LOGICALIS

Business and technology working as one

MASTER SOLUTIONS AGREEMENT
May 31, 2013 Revision
For prior versions please go to www.us.logicalis.com/msa

Each Statement of Work issued by Logicalis is an offer to sell professional services, managed services or cloud services to purchaser ("Customer") and includes and is governed by this Master Solutions Agreement. Logicalis' SOW and this Master Solutions Agreement shall be deemed accepted by Customer upon Logicalis' receipt of a purchase order or a signed SOW. Acceptance of Logicalis' SOW and this Master Solutions Agreement is expressly limited to the terms contained in Logicalis' SOW and this Master Solutions Agreement. Logicalis rejects any terms and conditions contained in Customer's forms that are additional to or different from those set forth in Logicalis' SOW or in this Master Solutions Agreement.

Customer and Logicalis are sometimes referred to individually in this Agreement as a "**Party**" and collectively as the "**Parties**."

1. DEFINITIONS

As used in this Agreement:

"**Agreement**" means this Master Solutions Agreement and all Statements of Work, schedules and attachments attached hereto or to or otherwise made a part of this Agreement.

"**Confidential Information**" means any information furnished by Discloser to Recipient during the term of this Agreement, including, without limitation, pricing, methods, processes, financial data, lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their customers and suppliers, concerning past, present, or future business activities of said entities. This Agreement is the Confidential Information of Logicalis. Customer Data is the Confidential Information of Customer. All other Confidential Information must be clearly designated as "Confidential." Information provided orally will be considered confidential only if a written memorandum of such information clearly designated as marked "Confidential" is delivered to Recipient within thirty (30) days of the Disclosure. As to any particular Confidential Information, "**Discloser**" means the Party disclosing the Confidential Information and the "**Recipient**" means the Party receiving the Confidential Information.

"**Content**" means information, software, Customer Data and other data including, without limitation, HTML files, scripts, programs, recordings, sound, music, graphics, and images that Customer or any of its Users create, install, upload or transfer in or through the Hosting Environment.

"**Customer Components**" means the hardware, software and other products, and Content that Customer provides, including those specified in a SOW.

"**Customer Data**" means all data and information about Customer's business(es), customers employees, operations, facilities, products, markets, assets or finances that Logicalis obtains, creates, generates, collects or processes in connection with its performance of Services and is stored in any Logicalis repository.

"**Disclosure**" means the release, publication, or dissemination of Confidential Information by a Party and excludes the release, publication, or dissemination of Confidential Information by a third party.

"**Hosting Environment**" means Logicalis' application hosting environment for the delivery of Services, consisting of, but not limited to, network, storage and server devices, software programs, applications network management devices, and other items specified in any Statement of Work.

"**PCR**" means a project change request (change order) signed by both Parties authorizing a change in the scope of the Services.

"**Required Consents**" means any consents, licenses, or approvals required to give Logicalis, or any person or entity acting for Logicalis under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Logicalis, or owners of such Customer Components and Content.

"**Services**" means the information technology services to be provided by Logicalis under this Agreement as specified in any Statement of Work.

"**Statement of Work**" or "**SOW**" shall have the meaning ascribed to it in Section 2.1.

"**User**" means any entity or individual that receives or uses the Services, or the results or products of the Services, through Customer.

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Statement of Work, unless the language or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW.

2. GENERAL

2.1.   **Agreement Structure**. This Agreement contains general contractual terms for all information technology services to be provided by Logicalis. The specific information technology services that Logicalis will provide, applicable pricing and payment terms, service level agreement, if any, and other transaction-specific provisions will be agreed upon through statements of work to this Agreement (each a "**Statement of Work**" or "**SOW**"). Each SOW shall be signed by both Parties and will be deemed to incorporate all of the provisions of this Agreement by reference. Each SOW will be a separate agreement between Logicalis and Customer.

2.2.   **Order of Precedence.** In the event of any inconsistencies between the terms of this Agreement and the terms of any Statement of Work, the terms of this Agreement shall control. The Parties may specify in the applicable SOW that a particular provision of the SOW is to supersede a provision of this Agreement, in which case the superseding SOW provisions shall be applicable only to such SOW and shall be effective for such SOW only if such provision expressly references the applicable Section of this Agreement that is to be modified and clearly states that such provision supersedes the conflicting or inconsistent provision in this Agreement.

3. SERVICES

3.1.   **Scope of Services.** Logicalis will perform the Services described in the applicable Statements of Work.

3.2.   **Designated Contact Persons.**   Each Party shall designate an individual who will be a primary point of contact for that Party and will have the authority to act and make decisions for that Party in all aspects of the Services, including PCRs. Customer shall make available all technical matter, data, information, operating supplies, and computer system(s), as reasonably required by Logicalis. Either Party may change its designated contact person by written notice to the other Party.

3.3. **Changes.** In the event Customer wishes to add additional programs, applications or data sources, systems servers, network devices of any kind (hubs, routers, switches), requests an expansion in the scope of the Services, or increases the network load in the Hosting Environment managed by Logicalis under this Agreement, then Customer shall present its request for such alterations of its network to Logicalis for scoping. No alterations will be permitted under this Agreement without a signed PCR.

4. **FEES AND PAYMENT TERMS**

4.1. **Charges.** Customer shall pay to Logicalis all recurring base monthly charges and non-recurring additional charges, for services, hardware or software not covered by the base rate at the rates and charges set forth on the applicable SOW or Customer quotation. The base monthly charge shall be billed prospectively on the 1st day of the month in which the Services are to be provided. Additional charges for services, hardware or software as the case may be, shall be billed on the last day of the month in which the charges are incurred or become billable. The stated charges are not subject to increase during the initial term of the SOW. Logicalis shall notify Customer of any changes in the charges applicable any renewal term at least one hundred twenty (120) days before commencement of the renewal term.

4.2. **Reimbursable Expenses.** Except as may otherwise be stated in the applicable SOW, Customer agrees to reimburse Logicalis all reasonable and customary out-of-pocket expenses, including, but not limited to, airfare, rental car, mileage, tolls, and lodging expenses, incurred by Logicalis in connection with the performance of services. Meal expenses shall be billed at Logicalis' then-current per-diem amount. Travel time will be billed at one-half the on-site billable rate each way. Reimbursable expenses shall be invoiced on a monthly basis. Upon request by Customer, Logicalis shall provide copies of documentation for such expenses.

4.3. **Invoices.** All invoices shall be due and payable within thirty (30) days after the invoice date. Customer agrees to pay a late payment charge at the rate of one and one-half percent (1.5%) per month, or at the maximum late payment charge permitted by applicable law, whichever is less, on any unpaid amount for each calendar month (or portion thereof) that any payment is thirty (30) days past due. Logicalis may apply any payment received to any delinquent amount outstanding.

4.4. **Taxes.** The amounts payable under this Agreement are exclusive of all sales, use, value-added, withholding, and other taxes and duties. Customer shall pay all taxes levied and duties assessed by any authority based upon this Agreement, excluding any taxes based upon Logicalis' income. This provision shall not apply to any taxes for which Customer is exempt and for which Customer has furnished Logicalis with a valid tax exemption certificate authorized by the appropriate taxing authority.

5. **INFORMATION SECURITY**

5.1. **Security Measures.** Logicalis will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Customer Data; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data; and (c) protect against any unauthorized access to or use of the Customer Data.

5.2. **Notification and Prevention Obligations.** Logicalis shall promptly notify Customer of any actual security breach in its Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Customer Data. This notification will state in reasonable detail the Customer Data at risk. Logicalis agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Logicalis further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Customer to address the breach. Logicalis shall not be responsible or liable for any security breach caused by Customer.

5.3. **Audits by Logicalis.** Logicalis will conduct an annual Statement on Standards for Attestation Engagements, No. 16 (SSAE No. 16) or equivalent audit of its security measures. Upon Customer's written request, Logicalis shall provide a copy of its most recent audit report. The report is to be treated as Confidential Information under this Agreement and remains the property of Logicalis.

5.4. **Audits by Customer.** Customer shall have the right to review Logicalis' security measures prior to the commencement of the Services and thereafter on an annual basis during the term of this Agreement. Such annual review may include an onsite audit, conducted by qualified personnel, of Logicalis' data centers in order to inspect the Hosting Environment to verify Logicalis' compliance with this Agreement. The dates of any onsite audit shall be mutually agreed upon by the Parties. Customer shall be responsible for the entire cost of any onsite audit.

6. OTHER CUSTOMER RESPONSIBILITIES

6.1. **Acceptable Use.** Customer agrees, and will ensure its Users agree, to act responsibly and not use the Logicalis Services for any illegal or unauthorized purpose including, but not limited to, hacking, phishing, spamming, identity theft, financial fraud, e-mail spoofing, virus distribution, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software, and unauthorized use of images. Logicalis has the right to investigate potential violations of this Section. If Logicalis determines that a breach has occurred, then Logicalis may, in its sole discretion: (a) restrict Customer's and Users' access to the Services; (b) remove or require removal of any offending Content; (c) terminate this Agreement for cause; and/or (d) exercise other rights and remedies, at law or in equity. Except in an emergency or as may otherwise be required by law, before undertaking the actions in this Section, Logicalis will attempt to notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Logicalis of any event or circumstance related to this Agreement, Customer's or any User's use of the Services, or Content of which Customer becomes aware, that could lead to a claim or demand against Logicalis, and Customer will provide all relevant information relating to such event or circumstance to Logicalis at Logicalis' request. Logicalis agrees to allow Customer complete and unrestricted access at all times to Customer's software applications, devices, equipment hardware, and all Services-related license files so that Customer can audit its Users' compliance with the terms of this Agreement.

6.2. **Content.** Customer is solely responsible for: (a) all Content including, without limitation, its selection, creation, design, licensing, installation, accuracy, maintenance, testing, backup and support; (b) all copyright, patent and trademark clearances in all applicable jurisdictions and usage agreements for any and all Content; (c) the selection of controls on the access and use of Content; (d) Customer agrees not to access the Hosting Service by any means other than through the interface that is provided by Logicalis for use in accessing the Hosting Service; and (e) the selection, management and use of any public and private keys and digital certificates it may use with the Services.

6.3. **Required Consents.** Customer shall obtain and keep in effect all Required Consents necessary for Logicalis to perform all of its obligations as set forth in this Agreement. Upon request, Customer will provide to Logicalis evidence of any Required Consent. Logicalis will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Logicalis any Required Consents. Logicalis will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Logicalis. Logicalis agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.

6.4. **Software.** Customer authorizes Logicalis to determine whether or not software specified in any SOW is currently in place, operational and maintained and supported at the level required for Logicalis to perform the Services required under this Agreement. Customer grants Logicalis, at no charge, the right to use any Customer-owned or developed application software systems required by Logicalis to provide the Services specified in any SOW to Customer.

6.5. **Capacity Planning.** Customer is solely responsible for determining whether the Services, Hosting Environment, and related Content meet Customer's capacity, performance, or scalability needs. Customer is responsible for planning for and requesting changes to the Hosting Environment and Services, including any additional capacity required to support anticipated peaks in demand that may significantly increase website hits, transaction volumes, or otherwise increase system resource utilization.

6.6. **Customer Components.** Customer is solely responsible for the selection, operation and maintenance of all Customer Components.

6.7. **Security.** Customer shall (a) use reasonable security precautions in connection with its use of the Services, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection; (b) Customer shall require each User to use reasonable security precautions, i.e., maintain up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Logicalis' ability to access or administer its network or provide the Services.

6.8. **Encryption.** Customer shall encrypt at the application level all data that is considered sensitive data that must be treated as confidential under state or federal law or under Customer's contractual obligations to others. This includes, but is not limited to, Social Security Numbers, financial account numbers, driver's license numbers, state identification numbers, Protected Health Information (as that term is defined in Title II, Subtitle F of the Health Insurance Portability and Accountability Act, as amended (HIPAA) and regulations promulgated there under) and Nonpublic Personal Information (as that term is defined in Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley) and regulations promulgated there under).

7. **CONFIDENTIAL INFORMATION**

7.1. **Restrictions on Use; Non-Disclosure.** Recipient agrees that it will use the same care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient agrees that it will not: (a) use the Confidential Information of Discloser for any purpose other than the purpose for which Discloser disclosed the information; or (b) disclose or reveal Confidential Information of Discloser to any person or entity other than its employees, directors, officers, agents and consultants who (i) have a need to know to further the purpose of this Agreement; and (ii) are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Agreement.

7.2. **Exceptions.** The obligations set forth in Section 7.1 shall not apply to Confidential Information that: (a) before the time of its Disclosure was already in the lawful possession of the Recipient; or (b) at the time of its Disclosure to Recipient is available to the general public or after Disclosure to Recipient by Discloser becomes available to the general public through no wrongful act of the Recipient; or (c) Recipient demonstrates to have been lawfully and independently developed by Recipient without the use of or reliance upon any Confidential Information of the other party and without any breach of this Agreement.

7.3. **Disclosures Required by Law.** If Recipient becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Recipient shall notify Discloser of the requirement promptly in writing so that Discloser may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Discloser waives in writing compliance with the terms hereof, then Recipient shall furnish only that portion of the information which Recipient is advised by written opinion of counsel is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.

7.4. **Disposal of Confidential Information.** Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Logicalis will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-supplied media. Any conversion of format or media performed by Logicalis in order to discharge its obligations under this Section shall be at Customer's expense.

7.5. **Remedies.** The Parties acknowledge and agree that a breach of this Agreement by either Party will cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Agreement by Recipient, and in addition to any other remedies available to it, to a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

7.6. **Duration.** The obligations set forth in this Section 7 shall apply during the term of this Agreement and for a period of one (1) year thereafter.

8. **OWNERSHIP RIGHTS**

8.1. **Services.** Logicalis retains all right, title, and interest in the Services and in all improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. The Services contain proprietary and confidential information that is protected by applicable intellectual property and other laws, and Customer agrees not to disclose such information to any third party without Logicalis' prior permission.

8.2. **Content.** Logicalis acknowledges and agrees that all Content, including copyrights, trademarks, database rights and other intellectual property contained in such Content are owned or licensed by Customer. Customer grants Logicalis a license to store, record, transmit and display the Content solely to perform Logicalis' obligations under this Agreement.

9. **REPRESENTATIONS AND WARRANTIES**

9.1. **By Each Party.** Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter into this Agreement; (b) it is in compliance, and will continue to comply during the term of this Agreement, with all laws and regulations governing its possession and use of Customer Data and its provision or use of the Services; and c) it has the requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement.

9.2. **By Customer.** Customer represents and warrants to Logicalis that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Logicalis the rights that Customer purports to grant in this Agreement; and (b) Logicalis' possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party.

9.3. **By Logicalis.** Logicalis represents and warrants to Customer that:

9.3.1. <u>Industry Standards</u>. The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Logicalis according to the generally accepted standards of the industry to which the Services pertain. In the event the Services provided by Logicalis are not in conformance with this warranty Logicalis will take the steps necessary to correct the deficiency at no charge to Customer. This is Customer's sole and exclusive remedy for breach of this warranty.

9.3.2. <u>Service Levels</u>. The Services will meet the technical standards of performance or service levels, if any, set forth in the applicable SOW. Customer's sole and exclusive remedy for any failure to meet the applicable technical standards of performance or service levels shall be as specified in the applicable SOW.

9.3.3. <u>Staffing Placement Services:</u> Logicalis warrants that any consultant provided to Customer will have the qualifications and hold the certifications represented to Customer by Logicalis. Logicalis makes no other representations or warranties with respect to the staffing placement Services to be provided.

9.4. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. IN ADDITION, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF YOUR SECURITY, FOR WHICH LOGICALIS CANNOT BE HELD LIABLE.

10. INDEMNIFICATION

10.1. **Indemnification by Logicalis.** Logicalis will indemnify and hold harmless Customer and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Customer or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Logicalis of any of it representations and warranties under Section 9; (b) real property damage or personal injury, including death, directly caused by or sustained in connection with Logicalis' performance under this Agreement; (c) any breach by Logicalis of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Logicalis; and (d) any breach by Logicalis of its obligations under Section 5.

10.2.   Indemnification by Customer. Customer will indemnify, defend and hold harmless Logicalis and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Logicalis or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of it representations and warranties under Section 9; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; and (d) any breach by Customer of its obligations under Section 6.1 and Section 6.3.

10.3.   Procedure. A Party having a right to indemnification under this Agreement ("Indemnified Party") may, at its election, require the Party having an obligation to indemnify under this Agreement ("Indemnifying Party") to defend any claim, suit or proceeding that is subject to indemnification under this Section 10, provided that the Indemnifying Party is notified promptly in writing of such claim and is given authority, information and assistance to handle such claim and to defend any suit or proceeding. In such a case, the Indemnifying Party will pay all damages and costs awarded against the Indemnified Party, including the amount that the Indemnified Party would consent to pay under any settlement involving such claims. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is available under this Section 10. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any such claim, suit or proceeding. In no event shall the Indemnifying Party make any settlement that involves a remedy relating to admission of liability by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the Indemnified Party's written consent.

11.   LIMITATION OF LIABILITY

11.1.   Limit on Types of Damages Recoverable. EXCEPT FOR ANY CLAIM ARISING OUT OF A BREACH OF SECTION 7 OR ANY CLAIM FOR INDEMNIFICATION UNDER SECTION 10, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.

11.2.   Limit on the Amount of Damages Recoverable. LOGICALIS' LIABILITY TO CUSTOMER AND ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSOR AND ASSIGNS FOR DAMAGES OF ANY KIND, REGARDLESS OF THE FORM OF ACTION OR THEORY OF LIABILITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE LIMITED IN ALL CASES TO DAMAGES WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CUSTOMER TO LOGICALIS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SOW.

11.3.   Non-Managed Systems. Logicalis shall not be liable for any damages caused by services, systems, software, or other components that neither it nor its employees, agents or subcontractors furnish or manage pursuant to this Agreement.

12. TERM AND TERMINATION

12.1. Term

12.1.1. <u>This Agreement</u>. This Agreement shall commence on the Effective Date and remain in effect until terminated by either party as provided in this Section 12.

12.1.2. <u>Statement of Work</u>. The term of each SOW shall be as specified in that Statement of Work.

12.2. Termination for Convenience.
Either Party may terminate this Agreement for convenience at any time upon written notice to the other Party. If there are any pending Statements of Work, termination shall be effective upon the expiration or termination of the last Statement of Work. If there are no pending Statements of Work, termination shall be effective upon receipt of the written notice.

12.3. Termination For Breach.
Either Party may terminate this Agreement or any individual SOW in accordance with subsection 12.3.1 (in certain circumstances where an opportunity to cure must be provided) or subsection 12.3.2 (in certain circumstances where an opportunity to cure is not available):

12.3.1. <u>Cure</u>. If the other Party breaches any material provision of this Agreement or any SOW and fails to cure such breach within thirty (30) days of receipt of notice of such breach from the non-breaching Party ("Cure Period"). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of the breach and how the breach can be cured within the Cure Period. If the breaching Party fails to cure the breach within the Cure Period, then termination shall be effective on the thirty-first (31st) day following receipt of such notice by the breaching Party.

12.3.2. <u>No Opportunity to Cure</u>. If: (a) the other Party breaches any representation or warranty, whether in this Agreement or any Statement of Work; (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.

12.4. Termination for Financial Insecurity.
Either Party may terminate this Agreement and all SOWs upon written notice if the other Party ceases conducting business in the normal course, admits its insolvency, makes an assignment for the benefit of creditors, or becomes the subject of any judicial or administrative proceedings in bankruptcy, receivership or reorganization. Termination shall be effective upon receipt of the written notice.

12.5. Final Payment.
Within thirty (30) days after any termination of this Agreement or individual SOW, Logicalis will submit to Customer a final itemized invoice for all fees and expense due and owing by Customer. Customer shall pay the invoice in accordance with Section 4.3.

12.6. Effects of Termination.
Upon termination of this Agreement or an individual SOW and payment by Customer of the final invoice described in Section 12.5, Logicalis will, to the extent applicable:

(a) Exercise reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Customer;

(b) Disclose to Customer all relevant information regarding the equipment, software and third-party vendor services required to perform the Services;

(c) Make reasonable efforts to effect a transfer or assignment of relevant licenses or agreement(s) for software or any third-party services utilized exclusively to provide the Services to Customer;

(d) At Customer's option, either provide Customer with a full backup of the Customer Data in NetBackup format (including the encryption keys necessary to decrypt such media if such media is encrypted) or destroy such full backup; and

(e) Expire all NetBackup catalog references to Customer Data.

Any additional transition services requested by Customer shall be provided by Logicalis on a time and material basis.

12.7. **Survival.** Those provisions that by their nature should survive termination of this Agreement, will survive termination. Without limiting the generality of the foregoing statement, Sections 8 (Ownership Rights); 9 (Representations and Warranties); 10 (Indemnification); and 11 (Limitation of Liability) shall survive any termination of this Agreement.

13. MISCELLANEOUS

13.1. **Force Majeure.** Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, acts of God, insurrection, war, riots or failure of transportation or a general and/or city-wide power failure. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

13.2. **Export Compliance.** Each Party shall be responsible for compliance with all applicable export and re-export control laws and regulations, including, without limitation, the Export Administration Regulations (15 CFR Parts 730-774) maintained by the United States Department of Commerce and that it is not relying on the other Party for any advice or counseling on such export control requirements. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Logicalis.

13.3. **Insurance.** Each party will obtain and maintain in effect during the term of this Agreement, a policy or policies of comprehensive general liability, workers' compensation, professional liability and other types of insurance each deems necessary to protect their individual interests from such claims, liabilities, or damages which may arise out of the performance of their respective obligations under this Agreement. For the avoidance of doubt, each party is solely responsible for insuring its personal property wherever located and each party acknowledges that neither of them will insure the property of the other while it is in transit or in the possession of the opposite party.

13.4. **Waiver.** The failure of either Party to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this Agreement or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any rights and the obligations of the Party with respect to such future performance and shall continue in full force and effect.

13.5. **Agreement Binding On Successors.** This Agreement shall inure to the benefit of and be binding upon the successors and permitted assignees of the respective Parties.

13.6. Governing Law and Jurisdiction.   The validity, construction and interpretation of this Agreement and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in the Eastern District of Michigan or state courts located in Oakland County, Michigan and the parties hereby irrevocably consent to the personal jurisdiction and venue therein.

13.7. Relationship of Parties.   The Parties hereto are independent contractors and this Agreement shall not create or imply an agency relationship between the Parties. Pursuant to and during the term of this Agreement, Logicalis may, from time to time, request that the Customer execute such instruments and documents appointing Logicalis an agent of the Customer for a specific limited purpose. An officer of Customer shall, in a timely manner, execute and deliver to Logicalis or the third party requiring the same, such instruments designating Logicalis as Customer's agent to the extent required by Logicalis to manage and perform to Services provided by it under this Agreement.

13.8. Subcontractors.   Logicalis may engage subcontractors to perform services under any SOW. Logicalis shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.

13.9. Severability. In the event that any of the provisions of this Agreement are declared or held by a court of competent jurisdiction invalid, illegal or unenforceable, the unaffected portions of this Agreement shall be unimpaired and remain in full force and effect. In the event of such a ruling, the Parties shall negotiate in good faith a substitute for the provision declared invalid, illegal or unenforceable.

13.10. Notices.   Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in writing and shall be sufficiently given if hand delivered or sent by first-class certified or overnight delivery mail, postage prepaid:

If to Logicalis:

> Logicalis, Inc.
> Attn: General Counsel
> 34505 W. Twelve Mile Road, Suite 210
> Farmington Hills, MI 48331

With a copy to:

> Logicalis, Inc.
> Attn: Executive Vice President, Managed Services
> 9277 Centre Point Drive, Suite 400
> Attn: Contracts Department
> West Chester, OH 45069

If to Customer, then to the person executing the SOW on behalf of Customer at the address indicated on the signature page of the SOW.

A Party may change its address for notices by sending a change of address notice using this notice procedure.

13.11. Errors. Neither Party shall be held accountable nor incur any additional costs due to discrepancies, errors, omissions in documentation or other information supplied by the other Party.

13.12. Captions. The descriptive headings of the Sections and subsections of this Agreement are for convenience only, do not constitute a part of this Agreement, and do not affect this Agreement's construction or interpretation.

13.13. Amendments. No waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed by the Party to be charged.

13.14. Publicity. Nothing contained in this Agreement shall be interpreted so as to permit Logicalis or Customer to publicize its business relationship with the other Party or the nature of the Services performed for Customer, without the other Party's prior written consent.

13.15. No Solicitation of Employees. Each Party agrees that during the term of this Agreement, and for a period of one year after the termination or expiration of this Agreement, it will not solicit, without the other Party's prior written consent, any person employed then by the other Party if such person became known to the soliciting Party through the relationship established pursuant to this Agreement. This prohibition will not apply to job opportunities posted on recruiting websites or in other publications in which one Party seeks to find candidates for open positions (absent direct solicitation and/or recruitment).

13.16. No Third Party Beneficiaries. This Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

13.17. Entire Agreement. This Agreement, including all SOWs and all schedules, attachments and/or other documents attached hereto or incorporated by reference constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty or agreement of the other Party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than those expressly stated in this Agreement.