

Master *Terms & Conditions*

Last Updated: June 12, 2026

MASTER TERMS AND CONDITIONS

These Master Terms and Conditions (“**Terms**”) are made available by **SIMPLE TECH, LLC** (“**Service Provider**” or “**Simple Tech**”) and govern the provision of Services to customers (“**Client**”).

These Terms are not executed by signature. Instead, they are incorporated by reference into any Statement of Work, order form, proposal, or similar document referencing these Terms (each, a “**Statement of Work**” or an “**SOW**”) and are binding upon Client upon the earliest of: (a) execution of an SOW referencing these Terms, (b) Client’s acceptance of Services, or (c) Client’s access to or use of the Services.

The current version of these Terms is available at:

<https://legal.simpletech.pro/terms>. Simple Tech provides information technology services, including managed IT services, web design and development, cybersecurity solutions, networking management, IT consulting and strategy, cloud computing services, and IT support and maintenance.

Client desires to retain Service Provider to provide certain of these information technology services upon the terms and conditions set forth in these Terms, and Service Provider is willing to perform such services.

In consideration of the mutual covenants and agreements set forth in these Terms, the parties agree as follows:

1. Definitions

Capitalized terms not otherwise defined in the context of these Terms are set forth and defined in the “*Glossary of Terms*” set forth on Schedule 1 attached to these Terms.

2. Services

- 2.1 Service Provider shall provide the Services to Client (as described in more detail in each Statement of Work) in accordance with the terms and conditions of these Terms. By accepting Services and/or an applicable Statement of Work, Client agrees to the terms of these Terms. Each SOW incorporates these Terms by reference as if fully set forth therein. In the event of any conflict between these Terms and an SOW, the SOW will control solely with respect to the specific Services, pricing, and any expressly agreed deviations. Client acknowledges and agrees that: (a) it has reviewed or had the opportunity to review these Terms at the hyperlink above; an (b) execution of an SOW, or acceptance/use of Services, constitutes binding acceptance of these Terms.
- 2.2 Each Statement of Work may include the following information, if applicable: (a) a description of the Services to be performed pursuant to the Statement of Work; (b) the date upon which the Services will commence and the term of such Statement of Work; (c) the fees and costs to be paid to Service Provider under the Statement of Work; (d) the Project implementation plan and/or timetable; (e) Project Milestones and payment schedules; (f) any other criteria for completion of the Services and/or Project; and (g) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.
- 2.3 Service Provider will perform all Services on a schedule, and in a prioritized manner, as Service Provider deems reasonable and necessary. Exact start dates may vary or deviate from the dates Service Provider states to Client depending on the Service that Service Provider provides and the extent to which prerequisites (if any), such as transition or onboarding activities, must be completed. Service Provider will respond to any notification received by Service Provider of any error, outage, alarm, or alert pertaining to the Environment in accordance with the priority table(s), if any, supplied to Client in an SOW. Except as otherwise provided in these Terms, Service Provider will not be responsible for delays in its response or Service Provider's provision of Services, including, but not limited to, delays in response or Service Provider's provision of Services during (a) those periods of time covered under the Transition Exception, (b) periods of delay caused by Scheduled Downtime, Client-Side Downtime, Vendor-Side Downtime, (c) periods in which Service Provider is required to suspend the Services to protect the security or integrity of the Environment or Service Provider Equipment, or (d) delays caused by a Force Majeure Event. Without limiting the generality of the foregoing, Service Provider will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that Client-Side Downtime or Vendor-Side Downtime causes such delays or deficiencies. Any response times, priority classifications, or service targets identified in an applicable Statement of Work or Services Dictionary are target response times only, apply only to Covered requests properly submitted through Service Provider's designated support channels, do not constitute service-level guarantees, and do not measure time to resolution, remediation, or restoration.
- 2.4 Each party is, and will remain, the owner and/or licensor of all works of Intellectual Property Rights owned by such party and nothing in these Terms, any SOW, or the provision of any Service shall be deemed to convey or grant any ownership rights or goodwill in one party's Intellectual Property Rights to the other party unless expressly set forth and described in a SOW. For the purposes of clarity, Client understands and agrees that Service Provider owns any software, codes, algorithms, or other works of authorship that Service Provider creates while providing the Services to Client. If Service Provider provides licenses to Clients for Third Party Products, then Client understands and agrees that such Third-Party Products are licensed, and not sold, to Client. Client may use such Third-Party Products subject to the terms and conditions (a) of these Terms, (b) of the applicable SOW, (c) written directions that Service Provider supplies to Client, and (d) any applicable EULA; no other uses of such Third Party Products are permitted. To the maximum extent permitted by applicable Law, Service Provider makes no warranty or representation, either expressed or implied with respect to Third Party Products or its quality, performance, merchantability, or fitness for a particular purpose.

3. Service Provider's Obligations

- 3.1 The Service Provider shall:
- (a) appoint (i) a Service Provider employee to serve as a primary contact with respect to these Terms and who will have the authority to act on behalf of Service Provider in connection with matters pertaining to these Terms (the "**Service Provider Contract Manager**"), and (ii) Service Provider Personnel, who shall be suitably skilled, experienced, and qualified to perform the Services;

- (b) before the date on which the Services are to start, obtain, and at all times during the Term of these Terms maintain, all necessary licenses and consents and materially comply with all relevant Laws applicable to the provision of the Services;
- (c) materially comply with, and ensure that all Service Provider Personnel, materially comply with, all rules, regulations, and policies of Client that are communicated to Service Provider in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of access to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures; and
- (d) in connection with Services with fees based on time and materials (versus flat rates), maintain complete and accurate records of the time spent and materials used by Service Provider in providing the Services in such form as Client shall reasonably approve.

3.2 Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

4. Client's Obligations

4.1 Client shall:

- (a) cooperate with Service Provider in all matters relating to the Services and appoint a Client employee to serve as the primary contact with respect to these Terms and who will have the authority to act on behalf of Client with respect to matters pertaining to these Terms (the "**Client Contract Manager**"). If no Client Contract Manager is identified in an applicable SOW or if a previously identified Client Contract Manager is no longer available to Service Provider, then the Client Contract Manager will be the person (i) who accepted the SOW, and/or (ii) who is generally designated by Client during the course of relationship to provide Service Provider with direction or guidance. Service Provider may rely upon directions and guidance from the Client Contract Manager until Service Provider is aware of a change of status of the Client Contract Manager. Client agrees that it will not use a ticketing system or help desk request to notify Service Provider about the change of a Client Contract Manager nor leave a recorded message for Service Provider informing it of a change to the Client Contract Manager.
- (b) provide Service Provider Personnel such access to Client's premises and such office accommodation and other facilities and equipment and networks as may reasonably be requested by Service Provider, for the purposes of performing the Services and each Project. Without limiting the generality of the foregoing, Client hereby grants to Service Provider and Service Provider's designated Third-Party Providers the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the Environment as necessary to enable Service Provider or Third Party Providers, as applicable, to provide the Services and/or Third Party Services. Depending on the Service, Client acknowledges that Service Provider may install one or more software agents into the Environment through which such access may be enabled. It is Client's responsibility to secure, at its own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for Service Provider or its Third-Party Providers to provide Services to the Environment and, if applicable, at Client's designated premises, both physically and virtually. Client must provide proper and safe environmental conditions at all times. Service Provider may not engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve;
- (c) implement and maintain reasonable physical security for all managed hardware and related Devices in Client's physical possession or control. Client is strongly advised to adhere to the following security measures: (i) physical barriers, such as door and cabinet locks, designed to prevent unauthorized physical access to protected equipment, (ii) an alarm system to mitigate and/or prevent unauthorized access to the premises at which the protected equipment is located, (iii) fire detection and retardant systems, and (iv) periodic reviews of personnel access rights to ensure that access policies are being enforced, and to help ensure that all access rights are correct and promptly updated;

- (d) respond promptly to any Service Provider request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Service Provider to perform Services in accordance with the requirements of these Terms and/or a SOW;
- (e) provide such Client Materials and/or information as Service Provider may request, in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects (including the maintenance and preservation of all passwords, keys, access codes, activations codes and other similar words, phrases and codes);
- (f) refrain from modifying or moving the Environment or installing software in the Environment unless Service Provider expressly authorizes such activity and to take all actions reasonably necessary to prevent any third party (other than Third Party Providers and as directed by Service Provider) from making any alterations to any hardware or software subject to the Services. In all situations (including those where Service Provider is co-managing an Environment with Client's internal IT department), Client agrees and understands that Service Provider will not be responsible for changes to the Environment or issues that arises from those changes that Service Provider does not authorize;
- (g) ensure that all Client Equipment is in good working order and suitable for the purposes for which the Client uses it and conforms to all relevant legal or industry standards or requirements, abide by terms of any warranty issued by any OEM and related software subject to the Services, and keep in working order all files, directories, and code associated with any website controlled by Client;
- (h) obtain and maintain all necessary licenses and consents and comply with all applicable Law in relation to the Services, the Environment, installation of any Service Provider Equipment, the use of Client Materials, and the use of the Client Equipment in relation to the Service Provider Equipment, in all cases before the date on which the Services are to start. If Service Provider asks for proof of authenticity and/or licensing, Client must provide Service Provider with such proof. If Service Provider requires certain minimum hardware or software requirements as set forth in SOW or in the Services Dictionary or otherwise in connection with a SOW ("**Minimum Requirements**"), Client agrees to implement and maintain those Minimum Requirements as an ongoing requirement of Service Provider providing the Services;
- (i) keep, maintain, and ensure all Service Provider Equipment, and shall not dispose of or use any Service Provider Equipment other than in accordance with Service Provider's written instructions or authorization;
- (j) notify Service Provider promptly of any operational or other errors or problems with regard to any hardware or software subject to the Services and not attempt to repair any such error or other problem and to maintain reasonable and appropriate levels of physical and electronic security and protection from all environmental or physical perils, loss of data and/or any harmful or malicious electronic files. Client agrees that if, in Service Provider's discretion, a hardware or software issue requires vendor or Original Equipment Manufacturer ("**OEM**") support, Service Provider may contact the vendor or OEM (as applicable) on Client's behalf and invoice Client for all fees and reasonable costs involved in that process;
- (k) to comply with all copyright and/or other Intellectual Property Rights of third parties, as required by any applicable Law;
- (l) to perform all patches, updates on hardware or software subject to the Services in a timely manner and in accordance with the instructions provided to Client by the manufacturer in connection with such updates ("**Updates**") unless Service Provider expressly agrees otherwise under a SOW. If Updates are provided to Client as part of the Services, Service Provider will implement and follow the manufacturers' recommendations for the installation of Updates; however, Client agrees and understands that Service Provider (i) does not warrant or guarantee that any Update will perform properly, (ii) will not be responsible for any downtime or losses arising from or related to the installation, use, or inability to use any Update, and (iii) reserves the right, but not the obligations, to refrain from installing an Update until Service Provider has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware subject to the Services; and
- (m) to comply fully with all reasonable specifications, rules, regulations and policies governing the Services provided to Client by Service Provider. Such rules, regulations and policies shall be subject to change from time to time in Service Provider's sole discretion.

- 4.2 Without limiting the generality of 2.3 above, if Service Provider's performance of its obligations under these Terms is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants, or employees, Service Provider shall not be deemed in breach of its obligations under these Terms or otherwise liable for any costs, charges, or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.
- 4.3 Without limiting the generality of the foregoing, Client agrees and understand that it alone, and not Service Provider, is responsible for Client's own compliance with all Laws, including all confidentiality and security requirements, and any and all such requirements of the HIPAA, Gramm-Leach-Bliley Act, USA Patriot Act (along with all network rules applicable to VISA, MasterCard, Discover, and/or other networks). Unless otherwise expressly stated in a SOW, Client agrees that Service Provider does not intend that the Services are used, or will be used, to bring Client into full regulatory compliance with any Law, rule, regulation, or requirement that may be applicable to Client's business or operations. Depending on the Services provided, the Services may aid Client's efforts to fulfill regulatory compliance; however, the Services are not a standalone compliance solution.
- 4.4 Client warrants and represents that Client knows of no Law governing Client's business that would impede or restrict Service Provider's provision of the Services, or that would require Service Provider to register with, or report Service Provider's provision of the Services (or the results thereof), to any government or regulatory authority. Client agrees to promptly notify Service Provider if Client becomes subject to any of the foregoing which, in Service Provider discretion, may require a modification to the scope or pricing of the Services. Similarly, if Client is subject to responsibilities under any applicable Law (including, but not limited to, HIPAA, Gramm-Leach-Bliley Act, and USA Patriot Act), then Client agrees to identify to Service Provider any data or information subject to protection under that Law prior to providing such information to Service Provider or, as applicable, prior to giving Service Provider access to such information.
- 4.5 Client understands and agrees that data loss or network failures in its Environment may occur, whether or not foreseeable. In order to reduce the likelihood of a network failure, Client must maintain proper security for its computer and information systems, including Updates. Client will adhere to Updates and maintain specific security standards, policies, procedures, such as those set forth by the NIST Cybersecurity Framework available at <https://www.nist.gov/cyberframework>. Client understands that unless otherwise expressly specified in a Statement of Work, within the Services provided it is not the intent for Service Provider to provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for Client.
- 4.6 Client understands and agrees that no security solution is one hundred percent (100%) effective, and a fraudster may circumvent any security paradigm and/or such paradigm may be rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are downloaded or installed into the Environment. Service Provider does not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined, or removed, or that any data deleted, corrupted, or encrypted by such malware ("**Impacted Data**") will be recoverable. Unless otherwise expressly stated in an SOW, the recovery of Impacted Data is out-of-scope of and not included in the Services. Except to the extent expressly included in the applicable Statement of Work or Services Dictionary, Service Provider is not responsible for activating or administering multifactor authentication in applications or systems outside the Covered Services. Client remains responsible for implementing and maintaining any multifactor authentication required by the applicable Minimum Requirement. Client is strongly advised to (a) educate its employees to properly identify and react to "phishing" activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (b) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a "best practice" scenario. Except as otherwise expressly set forth in these Terms, Client holds Service Provider harmless from any costs, expenses, or damages arising from or related to such incidents.

- 4.7 Client acknowledges that from time to time, Service Provider may provide Client with specific advice and directions related to the Services (“**Advice**”). For example, Advice may include increasing server or hard drive capacity, increasing CPU power, replacing obsolete equipment, or refraining from engaging in acts that disrupt the Environment or that make the Environment less secure. Service Provider strongly advises Client to follow Advice which, depending on the situation, may require Client to make additional purchases or investments in the Environment at its sole cost. Client acknowledges and agrees that Service Provider is not responsible for any problems or issues (such as downtime or security-related issues) caused by Client’s failure to promptly follow Advice. If, in Service Provider’s discretion, Client’s failure to follow Advice renders part or all of the Services economically or technically unreasonable to provide, then Service Provider may terminate the applicable Services for cause by providing notice of termination to Client. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by Client’s failure to follow Advice, or Client’s unauthorized modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements, are out-of-scope and not included in the Services without further remuneration to Service Provider. Service Provider may document Client’s acceptance, rejection, delay, or requested modification of any Advice, including through a recommendation, exception, ticketing, email, or similar written record, and such written documentation will be sufficient evidence of Client’s decision unless the parties expressly require a signed form for a particular category of security exception.
- 4.8 If an applicable Statement of Work or Services Dictionary provides for security incident initial response, such service will consist only of the limited initial triage assistance expressly described therein. Unless otherwise expressly stated in the applicable Statement of Work, Service Provider is not providing forensic investigation, legal or regulatory analysis, breach notification services, regulatory reporting, full incident remediation, or post-incident rebuild services.

5. Change Orders

- 5.1 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing in accordance with the notice provisions in 17.4 below. Service Provider shall, within a reasonable time (not to exceed 14 days) after receiving a Client-initiated request, or at the same time that Service Provider initiates such a request, provide a written estimate to Client of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Services arising from the change; (c) the likely effect of the change on the Services; (d) any other impact the change might have on the performance of these Terms; and (e) any other information reasonably requested by the Client.
- 5.2 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with 17.10 below.

6. Term and Termination

- 6.1 Term. These Terms shall commence as of the Effective Date and shall continue thereafter until the latest to occur of the completion of the Services under all Statements of Work and a term of one year (the “**Initial Term**”), unless sooner terminated pursuant to this Section 6. The termination of Services under one SOW shall not, by itself, cause the termination of (or otherwise impact) these Terms or the status or progress of any other Services between the parties.
- 6.2 Renewal. Upon expiration of the Initial Term, these Terms, and any applicable SOW (except if otherwise expressly set forth in such SOW), shall automatically renew for additional one (1) year terms unless a party provides written notice of nonrenewal at least sixty (60) days prior to the end of the then-current term (each a “**Renewal Term**” and together with the Initial Term, the “**Term**”). If the Term is renewed for one or more Renewal Term, the terms and conditions of these Terms and such SOW during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in fees in accordance with 7.5 below. If either party provides timely notice of nonrenewal, then these Terms and/or such SOW shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this 6.

6.3 Other Termination. Service Provider, in its sole discretion, may terminate these Terms or any SOW, in whole or in part, at any time without cause, by providing at least ninety (90) days' prior written notice to Client. If Client terminates these Terms (or any applicable SOW) for a reason other than as set forth in this Section 6 prior to the end of the Term or any subsequent Renewal Term, or if Service Provider terminates these Terms (or any applicable SOW) for a reason set forth in 6.4 below, in addition to any other amounts due to Service Provider under these Terms, Client shall pay to Service Provider damages equal to one hundred percent (100%) of the fees due during the remaining portion of the Initial Term, any Renewal Term, and/or SOW in effect at the time of such termination. For the avoidance of doubt, the foregoing sentence will apply such that Client will also be responsible to pay to Service Provider an amount equal to one hundred percent (100%) of the fees that would otherwise be due and payable under an upcoming Renewal Term if Client fails to abide by the requirements of 6.2 by terminating these Terms after the expiration of sixty (60) day period described therein. Furthermore, and without limiting the generality of the foregoing, Client shall remain liable for any and all license fees and related costs and expenses incurred in connection with EULA's and/or Third-Party Providers, including, but not limited to, residual license fees and related charges arising with respect to Microsoft NCE.

6.4 Termination for Cause.

- (a) Either party may terminate these Terms or any SOW, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party: (i) materially breaches these Terms, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; (ii) becomes insolvent or admits its inability to pay its debts generally as they become due; (iii) becomes subject, voluntarily or involuntarily, to any proceeding under any Law relating to domestic or foreign bankruptcy or insolvency, which is not fully stayed within twenty (20) business days or is not dismissed or vacated within forty-five (45) days after filing; (iv) is dissolved or liquidated or takes any corporate action for such purpose; (v) makes a general assignment for the benefit of creditors; or (vi) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- (b) In the event that Client or any of its staff, personnel, contractors, or representatives engages in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Services to Client, then in addition to Service Provider's other rights under these Terms, Service Provider will have the right upon providing Client with ten (10) days prior written notice, to terminate the Services, these Terms, and/or any applicable SOW.

6.5 Effects of Termination or Expiration. Upon expiration or termination of these Terms for any reason:

- (a) Service Provider shall (i) promptly deliver to Client all Deliverables (whether complete or incomplete) for which Client has paid, all Client Equipment and all Client Materials in its possession, (ii) promptly remove any Service Provider Equipment located at Client's premises, (iii) provide reasonable cooperation and assistance to Client upon Client's written request and at Client's expense in transitioning the Services to a different Service Provider (subject to subparagraph (d) below), and (iv) on a pro rata basis, repay all fees and expenses paid in advance for any Services not performed or Deliverables not provided (except to the extent Service Provider is permitted to retain fees in accordance with 6.3 above).
- (b) Each party shall (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information, (ii) permanently delete all of the other party's Confidential Information from its computer systems, and (iii) certify in writing to the other party that it has complied with the requirements of this clause.
- (c) If Client fails or refuses to grant Service Provider access as described herein, or if any of the Service Provider Equipment is missing, broken or damaged (normal wear and tear excepted) or any of Service Provider-supplied software is missing, Service Provider will have the right to offset against amounts otherwise owing to Client and/or invoice Client for, and Client hereby agrees to pay immediately, the full replacement value of any and all missing or damaged items.

- (d) In the event that Client requests Service Provider's assistance to transition away from the Services, Service Provider will provide such reasonable assistance if (i) all fees due and owing to Service Provider are paid to Service Provider in full prior to Service Provider providing its assistance to Client, and (ii) Client agrees to pay Service Provider's then-current hourly rate for such assistance, with up-front amounts to be paid to Service Provider as it may require. For the purposes of clarity, Client understands and agrees that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. Client also understands and agrees that any software configurations that Service Provider custom creates or programs for Client are Service Provider's proprietary information and Service Provider may not disclose such to Client under any circumstances. Unless otherwise expressly stated in a SOW, Service Provider will have no obligation to store or maintain any Client data in its possession or control beyond five (5) calendar days following the termination of the applicable Services, these Terms and/or the applicable SOW. Service Provider will be held harmless for, and indemnified by Client against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, Service Provider's deletion of Client's data beyond the time frames described in this section.

6.6 Survival. The rights and obligations of the parties set forth in this 6.6 and 6.5, 1, 9, 10, 12, 13, 14, and 17, and any right or obligation of the parties in these Terms which, by its nature, should survive termination or expiration of these Terms, will survive any such termination or expiration of these Terms.

7. Fees and Expenses; Payment Terms

- 7.1** In consideration of the provision of the Services by the Service Provider and the rights granted to Client under these Terms, Client shall pay the fees set forth in the applicable Statement of Work or as otherwise invoiced by Service Provider. An applicable Statement of Work may establish a minimum monthly commitment, recurring billing floor, minimum quantities, or other recurring fee commitments that remain payable during the applicable term notwithstanding any reduction in Covered users, devices, services, or usage, except as expressly stated in such Statement of Work.
- 7.2** Where the Services are provided on a time and materials basis: (a) the fees payable for the Services shall be calculated in accordance with Service Provider's daily or hourly fee rates, as may be set forth in the applicable Statement of Work or otherwise communicated by Service Provider to Client; (b) Client shall reimburse Service Provider, at Service Provider's actual cost, for any materials, machinery, equipment, and third-party services, including Third Party Providers (collectively, "**Materials**"), reasonably necessary for the provision of the Services. Except as otherwise provided in these Terms or an applicable Statement of Work, Service Provider shall obtain Client's written consent prior to the purchase of all Materials, which shall not be unreasonably withheld; and (c) Service Provider shall issue invoices to Client monthly in arrears for its fees for time for the immediately preceding month, calculated as provided in this 7.2, together with a statement of expenses for such month incurred in accordance with 7.4.
- 7.3** Where Service Provider provides services for a fixed price, whether monthly or otherwise, the fees for the Services shall be the amount set out in the applicable Statement of Work. Client shall pay the total price to Service Provider as set out in the Statement of Work, which may include recurring monthly fees as applicable. On achieving a Project Milestone, if applicable, and/or at the end of a period specified in an applicable Statement of Work in respect of which an installment is due, Service Provider may, but is not required to, issue invoices to Client for the fees that are then payable, together with a statement of any expenses incurred in accordance with 7.4.
- 7.4** Client agrees to reimburse Service Provider for all reasonable travel and out-of-pocket expenses incurred by Service Provider in connection with the performance of the Services. Per diem expenses shall conform to USGA standards at <http://www.gsa.gov/perdiem>.
- 7.5** Service Provider may revise its Rate Card upon at least thirty (30) days' prior written notice to Client; provided, however, that any revised Rate Card will apply prospectively only and will not alter fixed recurring fees expressly stated in an active Statement of Work during its then-current term unless the applicable Statement of Work or these Terms expressly provides otherwise. Revised Rate Card pricing may apply to new services, additions, out-of-scope work, after-hours work, renewals, and other variable-fee items occurring after the effective date of the revision.

- 7.6 Generally, all recurring monthly prices anticipate automatic monthly recurring payment by Client. Client hereby authorizes Service Provider to deduct from Client's designated bank account on the first business day of the month in which Service Provider provides the Services all recurring payments made by ACH. Furthermore, Client authorizes Service Provider to charge Client's designated credit card on the first business day of the month in which Service Provider provides the Services. All other non-recurring Services will be due upon receipt of invoice which Service Provider shall issue to Client in accordance with the terms of this Section, and Client shall pay all invoiced amounts due to Service Provider within thirty (30) days after Client's receipt of such invoice. All payments hereunder shall be in US dollars and, other than payments by ACH and/or credit card, Client shall make payment by check or wire transfer.
- 7.7 Client shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Client hereunder. Any such taxes, duties, and charges currently assessed, or which a taxing authority may assess in the future, which are applicable to the Services are for the Client's account, and Client hereby agrees to pay such taxes.
- 7.8 Amounts owing to Service Provider that remain unpaid for more than fifteen (15) days after due will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.50% per month or the maximum allowable rate of interest permitted by applicable Law. Service Provider reserves the right (in addition to and not in lieu of its other rights hereunder), but not the obligation, to suspend part or all of the Services without prior notice to Client in the event that any portion of undisputed fees are not timely received by Service Provider within five (5) days following the date due. Monthly or recurring charges (as applicable) shall continue to accrue during any period of suspension. Notice of disputes related to fees must be received by Service Provider within thirty (30) days after the applicable Service is rendered or the date on which Client pays an invoice, whichever is later; otherwise, Client waives its right to dispute the fee thereafter. A re-connect fee of up to five percent (5%) may be charged to Client if Service Provider suspends the Services due to Client's nonpayment. Time is of the essence in the performance of all payment obligations by Client. If Service Provider is required to refer Client's account to Collections or to start any Collections-related action to recover undisputed fees, Service Provider will be entitled to recover all costs and fees Service Provider incurs in the Collections process, including, but not limited to, reasonable attorneys' fees and costs.
- 7.9 Recurring third-party subscriptions, licenses, and cloud-service fees (including Microsoft 365, Google Workspace, security platforms, backup platforms, or similar services) are billed as set forth in the applicable Statement of Work or, if not expressly stated there, in accordance with Service Provider's Rate Card. Client is responsible for all vendor-imposed minimum terms, annual commitments, non-cancellable periods, auto-renewals, and vendor price increases applicable to subscriptions or licenses approved by Client. Any reduction or cancellation request will take effect only to the extent permitted by the applicable vendor program

8. Third Party Services; Equipment

- 8.1 Third party vendors, manufacturers, or providers referred by Service Provider ("**Third Party Provider**") may provide portions of the Services. Third Party Providers may provide services such as data hosting services, help desk services, malware detection services, domain registration services, data backup/recovery services, other security related services, and/or next generation technology solutions (each, a "**Third Party Service**"). Service Provider may not necessarily identify to Client all Third-Party Services, and at all times Service Provider reserves the right to utilize the services of any Third-Party Provider or to change Third Party Providers in its sole discretion as long as the change does not materially diminish the Services that Service Provider is obligated to provide to Client. Client understands and agrees that Third Party Providers are not Service Provider's contractors, subcontractors, or otherwise under its managerial or operational control. While Service Provider will endeavor to facilitate a workaround for the failure of a Third-Party Service, Service Provider will not be responsible, and Client will hold Service Provider harmless, for any failure of any Third-Party Service as well as the failure of any Third Party Provider to provide such services to Service Provider or to Client.

- 8.2** Portions of the Services may require Client to accept the terms of one or more third party end user license agreements with Third Party Providers (“EULAs”). If a Third-Party Provider requires acceptance of a EULA in order to provide the Services to Client, then Client hereby grants Service Provider permission to accept the EULA on Client’s behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in these Terms. Client agrees to be bound by the terms of such EULAs and will look only to the applicable Third-Party Provider for the enforcement of the terms of such EULAs. If, while providing the Services, a Third-Party Provider requires Service Provider to comply with a EULA and the EULA is modified or amended, Service Provider reserves the right to modify or amend any applicable SOW with Client to ensure Service Provider’s continued compliance with the terms of the EULA.
- 8.3** Under no circumstances will Service Provider be responsible for any data lost, corrupted, or rendered unreadable due to (i) communication and/or transmissions errors or related failures (whether onsite or cloud-based), (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) Service Provider failure to backup or secure data from portions of the Environment that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in writing by Service Provider, Service Provider does not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.
- 8.4** Client hereby represents and warrants that Service Provider is authorized to access all hardware, devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that Client (including its employees, agents, and/or representatives) have connected to the Environment (collectively, “Devices”), regardless of whether Client owns, leases or otherwise controls such Devices. Unless otherwise stated in writing by Service Provider, Devices may not receive or benefit from the Services while the Devices are detached from, or unconnected to, the Environment. Service Provider strongly advises Client to refrain from connecting Devices to the Environment where Service Provider does not previously know such Devices and where the Services, and/or managed service plan from Service Provider, does not cover such Devices (“Unknown Devices”). Service Provider will not be responsible for the diagnosis of, any failures due to, or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment, and Service Provider will not be obligated to provide the Services to any Unknown Devices.
- 8.5** Service Provider licenses all Service Provider Equipment to Client and such Service Provider Equipment is neither owned by Client nor leased to Client. Upon the termination of applicable Services, Client’s license to use the Service Provider Equipment shall immediately terminate, and thereafter all Client must return Service Provider Equipment to Service Provider immediately at Client’s expense. All configurations on the Service Provider Equipment are Service Provider’s proprietary information and Client will not circumvent, modify, or remove such information without Service Provider prior written consent.

9. Confidential Information

- 9.1** The Receiving Party agrees: (a) not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors who have a “need to know”, who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this 9; (b) to use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of Client, to make use of the Services and Deliverables; and (c) to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of Disclosing Party.

- 9.2 If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide: (a) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy; and (d) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

10. Representations and Warranties

10.1 Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing and in good standing as a corporation, limited liability company, or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into these Terms, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- (c) the party has authorized the execution of these Terms by its representative whose signature is set forth at the end hereof; and
- (d) when executed and delivered by such party, these Terms will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

10.2 Service Provider represents and warrants to Client that:

- (a) Service Provider Personnel will perform the Services in accordance with commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under these Terms;
- (b) it is in compliance with, and shall perform the Services in material compliance with, all applicable Laws;
- (c) (i) to Service Provider's knowledge none of the Services, Deliverables, and Client's use thereof infringe or will infringe any registered or issued patent, copyright or trademark of any third party arising under the Law of the United States, and, (ii) as of the date hereof, there are no pending or, to Service Provider's knowledge, threatened claims, litigation, or other proceedings pending against Service Provider by any third party based on an alleged violation of such Intellectual Property Rights, in each case, excluding any infringement or claim, litigation or other proceedings to the extent arising out of (x) any Client Materials or any instruction, information, designs, specifications, or other materials provided by Client to Service Provider, (y) use of the Deliverables in combination with any materials or equipment not supplied or specified by Service Provider, if the infringement would have been avoided by the use of the Deliverables not so combined, and (z) any modifications or changes made to the Deliverables by or on behalf of any Person other than Service Provider;
- (d) the Services and Deliverables will be in conformity in all material respects with all requirements or specifications stated in these Terms and the applicable Statement of Work for a period of 30 days after delivery to Client. In the event of Service Provider's breach of the foregoing warranty, Service Provider's sole and exclusive obligation and liability and Client's sole and exclusive remedy shall be as follows:
 - (i) The Service Provider shall use reasonable efforts to cure such breach; provided, that if Service Provider cannot cure such breach within a reasonable time (but no more than 30 days) after Client's written notice of such breach, Client may, at its option, terminate the Agreement by serving written notice of termination in accordance with 17.4 below.
 - (ii) In the event the Agreement is terminated in accordance with this 10.2(d), Service Provider shall within 30 days after the effective date of termination, refund to Client any fees paid by the Client as of the date of termination for such Service or Deliverable less a deduction equal to the fees for receipt or use of such Deliverables or Service up to and including the date of termination on a pro-rated basis.

- (iii) The foregoing remedy shall not be available unless Client provides written notice of such breach within 30 days after delivery of such Service or Deliverable to Client or with respect to changes made by any Person other than Service Provider or at Service Provider's direction.

10.3 All equipment, machines, hardware, software, peripherals, or accessories purchased through Service Providers ("Third Party Products") are generally nonrefundable once the item is ordered from Service Provider's third-party provider or reseller. If Client desires to return a Third Party Product, then the Third Party Provider's return policies shall apply. Service Provider does not guarantee that a Third-Party Provider will accept for return or exchanged any Third-Party Products, or not charge re-stocking fees. Client may be responsible for the payment of all re-stocking or return-related fees charged by the third-party provider or reseller as well as reasonable charges for Service Provider time spent in processing returns on Client's behalf. Service Provider will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to Client, but will have no liability whatsoever for the quality, functionality, or operability of any Third Party Products, and Service Provider will not be held liable as an insurer or guarantor of the performance, uptime, or usefulness of any Third Party Products. Service Provider provides all Third-Party Products "as is" and without any warranty whatsoever as between Service Provider and Client (including but not limited to implied warranties).

10.4 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND (B) SERVICE PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

11. Indemnification

11.1 Client shall defend, indemnify, and hold harmless Service Provider and Service Provider's Affiliates and their officers, directors, employees, agents, successors, and permitted assigns from and against all Losses arising out of or resulting from any third-party action arising out of or resulting from: (a) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the negligent or willful acts or omissions of Client; and (b) Client's breach of any representation, warranty, or obligation of Client in these Terms.

11.2 Service Provider shall promptly notify Client in writing of any action and cooperate with the Client at Client's sole cost and expense. Service Provider will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which Service Provider may seek indemnity under this section. Otherwise, Client shall immediately take control of the defense and investigation of such action and shall employ counsel of its choice to handle and defend the same, at Client's sole cost and expense. Client shall not settle any action in a manner that adversely affects the rights of Service Provider without Service Provider's prior written consent. Service Provider's failure to perform any obligations under this 11.2 shall not relieve Client of its obligations under this 11.2. Service Provider may participate in and observe the proceedings at its own cost and expense.

12. Limitation of Liability

12.1 Client acknowledges and agrees that Service Provider would not provide any Services, or enter into any SOW or these Terms, unless Service Provider could rely on the limitations described in these Terms, including this Section.

12.2 IN NO EVENT WILL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THE SERVICES, THIS AGREEMENT, ANY SOW, OR FOR ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY SOW, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 12.3** IN NO EVENT WILL SERVICE PROVIDER'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE (A "CLAIM"), EXCEED THE AMOUNT OF ACTUAL AND DIRECT DAMAGES, NOT TO EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER (EXCLUDING HARD COSTS FOR LICENSES, HARDWARE, ETC.) TO SERVICE PROVIDER FOR THE SPECIFIC SERVICE UPON WHICH THE APPLICABLE CLAIM(S) IS/ARE BASED DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CLAIM ACCRUED OR \$5,000, WHICHEVER IS GREATER. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE REMEDIES LISTED IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. SERVICE PROVIDER'S LIABILITY OBLIGATION SHALL BE FURTHER REDUCED TO THE EXTENT THAT A CLAIM IS CAUSED BY, OR THE RESULT OF, CUSTOMER WILLFUL OR INTENTIONAL MISCONDUCT, GROSS NEGLIGENCE, OR TO THE EXTENT THAT CUSTOMER FAILED TO REASONABLY MITIGATE (OR ATTEMPT TO MITIGATE, AS APPLICABLE) THE CLAIMS.

13. Insurance

- 13.1** At all times during the Term of these Terms, Client shall procure and maintain, at its sole cost and expense, the types and amounts of insurance coverage as Service Provider may reasonably require of Client, including cyber liability.
- 13.2** All insurance policies required pursuant to this 13 shall: (a) be issued by insurance companies reasonably acceptable to Service Provider; (b) provide that such insurance carriers give Service Provider at least 30 days' prior written notice of cancellation or non-renewal of policy coverage; provided that, prior to such cancellation, Client shall have new insurance policies in place that meet the requirements of this 13; (c) waive any right of subrogation of the insurers against Service Provider; (d) provide that such insurance be primary insurance and any similar insurance in the name of and/or for the benefit of Service Provider shall be excess and non-contributory; and (e) name Service Provider and its Affiliates, including, in each case, all successors and permitted assigns, as additional insureds.
- 13.3** Without limiting the generality of the foregoing, if Client is supplied with Service Provider Equipment, Client will also acquire and maintain, at its sole cost, insurance for the full replacement value of that equipment and listing Service Provider as an additional insured / loss payee and the policy will not be canceled or modified during the term of the applicable Services without prior notification to Service Provider.
- 13.4** Upon the written request of Service Provider, Client shall provide Service Provider with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this 13, and shall not do anything to invalidate such insurance and provide proof of payment of any applicable premiums or other amounts due under the insurance policy. This 13 shall not be construed in any manner as waiving, restricting, or limiting the liability of either party for any obligations imposed under these Terms (including but not limited to, any provisions requiring a party hereto to indemnify, defend, and hold the other harmless under these Terms).

14. Non-Solicitation

- 14.1** During the Term of these Terms and for a period of one (1) year thereafter, Client shall not, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under these Terms who is then in the employ of Service Provider. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this 14.1, and the hiring of any employee or independent contractor who freely responds thereto shall not be a breach of this 14.1.
- 14.2** If Client breaches 14.1, it shall, on demand, pay to Service Provider a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker, or independent contractor plus the recruitment costs incurred by the non-breaching party in replacing such person.

15. Non-Exclusivity

The Service Provider retains the right to perform the same or similar type of services for third parties during the Term of these Terms.

16. Force Majeure

- 16.1 No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached these Terms, for any failure or delay in fulfilling or performing any term of these Terms (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including without limitation the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake, pandemics, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order, Law, or actions; (e) embargoes or blockades in effect on or after the date of these Terms; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) internet outages, shortage of adequate power or transportation facilities; and (i) other similar events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within 30 days of the Force Majeure Event to the other party, stating the period of time the party expects the occurrence to continue.
- 16.2 During the Force Majeure Event, the non-affected party may similarly suspend its performance obligations until such time as the affected party resumes performance.
- 16.3 The affected party shall use diligent efforts to end the failure or delay and minimize the effects of such Force Majeure Event and shall resume performance of its obligations as soon as reasonably practicable after the removal of the cause. If the affected party's failure or delay remains uncured for a period of 30 days following written notice given by it under this 16, the other party may thereafter terminate these Terms upon 15 days' written notice.

17. Miscellaneous

- 17.1 Client shall, upon the request of Service Provider, promptly execute such documents and perform such acts as may be necessary to give full effect to the terms of these Terms.
- 17.2 The relationship between the parties is that of independent contractors. A party shall not construe anything contained in these Terms as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 17.3 Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to these Terms, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party, which such party shall not unreasonably withhold or delay.
- 17.4 All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 17.4.)

SIMPLE TECH, LLC
123 N. MAIN ST., SUITE 204
DUBLIN, PA 18918
EMAIL: BEN@SIMPLETECH.PRO
ATTENTION: BEN STRUNK

If to Client: At the address set forth in the SOW

- 17.5** For purposes of these Terms, (a) the words “include,” “includes,” and “including” shall be deemed to be followed by the words “without limitation;” (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to these Terms as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, Exhibits, and Statements of Work refer to the Sections of, and Schedules, Exhibits, and Statements of Work attached to these Terms; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. The parties shall construe these Terms without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing the draft of any instrument. The parties shall construe Schedules, Exhibits, and Statements of Work with, and as an integral part of, these Terms to the same extent as if they were set forth verbatim herein.
- 17.6** These Terms, together with all Schedules, Exhibits, and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to these Terms with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. If there is any conflict among these Terms, an applicable Statement of Work, and the Services Dictionary incorporated into such Statement of Work, the following order of precedence applies: (a) the applicable Statement of Work, solely with respect to client-specific scope, pricing, quantities, and expressly negotiated deviations; (b) these Terms; and (c) the applicable Services Dictionary, solely with respect to general service descriptions, operational standards, response targets, and Minimum Requirements, except to the extent the applicable Statement of Work expressly provides otherwise..
- 17.7** Client may not assign, transfer, or delegate any or all of its rights or obligations under these Terms, including by operation of Law, change of control, or merger, without the prior written consent of Service Provider. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. These Terms shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 17.8** These Terms is for the sole benefit of the parties hereto and their respective successors and permitted assigns and the parties do not intend anything herein, express or implied, to or confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of these Terms.
- 17.9** The headings in these Terms are for reference only and shall not affect the interpretation of these Terms.
- 17.10** The parties may amend, modify, or supplement these Terms only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- 17.11** If any term or provision of these Terms is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify these Terms so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the parties' consummate transactions contemplated hereby as originally contemplated to the greatest extent possible.
- 17.12** These Terms shall be governed by and construed in accordance with the internal Laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of Law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the Commonwealth of Pennsylvania. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court. The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of or related to any Service, these Terms, or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred. Except as otherwise provided in 17.13 below, any legal suit, action, or proceeding arising out of or related to these Terms or the Services provided hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the Commonwealth of Pennsylvania, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.
- 17.13** Each party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to these Terms or the transactions contemplated hereby. Except for undisputed collections actions to recover fees due to Service Provider ("**Collections**"), one arbitrator who is mutually agreed upon by the parties shall settle by arbitration any dispute, claim or controversy arising from or related to these Terms, including the determination of the scope or applicability of this agreement to arbitrate. The American Arbitration Association (the "**AAA**") or if there is no AAA-certified arbitrator available within a twenty (20) mile radius of Service Provider office, then by any arbitration forum as determined by Service Provider, shall administer and conduct the arbitration pursuant to the selected forum's arbitration rules for commercial disputes (the "**Rules**"). In the event of any inconsistency between the Rules and the procedures set forth in this paragraph, the procedures set forth in this paragraph will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a party files a demand for arbitration, the arbitration venue shall select the arbitrator. The arbitration shall take place in a venue of Service Provider choice. The arbitrator will determine the scope of discovery in the matter; however, it is the intent of the parties to limit any discovery proceedings to the specific issues in the applicable matter, and to tailor discovery to fulfill that intent. Initially, the parties shall split the cost of the arbitration evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys' fees and costs.
- 17.14** Each party acknowledges that a breach by a party of 9 (Confidentiality), and 14 (Non-Solicitation.) may cause the non-breaching party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity, subject to any express exclusions or limitations in these Terms to the contrary.
- 17.15** If a party institutes or commences any action, suit, or other legal or administrative proceeding against the other party arising out of or related to these Terms, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.
- 17.16** These Terms may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of these Terms delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of these Terms.

17.17 Service Provider may update these Terms from time to time by posting a revised version at the URL identified above. Updates apply prospectively to new SOWs entered into after the effective date of the update. Existing SOWs remain governed by the version of the Terms in effect as of the effective date of the applicable SOW, unless the SOW expressly provides otherwise or Client agrees in writing. Service Provider may identify updated versions by a "Last Updated" date at the top of the Terms. These Terms do not require signature and are binding as provided above. Each SOW executed by the parties serves as the operative agreement incorporating these Terms.

17.18

Schedule 1

GLOSSARY OF TERMS

(GLOSSARY OF TERMS)

"**AAA**" has the meaning set forth in 17.13.

"**Advice**" has the meaning set forth in 4.7.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Business Hours**" means 8:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday, excluding federal holidays."

"**Change Order**" has the meaning set forth in 5.2.

"**Collections**" has the meaning set forth in 17.13.

"**Confidential Information**" means any information that is treated as confidential by a party, including, but not limited to, all non-public information about its business affairs, products or services, Intellectual Property Rights, trade secrets, third-party confidential information, and other sensitive or proprietary information, marked, designated, or otherwise identified as "confidential." Confidential Information shall not include information that: (a) is already known to the Receiving Party without restriction on use or disclosure prior to receipt of such information from the Disclosing Party; (b) is or becomes generally known by the public other than by breach of these Terms by, or other wrongful act of, the Receiving Party; (c) is developed by the Receiving Party independently of, and without reference to, any Confidential Information of the Disclosing Party; or (d) is received by the Receiving Party from a third party who is not under any obligation to the Disclosing Party to maintain the confidentiality of such information.

"**Covered**" means users, devices, servers, domains, systems, services, or other items expressly identified in an applicable Statement of Work as within the scope of Services. Items not expressly identified as Covered are out of scope unless otherwise agreed in writing.

"**Client**" has the meaning set forth in the preamble.

"**Client Contract Manager**" has the meaning set forth in 4.1(a).

“Client Equipment” means any computers, equipment, systems, cabling, or facilities provided or otherwise owned by Client and used directly or indirectly in the provision of the Services.

“Client Materials” any documents, data, knowledge, methodologies, software, and other materials provided to Service Provider by Client or otherwise owned by Client, including computer software, programs, reports, and specifications.

“Client-Side Downtime” means any period of time during which Client, through its actions or omissions, causes delays or deficiencies, including, but is not limited to, any period of time during which Service Provider requires Client participation or Service Provider require information, directions, or authorization from Client but cannot reach the Client Contract Manager.

“Defaulting Party” has the meaning set forth in 6.4(a).

“Deliverables” means all documents, work product, and other materials that Service Provider delivers to Client under these Terms or are prepared by or on behalf of Service Provider in the course of performing the Services, including any items identified as such in a Statement of Work.

“Devices” has the meaning set forth in 8.4.

“Disclosing Party” means a party that discloses Confidential Information under these Terms.

“Environment” means, collectively, any computer network (cloud- based or otherwise), computer system, peripheral or device (virtual or physical) acquired, installed, maintained, monitored, or operated by Service Provider for Client or on Client’s behalf.

“EULA” has the meaning set forth in 8.2.

“Force Majeure Event” has the meaning set forth in 16.

“Impacted Data” has the meaning set forth in 4.6.

“Impacted Party” has the meaning set forth in 16.1.

“Initial Term” has the meaning set forth in 6.1.

“Intellectual Property Rights” means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, and domain names, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs), and rights in data and databases, (d) trade secrets, know-how, and other confidential information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement, or rule of law of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Losses” mean all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.

“Materials” has the meaning set forth in 7.2

“Minimum Requirements” has the meaning set forth in 4.1(h).

“OEM” has the meaning set forth in 4.1(j).

“Person” means an individual, corporation, partnership, joint venture, corporation, governmental authority, unincorporated organization, trust, association, or other entity.

“Project” means a project as described in a Statement of Work.

“Project Milestone” means an event or task described in a Statement of Work which Service Provider shall complete by the relevant date set forth in the Statement of Work.

“Rate Card” means Service Provider’s published schedule of hourly labor rates, project rates, one-time fees, recurring add-on pricing, pass-through markups, and other non-fixed pricing items, as updated from time to time in accordance with these Terms.

“Receiving Party” means a party that receives or acquires Confidential Information directly or indirectly under these Terms.

“Renewal Term” has the meaning set forth in 6.2.

“Rules” has the meaning set forth in Section 17.13.

“Scheduled Downtime” means those hours, as determined by Service Provider, during which Service Provider performs scheduled maintenance or adjustments to the Environment; provided that, absent Client authorization or exigent circumstances, Scheduled Downtime will not occur during Business Hours. Service Provider will endeavor to provide Client with at least twenty-four (24) hours’ prior notice of Scheduled Downtime..

“Service Provider” has the meaning set forth in the preamble.

“Service Provider Contract Manager” has the meaning set forth in 3.1(a).

“Service Provider Equipment” means any equipment, systems, cabling, or facilities provided by or on behalf of Service Provider and used directly or indirectly in the provision of the Services, including, but not limited to, such equipment provided by Service Provider to Client under a Statement of Work.

“Service Provider Personnel” means all employees and subcontractors engaged by Service Provider to perform the Services.

“Service Provider Proposal” means Client’s Request for Proposal for the Services and Service Provider’s response, describing how Service Provider proposes to carry out the Services and/or a Project.

“Services” mean the services Service Provider provides under these Terms, as expressly described in more detail in a Statement of Work, and Service Provider’s obligations under these Terms, including, but not limited to, any licenses, services, or products that Service Provider sells or re-sells to Client.

“Services Dictionary” means the Simple Tech services dictionary, if any, expressly identified and incorporated by reference in an applicable Statement of Work, as in effect on the effective date of such Statement of Work, unless the parties later agree otherwise in a signed writing.

“Statement of Work” or **“SOW”** means each Statement of Work entered into by the parties as contemplated by these Terms, each of which describes, summarizes, and/or defines the scope and provision of the Services.

“Term” has the meaning set forth in 6.

“Transition Exception” means the period of on-boarding following the commencement date of any Service, as well as any period of time during which Service Provider is performing off-boarding-related services (e.g., assisting Client in the transition of the Services to another provider, terminating a service, etc.).

“Third Party Provider” and **“Third Party Service”** have the meaning set forth in 8.1.

“Third Party Products” has the meaning set forth in 10.3.

“Unknown Devices” has the meaning set forth in 8.4.

“Updates” has the meaning set forth in 4.1(l).

“Vendor-Side Downtime” means any delays or deficiencies caused by third party service providers, third party licensors, or “upstream” service or product vendors.
