence, willful misconduct, violation of any applicable law, or breach of any of its obligations under this Agreement. Foortress's defense and indemnification obligations will not apply or will be comparatively reduced to the extent Client's claim arises from: (i) any Client Data if used by Foortress as permitted under this Agreement; (ii) any modification to the Services made by Client, its authorized users, or a party at the direction of Client or its authorized users without Foortress's prior written consent if the Client's claim would have been



avoided in the absence of such modification; or (iii) Client's use of the Services in breach of this Agreement (any of the foregoing subsections (i) to (iii) are "Exclusions").

25. Representations and Warranties. Foortress represents and warrants to Client that:

a. (i) Foortress has the right to enter into this Agreement, to grant the rights granted herein, and to perform fully all of its obligations in this Agreement; (ii) Foortress's entering into this Agreement with the Client and its performance of the services does not and will not conflict with or result in any breach or default under any other agreement to which it is subject; and (iii) Foortress has the required skill, experience and qualifications to perform the Services, and shall devote sufficient resources to ensure that the Services are performed in a commercially reasonable timely and reliable manner.

b. Client hereby represents and warrants to Foortress that: (i) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

26. Governing Law.

a. This Agreement shall be governed by, and construed as a whole in accordance with the fair meaning of, the applicable laws of the State of Oklahoma, exclusive of any choice or conflict of law principle that would require the application of the law of a different jurisdiction, as well as the copyright, patent, and trademark laws of the United States.

b. Prior to and as a condition of either party filing a claim under this Agreement, an officer of each party shall telephonically communicate with the other party in good faith to attempt to resolve all matters informally.

c. In the event of an impasse, Client hereby consents to the exclusive jurisdiction of the State and Federal courts located in Oklahoma, and irrevocably waives any objections regarding venue and *forum non conveniens* therein. Client acknowledges that the designations of venue, jurisdiction, and choice of law herein are reasonable.

d. The prevailing party in any action or proceeding relating to the Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees incurred in enforcing, defending, or otherwise protecting its interests hereunder. In the event of an account delinquency, Client consents to be contacted by a collection agency or attorney, including, without limitation, an Automated Telephone Dialing System, as defined by the Telephone Consumer Protection Act of 1991 (as amended), 47 U.S.C. Section 227, as well as by email, text, and voicemail, and to be charged collection agency and attorneys' fees. Notwithstanding the exclusive jurisdiction provision above, Client agrees that Company may seek to enforce any judgment anywhere in the world where Client may have assets.

e. In the event Foortress engages an outside commercial collection agency to recover any past due amounts owed by Client under this Agreement, Client shall be liable for all reasonable costs and expenses of collection, including, without limitation, reasonable attorneys' fees and court costs, incurred by Foortress. In addition, Client agrees to pay a collection fee equal to twenty-five percent (25%) of the outstanding principal balance. Client acknowledges and agrees that (1) the collection fee is a reasonable estimate of the additional costs incurred by Foortress in connection with the collection of past due amounts, including, but not limited to, internal administrative costs, the costs of engaging and supervising a collection agency, attorneys' fees, and other related expenses; (2) the damages would be difficult to ascertain with certainty; (3) this collection fee is intended to be a reasonable measure of liquidated damages and not a penalty; and (4) this collection fee is reasonable and not unconscionable under the laws of the State of Oklahoma or the state in which any legal action may be brought.

f. In the event of a default or breach of this Agreement and Client filing a petition under the United States Bankruptcy Code or for similar relief under state law, Client shall be liable for all reasonable attorney's fees, costs, and expenses incurred by Foortress as the Creditor in enforcing its rights under this agreement or collecting any amounts due, including in any bankruptcy proceeding. The Client/Debtor's obligation to pay reasonable attorney's fees and costs shall apply to all enforcement efforts, whether arising before or after the commencement of any bankruptcy case, including but not limited to participation in bankruptcy proceedings, claim litigation, or plan negotiations. All attorney's fees and costs recoverable under this agreement shall be reasonable, as determined by prevailing market rates and the nature of the services rendered. The Debtor's obligation to pay attorney's fees and costs under this agreement shall survive and remain enforceable notwithstanding the termination of this Agreement or the filing of any bankruptcy petition by the Debtor. These provisions shall be enforceable to the fullest extent permitted under Oklahoma and Federal law.

g. NO JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES' ACCEPTANCE OF SERVICES UNDER THIS AGREEMENT. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT PROVIDES THE WAIVER UNDER THIS SECTION KNOWINGLY AND VOLUNTARILY.

h. No claim may be brought as a class, collective, consolidated, or coordinated action, nor may Client assert such a claim as a member of, or participant in, such an action brought by another claimant, including, without limitation, as a private attorney general. Client agrees that it shall not bring a claim under the Agreement more than one (1) year after the claim accrued. The



Agreement shall not be governed by the United Nations Convention on the International Sale of Goods, or the Oklahoma Uniform Commercial Code and the implied warranties therein.

i. Pursuing a claim against Foortress, LLC is the Client's sole and exclusive remedy for any claim of breach under this Agreement. Client knowingly and voluntarily waives its right to name as a defendant or seek relief against any Affiliate of Foortress, as well as any past or present managers, directors, officers, employees, agents, or other representatives and any of their successors or heirs of Foortress or an Affiliate (each, an "Excluded Person"). Each Excluded Person is an express third-party beneficiary of this clause, and, as such, each Excluded Person may enforce the provisions of this clause directly.

27. Miscellaneous.

a. Both parties will comply with all applicable federal, state, and local statutes, rules, and regulations, including regarding all other activities contemplated by this Agreement, including, without limitation, export and data privacy laws.

b. The terms of this Agreement may be varied only by a written agreement signed by duly authorized representatives of both Parties that expressly refers to the Agreement. A project or task accepted by Foortress may be amended to modify, add, or remove services by a formal written agreement signed by both Parties, or by an exchange of correspondence (including via the Foortress ticketing system: support@foortress.com) that includes the express consent of an authorized individual for both Parties.

c. If any part of the Agreement is found unenforceable, the rest of the Agreement shall continue in effect, and the unenforceable portion shall be reformed to the extent possible to make it enforceable and give business efficacy to the Agreement. The Parties acknowledge and agree that the pricing and other terms in the Agreement reflect and are based upon the intended allocation of risk between the Parties and form an essential part of the Agreement. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past. Other than expressly stated in this Agreement, or as otherwise specifically designated a "Third Party Beneficiary," there are no third-party beneficiary rights of any kind to this Agreement, and all provisions herein shall be solely between the Parties. The word "including" means "including without limitation."

d. The following provisions shall survive expiration or termination of this Agreement: Confidentiality, Limitation of Liability, Non-Solicitation, Governing Law, Miscellaneous, all terms of the Agreement requiring Client to pay any Fees for Services, and any other provisions that by their nature are intended to survive expiration or termination of the Agreement.

e. This Agreement constitutes the complete and exclusive understanding between the Parties regarding its or any other subject matter raised by either party, as well as any and all work or services requested by Client prior or subsequent to the date of this Agreement, and supersedes, cancels, and replaces any or all prior, preexisting, or contemporaneous representation(s), agreement(s), arrangement(s), discussion(s), or understanding(s), whether

written or oral, of any kind and every nature, and between the Parties. The parties intend for this Agreement to be the final expression of their agreement and is also intended as a complete and exclusive statement of the terms of this Agreement. Client hereby acknowledges that no reliance is placed on any representation not specified in this Agreement. For clarity, Client affirms that it did not rely upon any oral or extra-contractual representations when executing, or as an inducement to executing, this Agreement.

f. All communications, whether written in any form or verbal, including, without limitation, statements of work, estimates, invoices, emails, oral conversations, confirmations, and acknowledgments, between Foortress and Client, whether or not signed by the Parties, are subject to, and governed by, the terms of this Agreement, which also supersedes any conflicting provisions in any of the foregoing communications. This Agreement may not be modified, changed, assigned, or discharged, in whole or in part, except by an agreement in writing signed by the Parties. Client is prohibited from claiming that this Agreement is not binding on all prior or subsequent emails, verbal conversations, or any other communications between Client and Foortress, or that such writings or conversations constitute an agreement that supersedes or is separate from this Agreement.

g. The terms of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of the parties hereto and their representatives, successors, and/or affiliates. For clarity, the term "Client" will include Client's affiliates. An "affiliate" is any legal entity that a party owns, that owns a party, or that is under common control of a party. "Control" and "own" mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity. A "representative" is an employee, contractor, advisor, or consultant of one of the parties or one of the party's respective affiliates.

h. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or consent in the course of performance under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.

i. The language, terms, conditions, and provisions of this Agreement are the result of negotiations between the Parties, and this Agreement shall not be construed in favor of or against any Party for any reason.

j. The headings to the various sections of this Agreement are inserted only for convenience of reference and are not intended, nor will they be construed to modify, define, limit, or expand the Parties' intent as expressed herein.

k. Each party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other party, whether express, implied, in fact, or in law.

l. Neither party shall be liable to the other if, and to the extent, that the performance or delay in performance of any of its obligations under this Agreement is prevented, restricted, delayed or interfered with due to circumstances beyond the reasonable control of such party, including but not limited to, government actions, legislation, or orders, fires, floods, explosions, epidemics, accidents, acts of God, wars, terrorism, riots, strikes, lockouts, or other concerted acts of workmen, shortages of materials, or tariffs ("Force Majeure Event"). The party claiming a Force Majeure Event shall promptly notify the other party in writing and provide full particulars of the cause or event and the date of first occurrence thereof, as soon as possible after the event, and also keep the other party informed of any further developments. The party so affected shall use its best efforts to remove the cause of non-performance.

m. Foortress's communications regarding legal notices will be sent by email and/or U.S. Postal Service ("USPS") Certified Mail to whom Client designates as the primary contact(s) for Client's account. Client is solely responsible for notifying Foortress of any changes in Client's primary contact(s). Email notice alone is sufficient for legal notice purposes. Email notices are deemed received upon the sending of same. USPS notices are deemed received at the time they are delivered. If the delivery time for email or USPS does not fall within a business day, the delivery will be considered as of the beginning of the first business day following the time the email was sent, or the USPS notice was delivered. Client cannot opt out of receiving email communications at any time. Any Party may, from time to time, designate, by written notice, substitute addresses, e-mail addresses, or persons to whom such notices shall be sent. Notices shall be given in the English language.

n. Wherever possible, each provision of this Agreement is to be interpreted in such a manner as will be effective and valid under applicable law, but if any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

o. This Agreement is the result of negotiations between the Parties. Accordingly, any rule of law or any legal decision requiring interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application, and any such right is expressly waived. By voluntarily executing this Agreement, the Parties confirm that they have had the opportunity to have this Agreement explained to them by their attorneys, and, in voluntarily executing this Agreement, the Parties rely upon their own judgment and the advice of their attorneys. By voluntarily executing this Agreement, the Parties confirm their competence to understand this Agreement and hereby accept the terms of this Agreement.

p. Foortress may not publicly disclose that it is providing Services to Client and may not use Client's name and logo to identify Client in promotional materials, including press releases, without Client's prior written or oral consent. Client may not issue any press release or publicity regarding the Agreement, use the Foortress name or logo, or other identifying indicia, or publicly disclose that it is using the Services without Foortress's prior written consent.



q. Client acknowledges that Foortress and Client may each correspond and convey documentation via Internet sources. Foortress may utilize the transmission and sharing of information via email, send data over the Internet using other methods (such as portals), store electronic data via software applications hosted remotely on the Internet, and allow access to data through third-party vendors' secured portals or clouds. Foortress and Client acknowledge that neither party controls the Internet's performance, reliability, availability, and security.

r. The terms of this Agreement shall be binding upon Client whether or not Client separately executes this Agreement or a requested Statement of Work, but otherwise, by its conduct and statements to Foortress personnel, agrees to go forward with purchasing services, software, and/or products from Foortress. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which will constitute together the same instrument, and by electronic signature. Each Party hereto acknowledges that the representative named below or in a Services order has the authority to execute this Agreement on behalf of the respective Party, and has caused this Agreement to be duly executed on its behalf. If a Party executes this Agreement or a Services order via electronic signature, then such electronic signature shall be deemed to be such Party's original signature for all purposes.

s. Client acknowledges and accepts the terms of this Agreement as it is published on <https://foortress.com>.

t. In consideration of the mutual and reciprocal covenants and consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties each intend to be legally bound and to enter into a contract according to this Agreement. Client and Foortress both acknowledge that this Agreement is reasonable, valid, and enforceable. Any breach by Client of the obligations under this Agreement shall be considered a material breach.

u. Except for federal holidays, Foortress Support is available from 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday. Foortress's Support team can be reached by phone at 866-562-8911, or a support ticket can be created by emailing support@foortress.com.