



Master Services Agreement

This Master Services Agreement (this “**Agreement**”) is entered into between Client (“**Client**”) and ne Digital, Inc., a Florida corporation (“**NED**”). No product or Services (as defined herein) will be provided under this Agreement alone, but will require the execution of a Statement of Work (each, a **Statement of Work**” or “**SOW**”), which must be executed by both parties and, upon such execution, is deemed incorporated in this Agreement for all purposes. The parties may execute multiple SOWs under this Agreement. In the event of any conflict between the terms of a SOW and this Agreement, the terms of the SOW will prevail.

You may not access any NED Offerings if you are a direct competitor, except with NED’s prior written consent. In addition, you may not access any NED Offerings for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

ACCEPTANCE

- A. Electronic Agreement.** By checking the “Accepted” box in relation to this Agreement and/or providing an electronic signature, Client consents to have this Agreement in electronic form and accepts this Agreement and its terms, conditions and notices contained or referenced herein.
- B. Modification.** Please consult this Agreement regularly. This Agreement may be modified by NED at its sole discretion from time to time upon written notice to Client, such modifications to be effective upon posting in the Agreement Center, available through the online portal designated for Client (the “**Online Portal**”). Client’s use of the Services after such posting will constitute acceptance by Client of such changes. If Client does not agree to the modifications, Client must notify NED within 30 days after receiving notification of such modifications. If Client provides such written notice, Client’s agreement will continue to be governed by the version of this Agreement made prior to such modification for the remainder of Client’s then-current Term (as defined below).
- C. Access and Retention.** A link to this Agreement will be found on NED’s Agreement Center, available through the Online Portal. Please print a copy of this document for your records.

GENERAL TERMS AND CONDITIONS

1. DESCRIPTION OF SERVICES

- 1.1 **Services.** NED shall provide certain services (collectively, the “**Services**”), as well as licenses for software, and/or subscription services, Third-Party Products (as defined herein) and support, to Client as detailed in a separate SOWs and on the terms and conditions set forth herein.
 - 1.2 **SOW Acceptance.** All SOWs must be accepted by an authorized representative of NED and Client and once accepted, shall be subject to the terms and conditions of this Agreement for the duration of the SOW. To be effective and bind the parties, a SOW must be on NED’s designated form. No term or condition of any SOW shall be modified except by written agreement of both parties.
 - 1.3 **SOW Modifications.** Either party may initiate a modification of a SOW (each, a “**Modification**”) by submitting a written request to the other party, or through the Online Portal. Either party may, in its sole discretion, reject any Modification requested by the other party. Once accepted, the terms of such Modification shall be deemed to be incorporated into the applicable SOW.
2. **TERM.** The initial term of this Agreement shall remain in effect for three (3) years from the Effective Date unless terminated earlier pursuant to Section 4 (the “**Initial Term**”). So long as a SOW incorporating this

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Agreement remains in effect, the term of this Agreement shall automatically renew for successive three (3) year terms (each, a “**Renewal Term**”, and together with the Initial Term, the “**Term**”) unless one party provides written notice of termination to the other party at least sixty (60) days in advance of the then-existing term, in which case this Agreement shall terminate at the end of the applicable Service Period (as defined in the applicable SOW).

3. PAYMENTS

- 3.1 **Fees.** The fees for Services are set forth in the applicable SOW. For recurring Services, NED shall invoice Client monthly based upon actual consumption unless the SOW states otherwise. Non-recurring charges will be invoiced separately and will be calculated at NED’s then-current time and material rates unless otherwise mutually agreed to in writing by the parties. Additional Services requested by Client not addressed in a Statement of Work shall be billed at NED’s then-current time and materials rates (or then-current pricing schedule, as applicable) upon Client approval of the additional Services or execution of an amended SOW. Unless otherwise set forth in the applicable SOW, each invoice shall be due and payable by Client within fifteen (15) calendar days after Client’s receipt of such invoice.
- 3.2 **Expenses.** Client shall promptly reimburse NED, upon NED’s written request, for all actual travel and other expenses incurred by NED in connection with, and in furtherance of, its performance of the Services. Expenses include, as applicable, mileage, parking, out-of-town travel costs, report preparation supplies, and allocated charges to cover the costs of technology, fax, telephone and mail/delivery services.
- 3.3 **Late Payments.** Past due amounts will incur a late payment charge, until paid, at the rate of 3% per month or the maximum amount permitted by law, whichever is less. In the event payment for fees is not made on or before the date such payments are due, NED may, in its sole discretion and in addition to any other remedies available at law or in equity, suspend Services until payment is made in full without incurring any liability, and charge Client NED’s current reinstatement fee following a suspension. Client shall pay any costs and/or collection/attorneys’ fees incurred by NED to collect any outstanding balance in addition to the outstanding balance.
- 3.4 **Invoice Dispute Process.** If Client has a bona fide dispute in relation to any portion of the fees invoiced, Client shall provide written notice to NED within five (5) days from the date of the invoice, setting forth the details surrounding the dispute. The parties shall use commercially reasonable efforts to resolve the disputed fees within sixty (60) days of the date of the notice. If the dispute is not resolved within such time period, then either party may at any time thereafter submit such dispute to a court of competent jurisdiction as set forth in Section 18 herein. When the dispute is resolved, any payments owed to a party the other party shall be made within five (5) days of the resolution of such dispute.
- 3.5 **Taxes.** Client shall pay all taxes and fees (including, but not limited to, any sales, use, federal excise or similar taxes, license fees and surcharges) applicable to the provision of the Services. All such taxes and fees shall be stated separately on Client’s invoices and shall be paid directly to NED unless a valid exemption certificate is furnished to NED prior to the applicable due date for such taxes and/or fees.

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4. TERMINATION

- 4.1 **By NED.** NED may terminate this Agreement as it applies to Client (and any outstanding SOWs) prior to the expiration of the Initial Term or any Renewal term: (i) upon not fewer than five (5) days written notice, if Client is overdue by more than sixty (60) days on any payments due and outstanding under any outstanding SOW and not otherwise subject to a bona fide dispute; which overdue payment shall continue to be due and payable by Client following such termination; (ii) if Client materially breaches any other provision of this Agreement and such breach is not cured (if capable of cure) within ten (10) days after written notice from NED of the same; (iii) upon Client's insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event; (iv) upon any violation by Client of an applicable law, rule or regulation that is not cured within thirty (30) days after receipt of written notice by NED thereof; or (v) if NED decides to discontinue the provision of an applicable Service, in whole or in part.
- 4.2 **By Client.** Client may terminate the affected SOW upon: (i) any breach by NED of any material provision of this Agreement or the affected SOW that is recurring or chronic in nature and materially impacts NED's ability to provide a Service and is not cured within fifteen (15) days after receipt of written notice thereof; (ii) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to NED; (iii) any violation by NED of an applicable law, rule or regulation in connection with this Agreement that is not cured within thirty (30) days after receipt of written notice thereof; or (iv) for convenience, by providing NED at least sixty (60) days' prior written notice and by paying all outstanding invoices and all applicable Termination Charges (as defined in Section 4.3).
- 4.3 **Effect of Termination.** Without limiting any other remedy available to NED at law or in equity, upon termination of this Agreement by NED due to Client's breach pursuant to Section 4.1(i)-(iv) or by Client for convenience pursuant to Section 4.2(iv), Client shall pay all fees due under this MSA (for the avoidance of doubt, which includes any outstanding SOWs), together with (i) any charges associated with NED's equipment for the remaining part of the Term; (ii) any cancellation charges incurred by NED as a result of such termination ("**Termination Charges**"); and (iii) any additional damages set forth in the applicable SOW, within fifteen (15) days of the date of invoice. In the event of termination for any reason, Client shall promptly reimburse NED for any reasonable out-of-pocket expenses incurred prior to such termination, upon NED's written request of the same.

5. GENERAL REQUIREMENTS.

- 5.1 **System.** For the purposes of this Agreement, "**System**" means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by NED pursuant to a SOW. To avoid a delay or negative impact on NED's provision of the Services, during the term of each SOW, Client agrees to refrain from modifying or moving the System, or installing software on the System, unless NED expressly authorizes such activity.
- 5.2 **Maintenance; Updates.** If patches and other software-related maintenance updates ("**Updates**") are provided under a SOW, NED will install the Updates only if it has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware.

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- 5.3 **Third Party Products.** Client acknowledges that certain third-party hardware and software products (“**Third-Party Products**”) may be provided by NED as a “pass through” to Client and such Third-Party Products may be covered by a warranty offered by the third-party vendor, not NED. Client shall look solely to the Third-Party Products vendor for warranty support. For any hardware provided by Client for use in the provision of the Services by NED, Client grants NED a personal, non-transferable and non-exclusive license to use such hardware in the manner necessary to provide Service. Client assumes the risk associated with the use, repair and maintenance of such equipment. NED will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products so acquired. NED does not own Third-Party Products. Client’s right to use the Third-Party Products is subject to Client’s agreement with NED, and to Client’s understanding of, compliance with and consent to the terms and conditions of the Third-Party agreements, which NED does not have authority to vary, alter or amend.
- 5.4 **Third-Party Service Providers.** NED may utilize third-party service providers (each, a “**Third-Party Service Provider**”), in its discretion, to provide the Services in accordance with the Agreement. NED will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for any such Third-Party Service Provider to Client, but will have no liability whatsoever for, and NED will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any Third-Party Service Provider. The Third-Party Service Provider may require the NED to sign a contract with the Third-Party Service Provider for its services (“**Third-Party Contract**”) and the terms of the Third-Party Contract may require certain conditions and requirements upon Client. The terms and conditions of any such Third-Party Contract(s) will be provided to the Client or hyperlinked or attached to a Statement of Work which identifies the Third-Party Service Provider and the associated terms and conditions. Client acknowledges and agrees that Client’s consent to those Third-Party Terms and Conditions shall be required for performance of the Services which Client has engaged NED to contract upon its behalf. Client further acknowledges that the Third-Party Service Providers’ terms and conditions may be legally binding on NED and Client. Hyperlinks to PDFs of Third-Party Service Provider terms and conditions can be found at NED’s website and/or the applicable SOW.
- 5.5 **NED Personnel.** NED shall have sole discretion in staffing the Services and may assign the performance of any portion of the Services to any Contracted Subcontractor. “**Contracted Subcontractors**” means Third-Party Service Providers and/or other service providers to whom NED contracts to provide specified services to complete the Services indicated in the applicable SOW. NED shall cause its employees and subcontractors physically located at Client facilities to comply with all reasonable workplace standards and policies applicable to Client employees that have been provided to NED.
6. **INTELLECTUAL PROPERTY.**
- 6.1 **NED Intellectual Property.** NED retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of this Agreement (including without limitation, under any SOW), as well as any software, materials, or methods created prior to or after conclusion of any work. Client acquires no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement (including without limitation, under any SOW).

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- 6.2 **Use.** Client may only use and disclose products (including Third-Party Products) in accordance with the terms of this Agreement, applicable SOW, and the terms and conditions governing any such Third-Party Products, as applicable. NED reserves all rights in and to the products not expressly granted in this Agreement. Client may not disassemble or reverse engineer any software product or decompile or otherwise attempt to derive any software product's source code from executable code, except to the extent expressly permitted by applicable law despite this limitation or provide a third-party with the results of any functional evaluation, or benchmarking or performance tests on the products, without NED's prior written approval. Except as expressly authorized in this Agreement or a Statement of Work, Client may not (i) distribute a product to any third-party (whether by rental, lease, sublicense or other transfer), or (ii) operate a product in an outsourcing or NED business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in a Third-Party Product; applicable installation instructions or release notes will contain the relevant details.
- 6.3 **Data Ownership.** Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any data, information or material proprietary submitted by Client to NED. "**Client Data**" means data in electronic form that belong to or is owned by Client, including without limitation, all information, data, materials, works, expressions or other content (and all improvements, modifications and derivatives thereof), including any that is (a) uploaded, submitted, posted, transferred, transmitted or otherwise provided or made available by or on behalf of Client, or (b) collected, downloaded or otherwise received by NED pursuant to this Agreement or at the written request or instruction of Client.
- 6.4 **License Agreements**
- 6.4.1 **NED License Grant.** Subject to the terms of this Agreement, NED grants Client a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other product provided as part of the Services solely for its own internal use.
- 6.4.2 **Client Data License Grant.** During the term of this Agreement, Client hereby grants to NED a limited, worldwide, non-exclusive, non-transferable, royalty-free right to use, display, transmit, and distribute Client Data as necessary to: (i) provide the Services; (ii) in anonymized and aggregated form, generate statistics and produce reports; and (iii) collect metadata about feature usage in order to continue to improve the development and delivery of the Service.
- 6.4.3 **Software Installation or Replication; Software Minimum Requirements.** If NED is required to install or replicate Client software as part of the Services, Client will independently verify that all such software is properly licensed. Client's act of providing any software to NED will be deemed Client's affirmative acknowledgement to NED that Client has a valid license that permits NED to perform the Services related thereto. At all times, all software on the System must be genuine and licensed, and Client agrees to provide NED with proof of such licensing upon NED's request. If NED requires Client to implement certain minimum hardware or software requirements ("**Minimum Requirements**"), Client agrees to do so as an ongoing requirement of NED providing Services to Client.

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- 6.4.4 **Pre-Existing License Agreements.** Any Third-Party Product, which is licensed to Client under a separate software license agreement with such third-party, will continue to be governed by the third-party license agreement.
- 6.4.5 **EULA.** Portions of the Services may require Client to accept the terms of one or more third-party end user license agreements (“EULAs”) or modify or amend any applicable SOW with Client to ensure NED’s continued compliance with the terms of the third-party EULA. If the acceptance of a EULA is required in order to provide the Services to Client, Client hereby grants NED permission to accept the EULA on Client’s behalf. 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. Client hereby permits NED to make any information disclosures to a third-party provider as may be required under such third-party provider’s EULA. Client agrees to hold harmless and indemnify NED against Client’s violation of any of the terms and conditions included in the subject EULA.

7. **ACCEPTABLE USE POLICY.** Client shall not use the Services in any way that violates federal, state, local or international law. This prohibition includes, without limitation, any actions which are threatening, obscene, defamatory, libelous or which violate trade secret, copyright, patent or other intellectual property rights of a third party, or rights of privacy or publicity, violate export laws, regulations, and rules (including, without limitation, the Export Administration Act and the Export Administration Regulations administered by the U.S. Dept. of Commerce) or which result in the spread of computer viruses, worms, time bombs or other damaging programs or data files. If any breach of this policy is not cured within ten (10) days after receipt of written notice from NED, NED may immediately suspend or terminate the Services.

Client will notify NED as to the existence of any such virus or destructive element immediately upon discovery thereof, and NED will have the right to take any steps it deems appropriate to eliminate the virus or destructive element from the NED network, in which case Client shall reimburse NED for actual costs reasonably incurred. If Client or its users are involved in the violation of system security, NED reserves the right to immediately suspend Service and release all usernames and related information, of all users involved in such violation, to system administrators at other sites in order to assist them in resolving such security incident. NED will fully cooperate with law enforcement authorities in investigating suspected lawbreakers.

8. **LIMITED WARRANTY.**

- 8.1 **Warranty and Remedy.** NED warrants that NED or its Contracted Subcontractors shall perform the Services substantially in accordance with the performance standards and specifications set forth in the applicable SOW. For any breach of the foregoing warranty, NED or its Contracted Subcontractors will exercise commercially reasonable efforts to re-perform any non-conforming Services that were performed within the ten (10) business day period immediately preceding the date of Client’s written notice to NED specifying in reasonable detail such non-conformance. If NED, in its sole discretion, concludes that conformance is impracticable, then NED will refund all fees paid by Client to NED hereunder, if any, directly allocable to such nonconforming Services. THIS REMEDY WILL BE CLIENT’S SOLE AND EXCLUSIVE REMEDY AND WILL BE IN LIEU OF ANY OTHER RIGHTS OR REMEDIES CLIENT MAY HAVE AGAINST NED FOR ANY CLAIM (A) THAT A SERVICE OR DELIVERABLE PROVIDED HEREUNDER DOES NOT CONFORM TO SPECIFICATIONS OR IS OTHERWISE DEFECTIVE, OR (B) THAT THE SERVICES WERE PERFORMED IMPROPERLY.

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8.2 **Exception for NED Products.** Notwithstanding any provision to the contrary in this Agreement, any warranty offered and provided directly by an NED product shall be deemed null and void if the applicable product is (i) altered, modified or repaired by persons other than NED or its Contracted Subcontractors, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by NED; (ii) misused, abused, or not operated in accordance with the specifications of NED or the applicable manufacturer or creator of the applicable product; or (iii) subjected to improper site preparation or maintenance by persons other than NED or persons approved or designated by NED.

8.3 **No Other Warranty.** EXCEPT FOR THE WARRANTIES MADE BY NED IN SECTION 8.1 ABOVE, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CLIENT, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY “AS-IS.” NED MAKES NO OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. IN PARTICULAR, THERE IS NO WARRANTY THAT ALL SECURITY THREATS AND VULNERABILITIES IN A SUPPORTED PRODUCT, SUPPORTED SYSTEM OR NETWORK WILL BE DETECTED OR THAT THE SERVICES WILL RENDER THEM SAFE FROM SECURITY BREACHES. NED DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF CLIENT OR ANY THIRD-PARTY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NED DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

NED DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CLIENT REQUIREMENTS NOT SET FORTH HEREIN, OR THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE.

9. CLIENT ACKNOWLEDGMENTS AND OBLIGATIONS.

9.1 **Provision of Materials and Services to NED.** Client agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe workspaces for purposes of NED or its Contracted Subcontractors performing the services. Client will also provide NED or its Contracted Subcontractors with access to all information, passwords and facilities requested by NED that is necessary for NED or its Contracted Subcontractors to perform the Services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Client understands that the NED or its Contracted Subcontractors, may be unable to perform their duties adequately. Client will maintain adequate backup for all data and other items furnished to NED.

9.2 **Working Environment.** Client shall provide a suitable working environment for any equipment located at Client's facility. Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each piece of equipment. Client shall bear the risk of loss of any equipment located at Client's facility.

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- 9.3 **Equipment.** Client acknowledges that from time to time (i) NED may identify additional items that need to be purchased by Client, and (ii) changes in Client's systems may be required in order for NED to meet Client's requirements.
- 9.4 **Performance Upgrades.** From time to time, NED may provide Client with specific advice and directions relating to the performance of the Services, and suggest certain performance improvements, modifications or upgrades to enhance the performance of said Service (including, without limitation, pursuant to Section 9.3 above) (herein known as "**Performance Upgrades**"), which shall be set forth in a "Critical Action Letter" delivered to Client. Client agrees to promptly follow and implement any such Performance Upgrades at Client's sole cost. NED does not accept any responsibility or any liability for any problems which may result from failure to implement Performance Upgrades set forth therein. If Client's failure to follow or implement NED's advice renders part or all of the Services economically or technically unreasonable to provide in NED's discretion, then NED may terminate the applicable SOW. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by Client's failure to follow NED's advice or directions, as well as any services required to bring the System up to or maintain the Minimum Requirements, are not covered under any SOW and will be out-of-scope. Should Client elect to forego implementation of the Performance Upgrades or corrective action as set forth in the Critical Action Letter, Client shall execute the Critical Action Letter Waiver (attached to the Critical Action Letter) identifying all Performance Upgrades or corrective actions the Client has elected to forgo, and shall indemnify, defend and hold harmless NED and its Contracted Subcontractors, and their respective directors, officers, employees, consultants and agents) for any losses (including attorneys' fees and costs) arising out of the same.
- 9.5 **Software Hardware and Security.** Client acknowledges and agrees that data loss or network failures may occur, whether or not foreseeable. In order to reduce the likelihood of a network failure, Client agrees to maintain proper security for its computer and information system including software and hardware updates on computing, storage and networking equipment and virtual cloud environments. Client will adhere to software and hardware updates and maintain specific security standards, policies, procedures set forth by the NIST Cybersecurity Framework available at <https://www.nist.gov/cyberframework>.
- 9.6 **Client Cyber Security.** Client acknowledges and agrees that the services provided pursuant to this Agreement are limited to the Services as set forth in the applicable Statement(s) of Work. Unless otherwise specified in a Statement of Work for "Managed Cybersecurity Services", NED does not provide, nor does NED intend to provide, internet security monitoring, cybersecurity monitoring, cyber terrorism monitoring, or any other cyber threat monitoring for Client. As cyber threats are always evolving, if Client has not entered into a "Managed Cybersecurity Services" SOW with NED, NED strongly recommends that Client engage the services of a cyber protection third-party vendor to monitor the cyber controls and cyber activities in Client's networks and systems.
- 9.7 **Data Access/Storage.** Depending on the Service provided, a portion of Client Data may occasionally be accessed or stored on secure servers located outside of the United States. Client agrees to notify NED if Client requires NED to modify its standard access or storage procedures.
- 9.8 **Telemarketing/Unsolicited Emails.** In no event, including the negligent act or omission on its part, shall NED or its Contracted Subcontractors, whether under this Agreement, an SOW or otherwise in connection with any of them, have any liability under any theory, if Client's data is breached

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because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic “spiders”, “spybots”, “spyware”, wiretapping, bugging, video cameras or identification tags.

- 9.9 **High Risk Activities.** Client acknowledges and agrees that NED did not design the Services for, and does not warrant the Services for use in, the operation, management, support or delivery of products, services, systems, environments or otherwise relative to or within environments requiring failsafe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, surgically implanted devices, weapons systems, or other applications, devices or systems in which the failure of the Services could directly result in death, personal injury, or severe physical or environmental damage (“**High Risk Activities**”). NED DISCLAIMS ANY AND ALL WARRANTIES AND LIABILITY WITH RESPECT TO THE USE OF THE SERVICES IN HIGH RISK ACTIVITIES.
- 9.10 **Onboarding Process.** Client acknowledges and agrees that NED will have no responsibility for any deficiencies in the System (including without limitation, Client’s current operating systems and infrastructure) until NED has had a reasonable opportunity to conduct a review of the current system and to provide Client with its recommendations.
- 9.11 **Offboarding process.** In the event of termination of Services by either party, NED will make reasonable accommodations to transfer Client’s account to Client’s new managed service provider or other authorized agent (the “**Onboarding Provider**”). Client shall indemnify and hold harmless NED, its Contracted Subcontractors and their respective directors, officers, employees, consultants and agents for any claims or losses resulting from the activities of the Client or the Onboarding Provider during the transition period from NED to the Onboarding Provider, inclusive of when Client obtains access to all super administrator accounts of their infrastructure.
10. **CONFIDENTIALITY.**
- 10.1 **Confidential Information.** By virtue of this Agreement and the performance of the Services by NED, both NED and Client may be exposed to or be provided with certain confidential and proprietary information of the other. As used herein, “Confidential Information” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (“**Confidential Information**”). Confidential Information of each party includes, but is not limited to, the terms and conditions (but not the existence) of this Agreement, including any SOWs hereunder, and documentation related to the products and/or Services all trade secrets, software, source code, specifications, and other information of NED or Client Data relating to or embodied therein.
- 10.2 **Confidential Information of Client.** Confidential Information of Client shall include any personally identifiable information or protected health information of Client’s employees, Client’s customers, and Client Data. Client acknowledges and agrees that this Agreement does not constitute a Business Associates Agreement (“**BAA**”) as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996 and as amended), and that the requirement for any such agreement in addition to this Agreement may be necessary to provide the Services hereunder. Client shall be solely responsible

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for the consequences, if any, of moving forward with the Services hereunder without such a BAA and shall be the sole judge of the necessity for a BAA in addition to this Agreement. Furthermore, Client hereby agrees to defend, indemnify and hold harmless NED, its Contracted Subcontractors, and their respective present and former directors, officers, employees, attorneys and agents, and their predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "**Indemnitee**"), from and against any and all claims, demands, causes of action, actions, judgments, liabilities, losses, costs and expenses, including attorneys' fees and costs, as they occur, brought against, imposed upon, or incurred or suffered by, the Indemnitee which in any way relate to the failure of Client to comply with the terms and conditions of this Agreement in proper handling of protected health information not caused by NED's gross negligence and/or due to the absence of any necessary BAA, or failing to notify NED of the necessity of same.

- 10.3 **Exclusions.** Information shall not be considered Confidential Information to the extent that the Receiving Party can establish that such information (i) is or becomes generally known or available to the public through no fault of the Receiving Party; (ii) was lawfully in the Receiving Party's possession before receipt from the Disclosing Party without a duty of confidentiality; (iii) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (iv) has been independently developed by the Receiving Party.
- 10.4 **Obligations.** Each of NED and Client shall protect the other's Confidential Information from unauthorized dissemination and use the same degree of care that each such party uses to protect its own confidential information, but in no event less than a reasonable amount of care. Neither NED nor Client shall use Confidential Information of the other for purposes other than those necessary to further the purposes of this Agreement or as otherwise authorized herein. Except as otherwise authorized by the Disclosing Party in writing, the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees, contractors (including Contracted Subcontractors) and agents who need such access for purposes consistent with this Agreement.
- 10.5 **Compelled Disclosure.** The Receiving Party may disclose Confidential Information (including Client Data) of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 10.6 **Return or Destruction of Confidential Information.** Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (i) required by applicable law or (ii) it would be unreasonably burdensome to destroy (such as archived computer records).

11. INSURANCE.

- 11.1 **Client Insurance.** Client shall secure and maintain throughout the term of this Agreement (and for the avoidance of doubt, so long as any SOW remains outstanding), Cyber Liability Insurance sufficient to address Client's cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine Client's specific coverage and policy limit requirements.

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- 11.2 **NED Insurance.** NED agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by applicable law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, NED will maintain at its own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for owned, hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000). Furthermore, upon Client's written request, NED shall have Client included in the Professional Liability policy as an additional insured for wrongful acts of NED subject to such policy's terms and conditions. NED shall maintain property coverage for its equipment in use by Client unless otherwise modified via the applicable SOW. Notwithstanding anything to the contrary in the foregoing, NED's insurance coverage referenced herein shall be in excess of any other insurance available to Client.
- 11.3 **Mutual Waiver of Subrogation.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW), PROFESSIONAL LIABILITY, GENERAL LIABILITY, PROPERTY, COMMERCIAL UMBRELLA/EXCESS, CYBER OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD NED, ITS SUBCONTRACTORS AND/OR THIRD-PARTY SERVICE PROVIDERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT CLIENT'S INSURANCE POLICIES REFERENCED ABOVE PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THIS AGREEMENT.

12. INDEMNIFICATION

- 12.1 **By Client.** Client hereby agrees to indemnify, defend, and hold harmless NED from and against all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "**Losses**") associated with any third-party claim to the extent relating to or arising as a result of the Services and/or products, Client's use or disclosure of the any deliverables or products provided under a SOW, or this Agreement; except that Client's indemnification obligation under this Section shall not apply to the extent that any such Losses are finally determined by a court of competent jurisdiction to be the result of NED's gross negligence, fraud or willful misconduct.
- 12.2 **By NED.** NED hereby agrees to indemnify Client from and against all Losses arising out of a third-party claim against Client alleging that the Services infringe any intellectual property rights of such third party. Notwithstanding the foregoing, in no event shall NED have any obligations or liability under this Section to the extent the infringement claim is attributable to: (i) the combination, operation or use of the Services or products with equipment or software supplied by Client where the Services would otherwise not themselves be infringing; (ii) NED's compliance with designs, specifications or instructions by Client; (iii) use of the Services or products in an environment or application for which it was not designed or contemplated under this Agreement or the applicable

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SOW; or (iv) modifications to the Services or products by anyone other than NED or its Contracted Subcontractors where the modified version is infringing. NED will have satisfied its obligations under this Section if, after receiving notice of a claim, NED obtains for Client the rights to continue using the Services or products as provided without infringement or replaces or modifies the Services or products so they become non-infringing. THE RIGHTS GRANTED TO CLIENT UNDER THIS SECTION 12.2 SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE SERVICES OF ANY PATENT, COPYRIGHT, OR OTHER PROPRIETARY RIGHT.

- 12.3 **Indemnification Procedures.** The Indemnified Party hereunder will (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. In no event may either party enter into any third-party agreement which would in any manner whatsoever affect the rights of the other party or bind the other Party in any manner to such third party, without the prior written consent of the other party. "Indemnified Party" shall mean, in the case of NED, NED, its affiliates and Contracted Subcontractors, and each their respective directors, officers, employees, contractors, consultants, agents and assigns and, in the case of Client, Client, Client's affiliates, and each of their respective directors, officers, employees, contractors, agents and assigns.
13. **LIMITATION OF LIABILITY.** THIS SECTION LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. CLIENT ACKNOWLEDGES AND AGREES THAT NED WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS SECTION. Client acknowledges and agrees that Client's sole and exclusive remedy and the NED's liability to Client, for any losses, claims, damages, expenses or liabilities under this Agreement, including under any SOW entered into hereunder, shall be limited to, at the NED's election, (i) re-performance of the Services or (ii) a refund of the amounts paid by Client hereunder for the three (3) months immediately preceding the event giving rise to such loss, claim, damage, expense or liability. The foregoing limitation will apply regardless of the form of action, whether contract or tort, or under any other legal theory. In no event shall the NED be liable to Client for any consequential, incidental, special, exemplary, indirect or punitive damages, including without limitation, loss of business, revenue, profits, use, data or good will, work stoppage, computer failure or malfunction, any and all other commercial damages or loss of any kind or nature whatsoever suffered by Client or any third party, regardless of whether the NED has been advised of the possibility of any such liability, loss, injury, damage, or third-party claim, arising in any manner from this Agreement and the performance or non-performance of obligations hereunder.
14. **NED'S EMPLOYEE'S, AGENTS OR SUBCONTRACTORS.** Client acknowledges that NED has incurred substantial recruitment, screening, training, and administrative expenses with respect to its agents, including its employees, vendors and independent contractors. From the date of Client's entry into this Agreement and up to one (1) calendar year after the date of termination of this Agreement, Client shall not hire or contract directly or indirectly with any of NED's employees, agents or Contracted Subcontractors who have communicated with and/or worked on any Service for Client. Client and NED mutually acknowledge and agree that it would be impractical and extremely difficult to ascertain the amount of monetary damages that would be caused by a breach by Client of this Section 14. Therefore, Client and NED mutually agree that in the event of a breach by Client in any way of this Section, Client shall pay to NED as

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liquidated damages, an amount equal to Three Hundred Fifty Thousand Dollars (\$350,000.00). This amount is an effort by both parties to properly and reasonably assess the damages that NED would suffer as a direct result of a breach by Client, taking into account the following facts and circumstances: (i) an average employee working for NED will generate significant net revenue for NED and remain employed by NED for an extended period of time; (ii) NED will lose significant revenue and incur significant costs in connection with attempting to replace such employee; (iii) there is no guarantee that such employee can be replaced; and (iv) accurately assessing the value of such employee to NED upon such breach is virtually impossible. In light of these circumstances, Client and NED mutually agree that this is liquidated damages provision represents reasonable compensation to NED for the losses that it would incur due to any such breach. Client and NED further acknowledge and agree that nothing in this Section shall limit NED's rights to obtain injunctive relief or any other damages including, but not limited to punitive, consequential, special, or any other damages, as may be appropriate in connection with Client's breach of this Section.

15. **EMAIL TRANSMISSIONS.** In connection with NED's performance of the Services, NED may communicate, from time to time, with Client or others via email transmission. Client acknowledges and accepts that the NED cannot guaranty, and does not warrant, that the email transmissions from NED: (i) will not be intercepted and read, disclosed or otherwise used or communicated by a third party; or (ii) will be delivered to each of the parties to whom they are directed and only such parties.
16. **FORCE MAJEURE.** Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW 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, pandemic, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, 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.
17. **INDEPENDENT CONTRACTOR.** The parties are independent parties; and this Agreement does not make the parties principal and agent, partners, or employer and employee; nor does it create a joint venture or partnership.
18. **GOVERNING LAW; EXCLUSIVE JURISDICTION AND VENUE.** This Agreement has been executed and delivered in, and shall be governed by, construed under, and enforced in accordance with, the laws of the State of Florida without respect to its conflict of laws principles. Jurisdiction and venue for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall vest only in Cook County, Illinois. Client irrevocably waives, to the fullest extent permitted by law, any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
19. **NOTICE.** All notices, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person; (ii) one (1) business day after deposit with an overnight delivery service for next day delivery; or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient party at the address set forth on the signature page hereof. In addition, NED shall be permitted to send Client notices to such authorized email address(es) as provided by Client to NED. Such email communication is deemed delivered on the day sent unless returned to sender.

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20. GENERAL

- 20.1 **Assignment.** Neither party may assign this Agreement without the express written consent of the other, other than as set forth in this Agreement with respect to the subcontract of Services. The obligations under this Agreement shall be binding on and inure to the benefit of each party, its successors, and permitted assigns.
- 20.2 **No Third-Party Beneficiaries.** Unless expressly stated otherwise in this Agreement, this Agreement does not and is not intended to confer any rights or remedies upon any party other than the parties to this Agreement.
- 20.3 **Publicity.** Client acknowledges that NED may use Client's name and logo for the purpose of identifying Client as a customer of NED.
- 20.4 **No Waiver.** Failure by either party to insist upon strict performance of any provision herein shall not be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default by the other party.
- 20.5 **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.
- 20.6 **Counterparts; Electronic Signatures and Acceptance.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Client's electronic signature or electronic acceptance of this Agreement shall have the same validity and effect as a signature affixed by Client's hand.
- 20.7 **Survival.** Any provision of this Agreement which, by its nature, would survive termination or expiration of this Agreement will survive any such termination or expiration of this Agreement.
- 20.8 **No Joining of Disputes.** NO DISPUTE OR CLAIM MAY BE JOINED WITH ANOTHER LAWSUIT OR IN ARBITRATION WITH A DISPUTE OF ANY OTHER PERSON. BY AGREEING TO THIS AGREEMENT OR USING NED'S SERVICES, CLIENT EXPRESSLY WAIVES ANY RIGHT TO BRING ITS CLAIM ON A CLASS-WIDE BASIS OR IN THE FORM OF A CLASS ACTION.
- 20.9 **Entire Agreement.** This Agreement, together with any Statements of Work entered into hereunder, constitutes the entire agreement by and between the Parties regarding the subject matter contained herein and supersedes all prior and contemporaneous undertakings and agreement of the Parties, whether written or oral, with respect to such subject matter.

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