

## MASTER SERVICES AGREEMENT

This Master Services Agreement (this "**MSA**") is between NETdepot.com, LLC, ("**NETdepot**") located at 2626 Spring Cypress Road, Spring Texas 77388, and the customer ordering the Services ("**Customer**") pursuant to a Customer Success Order. NETdepot and Customer are referred to herein each as a "**party**" and together as the "**parties**".

**1. DEFINED TERMS.** The defined terms in Schedule 1 to this MSA shall apply to the Agreement.

### **2. SERVICES.**

**2.1.** NETdepot shall provide the Services per the Agreement and all laws applicable to NETdepot. NETdepot shall have no obligation to provide Services to Customer in the event Customer does not meet NETdepot supportable requirements. Customer remains liable for the acts and omissions of Customer's end users. Unless otherwise expressly authorized by NETdepot in writing, Customer may not sell, resell, lease, or provide the Services as a service.

**2.2.** Customer may use the Services for commercial purposes only and may not use the Services in any situation where the Services or Customer's Environment's failure or fault could lead to death or serious bodily injury of any person or physical or environmental damage.

### **3. CUSTOMER OBLIGATIONS.**

**3.1.** For Services where NETdepot's access to Customer's Environment is necessary to perform the Services and/or to calculate any Fees based on usage of the environment (other than in respect of Managed Infrastructure), Customer shall grant NETdepot a reasonable method to access Customer's Environment and Customer shall cooperate with NETdepot's appropriate investigation of outages, security problems, and any suspected breach of the Agreement. Customer is responsible for keeping its account permissions, billing, and other account information current. Customer agrees that its use of any Managed Service shall comply with the Acceptable Use Policy (AUP). Customer is responsible for determining the suitability of the Services and Customer's compliance with any applicable laws, including export laws and data privacy laws, rules, and regulations.

**3.2.** NETdepot shall provide support only to individuals (account holders) designated as Account Owner, Administrator, Billing Contact, PPOC (Primary Point of Contact) or PTPOC (Primary Technical Point of Contact) in the NETdepot Nexus portal and is not required to provide any support directly to Customer's end users, unless contracted and explicit SLOs are agreed upon. Customer shall cooperate with and assist NETdepot to the extent necessary in the provision of the Service(s), including without limitation the provision of reasonable access to Customer's facilities and equipment to the extent reasonably necessary for NETdepot's performance hereunder. Customer will designate and make available to NETdepot at least one qualified agent of Customer who shall (i) have authority to act on behalf of Customer, (ii) manage all activities which are Customer's obligations hereunder, (iii) provide information and data concerning Customer's operations and activities, (iv) advise NETdepot of Customer's requirements, (v) provide access to Customer's facilities at all reasonable times during the performance of the Service(s) required pursuant to this Agreement, and (vi) provide appropriate access to work space for NETdepot at Customer's premises.

**3.3.** Customer is responsible for ensuring the integrity and security of Customer Data and for regularly backing up and validating the integrity of backups of Customer Data on an environment separate from Customer's Environment. NETdepot shall only back up Customer Data to the extent explicitly stated on a Customer Success Order.

**4. SECURITY.** NETdepot shall provide the Services per the Security and Privacy Practices and any additional security specifications identified in the Customer Success Order or Service Descriptions. Customer shall use reasonable security measures, and precautions in connection with its use of the Services, including appropriately securing and encrypting in transit and at rest Sensitive Data stored on or transmitted using Customer's Environment; and shall take appropriate measures to otherwise prevent access to Sensitive Data by NETdepot where NETdepot's

access to the premises, systems or networks managed or operated by Customer may result in its exposure. Customer Data is and always shall remain Customer's exclusive property. NETdepot shall not use or disclose Customer Data except as materially required to perform the Services or as required by law, rule, regulation, or legal process.

## 5. INTELLECTUAL PROPERTY.

**5.1. Pre-Existing.** Each party shall retain exclusive ownership of Intellectual Property created, authored, or invented by it before the Services' commencement. If Customer provides NETdepot with its Customer IP, Customer as a result of this grants to NETdepot, during the term of the applicable Customer Success Order, a limited, worldwide, non-exclusive, non-transferable, royalty-free, right and license to access and use Customer IP solely to provide the Services. Customer represents and warrants that Customer has all rights in Customer IP necessary to grant this license and that NETdepot's use of Customer IP shall not infringe on the Intellectual Property rights of any third party.

**5.2. Proprietary Rights; Deliverables.** Unless otherwise explicitly stated in the applicable Customer Success Order, and excluding any Customer IP, as between the parties, NETdepot shall own all right, title, and interest in and to the Intellectual Property created by or on behalf of NETdepot in providing the Services or otherwise contained in the Deliverables. Subject to Customer's compliance with the terms of the Agreement, NETdepot grants to Customer a limited, worldwide, non-exclusive, non-transferable, royalty-free right and license (without the right to sublicense) to use:

**(A)** Any Intellectual Property provided by NETdepot to Customer as part of the Services (excluding Third Party Software, Open-Source Software, and Deliverables) solely for Customer's internal use and as necessary for Customer to enjoy the benefit of the Services during the term of the applicable Customer Success Order; and

**(B)** Any Intellectual Property provided by NETdepot to Customer as part of the Deliverables (excluding Third Party Software and Open Source Software) solely for Customer's internal use in perpetuity.

**5.3. Open Source.** In the event, NETdepot distributes or otherwise provides for Customer use any Open Source Software to Customer as part of the Services and/or Deliverables. Such Open Source Software is subject to the terms of the applicable open source license(s). To the extent there is a conflict between this MSA and the terms of the appropriate open-source license(s), the open-source license(s) shall control.

**5.4. Third Party Software.** NETdepot may provide Third Party Software for Customer's use as part of the Services and/or Deliverables or to assist the Services' delivery. Unless otherwise permitted by the terms of the applicable license, Customer may not: (i) assign, grant, or transfer any interest in Third Party Services or 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 that are contained in or on the Third Party Software or Open Source Software; or (iv) exercise any of the reserved Intellectual Property rights provided under the laws governing the Agreement. Customer may only use Third Party Services and Third-Party Software supplied for its use as part of the Services (identified on the Customer Success Order) on that portion of Customer's Environment for which it was initially provided, subject to any additional restrictions specified in the Service Descriptions or Customer Success Order. Customer shall not be permitted to access any Third-Party Software that NETdepot installs solely to assist NETdepot's services delivery. Upon termination of the Customer Success Order, Customer shall remove any Third-Party Software installed by NETdepot or its Representatives on Customer's Environment. NETdepot makes no representation or warranty regarding Third Party Services, Open Source Software, or Third Party Software except that NETdepot has the right to use or provide the Third-Party Services, Open Source Software, or Third Party Software.

**5.5. Customer Provided Licenses.** If Customer uses any non-NETdepot provided software on or in conjunction with Customer's Environment, Customer represents and warrants to NETdepot that Customer has the legal right to use such software. If NETdepot has agreed to install, patch, or otherwise manage software in reliance on Customer's license with a vendor, Customer represents and warrants that it has a written license agreement with the vendor of such software that permits NETdepot to perform such activities as are necessary to perform the Services for Customer. NETdepot's obligation to install, patch, or otherwise manage Customer-provided software provided by Customer is strictly contingent on Customer maintaining original software vendor support or similar authorized support that provides a services request escalation path, access to patching, and software upgrades, as

applicable. On NETdepot's request, Customer shall certify in writing that Customer complies with this Section's requirements and any other software license restrictions that are part of the Agreement and shall provide evidence of Customer's compliance as NETdepot may reasonably request. If Customer fails to provide the required proof of licensing to NETdepot and continues to use such software, NETdepot may: (i) charge Customer its standard fee for the use of the software in reliance on NETdepot's licensing Agreement with the vendor until the required evidence is provided, or (ii) suspend or terminate the applicable Services.

**5.6. Infringement.** If the delivery of the Services or provision of Deliverables infringes the Intellectual Property of a third party and NETdepot determines that it is not reasonably or commercially practicable to obtain the right to use the infringing element or modify the Services or Deliverables such that they do not infringe, then NETdepot may terminate the infringing Services and/or Deliverables and shall not have any liability on account of such termination except to refund amounts paid for unused Services (prorated as to portions of the Services and/or Deliverables deemed infringing).

## **6. FEES.**

**6.1. Fees.** Customer shall pay the Fees due within fifteen (15) days from the invoice date. NETdepot bills in advance for Services to be provided during the upcoming month, except for charges that are dependent upon usage of Service, which are billed in arrears. If Customer has arranged for payment by credit card or automated clearing house, NETdepot may charge Customer's card or account on or after the invoice date. If Customer's undisputed payment is overdue by fifteen (15) days or more, NETdepot may immediately suspend the associated Services and any other services Customer receives from NETdepot on written notice. NETdepot shall undertake collection efforts prior to suspension. Invoices that are not disputed within fourteen (14) days of the invoice date are conclusively deemed to be accepted as accurate by Customer. Customer shall pay the Fees in the currency identified on the Customer Success Order, and, except as expressly permitted in Section 6.3, without setoff, counterclaim, deduction, or withholding. NETdepot may charge interest on overdue amounts at the lesser of one and one-half percent (1.5%) per month or the maximum legal rate and may charge Customer for any cost or expense arising out of NETdepot's collection efforts.

### **6.2. Fee Increases.**

**(A) NETdepot Fee Increases.** Unless stated to the contrary in the Agreement and subject to Sections 6.2(B) and 6.2(C), there will be no Fee increases during the Initial Term or during any Renewal Term. However, NETdepot may increase Fees following expiration of the Initial Term, any Renewal Term, or during any Auto-Renewal Term on giving at least thirty (30) days' advance written notice. Notwithstanding the foregoing, power shall be on a one (1) year term and shall adhere to the then published rates – failure by NETdepot to adjust a power price at the renewal of the term shall not negate its ability to adjust the price at any time - one time – during the subsequent renewal term of the Customer Success Order.

**(B) Third Party Fee Increases.** In the event of a Third Party Fee Increase, NETdepot may increase Customer's Fees by the same percentage amount on giving at least ten (10) days' advance written notice.

**(C) Holdover Rates.** If Customer continues to use any Services following termination of the Agreement or applicable Customer Success Order, Customer shall be responsible for payment of such Services at NETdepot's then-current market rates, as such rates may be updated by NETdepot from time to time.

**6.3. Taxes.** All amounts due to NETdepot under the Agreement are exclusive of Taxes. Customer shall pay NETdepot any Taxes that are due or provide NETdepot with satisfactory evidence of Customer's exemption from the Tax(es) in advance of invoicing. Customer shall provide NETdepot with accurate and adequate documentation sufficient to permit NETdepot to determine if any Taxes are due. All payments to NETdepot shall be made without any withholding or deduction for any taxes except for Local Withholding Taxes. Customer agrees to timely provide NETdepot with accurate factual information and documentation of Customer's payment of any such Local Withholding Taxes. NETdepot shall remit such cost to Customer in the form of a credit on Customer's outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes.

**6.4. Reimbursement for Expenses.** Unless otherwise agreed in the Customer Success Order, if any of the Services are performed at Customer's premises, Customer agrees to reimburse NETdepot for the actual

substantiated out-of-pocket expenses of its Representatives in performing such Services.

## **7. WARRANTIES AND DISCLAIMERS.**

**7.1. Mutual Warranties.** Each party warrants to the other that (i) it has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder and (ii) the performance of its obligations and duties hereunder do not and will not violate any agreement by which it is bound.

**7.2. NETdepot Warranties.** NETdepot represents and warrants that it shall perform the Services in a workmanlike and professional manner and that the Services will comply with performance standards established in the applicable Customer Success Order. NETdepot's sole obligation, and Customer's sole remedy, for any breach of the foregoing warranty shall be that NETdepot shall, at NETdepot's option and as applicable, use commercially reasonable efforts to re-perform, repair or replace the relevant Services.

**7.3. Services.** NETdepot makes no commitment to provide any services other than the Services stated in a Customer Success Order. NETdepot is not responsible to Customer or any third party for unauthorized access to, use, disclosure of, or processing of Customer Data, including, without limitation, Sensitive Data, or for unauthorized use of the Services. To the maximum extent permitted by law, NETdepot disclaims all responsibility for any situation where the security, availability, or stability of the Services is compromised by: (i) actions of Customer or any end user; (ii) software provided by Customer, or (iii) any actions taken by NETdepot which are requested by Customer, (iv) third party threat actors.

**7.4. Unsupported Services.** NETdepot may designate certain Services as Unsupported Services. NETdepot makes no representation or warranty with respect to Unsupported Applications Service or technology except that it shall use reasonable efforts as may be expected of technicians having generalized knowledge and training in managed infrastructure. NETdepot shall not be liable to Customer for any loss or damage arising from the provision of Unsupported Systems or Services and SLA(s) shall not apply to Unsupported Services, or any other aspect of Customer's Environment that is adversely affected by Unsupported Systems or service. If Customer uses any Test Services, then Customer's use of those Proof of Value (POV) is subject POV terms. At Customer's request, NETdepot may provide services that are not required by the Agreement. Any such services shall be provided AS-IS with no warranty whatsoever.

**7.5. Customer Warranties.** Customer hereby covenants, represents and warrants that Customer will not, and will not permit others to, use any Service(s) (i) for any unlawful or illegal purpose or in connection with or in furtherance of any unlawful or illegal activity, (ii) in violation of any applicable law or regulation, (iii) in a manner that will, or is likely to, infringe the copyright, trademark, trade secret or other intellectual property rights of others or violate the right of privacy, publicity or other personal rights of others, (iv) in connection with any conduct or activity that is, in the sole opinion of NETdepot, defamatory, indecent, obscene, offensive, threatening, abusive, hateful, tortuous or violate of the rights of any other person or entity, or (v) resell, assign or transfer any Service(s) without the express written consent of NETdepot. Customer represents and warrants that it will not, and will not permit others to, do any act which may interfere with or compromise the security or functionality of any Service(s), including without limitation attempting to probe or test the vulnerability of any system or network connected to or accessible by the Service(s). Customer further represents, warrants, and covenants that no equipment owned, leased, maintained by or controlled by Customer or by any third party which is connected to or utilized the Service(s) with the consent of Customer will (a) interfere with or impair any Service(s) or any plant, services or facilities of any Indemnitees or of any third party, (b) unlawfully interfere with or impair the transmission of privacy of any data or communications transmitted over the Service(s) or over any plant, services or facilities of any Indemnitees or of any third party, or (c) create, cause or contribute to the creation or causing of a hazard to any Indemnitees or to any third party.

**7.6. NETDEPOT AND ITS REPRESENTATIVES DISCLAIM ANY AND ALL WARRANTIES NOT EXPRESSLY STATED IN SECTION 7.2 OF THIS MSA TO THE MAXIMUM EXTENT PERMITTED BY LAW INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF UNINTERRUPTED OR ERROR-FREE OPERATION AND ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. NETDEPOT MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER REGARDING OPEN SOURCE SOFTWARE OR WITH REGARD TO ANY THIRD PARTY PRODUCTS OR SERVICES WHICH NETDEPOT MAY RECOMMEND**

FOR CUSTOMER'S CONSIDERATION. TPS AGREEMENTS ARE INDEPENDENT AND SEPARATE FROM THE AGREEMENT, AND NETDEPOT IS NOT A PARTY TO AND IS NOT RESPONSIBLE FOR THE PERFORMANCE OF ANY TPS AGREEMENTS.

## **8. TERM AND TERMINATION.**

**8.1. Term.** This MSA is effective as of the effective date set forth in the first Customer Success Order between Customer and NETdepot shall continue until terminated in accordance with its terms. Customer Success Orders for Recurring Services shall be subject to the Auto Renewal Term unless: (i) otherwise stated in the Agreement, (ii) the parties enter into an agreement for a Renewal Term, or (iii) either party provides the other with written notice of termination at least sixty (60) days prior to the expiration of the then current term.

**8.2. Termination for Convenience.** For Recurring Services, unless otherwise stated in the Agreement, Customer may terminate all or part of any Customer Success Order for convenience at any time by giving NETdepot at least sixty (60) days advance written notice; subject to an early termination fee equal to the monthly recurring Fee times the number of months remaining in the then current term of the Customer Success Order for the Services that have been terminated.

### **8.3. Termination for Cause.**

**(A)** Either party may immediately terminate the MSA and/or the affected Customer Success Order(s) for cause on written notice if the other party materially breaches the Agreement and, where the breach is remediable, does not remedy the breach within thirty (30) days of the non-breaching party's written notice describing the breach in reasonable detail.

**(B)** NETdepot may immediately terminate the Agreement and/or the applicable Customer Success Order(s) for breach on written notice if, following suspension of Customer's Services for non-payment, payment of any invoiced undisputed amount remains overdue for a further ten (10) days.

**(C)** Subject to applicable law, either party may immediately terminate the MSA and any Customer Success Order(s) on written notice if the other party enters into compulsory or voluntary liquidation, or ceases for any reason to carry on business, or takes or suffers any similar action which the other party reasonably believes means that it may be unable to pay its debts.

### **8.4. Charges and Schedule.**

**(A) Charges.** In the event that Customer terminates a Customer Success Order prior to the end of the term of a Customer Success Order (or in the event that the delivery of the Services is terminated by NETdepot as the result of an uncured default by Customer pursuant to this Agreement), Customer shall pay NETdepot a termination charge in a lump sum equal to a percentage of the total amount of Fees which would have been payable for such Service during the entire term for such Service as defined in the following Section 8.4(B) (less any Fees for such Service already paid to NETdepot). Customer acknowledges and agrees that (i) the injury caused to NETdepot by Customer's termination of one or more Service(s) will be difficult or impossible of accurate estimation; (ii) both Customer and NETdepot intend that the termination charge provides for liquidated damages, rather than a penalty; and (iii) that the termination charge constitutes a reasonable pre-estimate of the probable loss or injury that will be caused to NETdepot by Customer's termination of one or more Service(s). The foregoing obligations shall survive expiration or termination of the Agreement for any reason whatsoever.

#### **(B) Schedule and Amounts.**

- 1 year Customer Success Order – 75% of the remaining billable amount.
- 2 year Customer Success Order – 75% of the first year remaining amount and 50% of year 2 remaining amount.
- 3-4 year Customer Success Order – 75% of the first year remaining amount and 50% of year 2 remaining amount and 40% of year 3-4 remaining amount.
- 5 year Customer Success Order – 75% of the first year remaining amount and 50% of year 2 remaining amount and 40% of year 3-4 remaining amount and 30% of year 5 remaining amount.

- The parties acknowledge that the termination charges set forth in this Section 8 are a genuine estimate of the actual damages that NETdepot will suffer and are not a penalty.

**8.5. Delayed Termination.** If, following Customer's notice of termination, NETdepot permits Customer to cancel or delay the scheduled termination date, Customer is obligated to re-notify NETdepot in writing at least ninety (90) days prior to any rescheduled termination date.

**9. CONFIDENTIAL INFORMATION.** NETdepot and Customer acknowledge that proprietary and confidential information (including without limitation trade secrets) (collectively "Confidential Information") of each party may be disclosed to the other party throughout the term of this Agreement. Pursuant to the terms of the parties' Mutual Non-Disclosure Agreement ("NDA"), and in the event that a Non-Disclosure Agreement has not been executed between the parties, both parties agree that they have a duty to maintain the confidentiality of all matters related to the dealings between Customer and NETdepot. Each party agrees to not reverse engineer, decompile, disclose to any third party, or to use for any purpose not strictly required for such party's performance hereunder, such Confidential Information except to the extent that such Confidential Information was: (i) made publicly available by the owner of the Confidential Information or lawfully disclosed by a non-party to this Agreement; (ii) lawfully obtained from any source other than the owner of the Confidential Information; (iii) independently developed by personnel of the receiving party to whom Confidential Information had not been previously disclosed and not based on or derived from such Confidential Information; or (iv) previously known to the receiving party without an obligation to keep it confidential. Anything to the contrary herein notwithstanding, NETdepot may disclose such information as necessary to perform the Services to NETdepot's successors or assigns, subsidiaries, Affiliates, officers, directors, employees, agents, independent contractors, licensees, licensors and suppliers which have signed and are bound by a suitable non-disclosure agreement with NETdepot in order for NETdepot. The obligations set forth in this Section 9 shall survive the termination of this Agreement for any reason whatsoever for a period of three (3) years; provided, however, that, with respect to Confidential Information which constitutes a trade secret, the obligations set forth in this Section 9 shall survive the termination of this Agreement for any reason whatsoever for so long as such Confidential Information constitutes a trade secret under applicable law.

**10. LIMITATIONS ON DAMAGES. ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE AGGREGATE LIABILITY OF ALL EACH PARTY AND ITS SUCCESSORS OR ASSIGNS, SUBSIDIARIES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, INDEPENDENT CONTRACTORS, LICENSEES, LICENSORS, SUPPLIERS AND CUSTOMERS (THE "PROTECTED PARTIES") FOR ANY LOSSES OR DAMAGE, WHETHER DIRECT OR INDIRECT, ARISING OUT OF OR IN CONNECTION WITH THE SERVICE(S), INCLUDING WITHOUT LIMITATION ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT OR STRICT LIABILITY, SHALL BE LIMITED TO ACTUAL, DIRECT DAMAGES INCURRED BUT IN NO EVENT SHALL EXCEED THE FEES PAID BY CUSTOMER TO NETDEPOT DURING THE TWO (2) MONTHS PRECEDING THE MONTH IN WHICH LIABILITY AROSE FOR THE SERVICE(S) UNDER WHICH SUCH LIABILITY AROSE. NETDEPOT SHALL NOT BE LIABLE FOR LOST PROFITS OR OTHER CONSEQUENTIAL, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, COVER, OR EXEMPLARY DAMAGES OR FOR ANY CLAIMS AGAINST CUSTOMER BY ANY THIRD PARTY, EVEN IF NETDEPOT WAS ADVISED OF THE POSSIBILITY OF SAME. UNDER NO CIRCUMSTANCES SHALL NETDEPOT BE LIABLE HEREUNDER FOR SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, GENERAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, OR EXEMPLARY OR PUNITIVE DAMAGES. NO ACTION ARISING OUT OF THIS AGREEMENT, REGARDLESS OF FORM, MAY BE BROUGHT BY CUSTOMER AGAINST NETDEPOT MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE. WITHOUT LIMITING THE FOREGOING:**

**10.1. UNLESS OTHERWISE EXPLICITLY STATED IN THE CUSTOMER SUCCESS ORDER, CUSTOMER ACKNOWLEDGES THAT NETDEPOT IS NOT RESPONSIBLE FOR CONTROLLING OR MONITORING ANY CUSTOMER DATA OR ANY OTHER CUSTOMER CONTENT, INFORMATION, DATA OR OTHER MATERIALS STORED ON, TRANSMITTED VIA, OR ACCESSIBLE THROUGH USE OF, THE SERVICE(S), AND NETDEPOT WILL HAVE NO LIABILITY TO CUSTOMER WHATSOEVER IN CONNECTION WITH SUCH CONTENT, INFORMATION, DATA OR OTHER MATERIALS (INCLUDING WITHOUT LIMITATION THE ACCURACY OR SUITABILITY THEREOF OR UNAUTHORIZED ACCESS OR DAMAGE TO, ALTERATION, THEFT, CORRUPTION DESTRUCTION OR LOSS OF, CUSTOMER'S DATA OR OTHER MATERIALS).**

**10.2. NETDEPOT WILL HAVE NO LIABILITY TO CUSTOMER WHATSOEVER IN CONNECTION WITH ANY HARM OR LOSS ARISING FROM OR IN CONNECTION WITH UNAUTHORIZED ACCESS TO OR USE OF**

## **THE SERVICE(S) OR ANY CUSTOMER DATA.**

**10.3. All Protected Parties are expressly made third party beneficiaries of this Section 10;**

**10.4. As an essential part of the Agreement, the liquidated damages payable under the SLA(s) shall be the credits stated in any applicable SLA(s) which are Customer's sole and exclusive remedy for NETdepot's failure to meet those guarantees for which credits are provided; and the parties agree that the credits are not a penalty, are fair and reasonable and represent a reasonable estimate of loss that may reasonably be anticipated from any breach. The maximum credit(s) for failures to meet any applicable SLA(s) for any calendar month shall not exceed 100% of the then current monthly recurring Fee for the corresponding Services. Customer is not entitled to a credit if Customer is in breach of the Agreement at the time of the occurrence of the event giving rise to the credit, until such time as Customer has remedied the breach. No credit shall be due if the credit would not have accrued but for Customer's acts or omissions; and**

**10.5. This Section 10 shall survive expiration or termination of this Agreement for any reason whatsoever.**

## **11. INDEMNIFICATION.**

**11.1. Indemnification by NETdepot.** Subject to the limitations of liability in Section 10, NETdepot shall indemnify and hold harmless Customer, its officers, agents, employees, affiliates, subsidiaries, assigns and successors in interest from and pay any final judgments awarded against Customer, and pay Customer's reasonable costs and attorneys' fees resulting from any claims, liabilities, losses, suits, and damages asserted by a third party based on NETdepot's alleged infringement of any patent, copyright, trademark, trade secret, or other intellectual property or proprietary rights of such third party under the laws of the United States arising out of the Services, unless and except to the extent that such infringement is caused by (i) modification of the Services by anyone other than NETdepot, (ii) NETdepot's compliance with Customer's unique specification or instructions, (iii) NETdepot's use of Customer's trademarks, Customer Data, or other materials supplied by Customer, (iv) use of any Services in connection or in combination with equipment, devices, or software not provided by NETdepot (but only to the extent that such Services alone would not have infringed); (v) the use of any Services other than as permitted under this Agreement or in a manner for which it was not intended; or (vi) use of other than the most current release or version of any software (if such claim would have been prevented by the use of such release or version). If Software becomes the subject of an infringement claim under this Section 11.1, or in the NETdepot's opinion is likely to become the subject of such a claim, then NETdepot may, at its option and in its sole discretion, (A) replace or modify the Services to make them noninfringing or (B) procure the right to continue using the Services. If neither alternative is available on commercially reasonable terms, NETdepot shall have the right to cease the use of the Software and terminate the applicable Service(s) and refund a pro rata portion of any fees paid for such Service(s). The foregoing obligations will be Customer's sole and exclusive remedy for any claims of infringement.

**11.2. Indemnification by Customer.** Customer shall indemnify and hold harmless NETdepot, its officers, agents, employees, affiliates, subsidiaries, assigns and successors in interest from, defend NETdepot against, pay any final judgments awarded against NETdepot, and pay all of Customer's reasonable costs and attorneys' fees resulting from any claims, liabilities, losses, suits, and damages asserted by a third party based on (i) Customer's improper or misuse of the Services (including without limitation, in violation of applicable laws, rules or regulations or any portion of this Agreement); (ii) NETdepot's compliance with Customer's instructions; (iii) NETdepot's use of trademarks, Customer Data or other materials supplied by Customer, (iv) any breach or alleged breach by Customer of this Agreement or any TPS, (v) the conduct of any business in connection with use of the Services.

**11.3. Indemnification Procedures.** If any third party makes a claim covered by Section 11.1 or Section 11.2 against an indemnitee with respect to which such indemnitee intends to seek indemnification under this Section, such indemnitee shall give notice of such claim to the indemnifying party, including a brief description of the amount and basis therefor, if known. Upon giving such notice, the indemnifying party shall be obligated to defend such indemnitee against such claim and shall be entitled to assume control of the defense of the claim with counsel chosen by the indemnifying party, reasonably satisfactory to the indemnitee. The indemnitee shall cooperate fully with and assist the indemnifying party in its defense against such claim in all reasonable respects. The indemnifying party shall keep the indemnitee fully apprised at all times as to the status of the defense. Notwithstanding the foregoing, the indemnitee shall have the right to employ its own separate counsel in any such action, but the fees and expenses

of such counsel shall be at the expense of the indemnitee. Neither the indemnifying party nor any indemnitee shall be liable for any settlement of action or claim effected without its consent. Notwithstanding the foregoing, the indemnitee shall retain, assume, or reassume sole control over all expenses relating to every aspect of the defense that it believes is not the subject of the indemnification provided for in this Section. Until both (i) the indemnitee receives notice from indemnifying party that it will defend, and (ii) the indemnifying party assumes such defense, the indemnitee may, at any time after ten (10) days from the date notice of claim is given to the indemnifying party by the indemnitee, resist or otherwise defend the claim or, after consultation with and consent of the indemnifying party, settle or otherwise compromise or pay the claim. The indemnitee shall keep the indemnifying party fully apprised at all times as to the status of the defense.

**12. NOTICES.** Customer routine communications to NETdepot regarding the Services should be sent to Customer's account team using the customer portal. To give a notice regarding termination of the Agreement for breach, indemnification, or other legal matter, Customer shall send it by electronic mail and overnight postal service to 2626 Spring Cypress Road, Spring Texas 77388, Attn: Legal and to legal@netdepot.com. NETdepot's routine communications regarding the Services and legal notices shall be posted on the customer portal or sent by email or post to the individual(s) Customer designates as contact(s) on Customer's account. Notices are deemed received as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices shall be given in the English language.

**13. PUBLICITY, USE OF MARKS.** Customer agrees that NETdepot may publicly disclose that it is providing Services to Customer and may use Customer's name and logo to identify Customer in promotional materials, including press releases. Customer may not issue any press release or publicity regarding the Agreement, use the NETdepot name or logo or other identifying indicia, or publicly disclose that it is using the Services without NETdepot's prior written consent.

**14. ASSIGNMENT/SUBCONTRACTORS.** This Agreement shall accrue to the benefit of and be binding upon the parties hereto and any successor or permitted assignee or transferee. Except as expressly provided, neither party may, or shall have the power to, assign this Agreement or delegate its obligations hereunder without the prior written consent of the other, except that either party may assign its rights and obligations under this Agreement without the approval of the other party: (i) to an entity which acquires all or substantially all of the assets of the assigning party; (ii) to any Affiliate, in which event the assignor shall remain liable as a guarantor of the assignee/Affiliate's performance of such party's obligations hereunder; (iii) to a successor in a merger or acquisition; or (iv) as collateral to any institutional lender. NETdepot may use its Affiliates or subcontractors to perform all or any part of the Services, but NETdepot remains responsible under the Agreement for work performed by its Affiliates and subcontractors to the same extent as if NETdepot performed the Services itself.

**15. EXPORT.** The parties agree to adhere to all applicable export laws and regulations of the United States and that absent any required prior authorization from the Office of Export Licensing, U.S. Department of Commerce, they will not knowingly export or re-export (as defined in Part 779 of the Export Administration Regulations) directly or indirectly, through their Affiliates, licensees, or subsidiaries, any of the Information (or any product, process, or service resulting directly therefrom) they receive under this or any ancillary agreements, to Country Groups D1, E1, E2, or Iran, Syria, Sudan or any other country hereafter restricted by the U.S. Law or governmental order. Neither customer, nor any of its users, employees, or businesses under its control (i) is a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) as amended, (ii) engages in any dealings or transactions prohibited by Section 2 of such executive order, or is otherwise associated with any such person in any manner violate of Section 2, or (iii) is a person on the list of Specially Designated Nationals and Blocked Persons or subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order. Customers, its users, employees or businesses under Customer's direct control are in compliance, in all material respects, with the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended.

## **16. MISCELLANEOUS.**

**16.1. Dependencies and Adjustments.** NETdepot's failure to timely or otherwise perform its responsibilities



under this Agreement and/or any Customer Success Order, including, without limitation, failure to meet any deadlines or timelines, will be excused, and NETdepot will not be in breach of this Agreement or any Customer Success Order, if NETdepot's non-performance is caused by: (i) the wrongful or tortious actions of Customer or any employee, contractor, agent, or consultant of Customer ("Customer Personnel") performing obligations on behalf of Customer; (ii) the failure of Customer or any Customer Personnel to perform Customer's obligations under this Agreement and/or any Customer Success Order; or (iii) NETdepot acting in accordance with an instruction provided by Customer. The parties agree that in event any deadline or timeline is impacted by any of the foregoing, that the parties will mutually determine a revised deadline or timeline for NETdepot to perform the Services. The parties further agree that in the event of any such delay or non-performance as described in this Section, the original payment obligations set forth in the applicable Customer Success Order will remain unchanged regardless of any adjustment to the any deadline or timeline adjustment agreed to by the parties. Customer expressly acknowledges and agrees that proper provision of the Service(s) is dependent upon the provision to NETdepot by Customer of timely and accurate information regarding (i) Customer's needs and expectations regarding the Service(s), and (ii) all operational, technological, or other data which Customer knows or should know is relevant to the provision of the Service(s) (collectively "Information"). Customer shall provide the Information to NETdepot in a timely manner and the Information shall be accurate and NETdepot will not be held liable for any failures to perform under this Agreement to the extent caused by Customer's failure to provide any Information.

**16.2. Relationship of the Parties.** NETdepot is an independent contractor of Customer and neither NETdepot nor its subsidiaries, officers, directors, employees, agents, independent contractors, licensees, licensors, or suppliers (collectively "NETdepot Staff" solely for purposes of this Section) is or shall be deemed to be an agent, employee, franchisee, joint venturer, or legal representative of Customer by virtue of its performance hereunder. NETdepot and Customer hereby agree that, unless otherwise agreed between the parties in writing, Customer will not be required to provide or furnish any training to NETdepot Staff to enable NETdepot to perform the Services. NETdepot shall not be required to devote the full time of any NETdepot Staff to the performance of the Services. NETdepot reserves the sole right to determine the assignment of the NETdepot Staff to perform the services. NETdepot may perform any obligation pursuant to this Agreement using agents and subcontractors. Customer will not contract directly with any subcontractor relationships that NETdepot has under this agreement or are connected to future services related to this agreement or that are of the same nature.

**16.3. Non-Solicitation.** Customer and NETdepot agree that, during the term of this Agreement and for one (1) year after the termination of this Agreement, Neither party shall hire or solicit for hire, nor cause any third party to hire or to solicit for hire, any then-current employee of either party. In the event of any breach of this Section by a party, that party shall pay to the other party the Employee Expenses (as defined below). Customer and NETdepot acknowledge and agree that (i) the injury caused to the other party by the party's breach will be difficult or impossible of accurate estimation; (ii) both Customer and NETdepot intend that the Employee Expenses provide for damages, rather than a penalty; and (iii) the Employee Expenses constitute a reasonable pre-estimate of the probable loss or injury that will be caused to either party by breach of this Section. For purposes of this Section, "Employee Expenses" shall be an amount equal to thirty-five percent (35%) of all compensation paid to the party's employee hired in violation of this Section (including the monetary value of any bonuses and incentives but excluding any amounts paid by the previous employing party) during the twelve (12) months following such hiring.

**16.4. Regulatory.** If the FCC or any state body of competent jurisdiction determines that any provision of this Agreement violates any applicable rules, policies, or regulations, both parties shall make reasonable efforts to immediately bring this Agreement into compliance and shall endeavor in those efforts to preserve for both parties the economic benefits as reflected in this Agreement to the maximum extent possible. NETdepot reserves the right to disclose information relating to Customer's Customer Success Order if required to do so by law, regulation, local, state or federal governmental request, or in the good faith belief that such action is necessary to: (i) conform to the edicts of the law or comply with legal process served on NETdepot, its parent, or Affiliates; (ii) protect and defend the rights or property of NETdepot, its parent, or Affiliates; or (iii) act under exigent circumstances to protect the personal safety of any other users of NETdepot's services or members of the public.

**16.5. Insurance.** Each party will keep in full force and effect during the term of this Agreement: (i) comprehensive general liability insurance in an amount not less than \$2 million per occurrence for bodily injury and property damage and (ii) workers' compensation insurance in an amount not less than that required by applicable law. NETdepot will keep in full force and effect during the term of this Agreement (a) professional liability and errors and omission liability insurance covering acts, errors, omissions arising out of insured's negligence in an amount not

less than \$2 million per occurrence and (b) commercial crime coverage in an amount not less than \$1 million per occurrence. Before installation of any Equipment in a NETdepot data center, Customer will deliver to NETdepot certificates of insurance showing the minimum levels of insurance set forth above. Customer will bear all risk of loss with respect to all Equipment.

**16.6. Force Majeure.** If either party shall be prevented from performing any portion of this Agreement (except the payment of money) by causes beyond its control, including labor disputes, civil commotion, war, epidemics, pandemics, governmental regulations or controls, casualty, inability to obtain materials or service(s), or acts of God, such party shall be excused from performance for the period of the delay and the time for such party's performance shall be extended for a period of time equal to the duration of such delay.

**16.7. Severability.** If any provision of the Agreement is held invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.

**16.8. Superiority.** This Agreement shall not be supplemented or modified by any course of dealing or trade usage. Addition to or variance from the terms and conditions of the Agreement by Customer, including without limitation any additional or varying terms contained in Customer's preprinted forms, correspondence or other documents transmitted to NETdepot, shall be of no effect, unless otherwise expressly provided in this Agreement. If any conflict of terms set forth in this agreement and its schedules, exhibits, Customer Success Orders and attachments arises, the most recently executed agreement signed by both parties shall prevail.

**16.9. Construction, Venue, Jurisdiction.** This Agreement and any claim, action, suit, proceeding or dispute arising out of or in connection with this Agreement shall in all respects be governed by, and interpreted in accordance with, the substantive laws of the State of Texas.

**(A) Arbitration.** All disputes or claims shall be settled through a single session binding arbitration to be carried out in association with JAMS (<https://www.jamsadr.com>) via a randomly assigned arbitrator from them and the cost of arbitration shall be split equally between Netdepot and customer. This shall be conducted in Spring Texas and may occur via teleconference if customer chooses not to travel. The award shall be enforced through Texas courts and domesticated as a judgement in customers home state if customer does not settle the award amount at the closing of arbitration.

**16.10. Waiver.** The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. A waiver or consent given on one occasion is effective only in that instance and will not be construed as a bar to or waiver of any other right on any other occasion.

**16.11. Survival.** Sections of this Master Agreement, including those relating to payments, confidentiality, indemnification, and limitation of liability shall survive any expiration or termination of this Agreement.

**16.12. Entirety.** This Agreement and its schedules constitute the complete and entire statement of all terms, conditions, and representations of the agreement between NETdepot and Customer with respect to its subject matter and supersede all prior writings or understandings.

**16.13. Unknown Changes to this Agreement.** If Customer has made any change to the Agreement that it did not explicitly and clearly bring to NETdepot's attention in a way that is reasonably calculated to put NETdepot on notice of the change, such change shall not form part of this Agreement.

## SCHEDULE 1 DEFINED TERMS

Capitalized but undefined terms have the meanings set forth in this Schedule 1, in the main body of this MSA, or in the General Terms and Conditions.

"**Affiliate**" means any entity that: (i) directly or indirectly controls a party; (ii) is controlled by a party; or (iii) is under common control with the party, but only for so long as such control exists. As used in this definition "**control**" means control of more than a 50% interest in an entity.

"**Agreement**" means, collectively, the MSA, General Terms and Conditions, and any applicable Customer Success Order, Service Descriptions, or other addenda which govern the provision of Services.

"**AUP**" means NETdepot's Acceptable Use Policy found at [www.NETdepot.com/information/legal/aup](http://www.NETdepot.com/information/legal/aup).

"**Auto Renewal Term**" means the automatic renewal period following the Initial Term expiry for consecutive rolling 90-day terms.

"**Business Day**" means Monday through Friday, excluding United States public holidays.

"**Customer's Environment**" means an information technology system (hardware, software, and/or other information technology components) which is the subject of the Services or to which the Services relate.

"**Customer Data**" means any content, data, services, equipment, customer information, software supplied by Customer, and any trademarks and domain names used by Customer.

"**Customer IP**" means Customer's pre-existing Intellectual Property.

"**Deliverables**" means the tangible or intangible materials which are prepared for Customer's use in the course of NETdepot performing the Services and that are specifically identified and described in a Customer Success Order as Deliverables.

"**Fees**" means the fees payable under the applicable Customer Success Order.

"**General Terms and Conditions**" means NETdepot's General Terms and Conditions

"**Initial Term**" means the initial term of the applicable Customer Success Order.

"**Intellectual Property**" means patents, copyrights, trademarks, trade secrets, and any other proprietary and/or intellectual property rights.

"**Local Withholding Taxes**" means withholding (or similar) taxes imposed on income that may be attributable to NETdepot in connection with its provision of the Services that Customer is legally required to withhold and remit to the applicable governmental or taxing authority.

"**Managed Service**" means Customer's Environment provided by NETdepot for Customer's use at a NETdepot data center.

"**NETdepot Configuration Requirements**" means those specifications identified by NETdepot as required to perform the Services, such as a required reference architecture or software version, as described in Customer's Customer Success Order or Service Descriptions.

"**One Time Services**" means Services which are provided on a one-off basis.

"**Open Source Software**" means open source software including Linux, OpenStack, and software licensed under the Apache, GPL, MIT, or other open source licenses.

"**Service Descriptions**" or "**Service Schedule(s)**" means additional terms and conditions incorporated in a Customer Success Order which contain product-specific obligations.

"**Recurring Services**" means Services which are provided on an on-going, recurring basis.

“**Renewal Term**” means a fixed term extension of the Customer Success Order term.

“**Representatives**” means a party’s respective service providers, officers, directors, employees, contractors, Affiliates, suppliers, and agents.

“**Security and Privacy Practices**” means NETdepot’s Global Security and Privacy Practices found at [www.NETdepot.com/information/legal/securitypractices](http://www.NETdepot.com/information/legal/securitypractices).

“**Sensitive Data**” means any: (i) personally identifiable information or information that is referred to as personal data (including sensitive personal data); PII (or other like term) under applicable data protection or privacy law and includes information that by itself or combined with other information can be used to identify a person; (ii) financial records; and (iii) other sensitive or regulated information.

“**Customer Success Order**” means the document describing the Services Customer is purchasing, including any online order, process, statement of work, or tool through which Customer requests or provisions Services.

“**Services**” means the NETdepot services identified in a specific Customer Success Order.

“**SLA**” means a specific provision, if any, providing a specified credit remedy for NETdepot’s identified failure to deliver or provide the Services to the identified standard.

“**Tax**” means any value added, goods and services, sales, use, property, excise, and like taxes, import duties and/or applicable levies arising out of the provision of the Services.

“**Test Services**” means those Services designed by NETdepot as “Test”, “Beta”, “early access”, or with like designation in a Customer Success Order.

“**Test Terms**” means the Test Terms found at [www.NETdepot.com/information/legal/testterms](http://www.NETdepot.com/information/legal/testterms).

“**Third Party Fee Increase**” means the direct or indirect increase of fees by a third party vendor charged to NETdepot for Customer’s use of Third Party Services, Third Party Software, or both, which may occur at any time.

“**Third Party Services**” means services provided by a third party and used in connection with the Services.

“**Third Party Software**” means software provided by a third party and used in connection with the Services.

“**TPS Agreements**” means agreements for products and services provided by third parties, which are entered into directly between Customer and such third party.

“**Unsupported Services**” means Services designated by NETdepot as “commercially reasonable efforts”, “reasonable efforts”, “non-standard”, “reasonable endeavors”, “unsupported”, or with like designation in a Customer Success Order.