

TEKLINKS

Master Terms and Conditions

Contents

1.	Definitions	5
2.	Services and Products	5
A.	Services.....	5
B.	Products	5
C.	Orders for Services and Products	5
D.	Supplemental Services and Supplemental Products	6
E.	Service Conditions	6
F.	Service Limitations	7
G.	Requests for Changes.....	7
3.	Term; Termination.....	7
A.	Term	7
B.	Termination for Cause.....	7
C.	Termination for Convenience	8
D.	Termination Fees	8
E.	Effect of Termination	8
F.	Other Termination Rights	8
G.	Renewal.....	9
4.	Intellectual Property Rights	9
A.	Ownership	9
B.	Services Software	9
C.	General Skills and Knowledge	9
D.	Feedback; Derivative Works	10
5.	Customer Responsibilities.....	10
A.	Compatibility	10
B.	Software Rights	10
C.	Third-Party Software Licensing	11
D.	Access to Resources.....	11
E.	Internet Use	11
F.	TekLinks Equipment.....	12
G.	Compliance with Applicable Laws.....	12
H.	Compliance and Control Requirements	12
I.	Complaints.....	12

- J. Security Audits..... 13
 - TekLinks Audits..... 13
 - Customer Audits..... 13
- 6. Non-Disclosure and Confidentiality..... 13
 - A. Non-Disclosure Agreement 13
 - B. Confidential Information 13
 - C. Non-Confidential Information..... 14
 - D. Nonpublic Personal Information 14
 - E. HIPAA..... 15
 - F. Press Release 15
 - G. Injunctive Relief 15
- 7. Independent Contractor 15
- 8. Subcontractors 16
- 9. Fees; Billing and Payment Terms 16
 - A. Pass-Through Expenses 16
 - B. Payment Methods 16
 - C. Non Payment; Late Payment 17
 - D. Suspension of Service; Rights of TekLinks..... 17
 - E. Taxes..... 17
 - F. Usage Fees 17
 - G. Missed Appointment Fees..... 17
 - H. Moves; Termination Fees..... 18
- 10. No Solicitation..... 18
- 11. Warranties 18
 - A. Service Warranty 18
 - B. Disclaimer of Warranties 18
- 12. Limitation of Liability 19
- 13. Insurance; Indemnification 19
 - A. General..... 19
 - B. Insurance on Equipment 19
 - C. Indemnification 20
- 14. Force Majeure 21
 - A. General..... 21
 - B. Termination Rights 21
- 15. Dispute Resolution 21
 - A. Informal Dispute Resolution 21

B. Litigation 22

C. Attorneys’ Fees..... 22

D. Continued Service 22

E. Jury Waiver..... 22

F. No Impact on Right to Terminate 22

16. General..... 22

 A. Notices..... 22

 B. Waiver 23

 C. Assignment..... 23

 D. No Third-Party Beneficiaries 23

 E. Survival..... 23

 F. Amendments and Modifications 23

 G. Headings 24

 H. Governing Law 24

 I. Severability 24

 J. Counterparts..... 24

 K. Entire Agreement 24

 L. Interpretation of Conflicting Terms 24

 M. Due Authorization 25

17. Definitions..... 25

These TekLinks Master Terms and Conditions (these “Master Terms”) govern the provision of services and products by TekLinks, Inc., a Delaware corporation (“TekLinks”), to the customer (“Customer”) named on a services quote, statement of work, or purchase order (each, an “Order”) that incorporates these Master Terms by reference and is signed by Customer. Each Order, these Master Terms, the applicable Service Agreement, and any other writing that by its terms is intended to be made a part of any such Order (collectively, the “Agreement”) collectively shall constitute an independent and separate contract between the parties for the services or products specified therein.

1. Definitions

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in Section 17. Definitions.

2. Services and Products

A. Services

TekLinks provides an innovative approach to monitor and manage Information Technology (“IT”) for small, medium, and large businesses. The Services are designed to assist TekLinks’ customers in proactively keeping their IT resources running efficiently. The specific Services and Products to be provided, and the Fees for such Services and Products, will be described in the applicable Order, the Master SLA and the Service Agreement, if applicable. Except for Supplemental Services and Supplemental Products, and unless otherwise agreed to in writing by both parties, the Services and Products to be rendered are limited to those Services and Products specifically described in an Order.

B. Products

TekLinks does not manufacture any Products but is an authorized reseller/sub-licensor of certain Third-Party Software and Third-Party Equipment provided by third-party vendors, manufacturers and developers unrelated to TekLinks (collectively, “Vendors”). Any Products to be provided by TekLinks to Customer and the associated Fees will be set forth in an Order. Vendor terms and conditions of sale or license may apply.

C. Orders for Services and Products

Customer’s Authorized Representative may request Services and Products from time to time, and if TekLinks agrees to provide the same, TekLinks’ Authorized Representative will prepare and provide an Order for the Services or Products. Each Order shall, at a minimum, contain the following, if applicable:

- 1) The incorporation by reference of these Master Terms, the Master SLA, and the Purchase Terms and Conditions;
- 2) A description of: (i) the Services; (ii) the Service Terms; (iii) any specific service level agreement and support services terms applicable to the Service in addition to the Master SLA (“Specific SLAs” and collectively with the service level agreements and support services terms under the Master SLA, the “SLAs”); and (iv) the TekLinks Technology and/or the Products to be provided under the Agreement;
- 3) The Term of the Agreement;
- 4) An implementation project plan and a mutually agreed upon statement of work (“Statement of Work”) if TekLinks will customize or develop deliverables for Customer with delivery schedules;
- 5) The estimated delivery schedule for Products and any other deliverables;
- 6) The signature of Customer’s Authorized Representative;
- 7) The Effective Date of the Agreement;

- 8) The name and contact information of TekLinks' Account Manager; and
- 9) Customer's Primary Customer Contact and Primary Technical Contact for the Order.

D. Supplemental Services and Supplemental Products

If Customer requires Supplemental Services or Supplemental Products, Customer's Primary Technical Contact or Authorized Contact shall notify TekLinks in writing. If TekLinks agrees to provide such Supplemental Services or Supplemental Products, it will acknowledge the request in writing. Customer shall pay additional Fees for Supplemental Services at TekLinks' then current standard hourly rates. TekLinks shall notify Customer of its estimate of any such additional Fees and shall obtain Customer's written approval prior to providing any such Supplemental Services. TekLinks shall charge Customer for actual Fees incurred for Supplemental Services in the invoice issued the month following delivery of the Supplemental Services. TekLinks shall notify Customer of the Fees for any Supplemental Products and shall obtain Customer's written approval prior to providing any such Supplemental Products. Customer shall pay for Supplemental Products in advance, unless the parties otherwise agree in writing. TekLinks will use commercially reasonable efforts to provide Supplemental Services and Supplemental Products; however, TekLinks has no obligation to determine the need for, to suggest, or to provide any Supplemental Services or Supplemental Products to Customer.

E. Service Conditions

- 1) **Outside Conditions.** Customer acknowledges that certain conditions outside of TekLinks' control may adversely impact the ability of TekLinks to perform functions of certain Services. Examples of such conditions include, without limitation:
 - a) Customer task, software, scheduled job or other human intervention, intentional or otherwise, renders portions, complete files, or complete file systems unavailable through the Service.
 - b) Failure of Customer software, operating systems or equipment.
 - c) Network connectivity issues between Customer devices and TekLinks backup platform, when network connectivity is not provided as part of a TekLinks' Service.
 - d) Customer acknowledges that in the event of a support issue, Customer is responsible for on-site cooperative testing with TekLinks Technical Support to assist in the diagnosis of the problem.
- 2) **Non-Exclusive, Non-Transferable Right.** Subject to the terms of the Agreement, including payment by Customer of all amounts due to TekLinks, Customer shall have a non-exclusive, non-transferable right to use the Services solely for Customer's own internal business purposes for the Term and number of Users or other applicable Service metrics specified in the applicable Agreement.
- 3) **Restrictions on Use.** Customer will not use, and will not permit others to use, Customer's account to:
 - a) copy, distribute, rent, lease, transfer or sublicense all or any portion of the Service to any third party;
 - b) modify or prepare derivative works relating to the Service;
 - c) use the Service (other than for Customer's internal use) in any commercial context or for any commercial purpose or in any commercial product including reselling the Service;
 - d) use the Service in any manner that threatens the integrity, performance or availability of the Service to others;
 - e) reverse engineer, decompile, or disassemble the Service; or
 - f) use the Service to help design a competing or similar service.
- 4) **Eligibility.** TekLinks requires that any individual User of the Services be at least 18 years of age. By using the Services, Customer represents and warrants that Customer, if an individual, is at least 18 years of age and that Customer's use of the Service does not violate any applicable law or regulation.

- 5) **Service Levels.** The SLAs applicable to a particular Service include those service level agreements and support services terms set forth in the Master SLA and the respective Specific SLAs, if any.
- 6) **Additional Service Conditions.** Additional terms and conditions applicable to a Service may be set forth in the respective Service Agreement.

F. Service Limitations

Customer acknowledges that certain activities are excluded from the Services unless expressly included in an Agreement and may subject Customer to additional Fees. Examples of such activities include, without limitation:

- Any major change in network or physical infrastructure.
- Activities related to any lawsuit, legal inquiry, e-discovery or other unforeseen requests.
- Changes in Services necessitated by any third-party attempt, successful or otherwise, to fix hardware issues on Devices under Management by TekLinks.

G. Requests for Changes

If Customer wishes to implement changes in the scope of Services or Products to be provided under an Agreement, Customer's Authorized Representative must request such changes in writing and deliver the request to TekLinks' Authorized Representative. Within a reasonable period, not to exceed thirty (30) days, TekLinks shall review and return the request to Customer with a written evaluation of the changes, including the cost of the changes (if any) and the impact the changes will have on the completion of the Services or delivery of the Products. Following its review of TekLinks' evaluation, Customer may then choose to approve the changes by signing and returning to TekLinks a copy of TekLinks' written evaluation, which will then be subject to the terms and conditions of the Agreement. No changes in the scope of an Agreement will be effective until TekLinks and Customer mutually agree upon and sign the evaluation of the written change request.

3. Term; Termination

A. Term

Unless otherwise provided in the applicable Agreement, the Term of each Agreement shall begin on the Activation Date and shall continue for the duration of the Term set forth in the Order. These Master Terms shall be effective as of the first date on which an Order incorporating these Master Terms is executed by Customer.

B. Termination for Cause

Either party (the "Terminating Party") may terminate an Agreement effective upon the delivery of written notice to the other party (the "Defaulting Party") if any of the following occur (each, an "Event of Default"):

- 1) the Defaulting Party is insolvent or has a petition in bankruptcy filed against it;
- 2) the Defaulting Party is adjudicated a bankrupt;
- 3) the Defaulting Party makes a general assignment for the benefit of its creditors;
- 4) the Defaulting Party has a receiver, trustee or agent appointed with respect to its business or any significant portion thereof;

- 5) the Defaulting Party otherwise ceases to do business in any manner that would affect the Terminating Party's performance under an Agreement;
- 6) the Defaulting Party has failed to comply with any applicable laws in connection with its activities under an Agreement; or
- 7) the Defaulting Party is in breach of any other provision of an Agreement and fails to correct and cure such breach within thirty (30) days after the Terminating Party provides written notice of such default.

TekLinks also shall have the rights set forth in Section 9, Billing and Payment Terms, if Customer fails to pay any Fees when due under an Agreement, and such failure is an Event of Default hereunder. The election of said option to terminate by the Terminating Party shall in no manner diminish any other rights it may have against the Defaulting Party pursuant to an Agreement or by law.

C. Termination for Convenience

Customer may terminate any Agreement for convenience upon one hundred twenty (120) days' prior written notice to TekLinks ("Termination for Convenience"). Requests for Termination for Convenience by Customer should be submitted via email to hosting@teklinks.com.

D. Termination Fees

Upon termination of this Agreement for any reason, Customer shall be obligated to pay all amounts due and owing to TekLinks for Services performed and Products supplied up to the effective date of termination, and if Fees are calculated on a monthly, quarterly or other periodic basis, then Customer shall be liable for the pro-rata portion thereof up to the effective date of termination. If TekLinks effects a termination for Customer's Event of Default, then Customer shall pay to TekLinks on demand an amount equal to the sum of all Fees for Services and Products through the remainder of the Term that would have been paid had the Agreement not been terminated (such sum being the "Contract Balance Due"). If there is a Termination for Convenience by Customer, then Customer shall pay to TekLinks on demand the Contract Balance Due. All of the Fees due and payable by Customer hereunder on termination of this Agreement are collectively called "Termination Fees."

E. Effect of Termination

Upon termination or expiration of any applicable Agreement, Customer will no longer have access to, or be able to use the Services except as Customer may require and TekLinks shall allow, acting reasonably and in good faith, to facilitate Customer's move to another service. Upon termination or expiration of any applicable Agreement, Customer is responsible for: (1) making any Service Software and any TekLinks Equipment located at Customer's location available to TekLinks for uninstallation and return to TekLinks; and (2) providing TekLinks with access to Customer's location for the purpose of retrieving any such Service Software and TekLinks Equipment. Fees owed by Customer to TekLinks for Services and TekLinks Equipment shall continue under the applicable Agreement until such time as Customer has notified TekLinks in writing that Customer has made all such Service Software and TekLinks Equipment available for retrieval by TekLinks.

F. Other Termination Rights

Additional termination rights with respect to any Service may be provided in the applicable Order or Service Agreement.

G. Renewal

The Agreement shall automatically renew for successive one (1) year terms (“Renewal Term”) unless either party notifies the other of its intent to terminate at the end of the current term at least thirty (30) days prior to the expiration of the then current term. TekLinks reserves the right to change fees for Services at the end of the initial Term or Renewal Term.

4. Intellectual Property Rights

A. Ownership

Except for any rights expressly granted herein, the Agreement does not transfer from TekLinks to Customer any right, title or interest in or to any TekLinks Technology which TekLinks uses to provide the Services. Customer acknowledges that the Services are the exclusive property of TekLinks. TekLinks and its licensors retain all Intellectual Property Rights in and to all and any part of the Services and the TekLinks Technology used to provide the Services. Customer shall not acquire hereunder any right, title, or interest in the Services, except the right to use them in accordance with the Agreement. Except for any rights expressly granted in an Agreement, an Agreement does not transfer from Customer to TekLinks any right, title or interest in or to any process, system, software, service or device in which Customer has any Intellectual Property Rights or other ownership or use rights (“Customer Technology”). Except for any rights expressly granted in an Agreement, an Agreement does not transfer to Customer any right, title, or interest in or to any Third-Party Software or Intellectual Property Rights therein, and all right, title and interest therein remains with the party providing the same, or with the Third-Party Software owner, as appropriate.

B. Services Software

Where applicable, TekLinks may install certain Third-Party Software and TekLinks Technology on Equipment in Customer’s network for the purpose of delivering Services (collectively, “Services Software”). TekLinks has a license or other rights to allow use of such Services Software to deliver the Services. TekLinks hereby grants to Customer a limited, non-exclusive, non-transferable, personal license to use the Services Software on the Equipment for the Term of the applicable Agreement, subject to all applicable Third-party Software license terms and requirements. Upon the termination of an applicable Agreement, Customer shall return or allow TekLinks to remove the Services Software from any Customer Equipment, and Customer shall return to TekLinks any TekLinks Equipment containing Services Software. Customer shall not copy or move any Services Software and shall not use the Services Software in any way other than as provided in an Agreement in connection with Services.

C. General Skills and Knowledge

Subject to TekLinks’ obligations of confidentiality under an Agreement, TekLinks may utilize any skills, knowledge or general ideas acquired during the course of providing the Services, and may independently develop for other customers or for its own use deliverables or work products that are the same as or similar to deliverables and work products developed for Customer based on skills, knowledge or general ideas acquired during the course of providing the Services to Customer, including, without limitation, information publicly known or available or that could reasonably be acquired in similar work performed for another customer of TekLinks. No Agreement is an exclusive agreement. Customer may obtain services and products directly from third parties, and TekLinks may provide services, products and TekLinks Technology to third parties, without restriction or accounting to the other party.

D. Feedback; Derivative Works

If Customer, at any time during the Term, provides TekLinks with comments, suggestions or other feedback (collectively, "Feedback") regarding the Services or TekLinks Technology, TekLinks will own such Feedback as derivative works of the Services or TekLinks Technology. Customer agrees that all Feedback is and shall be given entirely voluntarily. TekLinks' use of Feedback will not cause any TekLinks Technology or Services or documentation incorporating or derived from such Feedback, or any TekLinks' Intellectual Property Rights therein, to be licensed to or otherwise shared with Customer or any Third Party. Furthermore, except as otherwise provided herein or in a separate subsequent written agreement between the parties, TekLinks shall be free to use, disclose, modify, reproduce, license, distribute, practice, commercialize, further develop and otherwise freely exploit the Feedback as it determines in its sole discretion without obligation to Customer or restriction of any kind. If, despite the express agreement of the parties to the contrary, Customer is deemed to own any Feedback, Customer hereby grants to TekLinks a non-exclusive, royalty-free, fully paid up, perpetual, irrevocable, worldwide license to use, disclose, modify, reproduce, license, distribute, practice, commercialize, further develop and otherwise freely exploit without restriction or payment of any kind all such Feedback.

5. Customer Responsibilities

A. Compatibility

TekLinks controls the version of hardware and software running on its infrastructure and does not guarantee that it is compatible with any version changes made by Customer to its network, server, operating system or application infrastructure (collectively, the "Customer System"). It is Customer's responsibility to ensure that any version change planned on the Customer System is compatible with TekLinks' hardware and software. If requested by Customer, TekLinks will make available a testing schedule and environment to test interoperability (additional charges may apply). TekLinks retains the right to change the version of software and hardware of its infrastructure and will provide Customer a notification of this change no less than fourteen (14) days in advance. Customer shall be fully responsible for providing to TekLinks at Customer's own expense and in a timely manner all security credentials necessary for TekLinks to use and access the Customer System in connection with Service. Customer is responsible for notifying TekLinks of all access changes, terminations or related events regarding the Customer System. Customer is responsible for cooperative testing of all Customer-provided hardware, software and services comprising the Customer System for compatibility with Service. If the Customer System is not compatible with any Service, the parties will work together in good faith to develop and implement modifications, patches, workarounds, updates, upgrades, and any other commercially reasonable changes necessary or appropriate to achieve such compatibility. If after such efforts to achieve such compatibility have failed, TekLinks shall have the right to terminate the Agreement for such Service with not less than thirty (30) days' written notice to Customer.

B. Software Rights

Customer has title to, or a license or other rights to use, access and modify, and has or will obtain for TekLinks a right or license to use, access or modify, any Customer Software or Third-party Software that Customer has requested TekLinks to use, access or modify as part of the Services. Customer shall indemnify, defend and hold harmless TekLinks and any TekLinks Parties from and against any Losses arising out of resulting from any claim or allegation that Customer does not have such rights, has not obtained such rights for TekLinks, or that TekLinks' provision of Services hereunder using the Customer Software or Third-Party Software infringes any party's right, title to or interest in or to the same.

C. Third-Party Software Licensing

Where applicable, TekLinks offers licensed Third-Party Software for use by Customer through Service Provider License Agreements (“SPLA”) as part of certified reseller programs with Third-Party Vendors. TekLinks will license such Third-Party Software on the terms set forth in the applicable SPLA. TekLinks has a license or other rights to use and access, and has or will obtain for Customer a right or license to use or access, any such Third-Party Software provided by TekLinks as part of the Services pursuant to a SPLA. TekLinks shall indemnify and defend Customer and shall hold Customer harmless from and against any Losses arising out of or resulting from any claim or allegation that TekLinks does not have such rights or has not obtained such rights for Customer. If Customer opts to obtain a direct license for such Third-Party Software with the Vendor and hires TekLinks to provide Services for the management of Customer Equipment upon which the Third-Party Software will run, Customer agrees to provide to TekLinks evidence of a current license agreement, including the software edition/version and any use limitations, or a separate Third-Party Software assurance agreement whereby the Vendor certifies to TekLinks the terms and scope of the applicable license and TekLinks’ right to provide Services related thereto (“Software Assurance Agreement”), within thirty (30) days after TekLinks’ request for the same. TekLinks reserves the right to terminate Services if a SPLA or other license agreement has expired, if Customer’s use violates the terms of the applicable SPLA or other license agreement, or if Customer fails to provide a Software Assurance Agreement when requested by TekLinks. Further, TekLinks reserves the right to audit, upon ten (10) days’ prior written notice to Customer, Customer’s use of Third-Party Software to ensure that Customer is in compliance with the terms of the SPLA. Customer will provide to TekLinks evidence or confirmation of use upon written request. Customer agrees to comply with Vendor’s licensing terms of use set forth in the SPLA. If an audit reveals that Customer has underpaid license fees to TekLinks or a Vendor, TekLinks will invoice Customer for such underpaid fees, and Customer shall pay the same on receipt of the invoice. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Customer, then Customer also shall pay TekLinks’ reasonable cost of conducting the audit.

D. Access to Resources

Customer shall supply TekLinks with access to appropriate personnel, documentation, records, the Customer System and facilities as requested by TekLinks from time to time in order for TekLinks to perform and provide the Services. Customer shall supply to TekLinks any applicable written vendor support contract, contact information or any other such service required to access patches, support information, manuals, or other information related to Customer’s operating system and applications. Customer shall designate a Primary Technical Contact to be the point of contact to interface with TekLinks Technical Support. TekLinks shall be excused from its obligation to provide Services or shall be granted additional time to provide Services for so long as and to the extent Customer’s failure to provide the foregoing access to resources causes delays in TekLinks’ provision of Services.

E. Internet Use

Where TekLinks’ Services include Internet access, Customer is responsible for providing and maintaining all computer equipment, software, cabling and telecommunications services necessary to access Internet Services. Customer shall be solely responsible for its connection to the Internet and shall maintain a valid IP address to enable Customer to use the Service. Customer shall be solely responsible for its activities (and the activities of anyone who obtains access to the Services using Customer’s passwords) in using the Service including the activities of its employees, agents and contractors. Customer shall conform to the protocols and standards published by standards organizations, such as the Internet Engineering Task Force, and generally accepted by the majority of Internet users in North America. Customer may access the Internet utilizing a Service for lawful purposes only, and Customer shall comply with rules and regulations established by TekLinks and other networks through which TekLinks provides the Services, including,

without limitation, TekLinks' Acceptable Use Policy and Digital Millennium Copyright Act Compliance Policy, available at <http://teklinks.com/>.

F. TekLinks Equipment

Customer is responsible for the reasonable care of any TekLinks Equipment located at any Customer location for the provision of Services. TekLinks shall at all times remain the owner of all TekLinks Equipment, and Customer shall not acquire any right, title or interest therein other than the limited right to use the same in connection with the Services. Customer agrees to maintain all TekLinks Equipment located at Customer's location in a reasonable operational environment, including without limitation the provision of reasonable lighting, HVAC, security, custodial services, and all minimum requirements set forth in any applicable Order. Customer shall provide TekLinks with ready access to all TekLinks Equipment as requested by TekLinks from time to time, and TekLinks may replace or substitute other TekLinks Equipment as it deems necessary or reasonable subject to the terms and conditions of the Master SLA and any applicable Service Agreement. Customer shall not allow any lien or encumbrance to be placed on any TekLinks Equipment at any time and shall maintain any TekLinks identification or other marking on the TekLinks Equipment placed thereon by TekLinks. In the event any TekLinks Equipment is damaged or defaced while at Customer's location or is returned damaged or defaced to TekLinks, Customer will be responsible for repair or replacement fees for the damaged or defaced TekLinks Equipment. For purposes of this Section, damage does not include hardware failure that occurs due to normal wear and tear during the course of normal use.

G. Compliance with Applicable Laws

Customer's and its Users' use of the Service will at all times comply with all applicable local, state, national and foreign laws and regulations.

H. Compliance and Control Requirements

Customer is responsible for providing TekLinks with a documented list of compliance and control requirements, if any, that are expected to be outsourced to TekLinks as part of an Agreement (collectively, "Controls"). In cases where all requested Controls cannot be covered, TekLinks will notify Customer in writing. Customer is responsible for notifying TekLinks of any Control evidence or audit assistance requirements. All such requests should be submitted in writing via e-mail and addressed to compliance@teklinks.com. TekLinks will provide information or assistance within seventy-two (72) hours of Customer's request.

I. Complaints

Customer shall be responsible for promptly notifying TekLinks by email or by telephone, followed up in writing (including email), of any Complaints regarding Services or TekLinks Equipment provided under an Agreement. A "Complaint" is defined as any communication received from Customer specifically addressing a currently provided Service or TekLinks Equipment that is not satisfactory to Customer. All Complaints should be submitted via email or by telephone with a follow up in writing (including email), to the TekLinks Account Manager at hosting@teklinks.com. TekLinks will record the Complaint and will use commercially reasonable efforts to resolve the deficiencies in Services or Equipment to Customer's reasonable satisfaction and in accordance with any applicable SLA set forth in the applicable Order or Services Agreement.

J. Security Audits

TekLinks Audits

TekLinks will employ industry best security measures, policies and procedures in its standard operating procedures and in the delivery of Services. TekLinks will test, monitor and audit, and have periodic third-party audits, of these security measures, policies and procedures. TekLinks will make the results of such audits available to Customer for review within three (3) business days following Customer's written request. Customer may request a copy of an audit report, and TekLinks will provide the same without additional cost (other than reasonable reimbursement for photocopying expenses).

Customer Audits

TekLinks acknowledges that Customer may be required to or may desire to confirm TekLinks' audit results through a third-party auditor retained by Customer. Customer may engage a third-party auditor to audit Customer's computing environment at a TekLinks Data Center and TekLinks shall provide access to its Data Center to such third-party auditor within three (3) business days after Customer's advance written notice to TekLinks. Such audit will be conducted on a mutually acceptable date during TekLinks' normal business hours, and, unless the audit reveals material inadequacies in TekLinks security measures, policies and procedures or unless required by any regulatory authority having jurisdiction over Customer, Customer will not have the right to audit more than once per year. The third-party auditor will take all commercially reasonable steps necessary to minimize interference with TekLinks' business and will provide TekLinks with a copy of any written audit report. TekLinks shall have the right to approve any third-party auditors, and will not unreasonably withhold, delay or condition such approval, provided that no third-party auditor that is a competitor of TekLinks will be allowed to conduct an audit at TekLinks' Data Centers. The scope of such audits must be limited to the Customer network and may not include any shared environments that may affect other customers of TekLinks. Customer will pay all costs of any audits conducted by its third-party auditor. If the audit reveals material inadequacies in TekLinks' security measures, policies and procedures, and TekLinks agrees with the audit report, TekLinks will work with Customer to remediate or mitigate such inadequacies in accordance with the terms of any applicable Service Agreement.

6. Non-Disclosure and Confidentiality

A. Non-Disclosure Agreement

If the parties have executed a separate Confidentiality and Non-Disclosure Agreement ("NDA"), the terms and provisions of such NDA are incorporated herein by reference, and the parties agree that such NDA sets forth the obligations and responsibilities of the parties with regard to the use, treatment, and disclosure of certain confidential and proprietary information of the parties. If there is a conflict between the terms of the NDA and the terms of an Agreement, the terms of the NDA shall govern and control to the extent of such conflict. The terms of the NDA shall survive the expiration or termination of an Agreement for any reason in accordance with the NDA's terms and conditions. The parties agree to cause any and all of their subcontractors and sub-servicers, if any, to observe the terms and provisions of the NDA as though they were parties thereto, and the parties shall be responsible for any breach of the NDA by or on behalf of their subcontractors or sub-servicers. Notwithstanding the foregoing, should the NDA expire or terminate while an Agreement is still in effect, the terms, conditions, representations, warranties, covenants, and agreements contained in the NDA will nevertheless apply to an Agreement.

B. Confidential Information

If the parties have not executed a separate NDA, the terms of this Section 6.B through Section 6.G, inclusive, will apply. Each party acknowledges that it and its employees, agents, representatives and contractors, and their respective successors and assigns (collectively, "Receiving Party") may be exposed to

or acquire information that is proprietary or confidential to the other party (“Disclosing Party”) in connection with the performance of an Agreement (“Confidential Information”). The Receiving Party shall hold such Confidential Information in strict confidence and shall not use or disclose any such Confidential Information to any third party other than as required to perform an Agreement. Confidential Information includes, without limitation: (a) any technical information, design, process, procedure, formula, or improvement, as well as any formulae, specifications, business or work processes and procedures, instructions, and other data relating to the Disclosing Party’s business, services or products, the development, production of any work done specifically for the Customer; (b) the business plans and financial information of the Disclosing Party, regardless of whether such information would be protected at common law; and (c) such other information that, due to its nature, the Receiving Party knows or should have known the same was the proprietary or confidential information of the Disclosing Party. Each party will cause any and all persons or entities that have access to Confidential Information by or through such party, including (without limitation) any Receiving Party, to observe and comply with the terms of such party’s confidentiality obligations hereunder as if they were parties hereto. Customer’s Feedback relating to TekLinks Services and TekLinks Technology, even if designated as confidential by Customer, shall not, absent a separate written agreement, create any confidentiality obligation for or upon TekLinks, and TekLinks will own and may utilize the same as set forth in Section 4.D (Feedback; Derivative Works). The financial terms of an Agreement that are not otherwise publicly available may not be disclosed to any third party, except to a party’s legal or accounting firms or as required by regulators with jurisdiction over Customer’s or TekLinks’ businesses, without the prior written consent of the Disclosing Party.

C. Non-Confidential Information

Notwithstanding Section 6.B., Confidential Information does not include the following:

- 1) information that at the time of disclosure is or was, without fault of the Receiving Party, available to the public by publication or otherwise;
- 2) information that the Receiving Party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the Disclosing Party;
- 3) information received from a third party with the right to transmit same without violation of any confidentiality agreement; and
- 4) information that must be disclosed pursuant to court order or by legal or administrative process; provided, however, that if information must be disclosed pursuant to court order or by legal or administrative process, the Receiving Party shall inform the Disclosing Party of such requirement (unless prohibited by law) and shall cooperate with the Disclosing Party in seeking a protective order or other limitation on disclosure.

D. Nonpublic Personal Information

- 1) To the extent that any Confidential Information of Customer obtained by TekLinks is Nonpublic Personal Information (as that term is defined by the Gramm-Leach-Bliley Act “GLBA”) and TekLinks is a service provider, TekLinks covenants and agrees that it will implement or has implemented security measures designed to:
 - a) ensure the security and confidentiality of Nonpublic Personal Information about Customer’s employees or consumers served directly or indirectly by or through Customer (each, a “Consumer”);
 - b) protect against any anticipated threats or hazards to the security or integrity of such Nonpublic Personal Information;
 - c) protect against unauthorized access to or use of such Nonpublic Personal Information that could result in substantial harm or inconvenience to any Consumer; and
 - d) ensure proper disposal of such Nonpublic Personal Information.

- 2) As a service provider, TekLinks will implement written security and disaster recovery plans consistent with industry standards. TekLinks will comply with all applicable laws and regulations regarding the security, handling, use and disclosure of such Nonpublic Personal Information in its role as a service provider. Upon termination of an Agreement pursuant to which TekLinks obtains Nonpublic Personal Information, TekLinks shall delete and erase from TekLinks' systems all such Nonpublic Personal Information relating to the Agreement and shall certify in writing to Customer that all such Nonpublic Personal Information has been deleted and erased in accordance with applicable laws.

E. HIPAA

The parties shall comply with all federal and state regulations regarding the use and disclosure of Protected Health Information, as that term is defined at 45 C.F.R. § 160.103 ("PHI"), including, but not limited to the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). If TekLinks will have access to the PHI of Customer's patients or employees, TekLinks will execute its form Business Associate Agreement in favor of Customer, as a covered entity under HIPAA. Upon termination of an Agreement pursuant to which TekLinks obtains PHI, TekLinks shall delete and erase from TekLinks' systems all such PHI relating to the Agreement and shall certify in writing to Customer that all such PHI has been deleted and erased in accordance with applicable laws.

F. Press Release

TekLinks may publicly refer to Customer, orally and in writing, as a customer of TekLinks and may refer to the publicly releasable titles of any Order with Customer. Any other reference to Customer by TekLinks may be made only in accordance with this Section. The parties shall consult with each other in preparing any press release, public announcement, case study or other form of release of information concerning an Agreement or the transactions contemplated hereby that is intended to provide such information to the news media or the public (a "Press Release"). Neither party may issue or cause the publication of any such Press Release without the prior written consent of the other party. However, nothing herein prohibits either party from issuing or causing publication of any such Press Release to the extent that such action is required by applicable law or the rules of any national stock exchange applicable to such party or its Affiliates, in which case the party wishing to make such disclosure will, if practicable under the circumstances, notify the other party of the proposed time of issuance of such Press Release and shall consult with and allow the other party reasonable time to comment on such Press Release in advance of its issuance.

G. Injunctive Relief

Money damages will not be an adequate remedy if any of the provisions of this Section 6 are breached and, therefore, either party may, in addition to any other legal or equitable remedies, seek an injunction or other equitable relief against such breach or threatened breach without the necessity of posting a bond or other security.

7. Independent Contractor

TekLinks will perform all Services solely in TekLinks' capacity as an independent contractor and not as an employee, agent or representative of Customer. TekLinks will not be entitled to any privileges or benefits that Customer may provide to its employees, and TekLinks will remain responsible for payment of all unemployment, social security, federal income (state and local income where applicable) and other payroll taxes or mandatory assessments imposed by any governmental body on employers in regard to those of its employees engaged in the performance of the Services.

8. Subcontractors

TekLinks may utilize subcontractors or suppliers to perform all or any portion of the Services or to provide any Products under an Agreement, but TekLinks shall at all times remain primarily liable to Customer under such Agreement. If Customer requests TekLinks to utilize a Customer-designated subcontractor or supplier for any of the Services or Products to be provided by TekLinks, Customer shall provide to TekLinks a written request for the same including any information reasonably required by TekLinks and evidence of the insurance coverage required under the applicable Agreement. TekLinks shall have the right, acting in good faith, to accept or reject such Customer-designated subcontractor or supplier. Consent by TekLinks to use a Customer-designated subcontractor or supplier shall not constitute a waiver of any right of TekLinks to reject defective subcontractor Services or Products, and TekLinks shall retain all such rights under its subcontract.

9. Fees; Billing and Payment Terms

Specific Fees for Services and Products are set forth in the Order, and Customer's obligation to pay the same will commence as set forth in the Order. Fees for any Supplemental Services or Supplemental Products will be handled in accordance with Section 2.D. Unless expressly set forth to the contrary in the Order, TekLinks reserves the right to increase Fees for any Services on each one (1) year anniversary of the date on which Fees began under an Order; provided, however, in no event will Fees increase by more than one and one-half percent (1.5%) per year. TekLinks will provide Customer with at least thirty (30) days' prior written notice of any such Fee increases. Additionally, if TekLinks' out of pocket costs to provide any Services (for example, the cost of a Microsoft SPLA) increases (each, a "Cost Increase"), TekLinks shall have the right to increase the Fees for Services by the amount of any Cost Increase on thirty (30) days written notice to Customer. TekLinks will provide Customer with invoices for Fees, including any Cost Increases, Expenses (as hereinafter defined) and charges due under an Agreement, and Customer shall pay the same within fifteen (15) days after the date of the invoice, unless otherwise expressly agreed in an Order, provided Customer shall have the right to withhold payment of any portion of any Fees or expenses disputed in good faith upon written notice to TekLinks within said fifteen (15) days. All invoices and payments will be in U.S. Dollars.

A. Pass-Through Expenses

Unless an Order provides for a fixed cost, in addition to the Fees provided in the Order, Customer shall reimburse TekLinks for its reasonable and documented out-of-pocket expenses, including without limitation, travel expenses, lodging, meals, or other similar expenses, incurred by TekLinks in performing the Services ("Expenses"). Any such Expenses will be billed at cost, invoiced monthly and paid as provided herein. Customer shall reimburse TekLinks for any charges or penalties levied against it as a result of insufficient funds.

B. Payment Methods

TekLinks will accept payments from Customer using any of the following forms of payment:

- Checks
- Electronic Funds Transfer ("EFT"), including automated clearinghouse (ACH)
- Monthly Bank Account Drafts
- Automatic Payment Drafts ("APD") using EFT or Major Credit Cards
- All Major Credit Cards (VISA, MasterCard, American Express)

C. Non Payment; Late Payment

TekLinks reserves the right to add a finance charge of 1.5% per month (18% per annum) ("Finance Charge") to late payments for every month or part of the month the undisputed portion of a payment is past due. The Finance Charge will be billed on a separate Finance Charge invoice or as a separate line item on an invoice, showing the past due invoices. For questions regarding billing, Customer must contact its Corporate Account Manager or TekLinks' accounts receivable department by phone at (205) 314-6600 or email at AR@teklinks.com. TekLinks reserves the right to place any Customer's account with respect to which the undisputed amount of the invoice remains unpaid beyond credit terms on hold ("Credit Hold") until payment is received. If Customer's account is placed on Credit Hold, Customer will not be permitted to place new Service or Product orders, obtain Services under existing Orders, or renew annual or other Service Agreements until payment is received. Accounts that remain unpaid sixty (60) days past payment terms may be reported to credit reporting agencies and/or turned over to collection agencies for collection.

D. Suspension of Service; Rights of TekLinks

If Customer fails to pay all undisputed amounts owed to TekLinks under an Agreement when due, then upon at least ten (10) business days prior written notice to Customer, and in addition to any other remedies available at law or in equity, TekLinks may suspend Services under an Agreement until full payment is made. TekLinks further reserves the right to retain any Customer Equipment stored in any TekLinks facilities as part of rendered Services until full payment is made. Customer shall pay a reasonable reactivation fee for Service restoration, to be determined by TekLinks. TekLinks' right to suspend Services and retain Customer Equipment under this Section is in addition to TekLinks' right to terminate an Agreement for non-payment.

E. Taxes

All charges and fees to be paid by Customer are exclusive of any applicable sales, use, excise or services taxes ("Taxes") that may be assessed on the provision of the Services or Products. In the event that any Taxes are assessed on the provision of any of Services or Products, Customer shall pay the Taxes directly to the taxing authority or shall reimburse TekLinks for their payment. The parties shall cooperate with each other in determining the extent to which any Taxes are owed, and shall provide and make available to each other any resale certificates, information regarding out-of-state use of Services or Products, and other exemption certificates or information reasonably requested by either party.

F. Usage Fees

If Fees due under an Agreement are based on the number of Users, volume of use or other usage metrics, TekLinks may, upon ten (10) days' advance written notice to Customer, audit Customer's use of the Services and increase billing for any and all usage-based Fees to the extent, but only to the extent that thereupon Customer's Fees match use of the Services. Notwithstanding the foregoing, in no event will Customer's Fees at any time fall below any minimums set forth in an Agreement.

G. Missed Appointment Fees

If TekLinks schedules an appointment with Customer to deliver Equipment or install Services, Customer or its Authorized Representative must be available at Customer's location for the scheduled appointment date and time to grant TekLinks access or to accept delivery of the Equipment, or to work with the TekLinks technician to activate the Service. If Customer fails to have an Authorized Representative available at the scheduled appointment time, the TekLinks technician will attempt to contact Customer or its Authorized Representative by phone for up to fifteen (15) minutes after which time the appointment may be rescheduled. TekLinks reserves the right to charge Customer a reasonable appointment rescheduling fee. Such missed appointment fee must be paid before the appointment is rescheduled.

H. Moves; Termination Fees

If Customer terminates a Service before the expiration of the Service Term due to a change of Customer's location, then Customer shall pay any applicable Termination Fees in accordance with the Service Agreement. Notwithstanding the foregoing, however, TekLinks will waive the Termination Fees if Customer purchases another Service from TekLinks for its new location that is of the same or greater value and subscribes to a new minimum contracted Service Term of at least twelve (12) months. Additional Equipment charges may apply depending on the type of new Service that is being purchased by Customer. If Service is not available at Customer's new location for any reason, Customer is liable for the Termination Fees.

10. No Solicitation

During the Term of an Agreement and for a one (1) year period immediately following the termination or expiration of an Agreement, neither party shall, directly or indirectly, for itself, or on behalf of any other person, firm, corporation or other entity, whether as principal, agent, employee, stockholder, partner, member, officer, director, sole proprietor, or otherwise, solicit, participate in, or promote the solicitation of any employee of the other party to leave such employment, or hire or engage such employee; provided, however, that nothing in an Agreement shall prohibit either party from offering employment to or hiring any employee of the other party in response to notices of employment addressed to the general public and not to the other party's employees in particular. In the event either party violates this non-solicitation agreement, the violating party shall pay to the other party, as reasonable liquidated damages, an amount equal to one hundred fifty percent (150%) of the employee's annualized salary at the non-violating party, including bonuses.

11. Warranties

A. Service Warranty

TekLinks warrants that the Services will be performed in a workmanlike manner and in accordance with the applicable Agreement and Order. In the event of a breach of this warranty, as Customer's exclusive remedy, TekLinks will re-perform the defective Services at no charge to Customer within a reasonable time or within the limits of the Master SLA or an applicable SLA under an Order.

B. Disclaimer of Warranties

Customer acknowledges and agrees that TekLinks is not the developer or manufacturer of any Products, including without limitation any Products provided under an Agreement. CUSTOMER ACKNOWLEDGES AND AGREES THAT ALL PRODUCTS ARE BEING MADE AVAILABLE AND PROVIDED TO CUSTOMER ON AN "AS IS" BASIS AND WITHOUT ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER BY TEKLINKS. TEKLINKS MAKES NO, AND EXPRESSLY DISCLAIMS ALL, WARRANTIES WITH RESPECT TO PRODUCTS, EXPRESS OR IMPLIED, INCLUDING THE ADEQUACY, AVAILABILITY, STABILITY, UTILITY, INTEGRITY OR QUALITY OF THE PRODUCTS, WHICH BOTH PARTIES ACKNOWLEDGE WERE MANUFACTURED OR DEVELOPED BY THIRD-PARTY VENDORS, LICENSORS OR SUPPLIERS. TEKLINKS EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND THOSE ARISING FROM TRADE USAGE OR COURSE OF DEALING. TEKLINKS DOES NOT WARRANT THAT THIRD-PARTY SOFTWARE OR SERVICE SOFTWARE WILL PERFORM UNINTERRUPTED, ERROR FREE OR VIRUS FREE, NOR DOES TEKLINKS WARRANT THAT THE SAME WILL MEET CUSTOMER'S REQUIREMENTS OR RESULT IN INCREASED REVENUES OR PROFITS OF CUSTOMER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY TEKLINKS, ITS AGENTS OR EMPLOYEES WILL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. TEKLINKS HAS

NO LIABILITY FOR VIOLATION OF LAWS BY CUSTOMER OR OTHER USERS OF PRODUCTS. CUSTOMER HEREBY RELEASES TEKLINKS FROM ANY AND ALL CLAIMS FOR BREACH OF WARRANTY ARISING OUT OF ITS OR ITS AUTHORIZED USERS' USE OF PRODUCTS. To the extent allowed by the Vendor of any Products, TekLinks shall pass through to Customer all end-user warranties, indemnities and guarantees relating to the Products, if any, including without limitation any indemnities or warranties regarding infringement claims related to Third-Party Software. To the extent TekLinks is not permitted to pass such warranties or indemnities through to Customer, TekLinks agrees to enforce such warranties and indemnities, if any, on behalf of Customer at Customer's request and expense.

12. Limitation of Liability

TekLinks' liability under an Agreement is limited to the actual, direct damages incurred by Customer arising out of or related to TekLinks' performance of the Agreement and shall in no event exceed the amount paid for the Services giving rise to the claim of Loss. In no event shall TekLinks be liable for any incidental, consequential, special, indirect, punitive or third-party damages or claims, including but not limited to lost profits or revenue, lost savings, lost productivity, loss of data, loss of use of equipment and loss from interruption of business, even if previously advised of their possibility and regardless of whether the form of action is based upon breach of warranty, breach of contract, negligence, strict liability in tort or any other legal theory. The foregoing limitations of liability shall be on a cumulative basis and not per incident. Additional limitations may be outlined in an Order and are in effect for the Term of the applicable Agreement.

13. Insurance; Indemnification

A. General

TekLinks and Customer each shall maintain reasonable insurance coverage through their respective carriers. Such insurance must include, at a minimum, general liability coverage in amounts of at least \$1 million per occurrence, \$3 million annual aggregate, and workers compensation coverage in amounts required by law. Each party shall provide the other with evidence of the insurance required hereunder within thirty (30) days of request.

B. Insurance on Equipment

For any TekLinks Equipment located at a Customer location, Customer shall maintain special form insurance against loss, theft or damage, in an amount not less than the new replacement value of the TekLinks Equipment. Customer shall name TekLinks as an additional insured/loss payee by policy endorsement. Customer shall deliver written evidence of such insurance satisfactory to TekLinks prior to delivery of TekLinks Equipment to Customer's location and thereafter within thirty (30) days of request. If Customer fails to obtain or maintain such insurance, TekLinks will have the right, but not the obligation, to obtain insurance in such forms and amounts as TekLinks deems reasonable to protect TekLinks' interests, and the expense for said insurance shall be paid by Customer on demand by TekLinks. TekLinks will discontinue such insurance (and refund to Customer any premiums refunded to TekLinks) when Customer provides satisfactory evidence of the insurance required hereunder. For any Customer Equipment located at any TekLinks location, Customer shall maintain special form insurance against loss, theft, or damage, in an amount not less than such Customer Equipment's new replacement value. Customer shall bear all risk of loss to Customer Equipment at any TekLinks location.

C. Indemnification

- 1) **By Customer.** Customer shall indemnify, defend and hold harmless TekLinks and the TekLinks Parties from and against any Losses arising out of or related to (a) Customer's or Customer Parties' breach of this Agreement, (b) Customer's or Customer Parties' use of the Services in a manner not authorized by an Agreement, (c) any third-party claim that Customer, Customer Parties or Customer Software infringe its United States Intellectual Property Rights, or (d) Customer's or Customer Parties' negligence, recklessness or intentional misconduct.
- 2) **By TekLinks.** TekLinks shall indemnify, defend and hold harmless Customer and Customer Parties from and against any Losses arising out of or related to (a) TekLinks' or TekLinks Parties' breach of this Agreement (but excluding any breach of warranty, the exclusive remedy for which is set forth in Section 11.A), (b) TekLinks' or TekLinks Parties' negligence, recklessness or intentional misconduct. Further, TekLinks shall indemnify, defend and hold harmless Customer and Customer Parties from and against all Losses awarded against Customer and Customer Parties in a final judgment based on any third-party claim that Customer's use of the Services in compliance with the Agreement infringes any United States Intellectual Property Right of a third party; provided, however, TekLinks shall have no obligations under this Section 13.C(2) with respect to infringement claims to the extent arising out of:
 - a) any Customer Software, other Customer-owned intellectual property, or any instruction, information, designs, specifications or other materials provided by Customer to TekLinks;
 - b) use of the Service in combination with any software, materials or equipment not supplied to Customer by TekLinks, if the infringement would have been avoided by the use of the Services not so combined;
 - c) any modifications or changes made to the Services by or on behalf of any person other than TekLinks or TekLinks personnel; or
 - d) any Third-Party Software or Third-Party Equipment, whether or not provided by TekLinks.

THIS SECTION 13.C(2) STATES THE ENTIRE OBLIGATION OF TEKLINKS, AND THE EXCLUSIVE REMEDY OF CUSTOMER AND CUSTOMER PARTIES, IN RESPECT OF ANY INFRINGEMENT OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE SERVICES. THIS INDEMNITY AND REMEDY ARE GIVEN TO CUSTOMER AND CUSTOMER PARTIES SOLELY FOR THEIR BENEFIT AND IN LIEU OF, AND TEKLINKS DISCLAIMS, ALL EXPRESS OR IMPLIED, WRITTEN OR UNWRITTEN WARRANTIES, CONDITIONS AND OTHER TERMS OF NON-INFRINGEMENT WITH RESPECT TO THE SERVICES.

- 3) **Indemnification Procedures.** A party entitled to indemnification ("Indemnified Party") by the other party ("Indemnifying Party") under this Agreement will notify Indemnifying Party in writing within a reasonable time after it determines that a claim may reasonably result in the indemnification of Indemnified Party under the Agreement. However, the failure or delay to notify Indemnifying Party of an indemnification claim will not affect Indemnifying Party's indemnification obligations, except and only to the extent that Indemnifying Party was materially prejudiced as a result of such failure or delay. Upon receipt of written notification of an indemnification claim, Indemnifying Party shall immediately take control of the defense and investigation of such claim and engage counsel reasonably satisfactory to Indemnified Party to handle and defend the indemnification claim, at Indemnifying Party's sole cost and expense. The parties shall cooperate in all reasonable respects in the investigation, trial, defense, and settlement of any indemnification claim and any appeal arising therefrom. An Indemnified Party may, at its own cost and expense, participate, through its own counsel or otherwise, in the investigation, preparation, trial, defense, and settlement of such claim and any appeal arising therefrom. Indemnifying Party will not settle any claim without Indemnified Party's prior written approval. Indemnified Party will not unreasonably delay, condition, or withhold its consent to a proposed settlement; provided that (a) such settlement proposal includes an express, complete release of Indemnified Party from any responsibility or liability arising from the subject matter relating to the claim, (b) such proposed settlement does not involve a remedy other than the payment of money by Indemnified Party, and (c) the proposed settlement does not have any likely negative impact on the reputation of Indemnified Party.

14. Force Majeure

A. General

Neither party will be liable for any delay or failure in performance under an Agreement due to any cause that is beyond its reasonable control and for which it is without fault or negligence, including, but not limited to, acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, insurrections, fires, explosions, earthquakes, nuclear accidents, floods, cable cuts, power blackouts affecting facilities other than facilities of a kind commonly protected by redundant power systems, unless such redundant power systems are also affected by such condition, unusually severe weather conditions, fuel or energy shortages, inability to secure products or services of other persons or transportation facilities, acts or omissions of transportation common carriers, other causes beyond a party's reasonable control, whether or not similar to the foregoing (collectively, "Force Majeure Events"). Upon the occurrence of a Force Majeure Event, the party whose performance is affected shall give written notice to the other party describing the Force Majeure Event, and the parties shall promptly confer in good faith to agree upon equitable, reasonable action to minimize the impact, on both parties, of such Force Majeure Event, including, without limitation and if applicable, implementing disaster recovery services. The parties agree that the party whose performance is affected shall use commercially reasonable efforts to minimize the delay caused by the Force Majeure Events.

B. Termination Rights

In the event the delay caused by a Force Majeure Event lasts for a period of more than thirty (30) days, the parties shall negotiate an equitable modification to the affected Agreements. If the parties are unable to agree upon an equitable modification within fifteen (15) days after such thirty (30) day period has expired, then either party will be entitled to serve thirty (30) days' notice of termination on the other party with respect to the affected Agreements. If the Force Majeure Event is continuing upon the expiration of such thirty (30) day notice period, the applicable Agreements, or the portions thereof impacted by the Force Majeure Event if such portions are severable from the remainder of the Agreement, automatically will terminate and Customer will have no further obligation for the payment of fees and charges to TekLinks (other than fees and charges already accrued or due and payable), and TekLinks will have no further obligation to provide Services. The remaining portions of the Agreement not impacted by the Force Majeure Event will continue in full force and effect. Customer shall pay TekLinks for Services through the date on which the applicable Order is terminated due to a Force Majeure Event. Financial problems or a financial inability to pay amounts due hereunder are not Force Majeure Events.

15. Dispute Resolution

A. Informal Dispute Resolution

The parties will notify each other in writing within a commercially reasonable timeframe and as promptly as possible regarding any conflicts or disputes arising out of an Agreement, or in the interpretation of the provisions of any part of an Agreement, or any dispute as to whether or not a breach of the Agreement is alleged to have occurred, and requesting informal dispute resolution. Notification for billing related disputes must be submitted no later than sixty (60) days from the invoice date. The parties will attempt to resolve all such conflicts as promptly as possible and in good faith before initiating any lawsuits, arbitration or other formal dispute resolution process. Each of the parties agrees to negotiate, in good faith, any such claims or disputes, and to escalate any and all disputes or claims to executive officers with authority to agree on a resolution, if necessary.

B. Litigation

If the parties are unable to resolve any dispute or claim utilizing informal procedures within thirty (30) days after delivery of a notice of the dispute as set forth Section 15.A, the parties may proceed with a lawsuit or other formal means to resolve the dispute or claim. Notwithstanding anything in Section 15.A to the contrary, either party may immediately (a) bring an action for injunctive or other equitable relief (without necessity of posting a bond or providing other security) if appropriate or (b) file a lawsuit or institute other formal dispute resolution to avoid the running of any applicable statute of limitations.

C. Attorneys' Fees

If any suit or action is necessary to enforce or interpret the terms of an Agreement, the substantially prevailing party will be entitled to reasonable attorneys' fees and costs in addition to any other relief to which such party may be entitled.

D. Continued Service

Unless TekLinks is bringing an action for Customer's failure to make payments not otherwise in dispute, TekLinks shall continue to provide Services under an Agreement, and Customer shall continue to make payments to TekLinks, in accordance with the Agreement during the period in which the parties seek resolution of the dispute.

E. Jury Waiver

IF ANY MATTER IS SUBJECT TO LITIGATION, EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO AN AGREEMENT, ANY ORDER, THE SERVICES OR ANY PRODUCTS (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE CHOICE OF LAW RULES OF ANY JURISDICTION AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS DO NOT APPLY.

F. No Impact on Right to Terminate

In no event will the existence or implementation of the dispute resolution processes set forth in this Section 15 or any other dispute resolution process selected or engaged in by the parties affect either party's right to terminate this Agreement as provided herein.

16. General

A. Notices

Except as otherwise provided under an Agreement, all notices, demands or requests to be given by a party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered (or the date of written refusal to accept delivery) in person, by courier service, by postage prepaid United States certified mail, return receipt requested, or electronic mail or fax with follow up copy by one of the other methods, and addressed to Customer at the address and contact specified in the Order, and if to TekLinks, addressed as follows: TekLinks, Inc., Attention: President, 201 Summit Parkway, Birmingham, AL 35209; Telephone: (205) 314-6600; Fax: (205) 940-9067; E-Mail: hosting@teklinks.com. The address to which such notices, demands, requests, elections or other communications are to be given by either party may be changed by written notice given by such party to the other party pursuant to this Section.

B. Waiver

No delay in exercising, no course of dealing with respect to, and no partial exercise of, any right or remedy hereunder will constitute a waiver of any right or remedy, or future exercise thereof. Any waiver must be in writing and signed by the party against whom the waiver is enforced.

C. Assignment

- 1) **By Customer.** Unless otherwise agreed in writing, neither an Agreement and associated documents nor any of the rights or obligations hereunder may be assigned, delegated or otherwise transferred by Customer without the prior written consent of TekLinks. Services are for the Customer's internal use only and may not be transferred or assigned to third parties without TekLinks' prior written consent, and any transfer or assignment to the contrary is void. Any change of Control of Customer shall constitute an assignment for which TekLinks' consent is required. Notwithstanding the foregoing, TekLinks will not deny, delay, or unreasonably condition any reasonable request for Customer's transfer or assignment upon satisfactory credit and documentation approval for Customer's proposed assignee. Under no circumstances shall Customer resell or redistribute the Services or Products provided under an Agreement.
- 2) **By TekLinks.** Customer acknowledges and agrees that TekLinks may transfer or assign or collaterally assign, in whole or in part, its rights, interests and obligations hereunder without limitation to any of its Affiliates, any party providing financing to TekLinks ("Financing Party"), and any successor or assign of TekLinks or such Financing Party without the consent of Customer; provided, however, that TekLinks and its successors shall remain obligated to Customer under an Agreement. Customer agrees that any Financing Party holding a security interest shall not be prevented or impeded by Customer from enforcing such security interest, and as long as TekLinks is performing its obligations hereunder, such action by a Financing Party shall not effect Customer's obligations under an Agreement. Customer shall execute all consents to assignment and/or acknowledgements of any security interest as are requested by TekLinks to give effect to the foregoing. Such acknowledgements may contain an agreement to allow a Financing Party to cure defaults by TekLinks under an Agreement and consent to allow the further assignment to a successors-in-interest of the holder of such security interest. An Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

D. No Third-Party Beneficiaries

Nothing in an Agreement will confer any rights upon any person or entity other than the parties hereto and each of their respective successors and permitted assigns. Unless otherwise agreed by the parties in writing, the obligations of TekLinks under an Agreement run only to Customer and not to its affiliates, users, customers or any other persons.

E. Survival

The duties and obligations of the parties with respect to proprietary rights, Intellectual Property Rights, non-disclosure and confidentiality, and each party's indemnification obligations, will survive and remain in effect, notwithstanding the termination or expiration of an Agreement.

F. Amendments and Modifications

- 1) **By TekLinks.** TekLinks reserves the right to modify these Master Terms, the Master SL Agreement, the Purchase Terms and Conditions, or any Service Level Agreement by posting such changes on its website at <http://teklinks.com>. TekLinks will notify Customer of any material changes in writing. Changes will not apply retroactively but will become effective upon notification. If after receiving notice Customer does not agree to the modifications to the Agreement, Customer and TekLinks will work in good faith to resolve the conflict within thirty (30) days. After which, if the conflict is not resolved to the satisfaction of

TekLinks and Customer, Customer may terminate the Agreement with twelve (12) months' written notice to TekLinks of its wish to terminate due to the modification. Notwithstanding anything herein to the contrary, TekLinks will not materially reduce the functionality or service levels applicable to any Service during the then current Term (excluding any Renewal Terms that begin after the date of the change) of the applicable Agreement for such Service without first obtaining Customer's written consent.

- 2) **By Customer.** If Customer desires any changes to these Master Terms, the Master SL Agreement, or any Service Level Agreement, a TekLinks Vice President or executive above the Vice President level ("TekLinks Officer") must approve the same, and any approved modifications must be made by a written Agreement Addendum and executed by an authorized representative of Customer and a TekLinks Officer.

G. Headings

Headings used in this Agreement are for convenience only and shall not be considered in construing or interpreting an Agreement.

H. Governing Law

Each Agreement is to be governed by and construed in accordance with the laws of the State of Alabama. Jurisdiction and venue for any action arising under or relating to an Agreement is exclusively in the state or federal courts located in Jefferson County, Alabama. The parties waive any other choice of venue.

I. Severability

If any term or provision of an Agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions will remain unimpaired, and the invalid terms or provisions are to be replaced by such valid terms and provisions that most nearly fulfill the parties' intention underlying the invalid term or provision.

J. Counterparts

An Agreement may be executed and delivered by facsimile or e-mail and in counterparts, each of which shall be deemed an original, and all of which together shall constitute one instrument. The parties agree that facsimile or electronic mail execution and delivery will have the same force and effect as delivery of an original document with original signatures, and that each party may use the same as evidence of the execution and delivery of an Agreement by all parties to the same extent that an original signature could be used.

K. Entire Agreement

An Agreement, including the Order, these Master Terms, the Master SLA, Service Agreement and SLA, if applicable, sets forth the entire understanding of the parties with respect to the subject matter thereof and is binding upon both parties in accordance with its terms. There are no understandings, representations or agreements other than those set forth in an Agreement. Each party, along with its respective legal counsel, has had the opportunity to review and amend the Agreement. Accordingly, in the event of any ambiguity, such ambiguity will not be construed in favor of or against either party.

L. Interpretation of Conflicting Terms

In the event of a conflict between or among the terms of the components of an Agreement, the following order of precedence shall control: an Agreement Addendum, the SLA, the Master SLA, the Service Agreement, the Purchase Terms and Conditions, these Master Terms, the Order and any other document made a part of the Agreement.

M. Due Authorization

Each person executing an Agreement on behalf of one of the parties hereto represents that such person is duly authorized to execute and deliver the Agreement pursuant to such party's respective by-laws, operating agreement, resolution or other legally sufficient authority. Further, each party and the persons executing an Agreement on its behalf represents to the other party that (a) it has been validly formed or incorporated, (b) it is duly qualified to do business in the state in which the Agreement is to be performed, and (c) an Agreement is being executed on its behalf and for its benefit.

17. Definitions

- **Account Manager** means the TekLinks' representative who identified in and is responsible for management of a particular Order.
- **Affiliate** means, with respect to a party, any entity that directly or indirectly Controls, is Controlled by, or is under common Control with such party.
- **Authorized Representative** means Customer's and TekLinks' respective representatives who are authorized in writing from time to time to request or approve any Services, Products, Supplemental Services or Supplemental Products requested by Customer and to execute an Agreement on such party's behalf.
- **Control** means ownership or control, directly or indirectly, of more than 50% of the voting or equity interests of the entity.
- **Corporate Account Manager** means TekLinks' representative identified to Customer in writing who shall be responsible for the overall management of the Customer account.
- **Customer** means the party with which TekLinks is entering into a Service agreement.
- **Customer Parties** means Customer, its officers, directors, members, employees, agents, subsidiaries, Affiliates, successors and permitted assigns.
- **Data Center** refers to the physical space within a facility used for hosting of customer equipment.
- **Effective Date** means the date on which the relevant Order is signed by Customer.
- **Equipment** means servers, desktop computers, routers, switches, hardware, and other components deployed to provide or enable the Service. Equipment may be owned or leased by TekLinks ("TekLinks Equipment") or Customer ("Customer Equipment").
- **Fees** means the fees for Services or Products set forth in a signed Order.
- **Help Desk** means the mechanisms through which TekLinks provides Technical Support.
- **Intellectual Property Rights** means all right, title and interest in and to all patents, copyrights, trade secrets, trademarks and other intellectual property and proprietary rights of a party or its licensors.
- **Losses** means any and all losses, liabilities and damages, and all costs and expenses relating to such losses, liabilities and damages (including, without limitation, costs of investigation; costs of litigation; court costs; penalties; fines; taxes; charges; fees; settlements; licensing fees; judgments; discovery costs; consultants', experts', and witnesses' fees and expenses; interest; and reasonable attorney fees and expenses).
- **Master SLA** means the master service level agreement which is found at <https://www.teklinks.com/agreements/>.
- **Primary Customer Contact** means the main Customer contact who is identified in writing to TekLinks and who is responsible for overseeing Customer's relationship with TekLinks for all Services provided under these Master Terms.

- **Primary Technical Contact** means the Customer representative identified in an Order who will be the primary contact with respect to technical issues arising under such Order.
- **Products** means Third-Party Software, Third-Party Equipment or other products manufactured or developed by parties other than TekLinks that are provided by TekLinks as a reseller or sub-licensor.
- **Services** means the managed services, remote back up, Internet, hosting, infrastructure supply and support, consulting or other services set forth in a signed Order.
- **Service Terms** means the specific terms and conditions applicable to a particular Service (as opposed to those generally applicable to all Services and set forth in these Master Terms), which will be identified in an Order and which are found at <https://www.teklinks.com/agreements/>.
- **Supplemental Products** means Products that Customer requests in writing from TekLinks on a “one-off” or emergency basis that are not included within the scope of Products described in an Order.
- **Supplemental Services** means limited Services that Customer requests in writing from TekLinks on a “one-off” or emergency basis that are not included within the scope of the Services described in an Order.
- **Taxes** means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes, but excluding any income taxes.
- **Technical Support** means technical support Services provided through personnel who man the Help Desk.
- **TekLinks Parties** means TekLinks, and its officers, directors, members, employees, agents, subsidiaries, Affiliates, successors and assigns.
- **TekLinks Technology** means any process, system, software, service or device in which TekLinks has any intellectual property or other ownership or use rights.
- **Term** means the initial and any renewal terms set forth in an Order.
- **Third-Party Equipment** means equipment developed or manufactured by a party other than TekLinks or in which any third party has any intellectual property or other ownership rights and which is provided by TekLinks as a reseller.
- **Third-Party Software** means software developed by a party other than TekLinks or in which any third party has any intellectual property or other ownership rights and which is provided by TekLinks as a reseller/sub-licensor.
- **Users** means Customer's owners, employees and contract workers who are authorized by Customer to use the Services.

(End of Master Terms and Conditions)