

SunPoint IT Solutions

Master Services Agreement

The following terms and conditions governs the relationship between SunPoint IT Solutions, LLC, a California limited liability company (“us,” “our,” “we,” “or “SunPoint”) and you (“Client,” “you,” or “your”). These terms and conditions limit our liability for any and all services or products that we provide, sell, or re-sell to you. Please read these terms carefully and keep a copy for your records.

- 1) **SCOPE OF SERVICES; SOW.** This is a master agreement that governs all services that we perform, as well as any services, licenses, or products that we sell or re-sell to you (collectively, the “Services”). The Services are not described in this Agreement; instead, the Services will be described in one or more orders, proposals, or statements of work that we provide to you (each, a “SOW”). Once you and we agree to a SOW (either by signing it or by electronic acceptance), the SOW will be governed under 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.
- 2) **GENERAL REQUIREMENTS.**
 - a) *Environment.* For the purposes of this Agreement, “Environment” means, collectively, the portion of any computer network (cloud-based or otherwise), computer system, peripheral or device (virtual or physical) that we maintain, monitor, or operate pursuant to a SOW. The scope of a SOW, and the fees charged under a SOW, are generally determined by your needs and the configuration of the Environment as of the date that the SOW is signed. Therefore, to avoid a delay or negative impact on our provision of the Services, and to mitigate against certain potential costs involved in correcting Client-originated issues, you agree to refrain from modifying or moving the Environment, or installing software on the Environment, unless we expressly authorize such activity.
 - b) *Requirements.* At all times, all software in the Environment must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we describe minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to implement those Minimum Requirements as an ongoing requirement of us providing the Services to you.
 - c) *Updates.* Patches and updates to hardware and software (“Updates”) are created and distributed by third parties—such as equipment or software manufacturers—and may be supplied to us from time to time for installation into the Environment. If required under a SOW, we will implement and follow the manufacturers’ recommendations for the installation of Updates; however, (i) we do not warrant or guarantee that any Update will perform properly, (ii) we will not be responsible for any downtime or losses arising from or related to the installation, use, or inability to use any Update, and (iii) we reserve the right, but not the obligations, to refrain from installing an Update until we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware.
 - d) *Third Party Support.* If in our discretion a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and pass through to you all fees and costs associated with that process. If such fees or costs are anticipated in advance or exceed \$125, we will obtain your permission before incurring those expenses on your behalf unless exigent circumstances require us to act otherwise.
 - e) *Advice; Instructions.* From time to time, we may provide you with specific advice and directions related to the Services (“Advice”). For example, our Advice may include increasing server or hard drive capacity, increasing CPU power, replacing obsolete equipment, or refraining from engaging in acts that disrupt the Environment or that make the Environment less secure. You are strongly advised to promptly follow our advice which, depending on the situation, may require you to make additional purchases or investments in the Environment at your sole cost. We are not responsible for any problems or issues (such as downtime or security-related issues) caused by your failure to promptly follow our Advice. If, in our discretion, your failure to follow our Advice renders part or all of the Services economically or technically unreasonable to provide, then we may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow our Advice, or your unauthorized modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements, are out-of-scope and not covered under any SOW.
 - f) *Prioritization.* All Services will be performed on a schedule, and in a prioritized manner, as we determine reasonable and necessary. Exact commencement / start dates may vary or deviate from the dates stated in a SOW depending on the Service being provided and the extent to which prerequisites (if any), such as transition or onboarding activities, must be completed.
 - g) *Authorized Contact(s).* We 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 or if a previously identified Authorized Contact is no longer available to us, then your Authorized Contact will be the person (i) who signed this Agreement, (ii) who signed the applicable SOW, and/or (iii) who are generally designated by you during the course of our relationship to provide us with direction or guidance. We will be entitled to

rely upon directions and guidance from your Authorized Contact until we are affirmatively made aware of a change of status of the Authorized Contact. If your change is provided to us in writing (physical document or by email), then the change will be implemented within two (2) business days after the first business day on which we receive your change notice. If your change notice is provided to us in person or by telephone (live calls only), the change will be implemented on the same business day in which the conversation takes place. Do not use a ticketing system or help desk request to notify us about the change of an Authorized Contact; similarly, do not leave a recorded message for us informing us of a change to your Authorized Contact. We reserve the right to delay the Services until we can confirm the Authorized Contact's authority within your organization.

h) *Insurance*. If you are supplied with SunPoint-owned or SunPoint-licensed equipment or software (collectively, "SunPoint Equipment"), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. SunPoint must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to SunPoint. Upon our request, you agree to provide proof of insurance to us including proof of payment of any applicable premiums or other amounts due under the insurance policy.

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 us on an hourly basis pursuant to our then-current standard hourly rate schedule. You are responsible for sales tax and any other taxes or governmental fees associated with the Services. If you qualify for a tax exemption, you must provide us with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes).

a) *Schedule*. Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the provision of the Services. If applicable, recurring payments made to SunPoint will be deducted from your designated bank account on the first business day of the month in which the Services are to be provided, and, if applicable, your designated credit card will be charged on the first business day of the month in which the Services are to be provided.

b) *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% per month or the maximum allowable rate of interest permitted by applicable law. We reserve 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 timely received by us, and monthly or recurring charges shall continue to accrue during any period of suspension. Notice of disputes related to fees must be received by us within ninety (90) 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-activation fee may be charged to you if we suspend the Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.

c) *ACH*. Generally, all prices quoted in a SOW anticipate automatic monthly recurring payment by you. Payments by any other methods may result in increased fees or costs.

4) **ACCESS**. You hereby grant to us and our designated vendors the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the Environment on a 24x7 basis solely for the purpose of enabling us or our designated vendors, as applicable, to provide the Services. Depending on the Service, we may be required to install one or more software agents into the Environment through which such access may be enabled. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for us or our vendors to provide the Services both physically and virtually, as applicable. Proper and safe environmental conditions must be provided and assured by you at all times. Our personnel will not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern, or that would require extraordinary or non-industry standard efforts to achieve.

5) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY**.

a) *Hardware / Software Purchased Through SunPoint*. Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through us ("Third Party Products") are nonrefundable once the product is placed in the delivery queue by the product's manufacturer or third party reseller. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and third party service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the 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 SunPoint and you (including but not limited to implied warranties).

b) *Liability Limitations*. **This paragraph limits the liabilities arising under this Agreement or any SOW and is a bargained-for and material part of our business relationship with you.** You acknowledge and agree that SunPoint would not enter into any SOW or this Agreement unless SunPoint could rely on the limitations described in this paragraph. In no event shall either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of

profits (except for fees due and owing to SunPoint), 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; however, (i) reasonable attorneys' fees awarded to a prevailing party (as described below), (ii) your indemnification obligations, and (iii) any amounts due and payable pursuant to the non-solicitation provision of this Agreement shall not be limited by the foregoing limitation. Except for the foregoing enumerated exceptions, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") 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, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to SunPoint for the specific Service upon which the applicable claim(s) is/are based during the three (3) month period immediately prior to the date on which the cause of action accrued. The foregoing limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct, or gross negligence. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, or gross negligence.

- 6) **INDEMNIFICATION.** Each party (an "Indemnifying Party") agrees to indemnify, defend and hold the other party (an "Indemnified Party") 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, the Indemnifying Party's breach of this Agreement. The Indemnified Party 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. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.
- 7) **TERM; TERMINATION.** This Agreement begins on the Effective Date and continues until terminated as described in this Agreement. Each SOW will have its own term and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW will not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other SOW between the parties.
- a) *Termination Without Cause.* Unless otherwise agreed by the parties in writing or otherwise permitted under this Agreement, no party will terminate this Agreement without cause if, on the date of termination, a SOW is in progress. In addition, no party will terminate a SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if SunPoint decides to cease providing a service to all of its customers generally, then we may terminate the applicable SOW (or the applicable portion of the SOW) without cause by providing no less than one hundred and twenty (120) days prior written notice to you. If you terminate a SOW without cause and without SunPoint's consent, then you will be responsible for paying the Termination Fee (described in Section 7(b), below). If no SOW is in progress, then either party may terminate this Agreement without cause by providing the other party with five (5) days prior written notice.
- b) *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 twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If SunPoint terminates this Agreement or any SOW For Cause, or if you terminate any SOW without cause prior to such SOW's expiration date, then we shall be entitled to receive, and you hereby agree to pay to us, all amounts that would have been paid to us had this Agreement or SOW (as applicable) remained in full effect ("Termination Fee"). 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.
- c) *Client Activity As A Basis for Termination.* In the event that (i) any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the Environment or any part of the Environment to malfunction consequently requiring remediation by SunPoint on three (3) occasions or more ("System Malfunction"), and if under those circumstances, you fail to remedy, repair, or replace the System Malfunction as directed by us (or you fail to cease the activity causing the System Malfunction, as applicable), or (ii) you or any of your staff, personnel, contractors, or representatives engage in any harassing or other unacceptable behavior that renders it impracticable, imprudent, or unreasonable to provide the Services to you, then SunPoint 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 our discretion and if applicable, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

- d) *Consent.* You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- e) *Equipment / Software Removal.* Upon termination of this Agreement or applicable SOW for any reason, you will provide us with access, during normal business hours, to your premises or any other locations at which SunPoint Equipment is located to enable us to remove all such equipment from the premises. If you fail or refuse to grant us access as described herein, or if any of the SunPoint Equipment is missing, broken or damaged (normal wear and tear excepted) or any of SunPoint-supplied software is missing, we 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. Certain services require the installation of software agents in the Environment (“Software Agents”), and you agree not to remove, disable, circumvent, or otherwise disrupt the Software Agents unless we explicitly direct you to do so.
- f) *Repayment of Discounted Fees.* If you are provided with a price discount or fee waiver under a SOW based on your commitment to retain our Services for a minimum term and if, under that scenario, we terminate the SOW for cause or you terminate the SOW without cause, then in addition to any other remedy available to us, you agree to pay us the amount of the fee waiver or, if applicable, the difference between the discounted rates and the non-discounted rates under that SOW, calculated from the effective date of the SOW through the date of termination.
- g) *Transition; Deletion of Data.* In the event that you request our assistance to transition away from our services, we will provide such assistance if (i) all fees due and owing to us are paid to us in full prior to us providing our assistance to you, and (ii) you agree to pay our then-current hourly rate for such assistance, with up-front amounts to be paid to us as we may require. 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. You also understand and agree that any software configurations that we custom create or program for you are our proprietary information and shall not be disclosed to you under any circumstances. **Unless otherwise expressly stated in a SOW, we will have no obligation to store or maintain any Client data in our possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** We 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, our deletion of your data beyond the time frames described in this paragraph.

8) **RESPONSE; REPORTING.**

- a) *Response.* We warrant and represent that we will provide the Services, and respond to any notification received by us of any error, outage, alarm or alert pertaining to the Environment, 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 Transition Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which we are required to suspend the Services to protect the security or integrity of the Environment or our 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 us but which will not occur between the hours of 9:00 AM and 5:00 PM Pacific Time, Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to the Environment. We will use our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
 - ii) Client-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services that are caused by your actions or omissions (“Client-Side Downtime”).
 - iii) Vendor-Side Downtime. We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, that are caused by third party service providers, third party licensors, or “upstream” service or product vendors.
 - iv) Remedies; Limitations. Except for the Onboarding Exception, if we fail to meet our service level commitment in a given calendar month and if, under such circumstances, our failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, we will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to us, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph and in Section 7(b) are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for our failure to meet any service level commitment during the term of this Agreement.
- b) *Transition Exception.* You acknowledge and agree that for the first forty-five (45) days following the commencement date of a SOW, as well as any period of time during which we are performing off-boarding-related services (e.g., assisting you in the transition of the Services to another provider, terminating a service, etc.), the response time commitments described in this Agreement or any applicable SOW will not apply to us, it being understood that there may be unanticipated downtime or delays related to those activities (the “Transition Exception”).

9) **CONFIDENTIALITY.**

- a) *Defined.* For the purposes of this Agreement, Confidential Information means any and all non-public information provided to us by you, including but not limited to your 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 by us, (ii) was developed independently by us, or (iii) is or was lawfully and independently provided to us prior to disclosure by you, 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.* We will keep your Confidential Information confidential and will not use or disclose such information to any third party for any purpose except as expressly authorized by you in writing, or as needed to fulfill our obligations under this Agreement.
- c) *Due Care.* We will exercise the same degree of care with respect to the Confidential Information we receive from you as we normally take to safeguard and preserve our own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care. If we enter into any other agreement with you related to Confidential Information (such as a business associate agreement) on or after the Effective Date, the contractual terms that require the higher levels of confidentiality will apply to our use of Confidential Information.
- d) *Compelled Disclosure.* If we are legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, we will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive our compliance with the provisions of this Section 9. We will use our best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, we may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that we have been advised, by written opinion from our counsel, that we are legally compelled to disclose.
- e) *Business Associate.* If we enter into a business associate agreement (“BAA”) with you for the protection of personal health information, then the terms of the BAA will be read in conjunction with the terms of the confidentiality provisions of this Agreement. The terms that protect confidentiality most stringently shall govern, and conflicting privacy- or confidentiality-related terms shall be governed by the BAA.

10) **ADDITIONAL TERMS; THIRD PARTY SERVICES.**

- a) *Compliance.* Unless otherwise expressly stated in a SOW, the Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client’s business or operations. Depending on the Services provided, the Services may aid Client’s efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution.
- b) *EULAs.* Portions of the Services may require you to accept the terms of one or more third party end user license agreements (“EULAs”). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to adhere to and be bound by the terms of such EULAs. If you are required to enforce the provisions of a EULA, you will look only to the applicable third party provider for such enforcement. If, while providing the Services, we are required to comply with a third-party EULA and the third party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third party EULA.
- c) *Third Party Services.* Portions of the Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as network monitoring services, data hosting services, domain registration services, and data backup/recovery services (“Third Party Service”). Not all Third Party Services may be expressly identified as such in a SOW, and at all times we reserve the right to utilize the services of any third party provider or to change third party providers in our sole discretion as long as the change does not materially diminish the Services to be provided to you under a SOW. We will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to SunPoint or to you.
- d) *Data Loss.* Under no circumstances will we 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) our failure to backup or secure data from portions of the Environment that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, we do not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.
- e) *BYOD.* You hereby represent and warrant that we are authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the Environment (collectively, “Devices”), regardless of whether such Devices 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 Environment. **Client is strongly advised to refrain from connecting Devices to the Environment**

where such devices are not previously known to us and are not expressly covered under a managed service plan from us (“Unknown Devices”). We will not be responsible for the diagnosis or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment, and we will not be obligated to provide the Services to any Unknown Devices.

f) *Equipment.* Unless otherwise noted in a SOW, all SunPoint Equipment is licensed to you, and is neither owned by you nor leased to you. Upon the expiration of an applicable SOW, your license to use the SunPoint Equipment shall immediately terminate, and thereafter all SunPoint Equipment must be returned to us immediately at your expense. All configurations on the SunPoint Equipment are our proprietary information and will not be circumvented, modified, or removed by you without our prior written consent.

11) **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 by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party. For the purposes of clarity, you understand and agree that we own any software, codes, algorithms, or other works of authorship that we create while providing the Services to you. If we provide licenses to you for third party software under a SOW, then you understand and agree that such software is licensed, and not sold, to you. You are allowed to use such third party software subject to the terms and conditions (i) of this Agreement, (ii) of the applicable SOW, and (iii) any applicable EULA; no other uses of such third party software are permitted. To the maximum extent permitted by applicable law, we make no warranty or representation, either expressed or implied with respect to third party software or its quality, performance, merchantability, or fitness for a particular purpose.

12) **ARBITRATION.** Except for undisputed collections actions to recover fees due to us (“Collections”), any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration before one arbitrator who is mutually agreed upon by the parties. The arbitration shall be administered and conducted by the American Arbitration Association (the “AAA”) or if there is no AAA arbitrator available within a twenty (20) mile radius of our office, then by any arbitration forum as determined by us, pursuant to that forum’s arbitration rules for commercial disputes (the “Rules”). In the event of any inconsistency between the Rules and the procedures set forth in this paragraph, the procedures set forth in this paragraph will control. The arbitrator will be 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, the arbitration venue shall select the arbitrator. The arbitration will take place in our office unless we agree to a different venue. The arbitrator will 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. Initially, the cost of the arbitration proceedings shall be split evenly between the parties and each party will pay its own attorneys’ fees and costs; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

13) **MISCELLANEOUS.**

a) *Disclosure.* You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Services, or that would require us to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Services. Similarly, if you are subject to responsibilities under any applicable privacy law (such as HIPAA), then you agree to identify to us any data or information subject to protection under that law prior to providing such information to us or, as applicable, prior to giving us access to such information.

b) *Security.* You understand and agree that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are purposely or intentionally downloaded or installed into the Environment. We do not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined or removed, or that any data deleted, corrupted, or encrypted by such malware (“Impacted Data”) will be recoverable. Unless otherwise expressly stated in a SOW, the recovery of Impacted Data is not included in the scope of a SOW. **You are strongly advised to (i) educate your employees to properly identify and react to “phishing” activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (ii) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a “best practice” scenario. Unless a malware-related incident is caused by our intentionally malicious behavior or our gross negligence, we are held harmless from any costs, expenses, or damages arising from or related to such incidents.**

- c) *Assignment*. Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party, and this Agreement will be binding upon any parties to whom this Agreement is permitted to be assigned or transferred. Notwithstanding the foregoing, either party 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 that party's business, or any other transaction in which ownership of more than fifty percent (50%) of that party's voting securities are transferred; provided, however, that the assignee must be reasonably capable of fulfilling the assignor's duties and obligations (including financial obligations) under this Agreement, and must so state in writing.
- d) *Amendment*. Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless the amendment or modification is originated in writing by SunPoint, specifically refers to this Agreement or the SOW being amended, and is accepted in writing (email is acceptable) by one of your Authorized Contacts.
- e) *Time Limitations*. The parties mutually agree that, unless otherwise prohibited by law, 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.
- f) *Severability*. If any provision in this Agreement or SOW is declared invalid by a court of competent jurisdiction, that provision will be ineffective only to the extent that the court declares it invalid or unenforceable, and 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.
- g) *Collections*. If we are required to send your account to Collections or to start any Collections-related action to recover undisputed fees, we will be entitled to recover all costs and fees we incur in the Collections process including but not limited to reasonable attorneys' fees and costs.
- h) *Other Terms*. We will not be bound by any terms or conditions printed on or contained in any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless we have expressly acknowledged the other terms and, thereafter, expressly and specifically accepted such other terms in writing (email is acceptable).
- i) *No Waiver*. The failure of either party to enforce or insist upon compliance with any term of this Agreement (including a one-time recurring waiver of a term in this Agreement) will not constitute a continuing obligation or intention to waive that term in the future.
- j) *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. The foregoing is not intended to eliminate or waive, and does not eliminate or waive, any amounts owed to us prior to the Effective Date, all of which (if applicable) shall remain due and payable pursuant to the agreement under which those amounts accrued. We will not be bound by any of our agents' or employees' representations, promises, or inducements if they are not explicitly set forth in this Agreement or a SOW. 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 modify this Agreement or provide binding contractual language between the parties. The foregoing sentence does not apply to any business associate agreement required under HIPAA, which the parties may (if required) enter into after the Effective Date of this Agreement.
- k) *Force Majeure*. Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by one party that prevents performance by the other party, or any acts or omissions of any governmental authority, natural disaster or pandemic, 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, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- l) *Non-Solicitation*. Each party (a "Restricted Party") acknowledges and agrees that during the term of this Agreement and for a period of one (1) year following the termination of this Agreement, the Restricted Party will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of the other party's employees with whom the Restricted Party worked to discontinue or reduce the scope of their business relationship with the other party, or recruit, solicit or otherwise influence any employee of the other party with whom the Restricted Party worked to discontinue his/her employment or agency relationship with the other party. In the event of a violation of the terms of the restrictive covenants in this section, the parties acknowledge and agree that the damages to the other party would be difficult or impracticable to determine, and in such event, the Restricted Party will pay the other party as liquidated damages and not as a penalty an amount equal to fifty percent (50%) of that employee first year of base salary with the Restricted Party (including any signing bonus). In addition to and without limitation of the foregoing, any solicitation or attempted solicitation for employment directed to a party's employees by the Restricted Party will be deemed to be a material breach of this Agreement, in which event the affected party shall have the right, but not the obligation, to terminate this Agreement or any then-current SOW immediately For Cause.

- m) *Survival*. The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- n) *Governing Law; Venue*. This Agreement and any SOW will be governed by, and construed according to, the laws of the state of California. You hereby irrevocably consent to the exclusive jurisdiction and venue of Alameda County, California, for any and all claims and causes of action arising from or related to this Agreement.
- o) *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.
- p) *Usage in Trade*. 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.
- q) *Business Day*. If any time period set forth in this Agreement expires on a day other than a business day in Alameda County, California, such period will be extended to and through the next succeeding business day in Alameda County, California.
- r) *Notices; Writing Requirement*. Where any notice, amendment, or similar communication is required to be provided to a party under this Agreement, it may be sent by U.S. mail, overnight courier, or email and it 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 email or immediately upon being acknowledged by the recipient (whichever is earlier). Notice sent by email must be sent to the last known email address of the recipient. All electronic documents and communications (such as email) between the parties will satisfy any “writing” requirement under this Agreement.
- s) *Independent Contractor*. We are an independent contractor; we are not your employer, employee, partner, or affiliate.
- t) *Subcontractors*. Generally, we do not utilize subcontractors to perform onsite services; however, should we elect to subcontract a portion of those services, we will guarantee the work as if we performed the subcontracted work ourselves.
- u) *Data & Service Access*. Some of the Services may be provided by persons outside of the United States and/or your data may occasionally be accessed, viewed, or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify these standard service provisions, in which case additional (and potentially significant) costs will apply.
- v) *Counterparts*. This Agreement is intended to be applied by reference into each SOW. Further, the parties intend to accept and/or deliver any SOW or any amendment in any number of counterparts, and 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 accept and/or deliver any SOW or any amendment 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.