

# Managed Services Agreement

This Managed Services Agreement (the “Agreement”) governs the provision of services by Usherwood Office Technology, a New York corporation having a principal place of business at 1005 West Fayette Street, Syracuse, New York 13204 (“Usherwood”) and the client identified in any Statement of Work (defined below) referencing this Agreement (“Client”), each a “Party” and collectively the “Parties.” This Agreement is effective as of the latest date of signature on the Statement of Work (defined below) into which it is incorporated (“Effective Date”). We reserve the right to change this Agreement. Changes shall be effective immediately upon their posting. Client agrees to review this Agreement, available at <https://www.usherwood.com/legal> (or other link that Usherwood shares with Client) periodically to be aware of such revisions. Client’s continued use of the Services (defined below) after Usherwood posts any changes constitutes Client’s acceptance of such changes.

1. **Services.** Subject to and conditioned upon Client's compliance with the Agreement, for any statement of work executed by the Parties referencing this Agreement (each, a “Statement of Work”), Usherwood will provide to Client information technology consulting, assessment, and managed services that are more specifically described in the relevant Statement of Work (the “Services”).
2. **Client Obligations**
  - a. **General Obligations.** Client shall provide Usherwood in a timely manner, at no charge to Usherwood, (i) reasonable assistance and cooperation with a single point of contact; (ii) access to software, equipment, documentation, content, and other materials reasonably necessary for the provision of the Services; (iii) access to personnel as reasonably necessary for the purpose of enabling Usherwood to perform the Services; and (iv) to the extent required by a Statement of Work, a properly licensed software environment within which to provide the Services. Client will keep in force the manufacturer’s

warranty on all supported devices identified in a Statement of Work. If Usherwood requires certain minimum hardware or software requirements in a Statement of Work ("Minimum Requirements"), Client agrees to implement and maintain those Minimum Requirements as an ongoing requirement of Usherwood providing the Services to Client.

- b. **Physical Security.** Client agrees to implement and maintain reasonable physical security for all managed hardware and related devices in Client's physical possession or control. Such security measures must include (i) physical barriers, such as door and cabinet locks, designed to prevent unauthorized physical access to protected equipment; (ii) an alarm system to mitigate and/or prevent unauthorized access to the premises at which the protected equipment is located; (iii) fire detection and retardant systems; and (iv) periodic reviews of personnel access rights to ensure that access policies are being enforced, and to help ensure that all access rights are correct and promptly updated.
- c. **Authorized Contact(s).** Usherwood will be entitled to rely on any directions or consent provided by Client personnel or representatives who are authorized to provide such directions or consent ("Authorized Contact(s)"). If no Authorized Contact is identified in an applicable Statement of Work or if a previously identified Authorized Contact is no longer available to Usherwood, then Client's Authorized Contact will be the person (i) who accepted the Statement of Work, and/or (ii) who is generally designated by Client during the course of the engagement to provide direction or guidance. Usherwood will be entitled to rely upon directions and guidance from Client's Authorized Contact until Usherwood is affirmatively made aware of a change of status of the Authorized Contact. Usherwood reserves the right to delay the Services until Usherwood can confirm the Authorized Contact's authority within Client's organization.

- d. Release of Obligations. Usherwood's performance is contingent upon Client's timely and effective performance of its responsibilities, decisions, and approvals, including but not limited to the Client responsibilities stated in the applicable Statement of Work. Usherwood will be relieved of that portion of its obligations where Usherwood is unable to perform its duties due to (i) Client's failure to perform its obligations identified in this Agreement or an applicable Statement of Work; (ii) Client's failure to perform its obligations identified by Usherwood as reasonably necessary for Usherwood to perform the Services; or (iii) Client's failure to reasonably cooperate or to provide the access or information that is reasonably necessary for Usherwood to perform the Services. In all situations, Usherwood will not be responsible for changes to the Environment (defined below) or issues in the Environment that arise from such changes that are not authorized by Usherwood.

### 3. Usherwood Obligations.

- a. Usherwood warrants that it will perform the Services in a professional and workmanlike manner using appropriately trained and qualified personnel. If Usherwood breaches this warranty, Usherwood shall reperform the Services to Client's good faith and reasonable satisfaction. The remedy described in this section is Usherwood's sole and exclusive obligation, and Client's sole and exclusive remedy, for any breach of the foregoing warranty by Usherwood.
- b. Usherwood may subcontract the Services, provided that Usherwood remains responsible for the subcontractor's compliance with the terms of this Agreement and performance hereunder. Client will be notified in writing prior to the use of any subcontractor who will have access to Client data or systems. All subcontractors are vetted in accordance with Usherwood's vendor management policy and are bound by written agreements that include obligations no less protective than those in this Agreement.

- c. From time to time, Usherwood may make changes to the Services or technologies provided thereunder, provided that Usherwood will provide a thirty (30) day notice of any additional charges, no more often than once every twelve (12) month period, for either per user or per service. Upon the effective date of such changes, all charges notified to Client will be considered additional fees owed by Client under this Agreement.
- 4. Access. Client hereby grants to Usherwood and its designated third-party vendors the right to monitor, inspect, manage, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the Client's information technology infrastructure, networks, network operations, functionality, software and hardware, including Client's servers, workstations, desktops, laptops, notebooks, mobile devices and other electronic devices (collectively, "Environment") and data and information provided by Client and its staff, customers and affiliates (collectively, "Stored Data"), solely as necessary to enable Usherwood or its vendors, as applicable, to provide the Services. Depending on the Services, Usherwood may be required to install one or more software agents into the Environment through which such access may be enabled. It is Client's responsibility to secure, at its own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits, or other permissions necessary for Usherwood or its vendors to provide Services within the Environment and, if applicable, at Client's designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by Client at all times. Usherwood shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.
- 5. Support.
  - a. Updates. Patches and updates to hardware and software ("Updates") are created and distributed by third parties—such

as equipment or software manufacturers—and may be supplied to Usherwood from time to time for installation into the Environment. If Updates are provided to Client under a Statement of Work, Usherwood will implement and follow the manufacturers' recommendations for the installation of Updates; however, Usherwood (i) does not warrant or guarantee that any Update will perform properly; (ii) will not be responsible for any downtime or damages arising from or related to the installation, use, or inability to use any Update; and (iii) reserves the right to refrain from installing an Update until Usherwood has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware.

- b. Advice; Instructions. From time to time, Usherwood may provide Client with specific advice and directions related to the Services ("Advice"). Client is strongly advised to promptly follow Usherwood's Advice which, depending on the situation, may require Client to make additional purchases or investments in the Environment at Client's sole cost. Usherwood is not responsible for any problems or issues (such as downtime or security-related issues) caused by Client's failure to promptly follow the Advice. If, in Usherwood's discretion, Client's failure to follow the Advice renders part or all of the Services economically or technically unreasonable to provide, then, in addition to Usherwood's termination rights elsewhere herein, Usherwood may terminate the applicable Statement of Work by providing notice of termination to Client. Unless specifically and expressly stated in a Statement of Work, any Services required to remediate issues caused by Client's failure to follow the Advice, or Client's unauthorized modification of the Environment, as well as any Services required to bring the Environment up to or maintain the Minimum Requirements, are out-of-scope.

6. No Legal Advice. Nothing in the Statement of Work, Agreement, or

Usherwood's Advice, recommendations, or actions, shall be construed as legal advice or a legal opinion. Client is solely responsible for taking any actions and implementing all measures that are required for Client to comply with any law, regulation, or industry standard applicable to its business. If Client is subject to responsibilities under any applicable privacy law, then Client will identify any data or information subject to heightened data privacy protections or contractual or legal requirements prior to disclosing or providing access of such information to Usherwood.

7. Client Representations. Client represents and warrants that:
  - a. Client has obtained all authorizations and licenses required for Usherwood to access and use the Environment and any hardware or software provided by Client in accordance with the terms of this Agreement without infringing or violating any third-party rights.
  - b. Client has all necessary rights and consents in and relating to any data Client makes accessible to Usherwood, including by presenting, complying with, and enforcing all appropriate disclosure, consent, and notice requirements at the point of collection of information, so that, as accessed, received, and used by Usherwood in accordance with this Agreement, the information does not and will not infringe, misappropriate, or otherwise violate any third-party rights, including without limitation data privacy rights.
  - c. Client has all necessary rights to authorize Usherwood to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones, and tablet computers) that are connected to the Environment (collectively, "Devices"), regardless of whether such Devices are owned, leased, or otherwise controlled by Client. Unless otherwise stated in a Statement of Work, Devices will not receive or benefit from the Services while the devices are detached from, or unconnected to, the Environment. Client is strongly advised to refrain from connecting Devices to the

Environment where such devices are not previously known to Usherwood and are not expressly covered under a managed service plan from Usherwood ("Unknown Devices"). Usherwood will not be responsible for the diagnosis or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment and will not be obligated to provide the Services to any Unknown Devices.

## 8. Confidentiality

- a. Definition. For the purposes of this Agreement, "Confidential Information" means any and all non-public information provided by one Party (a "Discloser") to the other Party (a "Recipient"), including but not limited to technology, business operations, plans, strategies, pricing, know-how, intellectual property, and trade secrets in any form, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of the Recipient; (ii) was developed independently by the Recipient; or (iii) is or was lawfully and independently provided to the Recipient prior to disclosure by the Discloser, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.
- b. Use. The Recipient shall (i) not use or disclose any Confidential Information of the Discloser for any purpose except as necessary in performance of its obligations under this Agreement or as otherwise authorized by the Discloser in writing; and (ii) limit access to Confidential Information of the Discloser to those of its and its affiliates' employees and subcontractors who have a need to know such Confidential Information for purposes consistent with this Agreement and who have signed confidentiality agreements with the Recipient containing protections not materially less protective of the Confidential Information than those herein.
- c. Due Care. The Recipient will exercise the same degree of care

with respect to the Confidential Information it receives from the Discloser as it normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

- d. **Compelled Disclosure.** If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party shall, to the extent legally permitted, provide Disclosing Party with advance written notice and cooperate in any effort to obtain confidential treatment of the Confidential Information.

#### 9. Sensitive Data.

- a. For purposes of applicable privacy laws, the Client retains all ownership and control of any sensitive or personal data provided or used in connection with the Services (“Sensitive Data”). Usherwood does not access, process, store, or otherwise use Sensitive Data except as expressly directed by the Client in writing. The Client is solely responsible for ensuring that its use of the Services complies with all applicable privacy and data protection laws.
- b. Notwithstanding the foregoing, Client acknowledges that certain data may be included in system-level backups or archival files stored by Usherwood solely in connection with data protection or disaster recovery services. In such cases, Usherwood shall store but not access, process, or use such data. The presence of such data in stored backups will not, in and of itself, be deemed a breach of this section
- c. Usherwood shall not be held liable for service disruptions, data loss, or system damage caused by third parties engaged or authorized by Client (including but not limited to auditors, penetration testers, or compliance assessors). Liability for any such third-party actions shall be limited to Usherwood’s direct involvement and Usherwood expressly disclaims any responsibility for failures or damages resulting from third-party access or interference outside of Usherwood’s control.



10. Exclusivity. During the term of this Agreement: (a) Usherwood will be the sole and exclusive provider of information technology support and management services related to the function, operation, and maintenance of Client's Environment (including but not limited to servers, networks, and related infrastructure); and (b) Client will restrict solely to Usherwood, all access to Client's Environment for the purpose of maintenance unless Usherwood provides its prior written consent otherwise. In the event that Client breaches this Section, Usherwood will not be liable to repair or restore any outcomes or consequences of such breach.

11. Fees and Payment Schedule.

- a. Client agrees to pay the fees, costs, and expenses described in each Statement of Work ("Fees") in accordance with the payment terms in such Statement of Work. Client is responsible for sales tax and any other taxes or governmental fees associated with the Services. If Client qualifies for a tax exemption, Client must provide Usherwood with a valid certificate of exemption or other appropriate proof of exemption.
- b. Any unpaid amount that is past due under this Agreement may accrue interest at the rate of 1.5% per month or the highest rate permitted by law, whichever is less. Client will be liable for all costs and expenses related to collection of past due amounts, including reasonable legal and other professional fees and expenses of litigation. Usherwood's rights under this Section will be in addition to all other rights and remedies available to Usherwood based on Client's breach of this Agreement.
- c. Unless otherwise stated in an applicable Statement of Work, Usherwood reserves the right to adjust pricing for Services annually on or after each anniversary of the Effective Date of this Agreement.

12. Co-Managed Services. If applicable, where the Client maintains internal IT personnel or third-party IT support, and where the Parties

agree to a co-managed services model ("Co-Managed Services"). In this arrangement, Usherwood will work collaboratively with Client's designated IT resources to deliver Services outlined in the applicable Statement of Work.

- a. The specific scope, responsibilities, service levels, and coordination procedures applicable to the Co-Managed Services arrangement shall be detailed in a separate Statement of Work, which shall be incorporated into and governed by this Agreement. No Co-Managed Services shall be deemed active or binding until such Statement of Work is fully executed by both Parties.
- b. Each Party shall remain solely responsible for the performance of the tasks assigned to them as defined in the applicable Statement of Work. Usherwood shall not be liable for any system issues, security breaches, data loss, or operational disruptions resulting from actions or inactions of Client's designated IT resources, unless directly caused by Usherwood's gross negligence or willful misconduct.
- c. The Parties agree to maintain clear lines of communication, defined escalation procedures, mutual access protocols, and a clear responsibility matrix, as specified in the governing Statement of Work.

### 13. Term and Termination.

- a. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue until termination or expiration of the service period specified in the Statement of Work, unless a Party earlier terminates the Statement of Work or this Agreement in accordance with the terms herein.
- b. **Termination for Breach.** Either Party may terminate this Agreement or any active Statement of Work in the event that the other Party materially defaults in performing any obligation under this Agreement (including Statement of Work) and such default continues un-remedied for a period of thirty (30) days

following receipt of written notice of default from the non-breaching Party. In addition to Usherwood's right to terminate for breach, Usherwood reserves the right to temporarily suspend the Services and/or repossess any equipment or hardware for Client's failure to pay in accordance with the terms herein.

- c. Effect of Termination. In the event of termination of this Agreement or an active Statement of Work for any reason, (i) all licenses granted hereunder will immediately terminate; and (ii) each Party will promptly destroy or return the other Party's Confidential Information.
- d. Default and Remedies. Client will be considered in default under this Agreement if: (a) any undisputed invoice remains unpaid more than thirty (30) days after its due date; or (b) Client breaches any material obligation under this Agreement or any applicable Statement of Work.

In the event of default, Usherwood may, at its sole discretion and without waiving any other rights or remedies, take one or more of the following actions:

- Assess late fees or interest as permitted under this Agreement;
- Suspend performance of any or all Services under the applicable Statement(s) of Work;
- Repossess or disable any Usherwood-provided equipment, to the extent permitted by law and this Agreement;
- Terminate the applicable Statement(s) of Work; or
- Pursue collection efforts, including engagement of third-party collection services or legal counsel to recover unpaid balances.

Client shall be responsible for all reasonable costs of collection, including attorneys' fees and third-party expenses, to the extent permitted by law

#### 14. Third Party Products and Services.

- a. **Third Party Services.** Portions of the Services may be acquired from, resold from, and/or rely upon the services of third-party suppliers and resellers (each, a “Third-Party Provider”) that may provide services such as data hosting services, malware detection services, domain registration services, and/or data backup/recovery services (each, a “Third-Party Service”). Not all Third-Party Services in a Statement of Work will be expressly identified as being provided by a Third-Party Provider, and at all times Usherwood reserves the right to utilize the services of any Third-Party Provider or to change Third-Party Providers in its sole discretion as long as the change does not materially diminish the Services to be provided to Client under the applicable Statement of Work. Client understands and agrees that Third-Party Providers are not Usherwood contractors, subcontractors, or otherwise under Usherwood’s managerial or operational control. While Usherwood will endeavor to facilitate a workaround for the failure of a Third-Party Service, Usherwood will not be responsible for the failure of any Third-Party Provider to provide services.
- b. **Third-Party Hardware / Software Purchased Through Usherwood.** Usherwood may use Third-Party Providers to provide hardware or software products (“Third-Party Hardware” and “Third-Party Software,” or collectively “Third-Party Products”). Unless otherwise stated in a Statement of Work, all Third-Party Products are generally nonrefundable once the product is obtained from the Third-Party Provider, and all refunds are governed by the Third-Party Provider’s policies. Usherwood does not guarantee that purchased Third-Party Products will be returnable, exchangeable, or that re-stocking fees can or will be avoided. Client will be responsible for the payment of all re-stocking or return-related fees charged by the Third-Party Provider. Usherwood will use reasonable efforts to assign, transfer, and facilitate all warranties (if any) and

service level commitments (if any) for the Third-Party Products and Third-Party Services to Client, but will have no liability whatsoever for the quality, functionality, or operability of any Third-Party Products or Third-Party Services, and Usherwood will not be held liable as an insurer or guarantor of the performance, uptime, or usefulness of any Third-Party Products or Third-Party Services. All Third-Party Products and Third-Party Services are provided “as is” and without any warranty whatsoever as between Usherwood and Client (including but not limited to implied warranties).

- c. Third-Party EULAs. Portions of the Services may require Client to accept the terms of one or more Third-Party Provider’s end user license agreements (“EULAs”). If the acceptance of a EULA is required in order to provide the Services to Client, then Client hereby grants Usherwood permission to accept the EULA on Client’s behalf. EULAs may contain service levels, warranties, and/or liability limitations that are different than those contained in this Agreement. Client agrees to be bound by the terms of such EULAs and will look only to the applicable Third-Party provider for the enforcement of the terms of such EULAs. If, while providing the Services, Usherwood is required to comply with a EULA and the EULA is modified or amended, Usherwood reserves the right to modify or amend any applicable Statement of Work with Client to ensure Usherwood’s continued compliance with the terms of the EULA.

## 15. Intellectual Property.

- a. Each Party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights, and other intellectual property owned by such Party (“Intellectual Property”), and nothing in this Agreement or Statement of Work shall be deemed to convey or grant any ownership rights or goodwill in one Party’s Intellectual Property to the other Party. For the purposes of clarity, Client understands and agrees that Usherwood owns any software, codes, algorithms, or other

works of authorship that Usherwood creates while providing the Services to Client. If Usherwood provides licenses to Client for Third-Party Software, then Client understands and agrees that such software is licensed, and not sold, to Client. Client is permitted to use such Third-Party Software subject to the terms and conditions of (i) this Agreement; (ii) the applicable Statement of Work; and (iii) any applicable EULA. No other uses of such Third-Party Software are permitted.

- b. Client hereby grants Usherwood a nonexclusive license to: (a) view the Stored Data to the extent necessary for Usherwood's performance of the Services or other obligations under this Agreement; and (b) to delete, change, and/or rewrite any necessary information or Stored Data to the extent necessary to complete any repair or improvement in the performance of the Services.

## 16. Disclaimer

- a. **Data Loss Disclaimer.** Usherwood will use commercially reasonable efforts to protect Client data in accordance with the Services and scope defined under the applicable Statement of Work. Usherwood. However, Usherwood shall not be responsible for any data lost, corrupted, or rendered unreadable due to (i) communication and/or transmissions errors, or other failures, interruptions, or delays outside Usherwood's reasonable control; (ii) failure, unavailability, or malfunction of equipment, software, systems, or services not maintained or monitored by Usherwood; (iii) failure or unavailability of any third-party platform, provider, service, or system, including but not limited to cloud platforms, software vendors, or backup/recovery providers, regardless of whether Usherwood assists in their management or administration; or (iv) systems, data, or components not expressly included in the scope of backup or recovery services under the applicable Statement of Work. Unless expressly stated in a Statement of Work, Usherwood does not warrant or guarantee that any maintained storage device or

functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.

- b. Virtual Services Disclaimer. Client understands and agrees that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are downloaded or installed into the Environment. Usherwood does not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined, or removed, or that any data deleted, corrupted, or encrypted by such malware ("Impacted Data") will be recoverable. Unless otherwise expressly stated in a Statement of Work, the recovery of Impacted Data is out-of-scope.
- c. Disclaimer. EXCEPT AS PROVIDED IN THIS AGREEMENT OR ANY APPLICABLE STATEMENTS OF WORK, ALL SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY ADDITIONAL REPRESENTATIONS OR WARRANTIES WHATSOEVER. USHERWOOD AND ITS SUBCONTRACTORS AND SUPPLIERS DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. USHERWOOD OFFICE TECHNOLOGY MAKES NO REPRESENTATION OR WARRANTY THAT ANY SERVICES WILL BE ERROR-FREE OR THAT ERRORS WILL BE CORRECTED, OR THAT ANY ACCESS TO ANY SERVICES OR ENVIRONMENT WILL BE UNINTERRUPTED OR COMPLETELY SECURE. WITHOUT LIMITING THE FOREGOING, USHERWOOD MAKES NO WARRANTY OF ANY KIND THAT ANY SERVICES WILL ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE OR COMPLETE. USHERWOOD MAKES NO GUARANTEES, REPRESENTATIONS, OR WARRANTIES REGARDING THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES

AND EXPRESSLY DISCLAIMS AND SHALL HAVE NO LIABILITY ARISING FROM CLIENT'S USE, OR USHERWOOD'S USE ON CLIENT'S BEHALF, OF THIRD-PARTY PRODUCTS OR THIRD-PARTY SERVICES. NOTWITHSTANDING THE FOREGOING, USHERWOOD SHALL PERFORM THE SERVICES IN A PROFESSIONAL AND WORKMANLIKE MANNER, CONSISTENT WITH GENERALLY ACCEPTED INDUSTRY STANDARDS APPLICABLE TO PROVIDERS OF SIMILAR SERVICES.

17. Limitation of Liability.

- a. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS LOST REVENUE, LOSS OF PROFITS (EXCEPT FOR FEES DUE AND OWING TO USHERWOOD), SAVINGS, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF WORK, THE SERVICES, THIRD-PARTY PRODUCTS, OR THIRD-PARTY SERVICES, OR FOR ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY, OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY STATEMENT OF WORK, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CLIENT FOR THE SERVICES IN THE THREE (3) MONTHS PRECEDING THE CLAIM.
- b. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT THAT A CLAIM ARISES FROM (I) CLIENT'S INDEMNIFICATION OBLIGATIONS; (II) BREACH OF THE NON-SOLICITATION PROVISION OF THE AGREEMENT; (III) CLIENT'S PAYMENT OBLIGATIONS; OR (IV) A PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE.

18. Indemnification.

- a. Usherwood will indemnify, defend, and hold Client harmless from and against any and all losses, damages, costs, expenses, or liabilities, including reasonable attorneys' fees (collectively,



“Damages”), resulting from any third-party claim, suit, action, or proceeding (“Third-Party Claim”) that are caused by (i) an allegation that the Services, or any use of the Services in accordance with this Agreement, infringes or misappropriates such third party’s Intellectual Property rights, patents, copyrights, trade secrets, or other proprietary rights (an “Infringement Claim”). If an Infringement Claim is made or appears possible, Usherwood will, in its sole discretion, to (i) modify or replace the Services, or component or part thereof, to make it non-infringing, or (ii) obtain the right for Client’s continued use. If Usherwood determines that neither alternative is commercially available, Usherwood may terminate the Statement of Work issued under this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Client. This Section will not apply to an Infringement Claim to the extent that the alleged infringement arises from: (i) the use of the Services in combination with data, software, hardware, equipment, or technology not provided by Usherwood (including Third-Party Products or Third-Party Services) or authorized by Usherwood in writing, provided that the infringement would not have occurred but for the combination; (ii) uses of or modifications to the Services not authorized by Usherwood; and/or (iii) any use of the Services not in accordance with this Agreement. This section sets forth Client’s sole remedies and Usherwood’s sole liability and obligation for any actual, threatened, or alleged claims the Services infringe, misappropriate, or otherwise violate any Intellectual Property rights of a third party.

- b. Client will indemnify, defend, and hold Usherwood harmless from and against any Damages resulting from any Third-Party Claim that arises from (i) any Stored Data that Client provides in violation of this Agreement; or (ii) gross negligence and willful misconduct.

19. Insurance. At all times during the term of this Agreement, Usherwood

will maintain adequate liability insurance coverage for the Services. Usherwood's staff will be insured by Usherwood. Throughout the term of this Agreement, Client will, at its own expense, carry property insurance covering loss, damage, and theft to all supported Devices regardless of where located. Client also agrees to carry and maintain adequate Cyber Risk Insurance. Coverage shall be sufficiently broad and address at minimum the following, but not limited to, any resulting loss Client incurs due to cyber breach including costs to notify regulators and individuals affected by data breaches, public relations costs, regulatory fines and/or penalties, Damages, lost income due to business interruption, claims involving infringement of Intellectual Property, extortion or ransoms, and attorneys' fees in connection with any breach. Upon Usherwood's request, Client will provide Usherwood with a certificate of insurance evidencing such required insurance coverage. Client will give Usherwood immediate, written notice of any cancellation of, lapse of, or reduction in the amount of such insurance coverage.

#### 20. Miscellaneous.

- a. No Solicitation. During the term of this Agreement and for a period of twelve (12) months thereafter, Client will not, directly or indirectly, solicit, recruit, or employ any of Usherwood's staff without Usherwood's prior written consent.
- b. Time Limitations. The Parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any Statement of Work (except for nonpayment by Client) must be commenced within one (1) year after the cause of action accrues or the action is forever barred.
- c. Assignment. Neither this Agreement nor any Statement of Work may be assigned or transferred by a Party without the prior written consent of the other Party. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, Usherwood may assign its rights and obligations hereunder to a successor in ownership in

connection with any merger, consolidation, or sale of substantially all the assets of Usherwood's business, or any other transaction in which ownership of more than fifty percent (50%) of Usherwood's voting securities are transferred; provided, however, that such assignee expressly assumes Usherwood's obligations hereunder.

- d. Incident Notification. In the event either Party becomes aware of any actual or reasonably suspected unauthorized access to, acquisition of, or disclosure of the other Party's data or systems, that Party shall notify the other Party without unreasonable delay, but in no event later than as required under applicable state or federal law.
- e. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement (each, a "Notice") must be in writing. Notices sent in accordance with this section will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or e-mail (with non-automated confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) on the fifth (5th) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Notices to Client will be provided to the addresses provided in the Statement of Work. Notices to Usherwood will be provided to:

Usherwood Office Technology  
Attention: Legal Department  
1005 W Fayette Street  
Syracuse, New York 13204

- f. Independent Contractor. Usherwood is an independent contractor, and is not an employee, partner, agent, joint

venturer, or affiliate. Nothing in this Agreement or Statement of Work shall be construed as establishing an agency, joint venture, partnership, or the relationship of employer and employee between the Parties for any purpose. This Agreement establishes a non-exclusive relationship between the Parties.

- g. Entire Agreement. This Agreement, together with any Statement(s) of Work executed pursuant to it, constitutes the complete and exclusive understanding between the Parties with respect to the subject matter herein and supersedes all prior or contemporaneous communications, representations, understandings, and agreements, either oral or written. No usage of trade or other regular practice or method of dealing between the Parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. Neither Party will be bound by, and specifically objects to, any term, condition, or other provision that is different from or in addition to this Agreement (whether or not it would materially alter this Agreement) that is proffered by the other Party in any acceptance, confirmation, invoice, purchase order, receipt, correspondence, or otherwise, unless each Party mutually and expressly agrees to such provision in writing. No amendment or modification of this Agreement or any Statement of Work shall be valid unless made in writing and signed by authorized representatives of both Parties.
- h. Amendment. Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any Statement of Work will be valid or binding upon the Parties unless such amendment or modification is accepted in writing by the Parties (email or electronic signature is acceptable).
- i. Severability. If any provision hereof or in any Statement of Work is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility, or unenforceability so that the remainder of that

provision and all remaining provisions will be valid and enforceable to the fullest extent permitted by applicable law.

- j. **Conflicts.** This Agreement governs the overall relationship between the Parties. If a conflict arises between the terms of this Agreement and the terms of a Statement of Work regarding the Services, the terms of the Statement of Work will control.
- k. **No Waiver.** The failure of either Party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- l. **Force Majeure.** Except for Client's payment obligations, neither Party will be liable to the other Party for delays or failures to perform its obligations because of circumstances beyond such Party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other Party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, pandemics, endemics, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- m. **Governing Law; Venue.** This Agreement and all Statements of Work will be governed by, and construed according to, the laws of the state of New York, without giving effect to any choice or conflict of law provision or rule thereof. The Parties hereby irrevocably consent to the exclusive jurisdiction and venue of Onondaga County, New York, or in the United States District Court for the Northern District of New York, for any and all claims and causes of action arising from or related to this Agreement. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH

PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY AND ALL ACTIONS. THIS WAIVER WILL BE IRREVOCABLE AND PERPETUAL. EACH PARTY UNDERSTANDS AND ACKNOWLEDGES THAT: (A) IN THE ABSENCE OF THIS SECTION, SUCH PARTY WOULD HAVE HAD A RIGHT TO LITIGATE ACTIONS THROUGH A JURY TRIAL; AND (B) THIS WAIVER IS A SUBSTANTIVE TERM BARGAINED BY THE PARTIES AS CONSIDERATION FOR ENTERING INTO THIS AGREEMENT.

- n. No Third-Party Beneficiaries. The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.