

## MASTER SERVICES AGREEMENT

These Master Services Agreement Terms & Conditions (“**Terms & Conditions**”) are incorporated into and made a part of the one or more Statement of Work (“**SOW**”) signed by Ignyte Platform Inc. dba Ignyte Assurance Platform (“**Ignyte**”), a Delaware company, and the Customer identified in the SOW, (“**Customer**”). Customer and Ignyte 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 Services Agreement and all present and future SOWs, attachments, schedules, appendices, addenda, and written amendments attached hereto or to or otherwise made a part of this Agreement.

“**Confidential Information**” means any non-public and/or proprietary information furnished by Discloser to Recipient (both defined herein) during the term of this Agreement, including, without limitation, pricing, processes, financial data, statistics, software, systems or equipment, programs, research, strategic plans, operating data, or related information of each of the parties and/or its or their customers and suppliers, concerning business activities of said entities. This Agreement is the Confidential Information of Ignyte. 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 to Ignyte in connection with its performance of the Services.

“**Customer Components**” means the hardware, software, other products, and other content including, without limitation, those specified in a SOW as being provided by Customer.

“**Customer Data**” means all data and information about Customer’s business(es), customer’s employees, operations, facilities, products, markets, assets or finances that Ignyte obtains, creates, generates, collects or processes in connection with its performance of Services.

“**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.

“**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 Ignyte, or any person or entity acting for Ignyte under this Agreement, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, the Customer Components and Content, without infringing the ownership or intellectual property rights of the providers, Ignyte, or owners of such Customer Components and Content.

“**Services**” means the information technology services to be delivered by Ignyte under this Agreement as specified in any SOW and does not include Third Party Services.

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

“**Third Party Services**” means the information technology services to be delivered by a third party under this Agreement as specified in any SOW.

“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, and shall apply only with respect to such SOW.

## 2. GENERAL

- 2.1. **Agreement Structure.** This Agreement contains general contractual terms for all Services. The specific Services, 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.
- 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.** Subject to the terms and conditions in this Agreement and the applicable SOW, Ignyte shall perform the Services described in the applicable SOW.
- 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 any technical matter, data, information, operating supplies, and computer system(s), as reasonably requested by Ignyte. 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, or requests an expansion in the scope of the Services, then Customer shall present its request for such alterations of its network to Ignyte 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 Ignyte all charges as set forth in the applicable SOW and provide via payment link.

## 5. CUSTOMER RESPONSIBILITIES

- 5.1. **Acceptable Use.** Customer is responsible for all acts and omissions of its Users in connection with receipt or use of the Services. Customer agrees, and will ensure its Users agree, to act responsibly and not use the Ignyte 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. Ignyte has the right to investigate potential violations of this Section. If Ignyte determines that a breach has occurred, then Ignyte 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, Ignyte will promptly notify Customer by any reasonably practical means under the circumstances, such as, without limitation, by telephone or e-mail. Customer will promptly notify Ignyte 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 Ignyte, and Customer will provide all relevant information relating to such event or circumstance to Ignyte at Ignyte's request. Ignyte 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.

- 5.2. 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; and (d) the selection, management and use of any public and private keys and digital certificates it may use with the Services.
- 5.3. Required Consents.** Customer shall obtain and keep in effect all Required Consents necessary for Ignyte to perform all of its obligations as set forth in this Agreement. Upon request, Customer will provide to Ignyte reasonable evidence of any Required Consent. Ignyte will be relieved of its obligations to the extent that they are affected by Customer's failure to promptly obtain and provide to Ignyte any Required Consents. Ignyte will adhere to reasonable terms and conditions pertaining to Content as notified in writing to Ignyte. Ignyte agrees not to remove or alter any copyright or other proprietary notice on or in any Content without Customer's consent.
- 5.4. Software.** Customer authorizes Ignyte to determine whether or not software specified in any SOW is currently in place, operational and maintained and supported at the level required for Ignyte to perform the Services required under this Agreement. Customer grants Ignyte, at no charge, the right to use any Customer-owned or developed application software systems required by Ignyte to provide the Services specified in any SOW to Customer.
- 5.5. Customer Components.** Customer is solely responsible for the selection, operation and maintenance of all Customer Components.
- 5.6. 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) 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 Ignyte's ability to provide the Services.
- 5.7. Encryption.** Customer shall encrypt at the application level Confidential Information, Customer Data, and all data that is considered sensitive data or 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).

## 6. CONFIDENTIAL INFORMATION

- 6.1. 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.

- 6.2. Exceptions.** The obligations set forth in Section 6.1 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 Discloser and without any breach of this Agreement.
- 6.3. 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.
- 6.4. 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. Ignyte 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, however, Ignyte may keep a copy in accordance with its record retention policy. Ignyte will protect any such retained copies as Confidential Information pursuant to the terms of this Agreement for as long as such information is retained.
- 6.5. 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 seek to obtain a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.
- 6.6. Duration.** Except for any retained copies of Confidential Information, which shall remain protected for as long the Receiving Party possesses it, the obligations set forth in this Section 6 shall apply during the term of this Agreement and for a period of one (1) year thereafter.

## 7. OWNERSHIP RIGHTS

- 7.1. Services.** Ignyte 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 Ignyte's prior permission.
- 7.2. Content.** Ignyte 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 Ignyte a non-transferable, non-sublicensable, limited license to store, record, transmit and display the Content solely to perform Ignyte's obligations under this Agreement.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1. 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.

**8.2. By Customer.** Customer represents and warrants to Ignyte that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Ignyte the rights that Customer purports to grant in this Agreement; and (b) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

**8.3. By Ignyte.** Ignyte represents and warrants to Customer that:

8.3.1. **Industry Standards.** The Services shall be performed in a good, workmanlike, professional and conscientious manner by experienced and qualified employees of Ignyte according to the generally accepted standards of the industry to which the Services pertain. For Services containing a deliverable, such Services will be deemed accepted by Customer if not rejected in a reasonably detailed writing within five (5) days of submission to Customer, or as otherwise identified in the applicable Statement of Work. In the event the Services provided by Ignyte are not in conformance with this warranty, Customer must provide written notice to Ignyte within five (5) days after the performance of the Services and such notice will specify in reasonable detail the nature of the breach. Upon confirmation of the breach, Ignyte will use commercially reasonable efforts to 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.

8.3.2. **Service Levels.** 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.

Neither Party shall make any representations or warranties on behalf of the other Party to any third party. Each Party shall be solely responsible and liable for any representations or warranties that such Party makes to any third party regarding the other Party, the Hosted Environment, the Services, or any other aspect of this Agreement. Ignyte makes no representations or warranties with regard to the Third Party Services and passes through to Customer the terms and conditions for the services delivered by a third party.

**8.4. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT OR REPRESENTATIVE OF IGNYTE IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF IGNYTE. CUSTOMER IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. 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 SECURITY, FOR WHICH IGNYTE CANNOT BE HELD LIABLE.

## 9. INDEMNIFICATION

**9.1. Indemnification by Ignyte.** Subject to the terms and conditions in this Agreement, Ignyte will, at its cost, (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Ignyte of any of its representations and warranties under Section 8.1; (b) real property damage or personal injury, including death, solely and directly caused by Ignyte' employees or contractors in the course of performance under this Agreement; (c) any breach by Ignyte of Section 6 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Ignyte; and (d) any allegation that

Customer's receipt of the Services under this Agreement infringes any of such third party's copyrights, or any such third party's patents, trademark, service marks, or other intellectual property or proprietary rights, or misappropriates any of such third party's trade secrets (each an "IP Claim"); and (ii) Ignyte shall pay any final award of damages (or settlement amount approved by Ignyte in writing and) paid to the third party that brought any such Claim.

- 9.2. Indemnification by Customer.** Customer will indemnify, defend and hold harmless Ignyte 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 Ignyte or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of its representations and warranties under Section 8; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of its obligations under Section 5.1, Section 5.3, or Section 5.7; (d) any breach by Customer of Section 12.2; and (e) any claim that Ignyte' possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.
- 9.3. Procedure.** A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. 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 sought under this Section 9. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial and defense of any Claim. In no event shall either Party make any settlement of a Claim, including without limitation, 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 other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.
- 9.4. Mitigation for IP Claims.** At any time after notice of an IP Claim, or if Ignyte believes there is a basis for an IP Claim, Ignyte has the right, at Ignyte' sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Ignyte believes would not be subject to the IP Claim. If Ignyte deems (a) or (b) not feasible or not commercially reasonable, Ignyte has the right to terminate the applicable SOW. In the event of any such termination, Ignyte will refund to Customer the unused portion of any amounts paid by Customer for the affected Service. In addition, upon any such termination, Customer shall cease the use of the applicable Service.
- 9.5. Limitations as to IP Claims.** Notwithstanding anything to the contrary, Ignyte shall have no obligations or liability under Section 9.1 if the IP Claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Ignyte, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to comply with Ignyte' direction to cease any activity that in Ignyte' reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Ignyte Service, or that does not reference a feature of function of a Ignyte Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Ignyte. Notwithstanding anything to the contrary, Customer shall have no obligations or liability under Section 9.2 if the claim is based upon, arises out of, or is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service developed, provided, and/or recommended by Ignyte, (b) use of the applicable Service as set forth in this Agreement, or (c) any claim for which Ignyte does not promptly tender control of the defense thereof to Customer.

- 9.6. Sole Remedy.** THE TERMS IN THIS SECTION 9 (INDEMNIFICATION) SHALL BE EACH PARTY'S SOLE AND EXCLUSIVE REMEDY AND SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 9, NEITHER PARTY SHALL HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY THE OTHER PARTY FOR THIRD PARTY CLAIMS.

## 10. LIMITATION OF LIABILITY

- 10.1. Limit on Types of Damages Recoverable.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL (AND IGNYTE' SUPPLIERS AND LICENSORS WILL NOT) BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY CLAIMING THROUGH A PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST OR DAMAGED DATA, INVESTMENTS MADE, AND LOSS OF BUSINESS OPPORTUNITY OR INTERRUPTION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY SOW FAILS OF ITS ESSENTIAL PURPOSE.
- 10.2. Limit on the Amount of Damages Recoverable.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY'S TOTAL AGGREGATE LIABILITY UNDER OR RELATING TO THIS AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, FEES PAID BY CUSTOMER TO IGNYTE DURING THE TWELVE (12) 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.
- 10.3. Non-Managed Systems.** Ignyte 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. Ignyte shall not be liable for the actions or inactions of Customer's employees, agents or contractors.
- 10.4. Applicability.** The terms in this Section 10 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 10 shall apply to not limit liability for such acts and omissions but will apply for all other acts and omissions.
- 10.5. Allocation of Risk.** EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 10 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CUSTOMER FOR THE SERVICES WOULD HAVE BEEN HIGHER.

## 11. TERM AND TERMINATION

- 11.1. 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.

- 11.2. 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 7 (Ownership Rights); 8 (Representations and Warranties); 9 (Indemnification); and 10 (Limitation of Liability) shall survive any termination of this Agreement.

## 12. MISCELLANEOUS

- 12.1. 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.
- 12.2. Export Compliance.** Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Ignyte.
- 12.3. 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, cyber liability insurance, 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.
- 12.4. 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.
- 12.5. 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. Any such successor of the Company will be deemed substituted for the Company under the terms of this Agreement for all purposes. For this purpose, "successor" means any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires all or substantially all of the assets or business of the Company.
- 12.6. 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 Ohio, excluding its conflict of laws principles.
- 12.7. 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, Ignyte may, from time to time, request that the Customer execute such instruments and documents appointing Ignyte an agent of the Customer for a specific limited purpose. An officer of Customer shall, in a timely manner, execute and deliver to Ignyte or the third party requiring the same, such instruments designating Ignyte as Customer's agent to the extent required by Ignyte to manage and perform to Services provided by it under this Agreement.

- 12.8. Subcontractors.** Ignyte may engage subcontractors to perform services under any SOW. Except as provided herein, Ignyte shall be fully responsible for the acts of all subcontractors to the same extent it is responsible for the acts of its own employees.
- 12.9. 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.
- 12.10. 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 at the addresses indicated on the first page of this Agreement.
- A Party may change its address for notices by sending a change of address notice using this notice procedure.
- 12.11. Intentionally Omitted.**
- 12.12. Active Negotiations.** Each Party acknowledges that this Agreement has been the subject of active and complete negotiations, and that this Agreement should not be construed in favor of or against any Party by reason of the extent to which any Party or its professional advisors participated in the preparation of this Agreement.
- 12.13. 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.
- 12.14. 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.
- 12.15. Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original but all of which together will constitute one agreement.
- 12.16. Publicity.** Ignyte may not use the name of Customer in promotional materials, or for any other purpose than providing the Services hereunder.
- 12.17. No Solicitation of Employees.** Customer 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, hire, or attempt to hire, without Ignyte's prior written consent, any person employed then by Ignyte if such person became known to the soliciting Party through the relationship established pursuant to this Agreement.
- 12.18. No Third Party Beneficiaries.** Except as provided in Section 9 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.
- 12.19. 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 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.