

SECARUS TERMS AND CONDITIONS OF SERVICE

The Client named on the Service Order Agreement and Secarus agree that the terms and conditions on the Service Order Agreement and these terms and conditions constitute the agreement (the "Agreement") for the provision of the Services selected by Client and designated on a Service Order. Services may include Managed IT (also known as Managed Care), Hosted Voice (also known as HVoice) commercial digital voice services, Web Hosting, and Domain Name Registration (each a "Service" and collectively "Services").

The terms and conditions in the "GENERAL TERMS AND CONDITIONS" section below are applicable to all Services. Additional terms and conditions apply to the Microsoft Cloud Solutions, Web Hosting, Domain Name Registration, Managed IT, and Hosted Voice Services and should be reviewed in either the "ADDITIONAL TERMS APPLICABLE TO MICROSOFT CLOUD SOLUTIONS" section, "ADDITIONAL TERMS APPLICABLE TO ADOBE VALUE INCENTIVE PLANS" section, "ADDITIONAL TERMS APPLICABLE TO WEB HOSTING" section, "ADDITIONAL TERMS APPLICABLE TO DOMAIN NAME REGISTRATION" section, "ADDITIONAL TERMS APPLICABLE TO MANAGED IT SERVICE PLAN" section, or the "ADDITIONAL TERMS APPLICABLE TO HOSTED VOICE SERVICE" section, as applicable.

GENERAL TERMS AND CONDITIONS

ARTICLE 1. DEFINITIONS

Affiliate: Any entity that controls, is controlled by, or is under common control with Secarus.

Agreement: Consists of the Service Order Agreement executed by Client and accepted by Secarus, these Secarus Terms and Conditions of Service, the then current Product Specific Attachment for each applicable ordered service ("PSA"), and each Service Order accepted by Secarus under the Agreement.

Confidential Information: All information regarding either party's business which has been marked or is otherwise communicated as being "proprietary" or "confidential" or which reasonably should be known by the receiving party to be proprietary or confidential information. Without limiting the generality of the foregoing, Confidential Information shall include, even if not marked, the Agreement, all Licensed Software, promotional materials, proposals, quotes, rate information, discount information, subscriber information, network upgrade information and schedules, network operation information (including without limitation information about outages and planned maintenance) and invoices, as well as the parties' communications regarding such items.

Client-Provided Equipment: Any and all facilities, equipment, or devices supplied by Client for use in connection with the Services.

Licensed Software: Computer software or code provided by Secarus or required to use the Services, including without limitation, associated documentation, and all updates thereto.

Party: A reference to Secarus or the Client; and in the plural, a reference to both companies.

Secarus: The operating company Secarus Company, an Illinois Corporation.

Secarus Client Portal or Website: The Secarus website where Client can access information related to Services provided by Secarus. The current URL for the Website is portal.secarus.com (or any successor URL). Secarus may update the Website documents and/or URL from time to time.

Secarus Equipment: Any and all facilities, equipment, or devices provided by Secarus or its authorized contractors at the Service Location(s) that are used to deliver any of the Services including, but not limited to, all terminals, wires, modems, lines, circuits, ports, routers, gateways, switches, network attached storage devices, VoIP handset, VoIP ATAs, computers, channel service units, data service units, cabinets, and racks. Notwithstanding the above, inside telephone and computer wiring, whether or not installed by Secarus, shall not be considered Secarus Equipment.

Secarus Website or Website: The Secarus website where the General Terms and Conditions for Service, PSA(s), SLA(s), and other Secarus security and privacy policies applicable to the Agreement will be posted. The current URL for the Website is www.secarus.com/legal (or any successor URL). Secarus may update the Website documents and/or URL from time to time.

Service(s): The Web Hosting, Domain Name Registration, Hosted Voice, and Managed IT services provided by Secarus to Client described in one or more Service Order(s). All Services are for domestic U.S., commercial use only. Services are subject to availability.

Service Commencement Date: The date(s) on which Secarus first makes Service available for use by Client. A single Service Order containing multiple Service Locations or Services may have multiple Service Commencement Dates.

Service Order: A request for Secarus to provide the Services to Service Location(s) submitted by Client to Secarus (a) on a then-current Secarus form designated for that purpose or (b) if available, through a Secarus electronic or verbal order

processing system designated for that purpose. Client's first Service Order is included as part of the Service Order Agreement.

Service Order Agreement: The agreement under which all Service Orders are submitted to Secarus, including these Secarus Terms and Conditions of Service

Service Location(s): The Client location(s) where Secarus provides the Services.

Service Term: The duration of time (commencing on the Service Commencement Date) for which Services are ordered, as specified in a Service Order.

Termination Charges: Except as otherwise provided herein, charges that may be imposed by Secarus if, prior to the end of the applicable Service Term (a) Secarus terminates Services for cause or (b) Client terminates any Service without cause. Termination Charges with respect to each Service terminated during the initial Service Term shall equal, in addition to all amounts payable by Client in accordance with Section 7.3, seventy-five percent (75%) of the remaining monthly fees that would have been payable by Client under the applicable Service Order or Agreement if the terminated Service(s) had been provided until the end of the initial Service Term, and one hundred percent (100%) of any amount paid by Secarus in connection with Custom Installation, as that term is defined in Section 3.7, for the Services provided by Secarus under such Service Order.

ARTICLE 2. CHANGES TO THE AGREEMENT TERMS

Secarus may change or modify the Agreement, and any related policies from time to time ("Revisions") by posting such Revisions to the Secarus Website. The Revisions are effective upon posting to the Website. Client will receive notice of the Revisions in the next applicable monthly invoice. Client shall have thirty (30) calendar days from the invoice notice of such Revisions to provide Secarus with written notice that the Revisions adversely affect Client's use of the Service(s). If after notice Secarus is able to verify such adverse effect but is unable to reasonably mitigate the Revision's impact on such Services, then Client may terminate the impacted Service(s) without further obligation to Secarus beyond the termination date, including Termination Charges, if any. This shall be Client's sole and exclusive remedy.

ARTICLE 3. DELIVERY OF SERVICES

3.1. Orders. A Service Order must be completed to initiate Service at a Service Location(s). A Service Order shall become binding on the parties when (i) it is specifically accepted by Secarus either electronically or in writing, (ii) Secarus begins providing the Services described in

the Service Order or (iii) Secarus begins installation of the Services described in the Service Order, whichever is earlier. When a Service Order becomes effective it shall be deemed part of, and shall be subject to, the Agreement.

3.2. Engagement of Services. The Client hereby engages Secarus to perform, and Secarus hereby agrees to perform for the Client, the Services specified in Service Orders (each a "Service Order") that may be entered into from time to time (the "Services"). The Services may be expanded or otherwise changed at any time during the terms of this Agreement by the written agreement of both parties. All Services will be performed at the Client's facility under the supervision of the Client's personnel. The Client, at its expense, will (a) provide Secarus with all equipment, software, cabling, appropriate electric current, system access, and any other materials necessary to perform the Services; (b) ensure the timely backup, removal, protection, and restoration, as applicable, of any programs, data, and removable storage media contained in its equipment before rendering the equipment to Secarus for its provision of Services and the restoration of all data after the completion of the Services; and (c) take all reasonable efforts to prevent any circumstances which would interrupt, delay, or hinder the performance by Secarus of the Services. Upon the failure of the Client to comply with the responsibilities set forth in this Agreement ("Non-Compliance"), Secarus may, at its option, refuse to perform any Services where Non-Compliance has occurred until such Non-Compliance has been cured to the reasonable satisfaction of Secarus without any liability or obligation under this Agreement or any applicable law; provided further, that Secarus may charge the Client at the then current Standard Rates for any service call at which no Services were performed by Secarus as a result of Non-Compliance.

3.3. Access. Client, at no cost to Secarus, shall secure and maintain all necessary rights of access to Service Location(s) for Secarus to install and provide the Services, unless Secarus has secured such access prior to this Agreement. In addition, Client shall provide an adequate environmentally controlled space and such electricity as may be required for installation, operation, and maintenance of the Secarus Equipment used to provide the Services within the Service Location(s). Secarus and its employees and authorized contractors will require free ingress and egress into and out of the Service Location(s) in connection with the provision of Services. Upon reasonable notice from

Secarus, Client shall provide all required access to Secarus and its authorized personnel.

3.4. Commencement Date. Upon installation and connection of the necessary facilities and equipment to provide the Services, or in the case of Voice, the day Voice Service is activated, Secarus shall notify Client that the Services are available for use, and the date of such notice shall be called the "Service Commencement Date." Any failure or refusal on the part of Client to be ready to receive the Services on the Service Commencement Date shall not relieve Client of its obligation to pay applicable Service charges.

3.5. Secarus Equipment. Secarus Equipment is and shall remain the property of Secarus regardless of where installed within the Service Location(s) and shall not be considered a fixture or an addition to the land or the Service Location(s). At any time Secarus may remove or change Secarus Equipment in its sole discretion in connection with providing the Services. Client shall not move, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any Secarus Equipment or permit others to do so, and shall not use the Secarus Equipment for any purpose other than that authorized by the Agreement. Secarus shall maintain Secarus Equipment in good operating condition during the term of this Agreement; provided, however, that such maintenance shall be at the expense of Secarus only to the extent that it is related to and/or resulting from the ordinary and proper use of the Secarus Equipment. Client is responsible for damage to, or loss of, Secarus Equipment caused by its acts or omissions, its Non-Compliance with this Agreement, or by fire, theft, or other casualty at the Service Location(s), unless caused by the negligence or willful misconduct of Secarus. Client agrees not to take any action that would directly or indirectly impair the title of Secarus to the Secarus Equipment, or expose Secarus to any claim, lien, encumbrance, or legal process, except as otherwise agreed in writing by the Parties. Following the discontinuance by Secarus of the Services to the Service Location(s), Secarus retains the right to remove the Secarus Equipment including, but not limited to, that portion of the Secarus Equipment located within the Service Location(s). To the extent Secarus removes such Secarus Equipment, it shall be responsible for returning the Service Location(s) to its prior condition, wear and tear excepted.

3.6. Client-Provided Equipment. Secarus shall have no obligation to install, operate, or maintain Client-Provided Equipment. Client alone shall be responsible

for providing maintenance, repair, operation, and replacement of all inside computer and telephone wiring and equipment and facilities on the Client's Location(s). All Client-Provided Equipment and wiring that Client uses in connection with the Services must be fully compatible with the Services. Client shall be responsible for the payment of all charges for troubleshooting, maintenance, and/or repairs attempted or performed by employees or authorized contractors of Secarus when the difficulty or trouble report results from Client-Provided Equipment. Secarus shall not be responsible to the Client if changes in any of the facilities, operations, or procedures of Secarus utilized in the provision of Service render any Client-Provided Equipment or other equipment provided by a Client obsolete or require modification or alteration of such equipment or system or otherwise affect its use or performance.

3.7. Engineering Review. Each Service Order submitted by Client shall be subject to an engineering review by Secarus. The engineering review will determine what technologies must be extended, built, or upgraded in order to provide the ordered Services at the requested Service Location(s), or whether Service installation has to be expedited to meet the Client's requested Service Commencement Date ("Custom Installation"). Secarus will provide Client written notification in the event Service installation at any Service Location will require an additional one-time installation fee ("Custom Installation Fee"). Client will have five (5) days from receipt of such notice to reject the Custom Installation Fee and terminate, without further liability, the Service Order with respect to the affected Service Location(s).

3.8. Administrative Website(s). Secarus may, at its sole option, make one or more administrative websites available to Client in connection with Client's use of the Services (each an "Administrative Website"). Secarus may furnish Client with one or more user identifications and/or passwords for use on the Administrative Website. Client shall be responsible for the confidentiality and use of such user identifications and/or passwords and shall immediately notify Secarus if there has been an unauthorized release, use, or other compromise of any user identification or password. In addition, Client agrees that its authorized users shall keep confidential and not distribute any information or other materials made available by the Administrative Website. Client shall be solely responsible for all use of the Administrative Website, and Secarus shall be entitled to rely on all Client uses of and submissions to the Administrative Website as

authorized by Client. Secarus shall not be liable for any loss, cost, expense, or other liability arising out of any Client use of the Administrative Website or any information on the Administrative Website. Secarus may change or discontinue the Administrative Website, or Client's right to use the Administrative Website, at any time. Additional terms and policies may apply to Client's use of the Administrative Website. These terms and policies will be posted on the site.

ARTICLE 4. PERSONNEL

4.1. Secarus Employees and Contractors. Secarus, through its employee and contractor consultants (each, a "Consultant") specified in the Service Order, shall perform the Services. Secarus shall be solely responsible for the compensation, withholdings, and benefits, including but not limited to workers' compensation, for each such Consultant. At the Client's request, or if the Consultant specified in the Service Order is not available, Secarus shall replace the Consultant then performing the Services with another Consultant reasonably satisfactory to the Client. All Consultants will be technicians capable of performing the Services in a professional and workmanlike manner.

4.2. Non-Solicitation. During the term of the Services provided by Secarus and for a period of one (1) year following the expiration or termination of the Services for any reason, the Client shall not directly or indirectly (though individuals, subsidiaries, holding companies, partnerships, subcontractors, or any other financially related firms) (i) offer employment to or engage any employee or independent contractor of Secarus with whom the Client has come into contact while providing the Services, (ii) attempt to directly or indirectly induce or solicit any employee or independent contractor of Secarus with whom the Client has come into contact as a result of the Services to terminate his or her employment or independent contractor status with Secarus, or (iii) offer employment to or engage a former employee or independent contractor of Secarus with whom the Client has come into contact during the twelve (12) month period immediately following such former employee or independent contractor's termination of employment or engagement with Secarus. In the event of a breach by the Client of this Section, the Client shall, within ten (10) days of such breach, pay Secarus, in addition to any other fees required hereunder, damages in an amount equal to eighteen (18) times such employee or

independent contractor's gross monthly compensation, including but not limited to wages, bonuses, and fringe benefits, at the time such employee or independent contractor terminated his or her employment or engagement with Secarus. Money damages may not be an adequate remedy for a breach by the Client of this Section and, therefore, in addition to any other legal or equitable remedies available to it, Secarus shall be entitled to obtain an injunction against such breach. The obligations set forth in this Section are independent covenants and shall survive the termination or expiration of the Services provided by Secarus.

4.3. Exception to Non-Solicitation. Notwithstanding the foregoing in this Article 4, upon the prior written agreement of the parties, the Client may employ or engage an employee or independent contractor of Secarus otherwise subject to said Section by first paying Secarus a finder's fee equal to nine (9) times such employee or independent contractor's gross monthly compensation at the time such employee or independent contractor terminated his or her employment or engagement with Secarus.

4.4. Hours. Unless otherwise specified in the Service Order, each Consultant shall be available to perform the Services eight (8) hours per workday, forty (40) hours per workweek. If a Consultant is available, but unable to perform Services due to circumstances beyond his or her control (including without limitation due to the Client's failure to provide the necessary equipment, software, materials, personnel, or the shutdown of the Client's Service Location(s) for any reason), the Client shall be billed for and shall pay Secarus for such time. A Consultant shall not be required to perform Services for more than eight (8) hours per workday or forty (40) hours per workweek without the prior written agreement of and between both Parties.

4.5. Holidays

a. **Closed on Holidays.** Secarus observes eleven (11) holidays per year. Tier 2 and Tier 3 support technicians and engineers, as well as all other regular office personnel, are not available on any of these holidays or their observed dates unless the Client pays the Emergency Support rate. Secarus Holidays include:

1. New Year's Day (January 1)
2. Birthday of Martin Luther King, Jr. (Third Monday of January)

3. Washington's Birthday (Third Monday of February)
 4. Memorial Day (Last Monday of May)
 5. Independence Day (July 4)
 6. Labor Day (First Monday of September)
 7. Columbus Day (Second Monday of October)
 8. Veterans Day (November 11)
 9. Thanksgiving Day (Fourth Thursday of November)
 10. Day after Thanksgiving (Friday following the Fourth Thursday of November)
 11. Christmas Day (December 25)
- b. **Observed Dates.** If a holiday falls on a Saturday, the holiday is observed on the preceding Friday. If the holiday falls on a Sunday, the holiday is observed on the following Monday.

ARTICLE 5. RATES, CHARGES, FEES, BILLING, AND PAYMENT

- 5.1. Standard Rates.** Unless otherwise provided for as part of this Agreement or Service Order, the Standard Rates shall be billed for the Services provided by Secarus to Client. Standard Rates may be found on the Secarus Website at www.secarus.com/rates (or any successor URL). Secarus may change or modify the Standard Rates from time to time ("Revisions") by posting such Revisions to the Secarus Website. The Revisions are effective upon posting to the Website. Client will receive notice of the Revisions in the next applicable monthly invoice.
- 5.2. Charges.** Client shall pay Secarus one hundred percent (100%) of the Setup Fee and/or Down Payment prior to the installation and/or commencement of Services. Client further agrees to pay all charges associated with the Services, as set forth or referenced in the applicable Service Order(s) or invoiced by Secarus. These charges may include, but are not limited to installation charges, monthly recurring service charges, usage charges including without limitation charges for the use of Secarus Equipment, per-call charges, charges for service calls, maintenance and repair charges, and applicable federal, state, and local taxes, fees, surcharges, and recoupments (however designated). Some Services such as measured and per-call charges, may be invoiced after the Service has been provided to Client.

- 5.3. Hourly Rate & Overages.** The Client shall pay Secarus the hourly rate set forth in the Service Order, based upon the eight (8) hours per workday, forty (40) hours per workweek schedule set forth above. Any time worked during holidays, weekends, after hours, or in excess of forty (40) hours per workweek with the prior written agreement of and between both Parties shall be billed at the higher of time and one-half (1½) the same hourly rate or the Emergency Support rate.
- 5.4. Travel Fees.** If mutually agreed by both Parties, Secarus consultant(s) will travel to Service Location(s).
- a. **Travel Within 50 Miles.** When visiting Service Location(s) located within fifty (50) miles of a Secarus office, Client will be assessed a travel fee equal to one (1) hour at the Consultant's hourly rate.
 - b. **Travel Greater Than 50 Miles.** Unless otherwise specified in the Service Order(s), when visiting any Service Location(s) located greater than fifty (50) miles from a Secarus office, Client will pay a daily rate equal to ten (10) times the Consultant's hourly rate for each full day, or portion thereof, the Consultant is engaged in travel to, work at, and/or travel from the Service Location(s).
 - c. **Travel Related Expenses.** Client will reimburse Secarus for all charges, fees, and expenses related to a Secarus Consultant's travel to Service Locations(s) greater than fifty (50) miles from a Secarus office including, but not limited to, airfare, car rental, fuel, taxi, lodging, etc.
- 5.5. Third-Party Charges.** Client may incur charges from third-party service providers that are separate and apart from the amounts charged by Secarus. Client agrees that all such charges, including all applicable taxes, are Client's sole responsibility. In addition, Client is solely responsible for protecting the security of credit card information provided to others in connection with such transactions. In certain cases, Secarus may agree to provide billing services on behalf of third parties, as the agent of the third party, and such charges billed by Secarus on behalf of the third party are subject to a three-percent (3.0%) markup to be paid by Client to Secarus. Any such third-party charges shall be payable pursuant to any contract or other arrangement between Client and the third party. Secarus shall not be responsible for any dispute regarding these charges between Client and such third party. Client must address all such disputes directly with the third party.

- 5.6. Payment of Invoices.** Except as otherwise indicated herein or on the Service Order(s), Secarus will invoice Client in advance on a monthly basis, on or about the fifteenth (15th) day of the month, for all monthly recurring Service charges and fees. Client shall make payment to Secarus for all amounts invoiced in advance by the first day of the month. All other charges are invoiced on a weekly basis and Client shall make payment to Secarus for all amounts invoiced in arrears within fifteen (15) days after the date of the invoice. Any amounts not paid to Secarus within such period will be considered past due. If a Service Commencement Date is not the first day of a billing period, Client's next monthly invoice shall include a prorated charge for the Services, from the date of installation or commencement to the first day of the new billing.
- 5.7. Partial Payment.** Partial payment of any invoice will be applied to the Client's outstanding charges in the amounts and proportions as solely determined by Secarus. No acceptance of partial payment(s) by Secarus shall constitute a waiver of any rights to collect the full balance owed.
- 5.8. Payments by Credit Card or ACH Bank Transfer.** Upon Client's written request and acceptance by Secarus of such request, Secarus will accept certain credit card or ACH bank account payments for charges generated under the Agreement. By providing Secarus with a credit card number and/or ACH bank account information, Client authorizes Secarus to charge the card or draft the bank account.
- a. **Term of Authorization.** Secarus will charge the client's credit card and/or draft the client's bank account for payment of invoices due until (i) this Agreement is terminated or (ii) Client provides thirty (30) days prior notice that Secarus stop charging the credit card and/or bank account.
- b. **Invoice Payment Terms.** Any client who provides credit card and/or ACH bank account information for automatic payments will have payment processed on the due date of the invoice. Monthly agreements will be drafted on the first day of the month and all other invoices shall be paid on the invoice date (i.e. due on receipt).
- c. **Updated Account Information.** Client agrees to provide Secarus with updated credit card, bank account, or alternate payment information on a timely basis prior to the expiration or termination of the credit card on file or in the event that Client's credit card limit or bank account balance is or will be insufficient to cover payment.
- d. **Unable to process.** If Secarus is unable to charge Client's credit card or draft Client's bank account for any reason, Client agrees to pay all amounts due, including any late payment charges or bank charges, upon demand by Secarus.
- e. **Limitations.** Secarus may limit the option to pay by credit card or ACH bank transfer to specific Services, products, or may discontinue acceptance of credit card and/or ACH bank transfer payments in whole or in part upon notice to Client.
- 5.9. Credit Approval and Deposits.** Initial and ongoing delivery of Services may be subject to credit approval. Client shall provide Secarus with credit information requested by Secarus. Client authorizes Secarus to make inquiries and to receive information about Client's credit history from others and to enter this information in Client's records. Client represents and warrants that all credit information that it provides to Secarus will be true and correct. Secarus, in its sole discretion, may deny the Services based upon an unsatisfactory credit history. Additionally, subject to applicable regulations, Secarus may require Client to make a deposit (in an amount not to exceed an estimated two-month's charge for the Services) as a condition to the provision of the Services by Secarus, or as a condition to continuation of the Services by Secarus. The deposit will not, unless explicitly required by law, bear interest and shall be held by Secarus as security for payment of Client's charges. If the provision of Service to Client is terminated, or if Secarus determines in its sole discretion that such deposit is no longer necessary, then the amount of the deposit will be credited to Client's account or will be refunded to Client, as determined by Secarus.
- 5.10. Taxes and Fees.** Federal, State, and local governments may assess taxes, surcharges, and/or fees on Client's use of Service or Devices. These charges may be a flat fee or a percentage of Client's charges and may change from time to time without notice. These charges are based on the rates applicable to the address Client provided to Secarus. Client is responsible for all applicable federal, state, provincial, municipal, local, or other governmental sales, use, excise, value-added, personal property, public utility, or other taxes, fees, or charges, however designated, now in force, enacted in the future, or that become applicable retroactively, that arise from or as a result of Client's subscription or use or payment for the Service or a Device. Such

amounts are in addition to payment for the Service or Devices and will be billed to Client as set forth in this Agreement. If Secarus is required to remit any fee, tax, or duty on behalf of or for the account of Client, Client will reimburse Secarus within ten (10) days after Secarus notifies Client in writing of such remittance. If Client are exempt from payment of such taxes, Client must provide Secarus with an original certificate that satisfies applicable legal requirements attesting to tax-exempt status. Tax exemption will only apply from and after the date Secarus receives such certificate

5.11. Other Government-Related Costs and Fees. Secarus reserves the right to invoice Client for any fees or payment obligations in connection with the Services imposed by governmental or quasi-governmental bodies in connection with the sale, installation, use, or provision of the Services, including, without limitation, applicable franchise fees (if any), regardless of whether Secarus or its Affiliates pay the taxes directly or are required by an order, rule, or regulation of a taxing jurisdiction to collect them from Client. These obligations may include those imposed on Secarus or its Affiliates by an order, rule, or regulation of a regulatory body or a court of competent jurisdiction as well as those that Secarus or its Affiliates are required to collect from the Client or to pay to others in support of statutory or regulatory programs. For example, Clients subscribing to Hosted Voice are charged a monthly regulatory recovery fee to help defray contributions made by Secarus to municipal, state, and federal programs including, without limitation, universal service, telecom relay services for the visually/hearing impaired, and 911/E911 programs and infrastructure. This regulatory recovery fee is not a tax, and it is not government mandated. Taxes and other government-related fees and surcharges may be changed with or without notice.

5.12. Disputed Invoice. If Client disputes any portion of an invoice, Client must pay the undisputed portion of the invoice and submit a written claim, including all documentation substantiating Client's claim, to Secarus for the disputed amount of the invoice by the invoice due date. The Parties shall negotiate in good faith to resolve the dispute. However, should the parties fail to mutually resolve the dispute within thirty (30) days after the dispute was submitted to Secarus, all disputed amounts shall become immediately due and payable to Secarus. Under no circumstances may Client submit a billing dispute to Secarus later than thirty (30) days following Client's receipt of the applicable invoice.

5.13. Past-Due Amounts. Any undisputed payment not made when due will be subject to a reasonable late fee of eighteen percent (18%) per annum of the amount Past Due, calculated daily, or an amount not to exceed the highest rate allowed by law on the unpaid invoice. If Client's account is delinquent, Secarus may refer the account to a collection agency or attorney that may pursue collection of the past due amount and/or any Secarus Equipment that Client fails to return in accordance with the Agreement. If Secarus is required to use a collection agency or attorney to collect any amount owed by Client or any unreturned Secarus Equipment, Client agrees to pay all reasonable costs of collection or other action. The remedies set forth herein are in addition to and not in limitation of any other rights and remedies available to Secarus under the Agreement or at law or in equity.

5.14. Rejected Payments. Except to the extent otherwise prohibited by law, Client will be assessed a service charge up to the full amount permitted under applicable law for any check or other instrument used to pay for the Services that has been rejected by the bank or other financial institution.

5.15. Fraudulent Use of Services. Client is responsible for all charges attributable to Client with respect to the Services, even if incurred as the result of fraudulent or unauthorized use of the Services. Secarus or its Affiliates may, but is not obligated to, detect or report unauthorized or fraudulent use of Services to Client. Secarus reserves the right to restrict, suspend, or discontinue providing any Service in the event of fraudulent use by Client.

ARTICLE 6. TERM

6.1. Agreement Term. This Agreement shall terminate one (1) year following the expiration or other termination of the final existing Service Order entered into under this Agreement. The term of a Service Order shall commence on the Service Commencement Date and shall terminate at the end of the stated Service Term of such Service. Unless otherwise stated in these terms and conditions, if a Service Order does not specify a term of service, the Service Term shall be one (1) year from the Service Commencement Date.

6.2. Service Order Renewal. Upon the expiration of the initial Service Term, this Agreement and each applicable Service Order shall automatically renew for successive periods of one (1) year each ("Renewal Term(s)" and unless otherwise distinguished herein, is also referred to as "Service Term(s)"), unless otherwise

stated in these terms and conditions or prior notice of non-renewal is delivered by either Party to the other at least thirty (30) days before the expiration of the then current Service Term. Such termination shall be effective thirty (30) days after receipt by Secarus of the written termination notice.

6.3. Changes in Monthly Recurring Services Charges.

Except as otherwise identified in the Agreement, at any time during Service Term and from time to time thereafter, Secarus may increase the monthly recurring charges for any and all Services subject to thirty (30) days prior notice to Client. Client will have thirty (30) days from receipt of such notice to cancel the applicable Service without further liability. Should Client fail to cancel within this timeframe, Client will be deemed to have accepted the modified Service pricing.

ARTICLE 7. SERVICE SUSPENSION

7.1. Suspension for Non-Payment. Notwithstanding anything herein to the contrary, Secarus may be suspended any or all services if payment is not received within five (5) days following date due.

ARTICLE 8. EARLY TERMINATION

8.1. Termination for Convenience. Notwithstanding any other term or provision in this Agreement, Client shall have the right to terminate a Service Order or this Agreement, in whole or part, at any time during the Service Term upon thirty (30) days prior notice to Secarus, and subject to payment to Secarus of all outstanding amounts due for the Services, any and all applicable Termination Charges, and the return of any and all Secarus Equipment. Such termination shall be effective thirty (30) days after receipt by Secarus of the termination notice.

8.2. Termination for Cause

- a. If Client is in breach of a payment obligation (including failure to pay a required deposit), and fails to make payment in full within ten (10) days after receipt of notice of default, or has failed to make payments of all undisputed charges on or before the due date on three (3) or more occasions during any twelve (12) month period, Secarus may, at its option, terminate this Agreement, terminate the affected Service Orders, suspend Service under the affected Service Orders, and/or require a deposit, advance payment, or other satisfactory assurances in connection with any or all Service Orders as a condition of continuing to provide the Services. However, Secarus will not take any such action as a result of Client's non-payment of a charge

that is the subject of a timely billing dispute, unless the parties have reviewed the dispute and determined in good faith that the charge is correct.

- b. If either party breaches any material term of this Agreement and the breach continues without remedy for thirty (30) days after notice of default, the non-defaulting party may terminate for cause any Service Order materially affected by the breach.
- c. A Service Order may be terminated by either party immediately upon notice if the other party has become insolvent or involved in liquidation or termination of its business, or adjudicated bankrupt, or been involved in an assignment for the benefit of its creditors.
- d. Termination by either party of a Service Order does not waive any other rights or remedies that it may have under this Agreement.

8.3. Effect of Expiration or Termination of the Agreement or a Service Order.

Upon the expiration or termination of a Service Order for any reason: (i) Secarus may disconnect the applicable Service; (ii) Secarus may delete all applicable data, files, electronic messages, voicemail, or other information stored on the servers or systems of Secarus or its Affiliates; (iii) if Client has terminated the Service Order prior to the expiration of the Service Term for convenience, or if Secarus has terminated the Service Order prior to the expiration of the Service Term as a result of material breach by Client, Secarus may assess and collect from Client applicable Termination Charges; (iv) Client shall permit Secarus access to retrieve from the applicable Service Locations any and all Secarus Equipment (however, if Client fails to permit access, or if the retrieved Secarus Equipment has been damaged and/or destroyed other than by Secarus or its agents, normal wear and tear excepted, Secarus may invoice Client for the full replacement cost of the relevant Secarus Equipment, or in the event of minor damage to the retrieved Secarus Equipment, the cost of repair, which amounts shall be immediately due and payable); and (v) if used in conjunction with the terminated Service, Client's right to use applicable Licensed Software shall automatically terminate, and Client shall be obligated to return the Licensed Software to Secarus.

8.4. Regulatory and Legal Changes. The parties acknowledge that the respective rights and obligations of each party as set forth in this Agreement upon its execution are based on law and the regulatory environment as it exists on the date of execution of

this Agreement. Secarus may, in its sole discretion, immediately terminate this Agreement, in whole or in part, in the event there is a material change in any law, rule, regulation, Force Majeure event, or judgment of any court or government agency, and that change affects the ability of Secarus to provide the Services herein.

ARTICLE 9. RETURNS

9.1. Criteria for Returns. All product returns must meet the criteria of both Secarus return policies and those criteria and policies of Secarus Distributors in order for Secarus to issue a return materials authorization (RMA) order. Provided Secarus and its Distributors have return rights with its manufacturers/suppliers, Secarus and its Distributors only accept the return of products that fall within one of these categories within thirty (30) days from the date of invoice:

- a. Factory sealed in fully resalable condition with no stickers, markings, other attachments, damage to packaging, etc.
- b. Defective or Dead on Arrival (DOA)
- c. Open - Non-Defective

9.2. Other Criteria for Returns. Products returned for any reason other than Dead on Arrival (DOA), Defective, or Open – Non-Defective, must be in resalable condition with no stickers, markings, other attachments, damage to packaging, etc., complete and unused, and the outer seal must not have been opened or re-taped. Product boxes that do not meet the condition specified on the return order are often not eligible for return and will be shipped back to the Client at their sole expense.

9.3. Non-Returnable Products. IF SECARUS OR ITS DISTRUBUTORS DO NOT HAVE RETURN RIGHTS TO THE MANUFACTURER, THE PRODUCT IS NON-RETURNABLE. Additionally, end-of-life and Original Equipment Manufacturer (OEM) products cannot be returned.

9.4. Custom Orders/Products Returns Not Allowed. All orders that require configuration or assembly of product to meet Client specifications are non-cancelable and may not be returned. These orders are custom built to meet a specific Client's need and may not be canceled. The Client is responsible for the full payment of the order once a purchase order has been sent to Secarus and/or its Distributors.

9.5. Replacement Returns of Products Damaged on Arrival. If requested, a replacement order can be created and Secarus or its Distributors ship the

replacement product as soon as the product is available.

9.6. Credit for Returned Products. For all eligible returns, Client ships the undamaged product and, when it is received, Secarus credits Client's account. Client will receive a Credit issued at current pricing or original purchase price, whichever is lower.

9.7. Current Account. For Returns Order to be issued and honored, Client's Accounts with Secarus must be current.

9.8. Products Returned Without a Valid Returns Order. Products not authorized for return shall be defined as an "unauthorized return." Unauthorized returns may be returned to Client at their sole expense or Secarus may, in its sole discretion, issue a credit for the current price or the cost of goods less a thirty percent (30%) handling fee. Secarus will not be liable for any loss or damage to unauthorized returns.

9.9. Refusal of Orders. Refused orders may be subject to a cancellation fee. Client must contact Secarus before refusing any shipment. Failure to contact Secarus may result in credit refusal and products will be returned to Client at Client's sole expense.

9.10. Return Shipping Guidelines. For Secarus and/or its Distributors to process Client's return in a timely manner, these procedures must be followed:

- a. The original manufacturers' boxes and packaging must be used.
- b. All returned products must be packaged to prevent damage in transit.
- c. All returns must have a return order number printed on the return shipping label.
- d. No addresses, return order numbers, nor any other markings may be written on the outside of the manufacturers' boxes. Products must be in resalable condition to receive credit.
- e. All returns must be unused and include all components, accessories, cables, software, and manuals in the original shipment.
- f. All returns must be received by Secarus or its Distributors within thirty (30) days from the date the return order number is issued. Return order numbers are only valid for thirty (30) days.

- g. Neither Secarus nor its Distributors provide call tags or shipping labels for returns unless it is an error on their part.
- 9.11. Dead on Arrival (DOA)/Defective Returns.** Provided Secarus and its Distributors have return rights with its manufacturers/suppliers, Secarus and/or its Distributors will accept the return of products as long as the Return Authorization (RA) is issued within thirty (30) days from the date of the invoice. Products that are inoperable at first use are eligible for a DOA return depending upon the manufacturer's returns policy. Certain manufacturers may require that all DOA and defective products be returned directly to them, or they may limit the return time frame after purchase. In accordance with manufacturer policies, all original packaging, components, accessories, software, and manuals must be included with returned DOA and defective products. DOA and defective products returned incomplete may be assessed a charge for the missing items or returned to Client at their sole expense.
- 9.12. Sealed Product Returns.** Provided Secarus and/or its Distributors have return rights with its manufacturers/suppliers, Secarus or its Distributors will accept the return of Sealed Product Returns products as long as they are returned within thirty (30) days from the date of the invoice. All products must have been purchased from Secarus and the Client's account with Secarus must be current. To qualify for sealed product returns, products must be in resalable condition in new, clean (without stickers, markings, or other attachments), unopened, undamaged, original manufacturer packaging. All products must be returned with all original components, accessories, software, manuals, and registration cards.
- 9.13. Non-Compliant Factory Sealed Returns.** All factory sealed returns that are not received in resalable condition may be subject to a 30% restocking fee. Credit will be issued at current pricing.
- 9.14. Discontinued/Obsolete Products.** Manufacturers reserve the right to limit factory sealed returns on discontinued items.
- 9.15. Return Policy Changes.** Manufacturer returns policies are subject to change without notice.
- 9.16. Technical Support.** When necessary, the Secarus Technical Support department will assist Client in reviewing the manufacturer's installation procedure to rule out incompatibility. Often, by offering expert technical information, Secarus will help Client avoid

the time and expense of returning a product. This service may be available to Client at Standard Rates.

ARTICLE 10. CONFIDENTIALITY

- 10.1. Confidential Information.** Except as otherwise specified herein, Secarus and Client each expressly undertake to retain in confidence all information transmitted to it by the other party pursuant to this Agreement that the disclosing party identifies as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, should in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and will make no use of such Confidential Information except under the terms and during the existence of this Agreement and as required by law, regulators, or tax authorities. Secarus and Client shall treat the terms and conditions of this Agreement as confidential; however, either party may disclose such information in confidence to its immediate legal and financial consultants as required in the ordinary course of that party's business. The receiving party's obligation hereunder shall extend for five (5) years following the disclosure of the Confidential Information. Client agrees not to disclose rate(s) or term(s) regarding this Agreement without the prior written consent of Secarus.
- 10.2. Exclusions.** Confidential Information shall not include any information that: (i) is at the time of disclosure, or subsequently becomes, publicly available without the receiving party's breach of any obligations owed the disclosing party, (ii) became known to the receiving party prior to the disclosing party's disclosure of such information to the receiving party; (iii) became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party; or (iv) is independently developed by the receiving party.
- 10.3. Remedies.** Notwithstanding any other Article of this Agreement, the non-breaching party shall be entitled to seek equitable relief to protect its interests pursuant to this Article 9, including, but not limited to, injunctive relief.
- 10.4. Monitoring.** Secarus shall have no obligation to monitor postings or transmissions made in connection with the Services, however, Client acknowledges and agrees that Secarus and its agents shall have the right to monitor any such postings and transmissions from time to time and to use and disclose them in

accordance with this Agreement, and as otherwise required by law or government request. Secarus reserves the right to refuse to upload, post, publish, transmit, or store any information or materials, in whole or in part, that, in the sole discretion of Secarus, is unacceptable, undesirable or in violation of this Agreement.

10.5. Independent Development. The above provisions shall not be deemed to preclude either party from independently developing or acquiring products and services without use of the other party's Confidential Information. Further, Secarus or Client shall be free to use for any purpose, the residuals resulting from access to or work with such Confidential Information, provided that such party maintains the confidentiality of the Confidential Information as provided herein. The term "residuals" means technical information related to computer software technology in non-tangible form, which may be retained by persons who have had access to the Confidential Information, including ideas, concepts, know-how, or techniques. Neither Secarus nor Client shall have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant to either party a license under the other party's copyrights or patents.

ARTICLE 11. CLIENT PRIVACY POLICIES

11.1. General Client Privacy Policy. In addition to the provisions of Article 10, the privacy policy below applies to the handling of Client confidential information by Secarus. In the event of a conflict between the provisions of Article 10 and any provision of the privacy policy below, the applicable provision of the privacy policy shall prevail in the resolution of the conflict. A copy of the Secarus Privacy Policy is available at www.secarus.com/privacy (or any successor URL).

11.2. Privacy Regarding Information Provided to Third Parties. Secarus is not responsible for any information provided by Client to third parties, and this information is not subject to the privacy provisions of this Agreement or the privacy policies. Client assumes all privacy and other risks associated with providing personally identifiable information, confidential information, trade secrets, or other similar sensitive data to third parties via the Services.

ARTICLE 12. LIMITATION OF LIABILITY; REPRESENTATIONS AND WARRANTIES

12.1. Limitation of Liability. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE, OF ANY KIND INCLUDING BUT NOT LIMITED TO ANY LOSS OF REVENUE, LOSS OF USE, LOSS OF BUSINESS, OR LOSS OF PROFIT, WHETHER SUCH ALLEGED LIABILITY ARISES IN CONTRACT OR TORT, PROVIDED, HOWEVER, THAT NOTHING HEREIN IS INTENDED TO LIMIT CLIENT'S LIABILITY FOR AMOUNTS OWED FOR THE SERVICES, FOR ANY EQUIPMENT OR SOFTWARE PROVIDED BY SECARUS, OR FOR EARLY TERMINATION CHARGES; (B) DAMAGES, WITHOUT LIMITATION, AS DAMAGES ARISING FROM LOST TIME, LOSS OF DATA OR PROGRAMMING, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, LOSS OF USE OF EQUIPMENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, AND CLAIMS AGAINST CLIENT BY ANY THIRD PERSON, EVEN IF SECARUS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (C) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY SECARUS TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND THE REASONABLE CONTROL OF SECARUS; OR (D) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST SECARUS MORE THAN TWO YEARS AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE ENTIRE LIABILITY OF SECARUS AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUPPLIERS, OR CONTRACTORS ("ASSOCIATED PARTIES"), WHETHER UNDER CONTRACT LAW, TORT LAW, WARRANTY, OR OTHERWISE FOR LOSS, DAMAGES AND CLAIMS ARISING OUT OF THE DELIVERY OF THE SERVICES INCLUDING, BUT NOT LIMITED TO, DELAY IN THE INSTALLATION OF SERVICES OR THE PERFORMANCE OR NONPERFORMANCE OF THE SERVICES OR THE SECARUS EQUIPMENT SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE AMOUNTS ACTUALLY RECEIVED BY SECARUS. REMEDIES UNDER THIS AGREEMENT ARE EXCLUSIVE AND LIMITED TO THOSE EXPRESSLY DESCRIBED IN THIS AGREEMENT.

12.2. IN NO EVENT SHALL SECARUS, OR ITS ASSOCIATED PARTIES, SUPPLIERS, CONTRACTORS, OR LICENSORS BE LIABLE FOR ANY LOSS, DAMAGE, OR CLAIM ARISING OUT OF OR RELATED TO: (i) STORED, TRANSMITTED, OR RECORDED DATA, FILES, OR SOFTWARE; (ii) ANY ACT OR OMISSION OF CLIENT, ITS USERS, OR THIRD PARTIES; (iii) INTEROPERABILITY, INTERACTION, OR INTERCONNECTION OF THE SERVICES WITH APPLICATIONS, EQUIPMENT, SERVICES, OR NETWORKS

PROVIDED BY CLIENT OR THIRD PARTIES; OR (iv) LOSS OR DESTRUCTION OF ANY CLIENT HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM ANY VIRUS OR OTHER HARMFUL FEATURE OR FROM ANY ATTEMPT TO REMOVE IT.

12.3. Warranty. THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE SERVICES, SECARUS EQUIPMENT, OR LICENSED SOFTWARE. ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED TO THE MAXIMUM EXTENT ALLOWED BY LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SECARUS DOES NOT WARRANT THAT THE SERVICES, SECARUS EQUIPMENT, CLIENT'S EQUIPMENT, OR LICENSED SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE, OR FREE OF LATENCY OR DELAY, OR THAT THE SERVICES, SECARUS EQUIPMENT, OR LICENSED SOFTWARE WILL MEET CLIENT'S REQUIREMENTS, OR THAT THE SERVICES, SECARUS EQUIPMENT, OR LICENSED SOFTWARE WILL PREVENT UNAUTHORIZED ACCESS BY THIRD PARTIES. SECARUS MAKES NO WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE SERVICES, SECARUS EQUIPMENT, OR LICENSED SOFTWARE FOR USE BY THIRD PARTIES.

12.4. Disruption of Service. The Services are not fail-safe and are not designed or intended for use in situations requiring fail-safe performance or in which an error or interruption in the Services could lead to severe injury to business, persons, property, or environment ("High Risk Activities"). These High-Risk Activities may include, without limitation, vital business or personal communications, or activities where absolutely accurate data or information is required. Client expressly assumes the risks of any damages resulting from High Risk Activities. Secarus shall not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances, including, but not limited to, causes attributable to Client or Client Equipment; inability to obtain access to the Service Location(s); failure of any third-party provider service; failure of a communications satellite; loss of use of poles or other utility facilities; strike; labor dispute; riot or insurrection; war; explosion; malicious mischief; fire, flood, lightning, earthquake, wind, ice, extreme weather conditions or other acts of God; failure or reduction of power; or any court order, law, act or

order of government restricting or prohibiting the operation or delivery of the Services.

12.5. Notice of Remedies. Client's sole and exclusive remedies under this Agreement are as expressly set forth in this Agreement. Certain of the above exclusions may not apply if the state in which a Service is provided does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, the liability of Secarus and its affiliates and agents is limited to the maximum extent permitted by law.

ARTICLE 13. INDEMNITY

13.1. Subject to Article 12, each Party ("Indemnifying Party") will indemnify and hold harmless the other Party ("Indemnified Party"), its affiliates, officers, directors, employees, stockholders, partners, providers, independent contractors, and agents from and against any and all joint or several costs, damages, losses, liabilities, expenses, judgments, fines, settlements, and any other amount of any nature, including reasonable fees and disbursements of attorneys, accountants, and experts, arising from any and all claims, demands, actions, suits, or proceedings whether civil, criminal, administrative, or investigative (collectively, "Claims") relating to: (i) any Claim of any third party resulting from the negligence or willful act or omission of Indemnifying Party arising out of or related to the Agreement, the obligations hereunder, and uses of Services, Secarus Equipment, and Licensed Software; and (ii) any Claim of any third party alleging infringement of a U.S. patent or U.S. copyright arising out of or related to this Agreement, the obligations hereunder, and the use of Services, Secarus Equipment, and Licensed Software.

13.2. The Indemnifying Party agrees to defend the Indemnified Party for any loss, injury, liability, claim or demand ("Actions") that is the subject of Article 13 hereof. The Indemnified Party agrees to notify the Indemnifying Party promptly, in writing, of any Actions, threatened or actual, and to cooperate in every reasonable way to facilitate the defense or settlement of such Actions. The Indemnifying Party shall assume the defense of any Action with counsel of its own choosing, but which is reasonably satisfactory to the Indemnified Party. The Indemnified Party may employ its own counsel in any such case and shall pay such counsel's fees and expenses. The Indemnifying Party shall have the right to settle any claim for which indemnification is available; provided, however, that to

the extent that such settlement requires the Indemnified Party to take or refrain from taking any action or purports to obligate the Indemnified Party, then the Indemnifying Party shall not settle such claim without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 14. SOFTWARE & SERVICES

- 14.1. License.** If and to the extent Client requires the use of Licensed Software in order to use the Services supplied under any Service Order, Client shall have a personal, nonexclusive, nontransferable, and limited license to use the Licensed Software in object code only and solely to the extent necessary to use the applicable Service during the Service Term. Client may not claim title to, or an ownership interest in, any Licensed Software (or any derivations or improvements thereto) and Client shall execute any documentation reasonably required by Secarus, including, without limitation, end-user license agreements for the Licensed Software. Secarus and its suppliers shall retain ownership of the Licensed Software, and no rights are granted to Client other than a license to use the Licensed Software under the terms expressly set forth in this Agreement.
- 14.2. Restrictions.** Client agrees that it shall not: (i) copy the Licensed Software (or any upgrades thereto or related written materials) except for emergency back-up purposes or as permitted by the express written consent of Secarus; (ii) reverse engineer, decompile, or disassemble the Licensed Software; (iii) sell, lease, license, or sublicense the Licensed Software; or (iv) create, write, or develop any derivative software or any other software program based on the Licensed Software.
- 14.3. Updates.** Client acknowledges that the use of the Services may periodically require updates and/or changes to certain Licensed Software resident in the Secarus Equipment or Client-Provided Equipment. If Secarus has agreed to provide updates and changes, Secarus may perform such updates and changes remotely or on-site, at the sole option of Secarus. Client hereby consents to, and shall provide free access for, such updates deemed reasonably necessary by Secarus.

ARTICLE 15. INSURANCE

- 15.1. General Liability Insurance.** Secarus shall maintain during the Initial Term or any Renewal Term commercial general liability insurance that covers its liability and obligations hereunder including property

damage and personal injury. The liability limits under these policies shall be, at a minimum, one million (\$1,000,000) dollars per occurrence, with a combined single limit for bodily injury and property damage liability.

- 15.2. Client's Property.** If Secarus holds, stores, or provides storage services for any of Client's property, including but not limited to any computer hardware or products, Client is required to maintain insurance on such property at its own expense and shall provide Secarus with a certificate of insurance naming Secarus as an additional insured. In case of loss, Client's insurance shall be primary, and coverage acquired by Secarus, if any, shall be non-contributory. Unless otherwise provided by an Exhibit, Secarus has no liability for Client's property stored at Secarus storage locations.

ARTICLE 16. MISCELLANEOUS TERMS

- 16.1. Force Majeure.** Neither party shall be liable to the other party for any delay, failure in performance, loss, or damage to the extent caused by force majeure conditions such as acts of God, fire, flood, storm, strike, lockout or other labor trouble, riot, war, epidemic, pandemic, act(s) of terrorism, rebellion, accident, explosion, power blackout, cable cut, acts of regulatory or governmental agencies, unavailability of right-of-way, unavailability of services or materials upon which the Services rely, or other causes beyond the party's reasonable control, except that Client's obligation to pay for Services provided shall not be excused. Changes in economic, business, or competitive condition shall not be considered force majeure events.
- 16.2. Assignment and Transfer.** Neither Party shall assign any right, obligation, or duty, in whole or in part, nor of any other interest hereunder, without the prior written consent of the other Party, which shall not be unreasonably withheld. The foregoing notwithstanding, Secarus may assign this Agreement to any affiliate, related entity, or successor in interest without Client's consent. In addition, Secarus may partially assign its rights and obligations hereunder to any party that acquires from Secarus all or substantially all of the assets in which the Service is deployed to Client. All obligations and duties of either Party under this Agreement shall be binding on all successors in interest and assigns of such Party.
- 16.3. Export Law and Regulation.** Client acknowledges that any products, software, and technical information (including, but not limited to, services and training)

provided pursuant to the Agreement may be subject to U.S. export laws and regulations, and any foreign use or transfer of such products, software, and technical information must be authorized under those regulations. Client agrees that it will not use, distribute, transfer, or transmit the products, software, or technical information (even if incorporated into other products) except in compliance with U.S. export regulations. If requested by Secarus, Client also agrees to sign written assurances and other export-related documents as may be required for Secarus to comply with U.S. export regulations.

16.4. Notices. Except as otherwise provided in this Agreement, any notices or other communications contemplated or required under this Agreement, in order to be valid, shall be in writing and shall be given via personal delivery, overnight courier, or via U.S. Certified Mail, Return Receipt Requested. Notices to Client shall be sent to the Client billing address; notices to Secarus shall be sent to 2940 N Lincoln Ave, Chicago, IL 60657. All such notices shall be deemed given and effective on the day when delivered by overnight delivery service or certified mail.

16.5. Entire Agreement. The Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The Agreement supersedes all prior agreements, proposals, representations, promises, inducements, statements of intent, or understandings, whether written or oral, concerning the Services or the parties' rights or obligations relating to the Services. Any prior agreements, proposals, representations, promises, inducements, statements of intent, or understandings regarding the Services that are not expressly provided for in this Agreement are of no effect. Terms or conditions contained in any purchase order, or restrictive endorsements, or other statements on any form of payment, shall be void and of no force or effect. Only specifically authorized representatives of Secarus may make modifications to this Agreement or this Agreement's form. No modification to the form or this Agreement made by a representative of Secarus who has not been specifically authorized to make such modifications shall be binding upon Secarus.

16.6. Severability. In the event that any portion of this Agreement is held to be invalid or unenforceable, all other parts of this Agreement will remain valid and enforceable. Such invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement. The parties shall replace the

invalid or unenforceable portion with another provision that, as nearly as possible, reflects the original intention of the parties, and the remainder of this Agreement shall remain in full force and effect.

16.7. Survival. The rights and obligations of either party that by their nature would continue beyond the expiration or termination of this Agreement or any Service Order, including without limitation representations and warranties, indemnifications, and limitations of liability, shall survive termination or expiration of this Agreement or any Service Order.

16.8. Applicable Law. The domestic law of the State of Illinois shall govern the construction, interpretation, and performance of this Agreement, except to the extent superseded by federal law. Any action of any kind by any party against another party arising as a result of this Agreement must be commenced within two (2) years from the date the right, claim, demand, or cause of action shall first accrue. In the event of any controversy, claim, or dispute between the parties arising out of or relating to this Agreement, or the breach thereof, the prevailing party shall recover from the losing party reasonable attorney's fees and costs.

16.9. No Third-Party Beneficiaries. This Agreement does not expressly or implicitly provide any third party (including users) with any remedy, claim, liability, reimbursement, cause of action, or other right or privilege.

16.10. Waiver. No failure by either party to enforce any rights hereunder shall constitute a waiver of such right(s).

16.11. Independent Contractor. The Parties to this Agreement are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party shall have any right, power, or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other Party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

16.12. Headings and Interpretations. The article and section headings used herein are for reference only and shall not limit or control any term or provision of this Agreement or the interpretation or construction thereof.

- 16.13. Compliance with Laws.** Each of the Parties agrees to comply with all applicable local, state, and federal laws, regulations, and ordinances in the performance of its respective obligations under this Agreement.
- 16.14. Attorney Fees.** In the event Secarus undertakes or initiates an action or suit to enforce the terms of this Agreement, the prevailing party shall be entitled to the payment of reasonable attorney fees and costs, together with such other legal costs as may be authorized by law.
- 16.15. Time Periods.** In computing any period of time prescribed or allowed by this Agreement, the day of the act, event, or default from which the designated period of time begins shall not be counted, but the last day of the period so computed shall be counted, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time is less than three (3) calendar days, intermediate Saturdays, Sundays, or legal holidays shall be excluded from the computation. If the specified period of time is measured in business days, "business days" shall mean Monday – Friday, but excluding United States Federal Holidays.

ARTICLE 17. ADDITIONAL TERMS APPLICABLE TO MICROSOFT CLOUD SOLUTIONS

- 17.1. Grants, rights and terms.** All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Client nor any of its Affiliates is in material breach of this agreement.
- a. **Software.** Upon acceptance of each order, Microsoft grants Client a limited right to use the Software in the quantities ordered.
- Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.
 - Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.
- b. **Online Services.** Customer may use the Online Services as provided in this agreement.
- Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
 - Suspension.** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
 - End Users.** Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
 - Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.
 - Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.
- c. **License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its

Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Attempted license transfers that do not comply with this agreement are void.

- d. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- e. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.
- f. **Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."
- g. **Verifying compliance for Products.**
 - 1. **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must

promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third-party audit.

- 2. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within thirty (30) days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is five percent (5%) or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at one-hundred twenty-five (125%) of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.
- 3. **Verification process.** Microsoft will notify Customer at least thirty (30) days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

17.2. Subscriptions, ordering.

- a. **Choosing a Reseller.** Customer must choose and maintain a Reseller authorized within its region. If Microsoft or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require Customer to accept different terms.

- b. **Available Subscription offers.** The Subscription offers available to Customer will be established by its Reseller and generally can be categorized as one or a combination of the following:
1. **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.
 2. **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.
 3. **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
 4. **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.
- c. **Ordering.**
1. Orders must be placed through Customer's designated Reseller. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 16.1.a and 16.1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.
 2. Customer's Reseller may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- d. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller.
- e. **Renewal.**
1. Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
 2. Customer's Subscription will automatically renew unless Customer provides its Reseller with notice of its intent not to renew prior to the expiration of the Term.
- f. **Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:
1. For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;
 2. For government offers, the requirements listed at <http://go.microsoft.com/government>; and
 3. For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.
- Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.
- g. **Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.
- 17.3. Term, termination.**
- a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.

- b. **Termination for cause.** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.
- c. **Cancel a Subscription.** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

17.4. Security, privacy, and data protection.

- a. **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.
- b. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- c. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by a Reseller. If Customer uses software or services that are hosted by

a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.

- d. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and Customer shall obtain the users' consent to the same.
- e. Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 16.4.

17.5. Warranties.

- a. **Limited warranty.**
 1. **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.
 2. **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA.

The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

17.6. Defense of third-party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Fix, alone or in combination with anything else, violates the law or harms a third party.

17.7. Limitation of liability.

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to

exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
 - b. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
 - c. **Exclusions.** In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.
 - d. **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.
- 17.8. Support and Professional Services.** Customer's Reseller will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

17.9. Miscellaneous.

- a. **Notices.** Client must send notices by mail, return receipt requested, to the following address:

Microsoft Corporation
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052 USA

Via Facsimile: (425) 936-7329

- Client agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.
- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
 - c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
 - d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
 - e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
 - f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
 - g. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.
 - h. **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.
 - i. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.
 - j. **Applicable law and venue.** This agreement is governed by Washington law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Washington. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
 - k. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.
 - l. **Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.
 - m. **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
 - n. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
 - o. **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.
- 17.10. Definitions.**
- Any reference in this agreement to "day" will be a calendar day.
- "Acceptable Use Policy" is set forth in the Online Services Terms.
- "Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party.

“Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 16.2.

“Customer Data” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Licensing Site and updated from time to time.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

“Professional Services” means Product support services and Microsoft consulting services provided to Customer under this agreement.

“Professional Services” does not include Online Services.

“Reseller” means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

“Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

ARTICLE 18. ADDITIONAL TERMS APPLICABLE TO ADOBE VALUE INCENTIVE PLANS

This Value Incentive Plan (“VIP” or “Program”) Commercial Membership Agreement (“Agreement”) sets forth the terms of your participation as a Member in the Program. The Agreement is effective as of the date of online enrollment. This Agreement is entered into by and between Adobe and the customer identified in on-line enrollment to become a Member. “Adobe” shall mean either ADOBE INC., a Delaware corporation having a place of business at 345 Park Avenue, San Jose, CA 95110-2704, if the Agreement is entered into with a Member’s

organization that is located in the United States, Canada, or Mexico, ADOBE SYSTEMS SOFTWARE IRELAND LIMITED, a company incorporated in Ireland and having a place of business at 46 Riverwalk, Citywest Business Campus, Dublin 24, Ireland as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835), if the Agreement is entered into with a Member's organization that is located in Australia, or otherwise with ADOBE SYSTEMS SOFTWARE IRELAND LIMITED, a company incorporated in Ireland and having a place of business at 4-6 Riverwalk, Citywest Business Campus, Dublin 24, Ireland. Member shall license all software, services, and offerings available under the Program (collectively "Product") to be installed and used within the United States (including United States territories and military bases wherever located), Canada, or Mexico from Adobe U.S. Member shall license all Products to be installed and used in Australia from Adobe Ireland, as authorized agent of Adobe Systems Pty Ltd (ABN 72 054 247 835). Member shall license all Products to be installed and used in all other countries and territories from Adobe Ireland.

18.1. Program Description

- a. **General and Program Term.** The VIP Program is a flexible licensing program designed to allow qualified and eligible customers to manage and deploy Product licenses purchased through the Program. The VIP Program is a membership program with license Subscription Periods as further defined in Section 17.3(d) of this Agreement. Once the organization enrolls in a membership through the VIP administration user interface and is accepted by Adobe into the Program, the organization will be a member of the Program ("Member") until the earliest of when (i) Adobe terminates the Program, (ii) this Agreement terminates. Member's participation is further subject to the terms stated in the program guide for the Program, which may be updated from time to time and is available at www.adobe.com/go/vip_program_guide_en ("Program Guide"). The Program Guide is hereby incorporated into the Agreement by reference. Adobe may change the terms of the Program at its sole discretion. If Program terms change Member may be required to reaccept the Program terms in the Console.

- b. **Termination.** Notwithstanding the foregoing, either party may terminate the Agreement with or without cause on thirty (30) days prior written notice. Termination of this Agreement shall not affect Member's obligations with regard to any Products ordered prior to the termination date, including without limitation any subscription terms or payment obligations. In addition, Adobe may immediately terminate this Agreement, upon written notice, for a material breach (including but not limited to any misappropriation or infringement of Adobe's intellectual property rights). If this Agreement terminates, then Member's organization shall immediately cease use of the Products, delete the Products from all computer systems and IT equipment on which it resides, and return to Member's Account Manager any media containing the Products as well as any related materials. Account Manager means either (i) Reseller, if a transaction is through a reseller, or (ii) Adobe representative, if a transaction is with Adobe.
- c. **Terms of Use.** The access and use of the Products is governed by the applicable Adobe terms of use ("TOU") available at <https://www.adobe.com/legal/terms.html>. The terms of the applicable TOUs are hereby incorporated by reference (including without limitations terms related to governing law and venue). In the event of inconsistency between the terms of this Agreement and the terms of the TOU, the terms of this Agreement shall control.
- d. **Program Products.** For a complete list of Products available through the Program, Member shall contact its Account Manager or go to the Program web pages located on Adobe.com <http://www.adobe.com/howtobuy/buying-programs/vip.html>. All Products purchased through the Program are solely for use within Member's own organization and all re-sale, sublicensing, and other distribution is prohibited except as set forth in Section 17.4(a) and/or the Program Guide, if applicable. Certain offerings may be available for license by purchasing Consumables, as described in the Program Guide.
- e. **Affiliates.** Adobe agrees that customer's Affiliates may place orders under this Agreement for the Products provided hereunder. Customer retains ultimate liability for any acts or omissions of such Affiliate. Affiliate means, for Member, any other entity that controls, is controlled by, or under common control with, Member. For the purposes of this Section 17.1(e), the

term “control” means the direct or indirect power to direct the affairs of the other entity through at least 50% of the shares, voting rights, participation, or economic interest in this entity.

18.2. Participation

- a. **Adobe ID and VIP ID.** An Adobe ID will be required in order to enroll in the Program. Each Member will be assigned a VIP ID which must be referenced on all orders. Member is responsible for acts or omissions of anyone who obtains access to and use of the Products through Member.
- b. **Console.** The Program administration user interface is the “Admin Console.” Once the terms of this agreement are accepted, the individual accepting on behalf of the organization will be assigned as the Contract Owner. The Contract Owner can add system administrator(s) (each an “Administrator”). The Contract Owner and any Administrator will be provided access to the Admin Console where they will have the ability to access the Product, manage their subscriptions, and view their account information. The Admin Console will allow the Administrator to invite additional users within their organization to gain access to the Admin Console. Member authorizes any Administrator or Contract Owner to act on Member’s behalf.
- c. **Confidentiality.** Member shall treat VIP ID as confidential and not share or disclose such information.
- d. **Memberships.** The terms of this Article 18 also apply to Education, Government, and Non-Profit Memberships. Member must use a separate VIP Agreement for any Products made available and ordered for use in the People’s Republic of China.

18.3. Ordering, Pricing, and Fulfillment

- a. **Ordering and Pricing.** Member shall place Product orders with their Account Manager. All fees are determined by Member’s Account Manager. Matters such as price, delivery, and payment terms must be agreed between Member and Member’s Account Manager. Adobe cannot guarantee any particular discount, unless Adobe is Member’s Account Manager.
- b. **Access, Admin Console Deployment, and Fulfillment.** Upon becoming a Member, Member’s Administrator will be provided access to the available Products, through the Admin Console. Member may add many Products from the Admin Console and obtain

immediate access to such Products. Adobe must receive an order for any such Products within the Grace Period.

- c. **Grace Period for Products Added in Admin Console.** The Grace Period is 14 days after adding such Products. If Adobe does not receive an order for such Products within the Grace Period, then Member will no longer be allowed to add additional Products until payment is made for all added Products. Member may manage the number of Products deployed in the Console.
- d. **Agreement Anniversary Date, Subscription Period, and Renewals**
 1. **Anniversary Date.** Unless otherwise communicated by Adobe, Member’s Anniversary Date is the day twelve months after Adobe accepts Member’s initial order (“Anniversary Date”).
 2. **Subscription Period.** The Subscription Period means the period that a Member may use Products and includes the initial Subscription Period and any renewal Subscription Period. The initial Subscription Period means the period that begins on Member’s initial order date and ends the day prior to the Anniversary Date. With Product subscription renewal, a renewal Subscription Period will begin on the Anniversary Date and continue until the day prior to the next Anniversary Date. Use of subscription Products and any related services co-terminates on the last day of the Subscription Period. Most Consumables must be used within a single Subscription Period, and any unused Consumables will expire on the last day of the Subscription Period. Additional information may be found in the Program Guide.
 3. **Subscription Renewals.** Adobe or Account Manager will use reasonable efforts to notify Member prior to any Subscription Period end date. Subscriptions must be renewed prior to the Anniversary Date in order to ensure uninterrupted use of Product.
- e. **Upgrade Protection.** Purchase of the subscription Product(s) includes upgrade entitlement, meaning Member will be entitled to receive the latest generally available version of a subscription Product purchased under the program as long as the Product subscription is paid and active at the time Adobe makes the new version of the Product commercially available.

- f. **Returns.** Without prejudice to any rights that a Member may have under any consumer laws in the jurisdiction that Member is located, once a Product is installed or accessed, Member cannot return it. If Member requests a return prior to installation, Member must return the entire order. Member must request the return of Products purchased under the Agreement through Member's Account Manager. Subject to any applicable warranty rights, return requests must be made to Member's Account Manager within fourteen (14) days after Member's original Product order date. Adobe must approve all return requests before any return is valid, as further described in the Program Guide.
- g. **Orders Direct from Adobe.** If Member orders direct from Adobe, then this section will apply. Members can add Products at any time via the Admin Console or via an Adobe representative, but you must place an order for all Products with an Adobe representative. Products are priced at the rates current at the time ordered and prorated based on the days remaining in your Subscription Period. Notwithstanding the language in 17.3(b), 17.3(c), and 17.4(b), if you add Products via the Admin Console, then Adobe may invoice you directly for those products at the then current price. Your order may be subject to credit approval. Member will be charged the Product price, plus applicable taxes. For any ordered Products, Member must pay in full within 30 days of the invoice date in accordance with the invoice. Any amounts not paid when due will bear interest at a rate which is the lesser of 1.0% per month or the maximum rate permitted by applicable law on any overdue fees, from the date due until the date the full amount plus interest is paid in-full.

18.4. VIP Marketplace

- a. Section 17.4 "VIP Marketplace" will apply to Products licensed through VIP Marketplaces. Unless otherwise communicated by Adobe, Subscriptions offered through VIP Marketplaces auto-renew on Member's Anniversary Date despite language in 17.3(d).3 above. Member may work with their Account Manager to adjust Product subscriptions.
- b. **VIP Marketplace Grace Period.** Notwithstanding Section 3.2 and 3.3, the Grace Period for VIP Marketplace Products is seven days after adding Products, not 14 days. If Adobe does not receive an order for Products added through VIP Marketplace within the Grace Period, then such Products will be removed.

18.5. Miscellaneous

- a. **Transfer of License.** Product TOUs do not govern restrictions regarding the transfer of Products licensed under or in connection with this Agreement. In limited circumstances, Adobe may permit the transfer of Product licenses under this Agreement in its sole and exclusive discretion. Such requests should be directed to Adobe Customer Service including a description of the reason for the proposed transfer and the contact information of the transferee. Additional information may be found in the Program Guide. For clarity, all offerings are licensed, not sold.
- b. **License Compliance.** Member must maintain systems and/or procedures sufficient to ensure an accurate record of the number of copies of the Products that have been installed and/or deployed and retain records of Product installation and/or deployment for two (2) years after the termination of the Agreement. Adobe and/or its representatives may conduct an audit of Member's Product installation/deployment not more than once per year on thirty (30) days written notice. Such audit will require Member to provide an unedited, accurate report of all Products installed/deployed and accessed by Member and all valid purchase documentation for all Products within thirty (30) days after request. If the audit findings demonstrate non-conformity with the Product licenses, Member shall purchase the necessary licenses within thirty (30) days after being so notified. Notwithstanding the foregoing, Adobe reserves the right to conduct an onsite audit of Member license installation and deployment after ten (10) business days' prior written notice during regular business hours. This Section 17.4(b) shall survive termination of the Agreement for a period of two (2) years.
- c. **Use of Information.** Adobe may use information about Member or Affiliate, including name and contact information, for fulfilling obligations under the Agreement. For more information, please see the Adobe Privacy Center (adobe.com/privacy).
- d. **Standing.** The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. If Member is an entity of the United States Federal Government, Member agrees that Adobe shall have standing and the right to assert any breach of contract claim arising out of this Agreement under the Contracts Disputes Act of 1978 ("Disputes Act").

- e. **General.** The parties are independent contractors, and this Agreement will not be construed to imply that either party is the agent or venturer of the other. Member may not assign this Agreement (by operation of law or otherwise) without the prior written consent of Adobe and any prohibited assignment is null and void. Adobe may, at its sole discretion, assign or novate this Agreement, without the prior written consent of Member. This Agreement will be binding upon and will inure to the benefit of any permitted successors or assignees. No modification will be valid or binding unless in writing. This Agreement (including the Program Guide, applicable TOUs, and any Exhibits or on-line enrollment information, if applicable) represents the entire agreement between the parties on the subject matter of this Agreement. If any provision of this Agreement is held unenforceable, the remainder of the Agreement will continue in full force and effect.

This Agreement is prepared and is executed in the English language only. The English language version shall be controlling in all respects, and any version of this Agreement in any other language, shall not be binding and shall have no effect. Further, each party agrees that signature by Member or Adobe on any non-English language version, even if there is no signature(s) on the English language version shall be deemed execution of the English language version and binding on the parties. Without limiting the foregoing, if there is any conflict or inconsistency between the English language version of this Agreement and any other translated version of this Agreement, the English language version and interpretation shall prevail. All communications or notices to be made or given pursuant to this Agreement and any disputes arising under this Agreement shall be conducted or resolved in the English language.

- f. **Services.** The Product may integrate with a variety of services, operated either by Adobe or by third parties, which may contain user-generated content that may be (a) inappropriate for minors, (b) illegal in some countries; or (c) inappropriate for viewing at work. A complete list of integrated services is available here: www.adobe.com/go/integratedservices. If Member wants to prevent viewing of or access to user-generated content services it may (i) disable service access in the Creative Cloud Packager, where that functionality is made available, or (ii) block access to the services via its network firewall. Services are not, under any circumstances, available to users under the age of thirteen (13). Adobe disclaims liability for all

user-generated content available via the services. Member is responsible for determining whether use of the services complies with applicable laws in Member's jurisdiction. Member is not entitled to a refund and Adobe is not liable (i) if access to the services is slowed or blocked as a result of government or service provider action, or (ii) if Adobe reasonably deems it necessary to block access to some or all of the services.

ARTICLE 19. ADDITIONAL TERMS APPLICABLE TO WEB HOSTING

- 19.1. **Authorization.** By using the Services to publish, transmit or distribute material or content, Client (i) warrants that the material or content complies with the provisions of the Agreement, (ii) authorizes Secarus, its agents and affiliates to reproduce, publish, distribute, and display such content worldwide and (iii) warrants that Client has the right to provide such authorization. Client acknowledges that material posted or transmitted using the Services may be copied, republished, or distributed by third parties, and agrees to indemnify, defend, and hold harmless Secarus, its agents and affiliates for any harm resulting from such actions.
- 19.2. **Website Content.** If applicable, Secarus will host Client's website in a data center in accordance with the then-current specifications published by Secarus, including, without limitation, storage levels ("Client Website"). Ownership of all graphics, text, or other information or content materials supplied or furnished by Client for incorporation into or delivery through a Client Website shall remain with Client (or the party that supplied such materials to Client). Ownership of any software developed or modified by Secarus and all graphics, text, or other information or content materials supplied or furnished by Secarus for incorporation into a Client Website shall remain with Secarus (or the party that supplied such materials to Secarus). Client agrees that Secarus has no proprietary, financial, or other interest in Client's goods or services that may be described in or offered through a Client Website, and that Client is solely responsible for content quality, performance, and all other aspects of its goods or services and the information or other content contained in or provided through a Client Website. Client assumes all responsibility for use by others of the Client Website (including commercial transactions, whether completed or not).
- 19.3. **Website Backup and Restoration.** Client acknowledges and agrees that (i) it is responsible for

developing and maintaining procedures (apart from the Services) to protect the Client content, including, without limitation, making appropriate backup copies of the Client content as may be necessary for reconstruction of any data, files, informational materials, or electronic messages; and (ii) Secarus is not responsible for backup and restoration of Client Content.

privileges, and interest in and to the subdomain name and the Secarus domain name.

ARTICLE 20. ADDITIONAL TERMS APPLICABLE TO DOMAIN NAME REGISTRATION

20.1. Registration. At the request of Client, Secarus will use commercially reasonable efforts to facilitate the registration of the Client internet domain name ("Client Domain Name") with a domain name registration service chosen by Secarus, but only to the extent that Client provides Secarus with all necessary information relevant to such registration. Secarus will invoice Client directly for all applicable registration fees, maintenance fees, and other applicable fees related thereto. Client hereby acknowledges that Client is entirely responsible for the payment of any and all such fees. Secarus does not represent that the Client Domain Name will be available on an initial or ongoing basis. Further, Client acknowledges that Client, not Secarus, has ownership, control, and use of the Client Domain Name. Further, Client hereby agrees now and forever to release and to hold harmless Secarus, its employees, affiliates, agents, and contractors, from any and all losses, damages, rights, claims, and actions with respect to, or in any way arising from, the domain name registration service's removal of allocation or support for the Client Domain Name. Should Client require modification of the Client Domain Name or additional related services, additional charges may apply from the relevant registration service and from Secarus for setup of the modification or addition.

20.2. Sub-Domain Name. Should Client be unable to register a unique domain name, Secarus may grant upon Client request and only for the term of the Service Order providing for such service, the limited, personal, and nontransferable right to specify and append a sub-domain name to a Secarus prescribed domain name, for the sole purpose of uniquely identifying Client's website address. Secarus does not represent that Client's selected sub-domain name will be available. Client receives no right to the Secarus domain name other than as specifically stated in this Article 17. Upon the termination of the applicable Service Order, Client shall surrender all rights,

ARTICLE 21. ADDITIONAL TERMS APPLICABLE TO VOICE SERVICES

21.1. Required Equipment. To use Voice Service, Client may need a VoIP Handset, multimedia terminal adapter ("MTA"), application layer gateway ("ALG"), analog telephone adapter ("ATA"), or other adapter device. Client can lease the required equipment from Secarus, in which case it will be Secarus Equipment. Client agrees to keep the required equipment plugged into a working electrical power outlet at all times.

21.2. Limitations of Emergency Services

- a. **Limitations.** 911 Dialing under this Service is different than traditional 911 service offered by traditional telecommunications carriers. Most Secarus Clients have access to either basic 911 or Enhanced 911 (E911) service. With E911 service, when 911 is dialed, the telephone number of the device used to place the call and registered address are simultaneously sent to the local emergency center assigned to the location of said number, and emergency operators have access to the information needed to send help and call back, if necessary. Clients in locations where the emergency center is not equipped to receive the telephone number and address have basic 911. With basic 911, the local emergency operator answering the call will not have the call back number or the exact location, so the Client must provide this information. Until the operator is given the phone number, he/she may not be able to call back or dispatch help if the call is not completed or is not forwarded, is dropped or disconnected, or the caller unable to speak. As additional local emergency centers become capable of receiving Client's information, Clients with basic 911 will be upgraded to E911 service. Client will not receive notice of the upgrade. Client authorizes disclosure of their name and address to third parties involved with providing 911 Dialing including, without limitation, call routers, call centers, and local emergency centers.
- b. **Notify All Users.** Client must inform any and all employees, household residents, guests, and other third persons who may be present at the physical location where the Service is utilized of the important differences in and limitations of 911 Dialing as compared with basic 911 or E911.
- c. **Registration of Physical Location Required.** For each phone number that to be used for the Service, Client must register the physical location where the Service

will be used with that phone number. When a Device is moved to another location, the phone number associated with said device must be registered to the new location. If the new location is not registered, any call made using the 911 Dialing feature may be sent to an emergency center near the old or incorrect address. The initial location will be registered at Service Activation. Thereafter, Client may register a new location by contacting Secarus. For purposes of the 911 Dialing feature, only one location may be registered at a time for each phone line Client uses with the Service. Regardless of what address is registered, emergency calls made from these devices will be routed to the national emergency response center.

- d. **Confirmation of Activation Required.** The 911 Dialing feature will not be activated for any phone line that is not being used with the Service, unless and until an email confirmation is received that indicates the 911 Dialing feature has been activated for that phone line.
- e. **Service Outages Due to Power Failure or Disruption.** 911 Dialing does not function in the event of a power failure or disruption. If there is an interruption in the power supply, the Service, including 911 Dialing, will not function until power is restored. Following a power failure or disruption, Client may need to reset or reconfigure the Device prior to utilizing the Service, including 911 Dialing.
- f. **Service Outages Due to Internet Outage or Suspension or Disconnection of Broadband Service or ISP Service.** Service outages or suspensions or disconnections of service by Client's Internet Service Provider (ISP) or Broadband Service will prevent all Service, including 911 Dialing, from functioning.
- g. **Service Outage Due to Disconnection of Client's Account.** Service outages due to disconnection, suspension, or termination of Client's account will prevent all Service, including 911 Dialing, from functioning.
- h. **Service Outages Due to ISP or Broadband Provider Blocking of Ports or Other Acts.** Client's ISP, broadband provider, other third party may intentionally or inadvertently block the ports over which the Service is provided or otherwise impede the usage of the Service. In that event, provided that Client alerts Secarus to this situation, Secarus will attempt to work with Client to resolve the issue. During the period that the ports are being blocked or Service is impeded, and unless and until the blocking or impediment is

removed or the blocking or impediment is otherwise resolved, Service, including the 911 Dialing feature, may not function. Client acknowledges that Secarus, Secarus Affiliates, or any other third party that provides, either directly or as reseller or distributor, the information or communications facilities or services underlying all or part of the Service for resale to Secarus ("Carrier"), is not responsible or liable in any way for the blocking of ports by Client's ISP, broadband provider, or any other impediment to Client's usage of the Service, and any loss of service, including 911 Dialing, which may result. In the event Client loses Service as a result of blocking of ports or any other impediment to Client's usage of the Service, Client will continue to be responsible for payment of the Service charges unless and until Client disconnects the Service in accordance with this Agreement.

- i. **Other Service Outages.** If there is a Service outage for any reason, such outage will prevent all Service, including 911 Dialing, from functioning. Such outages may occur for a variety of reasons, including, but not limited to, those reasons described elsewhere in this Agreement.
- j. **Re-Activation Required After Number Add, Port, or Change.** 911 Dialing does not function if Client changes their phone number or if Client adds or ports new phone numbers to their account, unless and until Client successfully registers their location of use for each changed, newly added, or newly ported phone number.
- k. **Network Congestion; Reduced Speed for Routing or Answering 911 Dialing Calls.** There may be a greater possibility of network congestion, delays, and/or reduced speed in the routing of a 911 Dialing call made utilizing the Service as compared to traditional 911 dialing over traditional public telephone networks, including where emergency calls are first routed through a national emergency center.
- l. **Disclaimer of Liability and Indemnification.** Neither Secarus nor its Affiliates has any control over whether, or the manner in which, calls using the 911 Dialing service are answered or addressed by any national or local emergency response center. Secarus and its Affiliates disclaim all responsibility for the conduct of local emergency response centers and the national emergency calling center. Secarus and its Affiliates rely on third parties to assist in routing 911 Dialing calls to local emergency response centers and to a national emergency calling center. Secarus and its Affiliates disclaim any and all liability or responsibility in the

event such third party data used to route calls is incorrect or yields an erroneous result. Neither Secarus and its Affiliates nor their respective officers, employees, or agents may be held liable for any claim, damage, or loss and Client hereby waives any and all such claims or causes of action arising from or relating to the 911 Dialing service unless such claims or causes of action arose from any gross negligence, recklessness, or willful misconduct. Client shall defend, indemnify, and hold harmless Secarus and its Affiliates, and their respective officers, directors, employees, affiliates, and agents and any other service provider who furnishes services to Client in connection the Service, from any and all claims, losses, damages, fines, penalties, costs, and expenses (including, without limitation, attorney fees) by, or on behalf of, Client or any third party relating to the absence, failure, or outage of the Service, including 911 Dialing, incorrectly routed 911 Dialing calls, and/or the inability of any user of the Service to be able to use 911 Dialing or access emergency service personnel.

- m. **Alternate 911 Arrangements.** If the Client is not comfortable with the limitations of the 911 Dialing service, the Client should consider having an alternate means of accessing traditional 911 or E911 services or disconnecting the Service.
- n. **Client-initiated 911 Testing.** If Client chooses to make test calls to 911, it agrees to obtain prior approval from the relevant state and/or local emergency communications authority as assumes all responsibility for the placement of such calls.

21.3. Usage Billing Rates.

- a. Voice Service calling plans billed as a flat monthly fee may not include certain call types. These excluded call types will instead be charged on a per-call basis (e.g., operator services) or a measured basis (e.g. outbound, international calls). Generally, for billing purposes, a measured call begins when the call is answered by the called party or an automated answering device (such as an answering machine or fax machine); it ends when one of the parties disconnects the call.
- b. Except as otherwise provided in these General Terms and Conditions, Voice Service measured calls are recorded in whole minutes, with partial minutes rounded up to the next whole minute. If the computed charge for a measured call or for taxes or surcharges includes a fraction of a cent, the fraction is rounded up to the nearest whole cent.

- c. Notwithstanding anything to the contrary in the Agreement, some providers (e.g., those involved in calls to foreign countries) charge for a completed call when the called party's line rings or after a certain number of rings. If such a provider charges Secarus or its Affiliates, as if such a call were answered by the called party, Secarus will charge Client for a completed call. Voice Service pricing lists and fees can be found at www.secarus.com/rates. Except as otherwise prohibited by law, calls invoiced on a per minute basis will have an initial minimum call duration of one (1) minute, subsequent intervals of one (1) minute each, and will be billed by rounding to the next whole minute. Secarus and its Affiliates reserve the right to round up any and all Voice Service invoice amounts to the nearest one (1) cent.

21.4. Monthly Term. Service is offered on a monthly basis for a term that begins on the date that Client's Service is activated and ends on the last day of the first full calendar month after such activation date. The term of this Agreement shall automatically renew for an unlimited number of successive monthly periods thereafter, unless Client delivers written notice of non-renewal at least thirty (30) days before the end of the then-current monthly term. Client is purchasing the Service for full monthly terms, meaning that if Client attempts to disconnect Service prior to the end of a monthly term, Client will be responsible for the full month's charges to the end of such monthly term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. Client will also be responsible for the next full month's charges in the event that Client does not provide the requisite thirty (30) day notice of disconnection prior to the expiration of the then-current term. Expiration of the term or disconnection of Service will not excuse Client from paying all accrued and unpaid charges due under this Agreement.

21.5. Disruption of Service. Client acknowledges and understands that Voice Service will not be available for use under certain circumstances, including without limitation when the network or facilities are not operating or if normal electrical power is interrupted and Client-provided Equipment and/or Secarus Equipment does not have a functioning backup power. Client also understands and acknowledges that the performance of the battery backup is not guaranteed. If the battery backup does not provide power, Voice Service, including calls to 911, will not function until normal power is restored. Client also understands that

certain online features of Voice Service, where such features are available, will not be available under certain circumstances, including but not limited to the interruption of the Internet connection.

21.6. Provision of Service. Subject to the terms and conditions herein, Voice Service is intended for commercial use only.

21.7. Use Policy.

- a. **Unlawful Use.** Client shall use the Service and the Device only for lawful purposes. Secarus reserves the right to immediately disconnect the Service without notice, if, in the sole and absolute discretion of Secarus, determines that Client has used the Service or the Device for an unlawful purpose. In the event of such disconnection, Client will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of the Service. If Secarus believes that Client has used the Service or the Device for an unlawful purpose, Secarus may forward the relevant communication and other information, including the identity of the Client, to the appropriate authorities for investigation and prosecution. Client hereby consents to the forwarding by Secarus of any such communications and information to these authorities. In addition, Secarus or its Affiliates may provide information in response to law enforcement requests, lawful government requests, subpoenas, court orders, etc., and Client hereby consents to any such information disclosures.
- b. **Inappropriate Conduct.** Client shall not use the Service or the Device in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior. Secarus reserves the right to immediately disconnect the Service without notice, if, in their sole and absolute discretion, Secarus determines that Client has used the Service or the Device in any of the aforementioned ways. In the event of such disconnection, Client will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will become immediately due and payable upon disconnection of Client's Service. If Secarus believes that Client has used the Service or the Device in any of the aforementioned ways, Secarus may forward the relevant communication and other information,

including Client's identity, to the appropriate authorities for investigation and prosecution. Client hereby consents to Secarus forwarding of any such communications and information to these authorities. In addition, Secarus and its Affiliates may provide information in response to law enforcement requests, subpoenas, court orders, etc., and Client hereby consents to any such information disclosures. Furthermore, Secarus and its Affiliates reserve all of each entities' respective rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

- c. **Use of Service and Device by Clients Outside the United States.** Secarus does not offer or support the Service in any countries other than the United States. Secarus Service is designed to work generally with unencumbered high-speed internet connections. However, if the high-speed internet connection used is outside the United States and/or Client's ISP places restrictions on the usage of VoIP services, Services may not be available or may be degraded or otherwise inoperable. No representation or warranty is made as to whether use of Secarus Service is permitted by any other jurisdictions or by any or all the ISPs. Client will be solely responsible for any violations of local laws and regulations or violations of ISP terms of service resulting from such use. Secarus reserves the right to disconnect Client's Service immediately upon determination, in their sole and absolute discretion, that Client has used the Service or the Device in violation of laws of jurisdictions outside the U.S.

21.8. Copyright; Trademark. The Service and Device and any firmware or software used to provide the Service or provided to Client in conjunction with providing the Service, or embedded in the Device, and all Services, information, documents, and materials on Secarus websites are protected by trademark, copyright, or other intellectual property laws and international treaty provisions. All websites, corporate names, service marks, trademarks, trade names, logos, and domain names used in connection with the Services (collectively "marks") are and will at all times remain the exclusive property of Secarus or the exclusive property of the respective Carriers. Nothing in this Agreement grants Client the right or license to use any such marks.

21.9. Unauthorized Usage of Device; Firmware or Software. To the extent of any firmware or software embedded or installed on the Device, or otherwise provided to Client in connection with the Service, Client is granted

a nontransferable, non-exclusive, revocable license to use such firmware or software in object code form only (without making any modification thereto) exclusively for use in connection with the Service, only during the term of this Agreement, and otherwise strictly in accordance with the terms and conditions of this Agreement. No further rights or licenses are granted to Client or any third party, by implication, estoppel or otherwise, and Secarus and its Affiliates reserve any and all rights of ownership and use. Client expressly agrees that the Device is exclusively for use in connection with the Service and that Secarus and its Affiliates will not provide any passwords, codes, or other information or assistance that would enable Client to use the Device for any other purpose. Secarus reserves the right to prohibit the use of any interface device that Secarus has not provided to Client. Client hereby represents and warrants that they possess all required rights, including software and/or firmware licenses, to use any interface device that Secarus has not provided to Client. In addition, Client shall indemnify and hold Secarus and any Carrier harmless against any and all liability arising out of Client's use of such interface device with the Service. Client shall not reverse compile, disassemble, or reverse engineer or otherwise attempt to derive the source code from the binary code of the firmware or software.

21.10. Tampering with the Device or Service. Client shall not change the electronic serial number or equipment identifier of the Device or perform a reset of the Device without the prior written consent of Secarus. Secarus reserves the right to disconnect Service if Secarus believes, in their sole and absolute discretion, that Client has tampered with the Device. In the event of such disconnection, Client will remain responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus a disconnection fee, if applicable, all of which will immediately become due and payable. Client shall not attempt to hack or otherwise disrupt the Service or make any use of the Service that is inconsistent with its intended purpose.

21.11. Theft of Service. Client shall not use the Service in a manner calculated to avoid reasonable policies or procedures of Secarus, its Affiliates, or any Carrier related to the use of the Service. Client shall not obtain or use the Services in an improper manner. Client shall notify Secarus immediately, in writing or by calling the Secarus Help Desk, if the Device is stolen or if Client becomes aware at any time that their Service is being stolen, fraudulently used, or otherwise being used in

an unauthorized manner. When Client reports the perceived theft, they must provide a detailed description of the circumstances of the Device theft, fraudulent use, or unauthorized use of Service. Failure to do so in a timely manner may result in the disconnection of Service and additional charges. Until such time as Secarus receives notice of the theft, fraudulent use, or unauthorized use, Client will be liable for all use of the Service using a Device stolen and any and all stolen, fraudulent, or unauthorized use of the Service. Secarus and its Affiliates reserve all of its rights at law and equity to proceed against anyone who uses the Services illegally or improperly.

21.12. Number Transfer and Service Disconnection. Upon the disconnection of the Service, the telephone number that was ported (transferred or moved over) to the Service from the previous service provider and used in connection with the Service shall be released to the new service provider if:

- a. such new service provider is able to accept such number;
- b. Client's account has been properly disconnected; and
- c. Client's account is completely current, including payment for all charges and applicable disconnection fees.

21.13. Service Distinctions. The Service is not a telecommunications service and is provided on a best efforts basis by reselling the communications services and facilities of Carriers. Events and circumstances beyond the control of Secarus and its Affiliates may affect the quality or availability of the Service, such as power outages, fluctuations in demand for Services or fluctuations in demand for internet or communications services or facilities, equipment malfunctions and software errors and problems in Client's underlying broadband service. Other things may affect Service, such as maintenance and repair, scheduled downtime, etc. Secarus and its Affiliates will act in good faith to minimize disruptions to the use of and access to Service. Important distinctions exist between telecommunications service and the Service offering provided. The Service is subject to different regulatory treatment than telecommunications service. This treatment may limit or otherwise affect Client's rights of redress before regulatory agencies or under applicable laws, rules, or regulations.

21.14. Ownership & Risk of Loss. Unless Client agrees to rent or lease the Device in a separate written instrument with Secarus or its Affiliates, upon the later of payment

in full of the set-up fees or equipment fees specified or delivery of the Device to Client, Secarus shall, and hereby does, sell, convey and transfer the Device to Client "AS IS" and without warranty or representation of any kind or nature from Secarus. However, Secarus shall, and hereby does, to the extent assignable, assign or transfer to Client all applicable manufacturer warranties on the Device. From and after the date of shipment of the Device to Client, Client shall bear all risk of loss of, theft of, casualty to or damage to the Device.

21.15. Privacy. The Service utilizes, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. Secarus is not liable for any lack of privacy which may be experienced with regard to the Service.

21.16. Incompatible Equipment and Services. Client's attempt to use any incompatible equipment or services in connection with Voice Service is solely at its own risk and Secarus shall not be liable for any damages whatsoever for any non-operation or damage to such services or devices. Client acknowledges and understands that certain Voice Service may not support or be compatible with:

- a. 0+ or operator assisted calling (including, without limitation, collect calls, third-party billing calls, or calling card calls).
- b. Non-recommended configurations including but not limited to MTAs, ATAs, or ALGs not currently certified by Secarus as compatible with Voice Service;
- c. Certain non-voice communications equipment, including certain makes or models of alarm and security systems, certain medical monitoring devices, certain fax machines, and certain "dial-up" modems;
- d. Rotary-dial phone handsets, pulse-dial phone handsets, and models of other voice-related communications equipment such as certain private branch exchange (PBX) equipment, answering machines, and traditional Caller ID units;
- e. Casual/dial around (10-10) calling; 976, 900, 700, or 500 number calling;
- f. 311, 511, or other x11 calling (other than 411 and 911); and
- g. Other call types not expressly set forth in product literature from and by Secarus (e.g., outbound shore-to-ship calling).

21.17. Disconnection; Discontinuance of Service. Secarus reserve the right to suspend or discontinue the Service at any time in the sole and absolute discretion of Secarus, without cause, after giving notice to Client thirty (30) days prior to such suspension or discontinuance of the Service. If Secarus discontinues the Service without cause, Client will only be responsible for charges accrued through the date of disconnection, including a pro-rated portion of the final month's charges. In addition, if Client breaches any of the terms or conditions of this Agreement, Secarus may terminate this Agreement or disconnect the Service following written notice of breach if Client has not cured such breach within ten (10) days thereafter. If Service is disconnected on account of Client's breach of any provision of this Agreement, Client will be responsible for the full month's charges to the end of the current term, including, without limitation, unbilled charges, plus the disconnection fee, if applicable, all of which will immediately become due and payable. Secarus will pursue collection for unpaid amounts on disconnected accounts and may report to credit bureaus.

21.18. Disconnection Fee. A disconnection fee of one hundred (\$100.00) dollars will be assessed if Service is disconnected for any reason after forty-five (45) days from activation and within the first year following the activation of Client's Service.

21.19. Limitation of Liability. Neither Secarus nor any of its Affiliates will be liable for any delay or failure to provide the Service, including 911 Dialing, at any time or from time to time, or any interruption or degradation of voice quality, including but not limited to any delay, failure, interruption, or degradation of Service that arises from or is related to any of the following:

- a. an act or omission of an underlying carrier, service provider, vendor, or other third-party;
- b. equipment, network, or facility failure;
- c. equipment, network, or facility upgrade or modification;
- d. force majeure events such as (but not limited to) acts of God, acts of nature, strikes, fire, war, riot, acts of terrorism and government actions;
- e. equipment, network, or facility shortage;
- f. equipment or facility relocation;

- g. service, equipment, network, or facility failure caused by the loss of power to Client;
- h. outage of, or blocking of ports by, Client's ISP or broadband service provider or other impediment to usage of the Service caused by any third-party;
- i. any act or omission by Client or any person using the Service or Device provided to Client; or
- j. any other cause that is beyond the control of Secarus, including, without limitation, a failure of or defect in any Device, the failure of an incoming or outgoing communication, the inability of communications (including, without limitation, 911 Dialing) to be connected or completed, or forwarded.

21.20. Indemnification. CLIENT ACKNOWLEDGES AND AGREES THAT NEITHER SECARUS NOR ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY VOICE SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICE PERSONNEL. CLIENT AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SECARUS AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CLIENT OR ANY THIRD PARTY OR USER OF THE VOICE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.

21.21. Limitations on Liability for Directories and Directory Assistance. THESE LIMITATIONS SHALL APPLY WHERE SECARUS MAKES AVAILABLE AN OPTION TO LIST CLIENT'S NAME, ADDRESS, AND/OR TELEPHONE NUMBER IN A PUBLISHED DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, AND ONE OR MORE OF THE FOLLOWING CONDITIONS OCCURS: (i) CLIENT REQUESTS THAT CLIENT'S NAME, ADDRESS AND/OR PHONE NUMBER BE OMITTED FROM A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS INCLUDED IN EITHER OR BOTH; (ii) CLIENT REQUESTS THAT CLIENT'S NAME, ADDRESS AND/OR PHONE NUMBER BE INCLUDED IN A DIRECTORY OR DIRECTORY ASSISTANCE DATABASE, BUT THAT INFORMATION IS OMITTED FROM EITHER OR BOTH; OR (iii) THE PUBLISHED OR LISTED INFORMATION FOR CLIENT'S ACCOUNT CONTAINS MATERIAL ERRORS OR OMISSIONS. IF ANY OF THESE CONDITIONS PERTAIN, THEN THE AGGREGATE LIABILITY OF SECARUS AND ITS ASSOCIATED PARTIES SHALL NOT EXCEED THE MONTHLY CHARGES, IF ANY, WHICH CLIENT HAS ACTUALLY PAID TO SECARUS TO

LIST, PUBLISH, NOT LIST, OR NOT PUBLISH THE INFORMATION FOR THE AFFECTED PERIOD. CLIENT SHALL HOLD HARMLESS SECARUS AND ITS ASSOCIATED PARTIES AGAINST ANY AND ALL CLAIMS FOR DAMAGES CAUSED OR CLAIMED TO HAVE BEEN CAUSED, DIRECTLY OR INDIRECTLY, BY THE ERRORS AND OMISSIONS REFERENCED ABOVE. FURTHERMORE, IF SECARUS MAKES AVAILABLE DIRECTORY ADVERTISING SERVICES, NEITHER SECARUS NOR ANY OF ITS ASSOCIATED PARTIES WILL BE LIABLE FOR ANY ACTS, ERRORS, OR OMISSIONS RELATED TO SUCH DIRECTORY ADVERTISING.

21.22. Aggregate Liability. Notwithstanding anything to the contrary in this Agreement, the aggregate liability of Secarus under this Agreement shall not exceed the actual amount received by Secarus on Client's during the calendar month in which act, event or occurrence giving rise to such liability occurred. Client acknowledges and agrees that, but for such limitation of liability, Secarus would not enter into this Agreement and Client would not benefit from the pricing contained herein.

21.23. Client Information. Secarus and its suppliers reserve the right both during the term of this Agreement and upon its termination to delete Client's voicemail, call detail, data, files, or other information that is stored on the servers or systems of Secarus or its suppliers. Client understands and acknowledges that Secarus shall have no liability whatsoever as a result of the loss or removal of any such voicemail, call detail, data, files, or other information.

ARTICLE 22. ADDITIONAL TERMS APPLICABLE TO MANAGED IT SERVICE PLAN

22.1. Covered Services.

- a. **Monitoring.** Secarus will provide ongoing monitoring and automated services on, of, and/or to all covered devices through remote means.
- b. **Remote Remediation.** Secarus will address issues identified through monitoring remotely. Should a problem be discovered during monitoring, Secarus shall make every attempt to rectify the condition in a timely manner through remote means.
- c. **Automated Maintenance Services.** Secarus tools may address issues detected through monitoring by means of automated maintenance services. These automated maintenance services may include local service restarts, operating system patch installation, third-party software updates, etc.

- d. **Remote Call-in Help Desk Support.** Remote Support Services are provided to Client’s employees by telephone using the Secarus Help Desk. Remote Call-in Help Desk Support is generally available 24x7, however the Help Desk is not available on the following dates:
 1. New Year’s Day (January 1)
 2. Labor Day (First Monday of September)
 3. Thanksgiving Day (Fourth Thursday of November)
 4. Christmas Day (December 25)
 - e. **On-Site Support.** On-Site services are available when a client issue cannot be solved remotely and a visit to the Service Location is necessary. Secarus will include, at its sole discretion, travel to a client’s service location(s) within forty (40) miles of a Secarus office. Travel by Secarus employees to a Service Location covered under a Managed IT Service Plan which is greater than forty (40) miles from the Secarus office shall incur travel fees as described in Article 5.
 - f. **Management Reporting.** Secarus will review executive reports with Client on a semi-annual basis. These reviews will be held in person or over the telephone. Secarus will provide monthly reports as well as document critical alerts, scans, and event resolutions to Client.
- 22.2. Additional Services.** Secarus will require, provide, manage, and maintain any or all the following additional services for Client at each covered site, on each covered device, or per each covered solution. Client may only refuse or opt out of an additional service plan if such service is not implemented or is covered under a valid support contract by an existing third-party vendor.
- a. **Antivirus Software and Recovery Services.** Secarus will provide and manage antivirus and endpoint security software on all covered equipment, provided such software exists for that equipment platform, at an additional fee per covered device. In the event of virus and/or malware infection on a supported computer not detected and quarantined by the latest antivirus definitions covered by Secarus-provided anti-virus and/or endpoint security solution, Secarus will restore the computer to its factory default and virus- or malware-free state at no additional charge to the Client with up to two (2) hours of on-site support. The remaining time required to restore the computer to its prior stable and virus- and malware-free state will be completed at the Secarus support depot.
 - b. **Backup Recovery Software and Services.** Secarus will provide and manage backup software on covered servers and, if deemed necessary, workstations, for an additional fee per covered device. Client will provide a suitable, separate network storage location for local backups. Secarus will also provide and manage online backup software. Depending on the solution implemented by Secarus, Client will pay per-device and/or per-gigabyte storage fees for the data and its updates. Secarus will make reasonable efforts to alert Client to increasing storage costs.
 - c. **Video Security Management Services.** Secarus will manage existing video security solutions for Client at an additional fee per site. Secarus will verify vendor-supported system are updated to current versions on a periodic basis and execute all requests for archive and/or retrieval of recorded security footage per Client’s request(s).
 - d. **Access Control Management and Administration.** Secarus will manage existing access control solutions for Client at an additional fee per site. Secarus will verify vendor-supported systems are updated to current versions on a periodic basis and administer all requests for credential and access administration per Client’s request(s).
- 22.3. Requests for Support.**
- a. **Methods for Requesting Support.** Support assistance must be requested by Client’s designated person(s) directly to the Secarus Help Desk using email, the Secarus Client Portal, or telephone. Valid methods of requesting support are published on the Secarus Website at www.secarus.com/support (or any successor URL). Each request for assistance will be issued a service ticket and assigned a service ticket number for tracking. Requests sent to a Secarus employee via individual email, telephone, voicemail, or text message are not considered support requests and service may be delayed or not actionable as a result.
 - b. **Escalation.** Secarus will respond to Client’s service tickets under the provisions of the Service Level Agreement (“SLA”). The Service Level Agreement may be found on the Secarus Website at www.secarus.com/legal (or any successor URL). Secarus may change or modify the Service Level Agreement from time to time (“Revisions”) by posting such Revisions to the Secarus Website. The Revisions are effective upon posting to the Secarus Website. Client will receive notice of the Revisions in the next applicable monthly invoice.

- c. **Service Outside of Normal Working Hours.** Remote, On-site, or Emergency Services performed outside of the hours of 9:00am – 5:00pm Central Time Monday through Friday, or at any time on Saturday, Sunday, or Secarus Holidays, shall be billed at the Standard Rates.
- d. **Service Calls Where No Trouble Found.** If Client requests onsite service and no problem is found or reproduced, Client shall be billed for the Service Call at the Standard Rates.

22.4. Suitability of Existing Environment.

- a. **Vendor Supported.** Secarus shall provide support of all hardware and systems, provided that all hardware is covered under a currently active vendor support contract; and all software shall be genuine, currently licensed, and vendor supported. Should any hardware, software, or systems fail to meet these provisions, they will be excluded from this Agreement. Should third-party vendor support charges be required in order to resolve any issues, these charges will be passed on to the Client after first receiving the Client’s authorization to incur them.
- b. **Minimum Standards Required for Services.** To qualify for any Managed IT Service Plan(s) provided by Secarus, the following requirements must be met (the “Minimum Standards”) by the Client:
 - 1. All devices acting as servers with Microsoft Windows Operating Systems must be running Windows 2016 Server or later.
 - 2. All desktop and notebook/laptop/tablet Personal Computers with Microsoft Windows Operating Systems must be running Windows 10 Professional Build 1909 or later with firewall and whole-disk storage encryption enabled.
 - 3. All Apple Mac systems must have Intel Processors and be running OS X version 10.13 or later.
 - 4. All server and desktop operating systems and software must be genuine, properly licensed, vendor supported, and have all the latest service packs, patches, and updates installed.
 - 5. Client must allow the installation of Secarus Managed Antivirus and Endpoint Security software on all compatible devices in the environment. Client must allow the removal of any and all currently installed Antivirus, Malware, Endpoint Security, and other similar software packages that may conflict with the Secarus Managed Antivirus and Endpoint Security software.

- 6. Client must allow the installation of Secarus Backup, Online Backup, and/or Cloud Backup and Disaster Recovery software on any and all compatible server devices in the environment. Client will pay for the licensing and/or data storage fees associated with the online (“cloud”) storage of their data.
- 7. Each Client site must have a currently licensed, vendor supported, and adequately sized hardware-based firewall(s) with intrusion detection and prevention capabilities between the internal network and the Internet. Additionally, any firewall must be cloud-controlled, have the capability of Secarus remote management, and have the latest vendor-supported firmware installed.
- 8. The environment must have a currently licensed, vendor supported, and adequately sized network switches and routers. All equipment must be less than five (5) years of age, cloud-managed, capable of Secarus remote management, and have the latest vendor-supported firmware installed.
- 9. All wireless networks in the environment must be capable of IEEE 802.11ac and secured with a WPA2 encryption key or stronger. All wireless access point(s) must be less than five (5) years of age, cloud-managed, capable of Secarus remote management, and have the latest vendor-supported firmware installed.
- 10. All networking equipment and servers must be located in a facility that can be secured with a locked door and protected with a power quality device that includes uninterruptable power supply (UPS), dual power conversion, and network-enabled monitoring features.
- 11. Client must have an acceptable use policy, a privacy policy, and a security policy that conforms to the requirements of the Secarus Standard Policy Requirements.
- c. **Upgrade Costs.** All hardware, software, support, design, and labor costs required to bring Client’s environment to meet the Minimum Standards Required for Services, unless otherwise noted, are not included in this Agreement.

- 22.5. **Access.** Client must provide Secarus Employees and Consultants 24x7x365 physical and administrative access to all equipment, systems, and services at the

Service Location(s) under management and access must be maintained through the Term of Agreement.

22.6. Excluded Services. All services qualifying under these excluding conditions, as well as services that fall outside this scope, will be billed at Standard Rates. These exclusions include:

- a. Parts, equipment, or software not covered by vendor/manufacturer warranty or active support agreement.
- b. The cost of any parts, equipment, software, licensing, renewals, upgrade fees, third-party vendor or manufacturer support of incident fees, shipping charges, or taxes of any kind.
- c. The cost to bring Client's environment up to Minimum Standards Required for Services.
- d. The cost of any hardware or third-party cloud storage services required to store backups performed by the backup services provided by this agreement.
- e. Failure due to acts of God, weather events, building modifications, power failures, riots, acts of terrorism, or other adverse environmental conditions or factors.
- f. Service, support, and/or repair made necessary by the alteration or modification of/to software installations, equipment, or configurations other than that authorized by Secarus, including alterations or modifications of/to software installations, equipment, or configurations made by Client's employees, third parties, or anyone other than Secarus.
- g. Service, support, administrative tasks, consultations, meetings, and/or any other requests related to audits, eDiscovery, or legal proceedings to which Client either has a self-interest or a regulatory and/or legal obligation.
- h. Programming (modification of software code) and program (software) maintenance.
- i. Training services of any kind.
- j. Troubleshooting or repair of cabling or cabling systems of any kind.
- k. Design and implementation services, as well as hardware and software related to, system upgrades, enhancements, or changes to the environment.
- l. Equipment which is listed in this agreement as "Not Covered."

- m. Any and all services requested by Client that fall outside of the terms of this Agreement are not included and will be quoted and billed as separate, individual Services.
- n. Any and all provision(s) declared in this Agreement.

22.7. Standard Rates. Secarus will list all covered networks, users, devices, and/or solutions as well as any covered software or additional services. Secarus, at its sole discretion, will charge Client based on the one or more of the following methods per Service Location:

- a. **Per-Network Pricing.** If Secarus selects a per-network pricing model, Client will pay a rate for each Service Location at the rate determined by Secarus.
- b. **Per-User Pricing.** If Secarus selects a per-user pricing model, Client will be charged a rate for each named user in their environment at the rate determined by Secarus.
- c. **Per-Device Pricing.** If Secarus selects a per-device pricing model, Client will pay a rate for the quantity of all devices in their environment at the rate determined by Secarus.
- d. **Per-Solution Pricing.** If Secarus selects a per-solution pricing model, Client will pay a rate for each additional solution in their environment at the rate determined by Secarus.
- e. **Changes to Quantity of Billable Items.** Additional covered Service Locations, networks, users, devices, or solutions ("billable items") added to the Service Plan will cause the actual monthly billing to increase over the term of the Agreement based on the number of additional billable items supported each month. These fees are based on the per-billable item count for each pricing plan chosen by Secarus. In the event Client adds new billable items during the term of this agreement, Secarus will charge a fee equal to the number of additional billable items added to the Service Plan at the rate determined by Secarus. When client removes billable items, support for said item will terminate on the last day of the month in which the termination occurs.
- f. **Minimum Quantity of Billable Items.** Secarus, in its sole discretion, may require a minimum quantity of billable items per Service Location during the term of this agreement. Client may not reduce the quantity of billable items below the stated minimum quantity of billable items without the express written consent of Secarus.

- g. **Entire Environment.** Secarus Managed IT Service Plans cover all client networks, users, devices, and solutions at a Service Location unless specifically excluded by this agreement. Client will be charged and supported for all covered items. Client cannot selectively exclude items for support on an “ala carte” basis.
- h. **Changes to Standard Rates.** Ongoing fees are based on the assessment of billable items at the beginning of each term of the Agreement. These fees may increase up to 10% annually on the anniversary of the Service Commencement Date. Secarus will provide Client written notification of any proposed changes to the fee structure of this Agreement a minimum of forty-five (45) days prior to the effective date of the change.

22.8. Additional Fees.

- a. If Client elects to begin service before the first day of the month, the first month’s billing will be prorated for the number of days covered. The first month’s billing is due upon receipt.
- b. A one-time setup fee will be charged equal to the first full month’s billing. Unless waived by Secarus, this fee must be paid at the acceptance of the Agreement.

22.9. Term.

- a. This Service Plan is effective upon the Service Commencement Date and shall remain in force for the greater of a period of one (1) year or the period specified as part of any Notes, Exceptions, Additional Terms, or similar (the “Initial Term”) unless otherwise terminated as provided in this Agreement.
- b. This Service Plan will remain in effect through the Initial Term and automatically renews for subsequent one (1) year term beginning on the day immediately following the end of the Initial Term (the “Renewal Term”) unless either party gives the other thirty (30) days’ prior written notice of its intent not to renew this Agreement.

22.10. Early Termination.

- a. **Client Early Termination.** In order for this Service Plan to be terminated by Client, the following requirements must be met:
 - 1. Client must provide written notice to Secarus thirty (30) days in advance explaining Client’s intent to terminate the Service Plan.
 - 2. Client must be current on all payments due to Secarus for this Service Plan as well as all other

services provided by Secarus under any other applicable agreements.

- 3. Client must pay a Termination Charge equivalent to the total of all remaining regular monthly fees, plus any additional billable items, for the Service Plan through the Initial Term or any subsequent Renewal Term(s).

- b. **Secarus Early Termination.** This Service Plan may be terminated by Secarus if Client:
 - 1. fails to fulfill in any material respect its obligations under this Service Plan or this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice;
 - 2. breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice; or
 - 3. terminates or suspends its business operations, unless it is succeeded by a permitted assignee under this Agreement.

- c. **Orderly Termination of Services.** If either party terminates this Agreement and so long as Client is current in all payments due to Secarus, Secarus will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Secarus the actual costs of rendering such assistance at Standard Rates.