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# IT 4 BUSINESS LIMITED - TERMS OF SERVICE

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## PARTIES

(1) **YOU**, the person or entity which is being provided with the services of the Consultant, the details of which are set out in the signature block of this contract (the “**Client**”); and

(2) **IT 4 BUSINESS LIMITED**, a limited liability company registered in England and Wales, the registered address of which is at 6<sup>th</sup> Floor 25 Farringdon Street, London, EC4A 4AB (the “**Consultant**”).

## AGREED TERMS

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

#### 1.1 Definitions:

**Business of the Client:** the Client's main business purpose and activities.

**Capacity:** as agent, consultant, director, employee, owner, partner, shareholder or in any other capacity.

**Commencement Date:** means the date that the Client executes this agreement by confirming their engagement of the Consultant to provide the Services, whether acceptance takes place by accepting a Proposal through Xero (or other similar software) or by email.

**Client Property:** all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Client or Group Company or its or their customers and business contacts, and any equipment, keys, hardware or software provided for the Consultant's use by the Client during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Consultant on the Client or the Consultant's computer systems or other electronic equipment during the Engagement.

**Confidential Information:** information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, products, affairs and finances of the Client or any Group Company for the time being confidential to the

Client or any Group Company and trade secrets including, without limitation, technical data and know-how relating to the Business of the Client or of any Group Company or any of its or their suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that the Consultant creates, develops, receives or obtains in connection with his Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Engagement:** the engagement of the Consultant by the Client on the terms of this agreement.

**Group Company:** the Client, its subsidiaries or holding companies from time to time and any subsidiary of any holding company from time to time.

**Holding company:** has the meaning given in [Clause 1.7](#).

**Intellectual Property Rights:** patents, utility models, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software,

database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Invention:** any invention, idea, discovery, development, improvement or innovation made by the Consultant in the provision of the Services, whether or not patentable or capable of registration, and whether or not recorded in any medium.

**Proposal:** means the Consultant's proposal form and/or quotation sheet describing the Services.

**Services:** the services provided by the Consultant in a consultancy capacity for the Client or any Group Company and any other services offered by the Consultant to the Client or any Group Company from time to time.

**Subsidiary:** has the meaning given in Clause 1.7.

**Substitute:** a substitute engaged by the Consultant under the terms of Clause 3.2.

**Termination Date:** the date of termination of this agreement, howsoever arising.

**UK Data Protection Legislation:** any data protection legislation

from time to time in force in the UK including the Data Protection Act 2018 or any successor legislation.

**1.2** The headings in this agreement are inserted for convenience only and shall not affect its construction.

**1.3** A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

**1.4** Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

**1.5** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

**1.6** The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

**1.7** A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) as a nominee.

## 2. TERM OF ENGAGEMENT

2.1 The Client shall engage the Consultant and the Consultant shall provide the Services on the terms of this agreement, and those contained in the Proposal, referenced hereto and hereby incorporated by reference.

2.2 The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated:

(a) as provided by the terms of this agreement; or

(b) by either party giving to the other not less than 4 weeks' prior written notice.

## 3. DUTIES AND OBLIGATIONS

3.1 During the Engagement the Consultant shall provide the Services with all due care, skill and ability.

3.2 The Consultant may, with the prior written approval of the Client and subject to the following provision/s, appoint a suitably qualified and skilled Substitute to perform the Services on his behalf, provided that the Substitute shall be required to enter into direct undertakings with the Client, including with regard to confidentiality. If the Client accepts the Substitute, the Consultant shall continue to invoice the Client in accordance with Clause 4 and shall be responsible for the remuneration of the Substitute. For the avoidance of doubt, the Consultant will continue to be subject to all duties and obligations under this agreement for the duration of the appointment of the Substitute.

3.3 Unless he has been specifically authorised to do so by the Client in writing, the Consultant shall not:

- (a) have any authority to incur any expenditure in the name of or for the account of the Client; or
- (b) hold himself out as having authority to bind the Client

save and except to the extent expressly agreed by the parties, or as set out in this agreement.

3.4 The Consultant may use a third party to perform any functions which are incidental to the provision of the Services.

3.5 Each party shall:

- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**); and
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

#### 4. FEES

- 4.1 The Client shall pay the Consultant the fees set out in the Proposal. Where the fees are not set out in the Proposal, a fee of £450 per half day, exclusive of VAT shall apply. A half day shall constitute 3.5 hours work. On the last working day of each month during the Engagement the Consultant shall submit to the Client an invoice which gives details of the half days the Consultant (or any Substitute) has worked during the month, the Services provided and the amount of the fee payable (plus VAT, if applicable) for the Services during that month.
- 4.2 In consideration for the provision of the Services during the Engagement, the Client shall pay each invoice submitted by the Consultant in accordance with Clause 4.1 within 14 days of receipt.
- 4.3 The Client shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Client or any Group Company at any time.
- 4.4 Where the Consultant provides, directly or indirectly, any additional Services to the Client or any Group Company from time to time which are Services other than consultancy Services, the Consultant shall advise the Client of the fees and costs involved for such Services prior to the provision of such Services.
- 4.5 The Consultant shall invoice the Client upon completion of the Services provided that the Consultant shall have the right to invoice the Client fortnightly where the Services are provided for a period of two (2) weeks or more.
- 4.6 Any expenses or disbursements incurred by the Consultant in connection with the Services shall be paid in by the Client in advance.
- 4.7 The Consultant shall have the right to require the Client to provide a deposit in connection with his provision of the Services in advance. Such deposit shall be non-refundable unless the Client provides fourteen (14) days' prior notice that they do not require the Services.
- 4.8 The Consultant shall have the right to delay the commencement of the provision of the Services in the event of late or non-payment of any advanced deposit, disbursements or expenses required by the Consultant. In such event, the Consultant shall not incur any liability whatsoever to the Client as a result of his failure to commence the Services or to commence the Services on any particular or agreed date.

4.9 If the Client fails to make a payment due to the Consultant under this agreement by the due date, then, without limiting any of the Consultant's remedies under this agreement, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment.

4.10 Interest under Clause 4.9 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

## 5. EXPENSES

5.1 The Client shall reimburse all reasonable expenses properly and necessarily incurred by the Consultant in the course of the Engagement, subject to production of receipts or other appropriate evidence of payment.

5.2 If the Consultant is required to travel abroad in the course of the Engagement he shall be responsible for any necessary insurances and immigration requirements.

## 6. ADDITIONAL SERVICES

6.1 The Consultant may provide additional services from time to time, including, without limitation:

- (a) remote management and monitoring, IT helpdesk and 2-level enhanced cyber security;
- (b) endpoint security, including but not limited to, antivirus software;
- (c) software agent application and operating system management tools; and
- (d) anti-ransomware technology.

6.2 Additional services may be provided by the Consultant in conjunction with third parties. The terms on which such additional services shall be provided are set out in the appendix to this agreement. In the agreement contained in the appendix (the "**Appendix Agreement**") the parties to the agreement shall be substituted so that the parties to the Appendix Agreement are the Consultant and the Client and the Appendix Agreement shall apply to the parties *mutatis mutandis*.

6.3 The Client hereby acknowledges and agrees that some of the additional services may be provided by third party service providers engaged by the Consultant, and that the outcome of such services are outside the control of the Consultant. Accordingly, the Client agrees to hold harmless the Consultant from and against any and all claims, liabilities, losses (including secondary losses), costs and expenses suffered or incurred by the Client arising out of or in connection with:

- (a) any late, defective or non-performance of the additional services provided by the engaged third party, and
- (b) any inability of the Consultant to remedy on short notice any such default of that third party.

## 7. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

7.1 The Consultant acknowledges that in the course of the Engagement he will have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this Clause 7.

7.2 The Consultant shall not (except in the proper course of his duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use his best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Client or required by law; or
- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Client Property in his possession to the Client.

7.4 Where the Consultant develops any Intellectual Property Rights in connection with the Engagement, unless otherwise agreed between the parties in writing, the Consultant shall retain ownership of such Intellectual Property Rights and shall only grant a revocable, perpetual, worldwide licence to the Client to use such Intellectual Property Rights in connection with the Client's business.

7.5 Where the parties have agreed that the Consultant shall transfer any Intellectual Property Rights to the Client, the Consultant shall retain ownership of such Intellectual Property Rights until it has received payment in full from the Client in respect of such Intellectual Property Rights and any outstanding and overdue amounts from the Client in respect of any Services provided or to be provided by the Consultant to the Client.

7.6 The Client shall keep confidential and not disclose to any third party without the prior written consent of the Consultant, any and all materials and information of a confidential nature belonging to the Consultant, save and except to the extent required by law.

## 8. DATA PROTECTION

8.1 The Consultant and the Client acknowledge that for the purposes of the Data Protection Legislation, the Client and the Consultant are separate data controllers.

8.2 The Consultant may be a joint controller with other third parties (including third party service providers) from time to time.

8.3 The Consultant and the Client will comply with the Data Protection Legislation.

## 9. TERMINATION

9.1 Notwithstanding the provisions of Clause 2.2, either party may terminate the Engagement with immediate effect with no liability to make any further payment to the other (other than in respect of amounts accrued before the Termination Date) if at any time the other party:

- (a) commits any gross misconduct affecting the other;
- (b) commits any serious or repeated breach or non-observance of any of the provisions of this agreement;
- (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed); or
- (d) is declared bankrupt, becomes insolvent or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984 or otherwise enters into any insolvency or administration process.

9.2 The Client may terminate the Engagement by providing one month's notice to the Consultant provided that in such an event the Client shall pay for any:

- (a) disbursements and/or expenses incurred by the Consultant;
- (b) Services provided at the point of termination on a pro rata basis; and
- (c) Services agreed to be provided by the Consultant but unperformed at the date of termination at a rate equal to 50% (fifty per cent.) of the rate at which they would have been charged had the agreement not been terminated.

## **10. INDEMNITY**

10.1 The Client shall hold harmless and indemnify the Consultant against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Consultant arising out of or in connection with any breach of this agreement by the Client and the enforcement of this agreement.

## **11. STATUS**

11.1 The relationship of the Consultant to the Client will be that of independent contractor and nothing in this agreement shall render him an employee, worker, agent or partner of the Client and the Consultant shall not hold himself out as such.

11.2 This agreement constitutes a contract for the provision of services and not a contract of employment and accordingly the Consultant shall be fully responsible for any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where the recovery is not prohibited by law.

## **12. NOTICES**

12.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be delivered by hand, by pre-paid first-class post, email or other next working day delivery service at its registered office or its principal place of business (if a company) or (in the case of the Consultant) his last known address.

12.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by email, at 9:00am on the first Business Day after transmission.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **13. ENTIRE AGREEMENT**

13.1 This agreement, together with the Proposal, constitutes the entire agreement between the parties and any Group Company and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

13.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

#### **14. VARIATION**

14.1 No variation of this agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **15. CONFLICT**

15.1 This agreement may be appended or accompanied by any proposal documents, including the Proposal, which shall form part of this agreement.

15.2 Where there is any conflict between the Proposal and this agreement, the Proposal document shall prevail.

#### **16. COUNTERPARTS**

16.1 This agreement may be executed in any number of counterparts, each of which, when executed, shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

#### **17. THIRD PARTY RIGHTS**

17.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

17.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

#### **18. NON-RESTRICTION OF CONSULTANT ACTIVITIES**

18.1 Nothing in this agreement shall prevent the Consultant from being engaged, concerned or having any financial interest in any Capacity in any other business, trade, profession or occupation during the Engagement.

## **19. GOVERNING LAW**

19.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

## **20. NO SET-OFF**

20.1 The Client may not withhold, reduce or set-off against any sums due and owing to the Consultant under or in connection with this agreement any other amounts owed to the Client, including any claims, liabilities or losses, if any.

## **21. SEVERENCE**

21.1 If any provision or part-provision of this agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, that provision or part-provision shall be modified to the minimum extent necessary to resolve such defect. If and to the extent that such provision or part-provision is not capable of being resolved by modification, it shall be deleted, and such deletion shall not affect the validity of the remainder of this agreement.

## **20. JURISDICTION**

20.1 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).



## APPENDIX

### ADDITIONAL SERVICES

License and Service Terms Updated May 9, 2018

**BY ACCEPTING THIS MSP LICENSE AND SERVICES AGREEMENT (THIS "AGREEMENT") OR USING THE SERVICES, THE ENTITY IDENTIFIED AS THE CUSTOMER IN THE APPLICABLE PURCHASE ORDER FORM OR MSP PORTAL ("MSP") AGREES TO THESE TERMS AND CONDITIONS WITH CONTINUUM MANAGED SERVICES HOLDCO, LLC ("CONTINUUM"). YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND MSP TO THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT.**

#### MSP License and Services Agreement

This MSP License and Services Agreement is made effective as of the date in which MSP first accepts its terms by clicking on the "accept" button accompanying this Agreement (the "Effective Date").

##### 1) RECITALS

- a) Continuum provides a SaaS-based managed services platform that managed services providers use to efficiently backup, monitor, troubleshoot, and maintain desktops, servers (physical and virtual), mobile devices and other endpoints for End-Clients.
- b) MSP desires to use one or more products or services of the Continuum Offering (as defined below) for the purpose of use by the MSP and / or providing such products or services to MSP's End-Clients.
- c) Subject to the terms and conditions in this Agreement, Continuum agrees to license to MSP the products and services of the Continuum Offering described in this Agreement and for which MSP agrees to pay, and MSP hereby accepts such license from Continuum.

IN CONSIDERATION OF THE MUTUAL PROMISES BELOW AND OTHER GOOD AND VALUABLE CONSIDERATION THE SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

##### 2) DEFINITIONS

- a) "Agreement" shall mean, collectively, this MSP License and Services Agreement, including all exhibits, schedules and documents referenced herein, and any Additional Terms (as defined below in Section 10).
- b) "Confidential Information" shall have that definition ascribed to it in Section 12, below.
- c) "Continuum Offering" shall mean those services ordered by MSP by executing Continuum's Purchase Order Form or via the MSP Portal and accepted by Continuum, and which may include the Software and/or Help Desk.
- d) "End-Client" or "End-Client site" shall mean any Entity for whom MSP provides one or more elements of the Continuum Offering.
- e) "Entity" shall mean any natural person, corporation, general partnership, limited partnership, limited liability company or partnership, proprietorship, other business organization, trust, union, association or governmental authority.
- f) "Help Desk" shall mean a service providing information and support to MSP and End-Clients.
- g) "MSP Portal" shall mean Continuum's support portals, including by not limited to the ITsupport24/7 Web Portal that allows MSP to order, add or otherwise manipulate the elements of the Continuum Offering, as well as view and monitor the systems of its End-Clients.
- h) "Purchase Order Form" means Continuum's form of ordering document signed by both parties pursuant to which MSP may order certain products and services of the Continuum Offering.
- i) "Software" or "Software Agents" shall mean Continuum's proprietary, hosted, remote IT infrastructure monitoring and management platform, as that platform may be modified by Continuum from time-to-time, which enables MSPs to manage desktops, servers, mobile devices, applications and other network devices at End-Client sites via the Internet.
- j) "Supported Devices" shall mean those hardware and software components supported by the Continuum Offering.

**3)SERVICES**

a) *License Grant.* Subject to MSP's compliance with the terms and conditions of this Agreement, Continuum hereby grants to MSP a non-exclusive, non-assignable, worldwide right to (1) access and use the applicable service in the Continuum Offering expressly described in the Purchase Order Form or MSP Portal during the applicable subscription term for such service, and (2) sublicense to End-Clients the non-exclusive, non-assignable right to install and use the Software Agent on Supported Devices; in each of (1) and (2) solely to provide IT infrastructure management services to End-Clients. Except to the extent expressly authorized or permitted in this Agreement or by applicable law without the possibility of contractual waiver, MSP and its End-Clients shall not: (i) copy, modify, transfer or distribute the Continuum Offering, (ii) reverse assemble, reverse engineer, reverse compile, attempt to discover the source code or underlying structure of, or otherwise translate any portion of the Continuum Offering, (iii) sublicense, sell, resell, rent, lease, time share, assign the license conveyed to MSP herein, or otherwise commercially exploit or make the Continuum Offering available to any third party, (iv) access or use the Continuum Offering (or any part thereof) to build a competitive product or service, (v) use the Continuum Offering in violation of any applicable law or regulation, or (vi) use the Continuum Offering beyond the scope of the rights granted herein. Neither MSP nor its End-Clients shall use the Continuum Offering to: (vii) send, upload or otherwise transmit any Data (as defined below) that is unlawful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable; (viii) upload or otherwise transmit, display or distribute any Data that infringes any trademark, trade secret, copyright or other proprietary or intellectual property rights of any person; (ix) upload or otherwise transmit any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (x) interfere with or disrupt the Continuum Offering or networks connected to the Continuum Offering; or (xi) violate any applicable law or regulation. MSP shall be responsible for any breach of this section by any of its End-Clients.

b) *Evaluation Period.* Commencing on the date on which MSP receives the log-in information to the MSP Portal and continuing for fourteen (14) days thereafter (the "Evaluation Period"), a limited version of the Software shall be provided to MSP at no charge solely for MSP to use for evaluation purposes. MSP acknowledges and understands that the Evaluation Period is not determined by, or calculated based on, the date on which any Software Agents are installed on to any Supported Device. Evaluations of the Help Desk will be provided for a term of thirty (30) days. The Evaluation Period shall not be extended without the express written consent of Continuum.

i) *Limitations.* During the Evaluation Period, the MSP may evaluate the Software only on its own internal network and on up to five (5) End-Client sites; the Help Desk is limited to the MSPs own internal network or for one End-Client site, on up to twenty-five (25) seats.

ii) *Termination of Evaluation Period.* If, at any time during the Evaluation Period, MSP desires to terminate its evaluation of the Software, MSP shall remove all of the Software previously installed on any Supported Devices. Upon such removal, MSP's evaluation of the Software shall automatically terminate, and Continuum shall have the right to immediately terminate the Evaluation Period.

iii) *No warranties.* During the Evaluation Period, notwithstanding anything to the contrary in this Agreement, Continuum provides the Continuum Offering on an "as-is" basis. The warranties set forth in Sections 7(a), (b) and (c) shall not apply during the Evaluation Period.

c) *Services.* If the MSP desires to continue its use of the Software or Help Desk following the expiration of the Evaluation Period, then it shall be required to complete and acknowledge acceptance of Continuum's Purchase Order Form provided by Continuum. If MSP fails to remove all of the Software Agents previously installed on any Supported Devices prior to the expiration of the Evaluation Period then MSP shall automatically be deemed to have purchased a full Software subscription, at Continuum's full Software subscription prices and at a cumulative minimum monthly fee of two hundred and fifty dollars (\$250) per month, terminable solely in accordance with Section 6 below. For the avoidance of doubt, agents installed during the Evaluation Period need not be re-deployed during any full Software subscription term, and shall continue unabated unless otherwise modified by MSP.

d) *Billing.* MSP shall be responsible for the payment of fees for the Software and services provided to MSP after the expiration of the Evaluation Period as set forth in Section 5 below.

e) *MSP Portal; Additional Services.* MSP will be required to register with Continuum via the MSP Portal in order to initially order the services of the Continuum Offering and to manage its subscriptions to the Continuum Offering and such initial order and changes will become effective generally within twenty-four (24) hours after such changes have been made by MSP. In connection with registration, MSP will provide and maintain in the MSP Portal true, accurate and current information. MSP is responsible for maintaining the confidentiality of its passwords and accounts and is fully responsible for any and all activities

that occur under its passwords and accounts. MSP agrees to promptly notify Continuum of any unauthorized use of its password or account or any other breach of security. Continuum will not be liable for any loss or damage arising from MSP's failure to comply with this Section.

f) *MSP System Access*. Continuum will provide MSP with third party software or other implementation code to enable the provision of certain services which involve the access by Continuum of End-Client servers and desktops. Continuum will provide reasonable support in connection with the integration of the software on one or more EndClient servers. MSP hereby grants Continuum a royalty free, worldwide, fully paid up, nontransferable, sublicenseable license and right to access End-Client servers and (a) copy, use, modify, distribute, display and disclose any Data (as defined below) belonging to End-Client in connection with providing the Continuum Offering to MSP and End-Clients, (b) copy, modify and use Data in connection with internal operations and functions, including, but not limited to, operational analytics and reporting, internal financial reporting and analysis, audit functions and archival purposes and (c) copy, use, modify, distribute, display and disclose Data on an aggregate and anonymized basis. MSP represents and warrants that it has all the rights necessary to grant the rights herein to Continuum and will indemnify, defend and hold harmless Continuum for any liability arising from any third party claims in connection with the breach of this Section. For the avoidance of doubt, Continuum shall own data and information relating to the operation and/or performance of the Continuum Offering.

g) *Branding/Relationship*. MSP may elect to re-brand the Continuum Offering under MSP's brand name and provide Continuum Offering-based services under MSP's label. In any event, the parties agree that (i) MSP, and not Continuum, shall determine the prices and terms upon which MSP's services are offered to End-Clients; and (ii) MSP is an independent purchaser and reseller of the Continuum Offering, and shall not be considered an agent or legal representative of Continuum for any purpose, and neither MSP nor any director, officer, agent or employee of MSP, shall be, or be considered, an employee or agent of Continuum for any purpose whatsoever. Further, MSP is not granted and shall not exercise any right or authority to assume or create any obligation or responsibility on behalf of or in the name of Continuum, including without limitation contractual obligations and obligations based on warranties or guarantees. Except as specifically provided in this Agreement, the operations of MSP under this Agreement are subject to the sole control and management of MSP. Subject to the terms and conditions of this Agreement, Continuum hereby grants MSP a limited, non-exclusive, non-transferable, non-sublicenseable right and license to display and use Continuum's trademarks identified by Continuum solely to promote and make available the Continuum Offering to End Clients. Any such use and all goodwill from such use will inure to the benefit of Continuum and will be subject to Continuum's trademark usage guidelines provided to MSP from time to time. Continuum reserves all rights, value and goodwill associated with its trademarks. Continuum may revoke such license if at any time the use of Continuum's trademarks by MSP is not consistent with Continuum's quality control standards to the extent that Continuum notifies MSP of such use and MSP fails to cure such use within thirty (30) days so that it is consistent with Continuum's quality control standards.

h) *Feedback*. MSP may from time to time provide suggestions, comments for enhancements or functionality or other feedback ("Feedback") to Continuum with respect to the Continuum Offering. Continuum shall have full discretion to determine whether or not to proceed with the development of the requested enhancements, new features or functionality. MSP hereby grants Continuum a royalty-free, fully paid up, worldwide, transferable, sublicenseable, irrevocable, perpetual license to (a) copy, distribute, transmit, display, perform, and create derivative works of the Feedback and (b) use the Feedback and/or any subject matter thereof, including without limitation, the right to develop, manufacture, have manufactured, market, promote, sell, have sold, offer for sale, have offered for sale, import, have imported, rent, provide and/or lease products or services which practice or embody, or are configured for use in practicing, the Feedback and/or any subject matter of the Feedback.

#### **4) RESTRICTIONS.**

a) *Non-Circumvention*. During the term of this Agreement, except as expressly provided in this Agreement, Continuum shall not intentionally communicate with any of MSP's then current End-Client about the Continuum Offering so long as Continuum is made aware of the identity of MSP's End-Clients. The parties agree that MSP and/or MSP's designated agent shall be the primary point of contact with each End-Client. The foregoing does not, however, prohibit Continuum from communicating with any End-Client in connection with Continuum's performance of its Help Desk or as requested by MSP.

b) *Non-Solicitation*. Continuum agrees that during the term of this Agreement, Continuum shall refrain from directly soliciting MSP's End-Clients for the provision of the Continuum Offering. The parties acknowledge and agree that general solicitations and advertisements not directed specifically at MSP's End-Clients, or business discussions initiated by MSP's End-Clients, shall not be a breach of this section.

c) *Nondisclosure*. Continuum further agrees not to disclose any information to any third party that identifies EndClient or End-Client's use of the Continuum Offering without the express written consent of MSP, except in the event of a financing of Continuum, sale of all or substantially all of the assets or business of Continuum or if Continuum is required to do so by law or in the good faith belief that such action is necessary to comply with a legal obligation or a government request or other urgent

circumstances to protect safety or protect against legal liability. Notwithstanding the forgoing, Continuum shall be permitted to collect and report information about the use of the Continuum Offering by MSPs and End-Clients for Continuum's research and marketing purposes.

#### **5) FEES; PAYMENT.**

a) *Fee Schedule.* The initial schedule of fees for each service comprising the Continuum Offering shall be as indicated in the applicable Continuum Purchase Order Form or on the MSP Portal. Following the expiration of the initial term of the Purchase Order Form and each renewal term thereafter, Continuum reserves the right to modify the prices applicable to such Purchase Order Form at any time. MSP's continued use of the Continuum Offering following notice of any Fee increase shall constitute MSP's acceptance of such increase(s).

b) *Invoices and Monthly Minimum.* Invoices are sent out after the end of each calendar month. All invoices shall be paid in full within thirty (30) days after the date of such invoice. MSP shall pay Continuum the greater of (i) the minimum amount set forth herein or in the Purchase Order Form, if applicable, and (ii) MSP's actual usage of the Continuum Offering. All reported numbers for purposes of billing, payments, the determination of MSP's actual usage, fees and general delivery reporting are based on measurements within the Continuum Offering .

c) *Late Payments.* Late payments shall be subject to interest at the lesser of 1.5% per month or the highest interest rate permitted by law (in each case, calculated as of the date when such payment is due). MSP agrees to pay for all reasonable costs Continuum incurs to collect any past due amounts which costs may include reasonable attorneys' fees. Continuum may suspend, cancel or otherwise terminate MSPs access to the MSP Portal and / or Continuum Offering if MSP fails to pay its Fees within 30 days of the due date.

d) *Pro-Rata.* MSP shall be charged when the Continuum Offering is deployed on a Supported Device. For certain Continuum Offerings, the charge will be on a prorated basis based on the number of days in the applicable calendar month that such Continuum Offering is deployed and in use. In addition, Continuum will cease charging MSP Fees for the Continuum Offering when uninstalled from a Supported Device and Fees will be calculated on a prorated basis based on the number of days in the applicable calendar month that such Continuum Offering was deployed and in use. MSP acknowledges and agrees that it shall notify Continuum immediately in the event that MSP cannot uninstall or de-activate an agent for any reason. MSP hereby agrees to pay for any fees it incurs for any agent appearing in MSP's Portal, or where MSP failed to timely notify Continuum of MSP's inability to uninstall or deactivate such agent. Notwithstanding the foregoing, MSP acknowledges and agrees that even if it uninstalls agents it shall still be obligated to pay Continuum any minimum fee set forth in the Purchase Order Form, if applicable. Accordingly, MSP shall pay Continuum the minimum fee set forth in the Purchase Order Form even if its actual usage is less than the contracted amount described in the Purchase Order Form.

#### **6) TERM; TERMINATION.**

a) *Term.* The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in effect until otherwise terminated in accordance with Section 6(b) below. The initial term of each Purchase Order Form, if applicable, shall be set forth in the Purchase Order Form. Thereafter, the Agreement will automatically renew for additional terms of one (1) year each unless either party provides written notice of non-renewal at least sixty (60) days prior to the end of the then-current term of such Purchase Order Form. If no Purchase Order Form exists or if Purchase Order Form is dated prior to January 1, 2018, this Agreement will continue indefinitely until terminated in accordance with this Section 6.

b) *Termination.* Either party may terminate this Agreement or any Purchase Order Form (i) immediately in the event of a material breach of this Agreement or any such Purchase Order Form by the other party that is not cured within thirty (30) days of written notice from the other party, provided that notwithstanding the foregoing, Continuum may terminate this Agreement immediately without notice in the event of MSP' breach of Section 3(a); or (ii) immediately if the other party ceases doing business or is the subject of a voluntary or involuntary bankruptcy, insolvency or similar proceeding, that is not dismissed within sixty (60) days of filing; or (iii) by Continuum for any reason upon providing MSP with written notice of termination no less than six (6) months prior to the effective date of termination. Termination of a Purchase Order Form shall not be deemed a termination of this Agreement. Termination of this Agreement shall, however, terminate all outstanding Purchase Order Forms. Either Party may also terminate this Agreement upon no less than thirty (30) days' prior written notice to the other Party for any reason, if at such time there are no outstanding Purchase Order Forms then currently in effect. MSP may also terminate this Agreement prior to the expiration of the Evaluation Period pursuant to Section 3 above. Except as expressly provided herein, termination of this Agreement by either party will be a nonexclusive remedy for breach and will be without prejudice to any other right or remedy of such party

c) *Removal of Sites & Supported Devices.* Except as otherwise stated in this Agreement and subject to MSP's ongoing obligation to pay Continuum any minimum fees set forth in the Purchase Order Form, if applicable, MSP may remove End-Client sites and / or Supported Devices at any time by removing the relevant Software or by notifying Continuum in writing.

The removal of Supported Devices shall impact the affected Supported Devices only, and such activity shall not be deemed to be a termination, or notice of termination, of this Agreement or any subscription to a Continuum Offering provided under this Agreement. MSP shall be responsible for Fees accrued prior to the removal of Supported Devices, and partial days shall be billed as full days for billing purposes.

d) *No Liability for Termination.* Continuum shall not be liable to MSP or any third party for any compensation, reimbursement, losses, expenses, costs or damages arising from or related to, directly or indirectly, the termination of this Agreement for any reason. This waiver of liability shall include, but shall not be limited to, the loss of actual or anticipated profits, anticipated or actual sales, and of expenditures, investments, or commitments in connection with MSP's or any third party's goodwill or business.

e) *Effect of Termination.* Upon termination of this Agreement for any reason, all rights granted hereunder and all obligations of Continuum to provide the Continuum Offering shall immediately terminate. Each party will not be liable to the other party or any third party for termination of this Agreement. Notwithstanding the foregoing, Sections 2, 5, 6, 8, 9, 11 and 12 shall survive termination of this Agreement.

#### **7) WARRANTIES; LIMITATIONS.**

a) *Warranties.* Continuum represents and warrants that (i) it has the authority to enter into this Agreement and to be bound by the terms contained herein, (ii) it holds all right, title and interest in and to the Continuum Offering and/or is an authorized licensor of all elements of the Continuum Offering, and has the authority to grant the licenses described in this Agreement, (iii) services provided by Continuum will be performed in a professional and workmanlike manner.

b) *Security.* At all times Continuum shall use reasonable care, which in all cases shall be no less than industry- standard care, to ensure the security of data and information exchanged or transmitted by MSP using the Continuum Offering ("Data"). However, the parties acknowledge and agree that the use of any communications technology, including the Continuum Offering, entails certain unavoidable risks, and that no technology is 100% foolproof or immune from attack. Accordingly, MSP shall hold Continuum harmless from and against any claim, cause of action, loss, expense, cost, fine or fee arising from or related to the unintentional or accidental disclosure, misuse, or erasure of the Data, or any breach of security impacting or affecting the Continuum Offering or the Data, provided that at the time of such occurrence, Continuum was in material compliance with the terms of this Section 7(b).

c) *Availability.* The Continuum Offering relies upon the availability of data centers. Although Continuum uses reasonable efforts to provide maximum data center availability, there is a possibility that the data center may become inaccessible or unavailable as a result of code upgrades, operating system instability, power failures, internet outages or other causes beyond Continuum's control, and Continuum shall be held harmless for and against any such event(s).

**d) Remedies. This Section 7 describes all warranties provided to MSP by Continuum. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE WARRANTIES SET FORTH IN THIS SECTION 7 ARE THE SOLE AND EXCLUSIVE WARRANTIES PROVIDED TO MSP AND ARE IN LIEU OF ALL OTHER WARRANTIES WHICH ARE HEREBY DISCLAIMED BY CONTINUUM, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, CONTINUUM PROVIDES THE CONTINUUM OFFERING ON AN "AS-IS" BASIS. CONTINUUM MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE CONTINUUM OFFERING WILL MEET MSP'S REQUIREMENTS OR THAT OPERATION OR USE OF THE CONTINUUM OFFERING WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT THERE IS ANY PARTICULAR MARKET FOR THE CONTINUUM OFFERING, OR THAT MSP'S ACTIVITIES HEREUNDER WILL BE PROFITABLE. WITHOUT LIMITING THE FOREGOING, CONTINUUM DOES NOT WARRANT OR GUARANTEE THAT ANY OR ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIATED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES. CONTINUUM MAKES NO WARRANTY THAT ALL SECURITY RISKS OR THREATS WILL BE DETECTED, REPORTED OR REMEDIATED BY USE OF THE CONTINUUM OFFERING, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD PARTIES, OR THAT FALSE POSITIVES WILL NOT BE FOUND. The parties acknowledge and agree that Continuum's sole liability for any breach of any warranty described herein and MSP's exclusive remedy is expressly limited to a prorated credit of the Fee paid to Continuum during the time that such warranty was not fulfilled. In no event shall the maximum credit issued to MSP exceed the monthly cost of service.**

#### **8) LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL CONTINUUM BE LIABLE TO MSP FOR (i) ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS AND SERVICES, LOSS OF PROFITS,



LOSS OF USE, LOSS OF OR CORRUPTION TO DATA, BUSINESS INTERRUPTION, LOSS OF PRODUCTION, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL, OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME; (ii) ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES WHETHER ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT, EVEN IF CONTINUUM HAS BEEN ADVISED SUCH DAMAGES MIGHT OCCUR OR (iii) ANY CLAIMS OR DAMAGES IN EXCESS OF THE FEES MSP PAID CONTINUUM FOR THE PORTION OF THE CONTINUUM OFFERING GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM. NOTHING IN THIS AGREEMENT SHALL OPERATE SO AS TO EXCLUDE OR LIMIT CONTINUUM'S LIABILITY FOR DEATH OR PERSONAL INJURY ARISING OUT OF NEGLIGENCE OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED OR LIMITED BY LAW. THE LIMITATION IN THIS SECTION 8 APPLIES TO ALL CAUSES OF ACTION AND OBLIGATIONS IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, ANY CLAIM OF BREACH OF CONTRACT OR NEGLIGENCE OR ANY OTHER LEGAL THEORY.

**9) INTELLECTUAL PROPERTY; OWNERSHIP.**

At all times, Continuum is and shall remain the sole and exclusive owner and licensor of the Continuum Offering and any and all trademarks, copyrights, patents, works of authorship, property rights and goodwill relating to the Continuum Offering (collectively, "Continuum's Intellectual Property Rights"). MSP shall not take any action, directly or indirectly, that injures or diminishes, or may tend to injure or diminish, any of Continuum's Intellectual Property Rights, nor shall MSP encourage any third person to do so. MSP agrees to inform Continuum immediately of any infringement of any of Continuum's intellectual Property Rights of which the MSP may become aware. Continuum reserves all rights not expressly granted to MSP herein.

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

MSP acknowledges and agrees that the fees paid to Continuum under this Agreement may include licensing fees for certain third party licenses ("Third Party Licenses") which are passed through to, and paid by, MSP. Continuum may attempt to negotiate bulk licensing fees for the Third Party Licenses; however, MSP understands that Continuum does not govern or control such fees. The Third Party Licenses may be subject to certain minimum licensing fees, as well as increases in the licensing fees from time to time without prior notice to Continuum, and, notwithstanding anything to the contrary in this Agreement, such increases (if any) may be passed through to, and paid by, MSP when incurred by Continuum.

Each service and software included in the Continuum Offering ordered by MSP may be subject to additional license terms, conditions and restrictions set forth in the online terms and conditions which MSP will be required to review and accept via the MSP Portal and / or directly with a third party End User License Agreement prior to using such additional software and/or services within the Continuum Offering ordered by MSP ("Additional Terms"). If MSP does not accept any applicable Additional Terms, MSP may not use such ordered service and/or software. MSP further agrees that it must accept any applicable Additional Terms prior to using any applicable services and/or software within the Continuum Offering ordered by MSP via the MSP Portal and accepted by Continuum. All licenses of such additional services and/or software within the Continuum Offering are granted subject to MSP's payment of applicable license fees and compliance with all applicable terms of this Agreement, including Additional Terms. Continuum reserves the right to modify Additional Terms at any time. MSP shall be responsible for any additional costs or fees associated with newer versions of such software and additional licenses. MSP acknowledges that Continuum is not liable for the performance of any third party services used in connection with the Continuum Offering, or any actions taken by third parties related to or arising from MSP's use of the Continuum Offering.

**11) CONFIDENTIALITY.**

a) *Defined.* As used herein, "Confidential Information" means, any and all information, regardless of whether it is in tangible form, disclosed by a party (the "Discloser") to the other party (the "Recipient"). All Confidential Information shall be either marked as confidential or proprietary, be identified in writing as confidential or proprietary within thirty (30) days of disclosure, or be reasonably understood by the Receiving Party as the Disclosing Party's Confidential Information at the time of disclosure; provided that Confidential Information shall include a Discloser's financial information (including pricing), technical information, internal procedures, algorithms, data, designs, and know-how, business information including operations, planning, marketing interests, and products regardless of whether such information is so marked or identified. Notwithstanding the foregoing, the terms of this Agreement and all discussions leading up to this Agreement shall, at all times, be Confidential Information of Continuum.

b) *Exclusions.* Confidential Information shall not include information that is (i) in the public domain through no fault of the Recipient, (ii) lawfully received by the Recipient from a third party having rights to the information without restriction, and

without notice of any restriction against its further disclosure, (iii) independently developed by the Recipient without any breach of the terms of this Agreement or any other law, rule or regulation binding on the Recipient, (iv) disclosed with the prior written consent of the disclosing party ("Discloser"), or (v) information that is required to be disclosed by law or by regulatory or judicial process; provided, however, that If Confidential Information is required to be produced by law or by regulatory or judicial process, the Recipient must immediately notify the Discloser of that obligation (unless otherwise prevented from doing so by such law or process), and provide the Recipient with sufficient time to seek a protective order or other appropriate relief.

c) *Use*. The Recipient may use the Confidential Information only to exercise rights or perform obligations under this Agreement. Confidential Information may not be disclosed to any third party without the written consent of the Discloser. Each party agrees that the other may disclose Confidential Information it receives to its subsidiaries, affiliates or agents who have a need to know such information and with whom the Recipient has a non-disclosure agreement that is at least as restrictive as the terms contained herein. The Recipient must provide at least the same care to avoid disclosure in breach of this Agreement or unauthorized use of the Confidential Information as it provides to its own Confidential Information, which in all cases shall be reasonable care. The Recipient shall not reproduce any of the other party's Confidential Information except as necessary to fulfill the Recipient's duties and obligations under this Agreement.

d) *Return*. Confidential Information remains the property of the Discloser. No rights, licenses, trademarks, inventions, copyrights, patents, or other intellectual property rights in or to the Confidential Information are implied or granted under this Agreement, except to use the Confidential Information in accordance with this Agreement. Upon the termination of this Agreement or at the Discloser's request, all written, recorded, graphical, or other tangible Confidential Information belonging to the Discloser, including copies of such information, must either be returned to the Discloser or destroyed by the Recipient. If such information is destroyed by the Recipient, then at the request of the Discloser, the Recipient will furnish a certificate, signed by an officer of the Recipient, certifying that any Confidential Information has been destroyed.

## **12) MISCELLANEOUS.**

a) *Force Majeure*. Except for the payment of money, neither party shall be liable for any delay or failure to perform hereunder due to floods, riots, strikes, freight embargoes, acts of God, acts of war or hostilities of any nature, laws or regulations of any government (whether foreign or domestic, federal, state, county or municipal) or any other similar cause beyond the reasonable control of the party affected. A party relying on such an event to excuse its performance hereunder shall, as soon as reasonably possible, notify the other party in writing of the nature of that event and the prospects for that party's future performance and shall thereafter, while that event continues, respond promptly and fully in writing to all reasonable requests for information from the other party relating to that event and those prospects.

b) *Waivers; Amendments*. The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. No amendment or waiver of any provision of this Agreement shall be effective unless it is in writing, and it is signed or otherwise electronically accepted by the party against which it is sought to be enforced.

c) *Severability*. If any provision of this Agreement is held to be void, the remaining provisions shall remain valid and shall be construed in such a manner as to achieve their original purposes in full compliance with the applicable laws and regulations.

d) *Merger*. This Agreement along with the Purchase Order Form (if applicable), the Dedicated Tech Services Agreement (if applicable), and the Business Associate Agreement (if applicable) is the sole and complete statement of the obligations and rights of the parties as to all matters covered by this Agreement, and supersedes all previous or contemporaneous understandings, agreements, negotiations and proposals relating thereto. The parties agree that no promises or inducements have been offered or made to MSP (other than those expressly stated in this Agreement) to induce MSP to enter into this Agreement and to be bound by the terms contained herein.

e) *Assignment*. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not be assigned by MSP without the prior written consent of Continuum, which Continuum may withhold, unless it determines, in its sole discretion (and so notifies MSP in writing), that (i) MSP's assignee is qualified, from a financial and technological perspective, to be bound by the terms of this Agreement, and that (ii) such assignment does not cause Continuum to incur any conflict of interest. Continuum may assign this Agreement without prior notice to MSP.

f) *Captions*. Captions contained in this Agreement are inserted only as a matter of convenience or for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any provision of this Agreement.

g) *Attorneys' Fees*. If Continuum commences any action or proceeding against MSP to enforce the terms of this Agreement, Continuum shall be entitled to an award against MSP for all reasonable attorneys' fees, costs and expenses incurred by

Continuum in connection with such action or proceeding (including any mediation or arbitration, and at all levels of trial and appeal), and in connection with the enforcement of any judgment or order thereby obtained.

h) *Governing Law*. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, USA. The parties agree that the sole and exclusive venue for any and all issues, claims, causes of action or matters arising from or related to this Agreement shall be in the federal or state courts located in Suffolk County, Massachusetts.

i) *Notices*. Whenever under the provisions of this Agreement, notice is required or permitted to be given to MSP, Continuum may deliver such notice(s) to MSP by electronic mail ("email") or by posting to the MSP Portal. Email notice shall be deemed given to MSP when such notice is sent to the last known email address provided to Continuum by MSP, regardless of whether such email address is functional or not. Notwithstanding any provision to the contrary, however, email notice to Continuum shall be effective only if Continuum subsequently acknowledges receipt of MSP's email via a return email to MSP in which MSP's original email is either referenced or reproduced. Notice provided in any method other than by email shall be deemed given either when delivered personally, or by courier, or by facsimile machine with printed transmittal confirmation sheet; or, three (3) days after mailing, postage prepaid by registered or certified mail, return receipt requested, addressed to the party for whom it is intended with copies provided to the address set forth above or to such other addresses as a party shall hereafter designate in writing to another party. Subject to the terms described herein, the parties acknowledge and agree that electronic mail ("email") and/or digital copies or electronic transmissions satisfy all "writing" requirements under this Agreement.

j) *Usage in Trade*. It is understood and agreed that no usage of trade or other regular practice or method of dealing between the parties to this Agreement shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

k) *Amendment*. No amendment, waiver, or modification (collectively, an "Amendment") of this Agreement or any provision of this Agreement shall be valid unless in writing, stating with specificity the particular amendment or modification to be made, and duly executed or otherwise electronically accepted by the parties. Upon mutual acceptance of an Amendment, the terms of such Amendment shall be deemed incorporated into this Agreement. To the extent that an Amendment conflicts with the terms of this Agreement, the Amendment shall control.

l) *Independent Contractor Relationship*. The parties are independent contractors to one another, and neither party is an employee, servant, agent, partner or joint venture of the other party. Neither party shall make any contracts, warranties or representations or assume or create any obligations, express or implied, in the other party's name or on its behalf,

m) *Business Day*. If any time period set forth in this Agreement expires on a day other than a business day in Boston, Massachusetts, i.e., on a Saturday, Sunday or legal holiday, such period shall be extended to and through the next succeeding business day in Boston, Massachusetts.

n) *Drafter*. This Agreement shall be construed and interpreted fairly, in accordance with the plain meaning of its terms, and there shall be no presumption or inference against the party drafting this Agreement in construing or interpreting the provisions hereof.

o) *No Third Party Beneficiaries*. The parties are entering into this Agreement solely for themselves and no other party, and nothing contained in this Agreement, whether expressed or implied shall be deemed to confer any rights or remedies (including, without limitation, third party beneficiary rights) upon, or obligate either Continuum or MSP to, any third person or entity.



**Continuum Data Processing Agreement (MSP) Updated April 30, 2018**

**CONTINUUM DATA PROCESSING AGREEMENT (MSP) ADDENDUM**

BY ACCEPTING THIS DATA PROCESSING AGREEMENT (THE "DPA"), THE ENTITY IDENTIFIED AS THE "CUSTOMER" OR "MSP" (FOR THE PURPOSES OF THIS DPA, THE "MSP") IN THE APPLICABLE MSP AGREEMENT WITH CONTINUUM MANAGED SERVICES HOLDCO LLC ("CONTINUUM"), AGREES TO BE BOUND BY THESE ADDITIONAL TERMS AND CONDITIONS WHICH SHALL HEREBY BE EXPLICITLY INCORPORATED BY REFERENCE INTO THE MSP AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND MSP TO THIS DPA. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS DPA.

**THIS DPA SHALL BE EFFECTIVE AS OF THE DATE ACCEPTED.**

**RECITALS**

a) Continuum and MSP have entered into an MSP Agreement together with one or more connected statements of work, purchase orders, contracts and/or agreements (collectively the "**MSP Agreement**").

b) Pursuant to the MSP Agreement, Continuum has agreed to provide certain SaaS based managed offerings as described in the MSP Agreement to MSP which enable MSP to provide certain offerings to its End-Clients (defined below) (the "**Offerings**").

c) The Parties wish to define their respective data protection obligations relating to Continuum's provision of Offerings to MSP in this DPA.

**IN CONSIDERATION OF THE MUTUAL PROMISES BELOW AND OTHER GOOD AND VALUABLE CONSIDERATION THE SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED:**

**1) Definitions**

a. In this DPA, the following terms shall have the following meanings:

**"controller", "processor", "data subject", "personal data", "processing" (and "process") "special categories of personal data"** and shall have the meanings given in Applicable Data Protection Law;

**"Applicable Data Protection Law"** shall mean: (i) prior to 25 May 2018, the EU Data Protection Directive (Directive 95/46/EC); and (ii) on and after 25 May 2018, the EU General Data Protection Regulation (Regulation 2016/679);

**"End-Clients"** means business end-clients and/or customers to whom the MSP provides managed services using the support of the Offerings;

**"Model Clauses"** means the Standard Contractual Clauses for Processors as approved by the European Commission and available at [https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outsideeu/model-contracts-transfer-personal-data-third-countries\\_en](https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outsideeu/model-contracts-transfer-personal-data-third-countries_en);

**"Privacy Shield"** means the EU-US Privacy Shield framework as administered by the U.S. Department of Commerce; and

**"Privacy Shield Principles"** means the Privacy Shield Framework Principles (as supplemented by the Supplemental Principles) contained in Annex II to the European Commission Decision of 12 July 2016 pursuant to the Directive, details of which can be found at [www.privacyshield.gov/eu-us-framework](http://www.privacyshield.gov/eu-us-framework).

**2) Relationship of the parties**

a. MSP (as a controller, and where applicable, a processor acting on behalf of its End-Clients) appoints Continuum as its processor to process the personal data that is the subject of the MSP Agreement and as more particularly described in Annex A (the "**MSP Data**") for the purposes of and in connection with delivering to MSP the Offerings described in the MSP Agreement (the "**Permitted Purpose**").

b. Continuum will also process certain personal data (such as names, contact details e.g. email addresses and correspondence and details about use of the Offerings) of MSP's employees, contractors, agents and other representatives

("CRM Data") in connection with Continuum's Offerings, including for example for: (i) correspondence between Continuum and MSP; (ii) invoicing, billing and other business inquiries related to the MSP Agreement or any Offerings; (iii) information on Continuum's performance of the Offerings (including metadata and IP addresses in relation to use of the Offerings); and (iv) general management of the MSP Agreement, the Offerings and the relationship between the parties including marketing. The Parties acknowledge that Continuum shall be an independent controller of the CRM Data. MSP agrees to provide such employees and other representatives, within a reasonable time but at the latest within one month of this DPA, with notice of Continuum's processing of the CRM Data and to refer them to Continuum's Privacy Policy <https://www.continuum.net/privacy-policy> for information about such processing.

c. Each Party agrees to comply with the obligations that apply to it under Applicable Data Protection Law with regards to its processing of the MSP Data.

### **3)International transfers**

a. Where Applicable Data Protection Law applies to MSP Data ("EU Data"), Continuum shall not process or transfer the EU Data outside of the European Economic Area ("EEA") unless it has taken such measures as are necessary to ensure the transfer is in compliance with Applicable Data Protection Law. Such measures may include (without limitation) transferring EU Data out of the EEA on the basis of (i) Continuum's Privacy Shield certification; and/or (ii) appropriate Model Clauses, which MSP shall (upon any request from Continuum) sign on behalf of itself and/or any End-Client(s) as appropriate, or procure their signature on behalf of any EndClients; and/or (iii) on the basis of Continuum having implemented Binding Corporate Rules approved by competent EU data protection authorities.

b. Continuum has certified its compliance with the Privacy Shield. The scope of its compliance with the Privacy Shield Principles is stated in its Privacy Shield Policy at <https://www.continuum.net/privacy-policy>. To learn more about the Privacy Shield program, and to view Continuum's certification listing, please visit <https://www.privacyshield.gov>.

### **4)Confidentiality of processing**

Continuum shall ensure that any person it authorizes to process the MSP Data (an "Authorized Person") shall protect the MSP Data in accordance with Continuum's confidentiality obligations under the MSP Agreement.

### **5)Security**

Continuum shall implement technical and organisational measures as set out in Annex B to protect the MSP Data: (i) from accidental or unlawful destruction, and (ii) loss, alteration, unauthorised disclosure of, or access to the MSP Data (a "Security Incident").

### **6)Subcontracting**

MSP consents to Continuum engaging third party subprocessors to process the MSP Data for the Permitted Purpose provided that: (i) Continuum maintains an up-to-date list of its subprocessors, which it shall update with details of any change in subprocessors and notify MSP of the same at least 10 days' prior to any such change; (ii) Continuum imposes data protection terms on any subprocessor it appoints that require it to protect the MSP Data to the standard required by Applicable Data Protection Law; and (iii) Continuum remains liable for any breach of this DPA that is caused by an act, error or omission of its subprocessor. MSP may object to Continuum's appointment or replacement of a subprocessor prior to its appointment or replacement, provided such objection is reasonable and founded on demonstrable grounds relating to the subprocessors' inability to comply with Applicable Data Protection Law.

### **7)Cooperation and data subjects' rights**

Continuum shall provide reasonable and timely assistance to MSP (at MSP's expense) to enable MSP and/or an End-Client to respond to: (i) any request from a data subject to exercise any of its rights under Applicable Data Protection Law (including its rights of access, correction, objection, erasure and data portability, as applicable); and (ii) any other correspondence, enquiry or complaint received from a data subject, regulator or other third party in connection with the processing of the MSP Data. In the event that any such valid request, correspondence, enquiry or complaint is made directly to Continuum, Continuum shall inform MSP providing full details of the same in a timely fashion.

### **8) Data protection impact assessment**

If Continuum believes or becomes aware that its processing of the MSP Data is likely to result in a high risk to the data protection rights and freedoms of data subjects, it shall inform MSP and provide reasonable cooperation to MSP (at MSP's expense) in connection with any data protection impact assessment that may be required under Applicable Data Protection Law.

### **9)Security incidents**

If it becomes aware of a confirmed Security Incident, Continuum shall inform MSP without undue delay and shall provide reasonable information and cooperation to MSP so that MSP (and/or End-Client) can fulfil any data breach reporting

obligations it may have under (and in accordance with the timescales required by) Applicable Data Protection Law. Continuum shall further take such reasonable necessary measures and actions to remedy or mitigate the effects of the Security Incident and shall keep MSP (and/or End-Client) up to date of all material developments in connection with the Security Incident.

**10) Deletion or return of MSP Data**

Upon termination or expiry of the MSP Agreement, Continuum shall (at MSP's election) destroy or return to MSP all MSP Data in its possession or control provided that MSP agrees to pay any reasonable costs associated with retrieval where retrieval by MSP is otherwise possible. This requirement shall not apply to the extent that Continuum is required by applicable law to retain some or all of the MSP Data, or to MSP Data it has archived on back-up systems, which Continuum shall securely isolate and protect from any further processing until deletion is possible except to the extent required by such law.

**11) Audit**

MSP acknowledges that Continuum is regularly audited against SOC-2 standards by independent third-party auditors. Upon request, Continuum shall supply a summary copy of its audit report(s) to MSP, which reports shall be subject to the confidentiality provisions of MSP Agreement.

**12) Miscellaneous**

- a. Headings in this DPA are for convenience of reference only and will not constitute a part of or otherwise affect the meaning or interpretation of this DPA.
- b. Annexes to this DPA will be deemed to be an integral part of this DPA to the same extent as if they had been set forth verbatim herein.
- c. To the extent there is any conflict or inconsistency between this DPA and any other terms of the MSP Agreement, or contracts between the parties relating to its subject matter, the terms of this DPA shall prevail.
- d. The provisions of this DPA are severable. If any phrase, DPA or provision is invalid or unenforceable in whole or in part, such invalidity or unenforceability will affect only such phrase, DPA or provision, and the rest of this DPA will remain in full force and effect.
- e. The provisions of this DPA will endure to the benefit of and will be binding upon the Parties and their respective successors and assigns.
- f. This DPA shall be governed by and construed in all respects in accordance with the governing law and jurisdiction as prescribed in the MSP Agreement.

**Annex A**

This Annex A forms part of the DPA and describes the MSP Data that Continuum will process on behalf of MSP.

**Type(s) of Personal Data processed:**

Depending on the Offering chosen by the MSP, Continuum will process on behalf of MSP the following personal data:

- First Name
- Last Name
- Mailing Address
- Business Phone
- Mobile Phone
- Computer Name
- Computer IP address
- Computer MAC address
- Computer access password

Computer name, IP address, and Mac address are collected via the Continuum Offering installed and run on partner customer end-points.

In addition, Continuum may process, under the terms of the MSP Agreement, personal data which the End-Client elects to host with or upload to the MSP in connection with the MSP's provision of services to its End-Client.

**Special Categories of Personal Data (if applicable):**

**Not applicable****Categories of Data Subjects:**

Continuum will process on behalf of MSP personal data of the following categories data subjects:

- consultants, contractors, agents and/or employees of MSP;
- consultants, contractors, agents and/or employees End-Client(s);and/or
- third parties with which the End-Client conducts business.

**Purposes of Processing:**

As a processor, Continuum shall process the above MSP Data only for the purposes of processing to provide the applicable Offerings in accordance with the MSP Agreement; and the terms of the MSP Agreement and the parties acknowledge that this DPA shall constitute the MSP's complete and final documented instructions to Continuum for these purposes.

**Annex B****DATA SECURITY GUIDE**

This Data Security Guide describes the measures Continuum takes to protect MSP Data. This Data Security Guide forms a part of any legal agreement into which this Data Security Guide is explicitly incorporated by reference (the "DPA") and is subject to the terms of the DPA. Capitalized terms not otherwise denoted in this Data Security Guide will have the meaning given to them in other parts of the DPA.

**1.SECURITY PROGRAM**

While providing the Offering, Continuum will maintain a written information security program of policies, procedures, and controls governing the processing, storage, transmission and security of MSP Data (the "Security Program"). The Security Program includes industry-standard practices designed to protect MSPs Data from accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access. Continuum regularly tests, assesses and evaluates the effectiveness of the Security Program and may periodically review and update the Security Program to address new and evolving security technologies, changes to industry standard practices and changing security threats. Although no such update will materially reduce the commitments, protections or overall level of service provided to MSP as described herein.

**2.TECHNICAL AND ADMINISTRATIVE SECURITY MEASURES****TECHNICAL SECURITY MEASURES**

- a) **Access Administration.** Access to the Offering by Continuum employees and contractors is protected by authentication and authorization mechanisms. User authentication is required to gain access to production and sub-production instances. Access privileges are based on job requirements and are revoked upon termination of employment or consulting relationships. Production infrastructure includes appropriate user account and password controls (e.g. the required use of VPN connections, complex passwords with expiration dates) and is accessible for administration.
- b) **Service Access Control.** The Offering provides user and role-based access controls. MSP is responsible for configuring such access controls within its instance.
- c) **Logging and Monitoring.** The production infrastructure log activities are centrally collected and are secured in an effort to prevent tampering and are monitored for anomalies by a trained Security team.
- d) **Firewall Systems.** Industry-standard firewalls are installed and managed to protect Continuum systems by residing on the network to inspect all ingress connections routed to the Continuum environment.
- e) **Vulnerability Management.** Continuum conducts periodic independent security risk evaluations to detect critical information assets, assess threats to such assets and determine potential vulnerabilities, and provide for remediation. When software vulnerabilities are revealed and addressed by a vendor patch, Continuum will obtain the patch from the applicable vendor and apply it within an appropriate timeframe in accordance with Continuum's current vulnerability management and security patch management standard operating procedures and only after such patch is tested and determined to be safe for installation in all production systems.
- f) **Antivirus** Continuum updates antivirus, anti-malware and anti-spyware software on regular intervals and centrally logs events for effectiveness of such software.

g) **Change Control** Continuum ensures that changes to platform, applications and production infrastructure are evaluated to minimize risk and are implemented following Continuum's standard operating procedure.

h) **Data Separation** MSP Data shall be maintained within a logical single-tenant architecture on multi-tenant cloud infrastructure that is logically and physically separate from Continuum's corporate infrastructure. ADMINISTRATIVE SECURITY MEASURES

a) **Security Awareness and Training** Continuum maintains a security awareness program that includes appropriate training of Continuum personnel on the Security Program. Training is conducted at time of hire and periodically throughout employment at Continuum.

b) **Vendor Risk Management** Continuum maintains a vendor risk management program that assesses all vendors that access, store, process or transmit MSP Data for appropriate security controls and business.

### 3. CERTIFICATIONS AND AUDITS

#### CERTIFICATIONS AND ATTESTATIONS

a. Continuum shall establish and maintain sufficient controls to meet the objectives stated in SOC 2 Type 2 (or equivalent standards) (collectively, the "Standards") for the information security management system supporting the Offering. At least once per calendar year, Continuum shall obtain an assessment against such Standards by an independent third-party auditor.

### 4. AUDITS AND CORRECTIVE ACTIONS.

#### AUDITS AND CORRECTIVE ACTIONS

a) **Audits.** Upon MSP's request Continuum shall grant MSP access to the Continuum documentation where MSP may access industry-recognized documentation evidencing the Security Program ("Audit"). Such documentation will include a copy of Continuum's certification or audit reports performed by an independent third-party of Continuum's information security management system supporting the Offering against the Standards.

b) **Corrective Actions.** Continuum and MSP may schedule a mutually convenient time to discuss the Audit. If a material deficiency is discovered between Continuum commitments in this Data Security Guide and the information gathered during an Audit, then Continuum shall take, at its own cost the necessary corrective actions. This sets forth MSP's exclusive rights and remedies (and Continuum's sole liability) with respect to any material deficiencies noted during an Audit and the results derived therefrom are Confidential Information of Continuum.

### 5. MONITORING AND INCIDENT MANAGEMENT

#### MONITORING MANAGEMENT AND NOTIFICATION

a) **Incident Monitoring and Management** Continuum will monitor, analyze and respond to security incidents in a timely manner in accordance with Continuum's standard operating procedure. Continuum security group will escalate and engage response teams as may be necessary to address an incident,

b) **Breach Notification** Unless notification is delayed by the actions or demands of a law enforcement agency, Continuum will report to MSP any accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access to MSP Data (a "Breach") without undue delay following determination by Continuum that a Breach has occurred.

c) **Report** The initial report will be made to MSP security or privacy contact(s) (or if no such contact(s) are designated, to the primary contact designated by MSP). As information is collected or otherwise becomes available to Continuum, and unless prohibited by applicable law, Continuum shall provide without undue delay any further information regarding the nature and consequences of the Breach to allow MSP to notify relevant parties, including affected Data Subjects, government agencies and data protection authorities in accordance with Data Protection Laws. The report will include the name and contact information of the Continuum contact from whom additional information may be obtained. Continuum shall inform MSP of the measures that it will adopt to mitigate the cause of the Breach and to prevent future Breaches.

d) **MSP Obligations** MSP will cooperate with Continuum in maintaining accurate contact information in the customer support portal and by providing any information that is reasonably requested to resolve any security incident, including any Breaches, identify its root cause(s) and prevent a recurrence. MSP is solely responsible for determining whether to notify the relevant supervisory or regulatory authorities and impacted Data Subjects and for providing such notice.

### 6. COOKIES

When providing the Offering, Continuum uses cookies to (i) track session state, (ii) route a browser request to a specific node when multiple nodes are assigned, and (iii) recognize a user upon returning to the Offering. MSP shall

be responsible for providing notice to, and collecting any necessary consents from, its authorized users of the Offering for Continuum's use of cookies.

#### 7. PENETRATION TESTS BY A THIRD-PARTY

Continuum contracts with third-party vendors to perform an annual penetration test on the Continuum application family to identify risks and remediation that help increase security.

#### 8. SHARING THE SECURITY RESPONSIBILITY

a) **PRODUCT CAPABILITIES** The Offering has the capabilities to, (i) authenticate users before access, (ii) encrypt passwords, (iii) allow users to manage passwords, and (iv) prevent access by users with an inactive account MSP manages each user's access to and use of the Offering by assigning to each user a credential and user type that controls the level of access to the Offering. MSP shall be responsible for implementing encryption and access control functionalities available within the Offering, for protecting all MSP Data containing sensitive data, including credit card numbers, social security numbers and other government issues identification numbers, financial and health information, Personal Data, and any Personal Data deemed sensitive or special categories of personal data under Data Protection Laws. MSP is solely responsible for its decision not to encrypt such data and Continuum will have no liability to the extent that damages would have been mitigated by MSP's use of such encryption measures. MSP is responsible for protecting the confidentiality of each user's login and password and managing each user's access to the Offering.

b) **MSP COOPERATION** MSP shall promptly apply any application upgrade that Continuum determines is necessary to maintain the security, performance or availability of the Offering.

c) **LIMITATIONS** Notwithstanding anything to the contrary in this Data Security Guide or other parts of the DPA, Continuum's obligations extend only to those systems, networks, network devices, facilities, and components over which Continuum exercises control. This Data Security Guide does not apply to, (i) information shared with Continuum that is not data stored in its systems using the Offering, (ii) data in MSP's VPN or a third-party network, (iii) any data processed by MSP or its users in violation of the DPA or this Data Security Guide, or (iv) Integrated Products. For the purposes of this Data Security Guide, "Integrated Products" shall mean Continuum-provided integrations to third-party products or any other third-party products that are used by MSP in connection with the Offering. MSP agrees that its use of such Integrated Products will be, (i) in compliance with all applicable laws, including but not limited to Data Protection Laws, and (ii) in accordance with its contractual agreement with the provider of such Integrated Products. Any Personal Data populated from the Integrated Products to the Offering must be collected, used, disclosed and, if applicable, internationally transferred in accordance with MSP's privacy policy, which will adhere to Data Protection Laws. For clarity, as between Continuum and MSP, MSP assumes all liability for any breaches of confidentiality that occur outside of the Offering.