

Visual Edge IT

MASTER SERVICES AGREEMENT

This Master Services Agreement (this “Agreement”) is between **Visual Edge, Inc., a Delaware corporation with principal offices at 3874 Highland Park NW; North Canton, OH 44720 (“VEIT”)**, and you, the entity whose name, authorized signatory and contact information appear in the signature block of this Agreement (“**you**”, “**your**” or “**Client**”). This Agreement will be effective as of the latest date of the signatures of the parties below (“Effective Date”).

- 1) **SCOPE OF SERVICES; SOW.** This Agreement governs all of the services that we perform for you (collectively, the “Services”). The Services will be described in one or more statements of work that we provide to you (each, a “SOW”), and once you and we mutually agree to a SOW (either by signing it or by electronic acceptance), the SOW will become a part of, and governed under, the terms of this Agreement. If there is a material difference between the language in a SOW and the language in this Agreement, then the language of the SOW will control, except in situations involving warranties, limitations of liability or termination of this Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement.
- 2) **GENERAL REQUIREMENTS.**
 - a) *System Configuration.* For the purposes of this Agreement, “System” means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored or operated by VEIT pursuant to this Agreement. Our fees are based upon the configuration of your System as of the effective date of the applicable SOW. If the System configuration changes for any reason, then we may adjust the scope of services and/or the fees charged to you under the applicable SOW to accommodate those changes.
 - b) *Requirements.* At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of VEIT providing its Services to you.
 - c) *Maintenance; Updates.* If patches and other software-related maintenance updates (“Updates”) are to be provided by VEIT under a SOW, VEIT will install the Updates only if VEIT has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the applicable software or hardware. VEIT will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer’s or applicable vendor’s instructions.
 - d) *Third Party Support.* If, in VEIT’s discretion, a hardware or software issue requires vendor or Original Equipment Manufacturer (“OEM”) support, VEIT may contact the vendor or OEM as applicable on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance of \$200, VEIT will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
 - e) *Insurance.* If you are supplied with VEIT Equipment, you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. VEIT shall be listed as an additional insured on any policy acquired and maintained by you hereunder, and the policy shall not be canceled or modified during the term of the applicable SOW without prior notification to VEIT. Upon VEIT’s request, you agree to provide proof of insurance to VEIT, including proof of payment of any applicable premiums or other amounts due thereunder. **Note additional insurance requirements are covered under section 13k**
 - f) *Advice; Instructions.* From time to time, we may provide you with specific advice and directions related to our provision of the Services or the maintenance or administration of the System. (For illustrative purposes, such advice or directions may include installing cooling mechanisms or environmental controls in a server room, increasing the System’s server or hard drive capacity, replacing obsolete equipment, etc.). You agree to promptly follow and implement any directions we provide to you related to the Services which, depending on the situation, may require you to make additional purchases or investments in the System or the environment in which the System is maintained, at your sole cost. VEIT will not be responsible for any System downtime caused by your failure to promptly follow VEIT’s advice or directions. If your failure to follow or implement VEIT’s advice renders part or all of the Services economically or technically unreasonable in VEIT’s discretion, then VEIT may terminate the applicable SOW for cause by providing notice of termination to you. Any services required to correct or remediate issues caused by your failure to follow VEIT’s advice

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or directions, as well as any services required to bring the System up to the Minimum Requirements, will be billed to you at VEIT's then-current hourly rates, as provided in the applicable SOW.

g) *Prioritization*. Unless otherwise stated in a SOW, all Services will be performed on a schedule, and in a prioritized manner, as determined by VEIT.

h) *Authorized Contact(s)*. You understand and agree that VEIT will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent ("Authorized Contacts"). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. If you desire to change your Authorized Contact(s), please notify VEIT of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

- 3) **FEES; PAYMENT.** You agree to pay the fees described in each SOW. If the SOW does not include a fee schedule, then you agree to pay VEIT on an hourly basis pursuant to VEIT's standard hourly rate of _____.
- 4) *Schedule*. Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the calendar month in which the Services are to be provided to you. If applicable, payments made by ACH will be deducted from your designated bank account on the first business day of the month in which the Services are to be provided. For prepaid fees or fees paid pursuant to a service plan, payment must be made in advance of work performed, unless other arrangements are expressly stated in the SOW. For purposes of clarity, this payment in advance means that payment for the first of month service under each SOW is due and payable prior to the effective date of the SOW.
- a) *Schedule for Fixed-Fee Projects*. Where services are provided for a fixed price, the total fees shall be the amount set out in the SOW. In the event the SOW states that the total fee shall be paid to VEIT in installments, with each installment being conditional on VEIT achieving an event or task described in the SOW (a "Project Milestone"), VEIT shall, upon reaching a Project Milestone, issue an invoice to the Client for the fees that are then payable, together with a detailed breakdown of any expenses incurred.
- b) *Schedule for Hardware Purchases*. Unless otherwise stated in an SOW or a Purchase Order ("PO"), all hardware will be invoiced on the date that the hardware is shipped to you, without regard to actual arrival date of shipment.
- c) *Nonpayment*. Fees that remain unpaid for more than fifteen (15) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. VEIT reserves the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not received by VEIT within sixty (60) days of such fees becoming indisputable. Notice of disputes related to fees must be received by us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connect fee may be charged to you in the event that VEIT suspends the Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.
- d) *Payment on Invoices Via Credit Card*. Any invoices paid by Client via a credit card will incur an additional fee of three percent (3%).
- e) *Fee Increases*. VEIT and Client agree that VEIT may increase its fees, not more frequently than once every twelve (12) months, provided that VEIT provides Client written notice of such increase at least thirty (30) days prior to effective date of increase, and the amount of such increase shall not exceed ten percent (10%).
- 5) **ACCESS.** You hereby grant to VEIT the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the System for the purpose of enabling VEIT to provide the Services. This includes ensuring VEIT both physical access and remote access to your system. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses, permits or other permissions necessary for VEIT to provide Services to the System and, if applicable, at your designated premises.
- 6) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY.**
- a) *Hardware / Software Purchased Through VEIT*. Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through VEIT ("Third Party Products") are nonrefundable once the applicable purchase order is placed in VEIT's queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the

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quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third Party Products are provided “as is” and without any warranty whatsoever as between VEIT and you (including but not limited to implied warranties).

b) *Warranty Application.* Notwithstanding any provision to the contrary in this Agreement, any warranty provided by VEIT shall be deemed null and void if the applicable hardware or product is (i) altered, modified or repaired by persons other than VEIT, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by VEIT; (ii) misused, abused, or not operated in accordance with the specifications of VEIT or the applicable manufacturer or creator of the hardware or product, or, (3) subjected to improper site preparation or maintenance by persons other than VEIT or persons approved or designated by VEIT.

c) *Limited Warranty.* VEIT warrants that the Services performed pursuant to this Agreement shall be done in a professional manner and in accordance with industry standards. Your exclusive remedy and VEIT’s entire liability under this warranty will be for VEIT to re-perform any non-conforming portion of the Services. **THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

d) *Liability Limitations.* **THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW, AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR LOST REVENUE, LOSS OF PROFITS (EXCEPT FOR FEES DUE AND OWING TO VEIT), SAVINGS, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, OR FOR ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY SOW, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF THE NEGLIGENCE OF EITHER PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.** VEIT’s aggregate liability to you for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, “Claim(s)”), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of your actual and direct damages, not to exceed the amount of fees paid by you to VEIT for the specific Service upon which the applicable Claims is/are based during the six (6) month period immediately prior to the date on which the Claim accrued. VEIT will not be responsible to the extent your willful or intentional misconduct, or gross negligence, caused or contributed to the Claim. Notwithstanding the foregoing, you agree that in the event that you fail to maintain the cyber liability insurance required in Section 17(k), VEIT’s aggregate liability to you for damages from any and all Claims that arise from or relate to a Data Breach, whether in contract, tort, indemnification, or negligence, shall be limited solely to your actual and direct damages, not to exceed the amount of fees paid by you to VEIT for the specific Service upon which the applicable Claims is/are based during the one (1) month period immediately prior to the date on which the Claim accrued.

- 7) **INDEMNIFICATION.** You agree to indemnify, defend and hold VEIT harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys’ fees, (collectively, “Damages”) that arise from, or are related to, your breach of this Agreement, or which relate to any act or omission undertaken or caused by you. The foregoing indemnification obligation includes Damages arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Services. VEIT will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. No claim for which indemnity is sought by VEIT will be settled without VEIT’s prior written consent, which shall not be unreasonably delayed or withheld.
- 8) **TERM; TERMINATION.** This Agreement will begin as of the latest date of the signatures of the parties below, and will continue until terminated as described in this Section. Additionally, each SOW will have its own term, and will be

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terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) the status or progress of any other SOW between the parties.

a) *Termination For Cause.* In the event that one party (a “Defaulting Party”) commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a “For Cause” termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within thirty (30) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If VEIT terminates this Agreement or any SOW For Cause, then VEIT shall be entitled to receive, and you hereby agree to pay to VEIT, (i) all amounts that would have been paid to VEIT had this Agreement or SOW (as applicable) remained in effect, and (ii) all Hard Costs. If you terminate this Agreement or a SOW for cause, then you will be responsible for paying only for those services that were properly delivered and accepted by you up to the effective date of termination.

b) *Client Activity As A Basis for Termination.* In the event that any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the System or any part of the System to malfunction or requires remediation by VEIT on three (3) occasions or more (“System Malfunction”), and you fail to remedy, repair or replace the System Malfunction as directed by VEIT (or you fail to cease the activity causing the System Malfunction, as applicable), then VEIT will have the right, upon ten (10) days prior written notice to you, to terminate this Agreement or the applicable SOW For Cause or, at VEIT’s discretion, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

c) *Consent.* You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.

d) *Equipment / Software Removal.* Upon termination of this Agreement for any reason, you will provide VEIT with access, during normal business hours, to your premises or any other locations at which VEIT-owned equipment or software (collectively, “VEIT Equipment”) is located to enable VEIT to remove all VEIT Equipment from the premises. If you fail or refuse to grant VEIT access as described herein, or if any of the VEIT Equipment is missing, broken or damaged (normal wear and tear excepted) or any of VEIT-supplied software is missing, VEIT will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items. If you fail or refuse to grant VEIT access to remove VEIT-supplied antivirus licenses, monitoring tools, or other VEIT-supplied software, you will continue to be responsible for 50% of the monthly fees stated in the SOW, until access is allowed and the licenses and tools are removed.

e) *Replacement Services.* Upon termination, any services VEIT provided you will cease to work. These may include, but are not limited to, email services, antivirus protection, other security tools, and backups. You are entirely responsible to obtain replacements any of these services. Any spam filtering services will be disabled upon termination. You are entirely responsible to redirect all of your MX records away from the spam filter system and redirect email to your server. Upon termination of spam filtering services, email will not be delivered unless you have taken the above steps. You acknowledge that you understand the above and accept the responsibility and consequences if you fail to act.

f) *Transition; Deletion of Data.* In the event that you request VEIT’s assistance to transition to a new service provider, VEIT will provide such assistance if (i) all fees due and owing to VEIT are paid to VEIT in full prior to VEIT providing its assistance to you, and (ii) you agree to pay VEIT its then-current hourly rate for such assistance, as defined in the SOW, or as defined in this MSA in the event no hourly rate is specified in the SOW, with up-front amounts to be paid to VEIT as may be required by VEIT. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, VEIT will have no obligation to store or maintain any Client data, including any backups, in VEIT’s possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** VEIT will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, VEIT’s deletion of your data beyond the time frames described in this Section 7(e).

9) **RESPONSE; REPORTING.**

a) *Response.* VEIT warrants and represents that VEIT will provide the Services, and respond to any notification received by VEIT of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in an applicable SOW (“Response Time”), except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), or (iii) periods in

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which VEIT is required to suspend the Services to protect the security or integrity of your System or VEIT's equipment or network, or (iv) delays caused by a force majeure event.

i) Scheduled Downtime. For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by VEIT but which will not occur between the hours of 8 AM and 5:30 PM EST (or EDT, as applicable), Monday through Friday without your authorization or unless exigent circumstances exist, during which time VEIT will perform scheduled maintenance or adjustments to its network. VEIT will use its best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.

ii) Client-Side Downtime. VEIT will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions ("Client-Side Downtime").

iii) Remedies; Limitations. Except for the Onboarding Exception, if VEIT fails to meet its Response Time commitment and if, under such circumstances, VEIT's failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, VEIT will issue you a pro-rated credit in an amount as determined solely by VEIT to be reasonable to compensate for the failure to meet the Response Time commitment. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the failure to meet the Response Time commitment. The remedies contained in this paragraph are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for VEIT's failure to meet any service level commitment during the term of this Agreement.

b) Onboarding Exception. You acknowledge and agree that for the first thirty (30) days following the commencement date of a SOW, the Response Time commitments described in this Agreement will not apply to VEIT, it being understood that there may be unanticipated downtime or delays due to VEIT's initial startup activities with you (the "Onboarding Exception").

10) CONFIDENTIALITY.

a) Defined. For the purposes of this Agreement, Confidential Information means any and all non-public information provided by either party (as the "Disclosing Party") to the other party (as the "Receiving Party"), including but not limited to customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of the Receiving Party, (ii) was developed independently by the Receiving Party, or (iii) is or was lawfully and independently provided to the Receiving Party prior to disclosure by the Disclosing Party, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

b) Use. The Receiving Party will keep the Disclosing Party's Confidential Information confidential, and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by the Disclosing Party in writing, or (ii) as needed to fulfill the Receiving Party's obligations under this Agreement. If the Receiving Party is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then the Receiving Party will ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section 10.

c) Due Care. The Receiving Party will exercise at least the same degree of care with respect to the Confidential Information it receives from the Disclosing Party as the Receiving Party normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.

d) Compelled Disclosure. If the Receiving Party is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, the Receiving Party will immediately notify the Disclosing Party in writing of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive the Receiving Party's compliance with the provisions of this Section 10. The Receiving Party will use its best efforts, at the Disclosing Party's expense, to obtain or assist the Disclosing Party in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, the Receiving Party may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that the Receiving Party has been advised by written opinion of counsel reasonably acceptable to the Receiving Party that it is legally compelled to disclose.

11) DATA PRIVACY

a) Definitions. Capitalized terms used herein shall have the meanings set forth in this Section 11.a:

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- i) "Authorized Persons" means VEIT's employees, contractors, agents, and auditors who have a need to know or otherwise access Personal Information to enable VEIT to perform its obligations under this Agreement, and who are bound by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Agreement.
 - ii) "Personal Information" means information that you provide or for which you provide access to VEIT, or information which VEIT creates or obtains on your behalf, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including Sensitive Personal Information as defined in Section 11.a.iv. Your business contact information is not by itself Personal Information.
 - iii) "Sensitive Personal Information" means an individual's (i) government-issued identification number, including Social Security number, driver's license number, or state-issued identification number; (ii) financial account number, credit report information, or credit, debit, or other payment cardholder information, with or without any required security or access code, personal identification number, or password that permits access to the individual's financial account; or (iii) biometric, genetic, health, or health insurance data.
 - iv) "Data Breach" means (i) any act or omission that materially compromises the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by VEIT, or by you should VEIT have access to your systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of VEIT or a breach or alleged breach of this Agreement relating to such privacy and data security practices.
- b) VEIT and Client Obligations.
- i) VEIT will:
 - (1) comply with the terms and conditions set forth in this Section 11.
 - (2) be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession.
 - (3) not disclose Personal Information to any person other than its Authorized Persons without your prior written consent unless required by applicable law, in which case, VEIT will use reasonable efforts and to the extent permitted by applicable law notify you before such disclosure or as soon thereafter as reasonably possible.
 - ii) You will:
 - (1) comply with the terms and conditions set forth in this Section 11.
 - (2) be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under your control or in your possession.
 - (3) comply with any applicable laws and regulations and use only secure methods, according to accepted industry standards, when transferring or otherwise making available Personal Information to VEIT.
 - (4) provide written notice to VEIT if any information you provide to VEIT under this Agreement contains Personal Information. VEIT will not be responsible for determining on its own that any information you provide under this Agreement qualifies as Personal Information.
- c) Information Security.
- i) VEIT will comply with applicable laws and regulations in its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information.
 - ii) VEIT will employ reasonable security measures to protect Personal Information in accordance with accepted industry standards.
 - iii) If, in the course of its performance under this Agreement, VEIT has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information on your behalf, VEIT will comply with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, as applicable.
- d) Data Breach Procedures.

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- i) VEIT maintains a cyber incident breach response plan in accordance with accepted industry standards ("Cyber Incident Response Plan") and will implement the procedures required under such plan on the occurrence of a Data Breach.
 - ii) VEIT will notify you of a Data Breach as soon as reasonably practicable after VEIT becomes aware of it.
 - iii) Immediately following VEIT's notification to you of a Data Breach, we will coordinate with each other, as necessary, to investigate the Data Breach in accordance with VEIT's current Cyber Incident Response Plan.
- e) Return or Disposal of Personal Information. On the termination or expiration of this Agreement, VEIT will promptly return to you or securely dispose of all Personal Information in its possession. If VEIT is not reasonably able to return or securely dispose of Personal Information, including, but not limited to, Personal Information stored on backup media, VEIT will continue to protect such Personal Information in accordance with the terms of this Agreement until such time that it can reasonably return or securely dispose of such Personal Information.

12) **THIRD PARTY SERVICES.**

- a) *EULAs.* Portions of the Services may require you to accept the terms of one or more third party end user license agreements ("EULAs"). EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs, and will look only to the applicable third party provider for the enforcement of the terms of such EULAs. If, while providing the Services, VEIT is required to comply with a third party EULA and the third party EULA is modified or amended, VEIT reserves the right to modify or amend any applicable SOW with you to ensure VEIT's continued compliance with the terms of the third party EULA.
- b) *Data Loss.* Under no circumstances will VEIT be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) VEIT's failure to backup or secure data from portions of the System that were not expressly designated in the applicable SOW as requiring backup or recovery services.
- c) *BYOD.* You hereby represent and warrant that VEIT is authorized to provide the Services to all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that (i) are connected to the System, and (ii) have been designated by you to receive the Services, regardless of whether such device(s) are owned, leased or otherwise controlled by you. Unless otherwise stated in a SOW, devices will not receive or benefit from the Services while the devices are detached from or unconnected to the System.
- d) **VEIT's liability is limited per section 5**

- 13) **REMOTE ACCESS TO PERSONAL COMPUTERS AND/OR NETWORKS.** If or when Client transitions to home or alternative networks, VEIT will make best effort to make connections and serviceability. However, home or alternative networks may not have adequate internet connectivity and equipment to effectively work. VEIT is not responsible for inadequacies in those home or alternative networks or to secure those connections. Home equipment will not be as secure and may not have VEIT's software and security features. VEIT is not responsible for the security of the home or alternative networks. Work on a home or alternative network unless otherwise included is outside the scope of this Agreement and VEIT may charge its then hourly rate, as designated in the SOW, for work on home or alternative networks. VEIT will charge for additional software installed at home or alternative networks as needed.

- 14) **OWNERSHIP.** Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party ("Intellectual Property"), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights in one party's Intellectual Property to the other party.

- 15) **ARBITRATION.** If the parties are unable to resolve a dispute informally, the dispute will be settled by final and binding arbitration. The arbitration will be initiated and conducted according to the JAMS Comprehensive Arbitration Rules and Procedures (except as modified herein) including the Optional Expedited Arbitration Procedures and Optional Appeal Procedure, in effect at the time the request for arbitration is made (the "Rules"). In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator, and not any federal, state, or local court or agency, will have exclusive authority to resolve any dispute relating to the interpretation, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of the Agreement is void or voidable. The arbitration shall be heard by a single arbitrator, to be selected by the parties

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and experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in the venue described in Section 17, below. The arbitrator shall determine the scope of discovery in the matter, however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys' fees and costs.

16) AUDIT AND INSPECTION RIGHTS

a) During the term of this Agreement, on 3 Business Days' notice and during regular business hours, VEIT may at its own expense inspect the Client's books, records, and other documents, including computer files and supporting orders and invoices, as necessary to verify compliance with the terms and conditions of this Agreement. The Client shall cooperate with VEIT in conducting any such audit. VEIT's failure to notify Client of any deficiency or breach that it identified during an audit hereunder is not a waiver of any claim of VEIT against Client.

17) MISCELLANEOUS.

a) *Assignment.* Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, VEIT may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of the business of VEIT, or any other transaction in which ownership of more than fifty percent (50%) of VEIT's voting securities are transferred; provided, however, that such assignee expressly assumes VEIT's obligations hereunder.

b) *Amendment.* No amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by VEIT, specifically refers to this Agreement, and is accepted in writing by one of your Authorized Contacts.

c) *Time Limitations.* The parties mutually agree that any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.

d) *Severability.* If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.

e) *Other Terms.* VEIT will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication between the parties unless such terms or conditions are incorporated into a duly executed SOW.

f) *No Waiver.* The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.

g) *Merger.* This Agreement, together with any and all SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Services to be provided, and will not act to modify this Agreement or provide binding contractual language between the parties. VEIT will not be bound by any agents' or employees' representations, promises or inducements not explicitly set forth herein.

h) *Force Majeure.* VEIT will not be liable to you for delays or failures to perform VEIT's obligations under this Agreement or any SOW because of circumstances beyond VEIT's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by you, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials,

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cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.

i) *Non-Solicitation.* You acknowledge and agree that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, you will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of VEIT's employees or subcontractors to discontinue or reduce the scope of their business relationship with VEIT, or recruit, solicit or otherwise influence any employee or agent of VEIT to discontinue such employment or agency relationship with VEIT. In the event that you violate the terms of the restrictive covenants in this Section 13(i), you acknowledge and agree that the damages to VEIT would be difficult or impracticable to determine, and you agree that in such event, as VEIT's sole and exclusive remedy therefore, you will pay VEIT as liquidated damages and not as a penalty an amount equal to fifty percent (50%) percent of that employee or subcontractor's first year of base salary with you (including any signing bonus) or \$25,000 whichever is greater. In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to any of VEIT's employees by you will be deemed to be a material breach of this Agreement, in which event VEIT shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.

j) *Survival.* The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive.

k) *Insurance.* VEIT and you will each maintain, at each party's own expense, all insurance reasonably required in connection with this Agreement or any SOW, including but not limited to, workers compensation and general liability. VEIT agrees to maintain a general liability policy with a limit not less than \$1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party by certified mail. You also agree to maintain a cyber liability insurance policy, including first party and third-party coverage, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for all claims each policy year. You agree that failure to maintain such cyber liability insurance policy increases risk for VEIT and you in the event of a Data Breach, regardless of cause. You also agree that failure to maintain such cyber liability insurance will subject you to the more restrictive limits of liability provided under Section 6(d).

l) *Governing Law; Venue.* This Agreement and any SOW will be governed by, and construed according to, the laws of the state of Delaware. You hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts in Delaware, for any and all claims and causes of action arising from or related to this Agreement. YOU AND WE AGREE THAT EACH OF US WAIVES ANY RIGHT TO A TRIAL BY JURY FOR ANY AND ALL CLAIMS AND CAUSES OF ACTION ARISING FROM OR RELATED TO THIS AGREEMENT.

m) *No Third Party Beneficiaries.* The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

n) *Usage in Trade.* It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

o) *Business Day.* If any time period set forth in this Agreement expires on a day other than a business day in Delaware, such period will be extended to and through the next succeeding business day in Delaware.

p) *Taxes.* It is understood that any Federal, State or Local Taxes applicable shall be added to each invoice for services or materials provided by VEIT. Client shall pay any such taxes unless a valid exemption certificate is furnished to VEIT for the jurisdiction of use.

q) *Notices; Writing Requirement.* Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, fax or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the "cc" portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to VEIT regarding (a) any alleged breach of this Agreement by VEIT, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any SOW, must be delivered to VEIT either by U.S. mail or fax, unless such

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requirement is expressly and specifically waived by VEIT. All electronic documents and communications between the parties will satisfy any “writing” requirement under this Agreement.

r) *Independent Contractor.* Each party is an independent contractor of the other, and neither is an employee, partner or joint venturer of the other.

s) *Subcontractors.* Generally, VEIT does not utilize subcontractors; however, should VEIT elect to subcontract a portion of the Services, VEIT shall guarantee all work performed by any VEIT-designated subcontractor as if VEIT performed the subcontracted work itself.

t) *Data Access/Storage.* Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us in the event that your company requires us to modify our standard access or storage procedures.

u) *Attorneys’ Fees.* If VEIT is required to bring an action to enforce the terms of this Agreement, VEIT shall be entitled to an award of the reasonable attorneys’ fees and costs that it incurred at all stages of the action, including without limitation, at trial and appeal.

v) *Counterparts.* The parties may sign and deliver this Agreement and any SOW in any number of counterparts, each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign and deliver this Agreement (or any SOW) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party’s signature for all purposes.