**Master Services Agreement**

This Master Services Agreement (“***Agreement***”) is between \_\_\_\_, LLC (“***\_\_\_\_***”) and the customer identified below (“***Customer***”). \_\_\_\_ and Customer may each be referred to herein as a “***Party***” and collectively as the “***Parties***.” The Parties enter into this Agreement as of the date last signed below (the “***Effective Date***”).

**WHEREAS**, \_\_\_\_ operates a growing nationwide network of retail mail and parcel centers that provide Services related to shipping packages and receiving returns, and;

**WHEREAS**, The Customer operates the Customer Business, and Customer is developing and/or expanding its capabilities to include receiving returned goods, determining their disposition status, and preparing them for re-commerce, and;

**WHEREAS**, \_\_\_\_ and Customer wish to establish a marketing and services relationship that will integrate and grow their respective franchise networks, logistics services, and other capabilities around the entire lifecycles of returned parcels. This relationship will enhance the consumer experience, standardize carrier workflows, and leverage the combined capabilities of both organizations;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable considerations, \_\_\_\_ and Customer hereby agree as follows:

1. **Definitions**

“***Affiliate***” of a Party means: (a) any entity that such Party controls; (b) any entity that controls such Party; or (c) any entity under common control with such Party. To “control,” for purposes of this definition, means owning or otherwise controlling more than 50% of the voting interests of an entity.

“***Authorized User***” means an employee, contractor, or computer system of Customer who is authorized by Customer to access, assist in, and/or use the Services, or who has been issued a Service account by Customer.

**"*Custody*"** shall mean the act of \_\_\_\_ taking possession of a Parcel at a specified Facility in accordance with the terms set forth in Section 5 of the Master Services Agreement (MSA) or any SOW.

***"Customer Business”*** shall have the meaning set forth in the applicable SOW.

***“Customer Client”*** means any customer or Customer to which \_\_\_\_ provides any Service and/or related services in connection with this Agreement.

***“Customer Client Consumer”*** means an end-consumer who uses a Service on behalf of a Customer Client.

“***Customer Data***” means all data, content, and information submitted by Authorized Users into a Service and the Customer-specific output that is generated by Authorized Users’ use of such Service.

“***Documentation***” means the user manuals, specifications, and policies, as may be updated from time to time, that describe the functionality, features, operation, or use of the Services and that are made available by \_\_\_\_ to Customer.

***“Facility”*** means the facility at which Services are performed as indicated in the applicable SOW.

“***SOW***” means a mutually executed statement of work or other ordering document attached to this agreement or agreed in writing by the Parties which details the Services to be purchased, the associated pricing, and any applicable commercial terms for Customer to purchase Services from \_\_\_\_. In the event of any conflict between the terms of this Agreement and the terms of any SOW, the language in the SOW shall take precedence and govern the relationship between the Parties.

***“Parcel”*** means a box, bag, container, or other package containing one or more Products.

***“Parcel Loss Claim”*** means a claim for the loss of a Parcel in \_\_\_\_’s Custody arising from \_\_\_\_’s performance or failure to perform Services under this Agreement.

***“\_\_\_\_ Materials”*** means: means the Services, Documentation, and any and all other information, data, documents, specifications, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by \_\_\_\_ or any subcontractor of \_\_\_\_ in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, \_\_\_\_ Materials include De-identified Data (as defined in Section 6.3) and any information, data, or other content derived from \_\_\_\_'s monitoring of Customer's access to or use of the Services, but do not include Customer Data.

“***Professional Services***” means any professional services related to Customer’s use of the Services, such as consulting, implementation, or training services, provided by \_\_\_\_ to Customer as expressly identified in the SOW.

***“Product”*** means an item of a Customer Client’s merchandise that is subject to shipment, handling, storing or other processing by \_\_\_\_ in connection with the Services.

“***Services***” means any software, services or work performed or made available by or on behalf of \_\_\_\_ as identified in the SOW. References to the “Services” in this Agreement include the Documentation.

“***Third Party Products and Content***” means any applications, products, services, or content that interoperate with the Services and that are provided by Customer or a third party.

1. **Responsibilities**
   1. Provision of the Services. Subject to the terms and conditions of this Agreement and during the Term, including any restrictions on the number of Authorized Users permitted to use the Services if and as set forth in the SOW, \_\_\_\_ will provide the Services as set forth in the applicable SOW and, as applicable, hereby grants Customer a non-exclusive, non-transferrable and non-sublicensable right for Authorized Users to access and use the Services solely for the business operations of Customer.
   2. Updates and Upgrades. The terms of this Agreement will also apply to updates and upgrades of the Services subsequently made available by \_\_\_\_ to Customer. \_\_\_\_ may update the functionality, user interfaces, usability, and Documentation from time to time in its sole discretion as part of its ongoing mission to improve the Services.
   3. Protection of Customer Data. \_\_\_\_ will maintain commercially reasonable administrative, physical, and technical safeguards designed to prevent unauthorized access to or use of Customer Data. Any additional data terms shall be set forth in the applicable SOW.
   4. Compliance with Laws. Each party will comply with all laws applicable to its performance under this Agreement.
   5. Support. As part of the Services, \_\_\_\_ will provide Customer with \_\_\_\_’s standard support, Documentation, and other online resources to assist Customer in its use of the Services as may be set forth in the applicable SOW and Documentation.
   6. Professional Services. If Professional Services are purchased in the SOW, \_\_\_\_ will provide to Customer such Professional Services in accordance with the SOW. Unless stated otherwise in the SOW, any timelines provided in connection with Professional Services are good faith projections and not guarantees.
   7. Use of Subcontractors. \_\_\_\_ may use subcontractors to provide any part of the Services, provided that \_\_\_\_ has conducted due diligence on such subcontractors, such subcontractors are bound in writing to the material terms of this Agreement, including confidentiality and compliance with laws, and \_\_\_\_ remains liable for all acts and omissions of its subcontractors; provided that \_\_\_\_ shall not be liable for any acts and omissions arising from or relating to Third Party Products and Content.
   8. Timeliness of Performance. Customer understands that \_\_\_\_’s performance of Services hereunder requires the prompt cooperation and compliance of Customer. Without limiting any other rights or remedies available to \_\_\_\_, if any anticipated or actual material delays in meeting the deadlines or scheduled completion dates for the Services are caused by the performance of any Customer employee or any other cause with the reasonable control of Customer, Customer shall provide a reasonable solution (for example additional temporary personnel) as requested by \_\_\_\_ and at no charge to \_\_\_\_, in order to complete the Services involved in a timely manner. \_\_\_\_ shall have no liability for delays caused by Customer, Customer Clients or Customer Client Consumers.
2. **Access to and Use of the Services**
   1. Authorized Users. Authorized User accounts cannot be shared or used by more than one Authorized User. Customer is responsible for maintaining the confidentiality of its logins, passwords, and accounts and for all activities that occur under Authorized User accounts.
   2. Customer Responsibilities. Customer will: (a) obtain any permissions and consents required for \_\_\_\_ and Authorized Users to access Customer Data in connection with the Services; (b) be responsible for Authorized Users’ compliance with this Agreement; (c) be responsible for the accuracy, appropriateness, and legality of Customer Data and the use or processing thereof in connection with the Services; and (d) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and promptly notify \_\_\_\_ of any such unauthorized access or use.
   3. Usage Restrictions. Customer may not itself or by or through any other party: (a) make the Services available to, or use the Services for the benefit of, anyone other than Customer and the Authorized Users; (b) upload, post, transmit, or otherwise make available to the Services any content that (i) is unlawful or tortious, or (ii) Customer does not have a right to make available under any applicable law or under contractual or fiduciary relationships, or that infringes, misappropriates, or otherwise violates any intellectual property, privacy, publicity, or other proprietary rights of any person; (c) sublicense, resell, time share, or similarly exploit the Services; (d) upload, post, transmit, or otherwise make available any content or information designed to interrupt, interfere with, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (e) reverse engineer, modify, adapt, or hack the Services, or otherwise attempt to gain unauthorized access to the Services or its related systems or networks; or (f) access the Services to build a competitive product or service ((a) through (f) herein, collectively, the “***Restrictions***”).
   4. Third Party Products and Content. If Customer enables Third Party Products and Content for use with the Services: (a) any use by Customer or its Authorized Users of such Third Party Products and Content is solely the responsibility of Customer and the applicable provider; (b) \_\_\_\_ does not guarantee, warrant, or offer support for any such Third Party Products and Content; (c) Customer acknowledges that the providers of those Third Party Products and Content may have access to Customer Data in connection with the interoperation of the Third Party Products and Content with the Services, and \_\_\_\_ will not be responsible for any use, disclosure, modification or deletion of such Customer Data.
3. **Fees**
   1. Fees, Invoicing, and Payment. Customer will pay all fees specified in the SOW. Payment obligations are non-cancelable and, except as expressly set forth herein, fees paid are non-refundable and payable in United States dollars. All fees will be invoiced by \_\_\_\_ in accordance with the terms set forth in the SOW. Except as set forth in the SOW, full payment for invoices issued must be received within 30 days from Customer’s receipt of the invoice. If any fees owed by Customer (excluding amounts disputed in reasonable and good faith) have not been paid by the applicable due date, \_\_\_\_ reserves the right to apply a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, and be reimbursed for all expenses of collection.
   2. Taxes. The fees are exclusive of, and Customer will be solely responsible for, all applicable taxes in connection with this Agreement, including any sales, use, excise, value-added, goods and services, consumption, and other similar taxes or duties (but excluding taxes based on \_\_\_\_’s net income). Should any payment for Services provided by \_\_\_\_ be subject to withholding tax by any taxing authority, Customer will reimburse \_\_\_\_ for such withholding tax. In the event Customer is tax-exempt, Customer shall provide a valid tax exemption certificate to \_\_\_\_ within five (5) days of the Effective Date.
4. **LOSS CLAIMS & REMEDIES**
   1. Generally. Except as otherwise expressly set forth in an SOW, and subject to Section 5.3, \_\_\_\_ shall be responsible for any theft, operational discrepancies, loss, damage, or destruction of any Parcel (each a “**Loss**”) for which \_\_\_\_ has accepted Custody from Customer or a Customer Client pursuant to this Agreement, until such time as the Parcel is handed over to a courier or carrier, as specified in this Agreement or an SOW. \_\_\_\_ will notify Customer of any known loss of a Parcel that has resulted from theft (or other operational discrepancies), damage or destruction within seven (7) days of the incident(s). \_\_\_\_ will allow Customer or one of its representatives to work directly with \_\_\_\_ management or authorized personnel to investigate and resolve any issues related to such Loss.
   2. Inbound Inventory. Except as otherwise expressly set forth in an SOW, Customer (or a Customer Client) is responsible for all costs and expenses related to, and assumes all risk of loss of, Product inventory prior to \_\_\_\_’s acceptance of each such Product at a Facility.
   3. Parcel Loss Claims. Most carriers offer "Declared Value" coverage, which automatically provides liability coverage for packages up to a specified maximum amount. \_\_\_\_ makes no warranty, whether express or implied, that such carrier coverage extends to Parcels or Products while in the Custody of \_\_\_\_. It is the sole responsibility of the Customer to thoroughly understand any constraints or limitations that may apply to such carrier coverage. In the event of any Loss, Customer must first seek reimbursement from the applicable carrier before pursuing any Parcel Loss Claim against \_\_\_\_. In cases where carrier coverage is denied due to actions by \_\_\_\_, including the performance of Services as provided in this Agreement or any related SOW, \_\_\_\_ accepts liability only as provided in the applicable SOW.
   4. Procedure. To pursue a Parcel Loss Claim, Customer may file a written loss claim notice, in the format provided in the applicable SOW, to \_\_\_\_ within 60 days of the date the corresponding invoice was delivered to Customer. Upon receipt of a loss claim notice, \_\_\_\_ shall acknowledge and respond to Customer within five (5) business days. \_\_\_\_ shall promptly investigate each submitted loss claim notice and, within fifteen (15) business days following receipt of a loss claim notice, \_\_\_\_ shall pay, decline, settle, or request additional information necessary to resolve the applicable claim. If \_\_\_\_ declines a claim, \_\_\_\_ shall provide Customer reasonable documentation supporting such determination, which will be considered final.
   5. Parcel Loss Remedy. Settled Parcel Loss Claims will be credited against Customer’s balance on a monthly basis following the month in which the loss claim notice was received by \_\_\_\_.
   6. Title. With respect to each Product, title to and all incidents of ownership of such Product are, and will remain with, the applicable Customer Client or Customer Client Consumer.
5. **Proprietary Rights**
   1. \_\_\_\_ Property. Subject to the limited rights expressly granted to Customer hereunder, \_\_\_\_ reserves and retains, and as between \_\_\_\_ and Customer, \_\_\_\_ exclusively owns, all rights, title, and interest in and to the \_\_\_\_ Materials, including all modifications, derivative works, upgrades, and updates thereto, and all related intellectual property rights therein. No rights are granted by \_\_\_\_ hereunder other than as expressly set forth herein. If Customer or any Authorized User provides \_\_\_\_ any feedback or suggestions regarding the Services or other \_\_\_\_ Materials, then Customer grants \_\_\_\_ an unlimited, irrevocable, perpetual, sublicensable, royalty-free license to use any such feedback or suggestions for any purpose without any obligation or compensation to Customer or any Authorized User. Unless otherwise set forth in an SOW, \_\_\_\_ retains exclusive ownership of all work product created by \_\_\_\_ in connection with its performance of Professional Services.
   2. Customer Data. Customer grants to \_\_\_\_ and its Affiliates a worldwide, non-exclusive license to access, use, copy, distribute, perform, and display Customer Data, and provide necessary access to subcontractors and third party service providers acting on \_\_\_\_’s behalf, such as \_\_\_\_’s hosting services provider, only: (a) to provide, maintain, and update the Services for Customer and Authorized Users; (b) to prevent or address service or technical problems or at Customer's request in connection with support matters; (c) as compelled by law; or (d) as expressly permitted in writing by Customer. Subject to the limited licenses granted herein, \_\_\_\_ acquires no right, title, or interest under this Agreement in or to any Customer Data.
   3. De-identified Data. Customer acknowledges and agrees that \_\_\_\_ may, during and after the Term, collect, use and analyze any de-identified information derived from the Customer Data (collectively, the “***De-identified Data***”) for \_\_\_\_’s lawful business purposes, including without limitation to improve and enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services. \_\_\_\_ may disclose De-identified Data solely in aggregate form in connection with its business. Notwithstanding anything to the contrary, De-identified Data shall be reasonably incapable of reidentification and shall not identify Customer, Customer Clients, or any other individual or entity.
6. **Confidentiality**
   1. Definition. “***Confidential Information***” means all confidential information disclosed by a party (“***Disclosing Party***”) to the other party (“***Receiving Party***”), whether orally or in writing, 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, including all copies thereof. Confidential Information of Customer includes Customer Data, Confidential Information of \_\_\_\_ includes the \_\_\_\_ Materials, Services (including its software and content, other than Customer Data), and the work product created from its performance of any Professional Services, and Confidential Information of each Party includes the terms of this Agreement. However, Confidential Information will not include any information that: (a) is or becomes generally available to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without use of or reliance on the Confidential Information of the Disclosing Party. Confidentiality obligations pertaining to Customer Data may be further specified in a SOW.
   2. Protection. The Receiving Party will: (a) use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care); (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of the Receiving Party’s and its Affiliates’ employees, contractors, and agents who need such access for purposes consistent with this Agreement and who are subject to confidentiality obligations at least as restrictive as those herein. The Receiving Party will provide prompt written notice to the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party’s Confidential Information. Upon request of the Disclosing Party during the Term, the Receiving Party will promptly return, or at the Disclosing Party’s option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party’s possession or under its control.
   3. Compelled Disclosure. The Receiving Party may access or disclose Confidential Information 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 access or disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's expense, if the Disclosing Party wishes to contest the access or disclosure.
7. **Representations, Warranties, and Disclaimers**
   1. Mutual Representations. Each Party represents that: (a) it is duly organized, validly existing, and in good standing under its jurisdiction of organization and has the right to enter into this Agreement; and (b) the execution, delivery, and performance of this Agreement are within the corporate powers of such Party and have been duly authorized by all necessary corporate action on the part of such Party, and constitutes a valid and binding agreement of such Party.
   2. \_\_\_\_ Warranties. \_\_\_\_ warrants that: (a) the Services will perform materially in accordance with the applicable Documentation; and (b) \_\_\_\_ will perform Professional Services in a professional manner.
   3. Customer Warranty. Customer warrants that it has obtained and will maintain all rights, consents, and permissions necessary for Customer to make available the Customer Data to \_\_\_\_ for its use as contemplated herein.
   4. Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN SECTION 8.2, THE SERVICES AND ALL RELATED COMPONENTS AND INFORMATION ARE PROVIDED ON AN “AS IS” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND \_\_\_\_ EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. \_\_\_\_ DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
8. **Indemnification**
   1. \_\_\_\_ Indemnification. \_\_\_\_ will defend, indemnify and hold harmless Customer and its Affiliates from and against any lawsuit or proceeding brought by a third party, and any damages and any reasonable attorneys’ fees finally awarded against them arising therefrom, to the extent such lawsuit or proceeding alleges that Customer’s use of the Services as permitted hereunder infringes or misappropriates such third party’s United States intellectual property rights; provided, however, that \_\_\_\_ will have no liability under this Section to the extent any such lawsuit or proceeding arises from: (a) Customer Data or Third Party Products and Content; (b) Customer’s, Customer Client’s, Customer Client Consumer’s or any of their Affiliates’ or Authorized Users’ gross negligence, misconduct, or breach of this Agreement; or (c) any modification or combination of the Services that is not performed or approved by \_\_\_\_ or specifically set out in the Documentation. In the event the Services is enjoined, or in \_\_\_\_’s reasonable opinion it is likely to be enjoined, then \_\_\_\_ shall do one of the following at its own discretion, which shall be Customer’s sole remedy in connection therewith: (i) procure for Customer the right to continue to use the Services, (ii) modify or replace the Services such that it is non-infringing but functionally equivalent, or (c) terminate the affected portion of the Services and provide a pro-rata refund of any prepaid fees for the affected Services.
   2. Customer Indemnification. Customer will defend, indemnify and hold harmless \_\_\_\_ and its Affiliates from and against any lawsuit or proceeding brought by a third party, and any damages and any reasonable attorneys’ fees finally awarded against them arising therefrom, to the extent such lawsuit or proceeding alleges that (a) any Customer Data or any processing thereof infringes, misappropriates, or otherwise violates the rights, including privacy and publicity rights, of any other party, or that Customer Data was collected or used by Customer in violation of applicable law, (b) any Third Party Products and Content provided by Customer infringes or misappropriates such third party’s intellectual property rights, and (c) Customer’s, Customer Client’s, Customer Client Consumer’s or any of their Affiliates’ or Authorized Users’ gross negligence, misconduct, or breach of this Agreement; provided, however, that Customer will have no liability under this Section to the extent any such lawsuit or proceeding arises from \_\_\_\_’s or any of its Affiliates’ gross negligence, misconduct, or breach of this Agreement.
   3. Procedures. The indemnified party will provide the indemnifying party with: (a) prompt written notice of any matter that is subject to indemnification hereunder; (b) the right to assume the exclusive defense and control of any such matter (provided that the indemnified party may participate in the defense at its own expense); and (c) cooperation with any reasonable requests assisting the indemnifying party’s defense of such matter. The indemnifying party may not settle any such lawsuit or proceeding without the indemnified party’s prior written consent.
   4. Exclusive Remedy. This Section 9 states the indemnifying party’s sole liability, and the indemnified party’s exclusive remedy, for any type of claim described in this Section 9.
9. **NON-SOLICITATION**
   1. Non-Solicitation. Customer agrees that, during the term and for a period of one (1) year thereafter, it and its Affiliates, officers, agents, employees and subcontractors shall not enter into a direct or indirect contractual relationship with any person or entity that provides services to or receives services from Customer in connection with this Agreement, through or as a result of such person’s or entity’s relationship with \_\_\_\_. In the event of a breach of this section damages shall not be deemed an adequate remedy and irreparable harm shall be deemed to be immediate and imminent. As a result, \_\_\_\_ shall automatically be entitled to injunctive relief to restrain any such breach, threatened or actual. Customer shall not be prohibited from working with or providing services to customers of \_\_\_\_ that were also customers of Customer as of the effective date of this Agreement or from working with or providing services or performing work for customers or suppliers of \_\_\_\_ that is different in nature or scope than the services being provided by \_\_\_\_ under this Agreement.
10. **Limitation of Liability**
    1. Exclusion of Certain Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY OR TO ANY OTHER PARTY FOR ANY LOST PROFITS OR REVENUES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.
    2. Liability Cap. EXCEPT FOR A PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT, OR ANY UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA CAUSED BY A BREACH BY \_\_\_\_ OF ITS OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY, THE “***EXCLUDED CLAIMS***”), IN NO EVENT WILL EITHER PARTY’S AGGREGATE LIABILITY RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO \_\_\_\_ HEREUNDER IN THE 12 MONTHS PRECEDING THE DATE ON WHICH THE FIRST CLAIM GIVING RISE TO LIABILITY AROSE (THE “***GENERAL LIABILITY CAP***”). THE GENERAL LIABILITY CAP SHALL NOT APPLY TO CUSTOMER’S LIABILITY FOR ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT, CUSTOMER’S LIABILITY WITH RESPECT TO THE RESTRICTIONS, A PARTY’S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, OR ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
    3. Excluded Claims. Notwithstanding Section 11.2, in no event will \_\_\_\_’s aggregate liability for all Excluded Claims exceed three times (3x) the General Liability Cap.
    4. Scope. For the avoidance of doubt, the exclusions and limitations set forth in Section 11.1, Section 11.2, and Section 11.3 will apply with respect to all legal theories of liability, whether in contract, tort, or otherwise. The Parties agree that the exclusions and limitations set forth in Section 11.1, Section 11.2, and Section 11.3 allocate the risks between the Parties under this Agreement, and that they have relied on these exclusions and limitations in determining whether to enter into this Agreement.
11. **Term, Termination, and Suspension**
    1. Term of the Agreement. The term of this Agreement commences on the Effective Date and, unless earlier terminated in accordance with the terms of this Agreement, will continue for a period of one year unless earlier terminated as permitted herein (the "**Initial Term**"). The term of this Agreement will automatically renew for additional successive one-year terms unless earlier terminated in accordance with the terms of this Agreement or either Party gives the other Party written notice of non-renewal at least ninety (90) days prior to the expiration of the then-current term (each a "**Renewal Term**" and, collectively, together with the Initial Term, the "**Term**"). Upon expiration of the Term, this agreement shall automatically continue in effect until such date as required to co-terminate with the last active SOW hereunder.
    2. Suspension. \_\_\_\_ may, upon written notice to Customer, suspend Customer’s or any or all Authorized Users’ access to the Services, in whole in part, if: (a) Customer or any Authorized User is using the Services in violation of this Agreement or any applicable law; (b) suspension of the Services is necessary, in \_\_\_\_’s reasonable discretion, to protect the security of the Services or the infrastructure of \_\_\_\_ or its Affiliates; (c) suspension is required by applicable law; or (d) any fees owed by Customer (excluding amounts disputed in reasonable and good faith) are 30 days or more overdue, provided \_\_\_\_ has given Customer at least 10 or more days’ prior notice.
    3. Termination for Cause. Either Party may terminate this Agreement effective after 30 days’ written notice if the other Party materially breaches this Agreement and such breach is not cured within such 30-day period. Upon any termination for cause by Customer, \_\_\_\_ will promptly refund Customer any unused prepaid fees covering the period remaining in the Term after the effective date of such termination. Upon any termination for cause by \_\_\_\_, Customer will promptly pay \_\_\_\_ any unpaid fees covering the period remaining in the Term after the effective date of such termination.
    4. Effects of Termination. Upon termination of this Agreement for any reason, (a) any amounts owed to \_\_\_\_ prior to such termination and all unpaid Professional Services fees will be immediately due and payable, and (b) all rights granted to access and use the Services will immediately cease to exist. For a period of 30 days following any termination of this Agreement, \_\_\_\_ will, upon Customer’s request, provide Customer with an export of all current Customer Data in the format agreed by the Parties. After such 30-day period, \_\_\_\_ will have no obligation to maintain or provide any Customer Data and \_\_\_\_ will, unless prohibited by applicable law, delete the Customer Data and/or retain Customer Data in its backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course. Subject to this Section, upon any termination of this Agreement and the Disclosing Party’s request, the Receiving Party will promptly return, or at the Disclosing Party’s option destroy, any or all Confidential Information of the Disclosing Party in the Receiving Party’s possession or under its control.
    5. Survival. The sections titled “Protection of Customer Data,” “Fees,” “Proprietary Rights,” “Confidentiality,” “Indemnification,” “Limitation of Liability,” “Termination for Cause,” “Effects of Termination,” “Survival,” and “General Provisions”, and any other sections which, by their nature would reasonably be considered to survive any termination of this Agreement, will survive any such termination.
    6. Termination for Insolvency; Bankruptcy. If either party hereto becomes or is declared insolvent or bankrupt, is the subject of any proceedings relation to its liquidation, insolvency or for the appointment of a receiver of similar officer of it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then the other party hereto may, by giving written notice thereof to such party, terminate this Agreement and/or any SOW as of a date specific in such notice of termination.
12. **General Provisions**
    1. Attribution. Customer agrees that \_\_\_\_ may use Customer’s name and logo to indicate that Customer is a customer of \_\_\_\_ for the Services on \_\_\_\_’s website, marketing materials, and in communications with existing or prospective \_\_\_\_ customers. Any such attribution will be consistent with Customer’s style guidelines or requirements as communicated to \_\_\_\_ by Customer.
    2. Force Majeure. Except for payment obligations, neither Party will be liable hereunder by reason of any failure or delay in the performance of its obligations due to events beyond the reasonable control of such Party, which may include natural disasters, fires, epidemics, pandemics, riots, war, terrorism, denial of service attacks, internet outages, labor shortages, and judicial or government action (each, a “***Force Majeure Event***”). If either Party’s nonperformance hereunder due to a Force Majeure Event persists for more than 30 days, either Party may immediately terminate this Agreement without charge or penalty upon notice to the other Party.
    3. Assignment. Neither Party may assign or delegate any of its rights or obligations under this Agreement, whether voluntarily or by operation of law, without the prior written consent of the other Party. However, either Party may assign or transfer this Agreement in its entirety with the consent of the other Party, in connection with a merger, acquisition, or sale of all or substantially all of its assets, provided that the assigning Party gives at least ninety (90) days' prior written notice and obtains written approval from the other Party. Any attempted assignment or delegation in violation of this Section will be considered null and void. This Agreement will bind and benefit the Parties, their successors, and permitted assigns.
    4. Governing Law. This Agreement, and any disputes arising out of or related hereto, will be governedby the laws of the State of Texas, without regard to its conflicts of laws rules or theUnited Nations Convention on the International Sale of Goods. Any claim or cause of action arising out of or relating to this Agreement shall only be brought in the state or federal courts located in Dallas County, Texas, and the Parties agree to the exclusive personal jurisdiction of such courts.Each Party hereby waives any rightto jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
    5. Dispute Resolution. In the event of any dispute arising out of or relating to this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. If the dispute cannot be resolved through negotiation within 30 days, the parties agree to submit the dispute to mediation administered by the Dallas County Dispute Resolution Center (DCDRC) under its rules. If mediation is unsuccessful, the dispute shall be resolved by binding arbitration conducted in accordance with the rules of Delaware Superior Court. The arbitration shall take place in Dallas County, Texas, and the decision of the arbitrator(s) shall be final and binding. This Agreement shall be governed by the laws of Texas/USA, without regard to its conflict of laws principles. Each party shall bear its own costs and expenses in connection with the dispute resolution process, except as otherwise provided by the arbitrator(s).
    6. Notices. All notices under this Agreement will be in writing and sent to the physical and/or email address listed below and will be deemed to have been duly given: (a) upon receipt if personally delivered or sent by certified or registered mail with return receipt requested; and (b) the first business day after sending by email or by next day delivery by a recognized overnight delivery service.
    7. Insurance. Each Party shall carry and maintain insurance in the amounts and for the occurrences for which insurance is typically carried by entities in the same or similar business.
    8. Relationship of the Parties; Third Party Beneficiaries. The Parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties. There are no third party beneficiaries to this Agreement.
    9. Miscellaneous. No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in full force and effect. This Agreement, including all exhibits hereto and all SOWs, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning Customer’s purchase and use of the Services and any Professional Services. No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by each of the Parties. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit hereto or any SOW, the terms of such exhibit or SOW will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any Customer purchase order or other Customer ordering documentation (excluding SOWs) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void. As used herein, the words “include” and “including” shall be deemed to be followed by the words “without limitation.” This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

**IN WITNESS WHEREOF**, the Parties have caused their duly authorized representatives to execute this Agreement as of the Effective Date:

|  |  |  |
| --- | --- | --- |
| [CUSTOMER NAME] |  | [\_\_\_\_ NAME] |
| Notice Address |  | Notice Address |
| Email: |  | Email: |
| Signature |  | Signature |
|  |  |  |
| Title |  | Title |
|  |  |  |
| Date |  | Date |