

# MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”), is between Motus, LLC (“**Motus**”), a Delaware limited liability company and the Client listed on the Order Form (“**Client**”). Motus and Client may each be referred to as a “party” and collectively as the “parties”. This Agreement includes all attachments to it and will be incorporated into any Order Form that references it.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CLIENT AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF CLIENT IS ENTERING INTO THIS AGREEMENT ON BEHALF OF ANOTHER LEGAL ENTITY, CLIENT REPRESENTS THAT CLIENT HAS THE AUTHORITY TO BIND SUCH OTHER LEGAL ENTITY AND ITS AFFILIATES TO THIS AGREEMENT, IN WHICH CASE THE TERM "CLIENT" SHALL ALSO REFER TO SUCH OTHER LEGAL ENTITY AND ITS AFFILIATES. IF CLIENT DOES NOT HAVE SUCH AUTHORITY, OR IF CLIENT DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, NEITHER CLIENT NOR ANY OTHER LEGAL ENTITY OR ITS AFFILIATES ARE AUTHORIZED TO USE THE SERVICES.

This Agreement was last updated on March 11, 2016. This Agreement is effective between Client and Motus on the date Client executes an Order Form that references this Agreement.

## DEFINITIONS.

Capitalized terms used in this Agreement have the following meanings or such meanings as defined elsewhere in this Agreement or in an Order Form:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with a party. “Control” means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity, or the right to direct the management of the entity.

“**Aggregate Data**” means de-identified, anonymous data in the form of summary level information that is derived from Client Data and used for analytical and statistical reporting purposes, but excludes Personal Information.

“**Client Data**” means any information uploaded to the Motus Solution by Client or Users (including any Personal Information), as well as the resulting Client-specific output that is generated by the Motus Solution when processing Client Data.

“**Client Technology**” means Client software, hardware, network, internet connectivity, and other technology, whether developed and/or owned by Client or made available to Client by third parties other than Motus.

“**Intellectual Property**” means all copyright, trademark, trade name, or patent rights (whether registered or unregistered, and any applications for the foregoing), trade secrets, inventions, know-how, and any other proprietary rights of any kind (and any rights to enforce the foregoing).

“**Order Form**” means the documents for placing orders for the Services that are entered into between Client and Motus from time to time, including Solution Order Forms, Statements of Work, Exhibits, Schedules, Addenda, and Supplements.

“**Permitted Affiliates**” means Client Affiliates listed in the Order Form or added by written consent of the parties.

**“Personal Information”** or **“PI”** means personal information as defined by U.S. state data breach notification laws as well as personally identifiable information concerning an individual that would be considered “nonpublic personal information” within the meaning of Title V of the Gramm-Leach-Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338) and its implementing regulations. PI does not include information that can be lawfully obtained from publicly available information.

**“Professional Services”** means the services supplemental to provision of the Solutions (such as implementation services) as may be specified in the Order Form.

**“Services”** means the Solutions and/or Professional Services to which Client subscribes or procures from Motus as specified in the Order Form.

**“Service Term”** means the duration for which Client subscribes to the Services as stated in the Order Form. The Service Term may include discrete Service Periods.

**“Solutions”** means the Motus data processing services, applications, hardware, programs, and other service offerings specified in the Order Form, but excludes Third Party Technology.

**“Specifications”** means the scope of Services and/or descriptions and limitations set forth in the Order Form.

**“Suggestions”** means any ideas, improvements, changes, features, functionality, or other ways of delivering the Services that Client communicates to Motus.

**“Third Party Technology”** means any software, networks, equipment, data, managed services, hosted platforms, hardware, and other technology or services provided by third parties unaffiliated with Motus that may form a part of, or interoperate with, or that are used or provided by Motus as part of or in delivering the Services.

**“Users”** means individuals who are designated by Client to be registered for and authorized to access and use the Services.

## **1. SCOPE OF SERVICES, USE OF SERVICES, RESTRICTIONS ON USE, AND OWNERSHIP.**

1.1 Scope of Services. Motus will provide the Services as stated in the Order Form. The Order Form will include the description, charges, duration, and other terms applicable to the Services. Motus will not be bound by the any Client purchase order forms or other Client documents.

### 1.2 Use of the Services.

1.2.1 Use Rights. During the Service Term, Client and Users have the non-exclusive, non-assignable, and limited right to access and use the Services (including any deliverables that Motus provides to Client and Users as part of the Services) solely for Client’s internal business operations. If the Services includes delivery of software, Motus will provide such software in object code form only and Client has no rights to any source code.

1.2.2 Client Account. Client will designate points of contact who are authorized to establish and manage Client’s account, including the designation of Users. Motus will provide each User with the ability to access and use the Services. Client is solely responsible for maintaining the status of its User base. The Services may only be accessed by Users who (i) have been issued a valid username and password (**“Identities”**) and (ii) have agreed to the applicable terms and conditions of use for the Services as set forth on the log-in screen of the Services or elsewhere within the Services (the **“Terms of Use”**), which Terms of Use Motus may update from time to time. The current Terms of Use and any updates to them can be viewed at <http://www.motus.com/legal/terms-of-use/> or such other location as Motus may designate. Client will ensure that all Users comply with the Terms of Use, in addition to all applicable terms

and conditions of this Agreement. Without limiting the foregoing, Client will instruct Users not to share their Identities with any other individuals and to take appropriate measures to keep their Identities confidential. Client authorizes Motus to make available data and access associated with a given Identity to any person who correctly enters such Identity into the Services. A person who correctly enters a given, valid Identity into the Services will be considered the User entitled to hold such Identity, and Motus will have no duty to further inquire about the identity of such person. Client acknowledges and agrees that Motus is not responsible for any unauthorized person accessing the Services and/or Client Data through a valid Identity. As between Motus and Client, Client hereby assumes all responsibility and liability with respect to the access to and use of the Services by Users, other than to the extent such liability arises directly from a breach of this Agreement by Motus. Any failure by a User to comply with the Terms of Use or the terms and conditions contained in this Agreement will be deemed a breach by Client of this Agreement. For clarity, Motus will look solely to Client and not to any User in satisfaction of any claims arising as a result of such User's use of the Services. If Users choose a password also used for any other account, Motus will not be responsible for any unauthorized access or harm to such other accounts. Client will promptly notify Motus if Client believes that an unauthorized third party may be accessing or using a User account or if User account information is lost or stolen.

1.2.3 Client Support of Services. Client will be solely responsible for: (a) the accuracy and completeness of configuration and set up (to the extent required) of the Services; (b) ensuring that the Services are compatible with Client business systems requirements; (c) the accuracy, quality and integrity of Client Data; (d) the maintenance and use of Client Technology; (e) ensuring that its Users, Permitted Affiliates, employees, agents, and representatives comply with this Agreement; (f) all actions taken via Client's account, including protecting the confidentiality of Client passwords and Identities; and (g) using the Services only in compliance with applicable law. Client's failure to commence or complete configuration or set up of the Services will not relieve Client from any of its obligations under this Agreement, including payment of Fees.

1.2.4 Permitted Affiliates. Permitted Affiliates may place separate Order Forms for Services under this Agreement or receive the Services provided under a Client Order Form, subject to the terms of this Agreement, provided that: (a) Client binds the Permitted Affiliates to comply with this Agreement; and (b) Client and Permitted Affiliates agree to be jointly and severally liable to Motus for complying with this Agreement. Client represents that it has the authority to act as an agent for Permitted Affiliates with respect to all interaction among Client, Permitted Affiliates, and Motus. Motus will invoice: (a) Client (and not its Permitted Affiliates) for the Services used by Permitted Affiliates under a Client Order Form; or (b) Permitted Affiliates, if Permitted Affiliates enter into separate Order Forms; provided, however, that Client will remain primarily responsible for payment and Client unconditionally guarantees payment of all invoices to Motus (including all amounts invoiced to Permitted Affiliates). Only Client (and not its Permitted Affiliates) may directly request support with respect to the Services if such Services are rendered pursuant to a Client Order Form; provided, however, that Permitted Affiliates which enter into separate Order Forms may request support directly from Motus. Only Client (and not its Permitted Affiliates) may initiate and participate in any dispute or litigation with Motus with respect to any Order Form. However, Motus may directly enforce any Order Form against any Permitted Affiliate if the Permitted Affiliate is in breach of this Agreement.

1.3 Services Restrictions. The Services are subject to the restrictions set forth in this Agreement and the following: (a) Client does not acquire any right to use the Services in excess of the scope and/or duration stated in the Order Form; (b) upon the expiration of the Service Term, Client's right to use the Solutions will terminate unless renewed pursuant to this Agreement; and (c) except as permitted in this Agreement, Client will neither directly nor indirectly (i) make the Solutions (or any results from the Solutions) available

to any third party, except to Permitted Affiliates, (ii) license, sell, resell, rent, lease, transfer, assign, distribute, permit time sharing or service bureau use, host, outsource, or otherwise commercially exploit the Solutions, (iii) interfere with or disrupt the integrity or performance of the Solutions, (iv) attempt to gain unauthorized access to the Solutions, (v) modify, copy, or make derivative works of the Solutions or underlying technology, or any data or other materials generated as part of the Solutions, (vi) disassemble, reverse engineer or decompile any portion of the Solutions or underlying technology, except to the extent permitted by applicable law, and (vii) use the Solutions to create any other products or services. Client will cooperate with Motus if Motus elects to monitor Client or Permitted Affiliate compliance with this Agreement.

1.4 Compliance with Export Laws. Client will not permit the Solutions to be used by any person or entity located in a jurisdiction that is subject to any export restrictions or which is otherwise barred from using the Solutions under applicable law, unless prior written authorization is obtained from the appropriate United States agency, and if so authorized, Client will comply with such applicable laws.

1.5 Use of Subcontractors. Client consents to Motus' use of subcontractors and consultants to provide the Services, and any subcontractors or consultants Motus uses will be under Motus' direction and will comply with all applicable provisions of this Agreement. Motus will remain responsible and liable for performance of the subcontractors or consultants used to render the Services.

#### 1.6 Ownership.

1.6.1 Client Data. Client will own all Client Data. Client hereby grants to Motus a worldwide, non-exclusive, non-assignable (except as otherwise permitted under this Agreement), license (including the right to grant sublicenses to Motus' subcontractors and consultants performing services for Motus under this Agreement), to access, retrieve, host, store, copy, display, and otherwise use Client Data to provide the Services. Client will obtain all rights necessary to provide Client Data to Motus for purposes of this Agreement, and to the extent required, notify any individuals who own or have an interest in Client Data that Client Data will be provided to Motus for purposes of this Agreement.

1.6.2 Aggregate Data. Motus will own all Aggregate Data, including the rights to: (a) provide Aggregate Data to third parties; and (b) develop, test, maintain, improve, modify, distribute, create derivative works from, and otherwise commercialize Aggregate Data.

1.6.3 Intellectual Property. Motus will own all Intellectual Property in the Motus Technology, Professional Services, Aggregate Data, and Suggestions (regardless of whether Client has designated the Suggestions as confidential). Client will own all Intellectual Property in Client Technology.

1.7 Reservation of Rights. Motus and Client each reserves all rights not expressly granted in this Agreement.

## **2. FEES AND PAYMENT TERMS.**

2.1 Fees. Client will pay Motus the fees as set forth in the applicable Order Form ("**Fees**"). Motus may increase Fees at the beginning of each renewal of the Service Term unless Fees for such renewal term are already stated in the applicable Order Form. Motus will give Client written notice of any such increase at least ninety (90) days prior to the beginning of the renewal term for any Fee increase greater than three percent (3%). If Motus does not provide Client with such written notice, then the Fees for the renewal term will be the same as the Fees for the immediately preceding Service Term. If Client requires a purchase order number on invoices issued by Motus, then Client must provide the purchase order number on the Order Form.

2.2 Payment Terms. Except as otherwise specified in the applicable Order Form: (a) Motus will invoice Client in advance Fees for the Service Periods set forth in the Order Form; and (b) all invoices are payable in U.S. Dollars with payment due within thirty (30) days of invoice date. Unpaid invoices will be subject to a finance charge of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is lower. If Client does not timely pay any invoice, then in addition to any rights Motus has under this Agreement, Motus may condition future renewals and Order Forms on terms different from those specified in this Agreement. Except as otherwise set forth in this Agreement, all Fees, once paid, are non-cancelable, non-refundable, and not subject to set-off.

2.3 Taxes. All amounts payable by Client are exclusive of any sales, use and other taxes however designated (collectively "**Taxes**"). Client is solely responsible for payment of Taxes, except for those taxes based on Motus' income. Client will not withhold any Taxes from any Fees or other amounts due. If Motus has the legal obligation to collect and pay Taxes for which Client is responsible, such Taxes will be invoiced to and paid by Client, unless prior to invoice, Client provides Motus with a valid tax exemption certificate authorized by the appropriate taxing authority.

### 3. CONFIDENTIALITY.

3.1 Confidentiality. Each party (a "**Disclosing Party**") may provide the other party (a "**Receiving Party**") with proprietary or confidential materials and information. "**Confidential Information**" means all materials and information provided by a Disclosing Party to a Receiving Party that: (a) is marked as "Confidential" or bears a similar legend at the time of disclosure, or is identified in writing as confidential within thirty (30) days of disclosure; or (b) Receiving Party should reasonably know is confidential at the time of its disclosure, including, Client Data, any unique user identifiers and passwords provided to Client to access and use the Services, information relating to pre-release offerings, business plans, pricing, products, policies, procedures, inventions, trade secrets, patents, and know-how of the Disclosing Party. "**Confidential Information**" does not include information that Receiving Party can establish: (a) has entered the public domain without Receiving Party's breach of any obligation owed to Disclosing Party; (b) has been rightfully received by Receiving Party from a third party without confidentiality restrictions; (c) is known to Receiving Party without any restriction as to use or disclosure prior to first receipt by Receiving Party from Disclosing Party; (d) has been independently developed by Receiving Party without use of Disclosing Party's Confidential Information; or (e) is Aggregate Data or Personal Information.

3.2 Obligations Related to Confidential Information. Receiving Party will only disclose Confidential Information to those persons who have a need to know such information in the course of performing their duties under this Agreement. Receiving Party will take reasonable measures to maintain the confidentiality of Confidential Information in its possession or under its control, which will in no event be less than the measures it takes to maintain the confidentiality of its own information of similar importance. If Receiving Party learns of an incident of unauthorized access to, misuse, or disclosure of Confidential Information in its possession or under its control, then Receiving Party will: (a) promptly notify Disclosing Party of the facts and circumstances giving rise to such incident; and (b) take reasonable measures to contain and control further unauthorized access to, misuse, or disclosure of such Confidential Information. Restrictions on access to, use or disclosure of Confidential Information will not apply to access, use or disclosure authorized in writing by Disclosing Party. The parties acknowledge that the terms of any previously executed confidentiality agreements between them will remain in effect with respect to the information exchanged under those agreements.

3.3 Disclosures Required by Law. If any applicable law, judicial, or administrative order requires Receiving Party to disclose Confidential Information or Personal Information, then, unless otherwise required by the disclosure order, Receiving Party will promptly notify Disclosing Party in writing prior to making any such disclosure. Following notification, Receiving Party will reasonably cooperate with Disclosing Party, at

Disclosing Party's request and at Disclosing Party's reasonable expense, to seek a protective order or other remedy to prevent or limit the disclosure of Confidential Information or Personal Information.

#### **4. REPRESENTATIONS AND WARRANTIES, DISCLAIMER OF WARRANTIES, AND REMEDIES.**

##### **4.1 Representations and Warranties.**

4.1.1 Motus warrants to Client that: (a) Motus will provide the Solutions in all material respects in accordance with the Specifications; and (b) Motus will perform the Professional Services in a workmanlike manner and in all material respects in accordance with the Specifications.

4.1.2 Client warrants to Motus that: (a) Client has or will obtain all necessary rights to use the Client Data that it provides to Motus; and (b) Client will comply with applicable law in connection with its access and use of the Services.

4.1.3 The parties represent and warrant to each other that each party has the required rights, power, and authority to enter into this Agreement and to grant all rights, licenses, and authorizations given in this Agreement.

4.1.4 These warranties are solely for the benefit the parties to this Agreement, and are not intended to be extended to any other person or entity.

4.2 DISCLAIMER OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, MOTUS DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. CLIENT ACKNOWLEDGES THAT MOTUS DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, NOR DOES MOTUS WARRANT AGAINST ANY DEFICIENCIES THAT RESULT IN WHOLE OR IN PART FROM ANY THIRD PARTY TECHNOLOGY. BECAUSE MOTUS RELIES ON CLIENT'S SELECTION OF THE PARAMETERS FOR AND CONFIGURATION OF THE SERVICES AS WELL AS ON THE ACCURACY OF THIRD PARTY TECHNOLOGY, MOTUS PROVIDES NO GUARANTEE OR ASSURANCE THAT THE SERVICES WILL ACCURATELY DETERMINE CLIENT'S REIMBURSEMENTS OR REIMBURSEMENT RATES. SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN WARRANTIES, SO THESE DISCLAIMERS MAY NOT APPLY TO CLIENT.

4.3 EXCLUSIVE REMEDY. FOR ANY BREACH OF WARRANTY, CLIENT'S EXCLUSIVE REMEDY AND MOTUS' ENTIRE LIABILITY WILL BE THE CORRECTION OF THE DEFICIENCY THAT CAUSED THE BREACH OF WARRANTY; PROVIDED THAT CLIENT PROMPTLY PROVIDES MOTUS WITH WRITTEN NOTIFICATION DESCRIBING IN REASONABLE DETAIL THE NATURE OF THE DEFICIENCY AND A REASONABLE OPPORTUNITY TO CORRECT THE DEFICIENCY. IF MOTUS CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, CLIENT MAY TERMINATE THIS AGREEMENT AND MOTUS WILL REFUND TO CLIENT THE UNUSED PRE-PAID FEES FOR THE SERVICES, PRO-RATED FOR THE REMAINDER OF SERVICE TERM.

#### **5. INDEMNIFICATION.**

5.1 Motus Indemnity. Motus will, at its expense, defend Client and its Permitted Affiliates ("**Client Indemnitees**"), and pay the amount of any adverse final and non-appealable judgement or settlement to which Motus consents (including reasonable attorney's fees and litigation costs) resulting from any unaffiliated third party claim, demand, suit or proceeding (each, a "**Claim**") that the Services, when used

in compliance with the terms of this Agreement, infringe on or misappropriate a valid (as of the Effective Date) U.S. patent, copyright, or trade secret right of such third party.

5.2 Discontinuation of Services. If the Services are held to infringe, or become, in Motus' reasonable opinion, likely to become the subject of an infringement Claim preventing further use as set forth in this Agreement, then Motus may, at its option: (a) obtain for Client the right to continue to use the Services; (b) replace or modify the Services so that they become non-infringing without material alteration; or (c) if (a) or (b) are not commercially reasonable for Motus to effect, then Motus may terminate this Agreement upon written notice to Client and refund to Client any unused pre-paid Fees, pro-rated for the remainder of the pre-paid Service Term.

5.3 Exclusions from Motus Indemnification. Motus will have no liability or obligation under subsection 5.1 above with respect to any Claim based on: (a) Client's use of the Services not in compliance with this Agreement; (b) any modifications or combinations of the Services or any results thereof with any information, data, software or other materials not provided by Motus (including any Client Technology and Third Party Technology); (c) Client's continued use of the Services after notification from Motus to cease from doing so; (d) Client's continued use of the Services after being provided with corrections or adjustments that would have avoided the Claim; (e) Client's breach of this Agreement; or (f) Client's or its permitted Affiliates' gross negligence or intentional misconduct.

5.4 Client Indemnity. Client will, at its expense, defend Motus and its Affiliates ("**Motus Indemnitees**"), and pay the amount of any adverse final and non-appealable judgement or settlement to which Client consents (including reasonable attorney's fees and litigation costs) resulting from any unaffiliated third party Claim based on or related to Client's: (a) use of the Services not in compliance with this Agreement; (b) not conveying to Motus all necessary rights, authorizations, or licenses to use Client Data; or (c) not complying with applicable law, regulations, and rules in connection with its use of the Services.

5.5 Exclusions from Client Indemnification. Client will have no liability or obligation under subsection 5.4 above with respect to any Claim based on Motus' its Affiliates' gross negligence or intentional misconduct.

5.6 Indemnification Procedure. As a condition to the obligations set forth in Section 5.1 and 5.4 above, the responsible party ("**Indemnitor**") must receive timely written notice of the Claim. Indemnitor will have sole control over the defense and settlement of the Claim with counsel of its own choosing, except to the extent that any settlement involves material commitments on the part of the indemnified party ("**Indemnitee**"), in which case such settlement will require the prior written consent of Indemnitee (which consent will not be unreasonably withheld, delayed, conditioned, or delayed). Indemnitee will provide reasonable and non-confidential information and cooperation (at Indemnitor's reasonable expense) as reasonably required by Indemnitor. Indemnitor will not be responsible for any settlement it does not approve in writing. Indemnitee reserves the right to participate at its own cost in any proceedings with counsel of its own choosing; provided, however, that the defense or settlement of any Claim will at all times be subject to Indemnitor's sole control.

5.6 EXCLUSIVE REMEDY. THE FOREGOING STATES INDEMNITOR'S SOLE OBLIGATION AND INDEMNITEE'S SOLE REMEDY FOR INDEMNIFICATION.

## **6. LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN CLAIMS.**

6.1 EXCLUSION OF CERTAIN CLAIMS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE IN ANY WAY TO EACH OTHER OR TO ANY THIRD PARTY UNDER ANY LEGAL OR EQUITABLE THEORY (INCLUDING BREACH OF CONTRACT OR WARRANTY, INDEMNITY, TORT, OR STRICT LIABILITY) WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY

KIND, WHETHER FORSEEABLE OR UNFORESEEABLE, INCLUDING DAMAGES FOR (A) LOSS, INACCURACY OR CORRUPTION OF DATA, (B) LOSS OF GOODWILL, (C) LOST PROFITS, (D) INTERRUPTION OF USE OR AVAILABILITY OF THE SERVICES, (E) THE COST FOR PROCUREMENT OF SUBSTITUTE SERVICES OR TECHNOLOGY, (F) WORK STOPPAGE, OR (G) OTHER MATTERS BEYOND SUCH PARTY'S REASONABLE CONTROL. THE EXCLUSIONS ABOVE WILL APPLY EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OCCURRING. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. THEREFORE, SOME OR ALL OF THE FOREGOING EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO THE PARTIES AND THE PARTIES MAY HAVE ADDITIONAL RIGHTS.

6.2 LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY EXCEED THE FEES PAID BY CLIENT TO MOTUS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CAUSE OF ACTION OR CLAIM, REGARDLESS OF WHETHER THE CAUSE OF ACTION OR CLAIM IS BASED ON BREACH OF CONTRACT OR WARRANTY, INDEMNITY, TORT, STRICT LIABILITY, OR OTHERWISE. IF NO FEES ARE PAID, SUCH AGGREGATE LIABILITY WILL BE LIMITED TO U.S. \$5,000.00). THIS LIMITATION OF LIABILITY WILL NOT APPLY TO CLIENT'S OBLIGATIONS TO PAY FEES AND EXPENSES WHEN DUE AND PAYABLE, NOR TO ANY INFRINGEMENT OR MISAPPROPRIATION BY CLIENT OF MOTUS' INTELLECTUAL PROPERTY, NOR TO EITHER PARTY'S ACTS OF GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT. MONETARY DAMAGES, AS LIMITED BY THIS SECTION, WILL BE EACH PARTY'S SOLE AND EXCLUSIVE REMEDY (AT LAW OR IN EQUITY) IN THE EVENT THAT ANY EXCLUSIVE REMEDY IN THIS AGREEMENT IS FOUND TO FAIL OF ITS ESSENTIAL PURPOSE. ALL CAUSES OF ACTION OR CLAIMS BROUGHT BY EITHER PARTY PERTAINING TO THIS AGREEMENT MUST BE BROUGHT WITHIN THE EARLIER OF ONE (1) YEAR FROM THE TERMINATION OR EXPIRATION OF THIS AGREEMENT, OR WITHIN SIX (6) MONTHS FROM THE DATE THE EVENT GIVING RISE TO THE CAUSE OF ACTION OR CLAIM IS DISCOVERED. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THIS AGREEMENT, EACH OF WHOM HAS RELIED ON THE EXCLUSION OF CERTAIN CLAIMS, AND THE LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT. CLIENT AGREES THAT WITHOUT THESE EXCLUSIONS AND LIMITATIONS, THE FEES FOR THE SERVICES WOULD BE SIGNIFICANTLY HIGHER. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES, SO THE FOREGOING PROVISIONS MAY NOT APPLY TO THE PARTIES.

## **7. SUSPENSION OF SERVICES.**

7.1 Generally. Motus may suspend Client's right (including its Users) to access or use any portion of the Services immediately on notice and without liability if Motus determines in good faith that: (a) Client's (or its Users) use of the Services (i) poses a security risk to the Services or to any third party, (ii) may adversely impact the Services or the networks or data of any third party, (iii) may subject Motus or any third party to liability, or (iv) is fraudulent; (b) the Services have been accessed or manipulated by a third party without Client's consent or in violation of this Agreement; (c) Client is in breach of this Agreement, including if Client is delinquent in its payment obligations for more than thirty (30) days; (d) suspension is required by applicable law or court order; (e) suspension is required by third party providers that provide portions of the Services; or (f) Client has ceased to operate in the ordinary course, made an assignment for the benefit of creditors or similar disposition of Client's assets, or becomes the subject of any bankruptcy, reorganization, liquidation, dissolution or similar proceeding.

7.2 Effect of Suspension. If Motus suspends Client's right to access or use any portion of the Services, then: (a) Client remains responsible for all Fees and expenses, including for the Services to which Client continues to have access, if any; and (b) Client will not be entitled to any compensation, refunds, or credits for any period of suspension.



7.3 Termination Rights. Motus' right to suspend access or use the Services is in addition to Motus' right to terminate this Agreement.

## 8. TERM AND TERMINATION.

8.1 Term. This Agreement will commence on the Effective Date and will continue in effect for the duration of any Order Form that references its terms, unless earlier terminated as set forth in this Agreement. The Service Term applicable to provision of the Services is set forth in the applicable Order Form.

8.2 Termination. Either party may terminate this Agreement upon written notice to the other party in the event that the other party: (a) commits any material breach of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice specifying in reasonable detail the nature of the breach; (b) breaches its obligations related to Confidential Information (in which case termination will be effective immediately on receipt of written notice); or (c) becomes (i) insolvent or unable to pay its debts as and when they fall due, or proposes an arrangement to restructure such debts, (ii) has a receiver, administrator or manager appointed over the whole or any part of its business or assets, (iii) becomes the subject of any petition, resolution, or order for winding up, bankruptcy or dissolution, or (iv) ceases to carry on its business in the normal course (in the cases of the foregoing Section 8.2(c)(i)-(iv), termination will be effective immediately on receipt of written notice). Upon termination of this Agreement, all Order Forms will automatically terminate.

8.3 Obligations on Termination. Upon termination or expiration of this Agreement, all rights granted to use the Services and all obligations to provide the Services will immediately cease. The termination or expiration of this Agreement will not relieve Client from paying all Fees and expenses accruing prior to or after termination or expiration. Except as required by applicable law or pursuant to Motus' data retention policies, upon Client's written request within sixty (60) days following the termination or expiration of this Agreement, Motus will return Client Data to Client in useable format, or at Client's election, destroy Client Data (with destruction certified in writing by Motus if requested in writing by Client), and Client agrees to reimburse Motus for Motus' reasonable expenses in connection with the return of Client Data.

8.4 Survival. The Definitions section and Sections 1.6-1.7, 2, 3, 4.1.4, 4.2-4.3, 5, 6, 8.3-8.4, and 9 will survive the termination or expiration of this Agreement for any reason whatsoever.

8.5 Force Majeure. Neither party will be deemed in breach of this Agreement for any cessation, interruption, or delay in performing its obligations under this Agreement due to causes beyond its reasonable control, including, without limitation: (a) earthquake, flood, or other natural disaster, acts of God, labor controversy, civil disturbance, terrorism, war, or the inability to obtain sufficient supplies, transportation, or other essential commodities or services required in the conduct of its business; or (b) any change in or the adoption of any law, rule, or regulation, or the entering of any judgment, order or decree that prevents or inhibits its performance under this Agreement (each of (a) and (b) a "**Force Majeure Event**"); provided that financial inability in and of itself will not be a Force Majeure Event. Notwithstanding the foregoing, a Force Majeure Event will not relieve Client from paying all Fees and expenses accruing prior to the Force Majeure Event.

## 9. GENERAL.

9.1 Publicity. Subject to Client's prior approval, Client gives Motus the right to refer to Client in customer-facing materials, including in Motus' roster of clients, press releases, case studies, testimonials, as a customer reference, and as a speaker at Motus conferences and trade shows.

9.2 Governing Law, Jurisdiction, and Venue. The laws of the State of Massachusetts govern this Agreement. The parties consent to exclusive jurisdiction and venue in the federal or state courts sitting in Suffolk County, Massachusetts that have subject matter jurisdiction over any dispute arising under this

Agreement, except for any dispute seeking injunctive or equitable relief or claims regarding infringement of intellectual property rights or breach of obligations related to Confidential Information (which may be brought in any court having proper jurisdiction). The parties waive all defenses of lack of personal jurisdiction and forum non-conveniens. Process can be served on either party in the manner authorized by applicable law or court rule.

9.3 Notices. All notices will be sent by express courier or by registered mail with a copy by fax to the contacts listed on the first page. Each party may change its contacts for notice on prior written notice (which can be provided by email) to the other party. All notices will be in writing and will reference this Agreement. Notices will be deemed given: (a) if sent by express courier, when delivered personally with written verification of receipt; or (b) if sent by registered mail, five (5) days after having been sent.

9.4 Relationship of the Parties. The parties are operating as independent contractors, and nothing in this Agreement will be construed as creating a partnership, franchise, joint venture, employer and employee, or agency relationship. Neither party has the authority to obligate the other party in any manner, and nothing in this Agreement will give rise to any rights of any kind to any third parties.

9.5 Waiver. Any delay or failure of a party to exercise a right or remedy under this Agreement or at law will not result in a waiver of that, or any other, right or remedy. No waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

9.6 Severability. If any provision of this Agreement is found to be unenforceable, the parties (or, if the parties cannot agree, a court) will revise it so that it can be enforced consistent the intent of the parties as of the Effective Date. Even if no revision is possible, the rest of this Agreement will remain in effect.

9.7 Assignment. Neither party will assign this Agreement without the written consent of the other party; provided, however, that this Agreement may be assigned by either party to any Affiliate of such party or to a successor organization acquiring all or substantially all of such party's assets (including by means of a merger, acquisition, or similar transaction) with written notice, but without the written consent of the other party.

9.8 Interpretation. This Agreement will be interpreted according to the plain meaning of its terms without any presumption that it should be construed either in favor of or against either party.

9.9 Binding Effect. This Agreement will be binding on the parties and their respective successors and permitted assigns.

9.10 Entire Agreement. This Agreement is the entire agreement between the parties regarding its subject matter and supersedes all prior and contemporaneous agreements or communications. This Agreement may not be modified except by a written agreement signed by authorized representatives of the parties. Notwithstanding the foregoing, the Services may include the use of certain websites and applications (e.g., applications for download and use on mobile devices) that have terms of use or privacy statements to which Client and/or Users are subject by virtue of their use or that Client and/or Users must accept as a condition to their use, and Client and/or Users agree to be bound by any such terms.