

## TERMS AND CONDITIONS (“Terms and Conditions”)

*By accepting an Order (as defined below) from Underground Vaults & Storage, Inc., (UV&S) related to any Services, Equipment or Licensed Software (all as defined below), the person or entity executing the Order (“Customer”) expressly agrees to be bound by the terms and conditions of these Terms and Conditions. Each Order is subject to UV&S acceptance and may be accepted or rejected by UV&S in its sole discretion. Further, these Terms and Conditions and any Order (including any attachments or exhibits) which refers to these Terms and Conditions are intended to and are agreed to collectively constitute one agreement (collectively, this “Agreement”).*

This Agreement is designed to define the rights and obligations of the parties depending upon the services or goods being provided by UV&S. It also contains the general terms and conditions that apply in all situations. Any term or condition which expressly applies to a Service not ordered by Customer, will not apply to the Customer unless thereafter purchased by the Customer. The parties agree as follows:

### **1. ORDERS FOR SERVICES, EQUIPMENT AND SOFTWARE**

This Agreement establishes the terms and conditions governing UV&S’s provision of any services, data center services, data storage, network operations center services, data security, managed hosting services (including, Virtual Hosting (defined herein) and “Co-location Services” (defined herein)), support services, all-inclusive service programs, or other services purchased by Customer (collectively, the “Services”) pursuant to any Order (as defined below) accepted by UV&S. This Agreement also covers Customer’s purchase or rental of any hardware or equipment (collectively, the “Equipment”) from UV&S, as well as Customer’s purchase of any software licenses (“Licensed Software”) from UV&S, regardless of whether the Equipment or Licensed Software is provided by UV&S as part of the Services or on

an independent basis. The parties may enter into one (1) or more purchase or service orders (each, an “Order”) that describe the Services, Equipment or Licensed Software to be provided by UV&S. UV&S agrees to provide, and Customer agrees to pay for, the Services, Equipment or Licensed Software as described in this Agreement and any Order. Customer may place additional Orders and such Orders will also be governed by the terms of this Agreement.

Customer is responsible for ordering and paying for all Internet, local and long distance lines from carriers and ordering any and all cross-connects necessary to utilize the Services.

### **2. TERM AND TERMINATION**

2.1 Term. Each increment of Services will commence on the effective date set forth in its applicable Order and will continue thereafter for the stated term of each Order (“Initial Term”). Upon expiration of the Initial Term of each Order, its term shall automatically renew for successive terms equal in duration to the Initial Term of such Order unless cancelled by either party in writing at least thirty (30) days before the expiration of the then current term (the Initial Terms and any renewal terms, if any, are collectively referred to herein as the “Term”). Absent

express language to the contrary set forth in an Order, after its Initial Term, either party may terminate this Agreement with respect to such individual Order without cause by giving the other party not less than 90 days advance written notice, and will owe UV&S contracted services for no less than 90 days from notice, regardless of being used or not. UV&S may change the length of the term or the prices it charges to Customer for any Services at any time after an Order's Initial Term, and such changes will be effective on the earlier of the commencement of the next renewal term or ninety (90) days following the date when UV&S provides written notice of such change to Customer. This Agreement will terminate upon the expiration or termination, as the case may be, of the last Order to which this Agreement is applicable.

2.2. Termination for "Cause." Either party may terminate this Agreement and any existing Orders, effective as of the date specified in the written notice of termination provided to the other party if: (i) the other party breaches any material term or condition of this Agreement or any Order and fails to cure such breach within thirty (30) days after receipt of written notice of the breach, except (a) in the case of failure to pay Fees, which must be cured within ten (10) days after receipt of written notice from UV&S, or (b) immediately upon Customer's violation of the Accepted Use Policy (defined herein) and regardless of any attempt to cure; (ii) the other party files a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. The foregoing shall not, however, apply to the term of, or the

obligations of the parties under, any Order for leased Equipment, which shall be separately governed by the express terms of the Order applicable to the leased Equipment. Notwithstanding the above, the provisions of Sections 2.3, 2.4, 4, 5.1, 6.11, 9 and 10.16 shall survive the expiration or termination of this Agreement.

2.3 Effect of Termination. Upon the effective date of the termination of this Agreement:

(a) UV&S will cease to provide the Services;

(b) Any and all periodic payment obligations of Customer due under this Agreement for Services or for provisioned Equipment provided through the date of termination or expiration, plus any amounts payable as a fixed fee or lease payment that would otherwise have become due during the then remaining Term had each Order not been terminated, will immediately become due;

(c) Within ten (10) days following termination, each party will return all tangible Confidential Information of the other party in its possession, erase from their respective drives, libraries and databases all electronic Confidential Information and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement; and

(d) Customer will pay to UV&S all expenses incurred by UV&S to return Customer's Confidential Information, including but not limited to, labor costs and the cost of media.

2.4 Termination Assistance. Notwithstanding the provisions of

Section 2.3, upon termination of this Agreement for any reason, UV&S will provide such termination assistance as may reasonably be requested by Customer relating to the return of Customer Equipment or the transfer of Customer's data and software, such assistance to be charged at UV&S's then current standard rates, and provided that Customer has demonstrated to UV&S's reasonable determination Customer's ability and willingness to remit such payment. UV&S's obligation to provide assistance pursuant to this Section 2.4 is limited to a period of fifteen (15) days ("Assistance Period"). Customer will pay UV&S on the first day of the Assistance Period, and as a condition to UV&S's obligation to provide termination assistance to Customer during the Assistance Period, an amount equal to UV&S's reasonable estimate of the total amount payable to UV&S for the assistance requested to be rendered during the Assistance Period. The balance, if any, shall be immediately paid upon invoice and any excess prepayment shall first be applied to any other sums owed to UV&S and any residual shall be promptly refunded by UV&S.

### **3. PAYMENT TERMS**

3.1 Fees. Customer will pay when due to UV&S all fees, charges and reimbursable expenses ("Fees") set forth on each Order, in U.S. currency, without offset, deduction or credit of any kind and remitted in readily available funds. Payments will be deemed to be delinquent if funds are not in UV&S's possession by their applicable due date. If Customer fails for any reason to pay any Fees to UV&S within twenty (20) days following its due date, Customer may be assessed and incur an administrative charge in an amount equal to five percent

(5%) of the past due Fees. If Customer for any reason fails to pay any Fees within twenty-five (25) days following its due date, UV&S may charge Customer interest on the unpaid amount at a rate equal to the lesser of one and one-half percent (1½%) per month or the maximum amount allowed by law. In addition to the other rights available under this Agreement or law, if Customer is more than thirty (30) days delinquent in payment, UV&S may at its discretion suspend providing Services without further responsibility or liability to Customer.

3.2 Disputed Payments. If Customer in good faith disputes any Fees presented on an invoice, payment of the individual charge may be withheld in good faith, provided that Customer timely remits full payment of all undisputed Fees and provides UV&S with a written explanation of the reasons for Customer's dispute of the charge within seven (7) days of the invoice date. Customer will cooperate with UV&S to resolve any disputed charge in a timely manner. If UV&S determines in good faith that the disputed Fee is not owed, the amount of the Fee will be credited to Customer's account. If UV&S determines in good faith that the disputed charge is valid, then the charge will be immediately due and owing and Customer will remit such amount within five (5) days following notification by UV&S of its determination.

3.3 Credit Terms. UV&S rendering of any Services, or provisioning, lease or sale of Equipment or Licensed Software to Customer pursuant to any Order is subject to its credit approval of Customer. UV&S may require at any time that Customer submit a deposit or other form of security or assurance for purposes of guarantying Customer's performance of its

covenants and obligations under this Agreement.

3.4 Responsibility for Taxes. All Fees are charged exclusive of all taxes and similar assessments imposed on any transaction conducted under this Agreement, including without limitation the rendering of any Services, the provisioning, sale or lease of Equipment or otherwise, all of which Customer will be responsible for and will timely pay in full, except for taxes based solely upon UV&S's new income.

#### **4. CONFIDENTIALITY AND INTELLECTUAL PROPERTY**

##### 4.1 Confidential Information.

(a) Nondisclosure of Confidential Information. Each party acknowledges that it will have access to certain confidential information of the other party concerning the other party's business, operations, plans, customers, vendors, technology, services and products, financial and other information proprietary to, or held in confidence by, the other party ("Confidential Information"). Confidential Information will include all information recorded in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure or its nature, should reasonably be considered confidential. Confidential Information will also include, but not be limited to, know-how, security protocols and procedures related to UV&S's IT Data Center (defined herein), firewall and other protections utilized to prevent unauthorized virtual access (including, for example, password policies and log-on procedures), the size and infrastructure requirements of server farms, the attributes, nature, capabilities, components or configuration of equipment (tangible and virtual), including Internet

operations design, data or content, software tools, software, user interface designs, architecture, size limitations, power consumption levels, infrastructure support requirements, class libraries, and documentation (both printed and electronic) and the terms and conditions of this Agreement. Each party agrees that it will not use in any way, for its benefit or the benefit of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party except as required by law or to a party's attorneys, accountants and other advisors as reasonably necessary, any of the other party's Confidential Information. Each party also agrees that it will take reasonable precautions to protect the confidentiality of the other party's Confidential Information, with methods at least as stringent as it takes to protect its own Confidential Information.

(b) Exceptions. Information will not be deemed to be "Confidential Information" if such information: (i) is known to the receiving party prior to receipt from the disclosing party; (ii) becomes known (independent of the disclosing party's disclosure) to the receiving party directly or indirectly from a source not subject to an obligation of confidentiality; (iii) becomes publicly known or otherwise ceases to be secret or confidential as a matter of law; or (iv) is independently developed by the receiving party. The receiving party may disclose Confidential Information pursuant to the requirements of a governmental agency or by operation of law, provided that it gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party to contest such disclosure.

## 4.2 Intellectual Property

(a) Ownership. This Agreement does not convey to Customer any interest in any technology utilized by UV&S to provide the Services. All right, title and interest in and to UV&S will remain solely with UV&S or its licensor(s). This Agreement does not convey to UV&S any interest in or to any of Customer's Confidential Information (defined herein), Customer's Equipment or Customer Cloud Environment (defined herein), and all right, title and interest in and to the same remain solely with Customer.

(b) General Skills and Knowledge. Notwithstanding Section 4.2(a), UV&S will not be prohibited from, and Customer will not attempt to enjoin UV&S from, utilizing any expertise, skills, know-how or knowledge of a general or specific nature acquired during the course of providing the Services, including, specifically, technical information publicly known or available or that could reasonably be acquired or developed while performing similar work for another customer of UV&S.

## 5. INDEMNIFICATION AND INSURANCE

5.1. Personal Injury and Property Damage. Each party will indemnify and defend the other party, its directors, officers, members, shareholders, employees, subcontractors, agents and their successors against all claims for damages, losses or liabilities arising directly or indirectly from this Agreement (i) for personal injury, death, or damage to personal property resulting from the negligence or willful misconduct, errors, or omissions of the indemnifying party or its subcontractors, directors, managers, officers, members, shareholders,

employees or agents; or (ii) the infringement or misappropriation of any intellectual property right relating to the provision, rendering, delivery or use of any Services, Equipment, or Licensed Software (but excluding any infringement caused in whole or in part by the other party). Customer will indemnify, defend and hold UV&S and its customers harmless from and against any and all damage or losses resulting from or arising out of any action or claim brought by or against UV&S or its customers alleging any damage or destruction to UV&S's IT Data Center or equipment (or its other customers' equipment) caused by (i) the negligence or willful misconduct of Customer or its representatives or agents, including any Authorized Staff (as defined herein); or (ii) any failure to comply or violation of the Acceptable Use Policy.

5.2. Duty to Defend. The party seeking indemnification under Subsection 5.1 must promptly notify the other party in writing of the claim and give the indemnifying party full and complete authority, information and assistance for the defense and settlement of any claim. The indemnifying party will retain the right, at its option, to settle or defend the claim, at its own expense and with its own counsel. The indemnified party will have the right, at its option, to participate in the settlement or defense of the claim, with its own counsel and at its own expense, but the indemnifying party will retain sole control of the claim's settlement or defense. To be indemnified under this provision, the party seeking indemnification must not by any act (including any admission or acknowledgement) materially impair or compromise a claim's defense.

### 5.3. Insurance Policies.

(a) General Liability - Insurance. If Co-location Services consists of physical hosting, Customer will be responsible for obtaining insurance adequate in its own judgment to protect itself against power outages and other damages. In addition, in order to provide its customers with physical access to the facilities operated by UV&S and equipment owned by third parties, UV&S is required by its insurers to ensure that each UV&S customer maintains adequate insurance coverage. Customer agrees to keep in full force and effect during the Term of this Agreement: (i) comprehensive general liability insurance in an amount not less than \$1 million per occurrence for bodily injury and property damage; and (ii) workers compensation insurance in an amount not less than that required by applicable law. Customer agrees that it will ensure and be solely responsible for ensuring that its agents (including contractors and subcontractors) maintain insurance coverage at levels no less than those required by applicable law and customary in Customer's and its agents' industries. Customer will cause its insurance providers to name UV&S and its designees as an additional insured and to thereafter notify UV&S in writing of the effective date of any cancellation of such insurance. Customer, Customer will (i) deliver to UV&S certificates of insurance which evidence the minimum levels of insurance set forth above;

(b) Cyber Insurance. If specified on an Order, and provided that UV&S's insurance carrier(s) will permit such coverage, during the Term of this Agreement, UV&S will list Customer as an additional insured on any cyber security coverage UV&S maintains; it

being understood that the types of risks, amounts of coverage and all other terms and conditions of such policy(ies) shall be at the sole discretion of UV&S. UV&S reserves the right to cancel or not renew any coverage at its sole discretion.

## 6. **TERMS OF CO-LOCATION SERVICES.**

### 6.1 Co-location Services.

(a) General. If Customer purchases any Services which include colocation services ("Co-location Services"), UV&S will provide the Co-location Services as specified on the applicable Order during the Term of such Order, as specified in Section 2. For purposes of this Agreement, "Co-location Services" means either (i) with regard to physical hosting, the specific physical location provided at a data center facility ("IT Data Center"), electrical power supplied, premise's security undertaken, computer and network support, accessibility, support personnel, air conditioning, connectivity, telecommunications service, and other services provided by UV&S with regard to all Customer Equipment (defined herein) physically placed by or for the benefit of Customer as described on any Order; or (ii) with regard to Virtual Hosting, the provisioning of a cloud-based or segregated server environment allocated to Customer's computer programs (whether owned or provided by UV&S or a third party) and data located on UV&S's servers and electronically segregated from other customers of UV&S whose software and data also reside on the same drives of such server or server farm, the nature, size and specifications of which are described on an Order. Housing of Additional Equipment (as defined herein) or data hosting will be

subject to space availability and infrastructure and logistical requirements.

(b) Delivery of Supplemental Services. The purpose of this provision is to enable UV&S to provide Customer with certain limited services and equipment needed by Customer on a “one-off” or non-emergency basis (“Supplemental Services”) whenever such additional services are not included within the express scope of the Co-location Services. Supplemental Services may include, for example, an intermittent request from Customer to UV&S via telephone that UV&S immediately replace a problem Customer server with a UV&S server for a temporary period of time. UV&S will notify Customer of the Fees for any Supplemental Services requested by Customer and obtain Customer’s approval prior to providing such services or equipment. Customer agrees to pay UV&S the approved fees charged by UV&S for the Supplemental Services. UV&S will use commercially reasonable efforts to provide Supplemental Services, provided that UV&S has no obligation to determine the need for, or to provide, any Supplemental Services for Customer as an incident to providing Co-location Services.

(c) Delivery of Supplemental Services on an Emergency Basis. In the event UV&S reasonably determines that Supplemental Services are required on an emergency basis, UV&S may provide such services without the consent of Customer, and thereafter UV&S will provide notice of the emergency services to Customer and bill Customer a reasonable fee for rendering such services based on UV&S’s then current rates. Customer agrees to pay UV&S the fees charged

for any Supplemental Services required on an emergency basis.

(d) Billing for Supplemental Services. Customer will be charged for Supplemental Services in the month immediately following delivery of the Supplemental Services.

## 6.2 Equipment De-installation and Installation to Customer Cabinet.

(a) During initial installation, UV&S will relocate Customer’s equipment (servers, peripherals, and related equipment as described in the applicable Order) (“Customer Equipment”) to the Customer Cabinet (herein defined) in accordance with the specifications and requirements described in the Order. UV&S will use commercially reasonable efforts to minimize disruption to the Customer System (defined herein) in connection with such relocation.

(b) Promptly upon relocating any item, or related group of items, of Customer Equipment to the Customer Cabinet, UV&S will commence to provide the Co-location Services that have been ordered, and will take or cause to be taken such other actions, as may be necessary for proper installation of the Customer Equipment in the Customer Cabinet (the “Initial Installation”) based on the specifications to be developed by the parties and described on the Order. Upon completion of the Initial Installation by UV&S, UV&S will provide notice to Customer that, in UV&S’s opinion, the Customer System has been properly installed in the Customer Cabinet in accordance with this Agreement and are ready for testing for compliance with such acceptance procedures as may be agreed upon by the parties in writing as set forth on the Order, or if none, with

UV&S's prescribed standard operational standards (collectively, the "Acceptance Protocols").

(c) Following the receipt by Customer of the notice referenced in Section 6.2(b), UV&S and Customer will promptly determine whether the Acceptance Protocols have been met. Customer will have two (2) business days within which to determine whether the Acceptance Protocols have been met. In the event that Customer reasonably determines that the Acceptance Protocols have not been met, UV&S, at its own expense (except as otherwise provided in this Agreement), will take or cause to be taken all reasonable actions (including modification, adjustment, repair or replacement of the Customer Cabinet or any equipment, systems or infrastructure supplied by UV&S) reasonably necessary to satisfy the Acceptance Protocols.

### 6.3 Services Provided at the IT Data Center.

(a) General. Whenever Customer intends to deliver or cause to be delivered to the Customer Cabinet, additional computer equipment, accessories, peripherals, software or other materials (collectively, "Additional Equipment") to be covered by the Co-location Services, then Customer will first notify UV&S. Customer will provide UV&S with such information as UV&S may reasonably request to enable UV&S to determine, based on space availability and IT Data Center infrastructure and logistical requirements, whether to permit Customer to deliver or install any Additional Equipment. Within one (1) business day following receipt of all such information, UV&S will notify Customer whether such permission is granted (which shall not be unreasonably

withheld or conditioned) and, if so, any additional reasonable requirements (including size limitations, power consumption levels, infrastructure support requirements, etc.) applicable to any such Additional Equipment. Whether such additions require an additional Order or the same shall be deemed to be incorporated into an existing Order will be determined by UV&S in its sole discretion. Customer will not deliver to or install in the IT Data Center any Customer Equipment, Additional Equipment, applications, data or other materials loaded thereon (collectively, "Customer System") reasonably likely to harm the IT Data Center, UV&S's equipment, networks or systems or third party equipment, networks or systems or their operation. Customer will be responsible for all costs and expenses associated with delivery to, and installation in, the IT Data Center of the approved Additional Equipment and for ensuring that the Additional Equipment satisfies UV&S's prescribed additional requirements.

(b) Receipt of Customer Equipment. UV&S will use commercially reasonable efforts to IT Data Center make available to Customer commercial standard loading docks to permit Customer to deliver and remove any Customer System to and from the Customer Cabinet. It will be Customer's sole responsibility to supply any equipment necessary to deliver and install any approved Additional Equipment or Customer System (other than for the Initial Installation). Subject to Customer's compliance with the terms of this Agreement, the Authorized Staff will be permitted access to the IT Data Center and the Customer Cabinet on a 24-hour, seven day a week, 365 day basis, as necessary to deliver, install, operate, monitor, maintain, repair, replace or remove any or all of the

Customer System. If Customer wishes to deliver, install, maintain, repair, replace, or remove any approved Additional Equipment or other Customer System other than during normal business hours, Customer shall notify UV&S of the dates and times when Customer is available to deliver and install such equipment so that UV&S may schedule an after-hours appointment at the IT Data Center. Promptly following receipt of such notice, UV&S shall use commercially reasonable efforts to schedule an appointment at a time mutually acceptable to UV&S and Customer. Customer shall be solely responsible for any additional fees or costs associated with any access to the building where the IT Data Center is located scheduled for a time other than during normal business hours, including any overtime costs of personnel at the IT Data Center.

(c) Customer Cabinet. When Co-location Services are being provided for Customer Equipment (as opposed to providing virtual hosting), UV&S shall provide and maintain the cabinet space, racking and dimension requirements listed on the applicable Order at a location within the IT Data Center (the "Customer Cabinet"). The Customer Cabinet must be suitable, as reasonably determined by UV&S, for the proper storage of Customer Equipment and operation of the Customer System. From time to time after an Initial Installation, if Customer wishes to make changes to its space, communication or electrical connections or other requirements in connection with Customer System, Customer shall first notify UV&S of its intention and UV&S shall review such request and within three (3) business days after receipt of such request shall make a reasonable determination regarding whether it is able to accommodate the additional requirements, taking into account such

factors as the space, power consumption and infrastructure support implications of such request. If UV&S is able to accommodate the additional requirements, UV&S shall within five (5) business days after the receipt of the request provide Customer with a reasonably detailed schedule and budget indicating the proposed timetable for, and cost of, accepting the additional requirements; all as set forth in an additional Order. In the event that Customer agrees in writing to such timetable and costs, UV&S shall provide such additional requirements in accordance with such schedule and budget. Customer will use the Customer Cabinet only for the purposes of installing, operating, monitoring, maintaining, repairing, replacing or removing a Customer System.

(d) Data Recovery – Customer. Other than for Customer's systems backed up by UV&S, Customer agrees to maintain an adequate data recovery system in order to facilitate the efficient restoration of data in the event that any data is lost. If Customer does not utilize UV&S's Uninterruptible Power Supply, then it is Customer's responsibility to provide backup power that it deems appropriate.

(e) Customer Responsibilities. Customer will be responsible for (i) ensuring that any computer scheduled to automatically back up is powered on at the time when the backup is scheduled; (ii) reviewing the reports that are automatically emailed to the specified person(s) each time a backup is performed; and (iii) periodically (i.e., at least once per business week) testing its ability to restore files and the ability to interpret data from same. If there is a problem, it will be Customer's responsibility to promptly inform UV&S of such problem. UV&S will not be liable if any changes in Services causes any Third

Party Products which are not provided by UV&S to become obsolete, require alteration, or perform at lower levels.

(f) Relocation. UV&S will use commercially reasonable efforts to not disturb or re-locate any Customer Equipment, however, should such a re-location become necessary due to an emergency or imminent danger to Customer Equipment, UV&S shall, use commercially reasonable efforts to re-locate Customer Equipment and minimize the disruption to Customer's operations, as may be reasonably required given the nature of the emergency. UV&S will use all reasonable efforts to notify Customer per a Customer-provided call list prior to moving any Customer Equipment or affecting any Services in the event of an emergency. If it is not feasible to contact a Customer representative prior to damage to the equipment, then the Customer Equipment will be moved even if Customer representative is not contacted.

(g) Space Cleanup. Customer will be responsible for all removal of installation material and clean-up of its space after installation of Customer Equipment and upon termination of this Agreement. If Customer defaults in its obligations under this Section 6, UV&S will have the right to perform the clean-up work at the expense of Customer.

(h) Cable Management. Customer's vertical and horizontal cables will be managed in a professional manner, both for the installation and management of the cables. If UV&S reasonably believes that Customer is not managing its cable in a professional manner, UV&S will notify Customer of the deficiencies and Customer will modify the cables within 7 days. If Customer does not modify the cables as

requested, UV&S may modify the cables and charge Customer for the cost of the modifications. UV&S will not be responsible for any damages caused by the modifications.

6.4 Virtual (Cloud-based) Hosting. When Customer's software, application(s) and data are being hosted ("Customer Cloud Environment") on UV&S's infrastructure (as opposed to being located on Customer Equipment) ("Virtual Hosting"), UV&S shall, at its own expense, pursuant to the terms, conditions, specifications, capabilities and requirements described on the Order, host Customer's Customer Cloud Environment on one (1) or more network computer servers equipped with the requisite processing speed and storage capacity sufficient to provide commercially adequate provisioning and support of Customer's usage of the same in the ordinary course of its business (all such servers, regardless of their physical location, or whether owned by UV&S or provided by a third party host service provider, collectively, the "UV&S Hosting Server"). UV&S shall bear sole responsibility for the operation and maintenance of the UV&S Hosting Server, including all hardware, its/their operating system and its platform software, and any third-party application software associated with, or necessary for, the normal operation and functioning of the UV&S Hosting Server in accordance with this Agreement. UV&S shall transfer the Customer Cloud Environment to the UV&S Hosting Server in accordance with the procedures, processes, specifications and requirements in the Order or any additional Order for same. UV&S will use commercially reasonable efforts to minimize disruption to the Customer Environment in connection with such relocation.

6.5. Fire Protection. UV&S's fire protection measures shall be maintained at the IT Data Center in accordance with customary industry standards. Such measures maintained by UV&S shall, at a minimum, comply with the requirements set forth by applicable city ordinances, building codes, and any other applicable rule or ordinance related to fire safety and prevention. UV&S shall provide such inspection, testing, and maintenance of the fire suppression systems as are reasonably necessary to assure satisfactory performance in the event of an emergency.

6.6. Security Protection - Physical. UV&S shall be responsible for developing and maintaining physical security measures for the IT Data Center and for the Customer Cabinet that define specific requirements in regard to monitoring controls and procedures assigned for the security and safety of each Customer System consistent with customary industry standards generally observed by members, vendors and organizations that participate in the information technology industry as the same relate to the business activities and services contemplated by this Agreement. If at any time UV&S becomes aware that any of the security measures in place for any portion of the IT Data Center or any portion of the Customer Cabinet are compromised or otherwise violated or potentially inadequate, UV&S shall provide notice of such event as soon as reasonably practicable to Customer in accordance with such notification and escalation call lists as Customer shall have, from time to time, provided to UV&S. In the event of a breach of the security measures, upon reasonable request, UV&S shall permit Customer to inspect the automatic security logs within twenty-four (24) hours following the receipt of such notice. Other than for access required by authorized UV&S

employees or contractors in order to perform UV&S's obligations under this Agreement, or as may be required by any applicable law or legal process, UV&S shall not permit any person other than an authorized staff member ("Authorized Staff") of Customer as set forth on the Order to have access to any Customer System or any portion of the Customer Cabinet. Notwithstanding the foregoing, UV&S may inspect and following a commercially reasonable effort to give notice to Customer may remove or disable any Customer Equipment located in the Customer Cabinet that it reasonably believes is unsafe or harmful to the IT Data Center, or to third party or UV&S's equipment, networks or systems operated within the Building.

6.7 Compliance with Law and Acceptable Use Policy.

(a) In General. Customer agrees that it will use the Co-location Services only for lawful purposes and in accordance with this Agreement. Customer will comply at all times with all Applicable Law and regulations and the Acceptable Use Policy, as updated by UV&S from time to time. The Acceptable Use Policy is incorporated into this Agreement and made a part of this Agreement by this reference. UV&S may change the Acceptable Use Policy upon thirty (30) days' notice to Customer, which notice may be provided by posting such new Acceptable Use Policy at the UV&S Web site [www.undergroundvaults.com](http://www.undergroundvaults.com). Customer agrees that it has received, read and understands the current version of the Acceptable Use Policy. The Acceptable Use Policy contains restrictions on Customers and Customer's users' online conduct (including prohibitions against unsolicited commercial email) and contains penalties for violations of such restrictions. Customer agrees to comply with such restrictions and,

in the event of a failure to comply, Customer agrees to be subject to the penalties in accordance with the Acceptable Use Policy. Customer acknowledges that UV&S exercises no control whatsoever over the content of the information passing through Customer's sites and that it is the sole responsibility of Customer to ensure that the information it and its users transmit and receive complies with all Applicable Law and regulations and the Acceptable Use Policy.

(b) Date Privacy Compliance – Additional Requirements. As to Virtual Hosting, UV&S shall be responsible for ensuring that the partitioning of each customer data base stored on a shared server is PCI DSS, HIPAA and state and federal privacy law compliant. Customer shall be responsible for ensuring that the operation and use of Customer Equipment, including database management, networking and connectivity comply with all PCI DSS, HIPAA and other state and federal privacy laws.

6.8 No Lease. The Co-location Services provided under this Agreement is for services only, and is not intended to, and will not, constitute a lease of any real property or personal property except to the extent any equipment is leased in accordance with an Order placed by Customer and timely accepted by Customer. Customer acknowledges and agrees that (i) it has been granted only a limited non-exclusive license to use the physical space assigned to its Customer Equipment pursuant to this Agreement; (ii) Customer has not been granted any real property interest in any portion of the building where the IT Data Center is located or in the IT Data Center itself; (iii) Customer has no rights as a tenant or otherwise under any real property or

landlord/tenant laws, regulations, or ordinances. Customer hereby waives and releases any claims or rights to assert any claim that it may have against any landlord under any lease applicable to the building where any Customer Equipment is located or where the Co-location Services or Virtual Hosting are provided by such third party landlord.

#### 6.9. Casualty or Condemnation.

(a) Rights to Terminate. If all or a portion of the IT Data Center is damaged by a casualty or taken through condemnation, whether or not the Customer Equipment has been damaged or taken, and if (a) substantial alteration or reconstruction of the IT Data Center will, in UV&S's sole opinion, be required, or (b) any holder of a lien against the IT Data Center requires that the condemnation award or insurance proceeds be applied to the payment of its debt, or (c) the casualty is not covered by UV&S's insurance, UV&S may terminate this Agreement by written notice to Customer. If (i) any portion of the IT Data Center is damaged by a casualty or taken by condemnation, (ii) as a result of the damage or taking, Customer's operations are materially and adversely affected, (iii) the damage resulting from the casualty or condemnation cannot be repaired within 60 days after the occurrence, and (iv) UV&S does not make comparable space available to Customer at another facility operated by UV&S, Customer may terminate this Agreement by written notice to UV&S delivered within 30 days after the occurrence of the casualty or receipt of notice of pending transfer of physical possession to the condemning authority.

(b) Restoration, Release of Claims. If, after a casualty or condemnation, this

Agreement is not terminated, UV&S will commence and proceed with reasonable diligence to restore the IT Data Center; but in no event will UV&S be required to spend more than the insurance proceeds or condemnation award actually received by UV&S or to replace any portion of any Customer Equipment. Upon notice of completion of UV&S's restoration work, Customer will restore or replace the Customer Equipment for deployment and reinstallation at the IT Data Center.

6.10. Accesses and Security. Except with the advanced written consent of UV&S, Customer's access to the IT Data Center will be limited solely to the persons listed as "authorized staff" on the Order. UV&S may prescribe limited, customary and usual security procedures from time to time, such as controlled access. Customer will comply with UV&S's security procedures, including locking all equipment rooms upon completion of Customer's access, and on or before the last day of Services surrendering all keys, master entry cards, or other means of building access in Customer's possession. Customer shall not make duplicates or copies of any keys, master entry cards or other entry devices utilized by UV&S to control access. CUSTOMER ACKNOWLEDGES THAT (A) ANY SECURITY MEASURES EMPLOYED BY UV&S ARE FOR THE PROTECTION OF UV&S'S BUSINESS INTERESTS, (B) UV&S IS NOT A GUARANTOR OF, AND EXPRESSLY DISCLAIMS ANY LIABILITY FOR, THE SECURITY OR SAFETY OF THE CUSTOMER'S AUTHORIZED STAFF OR THEIR PROPERTY, AND (C) SECURITY OR SAFETY OF CUSTOMER'S AUTHORIZED STAFF IS THE RESPONSIBILITY OF CUSTOMER AND

## LOCAL LAW ENFORCEMENT AUTHORITIES.

6.11 Surrender. Customer will remove its Customer Equipment from UV&S's IT Data Center prior to the expiration of the Term. Customer shall repair any damage to the IT Data Center resulting from Customer's removal of its Customer Equipment. If Customer fails to remove any Customer Equipment within ten (10) days after the end of the Term, (i) UV&S may at Customer's expense remove, store, or dispose of the remaining Customer Equipment in any manner UV&S deems appropriate and (ii) Customer will, at UV&S's election, be deemed to be holding over, subject to all provisions of this Agreement, except that the recurring fees will thereafter be charged at a rate equal to 150% of the amount charged for such Fees for the last month of the then expired Term. Customer will also be liable to UV&S for any and all damages and losses incurred by UV&S as a result of Customer's holding over after the expiration of the Term and Customer shall indemnify UV&S from any and damages and losses arising from Customer's failure to vacate in a timely manner.

6.12. Maintenance Accommodations; UV&S Equipment. If UV&S determines that it is necessary to interrupt Services or that there is a potential for Services to be interrupted for purposes of performing system maintenance, Company will use good faith efforts to notify Customer prior to the performance of any system maintenance; UV&S will use its best efforts to schedule any regular system maintenance during non-peak hours (midnight Saturday until 4:00 a.m. Sunday). In no event will the interruption of Service for system maintenance constitute a failure of performance by UV&S. To enable to

perform the Services requisite to be installation, provision, and maintenance of Co-location Services or Virtual Hosting, Customer will grant the persons appointed by UV&S access to any UV&S-provided Equipment located in an environment controlled by Customer. UV&S will observe Customer's reasonable security procedures and provide Customer with reasonable notice of the required access.

## 7. EQUIPMENT AND LICENSED SOFTWARE

7.1 Equipment and Software Not Provided by UV&S. Customer will be responsible for the installation, operation, and maintenance of any equipment, hardware or software that is not purchased from or provisioned or leased by Customer from UV&S ("Third Party Products"). In cooperation with Customer, UV&S will provide the initial configuration for the interface between the compatible Third Party Products and the Services. Provided, Customer is responsible for ensuring that the Third Party Products are compatible with the requirements of the Services. If UV&S notifies Customer that any Third Party Products are incompatible with or will impair the performance of the Services, Customer must eliminate the incompatibility or impairment in a timely manner. UV&S may suspend the Services until the incompatibility or impairment is resolved. If the incompatibility or impairment interferes with other UV&S customers, UV&S may suspend or disconnect the affected Services upon notice to Customer. Upon Customer's request, UV&S may troubleshoot any difficulties caused by the Third Party Products at UV&S's then current prices for the troubleshooting services. UV&S is not liable for its performance of the

Services under this Agreement for so long as the incompatibility or impairment exists.

7.2. Software License; Incidental Use – Customer. If software is provided by UV&S as part of the Services, or Customer is granted a nonexclusive and non-transferable license to use such software, including any related documentation, solely to enable Customer to use the Services and in accordance with any applicable licensing requirements of the software's licensor.

7.3 Software License; Incidental Use – UV&S. Customer agrees that if, in the course of performing any Services, it is necessary for UV&S to use Customer Cloud Environment, UV&S is hereby granted and shall have a nonexclusive, royalty-free license, during the Term of this Agreement, to use the Customer Cloud Environment solely for the purposes of providing or delivering any of the Services to Customer. UV&S shall have no right to use the Customer Cloud Environment for any other purpose.

7.4. Title to Software or Equipment. UV&S or its licensors will retain all ownership, title and property rights provided software and equipment provided by UV&S, regardless of whether such software is embedded in another software or system, or the equipment is attached to any realty. Except as expressly provided to the contrary herein, Customer neither owns nor will acquire any right of ownership to any UV&S-provided hardware or software, including, but not limited to, any related patents, copyrights, trademarks, or IP addresses assigned to Customer. This Agreement does not convey to Customer any interest in any Technology utilized by UV&S to provide any of the Services. All right, title and interest in and

to such technology will remain solely with UV&S. This Agreement does not convey to UV&S any interest in or to any of Customer's Confidential Information, Customer Equipment or Customer Cloud Environment (as defined hereafter), and all right, title and interest in and to the same remain solely with Customer. UV&S and Customer each will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive object code, source code or other trade secrets of the other party.

## 8. WARRANTIES.

8.1 Service Warranties. Subject to any exceptions set forth in the applicable Order for Service, UV&S warrants that it will provide the Services in a manner consistent with industry standards reasonably applicable to the performance of the nature and type of such Services. However, UV&S shall not be responsible for any (i) intermittent, minor or temporary failure or disruptions of the Co-location Services due to scheduled maintenance; (ii) failures or disruptions to the Co-location Services due to denial of service attacks, virus activity, hacking attempts or any other circumstances that are not within Concergent's control; or (iii) failure of the Co-location Services caused, in whole or in part, due to Customer's breach of this Agreement.

8.2 Equipment Warranty. All Equipment sold or leased by UV&S to Customer (and the related software), if any, pursuant to each Order is being provided "as-is," with Customer's sole remedy being the product warranties offered by their manufacturers or licensors to the extent the warranties are enforceable by Customer. In the event of a defect, UV&S's sole obligation, and Customer's exclusive

remedy, will be UV&S using commercially reasonable efforts to pursue any available manufacturer's warranty.

8.3 Software. As to software utilized in providing Virtual Hosting, UV&S warrants that all Licensed Software provided by UV&S will operate and perform in substantial accordance with its specifications. UV&S does not warrant that any Licensed Software will operate uninterrupted or error-free. All other software is being provided "as-is," with Customer's sole remedy being the product warranties offered by their manufacturers or licensors to the extent the warranties are enforceable by Customer.

8.4 No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, THE SERVICES AND ANY EQUIPMENT PROVIDED PURSUANT TO THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF ANY SERVICES AND EQUIPMENT IS CONDUCTED AT ITS OWN RISK. UV&S DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. UV&S DOES NOT WARRANT THAT THE SERVICES OR EQUIPMENT WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

8.5 Disclaimer of Actions Caused by or Under the Control of Third Parties. UV&S DOES NOT AND CANNOT CONTROL THE FLOW OF

DATA TO OR FROM UV&S'S NETWORK AND OTHER PORTIONS OF THE INTERNET. SUCH DATA FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED BY THIRD PARTIES WHO ARE BEYOND THE CONTROL OR INFLUENCE OF UV&S. AT TIMES, THE ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) OR REMOTE ACCESS TO CUSTOMER EQUIPMENT OR CLIENT'S VIRTUAL ENVIRONMENT. ALTHOUGH UV&S WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO MITIGATE THE EFFECT OR REMEDY OR AVOID SUCH DISRUPTING EVENTS. UV&S CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR OR BE PROMPTLY RESOLVED AND UV&S DISCLAIMS ANY AND ALL RESPONSIBILITY FOR, OR LIABILITY RESULTING FROM OR RELATED TO, SUCH EVENTS AND CUSTOMER AGREES TO HOLD UV&S HARMLESS FROM THE SAME.

## **9. SERVICE CREDIT; WAIVER; LIMITATION OF LIABILITY.**

9.1 Service Credit. SUBJECT TO THE LIMITATION OF LIABILITY UNDER SECTION 9.3, FOR ANY SERVICE OUTAGE, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WILL BE A PRORATED CREDIT FOR THE AMOUNT OF TIME DURING THE MONTH THAT THE SERVICE WAS NOT AVAILABLE. NEITHER PARTY WILL

BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT.

9.2 Personal Injury. EACH MEMBER OF CUSTOMER'S AUTHORIZED STAFF AND ANY OTHER PERSON VISITING A UV&S DATA CENTER DOES SO AT ITS/THEIR OWN RISK. UV&S ASSUMES NO LIABILITY WHATSOEVER FOR ANY HARM TO ANY PERSON RESULTING FROM ANY CAUSE OTHER THAN THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF UV&S.

9.3 Waiver of Consequential Damages; Limitation of Liability. EXCEPT FOR A BREACH OF SECTION 4 OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY BE LIABLE OR RESPONSIBLE TO THE OTHER FOR ANY TYPE OF INCIDENTAL, EXEMPLARY, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST REVENUE, LOST PROFITS, REPLACEMENT GOODS, LABOR COSTS, REPAIR COSTS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, LOSS OF DATA, OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER ARISING UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. FURTHER, NO CAUSE OF ACTION WHICH HAS ACCRUED MORE THAN TWO (2) YEARS PRIOR TO THE FILING OF A SUIT ALLEGING

SUCH CAUSE OF ACTION MAY BE ASSERTED AGAINST UV&S. THE MAXIMUM TOTAL LIABILITY OF UV&S TO CUSTOMER FOR ANY NEGLIGENCE IN THE PERFORMANCE OF THIS AGREEMENT OR FOR ANY BREACH OF THIS AGREEMENT OR ANY ORDER SHALL BE LIMITED TO FIFTY PERCENT (50%) OF THE TOTAL FEES CHARGED UNDER THE TERMS OF THE APPLICABLE ORDER AND PAID TO UV&S DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE WHEN THE EVENT OR ACTION OCCURRED UPON WHICH ANY SUCH CLAIM IS BASED.

9.4 Basis of the Bargain; Failure of Essential Purpose. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement represent the parties' agreement as to the allocation of risk between the parties in connection with UV&S's obligations under this Agreement and any Order, and that such limitations, exclusions and disclaimers will survive and apply even if found to have failed of their essential purpose. The parties acknowledge that UV&S has set its prices and entered into this Agreement and each Order in reliance upon the limitations of liability and the disclaimer of warranties and damages set forth in this Agreement, and that the same form an essential basis of the bargain between the parties.

9.5 Demarcation Point. For purposes of assigning accountability, allocating risks and liability with regard to physical hosting, the Demarcation Point will be the point where the Services are deemed to terminate. UV&S is not responsible for maintenance on the Customer's side of any Demarcation Point. The Demarcation Point

is defined as the physical location where an Ethernet cable connects into the Customer Equipment, unless expressly stated to the contrary in the Order.

## 10. OTHER TERMS AND CONDITIONS

10.2. Independent Contractor. Despite the use in its marketing materials of such terms as "vested partnership" used to describe or promote UV&S's services and product offerings, it is expressly understood that UV&S is acting as an independent contractor. Further, the parties' relationship is, and this Agreement will, not constitute or create an association, joint venture, partnership, or other form of legal entity or business enterprise, franchise or employment relationship between the parties, their respective agents, employees, subcontractors or affiliates. Neither party shall have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this Agreement to the contrary.

10.3. Use of Name, Service Marks, Trademarks or Trade Secrets. Neither party will use the trade name, service marks or trademarks of the other party or any of its affiliates for any purpose without first obtaining the other party's written consent.

10.4 Force Majeure. Neither party will be responsible for failure to comply with, or for delay in performance of, this Agreement, if the failure is directly or indirectly caused by events beyond the party's reasonable control, including, but not limited to, natural disasters, actions or decrees by governmental bodies, acts of God or failure of the Internet (not resulting from the actions or inactions of UV&S or Customer), provided that the delayed party:

(a) provides the other party with prompt notice; and (b) uses commercially reasonable efforts to promptly correct such failure or delay. However, the foregoing shall not apply to Customer's obligation to timely remit all Fees.

10.5 Compliance. Each party and their employees or subcontractors will comply with applicable laws and regulations of government authorities.

10.6 Applicable Laws and Jurisdiction. The applicable state law governing this Agreement will be the law of Kansas excluding choice of law principles. Any lawsuit involving this Agreement will be heard in Sedgwick County, Kansas.

10.7 Assignment. Customer may not assign this Agreement without first obtaining UV&S's prior written consent. UV&S may assign this Agreement at any time effect upon notice to Customer and provided the assignee expressly agrees to be bound to the terms of this Agreement. This Agreement will be binding upon and inure to the benefit of, each party's successors and permitted assigns. In addition, UV&S may also, without Customer's consent and without providing notice, delegate performance of Services to third parties provided UV&S remains responsible to Customer for the performance of the Services.

10.8 Waiver of Jury Trial. The parties mutually, expressly, irrevocably and unconditionally waive trial by jury for any proceedings arising out of, under, or in connection with this Agreement. This section survives the termination of this Agreement.

10.9 Inconsistent Provisions. In the event of a conflict between or among the

business terms set forth in this Agreement, any Order or any other document made a part hereof, the documents shall control in the following order: the Order with the most recent date, any document issued or executed by UV&S that expressly states that it supersedes this Agreement and then this Agreement if the Order or other document satisfies the foregoing condition and then any other documents.

10.10 Amendments. Except for the incorporation of one or more Orders as expressly provided in Section 1, Customer and UV&S may modify this Agreement only by written amendment signed by the parties' officers or authorized designees. Any oral modification contrary to this Agreement's terms is not admissible in any dispute, whether in a court of law or arbitration.

10.11 Notices. Any notice required under this Agreement or related to a dispute must be submitted in writing to the appropriate party's address as shown on the most recent Order unless and until a different address is provided by written notice. All notices shall require delivery by registered or certified mail, overnight courier or confirmed facsimile unless electronic transmission is expressly provided for in the Order and an email address for a specifically authorized representative is provided. Each notice will be deemed to have been given on the day when actually physically delivered, two (2) business days if mailed, the same day if faxed or electronic transmission or the next business day if sent via courier.

10.12 Headings; Pronouns, Plural and Gender. Headings are for reference purposes only and have no effect on the interpretation of any provision's meaning. All pronouns used in this Agreement shall

be construed as including both genders and neuter. All capitalized defined terms used in this Agreement are equally applicable to their singular and plural forms.

10.13 Blue Pencil. If any provision is determined to be illegal or unenforceable, this Agreement's unaffected provisions will remain in effect. The parties will negotiate a substitute provision consistent with the parties' original intention.

10.14. Self Help. If Customer defaults under this Agreement, it agrees that any Customer Equipment located on UV&S's premises or in UV&S's possession will be deemed UV&S's property free of any claim by Customer and UV&S may, in its discretion, apply the fair market value of the equipment against any outstanding invoice.

10.15 Employee Recruitment Prohibition. During the Term of this Agreement and for the twelve (12) months immediately following its expiration or termination, Customer will not for itself or the benefit of any third party, directly or indirectly solicit or attempt to solicit for employment or to otherwise recruit or induce any persons employed by UV&S to terminate their employment or independent contractor relationship with UV&S.

10.16 Dispute Resolution. This Agreement and the rights and obligations of the parties will be governed by and construed in accordance with the internal laws of the State of Kansas without regard to its conflicts of law principles. The parties will endeavor to amicably settle by mutual discussions all disputes, differences, or claims related to this Agreement. Failing amicable settlement, any such controversy, claim, or dispute arising under or relating to this Agreement, shall be resolved by

arbitration conducted in accordance with the Arbitration Rules (and if Customer is a non-U.S. entity, the International Arbitration Rules) of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English. No arbitrator will have the authority to award punitive damages. Each party shall bear its own expenses, but the parties will share equally the expenses of the arbitrator(s) and the AAA. Any arbitration award will be final and judgment thereon may be entered in any court of competent jurisdiction.