



MASTER SERVICES AGREEMENT

IMPORTANT: PLEASE READ THESE MASTER TERMS AND CONDITIONS CAREFULLY. BY SIGNING A STATEMENT OF WORK OR ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY USING OR PAYING FOR ANY OF THE SOFTWARE, HARDWARE, SERVICES, AND PRODUCTS OF FOORTRESS, LLC (COLLECTIVELY, THE "SERVICES"), YOU ("CLIENT") AGREE TO BE BOUND BY THIS AGREEMENT AS A VALID, ENFORCEABLE, AND ADMISSIBLE CONTRACT.

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

Client agrees that Foortress may exercise its rights and perform its obligations under this Agreement either directly or through any of its Affiliates. "Affiliate" shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with such Party.

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

2. Compensation and Payment.

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

b. Foortress may invoice Client for the time necessary for Foortress to conduct quality assurance managerial reviews of its work, as well as for administrative overhead costs. Foortress may impose a surcharge for after-hours emergency support. For billing purposes, hours consumed will be measured in ¼-hour increments, with a minimum charge of ½ hour for



each separate task, service incident, or case. For hourly services, Foortress will generate invoices on a weekly billing cycle (Monday to Sunday, "Invoices") and submit the Invoices to Client via email to Client's billing email address by the fifth business day following the previous weekly cycle.

c. Payment Terms for all undisputed Invoices shall be Net 15 days from the Invoice date via ACH electronic transfer, without setoff, counterclaim, deduction, or withholding, unless Foortress otherwise expressly agrees in writing. All fees are non-refundable and non-cancellable. Client will be responsible for all bank, credit card, and currency exchange charges associated with their payment(s) to Foortress, unless otherwise prohibited by law or payment card terms. Client shall not require the issuance of a purchase order to be obligated to pay Foortress's invoices. The pre-printed terms of Client's purchase order, other business form, or terms that Client provides to Foortress, shall be void and of no effect.

d. Client will present all invoice disputes in writing to Foortress within ten (10) days of the invoice date. Foortress and Client agree that invoices shall be deemed accepted if Client does not provide Foortress with written notice within that period. All Client disputes must be reasonable and rendered in good faith. The Parties will have five (5) business days to resolve the dispute. Undisputed invoices not paid within five (5) days of the due date may be charged interest at the rate of 1.5% per month or the maximum rate permitted by law. Client's failure to pay any amount due to Foortress will constitute an event of default and be considered a material breach of this Agreement. In such an event, and in its sole discretion, Foortress reserves the right, without waiving any other legal rights, and without notice to Client, to withhold its obligations under this Agreement and any and all Services, including, without limitation, labor hours, products, software, system access and updates, and subscription products, until the full amounts due are paid in full. Client agrees that Foortress may disable or interrupt the functionality of any Services, rendering some or all aspects of the Services unusable by Client, at any time to enforce its rights under the Agreement. The withholding of Services under this Section 2(d) will not be considered or treated as a notice of termination or as termination of this Agreement under Section 10 below. Client will be responsible for payment for all services and software purchases rendered up to the point at which Foortress ceases the work or services referenced herein, as well as for any services or software term commitments.

e. In its sole discretion, Foortress may require Client to prepay for services, software, and/or hardware. Moreover, new clients are required to prepay for up to forty (40) hours of labor time to be applied to the first project.

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

a. Hosting and IT services and software purchases are billed upon Client signing the applicable Statement of Work or Services order, unless stated otherwise, and are billed monthly in advance. Labor hours for implementing Hosting and IT services will be invoiced on a



consumption basis. Payments are due on the first day of each month. Whether from Foortress or a third-party vendor, Client agrees to pay in advance for software and hardware. All such purchases are non-returnable or non-refundable under any circumstances. Client will be solely responsible for any sales taxes and tariffs.

b. Client will be solely responsible for its decision to purchase or not purchase any software, hardware, products, services, or telephony. Foortress's professional duties and obligations to Client are strictly limited to the Services expressly defined in a Statement of Work. To the extent Foortress recommends additional security measures or services that Client declines to fund or authorize, whether orally or in writing, Client acknowledges that Foortress has fulfilled its duty of care with respect to those specific risks. Client is barred from asserting any claim that Foortress was negligent or otherwise failed to provide adequate protection for risks addressed by the declined recommendations. Client shall indemnify and hold Foortress harmless from any third-party claims or regulatory fines resulting from the absence of such recommended services. For clarity, the declination of Services may result in severe and costly consequences for Client, including, without limitation, security breaches, data loss, or system instability.

c. Foortress reserves the right to deprecate, alter, and/or replace any monthly Hosting and IT services upon email notice to Client. Any changes will be effective in the next billing month. Such changes may include an increase in Client's monthly costs.

d. Charges will be based on the current counts of seats, devices, users, and other relevant metrics. Counts may be added at Client's request and will co-terminate with the previously purchased counts. For any additional seats, devices, users, or other metrics that Client may add mid-month, Client will be charged in full for the month in which the additions occur. These additions will not be prorated. Any increases in storage capacity or bandwidth usage beyond the applicable tier's allowance will be invoiced for that month's utilization. Client may request a scope increase change order to adjust the design upon providing thirty (30) days' written notice.

e. Foortress makes no representation or warranty regarding any third-party software, hardware, products, services, or telephony that Foortress may recommend for Client's consideration. All Microsoft, Foortress, and third-party software are sold and used pursuant to, and governed by, the respective end-user license agreements. Third-party license agreements are independent and separate from this Agreement. Foortress is not responsible for the performance of any third-party software, the actions or inactions of any third-party vendor, or third-party product. All third-party software, hardware, products, services, and telephony are sold exclusively pursuant to the respective manufacturer's warranties. Client will be responsible for the shipping costs associated with warranty claims. The purchase of third-party software, hardware, services, and telephony does not include any Foortress service or support hours. Client acknowledges that Foortress may be unable to support a third-party product.



Foortress will not be responsible for software or hardware that Client has not retained Foortress to support.

f. Foortress may increase the software, services, or telephony fees at any time. If third-party software, services, or telephony fees increase, Foortress will increase its fees as necessary. If Client continues to use any software, service, or telephony following the termination of this Agreement, Client will be responsible for paying the applicable fees for the remainder of the term.

g. All IT services are rendered pursuant to the applicable Definition of Services and Components ("DSC") and Service Level Agreement ("SLA"), as well as the applicable Supplemental Terms for IT Projects and Services.

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

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

- i. Subscription licenses can be canceled up to 7 days (168 hours) after being provisioned. The charges will be prorated based on the time elapsed since the license was issued.
- ii. Client can add licenses at any time, but the license count can only be reduced at the end of the subscription term and upon at least thirty (30) days' prior written notice to Foortress, prior to the renewal date.
- iii. Subscription licenses will automatically renew for subsequent terms unless Client gives Foortress at least thirty days' written notice before the renewal date.
- iv. Client agrees to be solely responsible for the cost of the entire subscription license term and for the terms of the software publisher's end-user license agreement.
- v. Foortress may provide notice of automatic subscription renewals, whether for Microsoft or other software, but is not required to do so.

Foortress adheres to the Microsoft partner program terms and the tenant and license transfer requirements therein.

i. Non-Microsoft software sold by Foortress may be subject to annual and other term commitments. For example, most software is sold under an annual commitment that automatically renews for the subsequent year unless Foortress receives a written cancellation notice at support@foortress.com at least ninety (90) days before the renewal date. For monthly subscriptions, Foortress must receive the cancellation notice at support@foortress.com at least thirty (30) days before the subscription is to be canceled, unless the vendor requires otherwise. Client is responsible for paying Foortress for the entire duration of any term of the commitment, whether or not Client needs or uses the software, or



whether this Agreement has been terminated. Foortress may give advance notice of any renewal, but it is not required to do so.

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

5. Credit Limit. Client's credit limit will initially be \$10,000 and may be increased or decreased from time to time upon written notice to Client. Client is not permitted to exceed its credit limit. If Client's total balance exceeds its credit limit, Client may be required to pay the excess immediately upon being informed that payment is due. Upon written notice to Client, Foortress may cease all work and/or services until Client remits such payment in full.

6. Projects and Tasks.

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

b. Client acknowledges that any projects, tasks, or Services not expressly approved by Client will automatically fall outside the strict scope of Foortress's responsibility. Foortress will be responsible for and provide to Client only those services and products expressly approved by Client in the applicable statement of work, order form, or support case.

c. Foortress will bill Client for all hours worked, which may be more or less than those referenced in the estimate or statement of work. Estimates of hours or fees do not constitute a



guarantee of the actual time or cost. Exact fees and costs may vary from the estimates given. Estimates and statements of work, as well as any other written or oral communications between Foortress and Client, do not constitute any contract or agreement separate from this Agreement.

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

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

f. Any of Foortress’s work in progress, as requested by Client, is always billable and valid, whether or not that work represents a completed task or project. Client’s concerns regarding work in progress will be addressed through the dispute resolution process referenced in Section 27 below.

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



h. Foortress will assign an internal Project Manager ("PM" or similar designation) who will be available for the duration of any project. This person will coordinate and assist with all aspects of Client's work. The PM will work with Client to schedule design and training sessions, minimize Client's work interruptions, monitor each step of the implementation plan, and define Client's issues and problems. Foortress personnel will work with Client to assist with design, address questions, make modifications, prepare reports, and perform other necessary tasks. Client's first point of contact with Foortress will be the PM. Client agrees to submit all support requests to support@foortress.com.

i. In its sole discretion, Foortress retains the right to assign or not assign its personnel to Client's projects or tasks, as Foortress sees fit, provided that such resource allocation is commercially reasonable and appropriate under the circumstances. The personnel Foortress assigns to Client's work may change at any time, for any reason. Foortress will explain the rationale for any such change upon Client's request. Notwithstanding the foregoing, the Parties will work together to identify replacement personnel to meet Client's needs. Foortress may invoice Client for the commercially reasonable labor hours necessary to properly transition its personnel to work on Client's project or task.

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

k. A project or task accepted by Foortress may be amended to modify, add, or remove services by a formal written agreement signed by both Parties, or by an exchange of correspondence (including via the Foortress ticketing system: support@foortress.com) that includes the consent of an authorized individual from each Party.

l. Foortress will most likely need to ask many questions, at times repeatedly, concerning the issues that Client raises for any task or project. All questions from Foortress arise from the highly complex nature of software and IT system development and implementation. This process will enable all of Foortress's staff to understand Client's concerns and desired functionality.

7. Client Responsibilities.

a. Client agrees that Foortress will conduct all Client meetings via Microsoft Teams, that Foortress may electronically record meetings between Client and Foortress's personnel, and



that Microsoft Copilot (artificial intelligence) will transcribe and summarize the recorded sessions.

b. Client will be solely responsible for accurately and completely communicating all project and task requirements, along with the supporting details for those requirements, to Foortress. Foortress will have no liability, and will bear no responsibility, for Client's failure to do so. Foortress will not be responsible for any undisclosed requirements, or for discovering unknowable or unforeseeable requirements through commercially reasonable efforts. Client forever waives any and all claims that Foortress should have discovered Client's requirements for a project or task solely through Foortress's own efforts, without any or sufficient input from Client. If Client changes the requirements for a project or task, the costs may materially increase. Client and Foortress may agree to such a change via a Change Order, an email exchange, or verbal confirmation from Client to Foortress staff.

c. Foortress can provide products and the Services only based on the quality and accuracy of the information and work specifications that Client supplies. Client warrants that all data and information it provides to Foortress will be truthful and accurate, to the best of Client's knowledge. Foortress will not be responsible for inaccuracies in Client's data and information.

d. Client will designate an Authorized Representative who can approve purchases from Foortress. Client will also designate a project manager, *i.e.*, the party responsible for Client's project or tasks. Foortress will report to those persons and to any other persons named by Client. Client will be forever bound by the purchasing, product, and task decisions of its Authorized Representative and/or project manager, whether or not one or more of those persons later leave Client's employment.

e. Client's personnel will actively and promptly participate in testing and training sessions, promptly communicate any deficiencies, errors, questions, or comments, and "cross-train" other staff as necessary. Client will notify Foortress of any problems Client discovers with the operation of any software or IT system. Client will be responsible for defining and executing test cases. Client will thoroughly and accurately test all software or system modifications and work performed by Foortress in a test database before Foortress implements the changes in Client's "live" production system database. Client's failure to cooperate and participate in these processes will likely result in a material increase in the hours Foortress will need to expend for the project or task. Client will be solely responsible for any costs arising from Client's failure to test and approve software or system modifications in a timely and adequate manner.

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



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- g. Client will be solely responsible for providing written notice to support@foortress.com regarding any required user permissions.
- h. Client will be solely responsible for all of Client's data, database backups, system backups, and security, including, without limitation, virus, malware, or ransomware attacks, and system performance issues. Foortress will not be responsible for any data, system security, or confidentiality incident that may be determined to be a breach. Additionally, if Client has retained Foortress to store or back up Client's data on Foortress's servers, Foortress may delete such data after Client fails to remit payment for the service, provided that Foortress sends written notice via email to the last known contact person(s) for Client regarding Foortress's intent to delete such data by a date certain. Foortress will provide Client with five (5) days' written notice by email of its opportunity to cure such a default. After that time, Foortress may irretrievably destroy Client's data, in Foortress's sole discretion.
- i. Client agrees to remit payment for Client's software enhancement or license fees, as applicable, and on time. Client agrees that annual or multi-year hosting services and software commitments made to Foortress may not be canceled or altered except as set forth in the terms of those purchases. For example, an annual commitment that automatically renews for subsequent terms may be canceled only by providing written notice to support@foortress.com within the required timeframe. Client will remain financially responsible for these costs until the end of any subscription term, whether or not Client is using the software or hosting services.
- j. Client will provide timely access to Client's computer and software systems and financial information as Foortress may reasonably require to perform the services under this Agreement.
- k. For Client projects or tasks requiring Foortress to assist with data migration, Client agrees to provide Foortress with remote access to Client's data sources. Foortress will not alter any of Client's financial or other data. Client will be solely responsible for the accuracy of the data subject to Foortress's migration efforts.
- l. Client acknowledges that specifications for hardware, systems, and platforms (the "System Requirements") may be provided to Client to help determine the sufficiency and compatibility of Client's systems with any Third-Party Equipment, Third-Party Software, and Foortress Software to be installed and implemented. Client further acknowledges that the System Requirements are the minimum necessary for operation, but they may not constitute an optimal platform or configuration. Foortress does not warrant or guarantee that any hardware, software, or other products implemented or installed will function at any particular speed or efficiency level. Client acknowledges that each computer system or hardware platform is complex and unique. Foortress cannot control all variables related to the operation of hardware, software, or other products on Client's hardware or computer system, and Foortress will not be liable or responsible for any such failures. Client is solely responsible for the speed,



reliability, and security of Client's internet connection, and Foortress recommends that Client maintain a backup internet connection.

m. Foortress is a reseller of Microsoft and other vendors' software and equipment. Client agrees to purchase all software directly from Foortress, including, without limitation, Microsoft and Dynamics Business Central add-on software licenses, rather than from or through Microsoft or any other software reseller. For clarity, Foortress must be the reseller and Customer Partner of Record ("CPOR") for all Client software during the term of this Agreement, unless otherwise agreed. All software and equipment sold or resold by Foortress are subject to the respective end-user license or warranty agreements to which Client hereby agrees by using such software and/or equipment. In its sole reasonable discretion, and with prior notice to Client, Foortress may elect not to install or support software not published by Microsoft, or equipment that Foortress does not recommend. In such an event, Client will be required to remit payment to, or on behalf of, the software or equipment vendor for installation and support services.

n. The Services may include or incorporate Third-Party Products. The third-party owner, author, or provider of any such Third-Party Products retains all ownership and intellectual property rights in and to that content. Under no circumstances will Foortress have any responsibility or liability to Client for any product or service provided by a third party, even if such product or service was resold, distributed, or supported by Foortress. Such products and services are provided "as is," without any warranty from Foortress, whether express or implied. Foortress is not responsible in any way for the software, equipment, or services of any third-party vendor. Foortress is under no obligation to control, monitor, or correct Third-Party Products, and may remove any Third-Party Products in its sole discretion. Client accepts sole responsibility for, and the risk of loss associated with, Client's use of third-party software, hardware, products, and/or services, including, without limitation, those from Microsoft. Client accepts sole responsibility for all work product and invoices from, and indemnifies and holds Foortress harmless from claims by, third-party software developers, personnel, vendors, contractors, and/or subcontractors. Client shall further indemnify and hold Foortress harmless from and against any claims and resulting loss arising from or caused by any malware introduced by Client or a third party into Client's software or system.

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

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

q. Client agrees to comply with the following:

- i. Client's use of any Foortress cloud-hosted system shall comply with Foortress's Acceptable Use Policy.
 - ii. Client will keep their Authorized Representative, project manager, account permissions, billing, and other account information up to date.
 - iii. Client will determine the suitability of the Services and ensure Client's compliance with any applicable federal, state, and local laws and regulations.
 - iv. Client will ensure the integrity and security of Client's data, and regularly back up such data and validate its integrity in an environment separate from Client's system.
 - v. Client will comply with its contractual obligations to Foortress.
 - vi. Client will notify Foortress of any changes to their managerial, technical, or administrative contact information.
 - vii. Client will maintain its system(s) of record.
 - viii. Client will supervise, manage, and control its personnel's use of Foortress's services.
 - ix. Client will develop its own disaster recovery and business continuity plans.
 - x. Client will provide Foortress with a list of approvers for security and system configuration changes.
 - xi. Client will immediately notify Foortress of any actual or suspected information security breaches, including, without limitation, compromised user accounts, whether used for integrations or secure file transfers.
- r. Client shall use reasonable internal security measures and precautions in connection with its use of the Services, including the appropriate securing and encryption of sensitive data stored on or transmitted using Client's configuration, both in transit and at rest. Client will take appropriate measures to prevent Foortress from accessing sensitive data when Foortress's access to Client's premises, systems, or networks could expose such data.
- s. If Client uses any non-Foortress-provided software on Client's systems, Client represents and warrants to Foortress that Client has the legal right to use such software. If Foortress has agreed to install, patch, or otherwise manage software in reliance on Client's license with a vendor, Client represents and warrants that Client has a written license agreement with the vendor that permits Foortress to perform these activities. Foortress's obligation to install, patch, or otherwise manage Client-provided software is strictly contingent upon Client maintaining the original software vendor's support, which provides a service request escalation path, access to patching, and software upgrades, as applicable. Client will provide evidence of compliance as Foortress may reasonably request. If Client fails to provide the required evidence of licensing to Foortress and continues to use the software, Foortress may: (i) charge Client the standard fee for the use of the software in reliance on Foortress's licensing agreement with the vendor until the required evidence is provided, or (ii) suspend or terminate the applicable Services.



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

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

v. Client agrees that Foortress may renew Client's SSL Certificate when necessary and where Foortress has access to do so, unless Client expressly states otherwise in writing. Client will be responsible for the cost of the new certificate and for Foortress's time to replace the expired certificate.

w. Client is solely responsible for ensuring that it has the proper vendor, accounting, and other payment controls in place.

y. Client is solely responsible for documenting its own internal policies.

z. Client affirms that when executing a Statement of Work or Change Order, Client is doing so based solely on the terms, scope, and deliverables defined therein, and explicitly disclaims reliance on any prior discussions, estimations, or promises not expressly incorporated into the subject document, in accordance with the provisions of this Agreement.

8. Security Awareness and Vulnerability Mitigation



a. Fortress strongly recommends that it conduct Security Awareness Training for Client's staff and perform a complimentary IT Security Vulnerability Scan of Client's environment. These services are intended to mitigate risks associated with social engineering, human error, and exploitable technical weaknesses.

b. Should Client elect to decline either the Security Awareness Training or the IT Security Vulnerability Scan, or fail to facilitate the necessary access for performance, the following terms apply:

- i. Client acknowledges that standard technical controls (*e.g.*, firewalls, MFA) cannot fully protect against breaches involving human error or unknown technical vulnerabilities.
- ii. Client assumes all financial, legal, and operational risks arising from security incidents where the root cause is attributed to an untrained user or a technical vulnerability that the recommended scan would have identified.
- iii. Client shall indemnify, defend, and hold Fortress harmless from any third-party claims, regulatory fines, or data restoration costs resulting from a breach that could have been reasonably mitigated by the recommended training or the vulnerability scan.
- iv. Fortress's total liability for any security incident arising from a Client employee's action (or inaction) or an unpatched technical vulnerability is strictly capped at \$0.00, notwithstanding any other limitation-of-liability language in this Agreement.

c. By entering into this Agreement, Client acknowledges that the absence of managed Security Awareness and regular Vulnerability Scanning exposes the organization to the following specific risks:

Risk Category	Description of Threat	Potential Impact
Business Email Compromise (BEC)	Attackers spoofing executive identities to redirect wire transfers or payroll.	Direct financial loss, often not covered by standard E&O insurance.
Spear Phishing	Highly targeted emails designed to harvest administrative credentials.	Full network compromise, ransomware deployment, or data exfiltration.
Exploitable Vulnerabilities	Failure to identify and patch security holes in software, firmware, or hardware.	Unauthorized system access, persistent backdoors, or loss of data integrity.
Social Engineering	Manipulation of staff via phone or chat to bypass multi-factor authentication (MFA).	Unauthorized access to sensitive cloud environments and client data.



Risk Category	Description of Threat	Potential Impact
Regulatory Non-Compliance	Failure to meet "reasonable security" standards required by GDPR, HIPAA, or SOC 2.	Substantial statutory fines and loss of professional certifications.

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

a. Client understands and acknowledges that granting administrative access to a third party, including Foortress, carries inherent risks, including potential data loss, data corruption, system downtime, security breaches, and/or unauthorized access to sensitive information.

b. Client has considered these risks and, upon its own informed decision, has chosen to grant Foortress administrative access to Client's systems and IT environment for the purpose of providing the Services.

c. Client hereby grants Foortress administrative access, including any necessary credentials, accounts, or permissions, to Client's systems. Client represents and warrants that it has all required rights and authority to grant such access.

d. Foortress will use the administrative access solely for the purpose of performing its obligations under this Agreement. Foortress agrees to use commercially reasonable efforts to secure and protect all credentials and to allow access only to authorized personnel.

e. Client acknowledges and agrees that it is fully aware of the risks associated with granting administrative access to a third party. Client understands that any actions or inactions performed with such access, even if intended to benefit the Services, could lead to adverse outcomes, including, without limitation: (a) data loss or corruption, (b) system or application unavailability or downtime, (c) security vulnerabilities or breaches, (d) unauthorized modification or deletion of data, files, or configurations, and (e) violations of data privacy regulations or internal policies.

10. Term of Agreement.

a. Separately from the issue of the breach of Client's payment obligations under Section 2(d) above, this Agreement will remain in effect indefinitely but may be terminated by Client at any time upon ninety (90) days' written notice, for any reason or no reason. Client agrees to send the notice of termination to support@foortress.com and to execute a separate account termination form. Only Client's signing of the termination form will commence the ninety (90)-



day period. The signed form must specify the services and products Client intends to terminate.

b. Separately from the issue of the breach of Client's payment obligations under Section 2(d) above, Foortress may terminate this Agreement after providing thirty (30) days' written (email) notice to Client. For the avoidance of doubt, Foortress may cease any and all services under Section 2(d) above, and such action will not, by itself, constitute a notice of termination under this Section 10.

c. The termination of this Agreement does not release either Party from any liability that, at the time of such termination, has already accrued to the other Party or is attributable to a period prior to such termination, nor does it preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this Agreement. The termination of this Agreement does not relieve Client of its obligation to pay any invoices

d. Upon the termination of this Agreement, Foortress will retain a copy of Client's data, as defined in Section 12(d) below, for thirty (30) days after the date of termination. Thereafter, Foortress will permanently delete all Client's data from Foortress's system.

e. TERM COMMITMENTS, CANCELLATIONS, AND LIQUIDATED DAMAGES. ALL SOFTWARE, IT, AND HOSTING STATEMENTS OF WORK, AND ANY OTHER DOCUMENTS/ORDERS, ARE CANCELLABLE OR REDUCIBLE ONLY UNDER THE TERM COMMITMENTS SET FORTH THEREIN AND PURSUANT TO THIS AGREEMENT. FOR CLARITY, FOORTRESS-MANAGED IT SERVICES, INCLUDING, WITHOUT LIMITATION, NOC, HELP DESK, SOC, ROC, AND MXDR SERVICES, DATABASE MANAGEMENT AS A SERVICE (DMAAS), AND DATA WAREHOUSE AS A SERVICE (DWAAS), ARE RENDERED UNDER THREE (3)-YEAR TERM COMMITMENTS AND AUTOMATICALLY RENEW FOR SUBSEQUENT ONE (1)-YEAR TERMS UNLESS OTHERWISE STATED. FOORTRESS'S BUSINESS TECHNOLOGY ADVISOR ("BTA") PROGRAM HAS ONE (1)-YEAR AUTO-RENEWING TERMS UNLESS OTHERWISE STATED. THESE TERM COMMITMENTS SUPERSEDE ANY CONFLICTING CANCELLATION TERMS SET FORTH IN THIS AGREEMENT.

- i. FOORTRESS'S MANAGED SERVICES, INCLUDING, WITHOUT LIMITATION, SEAT, ENDPOINT, AND LICENSE COUNTS, AS WELL AS TERM COMMITMENTS, ARE NON-REDUCIBLE AND NON-CANCELABLE UNDER ANY CIRCUMSTANCES.
- ii. FOORTRESS MUST RECEIVE WRITTEN NOTICE AT SUPPORT@FOORTRESS.COM AT LEAST NINETY (90) DAYS PRIOR TO ANY AUTO-RENEWAL TO CANCEL A PRODUCT OR SERVICE. FOORTRESS MAY PROVIDE WRITTEN NOTICE TO CLIENT OF RENEWAL DATES, BUT IS NOT REQUIRED TO DO SO. CLIENT IS SOLELY RESPONSIBLE FOR TRACKING ANY AUTOMATIC RENEWALS.

- iii. EARLY TERMINATION AND BREACH. IN THE EVENT CLIENT ATTEMPTS TO CANCEL OR TERMINATE A MANAGED SERVICES OR BTA AGREEMENT, OR ANY TERM COMMITMENT SERVICE, PRIOR TO THE EXPIRATION OF THE APPLICABLE TERM, OR IF FOORTRESS TERMINATES THIS AGREEMENT DUE TO CLIENT'S MATERIAL BREACH (INCLUDING NON-PAYMENT OF MONTHLY INVOICES THAT REMAIN UNCURED FOR THIRTY (30) DAYS FOLLOWING WRITTEN NOTICE FROM FOORTRESS), CLIENT SHALL IMMEDIATELY BE RESPONSIBLE FOR ALL CHARGES FOR THE REMAINDER OF THE APPLICABLE TERM COMMITMENT. ALL FEES THAT WOULD HAVE BECOME DUE FOR THE REMAINDER OF THE TERM, INCLUDING, WITHOUT LIMITATION, CHARGES FROM THIRD-PARTY VENDORS RELATED TO CLIENT'S TERM COMMITMENT, SHALL BECOME IMMEDIATELY ACCELERATED, DUE, AND PAYABLE.
- iv. LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE AND AGREE THAT FOORTRESS INCURS SIGNIFICANT UPFRONT AND ONGOING COSTS TO PERFORM THE SERVICES, INCLUDING UNBILLED IMPLEMENTATION LABOR, CAPITAL INVESTMENTS IN SOFTWARE AND HARDWARE, AND BINDING LONG-TERM COMMITMENTS WITH THIRD-PARTY SOFTWARE AND HARDWARE VENDORS. FURTHERMORE, FOORTRESS PROVIDES MANAGED SERVICES THAT INCLUDE PRICING DISCOUNTS ON SOFTWARE, HARDWARE, SERVICES, AND LABOR HOURS IN EXCHANGE FOR CLIENT'S MINIMUM TERM COMMITMENTS. BECAUSE ACTUAL DAMAGES FOR EARLY TERMINATION OR BREACH ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE ACCURATELY, THE PARTIES AGREE THAT ACCELERATING ALL REMAINING FEES FOR THE TERM—LESS ANY VARIABLE COSTS FOORTRESS DEMONSTRABLY SAVES BY NO LONGER PROVIDING THE SERVICES TO CLIENT—REPRESENTS A REASONABLE FORECAST OF JUST COMPENSATION FOR FOORTRESS'S LOST PROFITS, INCURRED COSTS, AND HARM. THE PARTIES AGREE THAT THIS ACCELERATED AMOUNT IS INTENDED TO SERVE AS LIQUIDATED DAMAGES AND NOT AS A PENALTY UNDER OKLAHOMA LAW.

f. In the event Client alleges that Foortress has failed to materially perform the software or consulting services in accordance with the specifications set forth in the applicable Statement of Work and this Agreement, Client may seek to terminate the applicable services for cause, subject to the following process:

- i. Client must provide Foortress with formal, written notice to support@foortress.com, specifically detailing the nature of the alleged material non-performance. Such notice must include sufficient technical, operational, or factual details to permit Foortress to accurately identify, investigate, and reproduce the alleged deficiency.
- ii. Upon receipt of a compliant written notice, Foortress shall be granted a period of thirty (30) days (the "Cure Period") to investigate the allegations and effectuate a reasonable cure, correction, or functional workaround. Client agrees to provide reasonable cooperation and access to the necessary systems or personnel during this investigation.

iii. If, upon the expiration of the Cure Period, the specific material non-performance detailed in the original notice remains reasonably unresolved, Client reserves the right to terminate the applicable Statement of Work or this Agreement by delivering a final written notice of termination to Foortress, provided Client will remit payment in full for any then open invoices at that time.

g. In its discretion, Client may require Foortress not to perform any services during the applicable termination period. Foortress will reasonably cooperate with Client in transitioning any services to a third party of Client's choice. Client agrees that if Foortress permits Client to perform certain activities after this Agreement ends, Client will do so under the terms of this Agreement.

h. Upon termination of this Agreement (or at any time prior thereto), and upon Client's written request, Foortress will deliver a copy of the most recent version of Client's data in Foortress's systems to Client. Client acknowledges that Foortress may be unable to provide the data in the format requested by Client. Client agrees to prepay Foortress's hourly fees for this service. Client acknowledges that the term "data" does not include any Foortress Work Product referenced in Section 13 below, and that the terms of that section will remain in full force and effect.

11. Non-Disclosure of Confidential Information. In the course of this Agreement, each party may disclose to the other certain non-public, confidential, and/or proprietary information.

a. "Confidential Information" means nonpublic information disclosed by or through a Party (whether in writing, orally, by inspection, or by another means) (the "Disclosing Party") to the other Party (the "Receiving Party"), including, without limitation, (i) information expressly or implicitly marked or disclosed as confidential, including, without limitation, all forms and types of financial, business, marketing, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, algorithms, designs, prototypes, samples, recipes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, orally, graphically, photographically, or in writing; (ii) information traditionally recognized as proprietary trade secrets; (iii) Customer Information (as defined in Section 11(b) below); (v) Personnel Information (as defined in Section 11(c) below); and (vi) all copies of any of the foregoing or any analyses, studies, or reports that contain, are based on, or reflect any of the foregoing.

b. "Customer Information" means information, in any form, provided to the Receiving Party by or through the Disclosing Party that uniquely identifies a current, former, or prospective customer of the Disclosing Party.



- c. "Personnel Information" means information, in any form, provided to the Receiving Party by or through the Disclosing Party that uniquely identifies current, former, or prospective employees and contractors of the Disclosing Party.
- d. At all times, the Receiving Party shall protect and preserve the Confidential Information as confidential, using no less care than it uses to protect and preserve its own highly confidential and proprietary information (but in no event less than a reasonable degree of care). The Receiving Party shall not use the Confidential Information for any purpose other than the business relationship between Foortress and Client. The Receiving Party shall not use the Confidential Information for its internal product development, competitive analysis, or independent commercialization. The Receiving Party agrees not to use the Disclosing Party's Confidential Information for its own benefit or for the benefit of any third party, and not to create products or business plans that use or incorporate any part or all of the Confidential Information.
- e. The Receiving Party may disclose, distribute, or disseminate the Confidential Information to any of its officers, directors, members, managers, partners, employees, or agents (its "Representatives"), provided that the Receiving Party reasonably believes that those Representatives have a need to know and such Representatives are bound by confidentiality obligations at least as restrictive as those contained herein. The Receiving Party shall not disclose, distribute, or disseminate the Confidential Information to any third party, other than its Representatives, without the prior written consent of the Disclosing Party.
- f. The Receiving Party shall at all times remain responsible for any violations of this Agreement by any of its Representatives. If the Receiving Party receives any Confidential Information pursuant to this Agreement, it shall establish and maintain commercially reasonable physical, administrative, and technical safeguards to protect such Confidential Information. In the event of any unauthorized access, disclosure, or use of the Confidential Information of which the Receiving Party becomes aware, it shall promptly (and in any case within twenty-four (24) hours of learning of or suspecting the same) notify the Disclosing Party and use all reasonable efforts to aid in the investigation and remediation of the same.
- g. Promptly upon the Disclosing Party's request, the Receiving Party and its Representatives shall return to the Disclosing Party, or, at the Disclosing Party's option, destroy all materials in written, electronic, or other tangible form (including, without limitation, all written or printed documents, notes, memoranda, email, computer disks or tapes (whether machine- or user-readable), and computer memory, whether or not prepared by the Receiving Party) that contain, summarize, or abstract any portion of the Confidential Information, including, without limitation, all copies, extracts, and derivations of such materials. In addition, upon the Disclosing Party's request, the Receiving Party shall certify in writing to the Disclosing Party the Receiving Party's and its Representatives' compliance with its obligations pursuant to this Section 11.

h. The Receiving Party acknowledges and agrees that the Confidential Information, together with all intellectual property rights embodied therein (including, but not limited to, all concepts, ideas, patents, copyrights, copyrightable works, trade secrets, know-how, negative know-how, and trademarks) and derivative works thereof, are the sole and exclusive property of the Disclosing Party. The Receiving Party shall not have the right to use the intellectual property rights embodied in the Confidential Information for any purpose other than the Limited Purpose.

i. The term “Confidential Information” does not include information which documentary evidence demonstrates: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party or its Representatives (or any person to whom the Receiving Party or its Representatives disclosed such information); (ii) was known by the Receiving Party prior to its disclosure by the Disclosing Party; (iii) was independently developed by Receiving Party without use of the Confidential Information; or (iv) becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement, confidentiality obligation, or fiduciary duty that prohibits disclosure, and the Receiving Party has no reason to believe that such source may be restricted from making such disclosure. Notwithstanding the foregoing, Customer Information shall remain Confidential Information, irrespective of any such exceptions.

j. The Receiving Party acknowledges that in the event of a breach of this Agreement by the Receiving Party or its Representatives, substantial injury could result to the Disclosing Party, and money damages will not be a sufficient remedy for such breach. Therefore, in the event that the Receiving Party or its Representatives engage in, or threaten to engage in any act which violates any provision of this Agreement, the Disclosing Party shall be entitled, in addition to all other remedies which may be available to it at law or in equity, to seek equitable and/or injunctive relief (including, without limitation, temporary restraining orders, or preliminary or permanent injunctions) and specific enforcement of the terms of this Agreement. The Disclosing Party shall not be required to post a bond or other security, or to offer proof of damages, in connection with the granting of any such relief.

12. Information Security Measures, Data, and AI Usage.

a. Foortress will establish, and at all times maintain, internal and commercially reasonable administrative, organizational, technical, and physical security policies and procedures commensurate with reasonable and customary industry practices for protecting Client Confidential Information (collectively, the “Information Security Measures”). The Information Security Measures will be designed to (i) address the security and confidentiality of Client Confidential Information in possession of Foortress, including such Client Confidential Information maintained by Foortress on its systems as well as Client Confidential Information in



possession of or under the control of Foortress; (ii) identify potential threats or hazards to the security or integrity of such Client Confidential Information; (iii) protect against anticipated threats or hazards, and (iv) protect against unauthorized access to or use of Client Confidential Information, including protection from malicious or harmful code. These Information Security Measures will implement network and data security measures consistent with Information Technology (IT) industry standards, including (A) policies and procedures to address network security, protection from malicious code, access controls, change controls, monitoring and logging of network events, network segregation, and vulnerability assessments; (B) regular testing and auditing of all controls; (C) system and data back-up, disaster recovery, and business continuity plans; and (D) appropriate corrective action and incident response plans. If Foortress is directed to connect to Client's systems, Foortress will maintain all security measures and safeguards established by Client, follow any additional instructions, policies, and procedures provided by Client concerning the use of Client's systems, and Foortress will not alter, circumvent, or take any other actions that compromise or reduce the effectiveness of such security measures and safeguards. Foortress will comply with all applicable privacy, cybersecurity, and data protection laws that may apply to the data it processes on behalf of its clients.

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

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

d. To enable Foortress to provide the Services, Client may provide its Data to Foortress, or Foortress may be exposed to that Data. The term "Client Data" means data and information stored on Client's computer hardware, network, software systems, and infrastructure concerning Client's customers, personnel, suppliers, and/or vendors. The term "Client Data" does not include Foortress Work Product as referenced in Section 13 of this Agreement below. Foortress may access those systems, networks, or applications to perform the Services. Client Data may comprise Confidential Information and/or Client's trade secrets. Foortress shall, concerning Client Data: (i) implement the industry-standard security practices for information technology management on Foortress's internal systems to protect Client Data against unauthorized access, disclosure, or use; (ii) notify Client promptly upon becoming aware of any unauthorized access to Client Data or unauthorized disclosure or use of Client Data; and (iii)



fully cooperate with Client in the investigation of any such unauthorized access, disclosure and/or use.

e. Client hereby grants Foortress a non-exclusive, royalty-free license to use Client Data for the purpose of providing the Services. Client acknowledges and agrees that Foortress may, in its sole discretion, use advanced Artificial Intelligence (“AI”) and machine learning tools and algorithms to assist in the execution, improvement and delivery of the Services described herein, in accordance with the terms and scope of this Agreement. This use may involve proprietary AI tools or Third-Party AI Software. Foortress may utilize AI to conduct research and development and to enhance the Services and features available to Client. Additionally, Foortress may utilize AI to keep its products and Services current, high-performing, and to enhance user productivity, reliability, efficacy, quality, and security. For example, and without limitation, Foortress uses Microsoft Copilot for administrative tasks, such as taking notes during Microsoft Teams meetings, and Copilot or other AI software to develop computer code. Foortress may also use AI to examine Client’s computer telemetry data, which is the automatic collection and transmission of data from remote systems and devices for monitoring and analysis, and to optimize performance, troubleshoot issues, and enhance the user experience. Client further acknowledges that, depending on the specific AI software used, Client Data may be processed, analyzed, and, in some cases, retained or learned from by the AI software for model training, debugging, and service enhancement purposes. Foortress makes no representations or warranties regarding the data retention policies of Third-Party AI Software providers, who are solely responsible for the use and retention of Client’s data. Client will not have any intellectual property rights to the output from any AI software. Notwithstanding anything to the contrary in this Agreement, Foortress is not responsible for third-party violations of applicable AI laws, and Foortress does not provide a warranty or indemnify Client for violations of AI law. Foortress reserves the right to limit the scope of Services and charge additional labor hours if Client requires any exclusions from AI usage that materially affect the efficiency or functionality of the delivery of Services. Client agrees that Foortress’s use of AI, in any form, is reasonable and necessary for the provision of Services, and waives any and all claims against Foortress arising from the disclosed or undisclosed data practices of such AI tools. Additionally, Foortress will not be responsible for the outputs of any AI program, including, without limitation, the decisions made by agentic AI software that Foortress may prepare for, or recommend to, Client. The terms of this Section will supersede any conflicting terms in any other agreement, and any other section of this Agreement.

f. Foortress is not liable or responsible under any circumstances for a data loss in Client’s environment or systems.

13. Work Product.

a. For purposes of this Agreement, the term “Work Product” shall mean all software code, deliverables, reports, documentation, or other tangible or intangible items Foortress is required



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

b. Upon payment in full for Services rendered in the generation of Work Product, as well as payment in full for any other Foortress Services, Foortress hereby grants any and all rights, title, and interest in and to the Work Product to Client. For clarity, the rights, title, and interest in and to any Work Product will not transfer to Client until Client has fully satisfied all due and past-due Foortress invoices, unless otherwise expressly agreed to in writing by the parties. For clarity, Client will have no rights to any Work Product until Client has remitted payment in full for all outstanding or overdue Foortress invoices regarding such Work Product.

14. Accounting, Tax, and Legal Issues. Foortress does not render tax advice. Client is solely responsible for (a) determining what, if any, taxes apply to transactions that occur as a result of Client’s sales to its customers, and (b) collecting, reporting, and remitting the correct tax to the appropriate tax authorities. Foortress is not responsible for determining whether taxes apply to a transaction, or for collecting, reporting, or remitting any taxes arising from such transaction. Foortress may, from time to time, make certain tax calculation services offered by third-party providers available to Client. Such tax calculation services are services provided by third parties, and Foortress is not responsible for their accuracy. Foortress recommends that Client retain a certified public accountant to audit and remit all sales tax returns and defend against any tax audits. Client will indemnify, defend, and hold Foortress, its officers, directors, consultants, employees, successors, and assigns harmless from all claims and liability arising from Client’s failure to report or pay any such taxes, duties, or assessments. Foortress does not render legal, accounting, or auditing advice. Foortress is not licensed to render these services, and is not a law, accounting, or CPA firm. Foortress is not engaged as a management consulting firm and will not provide organizational design, governance, or policy advisory services specific to government or regulatory requirements.

15. Expenses. Foortress may incur expenses in performing its services to Client. Client shall reimburse such costs where Client has previously approved the expenditures orally or in writing. Foortress will submit all expenses in the form of an invoice, due and payable within 15 days of the invoice date, and must accompany the invoice with copies of receipts or other applicable documentation as requested by Client. Expenses may include, but are not limited to, travel time at one-half (1/2) of the specified hourly rate, airfare, car rental, parking, meals, taxi/train fare, and hotel fees. Foortress will be entitled to, and responsible for, booking and making reasonable choices regarding airlines/airfares, hotels, rental cars, and meal allowances. Foortress shall reasonably comply with the U.S. G.S.A. published per diem rates.



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

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

18. Insurance. During the Term, Foortress will maintain in force adequate workers' compensation, commercial general liability, errors and omissions, and other forms of insurance, with minimum policy limits of \$1,000,000 to protect Client from losses resulting from Foortress's conduct, acts, or omissions or the conduct, acts, or omissions of Foortress's agents, Foortress's, servants, or employees, pursuant to the terms of this Agreement, and as agreed to by Foortress's insurance providers.

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

20. Non-Solicitation and Non-Hire.

a. Neither Party will, directly or indirectly, during the term of this Agreement and for twelve (12) months thereafter, solicit, recruit, hire, or engage (whether as an employee, consultant, or independent contractor) any person who is or was an employee or contractor of the other Party at any time during the twelve (12) months prior to such action, unless the Parties agree otherwise in writing. This restriction applies whether such a person initiates contact or responds to a general public advertisement. The Parties agree that these provisions are necessary and reasonable to protect each Party's legitimate business interests in protecting substantial investments in such employees and contractors.

b. The Parties acknowledge that the loss of a key employee or contractor would cause irreparable harm that is difficult to quantify. Accordingly, if a Party breaches this Section, the breaching Party will pay the non-breaching Party, as liquidated damages and not as a penalty, an amount equal to the greater of one hundred percent (100%) of the hired individual's new annual base salary or expected annual compensation.



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

22. Client Feedback. To the extent Client provides Foortress with any ideas or other suggestions, whether or not patentable, that directly concern enhancements, improvements, or other changes to Foortress's Services or Software (such ideas or suggestions, "Feedback"), Client agrees that Foortress may use and exploit in any manner on a worldwide, irrevocable, perpetual, royalty-free basis any suggestions, requests, and feedback provided by or on behalf of Client regarding the Services or Software or any other Foortress intellectual property. Foortress shall have all right, title, and interest in and to such Feedback. Client hereby assigns and agrees to assign to Foortress all right, title, and interest in and to such Feedback.

23. Limitation of Liability

a. UNDER NO CIRCUMSTANCES SHALL FOORTRESS BE LIABLE FOR ANY LOSSES RELATING TO THE SERVICES OR THE ACTIONS OF FOORTRESS IN CONNECTION WITH THIS AGREEMENT THAT WERE NOT BROUGHT TO ITS ATTENTION BY CLIENT IN WRITING WITHIN FORTY-FIVE (45) DAYS OF ITS OCCURRENCE. NO CLAIM FOR LOSSES OR OTHER RELIEF ARISING OUT OF THIS AGREEMENT MAY BE FILED BY CLIENT MORE THAN ONE (1) YEAR FOLLOWING ITS DELIVERY TO CLIENT.

b. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, FOORTRESS AND ITS AFFILIATES SHALL NOT BE LIABLE OR OBLIGATED UNDER ANY SECTION OF THIS AGREEMENT



OR UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, FOR (i) LOST OR CORRUPTED DATA, (ii) BREACHES IN SYSTEM SECURITY, (iii) INTERRUPTION, DELAY, OR INABILITY TO USE THE SERVICES, WHETHER TEMPORARY OR PERMANENT (iv) LOST REVENUES OR PROFITS, (v) LOSS OF BUSINESS OR GOODWILL, (vi) FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION, (vii) SYSTEM INCOMPATIBILITY, (viii) THE PROCUREMENT COSTS OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES, (ix) THE USE OF ARTIFICIAL INTELLIGENCE SOFTWARE IN ANY FORM, OR (x) PERSONAL INJURY.

c. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, ENHANCED, PUNITIVE, OR CONSEQUENTIAL DAMAGES THAT A PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d. FOORTRESS WILL ACT IN GOOD FAITH AND USE COMMERCIALY REASONABLE EFFORTS TO COMPLY WITH ITS INTERNAL IT POLICIES. FOORTRESS WILL EVIDENCE ITS COMPLIANCE WITH THESE POLICIES THROUGH ANNUAL SOC 2 TYPE 2 COMPLIANCE ATTESTATIONS. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, FOORTRESS WILL NOT BE LIABLE TO CLIENT FOR ANY ERRORS OR OMISSIONS RELATED TO THE TERMS OF THIS AGREEMENT AND FOORTRESS'S INTERNAL POLICIES AND PROCESSES, INCLUDING BUT NOT LIMITED TO, SECURITY AND SYSTEMS ISSUES, DATA HANDLING AND BACKUPS, SOFTWARE UPDATES, ETC.

e. FOORTRESS'S MAXIMUM COLLECTIVE AGGREGATE LIABILITY FOR ANY DIRECT, COMPENSATORY, OR ANY OTHER ALLOWED DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, WILL NOT EXCEED THE REMEDIATION CAP SPECIFIED IN THE APPLICABLE SERVICE LEVEL AGREEMENT ("SLA"). IF AN SLA IS NOT APPLICABLE TO THE SPECIFIC CLAIM BY CLIENT, THE TOTAL AND CUMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID BY CLIENT TO FOORTRESS ONLY FOR THE SPECIFIC PRODUCT OR SERVICE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE UPON WHICH A CLAIM IS FIRST ASSERTED AGAINST FOORTRESS BY CLIENT. THE PARTIES AGREE THAT THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THE FOREGOING LIMIT. ANY DAMAGE AWARD IN FAVOR OF CLIENT SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CLIENT AND SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY STATED HEREIN. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE TOTAL LIABILITY OF FOORTRESS FOR DAMAGES ARISING FROM A COVERED EVENT SHALL NOT EXCEED THE LIMITS OF LIABILITY UNDER THE INSURANCE POLICY IN EFFECT AT THE TIME OF THE CLAIM OR SUCH EVENT, AS APPLICABLE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.



f. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN FOORTRESS AND CLIENT, AND THAT THEY HAVE BEEN TAKEN INTO ACCOUNT AND REFLECTED IN DETERMINING THE CONSIDERATION TO BE GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND IN THE DECISION BY EACH PARTY TO ENTER INTO THIS AGREEMENT. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE OR THE PARTIES SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS HEREIN APPLY TO ANY CLAIMS OR SERVICES RENDERED UNDER THE TERMS OF THIS AGREEMENT.

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

h. IF CLIENT ELECTS NOT TO PURCHASE OR IMPLEMENT ANY SERVICES, HARDWARE, SOFTWARE, OR SYSTEM UPDATES RECOMMENDED BY FOORTRESS, WHETHER ORALLY OR IN WRITING (COLLECTIVELY, "RECOMMENDED SERVICES"), CLIENT ACKNOWLEDGES THAT SUCH REFUSAL MAY SIGNIFICANTLY INCREASE THE RISK OF SECURITY BREACHES, DATA LOSS, OR SYSTEM INSTABILITY. CLIENT HEREBY EXPRESSLY ASSUMES ALL RISKS ASSOCIATED WITH THE FAILURE TO IMPLEMENT RECOMMENDED SERVICES. CLIENT FURTHER AGREES THAT FOORTRESS SHALL HAVE NO LIABILITY, AND CLIENT HEREBY WAIVES ANY AND ALL CLAIMS AGAINST FOORTRESS (INCLUDING CLAIMS FOR NEGLIGENCE OR BREACH OF DUTY) ARISING OUT OF OR RELATED TO ANY INCIDENT OR DAMAGES THAT COULD HAVE BEEN PREVENTED, MITIGATED, OR IDENTIFIED BY THE RECOMMENDED SERVICES. FOR CLARITY, FOORTRESS WILL NOT BE LIABLE FOR ANY CLAIMS ARISING FROM, OR RELATED TO, ANY FOORTRESS SERVICES THAT CLIENT DECLINED, OR FOR THE RAMIFICATIONS THEREFROM, WHETHER CLIENT COMMUNICATED SUCH DECLINATION ORALLY OR IN WRITING.

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

j. EACH PARTY SPECIFICALLY DISCLAIMS RESPONSIBILITY AND LIABILITY FOR THIRD-PARTY PRODUCTS AND SERVICES THAT FOORTRESS MAY UTILIZE FOR ITS SERVICES. EACH PARTY SPECIFICALLY DISCLAIMS AND WAIVES ANY RIGHTS AND CLAIMS AGAINST THE OTHER PARTY WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS AND SERVICES. FOR CLARITY, CLIENT AGREES THAT MICROSOFT IS A THIRD-PARTY PROVIDER OF PRODUCTS AND SERVICES UNDER THIS AGREEMENT.



k. FOORTRESS WILL NOT BE RESPONSIBLE FOR THE FAILURES, MISTAKES, OR OMISSIONS OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, THIRD PARTY SOFTWARE VENDORS.

l. FOORTRESS WILL NOT BE RESPONSIBLE FOR THE CONDUCT OR MISCONDUCT OF CLIENT'S EMPLOYEES, CONTRACTORS, AUTHORIZED PERSONNEL, OR OTHER VENDORS.

24. Disclaimer of Warranties.

a. EXCEPT AS EXPRESSLY PROVIDED HEREIN, SOFTWARE PROVIDED BY THIRD PARTIES IN THE THIRD-PARTY LICENSES OR WARRANTIES ASSOCIATED WITH THIRD PARTY EQUIPMENT OR THIRD PARTY SOFTWARE, THE SERVICES, THIRD PARTY EQUIPMENT, AND THIRD PARTY SOFTWARE, ARE ALL FURNISHED TO CLIENT "AS IS." FOORTRESS IS NOT RESPONSIBLE OR LIABLE, AND WILL NOT BE HELD RESPONSIBLE OR LIABLE, FOR HARDWARE, SOFTWARE, OTHER PRODUCTS OR SERVICES, OR THEIR FUNCTIONALITY OR IMPLEMENTATION, OR LACK THEREOF, THAT HAVE BEEN WRITTEN, PRODUCED, OR PROVIDED BY ANY THIRD PARTY. ALL THIRD PARTY EQUIPMENT AND THIRD PARTY SOFTWARE ARE SUBJECT TO THE ORIGINATOR'S LICENSE AGREEMENTS AND HAVE A WARRANTY ONLY TO THE EXTENT THE ORIGINATOR OFFERS ONE. FOORTRESS DOES NOT PROVIDE ANY ADDITIONAL IMPLIED OR EXPRESS WARRANTIES REGARDING THIRD-PARTY SERVICES OR PRODUCTS.

b. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE USE OF FOORTRESS'S SERVICES IS AT CLIENT'S SOLE RISK AND THAT THE ENTIRE RISK AS TO THE SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH CLIENT.

c. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FOORTRESS'S SERVICES ARE PROVIDED "AS IS" WITH ALL "FAULTS" AND "AS AVAILABLE". FOORTRESS MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO CLIENT'S USE OF THE SERVICES, INCLUDING WITHOUT LIMITATION, THEIR COMPATIBILITY TO CLIENT'S HARDWARE OR SOFTWARE, THEIR PERFORMANCE, SATISFACTORY QUALITY, MERCHANTABILITY, CORRECTNESS, SUITABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, SECURITY OF CLIENT'S DATA, USE OF CLIENT'S DATA BY AI SOFTWARE, AVAILABILITY OR UPTIME, QUIET ENJOYMENT, OR OTHERWISE, IRRESPECTIVE OF ANY COURSE OF DEALING OR PERFORMANCE, CUSTOM, OR USAGE OF TRADE. CLIENT SHALL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE, AND SUITABILITY OF THE SERVICES, AND FOORTRESS SHALL HAVE NO LIABILITY THEREFOR. FOORTRESS DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SERVICES WILL BE FREE FROM BUGS OR ERRORS, THAT CLIENT'S USE OF THE SERVICES WILL BE UNINTERRUPTED, OR AS TO THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. CLIENT ACKNOWLEDGES THAT COMPUTER HARDWARE, SOFTWARE, AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND THAT PERIODS OF DOWNTIME OCCUR. WITHOUT LIMITATION TO THE FOREGOING, FOORTRESS PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO



REPRESENTATION OF ANY KIND THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. CLIENT BEARS THE ENTIRE RISK OF USING THE SERVICES.

d. NO ORAL OR WRITTEN STATEMENTS MADE BY FOORTRESS OR ITS EMPLOYEES OR AGENTS, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, APPLICABILITY, AVAILABILITY, OR PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR AS TO THE SERVICES, SHALL BE DEEMED A WARRANTY OR A REPRESENTATION BY FOORTRESS FOR ANY PURPOSE NOR GIVE RISE TO ANY LIABILITY OR OBLIGATION OF FOORTRESS. FOORTRESS DOES NOT WARRANT THAT CLIENT'S USE OF ANY OF FOORTRESS'S SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

e. CLIENT EXPRESSLY ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT IS A COMMERCIAL TRANSACTION BETWEEN SOPHISTICATED BUSINESS ENTITIES. CLIENT REPRESENTS AND WARRANTS THAT IT IS ACQUIRING THE SERVICES AND DELIVERABLES DESCRIBED IN THIS AGREEMENT FOR COMMERCIAL AND BUSINESS PURPOSES ONLY, AND NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

CLIENT REPRESENTS THAT IT IS NOT IN A SIGNIFICANTLY DISPARATE BARGAINING POSITION AND HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF ITS OWN CHOOSING IN THE NEGOTIATION AND EXECUTION OF THIS AGREEMENT.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE CLIENT HEREBY VOLUNTARILY AND EXPRESSLY WAIVES ANY AND ALL RIGHTS, REMEDIES, AND PROTECTIONS IT MAY HAVE UNDER THE OKLAHOMA CONSUMER PROTECTION ACT (15 O.S. § 751 ET SEQ.), THE OKLAHOMA DECEPTIVE TRADE PRACTICES ACT (78 O.S. § 51 ET SEQ.), THE TEXAS DECEPTIVE TRADE PRACTICES-CONSUMER PROTECTION ACT (TEX. BUS. & COM. CODE § 17.41 ET SEQ.), AND ANY OTHER SIMILAR STATE OR FEDERAL CONSUMER PROTECTION, UNFAIR COMPETITION, OR DECEPTIVE TRADE PRACTICES LAWS IN ANY APPLICABLE JURISDICTION. AFTER CONSULTATION WITH AN ATTORNEY OF ITS OWN SELECTION, CLIENT VOLUNTARILY CONSENTS TO THIS WAIVER.

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



a. Foortress will defend Client against any third-party claim solely to the extent it alleges that a Product or Services made available by Foortress for a fee that has been paid in full by Client and used within the scope of the services and products provided under this Agreement (unmodified from the form supplied by Foortress and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. For clarity, Foortress will not indemnify Client for any other types of claims. If Foortress is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Services with a functional equivalent or (2) terminate the applicable Client's software license and refund any license fees, including amounts paid in advance for unused consumption and for any usage period after the termination date. Foortress will not be liable for any claims or damages arising from Client's continued use of a Product or Services after being notified to stop due to a third-party claim. Client's sole remedy for Foortress's infringement of third-party intellectual property shall be the defense obligations outlined in this Section 25(a). THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF FOORTRESS REGARDING ANY THIRD PARTY CLAIMS, AND THE EXCLUSIVE REMEDY AVAILABLE TO CLIENT WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS.

b. To the extent permitted by applicable law, Client will defend Foortress against any third-party claim to the extent it alleges that: (1) Client's business operations, data, or software misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; (2) Client's use of any Product or Services, alone or in combination with anything else, violates the law or any representation or warranty of Client contained in this Agreement; and (3) any third party claims that arise out of, relate to, or result from any act or omission of Client, in each case whether or not caused in whole or in part by the negligence of Foortress, and whether or not the relevant claim has merit. THE FOREGOING PROVISIONS STATE THE ENTIRE LIABILITY AND OBLIGATIONS OF CLIENT REGARDING THIRD PARTY CLAIMS REFERENCED IN THIS SECTION, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

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



26. Representations and Warranties.

- a. Foortress has the right to enter into this Agreement, to grant the rights granted herein, and to perform all of its obligations in this Agreement fully. Foortress's entering into this Agreement with Client and its performance of the services do not and will not conflict with, or result in any breach or default under, any other agreement to which it is subject. Foortress has the required skill, experience, and qualifications to perform the Services.
- b. Client has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder. The execution of this Agreement, or a Statement of Work that references this Agreement, by its representative whose signature is set forth at the end thereof, has been duly authorized by all necessary corporate action.

27. Governing Law.

- a. This Agreement shall be governed by, and construed as a whole, in accordance with the fair meaning of, the applicable laws of the State of Oklahoma, exclusive of any choice or conflict of law principle that would require the application of the law of a different jurisdiction, as well as the copyright, patent, and trademark laws of the United States.
- b. Prior to and as a condition of either party filing a claim under this Agreement, an officer of each party shall telephonically communicate with the other party in good faith to attempt to resolve all matters informally.
- c. In the event of an impasse, Client hereby consents to the exclusive jurisdiction of the State and Federal courts located in Oklahoma, and irrevocably waives any objections regarding venue and *forum non conveniens* therein. Client acknowledges that the designations of venue, jurisdiction, and choice of law herein are reasonable.
- d. The prevailing party in any action or proceeding relating to the Agreement shall be entitled to recover reasonable legal fees and costs, including attorneys' fees, consultants' fees, and expenses and costs, incurred in enforcing, defending, or otherwise protecting its interests hereunder. In the event of an account delinquency, Client consents to be contacted by a collection agency or attorney, including, without limitation, an Automated Telephone Dialing System, as defined by the Telephone Consumer Protection Act of 1991 (as amended), 47 U.S.C. Section 227, as well as by email, text, and voicemail, and to be charged collection agency and attorneys' fees. Notwithstanding the exclusive jurisdiction provision above, Client agrees that Foortress may seek to enforce any judgment anywhere in the world where Client may have assets.



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

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

g. Client acknowledges and agrees that the Services provided by Foortress may include, but are not limited to, software consulting and licensing, IT consulting and technical support, as well as data and business intelligence consulting and technical support. Client agrees that all Services are essential and "mission-critical" to Client's ongoing business operations and the preservation of its estate.

- i. If Client files a voluntary petition for relief under the United States Bankruptcy Code (the "Code"), or an involuntary petition is filed against Client, Client agrees that Foortress is a "Critical Vendor" as defined by the applicable standards of the bankruptcy court.
- ii. Client agrees that, upon the filing of a bankruptcy petition, it shall (A) promptly designate Foortress as a Critical Vendor in its initial "first-day" motions; (B) seek an order from the Bankruptcy Court authorizing the Client to pay any and all pre-petition amounts owed to Foortress in full to ensure the uninterrupted continuation of Services;



and (C) provide Foortress with a copy of such motion and any resulting order immediately upon filing or entry.

iv. Foortress's obligation to provide Services post-petition is expressly conditioned on the Bankruptcy Court's entry of a Final Order designating Foortress as a Critical Vendor and authorizing payment of all pre-petition arrears. For clarity, Client agrees that Foortress may cease all services and cancel access to Client's software licenses if the Bankruptcy Court does not designate Foortress as a Critical Vendor.

h. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES' ACCEPTANCE OF SERVICES UNDER THIS AGREEMENT. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT PROVIDES THE WAIVER UNDER THIS SECTION KNOWINGLY AND VOLUNTARILY.

i. No claim may be brought as a class, collective, consolidated, or coordinated action, nor may Client assert such a claim as a member of, or participant in, such an action brought by another claimant, including, without limitation, as a private attorney general. Client agrees that it shall not bring a claim under the Agreement more than one (1) year after the claim accrued. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods, the Oklahoma Uniform Commercial Code, or the implied warranties therein.

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

28. Miscellaneous.

a. Both parties will comply with all applicable federal, state, and local statutes, rules, and regulations, including any and all other activities contemplated by this Agreement.

b. If any part of the Agreement is found unenforceable, the rest of the Agreement shall continue in effect, and the unenforceable portion shall be reformed to the extent possible to make it enforceable and give business efficacy to the Agreement. The Parties acknowledge and



agree that the terms in the Agreement accurately reflect and are based on the intended allocation of risk between the Parties, and that these terms form an essential part of the Agreement. Each party may enforce its respective rights under the Agreement, even if it has waived such rights or failed to enforce them in the past. Other than expressly stated in this Agreement, or as otherwise specifically designated a "Third Party Beneficiary," there are no third-party beneficiary rights of any kind to this Agreement, and all provisions herein shall be solely between the Parties. The word "including" means "including without limitation."

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

d. This Agreement, including all statements of work, order forms, exhibits, and addenda, constitutes the final, complete, and exclusive understanding between the Parties regarding its subject matter and any other subject matter raised by either party, as well as any and all work or services requested by Client prior to, or subsequent to, the Effective Date of this Agreement. This Agreement supersedes, cancels, and replaces any and all prior, preexisting, or contemporaneous representations, agreements, arrangements, discussions, understandings, proposals, and marketing and advertising materials, whether written or oral, of any kind and of every nature, between the Parties. The Parties intend this Agreement to be the final expression of their agreement and a complete and exclusive statement of its terms and conditions. The terms of this Agreement will govern the provision of all services and products by Foortress, unless otherwise provided for in an executed writing by and between Foortress and Client.

Moreover, Client acknowledges, represents, and warrants that in executing this Agreement and/or any corresponding statement(s) of work or order forms, Client has relied solely upon its own independent investigation and the express, written representations and warranties explicitly set forth within the four corners of this Agreement. Client expressly acknowledges that it has not relied upon, and explicitly disclaims reliance upon, any other representations, warranties, promises, forecasts, or statements (whether written, oral, implied, negligent, or innocent) made by Foortress, its officers, employees, agents, or representatives during any negotiations, marketing, or discussions prior to the Effective Date. Client expressly waives any and all claims, rights, or remedies arising out of or relating to any alleged pre-contractual unintentional, innocent, and negligent misrepresentations by Foortress.

e. All communications, whether written in any form or verbal, including, without limitation, statements of work, estimates, invoices, emails, oral conversations, confirmations, and acknowledgments, between Foortress and Client, whether or not signed by the Parties, are subject to, and governed by, the terms of this Agreement, which also supersedes any conflicting provisions in any of the foregoing communications. Neither party may assign, transfer, or delegate any of its rights or obligations under this Agreement without the prior written consent



of the other party. Any attempted assignment or delegation in violation of this provision shall be void. Client is prohibited from claiming that this Agreement is not binding on all prior or subsequent emails, verbal conversations, or any other communications between Client and Foortress, or that such writings or conversations constitute an agreement that supersedes or is separate from this Agreement. This Agreement constitutes a binding contract between Foortress and Client.

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

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

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

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

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

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



l. Foortress's communications regarding legal notices will be sent by email and/or U.S. Postal Service ("USPS") Priority Mail to whom Client designates as the primary contact(s) for Client's account. For the purposes of this Agreement, Foortress's email address is support@foortress.com, and Foortress's mail address is P.O. Box 31014, Edmond, OK 73003. Client is solely responsible for notifying Foortress of any changes in Client's primary contact(s). An email notice alone is sufficient for legal notice purposes. Email notices are deemed received upon their sending. USPS notices are deemed received upon delivery. If the delivery time for email or USPS does not fall within a business day, the delivery will be considered as of the beginning of the first business day following the time the email was sent, or the USPS notice was delivered. Client cannot opt out of receiving email communications at any time. Any Party may, from time to time, designate, by written notice, substitute addresses, email addresses, or persons to whom such notices shall be sent. Notices shall be given in the English language.

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

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

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

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



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

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

s. Foortress Support is available from 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, except for federal holidays. Foortress's Support team can be reached by phone at 855-983-6247, 24/7/365, or by submitting a support ticket via email at support@foortress.com. Only support cases that are true emergencies and the subject of a telephone call to Support will be addressed after hours. Foortress will determine, in its sole discretion, whether any support case is emergent.