Master Services Agreement

Presented to:
<Client Name>
<Contact Name>
<Title>
<ClientEmail@acme.org>
XXX-867-5309

Presented By:
DataTenant
<Name>
<Title>
<RepName>@DataTenant.com
XXX-867-5309

Date Submitted:

__/__/202_

DataTenant, LLC MASTER SERVICES AGREEMENT

This DataTenant Master Services Agreement ("Agreement" or "MSA") is entered into this ___ day of ____, 202_ by and between [   ] ("Client") and DataTenant LLC ("DataTenant").

1. DEFINITIONS; STRUCTURE. This MSA is "Master Agreement" which provides the common terms and conditions governing services purchased by Client from DataTenant described in any Statement of Work or Statement of Services (each, a "Statement"). Client shall order Services pursuant to the Statement. Services, including support, software, and products may be provided to Client by third-party providers (each, a "Solution Provider"). Client shall abide by all terms and conditions of Client's agreements with Solution Providers. All services described in all Statements between DataTenant and Client are "Services" hereunder. This Agreement is incorporated into each Statement, but in the event of any conflict between this Agreement and any provision in a Statement, this Agreement shall control. Client's acceptance of the Services shall reflect Client's assent to the terms and conditions set forth in this Agreement and each Statement.

2. CHANGES IN SCOPE. Client may request changes in the Services by submitting a written request for change. No change shall be effective or binding upon DataTenant until accepted by DataTenant by its written approval of the requested change. Client agrees and acknowledges that changes accepted by DataTenant may result in a change in schedule and completion of the Services, pricing, or all of the foregoing. Client changes to the Environment affecting Services may result in a written request for change submitted by DataTenant to Client as provided in any Statement.

3. PAYMENT AND PRICING. The total fee charged by DataTenant to the Client shall be set forth in the specific Statement, payable by Client upon the due date set forth therein or in any invoice issued pursuant to the Statement. Unless otherwise specifically indicated, the fee is based upon provision of Services during regular business hours (M – F, 8 a.m. to 4 p.m.). Unless specifically defined in separate "Statement of Work"; in addition to the fee, Client shall pay DataTenant all taxes (defined below), shipping, other costs and out-of-pocket expenses incurred by DataTenant, including but not limited to, travel, lodging, automobile mileage, meals, per diem, and the like, for which Client will be invoiced. If Client requires Services outside regular business hours, additional charges may apply. Payments received by DataTenant from the Client shall be applied, at DataTenant's sole discretion, first to any outstanding accrued finance charges, any Late Fee (as defined below) or as otherwise designated by DataTenant. Client shall pay the fee and all other charges on or before the specified due date and shall be deemed delinquent unless it includes all amounts due including any Late Fee as provided below. If Client disputes any fees or charges, Client must notify DataTenant in writing of the dispute within ten (10) days of the date of the affected invoice. If Client fails to provide such notice, Client waives any such dispute regarding the invoice. DataTenant may accept credit card payments. In the event Client pays any fees or charges with a credit card after the due date of the applicable invoice, Client will be charged and shall pay any additional credit card processing fees of the applicable invoice and Late Fee.

4. LATE FEES; TAXES. If Client fails to make any payment in full on or before its due date, Client shall pay interest on the part of the payment that is late in the amount of 1.5% per month or any part of a month or the maximum interest rate allowed by law, whichever is less, from the due date to the date paid ("Late Fee"). The Late Fee is without waiver of any of DataTenant's rights and remedies due to a default as set forth in this MSA and/or any Statement. Client is also responsible for and shall pay all taxes and fees associated with the Services and materials provided hereunder or otherwise arising from this MSA and/or any Statement, including without limitation, sales, use, personal property, excise and value added taxes including all fines, interest or penalties assessed by federal, state, and/or local authorities ("Taxes"). Such Taxes may be added to each invoice provided to the Client or may be

invoiced separately at any time, and Client agrees to promptly pay any and all Taxes whether included in the original invoice or invoiced at a later time. In addition, Client authorizes DataTenant to pay any Taxes when and as they become due, and Client agrees to reimburse DataTenant promptly and on demand for the full payment for such Taxes.

5. LIMITED WARRANTY. DataTenant warrants that the Services shall be performed in a substantially commercially reasonable manner, and to the extent any service levels are specifically provided in an applicable Statement for DataTenant cloud solution services, DataTenant will use commercially reasonable efforts to meet such service levels. With respect to any product, software or Services provided by a Solution Provider, the Solution Provider may provide and DataTenant shall assign any warranty offered by the Solution Provider with respect to the product, software or Services to the extent such warranty is assignable or transferable to Client. With respect to any Services provided by a Solution Provider, Client's recourse shall be solely against the Solution Provider and not against DataTenant. Client's failure to follow the manufacturer's instructions, Client's failure to follow instructions provided by DataTenant or Solution Provider, or other misuse, abuse, or unauthorized repair or disassembly of equipment, devices, applications, products, or software related or associated with the Services ("Misuse") will void the limited warranty of DataTenant provided herein and any Solution Provider's warranty. Client shall notify DataTenant in writing of any breach by DataTenant of its limited warranty with respect to the Services within ten (10) days of provision of the defective Services, shall label such notice as notice of a breach of warranty, and shall specify with reasonable detail the Services which were defective and identify how, when and why such Services were defective ("Warranty Notice"). Along with such Warranty Notice, Client shall provide DataTenant with all documentation reasonably related to and supporting its claim that DataTenant breached its limited warranty hereunder or which is requested by DataTenant. After the aforementioned ten (10) day period, the aforesaid limited warranty shall expire. In the event of a timely Warranty Notice by Client, the terms of Paragraph 8 ("Client's Sole Remedies and Limitation of DataTenant's Liability") shall provide the sole remedy to Client for such breach.

6. DISCLAIMER OF ALL OTHER WARRANTIES BY DATATENANT. EXCEPT FOR THE LIMITED WARRANTY FOR SERVICES SET FORTH ABOVE, DATATENANT MAKES NO WARRANTY AND HEREBY DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS, EXPRESS OR IMPLIED, ARISING BY APPLICABLE LAW OR OTHERWISE, OF ANY KIND OR NATURE WITH RESPECT TO ALL EQUIPMENT, DEVICES, SOFTWARE, ENVIRONMENT, MANAGED RESOURCES OR ANY OTHER PRODUCT OR SERVICE OR WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, THAT ANY EQUIPMENT, PRODUCTS, DEVICE, SOFTWARE, MANAGED RESOURCES OR SERVICE WILL ACHIEVE SPECIFIC RESULTS OR WILL MEET CLIENT'S NEEDS OR REQUIREMENTS, AND WARRANTIES OF RESULTS, PERFORMANCE, UPTIME, ACCURACY OF INFORMATION, SYSTEM INTEGRATION, SCALABILITY, PERFORMANCE WITH ANY PARTICULAR COMPUTER SOFTWARE, HARDWARE OR SYSTEM, AND THAT THE PRODUCTS OR SERVICES WILL BE "ERROR" OR "BUG" FREE. DATATENANT EXPRESSLY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS CONCERNING ANY PATENT, COPYRIGHT OR OTHER INTELLECTUAL PROPERTY RIGHTS BY SOLUTION PROVIDER RELATING TO ITS PRODUCT, SOFTWARE, SERVICES, MEANS OR MEDIUM.

7. NOTICE TO DATATENANT OF NON-WARRANTY BREACHES. Client shall provide written notice to DataTenant of any alleged breach of this MSA and/or any Statement by DataTenant (other than a Warranty Notice as provided in Paragraph 5 above) within ten (10) days of said breach and shall specify with reasonable detail the breach ("Breach Notice"). In the event of a timely Breach Notice by Client, the terms of Paragraph 8 ("Client's Sole Remedies and Limitation of DataTenant's Liability") shall provide the sole remedy to Client for such breach.

8. CLIENT'S SOLE REMEDIES AND LIMITATION OF DATATENANT'S LIABILITY.

8.1 <u>WARRANTY REMEDY AND BREACH REMEDY</u>. In the event of an alleged breach by DataTenant of the limited warranty regarding Services and a timely Warranty Notice to DataTenant from Client, DataTenant's sole responsibility shall be to provide Client, with respect to defective DataTenant cloud solution Services, an extension of such Services for a period equal to the period of warranty breach (but not to exceed 30 days) at no additional charge to Client, and for all other defective Services, to provide Client replacement Services for the defective Services within thirty (30) days after the timely Warranty Notice or, if the replacement Services cannot reasonably be completed within thirty (30) days, then DataTenant will provide such replacement Services within a reasonable period thereafter as long as DataTenant has commenced and is proceeding with such replacement Services ("Warranty Remedy"). In the event of an alleged breach by DataTenant of any other non-warranty term of this MSA and/or any Statement and a timely Breach Notice to DataTenant from Client, DataTenant's sole responsibility shall be to cure such breach within thirty (30) days after the date of the Breach Notice or such longer period as may be required as long as DataTenant has commenced the cure within the 30-day period and is using commercially reasonable efforts to cure the breach ("Breach Remedy").

8.2 <u>CLIENT'S SOLE REMEDIES IF FAILURE OF WARRANTY REMEDY/BREACH REMEDY</u>. In the event DataTenant fails to correct an alleged breach of warranty by providing a Warranty Remedy as set forth in Paragraph 8.1 above or fails to correct any other non-warranty breach, including a failure to provide Services, by providing a Breach Remedy as set forth in Paragraph 8.1 above, Client's sole remedy shall be to terminate this MSA and/or any Statement and to receive a refund of any amount actually paid DataTenant for the Services which were defective or which were not provided by DataTenant, or a credit for such defective Services if Client has not yet paid for them. Notwithstanding the foregoing, even in the event of such termination, Client shall be responsible for and shall pay DataTenant for all other Services previously provided by DataTenant pursuant to this MSA and/or any Statement which were not defective or for which no Warranty Notice or Breach Notice was provided DataTenant. However, Client's right to terminate these MSA and/or Statement must occur by written notice to DataTenant within sixty (60) days of the Warranty Notice or Breach Notice and prior to completion of the Warranty Remedy or Breach Remedy.

8.3 <u>LIMITATION OF LIABILITY</u>. DATATENANT SHALL NOT BE LIABLE TO CLIENT FOR PERSONAL INJURY, DEATH, PROPERTY DAMAGE AND/OR ANY OTHER DAMAGE ARISING FROM OR RELATING TO CLIENT'S NEGLIGENCE, FROM CLIENT'S MISUSE, AND/OR FROM ANY THIRD-PARTY SOURCES SUCH AS COMPUTER VIRUSES, MALWARE, WORMS, TROJAN HORSES, RANSOMWARE, SPYWARE, ADWARE ROUGE SOFTWEAR AND SCAREWARE THROUGH THE INTERNET OR OTHER MEDIA. IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DATATENANT'S TOTAL LIABILITY TO CLIENT FOR ANY CAUSE OR CLAIM WHATSOEVER EXCEED THE ITEMIZED FEE FOR THE DEFECTIVE OR UNPROVIDED SERVICES AS SET FORTH IN THE APPLICABLE INVOICE; ANY SOLUTION PROVIDER'S LIABILITY SHALL NOT EXCEED THE ITEMIZED FEE FOR THE DEFECTIVE PRODUCT OR SERVICE OF THE SOLUTION PROVIDER. THIS LIMITATION SHALL APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE, INCLUDING WITHOUT LIMITATION, NEGLIGENCE ACTIONS. CLIENT AGREES AND ACKNOWLEDGES THAT THIS IS AN ADEQUATE REMEDY. IN NO EVENT SHALL DATATENANT OR ANY SOLUTION PROVIDER BE LIABLE TO CLIENT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE IN ANY WAY ARISING OUT OF OR RELATING TO THESE MSA AND/OR STATEMENT, INCLUDING WITHOUT LIMITATION, DELAY OR SUSPENSION IN PROVISION OF SERVICES, LOSS OF BUSINESS, LOSS OF PROFITS, SAVINGS OR REVENUE, BUSINESS INTERRUPTION, LOSS OF GOODWILL, LOSS OF USE OF EQUIPMENT, LOSS OR CORRUPTION OF DATA, COSTS OF SUBSTITUTE EQUIPMENT, GOODS OR SERVICES, OTHER COSTS OR LOST OPPORTUNITY COSTS, INABILITY TO RESTORE DATA FOR ANY REASON, ANY LOSS RELATED TO NON¬ PERFORMANCE OR DELAY, OR ANY OTHER TYPE OF LOSS EVEN IF SUCH DAMAGES WERE FORESEEABLE AND THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT ACKNOWLEDGES THAT THE AMOUNTS PAID HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH HEREIN AND THAT DATATENANT WOULD NOT ENTER INTO THIS MSA AND/OR ANY STATEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

8.4 ENTIRE REMEDY AND LIMITATION OF LIABILITY. DataTenant's entire liability and Client's sole remedies, whether pursuant to contract, tort, statute or otherwise or in any way related to or otherwise concerning this MSA, any Statement and/or the ancillary products or Services provided pursuant to any Statement, are limited as set forth in this Paragraph 8, including all subparagraphs, or with respect to the Products, as set forth in the Terms and Conditions.

9. CLIENT OBLIGATIONS.

9.1 GENERAL. In addition to specific Client responsibilities included in any Statement, Client shall provide DataTenant and persons authorized by DataTenant, including Solution Providers, physical and/or remote access to, as applicable, Client's facility, equipment, systems, data center, network, telephone lines, and backup data at reasonable times to provide the Services, or as applicable, for the purposes of maintenance, repair, improvements, or, with respect to backup data, on a continuous basis for restoration and recovery purposes. Client also shall provide to DataTenant its internal resources and personnel as reasonably requested to provide information and support and to respond timely to requests to perform tasks which have a direct impact on the successful completion of the Services. Client shall make available to DataTenant in a timely manner all of Client's knowledge regarding the operations of its equipment, network and systems for the operation of its business for purposes of DataTenant performing the Services. Client shall install data collection software provided by DataTenant which is necessary for DataTenant to perform the Services. If any action of Client or within Client's reasonable control prevents, restricts, hinders or delays the Services, any additional work required as a result shall be at the additional expense of Client.

9.2 ENVIRONMENT. Client is responsible for establishing and maintaining its existing computer programs, hardware, platforms, equipment, network, and systems ("Environment") to qualify and be compatible for the Services provided under any Statement, including without limitation, power configuration, network performance and network and server configuration, applications and licensing, cabling, and rack space and configuration. To qualify and be compatible for the Services, Client's Environment must at a minimum meet any additional requirements set forth on the applicable Statement or reasonably specified by DataTenant. If any hardware, equipment, or system which is not maintained by DataTenant is not fully functional and in good operating condition, or in DataTenant's reasonable discretion negatively impacts the Services, Client shall complete and pay for all repairs or upgrades necessary so that the hardware, equipment or system is fully functional and in good operating condition or otherwise supports the Services. Client shall not without prior written notice to DataTenant alter or modify its Environment; provided, however, Client agrees and acknowledges that any such alterations to the Environment may result in a change to the Services, pricing, or both. Client agrees that the Statements may contain additional terms with respect to Client's obligations related to the Services provided hereunder and/or by Solution Providers, and Client shall comply with all such additional terms and conditions. Client shall name DataTenant as an additional insured on its commercial general liability insurance policies and shall provide proof that it has done so upon DataTenant's request.

9.3 CLIENT REPRESENTATIONS AND WARRANTIES. Client represents and warrants that: (a) it is authorized to enter into this MSA and any Statement; (b) all information it has or will provide to DataTenant is complete and accurate; (c) its use of any Services provided by DataTenant does not violate any applicable law or regulation; (d) it will reasonably cooperate with DataTenant to enable DataTenant to perform the Services and provide any required Environment (defined above and in the Statement); (e) it has all necessary licenses, leases or rights to use the software, equipment, products and applications associated with the Services, (f) all Equipment (as defined in the applicable Statement) for which DataTenant is providing maintenance services is fully functional and in good operating condition before the effective date of the Statement; (g) Client will at all times during the term of any Statement for which DataTenant is providing maintenance services use all Equipment in accordance with all laws, operating manuals, manufacturer's instructions, DataTenant and Solution Provider's instructions; and (h) Client

shall abide by all third party agreements between Client and any Solution Provider related to the Services or products related to the Services. Client acknowledges that DataTenant is not responsible for Services or products provided by Solution Providers or covered by third party agreements between Client and the Solution Provider. Client further agrees, represents and warrants that (h) it is solely responsible for the content, confidentiality and privacy protection of its data, including without limitation, all text, files, images, graphics, illustrations, information, data, audio, video, photographs and other content and material in any format provided by Client or its users which resides in, or runs through or on, the Environment; (i) that it shall maintain commercially reasonable security standards for its use of the Services, (j) that it has collected and shall maintain and handle all of its data in compliance with all applicable laws and regulations regarding data content and privacy and security of data it receives, stores and transmits, and encryption of such data as required; (k) that it is solely responsible for determining the suitability of the Services for Client's business and complying with all regulations, laws, or conventions applicable to Client's data and use of the Services. Client further represents and warrants that (l) it will not commit, attempt to commit, aid or abet any action that may threaten any service or the Services, or use or permit the use of the Services, whether deliberately, negligently or innocently to or for: i) an attempt to "crash" any service host or network; ii) 'denial of service' attacks, or 'flooding' attacks against any service host or network, iii) any attempt to circumvent any user authentication or security for any service or service host or network, iv) the creation, transmission or publication of any kind of virus or corrupting program or corrupted data, v) any purpose that may cause injury or damage to any person or property, violate privacy rights, or which involves the publication of any material that is illegal, obscene, defamatory, or threatening (vi) for any purpose that constitutes unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (vii) for any purpose which constitutes an infringement of any third party's intellectual property rights, or (viii) any other use which otherwise violates any applicable law, ordinance or regulation. (Items (l(i) through (viii), the "Acceptable Use Policy"). DataTenant reserves the right to suspend or terminate any affected Service and to take such defensive action as it deems necessary in its sole discretion in the event of any such violation of the foregoing Acceptable Use Policy. CLIENT AGREES AND ACKNOWLEDGES THAT IT HAS SOLE RESPONSIBILITY FOR THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, APPROPRIATNESS, AND SECURITY OF ITS DATA. DATATENANT DOES NOT MONITOR AND IS NOT RESPONSIBLE FOR ANY OF CLIENT'S DATA, AND CLIENT SHALL INDEMNIFY AND HOLD DATATENANT HARMLESS FOR ANY BREACH OF THE ACCEPTABLE USE POLICY.

9.4 <u>CLIENT OBLIGATIONS UPON TERMINATION</u>. Client shall, immediately but no later than within five business days of DataTenant's request, at Client's expense, deliver to DataTenant and forthwith remove and/or return or destroy (as directed by DataTenant): all technology or software provided to Client to enable or facilitate the Services provided to Client which Client has not purchased or leased; all Confidential Information of DataTenant or any DataTenant Solution Provider, and any materials bearing DataTenant's trademarks from any storage media or hard copies remaining in Client's control or possession; and provide an officer's certificate attesting to such delivery, erasure and/or destruction as is satisfactory to DataTenant in its reasonable discretion; remit all fees payable for Services due prior to the date of such termination and any other fees due hereunder or under the Statement; and remit to DataTenant all such costs and fees owing to DataTenant including any termination fee described in any Statement, and fees related to the termination or permanent or temporary winding down of any Services provided by DataTenant.

10. <u>DATA SERVICES</u>. Client's data may be transmitted to data centers maintained by or on behalf of DataTenant ("Data Center"). DataTenant reserves the right to physically ship the backup data on tape or other media to the Client's site or the Data Center, as applicable. DataTenant is not responsible for any unauthorized access to or modification of Client's data at any time, including during electronic transmission to or from any Data Center; nor is DataTenant responsible or liable for any data or content of any type sent, using or received from any service, including any data or content which may be illegal, obscene, defamatory, threatening or which may violate any trademark or copyright. Unless Client's data is managed by DataTenant pursuant to a separate Statement expressly assuming such responsibility, Client shall review backup sets to ensure that the desired data has been properly and

fully transmitted, and shall be responsible for mirroring its data, for backing it up frequently and regularly, and for taking all reasonable precautions to prevent data loss or corruption.

11. <u>TERMINATION; DEFAULT.</u> This Agreement shall remain in effect until that date which is eighteen (18) months after DataTenant completed the Services described in the most recent Statement between DataTenant and Client, as such date is reflected in DataTenant's records. Client shall be deemed to be in default of this MSA and/or any Statement and DataTenant may, in addition to all other remedies available to it at law, equity or by this MSA and/or the Statement, terminate this MSA and all Statements immediately without further notice or opportunity of Client to cure if Client (a) fails to pay any invoice from DataTenant within ten (10) days of the date the payment is due; provided that any late payment shall not be deemed cured unless it includes all delinquent amounts including the Late Fee (any failure to pay including any failure to pay all amounts due, is a "Payment Default"); (b) breaches any other term of this MSA and/or any Statement (other than payment terms) which is not cured by Client within ten (10) days of written notice by DataTenant; (c) terminates or suspends business operations unless Client is succeeded by a permitted assignee under this MSA and/or any Statement; or (d) makes an assignment for the benefit of creditors, files for protection under the U.S. bankruptcy code or similar law or a bankruptcy petition is filed against Client which is not discharged within thirty (30) days of filing. Default in paying any sum due under this MSA and/or any Statement will be remedied only if the payment also includes the accrued Late Fee payable as described above. Any default of any Statement and/or this MSA shall be a default by Client of any other agreement between DataTenant and Client, and any default by Client of any other agreement between DataTenant and Client shall be a default of any Statement and this MSA; DataTenant shall have all rights and remedies as provided herein or in such other agreement(s) between DataTenant and Client. In addition, DataTenant may terminate this MSA and/or any Statement or any Services provided hereunder immediately upon written notice to Client without liability if, in DataTenant's sole reasonable discretion, provision of the Services, or any service, is prohibited by law, statute, legislation, order, regulation or guidance issued by a court of law, governmental body or regulatory body, or if for any reason beyond DataTenant's reasonable control the Services, or any of them, cannot be provided for reasons including, without limitation, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving DataTenant's employees), weather of exceptional severity, acts of local or central government or other authorities or regulatory bodies, natural disaster, terrorism, riot, sabotage, transportation delays, computer failure, hardware failure, telecommunications failure, electronic mail failure, power failure, or failure of Client to cooperate with the reasonable requests of DataTenant. DataTenant may also terminate this MSA and/or any Statement for any reason at any time upon thirty (30) days written notice to the Client.

12. <u>DATATENANT'S REMEDIES.</u> Upon a default by Client, DataTenant reserves the right to exercise any and all other remedies available to DataTenant under this MSA and/or any Statement and applicable law and equity, without waiver of DataTenant's right to exercise any other remedy provided herein, including but not limited to any or all of the following: (a) termination of this MSA and/or any Statement as provided above; (b) upon a Payment Default by Client, cease providing Services to Client; (c) to demand and collect payment to DataTenant by Client in an amount equal to (i) the sum of all amounts then due and past due, (ii) any Termination Fee (defined in any Statement) and (iii) all other amounts that may thereafter become due hereunder including the Late Fee and to the extent that DataTenant will be obligated to collect and pay such amounts to a third party; (d) to collect all other damages caused by Client's default, including without limitation, Solicitation Damages (as defined in Paragraph 15 below) for any breach by Client of Paragraph 15 of this MSA; (e) to seek and obtain injunctive relief (without the requirement of posting a bond) with regard to any breach by Client other than for failure to pay; and (f) reimbursement by Client to DataTenant for all reasonable expenses of enforcement of this MSA and/or any Statement (including, without limitation, reasonable attorneys' fees and other legal costs) and including all such expenses (including reasonable attorney fees) associated with collecting delinquent or dishonored payments or accounts or with collecting or enforcing this MSA and/or any Statement including in any Client bankruptcy proceeding.

13. DELAYS OR INTERRUPTIONS IN SERVICES. In addition to suspension of Services for a Payment Default as provided above, Client agrees and acknowledges that DataTenant may, in its sole discretion and without liability, suspend some or all of the Services or Client system operations during repair, maintenance or improvement. DataTenant shall use commercially reasonable efforts to provide advance notice to Client of any such suspension for improvements and shall implement such suspension so as to minimize disruption to the Service(s) or system operations. However, Client agrees and acknowledges that such suspension may occur without notice to Client in the course of repair or maintenance. DataTenant shall have no liability for any delay or suspension of Services or system operations. Client shall be solely responsible for any expense, cost, loss or liability arising in connection with the suspension, including without limitation, integrity, maintenance, security, publicity, loss or back-up of any data or software regardless of the location of the data or the software.

14. CONFIDENTIAL INFORMATION. Each party agrees that during the Term of any Statement and for a period of five (5) years thereafter to keep confidential all of the other party's Confidential Information which it has obtained or received, as a result of the discussions leading up to, entering into, or in performance or during the Term of this MSA and/or any Statement. Each party further agrees not to disclose the other party's Confidential Information in whole or in part to any third party or use any party's Confidential Information without the disclosing party's written consent, save to those of its employees, agents and contractors involved in the implementation of this MSA and/or any Statement who have a need to know such Confidential Information and are bound to keep if confidential, or as necessary in the monitoring of compliance with or enforcement of this MSA and/or any Statement. Each party shall protect the other party's Confidential Information in its possession exercising the same degree of care that a company utilizing industry accepted business practices would exercise with similar data of its own and will implement reasonable security and environmental precautions to promote an appropriate level of system availability and data protection and recovery. For purposes hereof, "Confidential Information" includes all trade secrets (as defined by applicable law), financial and business information, technology, proprietary devices, software, related specifications, documentation, source code and data belonging to the parties or Solution Providers, Client data, and Client e-mail not created by or for DataTenant or the designated Solution Provider. Notwithstanding the foregoing, Confidential Information shall not include information that is or subsequently becomes known to the public through no fault of the receiving party, which was known by the receiving party prior to receipt from the disclosing party or which was developed independently by the receiving party without using any of the disclosing party's information.

15. NON-INTERFERENCE WITH VENDORS. During the Term set forth in the Statement and for a period of two (2) years after any termination of this MSA and any Statement, Client shall not, directly or indirectly, (a) solicit or assist or induce others to solicit Vendors to terminate or leave the Vendors' relationship with DataTenant, (b) interfere with DataTenant's relationship with its Vendors who were Vendors during the Term set forth in the Statement, or (c) circumvent DataTenant by dealing directly with any Vendor where opportunity in question specifically originated with DataTenant. For purposes hereof, the term "Vendor" shall mean any Solution Provider, manufacturer, distributor, representative, dealer or other person or entity from which DataTenant purchased products and/or Services on behalf of Client during the Term. For purposes hereof, the term "Opportunity" shall mean any financial transaction involving goods or services where DataTenant efforts initiated said transaction.

16. INDEMNIFICATION; RELEASE. Client shall indemnify and hold harmless DataTenant and its Solution Providers upon demand against any and all costs, expenses (including, without limitation, legal costs and reasonable attorney's fees), liabilities, losses, damages, claims, demands and judgments ("Losses") incurred, suffered or related to any breach of this MSA and/or any Statement by Client, any Misuse of the Services, or any claim by any Solution Provider arising from or related to Client's use of such Solution Provider's products, software or services. Client further waives and releases DataTenant from and against all claims for personal injury, death and property damage arising from or relating to the Services, and Client shall indemnify and hold harmless DataTenant from and against

all Losses arising from or related to any claim by any third party for personal injury, death and/or property damage arising from or relating to the Services.

17. <u>ASSIGNMENT</u>. CLIENT SHALL NOT SELL, ASSIGN, OR OTHERWISE TRANSFER (collectively, "Transfer") THIS AGREEMENT AND/OR ANY STATEMENT, IN WHOLE OR IN PART, WITHOUT DATATENANT'S PRIOR WRITTEN CONSENT, which DataTenant may grant, withhold or condition in its sole discretion. Any attempted Transfer without DataTenant's prior written consent shall be void. DataTenant shall have the right to Transfer this MSA and/or any Statement to any successor or assignee of DataTenant.

18. <u>NOTICES</u>. Notices must be in writing and will be deemed given five (5) days after mailing, or two (2) days after sending by nationally recognized overnight courier, to the other party's business address as set forth herein, or to such other address designated by either party to the other by written notice given pursuant to this sentence ("Standard Notice"). Notwithstanding the foregoing, notice may be made by e-mail to the other party's e-mail address set forth above, but shall only be deemed notice for purposes hereof if the recipient acknowledges receipt of the e-mail notice by a return e-mail within two (2) days of receipt of the original e-mail. The notice will be deemed given upon the date the original sender receives the acknowledgment. If the original sender does not receive an e-mail acknowledging receipt within the two-day period, the e-mail notice shall not be effective and the sender shall use the Standard Notice procedure.

19. <u>SEVERABILITY</u>. Each term hereof shall be interpreted to the maximum extent possible so as to be enforceable under applicable law. A determination by any court of competent jurisdiction that any provision in this MSA and/or any Statement is void or unenforceable shall not affect the enforcement or enforceability of any other provision in this MSA and/or any Statement; all provisions other than the provision which is determined to be void or unenforceable are and shall remain in full force and effect.

20. <u>APPLICABLE LAW; VENUE; JURISDICTION</u>. Any action related to this MSA and/or any Statement shall be governed by the laws of Iowa without regard to choice of law principles, and jurisdiction and venue for any litigation arising from or related to this MSA and/or any Statement shall be exclusively proper, if in state court, in the Iowa District Court for Scott County, Iowa, and if exclusively within the jurisdiction of a federal court, in the U.S. District Court for the Southern District of Iowa, Davenport, Iowa. The U.N. Convention on Contracts for the International Sale of Goods shall not apply to this MSA and/or any Statement.

21. <u>EXPORT CONTROLS</u>. Client agrees to comply with all applicable U.S. export control laws and regulations as from time to time amended, including without limitation, those administered by the U.S. Department of Commerce and the U.S. Department of State. Client shall not export, import or transfer any of the Services contrary to U.S. or other applicable laws, whether directly or indirectly, and shall not cause, approve or otherwise facilitate others such as agents or any third parties in doing so. Client represents that neither the U.S. Department of Commerce nor any other federal agency has suspended, revoked or denied its export privileges. Client further agrees not to use or transfer any of the services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. government by regulation or specific license.

22. <u>LIMITATION OF CLAIMS AGAINST DATATENANT</u>. All actions by Client including any claims or lawsuits brought by Client for breach or enforcement of this MSA and/or any Statement must be filed (a) within one (1) year of the time the Services which are the subject of, or are involved in or related to the claim, were delivered or provided to Client, or (b) within one (1) year of the alleged breach of this MSA and/or any Statement, whichever is earlier, or Client shall be forever barred from bringing such action.

23. <u>INTEGRATION</u>. This MSA and any applicable Statement constitute the entire agreement between Client and DataTenant with respect to the Services and supersede all prior negotiations, agreements and understandings

between the parties with respect to same, whether oral or written, including but not limited to any proposals, purchase orders or similar documents. This MSA and/or any Statement may not be modified or changed except by a writing signed by both parties which specifically mentions this MSA and/or the applicable Statement.

24. <u>FORCE MAJEURE</u>. DataTenant shall not be liable for any failure to render Services due to circumstances beyond its control including but not limited to acts of God, pandemic, epidemic, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving DataTenant's employees), weather of exceptional severity or acts of local or central government or other authorities or regulatory bodies, natural disaster, terrorism, riot, sabotage, transportation delays, computer failure, hardware failure, telecommunications failure, electronic mail failure, power failure, or failure of Client to cooperate with the reasonable requests of DataTenant.

25. <u>MISCELLANEOUS</u>. If the Client shall consist of more than one person or entity, the obligations hereunder of such persons or entities shall be joint and several. This MSA and any Statement may be executed in counterparts, all of which together shall constitute the same document. The parties agree that a facsimile or other copy containing the signatures of both parties shall be as enforceable as the original executed MSA and/or Statement. The failure by either party to enforce at any time any provision of this MSA or any Statement shall not be construed to be a waiver of such provision or the right thereafter to enforce each and every provision hereof and thereof. No waiver by either party, either express or implied, of any breach of this MSA and/or any Statement shall be construed as a waiver of any other breach. The provisions of this MSA and/or any Statement that by their nature continue in effect shall survive the termination or expiration of this MSA and/or any Statement, including but not limited to, Paragraph 8 (Client's Sole Remedies and Limitation of DataTenant's Liability), Paragraph 9 (Client Obligations), Paragraph 12 (DataTenant's Remedies), Paragraph 14 (Confidential Information), Paragraph 15 (Non-Interference with Vendors), Paragraph 16 (Indemnification; Release), and Paragraph 22 (Limitation of Claims against DataTenant). Client hereby represents to DataTenant that this MSA and any Statement is legally binding and enforceable against Client in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have caused this MSA to be signed by their duly authorized representatives as of the date set forth below:

Agreement Acceptance
This agreement and all of its content has been agreed to by the following representatives:

[Client]   **DataTenant, LLC**

_____/___/___   _____/___/___
Signature   Date   Signature   Date

_____   _____
Print Name   Print Name

_____   _____
Title   Title