

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the “Agreement”) is between Tigunia, LLC and the Client ordering the Services, Software, or Products (“Client”) in the relevant statement of work or similar document that references this Agreement, and is agreed to or executed by the parties. The Effective Date of this Agreement is the date of the first statement of work that is entered into between Tigunia and Client, or is otherwise agreed to or executed by Client.

**1. Scope of Work.** Tigunia will provide software and IT consulting, analysis, development, technical, project, and support services (“Services”) as determined and agreed upon by Client or Client’s designee from time to time in one or more statements of work mutually agreed to or executed by the Parties (each, a “Statement of Work”, “SOW”, “Estimate”, or “Order Form”). The term “Services” includes any products or services provided by third parties. Tigunia will perform such Services diligently and in a good, timely, workmanlike and professional manner, and in accordance with generally recognized industry standards in Tigunia’s field.

### **2. Compensation and Payment.**

- a. Tigunia’s hourly rate for the services shall be set forth in Exhibit A below and/or in the initial SOW. All hourly services are rendered on a Time and Materials basis only. The initial hourly rate shall not increase for the twelve (12) months subsequent to the Effective Date of this Agreement. Thereafter, Tigunia may increase the hourly rate by up to ten percent (10%) of the then existing rate in each subsequent calendar year, and upon 30 days advance written notice to Client. Client acknowledges that it is entering into a Time and Materials contract because it is not possible to accurately estimate the scope or duration of Tigunia’s work at the time of executing this agreement, or to anticipate the total costs to Client with any reasonable degree of confidence. For billing purposes, hours consumed will be measured in ¼-hour increments, with a minimum of ½-hour charged for each separate task, service incident, or case. For hourly services, Tigunia will generate invoices on a weekly billing cycle, *i.e.*, Monday to Sunday (“Invoices”), and will submit the Invoices to Client via email to the Client’s Billing Email Address by the fifth business day following the previous weekly cycle.
- b. Payment Terms for all undisputed Invoices shall be Net 15 Days from the date of the Invoice via ACH electronic transfer, without setoff, counterclaim, deduction, or withholding. Client will be responsible for any and all bank, credit card, and currency exchange charges associated with its payment(s) to Tigunia. Client shall not require the issuance of Client’s own purchase order to be obligated to pay Tigunia’s invoices. The pre-printed terms of Client’s purchase order or other business form or terms that Client provides to Tigunia shall be void and of no effect.

- c. Client will present all invoice disputes in writing to Tigunia within 5 days of the date of the invoice. Tigunia shall deem invoices as accepted should Client not provide written notice to Tigunia within that time period. Undisputed Invoices not paid within 30 days of the due date will be charged interest at the rate of 1.5% per month. Client's failure to pay any undisputed amount due under the terms of this Agreement will constitute an event of default and will be considered a material breach of this Agreement. In such an event, Tigunia, in its sole discretion, and without waiving any other legal rights, may withhold any services, products, software subscription services, and/or software updates. Tigunia shall provide written notice to Client at least 5 business days prior to exercising its withholding rights under this section. Client will be responsible for the payment of all undisputed services and software purchases rendered up to the point that Tigunia ceases the work or services referenced herein.
- d. Tigunia may require Client to prepay for any services, software, or hardware, in its sole discretion.

**3. Software, Hardware, Services, and Telephony.** Software purchases are billed monthly in advance, and payments for same are due on the first day of each month. Payment for software and hardware, whether from Tigunia or a third-party vendor, will be rendered in advance. Client will be solely responsible for its decision to purchase or not purchase any third-party software, hardware, products, services, and telephony. Client forever waives any and all claims against Tigunia regarding any such purchase decisions, and these purchases are not returnable or refundable under any circumstances. Tigunia makes no representation or warranty whatsoever regarding any Third-Party Software ("TPS"), hardware, products, services, or telephony that Tigunia may recommend for Client's consideration. All Microsoft, Tigunia, and third-party software are sold pursuant to, and governed by, the respective end user license agreements. TPS license agreements are independent and separate from this Agreement, and Tigunia is not a party to, and is not responsible for the performance of any TPS, or that of any TPS vendor. All third-party hardware, products, services, and telephony are sold exclusively pursuant to the respective manufacturers' warranties. The purchase of third-party software, hardware, services, and telephony does not include any Tigunia service or support hours, which if requested, Tigunia will invoice separately, along with any shipping or other costs charged by the vendor/manufacturer, as may be applicable. Client acknowledges that Tigunia may not be able to provide support for the items referenced in this section, other than Tigunia-created software. Tigunia may increase the software, services, or telephony fees following the expiration of the initial purchase term or any renewal/auto-renewal term. In the event of a third-party software, services, or telephony fee increase, Tigunia may increase such fees by the same percentage amount. If Client continues to use any software, service, or telephony following the termination of this Agreement, Client will be responsible for the payment of such fees at Tigunia's then current rates.

**4. Microsoft Software.** Client agrees to the following terms regarding the purchase of Microsoft NCE (New Commerce Experience) Subscription software:

With NCE, Client will have two main subscription term commitment options to choose from: Monthly or Annual. There is an option to pay for the whole annual subscription upfront if Client chooses to receive a price discount.

- a. Subscription licenses can be canceled up to 7 days (168 hours) after first being provisioned. The charges will be prorated based on the time that has passed since the license was issued.
- b. Client can add licenses at any time, but the license count can only be reduced at the end of the subscription term, and upon at least 30 days written notice to Tigunia prior to the renewal date.
- c. Subscription licenses will automatically renew for subsequent terms unless Client provides at least 30 days written notice to Tigunia prior to the renewal date. Tigunia does not provide notice of automatic subscription renewals.
- d. Client agrees to be solely responsible for the cost of the entire subscription license term, and to the terms of the software publisher's end user license agreement.

**5. Taxes.** Client will be responsible for all sales, use, and excise taxes imposed by any federal, state, or local governmental entity on any amounts payable by Client, applicable to the Services, software, and hardware hereunder, and properly itemized on an Invoice, provided that, in no event will Client pay or be responsible for any taxes imposed on, or regarding, Tigunia's income, revenues, gross receipts, personnel, real or personal property, or other assets. Client will provide a certificate of exemption from such taxes acceptable to the appropriate taxing authority if Client asserts that it should not be charged sales tax.

**6. Credit Limit.** Client's credit limit will initially be \$10,000 and may increase from time to time without prior written notification to Client, but will only decrease upon prior written notice to Client. Client is not permitted to exceed its credit limit. If Client's total balance exceeds its credit limit, Client may be required to immediately pay the excess amount upon Client being made aware that such payment is due.

#### **7. Projects and Tasks.**

- a. All hours and due date estimates and statements of work provided by Tigunia to Client are only approximate calculations and are only valid for 30 days from the date of the estimate or statement of work. Tigunia does not provide fixed bids or quotes. Estimates are always subject to changes in time, *i.e.*, the length of time that the project or task may take, as well as the scope. Specifically, Tigunia's work for Client will often involve changes in requirements or the discovery of new conditions that may affect any estimate or scope of work. Project and task scopes and costs may vary materially,

significantly, and/or dramatically from the original estimate, and Tigunia will communicate with Client and obtain Client's approval in advance of continuing work to the extent costs for a given project are expected to exceed twenty percent (20%) of the costs initially estimated and provided to Client. Factors that may cause this variation include, without limitation, changes in the project/task scope, additional business process requirements, unknowable or unforeseeable events and conditions, or requirements that Client did not disclose prior to Tigunia preparing the estimate. Client acknowledges that any projects or tasks not expressly required by Client will automatically be outside of the strict scope of Tigunia's responsibility.

- b.** Tigunia will bill Client for all hours actually worked, and that number of hours may be more or less than the hours referenced in the estimate or statement of work. Estimates of hours or fees will not serve as a guarantee. Actual fees may vary from estimates given. Estimates and statements of work, as well as any other written or oral communications between Tigunia and Client, do not form any contract or agreement that is separate from this Agreement.
- c.** Tigunia does not promise or guarantee certain "go-live" dates or time periods to finish a project or task under any circumstances. Tigunia will make reasonable efforts to meet any mutually agreed upon go-live date. Tigunia may withhold its consent to, and participation in, a go-live date for Client's project or task for any reason, and in Tigunia's sole reasonable discretion. Circumstances beyond Tigunia's control may affect Tigunia's ability to participate in a go-live date that Client requests. For the sake of clarity, such circumstances may include, without limitation, acts or omissions of third parties, as well as unknowable or unforeseeable software, server infrastructure, hardware, and personnel issues, and schedule slippage. Software development and implementations, and hardware configurations, are all highly complex and evolving processes, and unforeseen and unforeseeable issues will arise. Tigunia will provide as much prior written and/or oral notice as possible to Client should Tigunia reasonably believe that a certain go-live date is not in Client's best interests. Under no circumstances will Tigunia be liable for any financial penalties as a result of a delayed go-live date.
- d.** A problematic project or task go live can result in severely adverse financial consequences for Client's business, finances, and operations, including without limitation, a complete shutdown of Client's business. A delayed go-live is not the result of Tigunia attempting to bill additional monies to Client for the project or task. Rather, a project or task is only ready for a go live when all of the conditions as reasonably required by Tigunia have been met. In some cases, a project or task may require more effort by Tigunia to effectuate a go live. Due to the nature of software development and implementation, and hardware installation and configuration, no project or task go live will be perfect, *i.e.*, without any issues or problems whatsoever.

- e. Software and IT projects and tasks are inherently complex and must be considered so by Client and its end users. Client acknowledges that no software runs flawlessly in all situations and combinations. Tigunia does not warrant that any software will be uninterrupted or error free. Inadvertent errors can and do occur. Further, Tigunia has made no guarantees or warranties whatsoever regarding the outcome of any project or task, nor has Tigunia made any statements not consistent with the terms of this Agreement. Tigunia's comments about the outcome of any task or project are an expression of opinion only.
- f. Tigunia will assign an internal Project Manager ("PM" or "Client Lead") that will be available for the duration of any project. This person will coordinate and assist in expediting all aspects of Client's work. The PM will work with Client to schedule design and training sessions, minimize work interruptions for Client, monitor each step of the implementation plan, and work with Client to clearly define its issues and problems. Tigunia personnel will work closely with Client to assist with the design, questions, modifications, reports, or any other needed items. Client's first line of communication with Tigunia will be with the PM. Client also agrees to submit all requested support tasks to support@tigunia.com.
- g. In its sole discretion, Tigunia retains the right to assign or not assign its personnel to Client's projects or tasks as Tigunia sees fit provided that such resource allocation is commercially reasonable and appropriate under the given circumstances. The personnel that Tigunia assigns for Client's work may change at any time, for any reason, and with prior written notice to client and an explanation for such change. Notwithstanding the foregoing, the Parties will work together to find replacement personnel that will meet Client's needs.
- h. Tigunia will seek the approval of work hours for tasks that Tigunia estimates will take more than four (4) hours of billable time. Tigunia will not seek the approval of estimated time for tasks that Tigunia envisions will take less than four (4) hours, depending on the task, which Client agrees are pre-approved upon Client's submission of a such request, thus allowing Tigunia to reduce Client's costs. Specifically, Tigunia is not expending billable time to write an assessment or proposed statement of work for a task that Tigunia anticipates will take less than four (4) hours to resolve.
- i. Tigunia will most likely need to ask many questions, at times on a repeated basis, concerning the issues that Client raises for any task or project. All questions from Tigunia are due to the highly complex nature of implementing and developing software and IT systems. This process will allow all of Tigunia's staff to ensure that Tigunia fully understands Client's concerns and the functionality that Client desires.

## **8. Client Responsibilities.**

- a.** Client will be solely responsible for correctly and completely communicating all project and task requirements, and the supporting details for same, to Tigunia, and Tigunia shall have no liability, nor bear any responsibility for, Client's failure to do so. Tigunia will not be responsible for any undisclosed requirements, or for discovering requirements that are unknowable or unforeseeable through commercially reasonable efforts. Client forever waives any and all claims that Tigunia should have discovered Client's requirements for a project or task based solely on Tigunia's own efforts, and without any or sufficient input from Client. If Client changes the requirements for a project or task, the cost for that project or task may materially increase. Client and Tigunia may agree to such change via a Change Order, email exchange, or verbal confirmation from Client to Tigunia staff.
- b.** Tigunia is only able to provide products and services based on the quality and accuracy of information and work specifications that Client supplies. Client warrants that all of the information that it will provide to Tigunia will be truthful and accurate, to the best of Client's knowledge. Tigunia shall not be responsible for inaccuracies in Client information.
- c.** Client agrees to designate one of Client's own internal employee or contractor as its project manager or the party responsible for Client's project or tasks. Tigunia will report to that person as well as any other designated persons working on behalf of Client.
- d.** Client's personnel will be actively and timely engaged in all reasonably requested testing and training sessions. The lack of this cooperation and participation will most likely result in a material change to any hours estimate that Tigunia has provided to Client for the project or task. Client will be solely responsible for the failure of its personnel to fully and properly test any new system or system changes prior to the go-live of same. Client's project manager will be responsible for providing written notice to Tigunia regarding any needed go-live permissions.
- e.** Client will promptly notify Tigunia of any problems that Client discovers with the operation of any software or IT system. Client will completely and timely test all software or system modifications and work performed by Tigunia in a test database prior to Tigunia placing the modifications in Client's "live" production system database. Client will be solely responsible for any costs associated with Client's failure to properly and/or timely test any software or system modifications. Client will fully participate in all reasonably requested training sessions and will "cross train" other Client staff where necessary. Client will be solely responsible for the validation and integrity of its data, and for any ramifications from its failure to do so.

- f. Except for Tigunia agreeing to perform IT services under a statement of work, Client will be solely responsible for all of Client’s data, database and system backups, system security, including without limitation, virus, malware, or ransomware attacks, and system performance issues. Tigunia will not be responsible for any IT systems or data for which Client has not retained Tigunia to support. Additionally, in the event that Client has retained Tigunia to store or back up Client’s data, Tigunia will not be responsible for client’s data subsequent to Client failing to remit payment for such service, provided that Tigunia will send written notice via email to the last known contact person(s) for Client of Tigunia’s intent to delete such data by a date certain. Tigunia will provide five (5) days’ notice of Client’s opportunity to cure such a default, and thereafter, Tigunia may irretrievably destroy Client’s data, in Tigunia’s sole discretion.
- g. Client agrees to remit payment on a timely basis for any of Client’s software enhancement or other fees, as applicable. Moreover, Client agrees that annual or multi-year hosting services and/or software commitments that Client makes to Tigunia may not be canceled or altered, except according to the terms of those purchases. For example, an annual commitment that automatically renews each year may only be canceled by providing written notice to Tigunia within the required timeframe. Whether or not Client is using the software or hosting services in question, Client will remain financially responsible until the end of the subscription term.
- h. Client will provide, on a timely basis, access to Client’s computer and software systems, and financial information as Tigunia may reasonably require in order to perform the services under this Agreement.
- i. For Client projects or task that require Tigunia to assist with data migration, Client agrees to provide Tigunia with remote access to Client’s data sources. Tigunia will not alter any of Client’s financial or other data. Client will be solely responsible for the accuracy of its data that is the subject of Tigunia’s migration efforts.
- j. Client acknowledges that specifications for hardware, systems, and platforms (the “System Requirements”) may be provided to Client so that it can determine the sufficiency and compatibility of its systems for any Third-Party Equipment, Third-Party Software, and/or Tigunia Software to be installed and/or implemented. Client further acknowledges that System Requirements are minimum requirements necessary for operation, but which may not be an optimal platform or configuration. Tigunia does not warrant or guarantee any hardware, software, or other products implemented or installed will function at any particular speed or level of efficiency. Client acknowledges that each computer system or hardware platform is complex and unique, and Tigunia cannot control all variables related to the operation of hardware, software, or other products on Licensee’s hardware or computer system.



- k. Tigunia is a reseller of Microsoft and other vendors' software and equipment. Client agrees to purchase any and all software licenses needed by Client directly from Tigunia and not from any other software reseller. All software and equipment sold or resold by Tigunia is solely subject to the respective end user license or warranty agreements that will be agreed upon by Client. In its sole reasonable discretion, and with prior notice to Client, Tigunia may elect to not install or support software not published by Microsoft, or equipment that Tigunia does not recommend. In that event, Client will be required to remit payment to, or on behalf of, the software or equipment vendor for installation and support services.
- l. Client accepts sole responsibility for, and the risk-of-loss associated with, Client's use of third-party software, hardware, products, and/or services. Client accepts sole responsibility for all work product of, invoices from, communications with, and indemnifies and holds Tigunia harmless from claims by, third-party software developers, personnel, vendors, contractors, and/or subcontractors, who have not been directly commissioned, engaged, retained, or hired by Tigunia. Client shall further indemnify and hold Tigunia harmless from and against any claim and resulting loss that arise from, are the result of, or that are caused by any malware introduced by Client or a third-party into Client's software or system.
- m. For Services where Tigunia's access to the Client Configuration is necessary to perform the Services, Client shall grant Tigunia a reasonable method to access the Client Configuration. Client will cooperate with Tigunia's reasonable investigation of outages, security problems, and any suspected breach of the Agreement.

## **9. Client Obligations.**

- a. Client agrees to comply with the following:
  - i. Client's use of any Hosted System shall comply with the Tigunia's Acceptable Use Policy.
  - ii. Client is responsible for keeping its account permissions, billing, and other account information up to date.
  - iii. Client is responsible for determining the suitability of the Services, as well as Client's compliance with any applicable federal, state, and local laws and regulations.
  - iv. Client is responsible for ensuring the integrity and security of Client Data, and for regularly backing up and validating the integrity of backups of Client Data on an environment separate from Client's system. Tigunia will only back up data and provide disaster recovery, or any other services, to the extent stated on a Service Order.



- v. Client is responsible for understanding and complying with its contractual obligations to Tigunia.
  - vi. Client is responsible for notifying Tigunia of changes made to technical or administrative contact information.
  - vii. Client is responsible for maintaining its own system(s) of record.
  - viii. Client is responsible for ensuring the supervision, management, and control of the use of Tigunia's services by Client's personnel.
  - ix. Client is responsible for developing its own disaster recovery and business continuity plans that address the inability to access or utilize Tigunia's services.
  - x. Client is responsible for providing Tigunia with a list of approvers for security and system configuration changes for data transmission.
  - xi. Client is responsible for immediately notifying Tigunia of any actual or suspected information security breaches, including compromised user accounts, including those used for integrations and secure file transfers.
- b. Security.** Client shall use reasonable security measures and precautions in connection with its use of the Services, including appropriately securing and encrypting in transit and at rest sensitive data stored on or transmitted using the client configuration. Client shall take appropriate measures to otherwise prevent access to sensitive data by Tigunia where Tigunia's access to the premises, systems, or networks managed or operated by Client may result in its exposure. Tigunia shall not use or disclose Client Data except to perform the Services according to this Agreement or as required by law.
- c. Client Provided Licenses.** If Client uses any non-Tigunia provided software on the Client Configuration, Client represents and warrants to Tigunia that Client has the legal right to use the software. If Tigunia has agreed to install, patch, or otherwise manage software in reliance on Client's license with a vendor, then Client represents and warrants that it has a written license agreement with the vendor that permits Tigunia to perform these activities. Tigunia's obligation to install, patch, or otherwise manage Client provided software is strictly contingent on Client maintaining the original software vendor support or similar authorized support that provides a services request escalation path, access to patching, and software upgrades, as applicable. Upon Tigunia's request, Client shall certify in writing that Client is in compliance with the requirements of this section and any other software license restrictions that are part of this Agreement, and shall provide evidence of Client's compliance as Tigunia may reasonably request. If Client fails to provide the required evidence of licensing to Tigunia, and continues to use the software, Tigunia may: (i) charge Client its standard fee for the use of the software in reliance on Tigunia's licensing agreement with the vendor until such time as the required evidence is provided, or (ii) suspend or terminate the applicable Services.
- d. Third-Party Software and Support.** Tigunia may provide and rely on Third Party Software, and Vendor Support regarding that Software, for Client's use as part of the

Services and to assist in the delivery of the Services. Unless otherwise permitted by the terms of the applicable license, Client may not: (1) assign, grant, or transfer any interest in the Third Party Software to another individual or entity; (2) reverse engineer, decompile, copy, or modify the Third Party Software; (3) modify or obscure any copyright, trademark, or other proprietary rights notices that are contained in or on the Third Party Software; or (4) exercise any of the reserved Intellectual Property rights provided under the laws governing this Agreement. Client may only use Third Party Software provided for its use as part of the Services (identified on the Service Order) on the Client Configuration on which it was originally installed, subject to any additional restrictions identified in the Statement of Work. Client shall not be permitted to access any Third-Party Software that Tigunia installs solely to assist Tigunia's delivery of the Services. Upon termination of the Statement of Work, Client shall permit removal of any Third-Party Software installed by Tigunia or its Representatives on the Client Configuration. Tigunia makes no representation or warranty regarding Third-Party Software or Support except that Tigunia has the right to use or provide the Third-Party Software and Support. The use of any software is governed by the applicable end user license agreement(s) and this Agreement. Third-Party Support services are governed by the Third-Party's services agreement(s).

- e. Infringement. If the delivery of the Services infringes the Intellectual Property of a third party and Tigunia determines that it is not reasonably or commercially practicable to obtain the right to use the infringing element, or modify the Services such that they do not infringe, then Tigunia may terminate the infringing Services on 30-days notice, and shall not have any liability on account of such termination except to refund amounts paid for unused Services (prorated as to portions of the Services deemed infringing).

## 10. Term of Agreement.

- a. This Agreement will remain in effect indefinitely but may be terminated by Client or Tigunia at any time upon ninety (90) days written notice, and for any reason or no reason at all. Client agrees to send the notice of termination to support@tigunia.com, and to execute a separate account termination form. Only the signing of the termination form will commence the 90-day period. The signed form will contain the services and/or products that Client wants to terminate.
- b. All software, IT, hosting statements of work, and other documents/orders are only cancellable upon their originally stated terms. For the sake of clarity, all Tigunia managed IT services, including, but not limited to, NOC Core, NOC Standard, NOC Premium, Service Desk Standard, Service Desk Premium, SOC Services, and Database Management as a Service (DMaaS) are all rendered based on three (3) year term commitments, and will renew for subsequent one (1) year terms unless otherwise stated. Tigunia's Business Technology Advisor ("BTA") program is a one (1) year auto

renewing term unless otherwise stated. Software orders, whether subscription or perpetual, may only be cancelled based upon their original purchase terms. Tigunia must receive written notice at least 90 days prior to any auto renewal in order to cancel a product or service. Client will be responsible for the entirety of the charges for the remainder of the term upon early cancellation.

- c. Client may in its discretion require that Tigunia not perform any services during the 90-day termination period. Tigunia will reasonably cooperate with Client regarding the transition of any services to the third-party of Client's choice. Client agrees that if Tigunia permits Client to perform certain activities after this Agreement ends, Client will do so under the terms of this Agreement, or as Tigunia otherwise specifies.
- d. Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice, provided that Client will nevertheless remain financially responsible to Tigunia for the remainder of any product or service obligations, and further provided that such claim of breach and termination will not supersede the provisions of Client's remedies, *i.e.*, service credits only, under the Tigunia Service Level Agreement directly related to said service about which Client is claiming breach.
- e. Upon the termination of this Agreement (or at any time prior thereto), and Client's written request, Tigunia will deliver a copy of the most recent version Client's Data in Tigunia's systems to Client. Client acknowledges that Tigunia may not be able to deliver the Data in the format that Client requests. Client will be responsible for Tigunia's hourly fees for this service.

**11. Waiver.** Client will forever waive any and all claims against Tigunia to the extent such claims arise from damages for losses arising solely out of Client's failure to accept Tigunia's reasonable recommendations as it relates to any specific issue, provided that, in these cases, Tigunia will document such recommendations in writing to Client.

## **12. Confidentiality and Data.**

- a. As used in this Agreement, "Confidential Information" means any information that is proprietary or unique to the Discloser and that is disclosed to the Recipient during the term of this Agreement, including without limitation, trade secret information, matters of a technical nature such as processes, devices, techniques, data, marketing methods, plans and strategies, information about operations, products, services, revenues, expenses, profits, sales, personnel, customers, suppliers, and pricing policies, and any information concerning the marketing and other business affairs and methods of the Discloser which is not readily available to the public. Confidential Information also

includes information of others that is disclosed under this Agreement, and that the Recipient is obligated to protect from disclosure or restricted from using or both. Confidential Information need not be marked as “Confidential” to be deemed Confidential Information. The term “trade secret” includes, without limitation, customer lists and information, personnel lists and information, licensors, vendors, suppliers, and any other third party. Recipient may not engage in the misappropriation any of the Discloser’s trade secrets. For the sake of clarity, Recipient agrees that the term “misappropriation” is defined as (i) the information was secret, (ii) the information had actual or potential independent economic value because it was secret, and (iii) the Discloser made reasonable efforts to keep the information secret. Confidential Information also includes all information concerning the existence and progress of the parties’ dealings, as well as information provided by one party to the other before the execution of this Agreement.

- b.** Use and Ownership of Confidential Information. The Recipient, except as expressly provided in this Agreement, will not disclose Confidential Information to anyone without the Discloser's prior written consent. In addition, the Recipient will not use, or permit others to use, Confidential Information for any purpose other than to determine whether mutually beneficial business opportunities exist, and during the course and scope of any future business relationship, including without limitation, Tigunia’s provision of services to the Company (the “Purpose”).
- c.** The Recipient will not: (i) divulge Confidential Information to any third party; (ii) use the Confidential Information for its own benefit or for the benefit of any third parties, except for the Purpose stated in this section; (iii) copy Confidential Information, except as reasonably required in direct support of the Purpose; or (iv) reverse engineer, decompile, redesign, disassemble, build derivative works or products from, or design around any Confidential Information or Tigunia software.
- d.** The Recipient will take all reasonable measures to avoid disclosure, dissemination, or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. Recipient agrees to hold its attorneys and advisors responsible for the same standards of protecting Confidential Information as are imposed on Recipient. Nothing in this Agreement is intended to grant any rights to either Party under any patent, copyright, or other intellectual property rights of the other Party, nor will this Agreement grant any Party any rights in or to the Confidential Information of the other Party, except as expressly set forth in this Agreement.
- e.** All Confidential Information will remain the property of the Discloser. The Recipient may only use the Confidential Information as expressly provided herein. Any Confidential Information supplied to the Recipient prior to the execution of this

Agreement shall be considered in the same manner and be subject to the same treatment as the Confidential Information made available after the execution of this Agreement.

- f.** Client will not disclose any documentation that Tigunia prepares on Client’s behalf or at Client’s request, including without limitation, Statements of Work and Change Orders, and the contents and information therein, to any third-party service providers similar to Tigunia.
- g.** Exceptions. The provisions of section will not apply to any information that (i) is or becomes publicly known other than through a breach of this Agreement by the Recipient or any of its Personnel (as defined below); (ii) is already known to the Recipient at the time of disclosure as evidenced by the Recipient’s written documentation, provided the source of such information was not known by the Recipient to be bound by a confidentiality agreement with the Discloser, or any third or other legal or fiduciary obligation of confidentiality owed to the Discloser or any of its affiliates; (iii) is lawfully received by the Recipient from a source other than the Discloser or its personnel without, to the Recipient’s knowledge, breach of any confidentiality agreement or other legal or fiduciary obligation of confidentiality owed to the Discloser or any of its affiliates by such source; (iv) is independently developed by the Recipient without use, directly or indirectly, of Confidential Information received from the Discloser; or (v) is authorized in writing by the Discloser to be released from the confidentiality obligations herein.
- h.** Proprietary Legends. No Party shall remove any copyright or other proprietary rights notice attached to or included in any Confidential Information. Each Party shall reproduce all such notices on any copies such Party makes of Confidential Information.
- i.** Loss, Theft or Unauthorized Access or Disclosure. Each Party will promptly notify the other Party of any theft or unauthorized disclosure, access to, reproduction or use of any Confidential Information, or any part of such information, of which such Party has knowledge. This notice obligation shall expressly include any breach of a network or environment in which Confidential Information is located or stored. A Party shall include in such notice the name, title, business address of any person, whether or not employed by such Party, and whom such Party reasonably believes has unauthorized possession of or made unauthorized disclosure, reproduction, or use of Confidential Information. Such notice shall be sent to the other Party in accordance with the notice provisions below. In such case, the notifying Party shall also provide, at its own expense, reasonable assistance in remedying any such loss or unauthorized use or disclosure to the other Party.

- j. Disclosures to Courts and Governmental Entities. If the Recipient becomes legally obligated to disclose Confidential Information by any court or governmental entity with jurisdiction over it, the Recipient will give the Discloser prompt written notice to allow the Discloser to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Such notice must include, without limitation, identification of the information to be so disclosed and a copy of the order. In the event such protective order or other remedy is not obtained, or the Discloser waives compliance with the provisions of this Agreement, the Recipient will disclose only such information as is legally required and will use its reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed. Notwithstanding the foregoing, the Company may disclose any Confidential Information of Tigunia if required (in the Company's discretion) by the rules or regulations of any securities exchange or market.
- k. Recipient Personnel. The Recipient will restrict the possession, knowledge, development, and use of Confidential Information to its employees, agents, subcontractors and entities controlled by or controlling it (collectively, "Personnel") who have a need to know the Confidential Information in connection with the purposes set forth in this section. The Recipient's Personnel will have access only to the Confidential Information they need for such purposes. The Recipient will ensure that its Personnel comply with this Agreement and will promptly notify the Discloser of any breach of this Agreement. Each party agrees to periodically audit and monitor activities that involve Confidential Information.
- l. The Recipient hereby acknowledges that it is aware and that its Personnel have been advised that under certain circumstances the United States securities laws prohibit any person who has material non-public information about an issuer from purchasing or selling securities of an issuer. Each Party acknowledges that it shall be solely responsible for its own assessment, and for obtaining its own legal advice, as to whether any of the Confidential Information would be considered material nonpublic information or is of a price sensitive nature related to any securities listed on any securities exchange or market.
- m. Return of Confidential Information. Upon the Discloser's written request, the Recipient will promptly return or destroy (or, in the case of electronic embodiments, permanently erase) all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) in its possession or under its control. Notwithstanding the foregoing, (a) the Recipient may retain a single copy of Confidential Information solely as an archival record of materials submitted, and solely for internal administrative purposes, including legal requirements such as regulatory compliance and enforcement of this Agreement; and (b) Confidential Information routinely embedded in a Party's electronic records

(including, without limitation, email messages), or incorporated in the ordinary course in any Party's written board or decisional materials or minutes or the like, shall not be subject to the obligations of return or destruction set forth in this section as long as such materials or minutes are held consistent with the procedures normally used by that Party to safeguard its own proprietary information, but not less than reasonably prudent care.

- n. Injunctive Relief; Limitation of Liability. The Recipient acknowledges that disclosure or use of Confidential Information in violation of this Agreement, including without limitation, the misappropriation of any Tigunia trade secrets or software, or interference with the performance of a contract or economic relations of Tigunia, would cause irreparable harm for which monetary damages would be an inadequate remedy for the injuries and damages that would be suffered and incurred by the other Party as a result of a breach of any of the provisions of this Agreement. The Recipient therefore agrees that the Discloser will have the right, in addition to whatever rights and remedies it may have at law or in equity, including without limitation, monetary damages, to seek injunctive relief for any violation of this Agreement without promulgating any proof of damages or posting bond or other security, or by posting bond at the lowest amount required by law. Further, if the Discloser substantially prevails in any legal proceedings brought by it against the Recipient to enforce this Agreement either at law or in equity or both, the Discloser shall be entitled to recoup from the Recipient its legal expenses including without limitation, reasonable attorneys' and collection fees. In no event shall a Party be liable to the other Party (or any person claiming through the other Party) for any indirect, punitive, incidental, special, or consequential damages arising out of or in any way related to this Agreement.

### **13. Information Security Measures and Data.**

- a. Tigunia will establish, and at all times maintain, commercially reasonable administrative, organizational, technical, and physical security policies and procedures commensurate with customary industry practices for the protection of Client Confidential Information (collectively, the "Information Security Measures"). The Information Security Measures will be designed to (i) ensure the security and confidentiality of Client Confidential Information in possession of Tigunia, including such Client Confidential Information maintained by Tigunia on its systems as well as Client Confidential Information in the possession of or under the control of Tigunia; (ii) identify potential threats or hazards to the security or integrity of such Client Confidential Information; and (iii) protect against anticipated threats or hazards, and protect against unauthorized access to or use of Client Confidential Information, including protection from malicious or harmful code. These Information Security Measures will implement network and data security measures consistent with information technology (IT) industry standards, including (A) policies and procedures to address network security, protection from malicious code,



access controls and encryption to protect Client Confidential Information in transit and at rest, change controls, monitoring and logging of network events, network segregation, and vulnerability assessments; (B) regular testing and auditing of all controls; (C) system and data back-up, disaster recovery, and business continuity plans; and (D) appropriate corrective action and incident response plans. If Tigunia is directed to connect to the Client systems, Tigunia will maintain all security measures and safeguards established by Client, follow any additional instructions, policies, or procedures provided by Client with respect to use of Client systems, and Tigunia will not alter, circumvent, or take any other actions that compromise or reduce the effectiveness of such security measures and safeguards. Tigunia will comply with all applicable privacy, cybersecurity, and data protection laws that may apply to the data it processes on behalf of its clients. Upon request, but not more than annually during the term of this Agreement, and upon the request from Client, Tigunia will deliver to Client a copy of its third-party (data center) provided SOC 2 Certification evidencing the operating effectiveness of Tigunia's Information Technology (IT) control environment. Upon request, Tigunia will also provide summaries of its IT security and disaster recovery policies and make its senior IT personnel reasonably available for discussion upon request.

- b.** Protection of Client Data. In order to enable Tigunia to provide certain Services hereunder, Client may provide to Tigunia, or Tigunia may be exposed to, Client Data. "Client Data" means data and information stored on Client's computer hardware, network, software systems and infrastructure concerning Client's customers, personnel, suppliers and/or vendors. Tigunia shall only access those systems, networks, applications, or Client Data that it is expressly authorized by Client to access, even if the technical controls in the system or application do not prevent Tigunia from accessing that Client Data or functions outside of Client's authorization. Tigunia acknowledges that Client Data may comprise Confidential Information and/or trade secrets of Client and the obligations set forth in this section are in addition to and not in lieu of other obligations applicable to Confidential Information and trade secrets under this Agreement. Tigunia shall use Client Data solely to enable Tigunia to meet its obligations hereunder to provide the Services and shall use Client Data for no other purpose whatsoever. Regardless of whether Client Data comprises Confidential Information and/or trade secrets of Client, Tigunia agrees that Tigunia shall maintain all Client Data in strict confidence, and shall not, except as otherwise permitted herein or expressly directed in writing by Client, copy, disclose, or use, or permit any unauthorized person access to, any Client Data. In addition to complying with these confidentiality requirements, Tigunia shall, with respect to Client Data: (i) implement industry standard security practices for information technology management to protect Client Data against unauthorized access, disclosure or use; (ii) notify Client promptly upon becoming aware of any unauthorized access to Client Data or unauthorized disclosure or use of

Client Data; and (iii) fully cooperate with Client in the investigation of any such unauthorized access, disclosure and/or use.

- c. Notwithstanding the foregoing and any other terms in this Agreement or any other Agreement with Tigunia, Client hereby grants to Tigunia a limited, non-exclusive, royalty-free, license to use Client Data solely for the purpose of providing the Services. Client agrees that Tigunia improves the Services by using Client Data as well as aggregated and anonymized Client Data. Accordingly, and in compliance with applicable laws and this Agreement, Tigunia may: (i) during the Term, use Client Data to develop, improve, support, and render the Services, except that any Client Data shared externally must be aggregated and anonymized and in a format that is not traceable back to Client; and (ii) improve the Services by using artificial intelligence (“AI”) models that include Client Data that has been de-identified, anonymized, and aggregated so that it does not identify Client, authorized users, or any other individual person or company. Tigunia agrees that once the Client Data is converted to a de-identified, aggregated, and anonymized format (together “De-Identified Data”), it cannot be re-identified. The terms of this Agreement will supersede any conflicting terms of Tigunia’s or Client’s Non-Disclosure Agreement.

#### **14. Work Product.**

- a. For purposes of this Agreement, the term “Work Product” shall mean all software code, deliverables, reports, documentation, or other tangible or intangible items Tigunia is required to create or deliver as part of the SOW, provided that the term “Work Product” will not include software that Tigunia may sell to Client pursuant to a separate End User Software License Agreement. Upon Client’s request or upon termination of this Agreement, Tigunia will immediately provide Client with the then current version of any Work Product in the possession or under the control of Tigunia or any of its employees or personnel.
- b. Work-Made-For-Hire. Upon payment for Services rendered in the generation of Work Product, Tigunia hereby grants any and all right, title and interest in and to the Work Product to Client.

**15. Accounting, Tax, and Legal Issues.** Tigunia does not render tax advice. Client is solely responsible to: (a) determine what, if any, taxes apply to transactions that occur as a result of Client’s sales to its customers; and (b) collect, report, and remit the correct tax to the appropriate tax authorities. Tigunia is not responsible for determining whether taxes apply to a transaction, or for collecting, reporting, or remitting any taxes arising from any transaction. Tigunia may from time to time make available to Client certain tax calculation services offered by third party providers. Such tax calculation services are third party Services, and Tigunia is not responsible for the accuracy of same. Tigunia recommends that Client retain the services of

a certified public accountant to audit and remit all sales tax returns, and to defend any tax audits. Client will indemnify, defend, and hold Tigunia, its officers, directors, consultants, employees, successors, and assigns harmless from all claims and liability arising from Client's failure to report or pay any such taxes, duties, or assessments. Tigunia also does not render legal, accounting, and/or auditing advice. Tigunia is not licensed to render these services, and is not a law, accounting, or CPA firm.

**16. Expenses.** Tigunia may incur expenses during the performance of its services to Client. Such expenses shall be reimbursed by Client only if approved in advance by Client in writing. Tigunia will submit all expenses in the form of an invoice which is net due within 15 days following the date of said invoice and must be accompanied by copies of receipts or other applicable documentation as requested by Client. Expenses may include, but are not limited to, travel time at one-half (1/2) the specified hourly rate herein, airfare, car rental, parking, meals, taxi/train fare, and hotel fees. Tigunia will be entitled to, and responsible for, the booking of, and reasonable choices regarding, airlines/airfares, hotels, and rentals cars, and Tigunia shall reasonably comply with the U.S. G.S.A. published per diem rates for these costs where possible. Meal allowances shall comply with these rates.

**17. Equipment.** Tigunia shall furnish, at Tigunia's own expense, the equipment, supplies, and other materials used to perform the Services. Client will provide Tigunia with access to its premises, equipment, software systems, and network environment to the extent necessary for the performance of the Services.

**18. Onsite Compliance.** While on the Client's premises or using the Client's equipment, Tigunia shall comply with all applicable policies of the Client relating to business and office conduct, health and safety, and use of the Client's facilities, supplies, information technology, equipment, networks, and other resources.

**19. Insurance.** During the Term, Tigunia shall maintain in force adequate workers' compensation, commercial general liability, errors and omissions, and other forms of insurance, with minimum policy limits of \$1,000,000 to protect the Client and its affiliates, and each of their officers, directors, agents, employees, subsidiaries, partners, members, controlling persons, and successors and assigns, from losses resulting from Tigunia's conduct, acts, or omissions or the conduct, acts, or omissions of Tigunia's agents, Tigunia's, servants, or employees, pursuant to the terms of this Agreement, and as agreed to by Tigunia's insurance providers.

**20. Relationship of the Parties.** This Agreement, or any other past relationship between the Parties hereto, shall not be construed to create any employment, association, partnership, joint venture, employee, agency relationship, or fiduciary relationship between the Client and Tigunia or any other person or entity for any purpose. Tigunia has no authority (and shall not

hold itself out as having authority) to bind the Client, and Tigunia shall not make any agreements or representations on the Client's behalf without the Client's prior written consent.

**21. Non-Solicitation.** Neither Party will, directly or indirectly, during the term of this Agreement and for a period of one (1) year after the date of the termination of this Agreement, recruit, or attempt to recruit, discuss employment with, or otherwise utilize the services in any capacity of any person who is or was an employee or contracted personnel of the other Party during the term, unless the Parties agree otherwise in writing. The Parties agree that these provisions are necessary and reasonable to protect the legitimate business interests that each Party has in protecting substantial investments in such employees and contractors.

**22. Non-Disparagement.** Each party shall not, at any time during the term of this Agreement, and thereafter, make any statements or representations, or otherwise communicate, directly or indirectly, in writing, orally, or otherwise, or take any action which may, directly or indirectly, disparage the other party or any of its respective affiliates or managers, officers, directors, employees, advisors, personnel, businesses, or reputations. Notwithstanding the foregoing, nothing in this Agreement shall preclude a party from making truthful statements that are required by applicable law, regulation, or legal process. Each party acknowledges and agrees that the other party would be damaged irreparably in the event any of the covenants regarding disparagement in this section are breached. Accordingly, each party agrees that in addition to any other remedy to which such party may be entitled at law or in equity, the complaining party shall be entitled to seek temporary or permanent injunctive relief to enforce the covenants contained in this section restraining the other party from engaging in the activities prohibited by this section, without the necessity of proving irreparable harm or injury as a result of such breach or threatened breach, and without the necessity of posting a bond. For the avoidance of doubt, the restrictions in this section shall prohibit a Party from making disparaging or defamatory statements on the Internet, and to the press or on social media, including but not limited to, the following social media sites: on LinkedIn (<https://www.linkedin.com>), Facebook (<https://www.facebook.com/>), Instagram (<https://www.instagram.com/>), Twitter (<https://www.twitter.com/>) or X (<https://www.x.com/>), YouTube (<https://www.youtube.com/>), their successors, or on any pages within any of those or related URL's.

**23. Client Feedback.** To the extent Client provides Tigunia with any ideas or other suggestions, whether or not patentable, that directly concern enhancements, improvements, or other changes to Tigunia's Services or Software (such ideas or suggestions, "Feedback"), Tigunia shall have all right, title, and interest in and to such Feedback, and Client hereby assigns and agrees to assign to Tigunia all right, title, and interest in and to such Feedback.

**24. Limitation of Liability:**

- a. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, ENHANCED, PUNITIVE, OR CONSEQUENTIAL DAMAGES, ANY LOSS OF REVENUE OR PROFITS, INTERRUPTION OF BUSINESS, OR LOSS OF DATA OR DATA USE, OR SIMILAR DAMAGES THAT A PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TIGUNIA'S MAXIMUM COLLECTIVE AGGREGATE LIABILITY FOR ANY DIRECT, COMPENSATORY, OR ANY OTHER DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY CLIENT TO TIGUNIA FOR THE SERVICES (AND NOT FOR ANY PRODUCTS OR SOFTWARE) THAT ARE THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT(S) THAT FIRST GAVE RISE TO THE CLAIM. ANY DAMAGE AWARD IN FAVOR OF CLIENT SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CLIENT AND SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY STATED HEREIN. THE LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY EVEN IF CLIENT'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. AT NO TIME SHALL THE SUM OF CLIENT'S DAMAGES EXCEED THE AMOUNT OF INSURANCE PURCHASED BY TIGUNIA DURING THE TIME THAT INSURANCE IS RECOVERABLE.
- b. TIGUNIA SHALL NOT BE LIABLE FOR ANY FAILURE TO COMPLY WITH ITS OBLIGATIONS IN THIS AGREEMENT TO THE EXTENT THAT SUCH FAILURE ARISES FROM A FAILURE OF CLIENT TO ABIDE BY ITS OBLIGATIONS UNDER THIS AGREEMENT.

## **25. Disclaimer of Warranties.**

- a. Except as expressly provided herein, Tigunia Software, Tigunia SaaS Software, and software given by third parties in the third-party licenses or warranties associated with the Third-Party Equipment or Third-Party Software, the Services, Third-Party Equipment, and Third-Party Software, are furnished to Client "AS IS." Tigunia is not responsible or liable, and will not be held responsible or liable, for hardware, software, other products or services, and for the functionality or implementation, or lack of functionality, of same, that have been written, produced, or provided by third parties. All Third-Party Equipment and Third-Party Software are subject to the originator's license agreements and have a warranty only to the extent one is provided by the originator. Tigunia does not provide any additional implied or express warranty of the product(s).
- b. EXCEPT AS EXPRESSLY STATED HEREIN, TIGUNIA MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, EQUIPMENT, OR SOFTWARE, THEIR COMPATIBILITY WITH CLIENT'S HARDWARE OR SOFTWARE, THEIR PERFORMANCE, QUALITY, MERCHANTABILITY, CORRECTNESS, FITNESS FOR ANY PARTICULAR PURPOSE, NONINFRINGEMENT, SECURITY OF CLIENT'S DATA, AVAILABILITY

OR UPTIME, OR OTHERWISE. FURTHER, TIGUNIA DOES NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATIONS THAT THE SERVICES, HARDWARE, OR SOFTWARE WILL BE FREE FROM BUGS OR ERRORS, THAT CLIENT'S USE OF THE HARDWARE OR SOFTWARE WILL BE UNINTERRUPTED, OR AS TO THEIR CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. NO ORAL OR WRITTEN STATEMENTS MADE BY TIGUNIA OR ITS EMPLOYEES OR AGENTS, INCLUDING BUT NOT LIMITED TO STATEMENTS REGARDING CAPACITY, SUITABILITY FOR USE, APPLICABILITY, AVAILABILITY, OR PERFORMANCE OF ANY HARDWARE OR SOFTWARE OR AS TO THE SERVICES, SHALL BE DEEMED A WARRANTY OR A REPRESENTATION BY TIGUNIA FOR ANY PURPOSE NOR GIVE RISE TO ANY LIABILITY OR OBLIGATION OF TIGUNIA. TIGUNIA DOES NOT WARRANT THAT CLIENT'S USE OF ANY OF TIGUNIA'S PRODUCTS OR SERVICES WILL BE UNINTERRUPTED, ERROR FREE, SECURE, OR THAT ALL DEFECTS WILL BE CORRECTED.

**26. Defense of Third-Party Claims.** The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. By Tigunia. Tigunia will defend Client against any third-party claim solely to the extent it alleges that a Product or Services Deliverable made available by Tigunia for a fee that has been paid and used within the scope of the services and products provided under this Agreement (unmodified from the form provided by Tigunia and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Tigunia is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Services Deliverable with a functional equivalent or (2) terminate Client's software license and refund any license fees, including amounts paid in advance for unused consumption for any usage period after the termination date. Tigunia will not be liable for any claims or damages due to Client's continued use of a Product or Services Deliverable after being notified to stop due to a third-party claim.
- b. By Client. To the extent permitted by applicable law, Client will defend Tigunia against any third-party claim to the extent it alleges that: (1) Client's business operations, data, or software misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; (2) Client's use of any Product or Services Deliverable, alone or in combination with anything else, violates the law or any representation or warranty of Client contained in this Agreement; and (3) any third party Claims that arise out of, relate to or result from any act or omission of Client, in

each case whether or not caused in whole or in part by the negligence of Tigunia, or any other Indemnified Party, and whether or not the relevant Claim has merit.

- c. Neither Party's defense obligations under this Agreement will apply or will be comparatively reduced to the extent the underlying allegation arises from the Indemnitee's fraud, gross negligence, willful misconduct, violation of any applicable law, or breach of any of its obligations under this Agreement. Tigunia's defense and indemnification obligations will not apply or will be comparatively reduced to the extent Client's claim arises from: (i) any Client Data if used by Tigunia as permitted under this Agreement; (ii) any modification to the Services made by Customer, its authorized users, or a party at the direction of Client or its authorized users without Tigunia's prior written consent if the Client's claim would have been avoided in the absence of such modification; or (iii) Client's use of the Services in breach of this Agreement (any of the foregoing subsections (i) to (iii) are "Exclusions").

**27. Representations and Warranties.** Tigunia represents and warrants to Client that:

- a. (i) Tigunia has the right to enter into this Agreement, to grant the rights granted herein and to perform fully all of its obligations in this Agreement; (ii) Tigunia's entering into this Agreement with the Client and its performance of the services does not and will not conflict with or result in any breach or default under any other agreement to which it is subject; and (iii) Tigunia has the required skill, experience and qualifications to perform the Services, and shall devote sufficient resources to ensure that the Services are performed in a commercially reasonable timely and reliable manner.
- b. Client hereby represents and warrants to Tigunia that: (i) it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder; and (ii) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action.

**28. Governing Law.**

- a. This Agreement shall be governed by, and construed as a whole in the accordance with the fair meaning of, the applicable laws of the State of Oklahoma, exclusive of any choice or conflict of law principle that would require the application of the law of a different jurisdiction, as well as the copyright, patent, and trademark laws of the United States.
- b. Prior to and as a condition of either party filing a claim pursuant to this Agreement, an officer of each party shall telephonically communicate with the other party in good faith to attempt to informally resolve all matters.



- c. In the event of an impasse, Client hereby consents to the exclusive jurisdiction of the State and Federal courts located in Oklahoma, and irrevocably waives any objections regarding venue and *forum non conveniens* therein. The prevailing party in any action or proceeding relating to the Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees incurred in connection with enforcing, defending, or otherwise protecting its interests hereunder. In the event of an account delinquency, Client consents to be contacted by a collection agency or attorney, including without limitation, an Automated Telephone Dialing System, as defined by the Telephone Consumer Protection Act of 1991 (as amended), 47 U.S.C. Section 227, as well as by email, text, and voicemail, and to be charged collection agency and attorneys' fees. Notwithstanding the exclusive jurisdiction provision above, Client agrees that Company may seek to enforce any judgment anywhere in the world where Client may have assets.
- d. NO JURY TRIAL. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER OR, IN CONNECTION WITH THIS AGREEMENT AND ANY DOCUMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES' ACCEPTANCE OF SERVICES UNDER THIS AGREEMENT. EACH PARTY FURTHER REPRESENTS AND WARRANTS THAT IT PROVIDES THE WAIVER UNDER THIS SECTION KNOWINGLY AND VOLUNTARILY.
- e. No claim may be brought as a class, collective, consolidated, or coordinated action, nor may Client assert such a claim as a member of, or participant in, such an action that is brought by another claimant. Client agrees that it shall not bring a claim under the Agreement more than one (1) year after the time that the claim accrued. The Agreement shall not be governed by the United Nations Convention on the International Sale of Goods, or the Oklahoma Uniform Commercial Code and the implied warranties therein.
- f. Pursuing a claim against Tigunia, LLC is the Client's sole and exclusive remedy for any claim of breach under this Agreement. Client knowingly and voluntarily waives its right to name as a defendant or seek relief against any Affiliate of Tigunia, as well as any past or present managers, directors, officers, employees, agents, or other representatives and any of their successors or heirs of Tigunia or an Affiliate (each, an "Excluded Person"). Each Excluded Person is an express third-party beneficiary of this clause, and, as such, each Excluded Person may enforce the provisions of this clause directly.

## 29. Miscellaneous.

- a. Both parties will comply with all applicable federal, state, and local statutes, rules, and regulations, including regarding all other activities contemplated by this Agreement, including without limitation, export and data privacy laws.
- b. The terms of this Agreement may be varied only by a written agreement signed by duly authorized representatives of both Parties that expressly refers to the Agreement. A project or task accepted by Tigunia may be amended to modify, add, or remove services by a formal written agreement signed by both Parties, or by an exchange of correspondence (including via the Tigunia ticketing system: support@tigunia.com) that includes the express consent of an authorized individual for both Parties.
- c. If any part of the Agreement is found unenforceable, the rest of the Agreement shall continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable and give business efficacy to the Agreement. The Parties acknowledge and agree that the pricing and other terms in the Agreement reflect and are based upon the intended allocation of risk between the Parties and form an essential part of the Agreement. Each party may enforce its respective rights under the Agreement even if it has waived the right or failed to enforce the same or other rights in the past. Other than expressly stated in this Agreement, or as otherwise specifically designated a "Third Party Beneficiary", there are no third-party beneficiary rights of any kind to this Agreement, and all provisions herein shall be solely between the Parties. The use of the word "including" means "including without limitation".
- d. The following provisions shall survive expiration or termination of this Agreement: Confidentiality, Limitation of Liability, Non-Solicitation, Governing Law, Miscellaneous, all terms of the Agreement requiring Client to pay any Fees for Services, and any other provisions that by their nature are intended to survive expiration or termination of the Agreement.
- e. This Agreement constitutes the complete and exclusive understanding between the Parties regarding its or any subject matter raised by either party, as well as any and all work or services requested by Client prior or subsequent to the date of this Agreement, and supersedes, cancels, and replaces any or all prior, preexisting, or contemporaneous representation(s), agreement(s), arrangement(s), discussion(s), or understanding(s), whether written or oral, of any kind and every nature, and between the Parties. This Agreement intended by the parties to be a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this Agreement. Client hereby acknowledges that no reliance is placed on any representation not specified in this Agreement. For the sake of clarity, Client affirms that it did not rely

upon any oral or extra-contractual representations when executing, or as an inducement to executing, this Agreement.

- f.** All communications, whether written in any form or verbal, including, without limitation, statements of work, estimates, invoices, emails, oral conversations, confirmations, and acknowledgments, between Tigunia and Client, whether or not signed by the Parties, are subject to, and governed by, the terms of this Agreement, which also supersedes any conflicting provisions in any of the foregoing communications. This Agreement may not be modified, changed, assigned, or discharged, in whole or in part, except by an agreement in writing signed by the Parties. Client is prohibited from claiming that this Agreement is not binding on all prior or subsequent emails, verbal conversations, or any other communications between Client and Tigunia, or that such writings or conversations constitute an agreement that supersedes or is separate from this Agreement.
- g.** The terms of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to the benefit of the parties hereto and their representatives, successors, and/or affiliates. For the sake of clarity, the term “Client” will include Client’s affiliates. An “affiliate” is any legal entity that a party owns, that owns a party, or that is under common control of a party. “Control” and “own” mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity. A “representative” is an employee, contractor, advisor, or consultant of one of the parties or one of the party’s respective affiliates.
- h.** No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or consent in the course of performance under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or consenting party has knowledge of the nature of the performance and the opportunity to object.
- i.** The language, terms, conditions, and provisions of this Agreement are the result of negotiations between the Parties, and this Agreement shall not be construed in favor of or against any Party for any reason.
- j.** The headings to the various sections of this Agreement are inserted only for convenience of reference and are not intended nor will they be construed to modify, define, limit, or expand the intent of the Parties as expressed herein.
- k.** Neither party shall be liable or be in breach of the Agreement (excluding in relation to the Client’s payment obligations) if the failure to perform the obligation is due to an event beyond its reasonable control, including significant failure of a part of the power

grid, failure of the Internet, natural disaster or weather event, fire, acts or orders of government, war, riot, insurrection, epidemic, strikes or labor action, or terrorism.

- l.** Tigunia’s communications regarding legal notices will be sent by email and/or U.S. Postal Service (“USPS”) Certified Mail to whom Client designates as the primary contact(s) for Client’s account. Client is solely responsible for notifying Tigunia of any changes in Client’s primary contact(s). Email notice only is sufficient for legal notice purposes. Email notices are deemed received upon the sending of same. USPS notices are deemed received as of the time delivered. If the delivery time for email or USPS does not fall within a business day, the delivery will be considered as of the beginning of the first business day following the time the email was sent, or the USPS notice was delivered. Client cannot opt-out of receiving email communications at any time during the time this Agreement is in force. ~~Any Party may from time to time designate, by written notice, substitute addresses, e-mail addresses, or persons to whom such notices shall be sent.~~ Notices shall be given in the English language.
- m.** Wherever possible, each provision of this Agreement is to be interpreted in such a manner as will be effective and valid under applicable law, but if any provision of this Agreement is prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- n.** This Agreement is the result of negotiations between the Parties. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the party that drafted it has no application and any such right is expressly waived. By voluntarily executing this Agreement, the Parties confirm that they have had the opportunity to have this Agreement explained to them by their attorneys, and, in voluntarily executing this Agreement, the Parties rely upon their own judgment and the advice of their attorneys. By voluntarily executing this Agreement, the Parties confirm their competence to understand this Agreement and hereby accept the terms of this Agreement.
- o.** Tigunia may not publicly disclose that it is providing Services to Client and may not use Client’s name and logo to identify Client in promotional materials, including press releases without Client’s prior written consent. Client may not issue any press release or publicity regarding the Agreement, use the Tigunia name or logo or other identifying indicia, or publicly disclose that it is using the Services without Tigunia’s prior written consent.
- p.** Client acknowledges that Tigunia and Client may each correspond and convey documentation via Internet sources. Tigunia may utilize the transmission and sharing of information via email, send data over the Internet using other methods (such as

portals), store electronic data via software applications hosted remotely on the Internet, and allow access to data through third-party vendors' secured portals or clouds. Tigunia and Client each acknowledge that neither party has control over the performance, reliability, availability, and security of the Internet.

- q. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute together one and the same instrument, and by electronic signature. The individuals below affirm that they have the specific authority to bind the respective Parties. Each Party hereto acknowledges that the representative named below has the authority to execute this Agreement on behalf of the respective Party, and has caused this Agreement to be duly executed on its behalf as of the date first above written. If a Party executes this Agreement via electronic signature, then such electronic signature shall be deemed to be such Party's original signature for all purposes. The terms of this Agreement shall be a binding upon Client whether or not Client executes this Agreement or a requested Statement of Work, but otherwise by its conduct and statements to Tigunia personnel agrees to go forward with purchasing services, software, and/or products from Tigunia.
- r. In consideration of the mutual and reciprocal covenants and consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties each intend to be legally bound and to enter into a contract pursuant to this Agreement. Client and Tigunia both acknowledge that this Agreement is reasonable, valid, and enforceable. Any breach by Client of the obligations under this Agreement shall be considered a material breach of this Agreement.
- s. Tigunia Support is available from 7:00 a.m. to 7:00 p.m. Central Time, Monday through Friday, except for federal holidays. Tigunia's Support team can be reached by phone at 866-562-8911, or a support ticket can be created by emailing [support@tigunia.com](mailto:support@tigunia.com).