

**S3 GROUP, INC.**  
**MASTER SERVICES AGREEMENT - GENERAL TERMS**

**Last Updated: January 2025**

These General Terms are part of and incorporated into that Master Services Agreement (the "MSA") executed by and between S3 Group, Inc., a Georgia corporation ("S3 Group") and the "Client" identified in such MSA. Capitalized terms used and not otherwise defined herein will have the same meanings given for those terms in the MSA execution page.

**1. Provision of Services.**

a. Subject to the terms and conditions of this Agreement, S3 Group will make the Service(s) identified in Client's Orders available to Client for the Service Term (described below) for use by Client in accordance with the terms of this Agreement (including, without limitation, any applicable Supplemental Terms). Except as otherwise provided on such Order or in this Agreement, each Order is non-cancellable and will be subject to the terms and conditions of this Agreement. If required as part of Client's internal procedures, an Order may be supplemented by a purchase order issued by Client, but in no event will a Client purchase order modify any of the pricing, deliverables or terms set forth in the Order or this Agreement.

b. The Services may consist of one or more of the following: (i) professional or consulting services ("Professional Services") relating to evaluation and implementation, customization, training and technical support services with respect to products or services (each, a "Third Party Product") offered by third-party providers (each, a "Third Party Provider"); and (ii) access to S3 Group's proprietary hosted software services, together with standard implementation and support services ancillary to such hosted software services (collectively, the "Hosted Services"). To the extent applicable, Client is solely responsible for all access and use of the Service by its affiliates and their respective employees, contractors or agents. Without limiting the generality of the foregoing, "Third Party Products" may include third party software, hardware and shipping or postage products or services.

c. To the extent the Services involve S3 Group's recommendation, promotion, resale, distribution, implementation installation, support or integration with any Third Party Products, Client acknowledges that S3 Group does not make any representations or warranties as to such Third Party Products, regardless of whether or not the applicable Third Party Provider or their Third Party Products have designated S3 Group as "a partner," "validated," "certified" or otherwise. Client acknowledges and agrees that (i) access and use of any Third Party Software may require Client's subscription to or purchase of a separate license from (or agreement or acceptance of separate terms of use or similar terms with) the applicable Third Party Provider; (ii) Client will review and comply with all such terms and conditions and any other applicable rules and regulations of the Third Party Provider, and will not use the Third Party Products in any manner that would infringe or violate the rights of Third Party Provider, S3 Group or any other party or in furtherance of criminal, fraudulent or other unlawful activity; (iii) the Third Party Provider, and not S3 Group, is responsible for its own actions and inactions and any errors or bugs in the Third Party Products (provided, however, that the foregoing shall not relieve S3 Group of its obligations to perform any technical support Professional Services with respect to the same, to the extent set forth in an Order).

**2. Term; Termination.**

a. The initial term of the MSA will begin upon execution by both Client and S3 Group and will continue in full force and effect until the termination or expiration of the last Order then in effect. The initial term of each Order, and, if applicable the initial term of the Client's subscription for the Services described in the Order (the "Initial Service Term"), begins upon the effective date of that Order and will continue for the period set forth in the Order. If no period is specified in the Order, the Initial Service Term will be a period of one (1) year commencing on the effective date of the Order. The term of an Order will renew for additional successive periods equal to the term specified in the Order (or, if none is specified, for successive one (1) year periods) (each, a "Renewal Service Term") unless either party notifies the other party in writing of its election to not renew such Order at least thirty (30) days prior to the then-expiring term. The Initial Service

Term and all Renewal Service Terms for a particular Order are individually and collectively referred to herein as the "Service Term."

b. Either party may terminate this Agreement or any Order immediately upon written notice to the other party (or S3 Group may, in its sole discretion, suspend the provision of Services hereunder) if the other party commits a material breach of this Agreement and fails to cure such breach within thirty (30) days after written notice of the same (other than a failure to pay any undisputed Fees or Costs invoiced hereunder, which failure must be cured within ten (10) days after S3 Group's notice to Client with respect to the same). S3 Group may also terminate this Agreement or suspend the provision of Services hereunder in the event Client commits a material breach of this Agreement that is incapable of remedy, including, without limitation Client's or its personnel's breach of any license restrictions, intellectual property ownership rights or any restrictive covenants under this Agreement.

c. In addition to the foregoing, either party may terminate this Agreement immediately upon written notice to the other party (or S3 Group may, in its sole discretion, suspend the provision of Services hereunder) if such other party: (i) is unable to pay its debts generally as they become due; (ii) is declared or otherwise becomes insolvent; (iii) is subject to a general assignment for the benefit of creditors; (iv) is subject to the appointment of a receiver for its business or assets; or (v) is subject to any proceedings under any bankruptcy or insolvency law or liquidation, voluntary or otherwise, that, if involuntary, is not dismissed within sixty (60) days of its filing.

d. S3 Group may terminate or suspend the provision of any Service, or portion thereof, if the provision of such Service, or any portion thereof, is determined to violate any applicable law or regulation or of any S3 Group license in any jurisdiction, or is no longer permitted under any of the same, or if any change in legal or regulatory provisions has a material adverse effect on S3 Group's provision or performance of the Services, as determined by S3 Group in its sole discretion. In such an event, S3 Group shall provide Client with as much notice as possible of such termination or suspension. Further, S3 Group's ability to provide the Services may be subject to various licenses or other agreements (each a "Service Agreement") between S3 Group and its third-party suppliers or strategic partners (including, without limitation, Third Party Providers). In the event of the expiration or termination of any applicable Service Agreement, S3 Group will use commercially reasonable efforts to obtain alternative suppliers in order to avoid suspension or disruption in the Services. If S3 Group is unable, for any reason, to obtain such an alternative or replacement Service Agreement, S3 Group may terminate or suspend all affected Orders upon written notice to Client without any liability to Client. S3 Group will give Client at least sixty (60) days prior written notice to Client (or, if it is not possible to give 60 days' notice, as much notice as possible under the circumstances) of the termination or expiration of a Service Agreement governing S3 Group's ability to deliver the Services. If S3 Group terminates any Order pursuant to this Section 2(d), and Client has prepaid for any Services under that Order, then S3 Group will, after applying such prepayment to all fees and charges due under the Agreement, return the unused portion of such prepayment to Client within forty-five (45) days after the date of termination.

e. Upon the effective date of termination of any Order: (i) S3 Group will immediately cease providing, and Client will immediately cease using, the Services set forth in such Order; (ii) all licenses granted hereunder with respect to the terminated Service(s) will immediately terminate (except as otherwise set forth herein or in any applicable Supplemental Terms); and (iii) any and all payment obligations of Client under this Agreement with respect to such Order(s) (including, without limitation, all charges for Services provided through the date of termination) will be due within thirty (30) days of the effective date of termination. If Client fails to pay such amounts on the date due, then S3 Group may impose interest on such overdue payments as set forth in Section 3(d). In addition to the foregoing, within thirty (30) days of termination of this Agreement as a whole, each party will return or destroy (and, upon request, certify such destruction) all Confidential Information (defined hereafter) of the other party in its possession and will not make or retain any copies of such Confidential Information, except as expressly permitted pursuant to, and in accordance with, the terms of Section 7.

f. In the event of any nonrenewal of this Agreement or any Order by S3 Group pursuant to Section 2(a) or any termination of this Agreement or any Order by Client pursuant to Sections 2(b) or (c), then upon Client's request and subject to Client's continued compliance with the terms of this Agreement, S3 Group shall provide to Client and its designee (collectively, the "Successor"), reasonable assistance to facilitate the orderly transfer of the terminating/ expiring Services to the Successor (the "Transition Assistance") for a period (the "Transition Assistance Period") of ninety (90) days from (i) the date of notice of S3 Group's nonrenewal of this Agreement or any Order pursuant to Section 2(a); or (ii) the date of

termination with respect to any termination of this Agreement or any Order by Client pursuant to Sections 2(b) or (c), as applicable. During the Transition Assistance Period, S3 Group will continue to provide the terminating/expiring Services at the then-current Fees (subject to any increases permitted pursuant to Section 3(a), below) until such time as such terminated/expired Services have been successfully transferred to the Successor or until the expiration of the Transition Assistance Period, whichever comes first. For any Transition Assistance Services requested by Client that are not within the scope of the then-current Services, S3 Group will have no obligation to provide such services unless the parties agree to execute a mutually agreeable change order describing such Services and setting forth the rates or fees applicable thereto.

g. Termination of this Agreement will terminate all then-current Orders. Except as specifically set forth in a notice of termination hereunder, termination of any Order will not serve to terminate any other Order, this Agreement as a whole or the parties' respective obligations thereunder. The definitions herein and the respective rights and obligations of the parties under Sections 2(c), 2(e)-(g), 3(a), 3(d), 5(c) and 6-10 will survive any termination or expiration of this Agreement.

### **3. Compensation.**

a. Client will pay to S3 Group all fees ("Fees") and reimbursable costs ("Costs") due for the Services according to the prices and terms listed in the Orders. S3 Group may modify any Fees set forth in an Order with respect to any proposed Renewal Service Term upon at least sixty (60) days prior written notice.

b. Upon execution of an Order, Client will remit payment in full for the amount equal to the initial implementation and other initial subscription fees (collectively, the "Initial Fees") for the Services set forth on such Order within at ten (10) days after the effective date of such Order. Thereafter, Client will be invoiced for any other Fees or Costs on a monthly basis or as otherwise set forth in the Order. Invoices for recurring, usage or per transaction Fees may be generated automatically through technical means integrated with the Services. Client will not take or fail to take any action that would impair, disable, interfere with or frustrate such technical means, and Client will reasonably cooperate with S3 Group to make available all information necessary for S3 Group's billing purposes. Except as otherwise set forth in an Order, invoices for any undisputed Fees or Costs (other than the Initial Fees) are due and payable within thirty (30) days from the date of such invoice.

c. Client must notify S3 Group, in writing, of any disputed invoiced amounts prior to the applicable due date; failure to provide written notice of such dispute within such period constitutes a waiver by Client of such dispute. All invoice disputes must be made in good faith, and Client must pay the undisputed portion paid in full as described in the applicable Order. Any disputed amounts resolved in favor of Client will be credited to Client's account on Client's next invoice.

d. Any Fees or Costs not paid when due will accrue interest at a rate equal to the lesser of: (i) one and one-half percent (1.5%) per month; or (ii) the highest rate allowed by law. In addition to the foregoing and without prejudice to S3 Group' other rights and remedies under this Agreement, at law or equity, if Client is delinquent in its payments, S3 Group may, at S3 Group' sole discretion do any one or more of the following: (x) terminate the applicable Order or the Agreement as described in Section 2(b), above; (y) in whole or in part suspend providing Services (or any of them) to Client until payment in full has been made; or (z) require other assurances to secure Client's payment obligations hereunder. In the event that any delinquent amount is referred to an agency or attorney for collection, Client agrees to pay all costs of collection, including, without limitation any collection agency, court costs and attorneys' fees.

e. All Fees and Costs charged by S3 Group with respect to the Services are exclusive of taxes, VAT and similar fees now in force or enacted in the future imposed on the transaction, all of which Client will be responsible for, except for taxes based on S3 Group's net income.

### **4. Client Responsibilities; Client Data.**

a. Client will designate one or more representatives (each, a "Client Manager") who will have overall responsibility for managing and coordinating Client's obligations hereunder and who has the authority to act for and bind Client in connection with the Services; Client may change or substitute any Client Manager from time to time upon ten (10)

days prior written notice to S3 Group. The Client Manager(s) will serve as S3 Group 's initial point of contact for the resolution of issues in connection herewith, must be available to S3 Group during the Term and have authority to schedule performance of the Services and address any issues that may arise.

b. In addition to any Client obligations set out in any Supplemental Terms, Client will provide S3 Group, in a timely manner, with all data and information reasonably necessary for S3 Group to perform the Services, including, without limitation, information and data reasonably necessary for S3 Group to perform the Services (including, without limitation, all Client Data, as defined below) and access to personnel of Client who are knowledgeable regarding the implementation desired by Client and to Client facilities and computer systems (the "Client System") as reasonably necessary. Client will inform S3 Group in writing and in advance of any security and access standards or requirements with respect to Client's facilities or the Client System. As used herein, the term "Client Data" means (i) information or data created or otherwise owned by Client, or provided by or on behalf of Client, and transmitted to, stored on or processed by any software, systems or network of S3 Group (including the Hosted Services), including, without limitation, all access credentials necessary to enable S3 Group to access the Client's systems or Client's instance of any Third Party Products with respect to which the Services are provided and, if applicable, submit and retrieve Client Data from such Third Party Products; or (ii) information or data output generated by the Services that is based on information or data supplied by the Client and is specific to Client or its customers (but excluding any S3 Group IP included in or associated with such output). Client will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to its Client Data and all legally protectable elements thereof.

c. Client hereby (i) grants S3 Group and its service providers (including, without limitation, S3 Group's affiliates) the right to process, distribute, transmit, use, copy, modify, manipulate and create derivative works of such Client Data as necessary in order to perform the Services and as otherwise set forth in the Privacy Policy; (ii) agrees to secure rights in the Client Data necessary for Client to grant S3 Group the rights under this Section 4(c) without violating the rights of any third party, or otherwise obligating S3 Group to Client or any third party (except as otherwise set out in this Agreement), and will comply with any reasonable specifications of S3 Group with respect to the content of such consents; and (iii) will not intentionally transmit, and will use commercially reasonable efforts to prevent the transmission of, any Trojan horse, malicious code, or other computer software code, routines or device designed to disable, damage, impair, erase or deactivate any data via the Client's network or system to S3 Group's networks or systems. Unless otherwise agreed to by the parties in a separate writing, Client agrees that S3 Group may, in its sole discretion, determine the means of processing Client Data in accordance with the Privacy Policy.

d. S3 Group agrees to implement reasonable and appropriate technical and organizational measures designed to secure the Client Data against accidental or unlawful loss, access, or disclosure and will otherwise comply with its Privacy Policy in the processing and handling of Client Data subject thereto. Client agrees that the foregoing obligations in this Section 4(d) are (i) S3 Group's only responsibility with respect to the security and handling of Client Data, except as otherwise required by law directly applicable to S3 Group's activities as a data processor under this Agreement or as otherwise may be expressly agreed to by S3 Group in writing; and (ii) in lieu of, and not in addition to, the confidentiality terms of Section 7, below. Client expressly agrees that S3 Group may transmit or disclose Client Data to (x) any Third Party Products and systems on which such Third Party Products are maintained, to the extent included in the scope, features or functionality of the Services; and (y) other third parties in accordance with Client's or its personnel's directions (whether via the Services or otherwise).

e. Client acknowledges that if it fails to provide assistance and perform or fulfill its obligations in accordance with this Agreement, S3 Group's ability to provide the Services and meet the schedule set forth in the applicable Order may be adversely affected. If any delays in the Services occur as a result of any incorrect information, incorrect assumption or failure of Client to perform or fulfill its obligations in connection with any Order, the performance schedule for the applicable project may be extended. S3 Group will have no liability or responsibility for any costs or expenses resulting from such delays.

## **5. Limited Warranties; Disclaimer.**

a. Specific warranties with respect to the Services are provided in the applicable Supplemental Terms. Each party acknowledges that S3 Group's ability to provide the Services is predicated on the Third Party Provider not making material changes to the features, functionality or API relating to any applicable Third Party Products from and after the initial implementation of the Services, and S3 Group shall not be responsible for any failure of the Services caused by any such changes. If S3 Group becomes aware that a Third Party Provider has made such a change that adversely affects S3 Group's ability to provide the Services to Client, S3 Group will notify Client of the nature of such change and the effect it will have on S3 Group's ability to provide the Services with respect to such Third Party Software. Unless otherwise agreed to by Client and S3 Group in an Order or change order (or included in the scope of the Services in such Order), S3 Group will not have any obligation to make any changes to the Services, or provide any additional Professional Services, necessitated by a Third Party Provider change described in this Section 5(a), and the foregoing limitation will apply to any Service-specific warranties set forth in the applicable Supplemental Terms.

b. Client represents and warrants that (i) Client has the full right, power and authority to grant the rights granted herein and to provide S3 Group with the Client Data; (ii) neither S3 Group's access to or use of the Client Data will give rise to any action or claim by a third party or cause Client to breach any of its agreements or understandings in relation to the Client Data, including without limitation any terms of use or similar agreements with respect to Third Party Products; (iii) the Client Data will not contain any information of a third party that Client does not have the right to provide; and (iv) the performance of its obligations and use of the Services by Client will not violate any applicable laws. The foregoing representations and warranties will be automatically reaffirmed each time it submits Client Data to S3 Group and each time Client uses the Services.

c. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5 OR IN ANY SUPPLEMENTAL TERMS, THE SERVICES AND ALL OUTPUT OR RESULTS THEREOF ARE PROVIDED "AS IS," AND S3 GROUP AND ITS SUPPLIERS DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, S3 GROUP DOES NOT WARRANT OR GUARANTEE THAT THE SERVICES OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED OR ERROR-FREE. AS BETWEEN THE PARTIES, CLIENT WILL BE SOLELY RESPONSIBLE FOR ENSURING THE ACCURACY, TIMELINESS AND LEGALITY OF ALL DATA OR MATERIALS SUBMITTED BY OR USED BY CLIENT OR ITS PERSONNEL IN CONNECTION WITH THE SERVICES.

## **1. Indemnification and Insurance.**

a. To the maximum extent permitted by law, Client agrees to indemnify, defend and hold S3 Group, its affiliates and their respective directors, officers, employees, agents, successors and assigns (harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees and costs) paid or payable to a third party (collectively, "Losses") resulting from any claim, suit, action or proceeding (each an "Action") brought by any third party (including, without limitation, any employee or agent of Client) against such indemnified party(-ies) arising out of or relating to (i) Client's breach of its representations and warranties in this Agreement (including any representations or warranties set forth in any Supplemental Terms) or obligations under Section 4(c)(ii); (ii) Client's activities or relationship with the Third-Party Provider (including, without limitation, violation of the terms of use or agreement with the applicable Third Party Provider relating to the same, or any dispute with a Third Party Provider) or Client's use or misuse of any Third-Party Products; (iii) any actual or alleged violations of another party's intellectual property rights, including, without limitation, trade secrets, copyrights, trademarks, patents or other proprietary rights caused by the Client Data; or (iv) Client's gross negligence or willful misconduct. Client will indemnify, defend, and hold S3 Group harmless from and against any and all Losses resulting from any Action brought by any third party (including, without limitation, any Third-Party Provider, or End User) against S3 Group arising out of or relating to (i).

b. To the maximum extent permitted by law, S3 Group agrees to indemnify, defend and hold Client harmless from and against any and all Losses resulting from any Action brought by any third party against Client and arising out of or relating to (i) any allegation that the Services themselves (exclusive of any Third Party Products or materials or information provided by Client, including, without limitation, any Client Data) violate any U.S. patent, copyright, trademark or trade secret right of a third party; or (ii) S3 Group's gross negligence or willful misconduct. If the Services become, or in S3 Group's reasonable opinion is/are likely to become, the subject of an infringement claim, S3 Group may, at its sole option and

expense: (x) procure for Client the right to continue using the Services, (y) replace or modify the Services so that they become non-infringing, or (z) if neither (x) nor (y) is, in S3 Group's sole discretion, commercially reasonable, then S3 Group may terminate the Agreement and return a portion of any pre-paid Fees paid to S3 Group that are attributable to the period of time after termination. Notwithstanding the foregoing, S3 Group will have no obligation under this Section or otherwise with respect to any indemnification claim to the extent caused by (1) any use of the Services not in accordance with this Agreement, (2) Client's failure to comply with specifications or requirements supplied by S3 Group, (3) the combination or use of the Services in combination with any other hardware or software not supplied by S3 Group (including, without limitation, any Third Party Products); or (4) any modification of the Services by any person other than S3 Group or a party acting on behalf of S3 Group. THIS SECTION STATES S3 GROUP'S ENTIRE LIABILITY AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT CLAIMS AND ACTIONS.

c. Each indemnifying party's indemnification obligation hereunder shall be subject to (i) receiving prompt written notice of the existence of any Action from the indemnified party (provided, however, that the failure to provide prompt notice will not relieve the indemnifying party of its obligations hereunder, except to the extent such failure actually prejudices the indemnifying party); (ii) being able to, at its option, control the defense of such Action (provided, however, that the indemnifying party may not settle any Action without the consent of the indemnified party, which shall not be unreasonably withheld, conditioned or delayed); (iii) permitting the indemnified party, at the indemnified party's sole option and expense, to participate in the defense of any Action; and (iv) receiving full cooperation of the indemnified party, at the indemnifying party's expense, in the defense of such Action.

d. During the Term of this Agreement and for two (2) years thereafter, each party shall carry (i) commercial general liability insurance (including, without limitation, premises-operations, broad-form property damage, products and completed operations, contractual liability, errors & omissions, independent contractors and personal and advertising injury) with a minimum combined single limit for each occurrence of at least One Million Dollars (\$1,000,000.00); (ii) workers' compensation and employer's liability insurance as required by law; (iii) errors and omission insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence covering such party, its employees and its sub-contractors and agents; and (iv) umbrella liability insurance with a limit of not less than Five Million Dollars (\$5,000,000). Each party will be responsible for paying any deductible or retention under its policies. All liability policies shall be written on a primary and non-contributory basis. Upon request, a party shall furnish the other party certificates of insurance evidencing its compliance with this Section 6(d).

## **7. Confidential Information; Intellectual Property Rights.**

a. "Confidential Information" includes any and all proprietary and confidential data or information of a party disclosing information hereunder or any of its affiliates that is of tangible or intangible value to the disclosing party or its affiliates and is not public information or is not generally known or available to the disclosing party's competitors but is known only to the disclosing party and its employees, independent contractors or agents to whom it must be confided in order to apply it to the uses intended, but does not include data or information that is available to the public or in the public domain at the time of such disclosure without breach of this Agreement or other applicable law or that has been independently developed and disclosed by others not subject to an obligation of confidentiality.

b. "S3 Group IP" means and refers to (i) S3 Group's proprietary technology, software, software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by S3 Group or licensed to S3 Group from a third party), and any derivatives, improvements, enhancements or extensions of the foregoing, that are created, owned or licensed by S3 Group and provided to or used by Client under this Agreement; (ii) any comments, suggestions, or feedback in any form, provided by Client or its users with respect to the Services (collectively, "Feedback"); or (iii) other S3 Group information, materials, technology, specifications, or trademarks, whether electronic or "hard copy" or in any form or media whatsoever, including but not limited to any proprietary and confidential business information or trade secrets of S3 Group and/or any of its affiliates (including modifications, changes and derivatives thereto), provided to Client by S3 Group in connection with the Services that are generally and routinely provided to customers of S3 Group in the regular course of S3 Group's business (or are otherwise of a similar nature and purpose) and are not generated from, derived from or developed using any Client Confidential Information.

c. "Third Party Provider IP" means and refers to (i) the applicable Third Party Provider's proprietary technology or software, software tools, hardware designs, algorithms, user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, trade secrets and any related intellectual property rights throughout the world (whether owned by such Third Party Provider or licensed to such Third Party Provider from a third party), and any derivatives, improvements, enhancements or extensions of the foregoing, that are created, owned or licensed by such Third Party Provider and provided to or used by Client under this Agreement; or (ii) other such Third Party Provider information, materials, technology, specifications, or trademarks, whether electronic or "hard copy" or in any form or media whatsoever, including but not limited to any proprietary and confidential business information or trade secrets of such Third Party Provider and/or any of its affiliates (including modifications, changes and derivatives thereto), provided to Client by S3 Group in connection with the Services.

d. Each party agrees that any Confidential Information received by such party (the "recipient") from the other party (as the "disclosing party") will not, without the disclosing party's authorization, be disclosed to any other party or used by the receiving party except as contemplated by this Agreement. The recipient will (i) protect the confidentiality of the Confidential Information using at least the same measures it takes to protect its own confidential information, but not less than reasonable care; (ii) restrict access to Confidential Information to personnel of the recipient (and with respect to S3 Group, any subcontractor of S3 Group) on a need to know basis for the purposes of this Agreement; and (iii) not disclose Confidential Information to any third party, except as necessary to carry out the purposes of this Agreement or as required by judicial or governmental action (provided, however, that in the event of such action, the recipient will promptly notify the disclosing party of such action). Assuming the definition set forth above is met, Confidential Information includes, without limitation, (x) information with respect to the operations, customers, customer lists, marketing strategy and services of a party disclosing such information and its affiliates; and (y) with respect to S3 Group and as between the parties, all non-public information regarding the S3 Group IP or Third Party IP. Client agrees that it will not provide S3 Group with any information that constitutes a trade secret under applicable law without first obtaining S3 Group's prior written consent regarding the same.

e. Confidential Information will be returned or destroyed (at the receiving party's option) upon the earlier of: (i) thirty (30) days after the termination or expiration of this Agreement; or (ii) the disclosing party's written request, which destruction will include without limitation the complete erasure of any electronic file, folder, database or other electronic repository from all computer processing units on which the Confidential Information had been placed or stored; provided, however, that S3 Group may retain, subject to the obligations of this Section 7, copies of Confidential Information solely for legal, archival and recordkeeping purposes.

f. Additional terms relating to the license or assignment of any intellectual property rights relating to or in connection with the Services may be set forth in the applicable Supplemental Terms. S3 Group and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to (i) the Services and all legally protectable elements or derivative works thereof, including, without limitation, the S3 Group IP; and (ii) any aggregated and anonymized data derived from the Client Data or otherwise collected by S3 Group in connection with its performance of the Services, and Client hereby assigns any rights, title and interest it may have in any of the foregoing to S3 Group. The applicable Third Party Provider and its licensors will retain all right, title, and interest (including copyright and other intellectual property rights or informational rights) in and to Third Party Products and all legally protectable elements or derivative works thereof, including, without limitation, its Third Party IP. Except as specifically set forth in this Agreement (including any applicable Supplemental Terms), Client does not obtain any rights in the Services, the products thereof, the S3 Group IP or the Third Party IP pursuant to this Agreement. Notwithstanding anything to the contrary in this Agreement, S3 Group will not be prohibited or enjoined at any time by Client or any user from utilizing any skills, knowledge or information of a general nature acquired during the course of providing the Services, including, without limitation, knowledge or information publicly known or available or that could reasonably be acquired in similar work performed for another client of S3 Group.

g. The parties acknowledge the confidentiality of the terms of this Agreement and agree not to divulge to any third party the specific terms, fee agreements, and conditions herein contained, except as required by law.

## 8. **Limitation of Liability.**

a. IN NO EVENT WILL EITHER PARTY'S LIABILITY (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE) CONCERNING PERFORMANCE OR NON-PERFORMANCE OR OTHERWISE RELATED TO THIS AGREEMENT EXCEED, IN THE AGGREGATE, DIRECT AND ACTUAL DAMAGES, IN AN AMOUNT THAT EXCEEDS THE TOTAL FEES PAID OR PAYABLE (WHICHEVER IS GREATER) TO S3 GROUP UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. FURTHER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE HEREUNDER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES OR EXPENSES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR OTHER ECONOMIC LOSS, LOST REIMBURSEMENTS, LOST DATA, OR LOST SAVINGS), REGARDLESS OF THE FORM OF CLAIM OR ACTION, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF THE OCCURRENCE OF SUCH DAMAGES. NOTWITHSTANDING ANY TERM TO THE CONTRARY CONTAINED HEREIN, THE FOREGOING LIMITATIONS SHALL NOT APPLY TO (I) A PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (II) EITHER PARTY'S LIABILITY FOR LOSSES PURSUANT TO ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 6; OR (III) CLIENT'S LIABILITY FOR DAMAGES ARISING FROM A BREACH OF ANY LICENSE GRANTED UNDER THIS AGREEMENT.

b. THE PARTIES ACKNOWLEDGE THAT S3 GROUP HAS SET ITS PRICES AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT WILL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**9. Nonsolicitation of Employees.** During the term of this Agreement and for a period of one (1) year thereafter, each party agrees not to solicit, divert, or recruit (or attempt to solicit, divert or recruit, or encourage or assist any third party to do so) any employee of the other party with whom the soliciting party had material contact during the term of this Agreement; provided, however, that the foregoing shall not apply to advertisements or solicitations of general solicitation.

**10. General.**

a. The parties agree that S3 Group's relationship with Client is that of an independent contractor and nothing in this Agreement will be construed as creating a partnership, joint venture, pooling arrangement, partnership, employer-employee relationship, or formal business organization of any kind, and the rights and obligations of the parties will be only those expressly set forth herein. Neither party will have authority to bind the other except to the extent expressly authorized herein.

b. If at any time during the Term, there arises a claim, issue or disagreement about the substance or performance of this Agreement or any term or condition hereof (collectively, a "Dispute"), the disputing party shall notify the other party in writing of such Dispute (including a description of the subject matter of the Dispute) pursuant to the processes set forth in this Section 10(b). Prior to commencing any lawsuit or other proceeding, the parties shall attempt to negotiate in good faith an amicable business resolution of the Dispute. If the parties cannot resolve such Dispute within twenty (20) business days after the receipt of the notice of Dispute by the receiving party, either party may pursue any and all remedies available at law or in equity. This Section 10(b) provision shall not prevent either party from seeking immediate injunctive or other equitable relief pursuant to Section 10(d), below.

c. This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, without regard to the conflict of laws provisions thereof. Subject to the terms of Section 10(b), the parties hereby submit to the personal and subject matter jurisdiction of the state, superior or federal courts having jurisdiction over Gwinnett County, Georgia, which will be the exclusive venue for any such dispute. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO EACH HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER.

d. The parties to this Agreement acknowledge that any breach of Sections 7 or 9, or any license grant or restrictions on use in the applicable Supplemental Terms, may result in irrevocable harm to the other party and that the remedies at law for such breach may not adequately compensate the non-breaching party for damages suffered. Accordingly, the parties agree that in the event of such breach, the non-breaching party will be entitled to seek injunctive



relief or such other equitable remedy as a court of competent jurisdiction may provide, without the requirement that the non-breaching party prove actual damages or post a bond or other security. Except as otherwise specifically set forth herein, nothing contained herein will be construed to limit the non-breaching party's right to any remedies at law, including the recovery of damages for breach of this Agreement.

e. Except for the Indemnitees described in Section 6, there are no third-party beneficiaries to this Agreement. Client may not transfer or assign this Agreement or any of its obligations or rights hereunder without S3 Group's prior written consent. Any attempted assignment, transfer or other disposition by Client in violation of this provision will be null, void and of no force and effect.

f. S3 GROUP RESERVES THE RIGHT TO CHANGE THESE GENERAL TERMS, ANY SUPPLEMENTAL TERMS OR THE PRIVACY POLICY AT ANY TIME BY POSTING REVISED VERSIONS OF THE SAME AT THE APPLICABLE URL(S) SET FORTH IN THIS AGREEMENT OR BY SENDING AN EMAIL TO THE CLIENT MANAGER. THE CHANGES WILL BE EFFECTIVE UPON THE (I) EXECUTION OF A NEW ORDER AT LEAST 5 DAYS AFTER THE DATE OF SUCH POSTING OR EMAIL OR (II) ANY RENEWAL OF AN EXISTING ORDER AT LEAST 35 DAYS AFTER THE DATE OF SUCH POSTING OR EMAIL. CLIENT'S USE OR CONTINUED USE OF THE SERVICES FOLLOWING SUCH NEW ORDER OR RENEWAL WILL CONSTITUTE CLIENT'S ACCEPTANCE OF THE CHANGED TERMS OR POLICIES. Except for amendments to the General Terms, Supplemental Terms or Privacy Policy as set forth in the immediately foregoing sentence, this Agreement (including, without limitation, any Order) may only be amended in writing by the mutual consent of the parties. No waiver of any provision hereof or of any right or remedy hereunder shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. No delay in exercising, no course of dealing with respect to, or no partial exercise of any right or remedy hereunder shall constitute a waiver of any other right or remedy, or future exercise thereof. If any provision of this Agreement is determined to be invalid under any applicable law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable. Time is of the essence with respect to each provision of this Agreement.

g. Any notice or other communication under this Agreement will be in writing and will be effective upon: (i) three (3) business days following deposit into the United States mail (certified mail, return receipt requested), (ii) the next business day following deposit with a nationally recognized overnight courier service, or (iii) the day of transmission of e-mail during regular business hours (or if outside of business hours, on the next business day), with either receipt of such email confirmed by non-automated reply or a copy promptly sent via first class mail. All notices to S3 Group shall be directed to 4124 Chattahoochee Trace Suite #104, Duluth GA, 30097, Attn: Legal Department, Email: legal@s3groupinc.com. All notices to Client will be sent to the address as set forth on the MSA execution page. General information regarding the Hosted Services (such as scheduled maintenance or other similar information) may also be provided by posting on the Hosted Services only. Upon account setup of any hosted Services provided under this Agreement, Client may designate additional contacts for various types of notices. S3 Group recommends that the main contact and billing contact email addresses be group addresses (such as billing@client.com) so that notices are reviewed promptly and not delayed due to the absence of one individual. In addition, S3 Group may rely and act on all information, authorizations and instructions provided to S3 Group from the above-specified e-mail address and Client administrators. Either party may change its notice address by writing notice as described in this Section 10(g).

h. Client agrees that S3 Group may use its name, trademark, service mark, trade name, logo or other commercial or product designations exclusively for the purposes of identifying Client as a client; provided, however, that S3 Group will not issue a press release or create a case study pertaining to Client's use of the S3 Group Service without receiving prior written consent of Client.

i. Any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused (except, however, for the obligations of Client to pay Fees or Costs as provided herein) to the extent caused by any occurrence beyond the reasonable control of such party including, but not limited to, acts of God, fire, flood, explosion, epidemic, pandemic, governmental action, national emergency, wars, terrorism, riots, civil disturbances and strikes, power outages, or failures of the Internet (a "Force Majeure Event") provided that the party affected by the Force Majeure Event uses reasonable efforts to mitigate the effects of such event and to resume performance as soon as practicable after such event has abated.

j. Should any provision of this Agreement require judicial interpretation, the parties agree that the court interpreting or construing the same shall not apply a presumption that this Agreement shall be more strictly construed against one party than the other.

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