MASTER SOLUTIONS AGREEMENT — MANAGED SERVICES PURCHASED THROUGH IBM

Version 1.0 — Effective as of the date posted posted at www.us.logicalis.com/msa-ibm and applies to Managed Services acquired from Logicalis through IBM Marketplace.

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING "I ACCEPT" OR A SIMILAR BUTTON OR BOX, BY PLACING AN ORDER FOR THE SERVICES THROUGH IBM, OR BY ACCESSING OR USING THE SERVICES, CUSTOMER ACKNOWLEDGES THAT IT HAS READ AND AGREES TO BE BOUND BY IT ON BEHALF OF THE CUSTOMER, AND REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY. IF YOU DO NOT AGREE OR DO NOT HAVE SUCH AUTHORITY, DO NOT ACCEPT THIS AGREEMENT, PLACE AN ORDER, OR USE THE SERVICES.

1. SCOPE

This Master Solutions Agreement (this "Agreement") is entered into by and between Logicalis, Inc. ("Logicalis") and the entity that acquires Managed Services from Logicalis through IBM ("Customer") as reflected in the applicable Order Document. This Agreement governs Customer's acquisition and use of Managed Services and other information technology services provided by Logicalis that Customer orders through International Business Machines Corporation or any of its affiliates or authorized resellers ("IBM"), via the IBM marketplace and/or procurement system (collectively, the "IBM Marketplace").

Customer accepts and becomes bound by this Agreement by any of the following: (a) clicking or selecting a button or box indicating acceptance of this Agreement or of terms that reference this Agreement or the URL at which it is posted; (b) placing, submitting, or authorizing an order for the Services through the IBM Marketplace or otherwise through IBM; (c) executing a Statement of Work, Order Document, or other document that references this Agreement or the URL at which it is posted; or (d) accessing, receiving, or using the Services, or permitting any User to do so. The individual accepting this Agreement represents that he or she is authorized to bind Customer.

Acceptance of this Agreement and of any Statement of Work or Order Document is expressly limited to the terms contained in this Agreement and the applicable Statement of Work or Order Document. Logicalis rejects any terms and conditions contained in Customer's forms, purchase orders, portals, or other documents that are additional to or different from those set forth in this Agreement and the applicable Statement of Work or Order Document, and no such terms shall bind Logicalis regardless of whether Logicalis performs the Services.

All charges, billing, invoicing, payment, credits, refunds, and taxes relating to the Services are governed exclusively by the agreement between Customer and IBM and are not addressed in this Agreement.

This Agreement governs Services only. Logicalis' Terms and Condition of Sale found at www.us.logicalis.com/tcsales shall apply to the sale of any Products (as that term is defined there) and do not apply to Services acquired through IBM.

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

2. DEFINITIONS

As used in this Agreement:

"**Affiliate**" means any entity that controls, is controlled by, or is under common control with a Party.

"**Agreement**" means this Master Solutions Agreement and all schedules and attachments attached hereto or otherwise made a part of this Agreement. This Agreement does not include, and Logicalis' terms of sale applicable to product sales do not apply to, any transaction governed by this Agreement.

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

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

"**Customer Components**" means the Content and other hardware, software, and other materials being provided by Customer, whether or not expressly specified in a SOW.

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

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

"**Feedback**" means any suggestion or idea for modifying or improving Logicalis' Services.

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

"IBM" means International Business Machines Corporation and its affiliates and authorized resellers, in its capacity as the party through which Customer acquires the Services.

"IBM Marketplace" means any IBM marketplace, catalog, tile, portal, ordering system, or procurement platform through which the Services are offered or ordered.

"IBM Marketplace Terms" means the terms and conditions governing Customer's relationship with IBM in connection with Customer's acquisition of the Services, including IBM's applicable client relationship agreement, service description, transaction documents, and marketplace terms of use.

"Order Document" means an order, subscription, enrollment, quotation, transaction document, or other ordering instrument issued or accepted through the IBM Marketplace or otherwise by or through IBM that identifies the Services ordered by Customer.

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

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

"**Services**" means the information technology services to be delivered by Logicalis or its Affiliates under this Agreement as specified in any Statement of Work and does not include Third Party Services.

"**Statement of Work**" or "**SOW**" shall have the meaning ascribed to it in Section 2.2, and where the context requires includes any Order Document and any service definition, addendum, or sub-addendum referenced therein.

"Third Party Services" means the information technology services to be delivered by a third party under this Agreement as more fully described in Section 3.3 below and/or as specified in any Statement of Work.

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

Any capitalized term which is defined in this Agreement shall have the same meaning when used in any Statement of Work, unless a specific and different definition is included in a SOW or context requires otherwise. SOW-specific definitions, if any, shall be included in the applicable SOW, and shall apply only with respect to such SOW.

3. GENERAL

3.1. Agreement Structure. This Agreement contains the general contractual terms applicable to the Managed Services and other information technology services provided by Logicalis to Customer where Customer acquires such services through IBM. This Agreement is published at a publicly accessible URL and is incorporated by reference into each Statement of Work and Order Document.

3.2. Statements of Work. The specific information technology services that Logicalis will provide, the service levels or service level objectives (if any), the term, and other transaction-specific provisions will be set forth in a statement of work, service definition, quotation, order, or similar document (each a "Statement of Work" or "SOW"). Each SOW constitutes a separate contract and will be deemed to incorporate all of the provisions of this Agreement by reference, regardless of whether this Agreement is expressly referenced, unless a different governing document is specified in the SOW. A SOW may be accepted by signature, by electronic acceptance, or by placement of an order through the IBM Marketplace. The Services will be performed in accordance with the applicable SOW and Logicalis' then-current service definitions and policies for the Services as published or made available by Logicalis, which Logicalis may update from time to time; provided that no such update will materially reduce the Services during the then-current term of an affected SOW.

3.3. Order Documents. Customer orders the Services through IBM. Logicalis does not invoice Customer and does not administer Customer's account with IBM. Logicalis may accept an Order Document, purchase order, or similar instrument issued by or through IBM or by Customer as an administrative accommodation only. Any terms stated in any such purchase order or Customer-issued document are expressly rejected, shall not be deemed a counter-offer by Customer, and shall have no force or effect.

3.4. Order of Precedence. In the event of any inconsistency among the documents governing the Services, the following order of precedence applies: (a) the applicable Statement of Work, but only as to a provision that satisfies the superseding requirements below; (b) this Agreement; and (c) the applicable Order Document. For a SOW provision to supersede a provision of this Agreement, the SOW provision must (i) expressly reference the applicable Section of this Agreement that is to be modified and (ii) clearly state that such provision supersedes the conflicting or inconsistent provision in this Agreement. Any such superseding provision is valid only for the SOW in which it is set forth and not for any other SOW. Notwithstanding the foregoing, the IBM Marketplace Terms govern exclusively as between Customer and IBM with respect to charges, billing, invoicing, payment, taxes, credits, refunds, ordering mechanics, subscription administration, and renewal. This Agreement governs exclusively as between Customer and Logicalis with respect to the scope, performance, and delivery of the Services, intellectual property, confidentiality, information security, warranties, disclaimers, indemnification, and limitation of liability. Nothing in the IBM Marketplace Terms expands Logicalis' obligations or liability to Customer beyond what is expressly stated in this Agreement.

4. SERVICES

4.1. Services. Subject to the terms and conditions in this Agreement and the applicable SOW, Logicalis will use

commercially reasonable efforts to perform the Services described in the applicable Statements of Work. The Services are delivered primarily on a remote basis and may include managed infrastructure and endpoint services, monitoring and event management, security services, managed detection and response, and other recurring or subscription-based services, in each case as and to the extent described in the applicable SOW. The Services may be performed by Logicalis and/or its Affiliates using resources inside or outside the United States, and any remote monitoring or security operations may be performed from locations determined by Logicalis, unless restrictions to the contrary are expressly set forth in a SOW. Logicalis reserves the right to modify or change the facilities, networks, systems, tools, and personnel used to provide the Services, including to increase capacity, upgrade environments, adopt evolving technology, or enhance the Services, and will use commercially reasonable efforts to notify Customer of any planned change that is reasonably likely to adversely affect the Services.

4.2. Changes. The Parties may agree to a change in the scope or time of a SOW by entering into a project change request or similar change document ("PCR"). No such modification will take effect until each Party has executed the PCR, which may be executed by signature, by electronic acceptance, or through the IBM Marketplace ordering process. Changes may be managed through the change management procedures set forth in the SOW, if any. No alterations or modifications will be permitted under this Agreement without an executed PCR.

3.3 Third Party Services; IBM

3.3.1 Logicalis may elect to resell or incorporate Third Party Services as part of the Services pursuant to a SOW. In such cases, Customer understands that Logicalis has contracted with such third party to provide such services. The terms of such Third Party Services will either be incorporated into the SOW or passed through to Customer for acceptance directly from the third party (in either case, the "Upstream Terms"). By accepting this Agreement or placing an order for the affected Services, Customer agrees to the applicable Upstream Terms. Logicalis makes no warranty on Third Party Services other than what is provided by the third party performing such services. Logicalis may suspend or terminate all or part of the Services in the event a third-party provider whose services are necessary for the delivery of Services suspends or terminates its services to Logicalis due to circumstances outside of Logicalis' control. IBM as ordering and billing party. Customer acknowledges that Customer acquires the Services through IBM and that IBM is not a subcontractor of, or agent for, Logicalis with respect to Customer's order, account, billing, or payment. Logicalis is not responsible for IBM's acts or omissions, for the IBM Marketplace, or for any dispute between Customer and IBM regarding charges, invoicing, taxes, credits, refunds, provisioning, or account administration. Customer's exclusive remedies with respect to such matters are against IBM under the IBM Marketplace Terms.

3.3.2 Where the Services are delivered on, integrate with, or depend upon IBM products, cloud services, infrastructure, or platforms (collectively, "IBM Platform"), Customer acknowledges that the IBM Platform is provided under IBM's own terms, which constitute Upstream Terms for purposes of this Section 3.3. Customer agrees to comply with such Upstream Terms and acknowledges that Customer's rights in the IBM Platform extend only to those expressly granted by IBM. Logicalis does not warrant the IBM Platform, is not responsible for its availability, performance, security, or continuity, and is not liable for any failure, degradation, modification, withdrawal, or suspension of the IBM Platform or of any Service to the extent caused thereby. IBM may modify or withdraw IBM Platform offerings and published service descriptions, and Logicalis may make corresponding changes to the Services upon notice to Customer. IBM's terms for the IBM Platform, including the applicable IBM Cloud Services Agreement, license agreements, and Service Descriptions, are available at https://www.ibm.com/support/customer/csol/terms and are incorporated into this Agreement by reference as Upstream Terms as between Customer and IBM.

3.3.3 Nothing in the IBM Marketplace Terms, any IBM order document, or any IBM communication creates any obligation, warranty, service level, remedy, or liability on the part of Logicalis, and Logicalis is not bound by any representation regarding the Services made by IBM or any IBM representative that is not expressly set forth in this Agreement or the applicable SOW.

3.3.4 The Services are non-IBM services provided solely by Logicalis and are not IBM products or services. IBM provides no warranty for the Services. Any warranty for the Services is provided solely by Logicalis as set forth in Section 9, and Customer must submit any warranty claim regarding the Services directly to Logicalis in accordance with Section 9.3.

3.4 Logicalis Tools. Unless otherwise specifically stated in a SOW, Logicalis retains title to any hardware, software, agents, or tools provided or installed by Logicalis in connection with the Services. Customer may not use, transfer, assign, pledge, or in any way encumber or convey such items and will permit their removal or deactivation upon termination or expiration of the applicable SOW.

5. CHARGES

5.1. Charges, Billing, and Taxes. All charges for the Services, and all matters relating to billing, invoicing, payment timing, late payment, currency, credits, refunds, expense reimbursement, collection, and taxes, are governed exclusively by the IBM Marketplace Terms and the applicable IBM transaction documents, and are not addressed in this Agreement. Any charge-related terms specific to the scope of a particular engagement (including early termination charges, usage true-ups, and out-of-scope rates) will be set forth in the applicable SOW or Order Document. References in this Agreement to amounts paid, payable, or due for the Services mean amounts paid or payable by Customer for the Services, whether to Logicalis, to IBM, or to an IBM authorized reseller.

6. INFORMATION SECURITY

6.1. Security Measures. Logicalis will maintain commercially reasonable security measures that are designed to (a) ensure the security of the Customer Data stored by Logicalis in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of the Customer Data stored by Logicalis in the Hosting Environment; and (c) protect against any unauthorized access to or use of the Customer Data as stored by Logicalis in the Hosting Environment. Customer acknowledges that no security measures are infallible and that Logicalis does not warrant or guarantee that all cyber threats, unauthorized access, or data breaches can or will be prevented. Logicalis shall have no responsibility or liability for any security incident or breach to the extent arising from (a) Customer systems, Customer Components, or third-party systems or services not controlled by Logicalis, or (b) Customer's failure to comply with its obligations under this Agreement, including without limitation its security-related responsibilities.

6.2. Notification and Prevention Obligations. Upon becoming aware, Logicalis shall promptly notify Customer of any confirmed security breach in its Hosting Environment that is reasonably likely to result in the unauthorized access to or disclosure of unencrypted Customer Data. This notification will state in reasonable detail the Customer Data at risk. Logicalis agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. Logicalis further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Customer to address the breach. Logicalis shall not be responsible or liable for any security breach caused by Customer. Customer acknowledges that Logicalis may report to IBM any actual or suspected security breach, defect, or violation of law involving the Services, and may provide IBM with information reasonably necessary for that purpose.

6.3. Audits by Logicalis. Logicalis will conduct an annual Statement on Standards for Attestation Engagements (SSAE) or equivalent audit of its security measures. Upon Customer's written request, Logicalis shall provide a copy of its most recent audit report. The report is to be treated as Confidential Information under this Agreement whether or not marked or otherwise identified as "Confidential" and remains the property of Logicalis.

6.4. Audits by Customer. Prior to the commencement of the Services**,** and thereafter on an agreed upon schedule during the term of this Agreement, not to exceed more than once per contract year, Customer shall have the right to review Logicalis' security measures solely as it relates to the Services provided under this Agreement. Such review shall be limited to documentation, policies, and procedures directly related to the contracted Services and shall not include access to the Hosting Environment or to any infrastructure or systems not exclusively dedicated to Customer . Logicalis may condition its participation in any such review, and in any Customer request for information, custom reporting, questionnaire response, or auditor coordination, upon the Parties first agreeing, through a PCR or a separate order, on the scope of such activity and any applicable charges. Notwithstanding anything to the contrary, Logicalis may satisfy these audit requirements by providing Customer with copies of its current certifications or third-party audit reports (e.g., SOC 2 Type II) covering the relevant security controls.

7. OTHER CUSTOMER RESPONSIBILITIES

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

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

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

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

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

7.6. Customer Components. Customer is solely responsible for the selection, operation, and maintenance of all Customer Components. For avoidance of doubt, if Customer requests managed services from Logicalis, Customer will not cause Logicalis to use anything for which Logicalis would need to obtain a license from such third party to provide those services. Customer will obtain all necessary rights, permissions, and consents associated with technology or data that Customer provides to Logicalis or with third party software or other items that Customer requests that Logicalis work with, install, or integrate to or from. Customer will cooperate with Logicalis' reasonable investigation of services outages and security issues.

7.7. Security. Customer shall (a) use reasonable security precautions in connection with its use of the Services (including but not limited to maintaining up-to-date virus scanning and operating system security patches and firewall protection) and (b) require each User to use reasonable security precautions (including but not limited to maintaining up-to-date virus scanning and operating system security patches and firewall protection. In addition, Customer shall not take any action or install any software that may preclude or impair Logicalis' ability to access or administer its network or provide the Services. Customer shall abide by the Logicalis Acceptable Use policy or Customer equivalent. Upon becoming aware, Customer shall promptly notify Logicalis of any suspected or actual security incident in its environment that may result in the unauthorized access to the Hosted Environment.

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

7.9. Remote Monitoring. Any remote monitoring services (or portions thereof) will be provided from locations determined by Logicalis, which may include locations outside of the United States. Logicalis may need to install certain hardware and/or software tools to deliver the Services. Such tools are owned by Logicalis unless otherwise stated in a SOW and delivery of these Services are contingent upon installation of them for use by Logicalis. Customer may not use, transfer, assign, pledge, or in any way encumber or convey the tools. Customer will remove the tools upon termination or expiration of the SOW. Customer acknowledges that it is responsible for obtaining all required approvals, licenses, authorizations, consents, and permits necessary for Logicalis to perform the Services.

7.10. Other Obligations. In addition to the obligations stated in this Agreement, Customer is responsible for controlling the access to, and use and security of, its data with respect to the Services and the data residing in or processed via the Services, including the appropriate encryption as set forth in this Agreement and for the security and provision of backup copies of its own data and for ensuring that any backups are protected unless such backup and recovery services are otherwise provided as separate services by Logicalis to Customer. Logicalis does not serve as Customer's compliance officer and does not represent or warrant that the Services will cause Customer to be compliant with any such requirements. Customer understands and agrees that Customer is not relying on Logicalis for legal, regulatory, or compliance advice.

7.11. IBM Platform Responsibilities. Where the Services are delivered on or in connection with the IBM Platform, Customer shall (a) obtain and maintain in effect throughout the term of the applicable SOW an active subscription or entitlement to the IBM Platform resources required for the Services; (b) provide Logicalis with the account access, credentials, and permissions in Customer's IBM Platform account reasonably required for Logicalis to perform the Services; and (c) remain solely responsible, as between Customer and Logicalis, for the IBM Platform resources provisioned in or consumed by Customer's account, whether provisioned by Customer or by Logicalis at Customer's direction. Logicalis will be relieved of its obligations to the extent its performance is affected by Customer's failure to comply with this Section; provided, however, that Customer shall remain responsible for Fees owed under the SOW, which shall accelerate and become due in the event of an uncured breach of this Section..

8. CONFIDENTIAL INFORMATION

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

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

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

8.4. Other Disclosures. Logicalis may share Customer's name and account information with IBM and with other third parties, including Customer's service providers and vendors, as necessary to provision, administer, support, or troubleshoot the Services, to assist Customer in the resolution of technical issues pertaining to the Solutions, and to satisfy Logicalis' reporting and compliance obligations to IBM. To the extent legally required, Logicalis may report any violations of law pertaining to Customer's use of the Services. Customer consents to Logicalis disclosing to IBM, and to IBM and its affiliates, contractors, and sub-processors storing and processing, Customer's business contact information (including that of Customer's personnel and Users), account data, order and transaction records, and information regarding the Services, as required for IBM's administration of Customer's order and IBM's compliance review and audit of the transactions under which the Services are acquired, and in accordance with the IBM Online Privacy Statement. Customer agrees that Section 7 does not restrict any disclosure permitted by this Section.

8.5. Disposal and Retention of Confidential Information. Upon termination of this Agreement or upon Discloser's request at any time, Recipient agrees to promptly return to Discloser all copies of Confidential Information. If return is impossible as to any portion of the Confidential Information, then Recipient shall certify to Discloser promptly that all such Confidential Information of Discloser, including all copies thereof, has been totally and permanently destroyed. Logicalis will return to the Customer, all Customer Data in its possession at the date of termination in its then-existing format and on its Customer-supplied media, however, Logicalis may keep a copy in accordance with its record retention policy.

8.6. Remedies. The Parties acknowledge and agree that a breach of this Section 7 by either Party may cause continuing and irreparable injury to the other's business as a direct result of any such violation, for which the remedies at law will be inadequate, and that Discloser shall therefore be entitled, in the event of any actual or threatened violation of this Section 7 by Recipient, and in addition to any other remedies available to it, to seek to obtain a temporary restraining order and to injunctive relief against the other Party to prevent any violations thereof, and to any other appropriate equitable relief.

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

9. OWNERSHIP RIGHTS

9.1. Services. During Logicalis' performance of the Services, if Logicalis creates any documentation, training materials, software scripts, or knowledge transfer ("Documentation") such materials are the exclusive property of Logicalis. Such Documentation may be made available to the Customer during the term of the Agreement solely for use in connection with implementing the underlying solution. For avoidance of doubt, Logicalis retains all right, title, and interest in all Documentation and any intellectual property rights therein or derived therefrom as well as all other pre-existing intellectual property and in all know-how, ideas, techniques, documentation, improvements, enhancements, modifications, or derivative works thereof including, without limitation, all rights to patent, copyright, trade secret, and trademark. Customer retains ownership of its Customer Data and Content. Subject to Customer's compliance with this Agreement and payment of all amounts due for the Services, Customer is granted a non-exclusive, non-sublicensable license to use the Documentation, solely for internal business purposes in connection with Customer's use of the Services. Logicalis reserves all right it does not specifically grant hereunder or in a SOW. Certain Services may include or interoperate with Third Party Services and the use of such Third Party Services are subject to, and limited by, the applicable third-party license terms. Where Logicalis provides Customer with software licenses or subscriptions issued by third party vendors, such licenses remain the property of the applicable vendor and are provided to Customer as an end user subject to the vendor's terms. Customer's rights in Third Party Services extend only to those expressly granted by the applicable third-party license.

9.2. Feedback. Customer hereby grants Logicalis a perpetual, irrevocable, worldwide license to use any Feedback Customer communicates to Logicalis, without compensation and without any restriction. Logicalis' rights granted in the previous sentence include, without limitation, the right to use Feedback and disclose Feedback to third parties for the purpose of improving the Services.

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

10. REPRESENTATIONS AND WARRANTIES

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

10.2. By Customer. Customer represents and warrants to Logicalis that: (a) it owns, or is a licensee of, having the right to sublicense, the Content and that Customer has the right to grant Logicalis the rights that Customer purports to grant in this Agreement; (b) to the extent applicable, it has collected the Content and uploaded or transferred the Content into or through the Hosting Environment in compliance with all applicable laws, including, without limitation, laws concerning privacy, security, and disclosure of personal information; (c) Logicalis' possession or use of the Content or Customer Data does not and will not infringe on, violate, or misappropriate any patent, trademark, or copyright, or misappropriate any trade secret or other proprietary right of any third party; and (d) it will not use, nor will it allow any third parties under its control to use, the Services for high risk activities, such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Services could lead to death, personal injury, or environmental damage.

10.3. By Logicalis. Logicalis represents and warrants to Customer that:

10.3.1. Industry Standards. The Services shall be performed in a good, workmanlike, professional, and conscientious manner by experienced and qualified employees of Logicalis according to the generally accepted standards of the industry to which the Services pertain. In the event the Services provided by Logicalis are not in conformance with this warranty, Customer must provide written notice to Logicalis within thirty (30) days after the performance of the non-conforming Services, specifying in reasonable detail the nature of the non-conformity. Upon confirmation of the non-conformity, Logicalis will use commercially reasonable efforts to re-perform the deficient Services at no additional charge. Re-performance is Customer's sole and exclusive remedy, and Logicalis' sole and exclusive obligation, for breach of this warranty. Where a SOW provides for deliverables and an acceptance procedure, that procedure applies to such deliverables in lieu of this Section 9.3.1.

10.3.2. Service Levels. The Services will meet the technical standards of performance or service levels, if any, expressly set forth in the applicable SOW. Where a SOW designates a metric as a service level objective, target, or non-binding performance goal, failure to meet such metric does not constitute a breach of this Agreement or the SOW, and no credits, penalties, or other remedies apply. Where a SOW establishes a binding service level, Customer's sole and exclusive remedy for any failure to meet it shall be as specified in that SOW. Any service level commitment applicable to the IBM Platform is made solely by IBM. Claims under any such commitment are subject to IBM's review and determination, and Logicalis' sole obligation with respect to any such claim is to submit the claim to IBM and pass through to Customer any credit actually received by Logicalis from IBM for that claim.

Customer is not authorized to make, and Customer shall not make, any representations or warranties on behalf of Logicalis to any third party. Customer shall be solely responsible and liable for any representations or warranties that Customer makes to any third party regarding Logicalis, the Hosted Environment, the Services, or any other aspect of this Agreement.

10.4. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION, NEITHER PARTY MAKES ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM THE USAGE OF TRADE OR COURSE OF PERFORMANCE. NO EMPLOYEE, AGENT, OR REPRESENTATIVE OF LOGICALIS IS AUTHORIZED TO MAKE ANY ADDITIONAL OR OTHER REPRESENTATIONS OR WARRANTIES ON BEHALF OF LOGICALIS. CUSTOMER IS NOT RELYING ON ANY OTHER REPRESENTATIONS OR WARRANTIES. IN ADDITION, CUSTOMER UNDERSTANDS AND ACKNOWLEDGES THAT THE INTERNET IS NOT A SECURE MEDIUM, MAY BE INHERENTLY UNRELIABLE AND SUBJECT TO INTERRUPTION OR DISRUPTION, AND MAY BE SUBJECT TO INADVERTENT OR DELIBERATE BREACHES OF SECURITY, FOR WHICH LOGICALIS CANNOT BE HELD LIABLE. FOR THE AVOIDANCE OF DOUBT, LOGICALIS DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY SERVICES.

11. INDEMNIFICATION

11.1. Indemnification by Logicalis. Subject to the terms and conditions in this Agreement**,** Logicalis will, at its cost: (i) defend Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively the "Customer Indemnified Parties") from and against any claim, suit, action, or proceeding (threatened or otherwise) (each a "Claim") made or brought by a third party against Customer Indemnified Parties to the extent based upon (a) any breach by Logicalis of any of it representations and warranties under Section 9.1; (b) real property damage or personal injury, including death, solely and directly caused by the negligent acts or omissions of Logicalis' employees, its subcontractors, or any party for whom Logicalis has expressly assumed liability for their acts in the course of performance under this Agreement; (c) any breach by Logicalis of Section 7 but only with respect to the Logicalis' unauthorized disclosure of Confidential Information and to the extent the disclosure is the result of actions predominantly attributable to Logicalis; (d) security breaches to the Hosting Environment to the extent directly caused by Logicalis' material breach of its obligations under Section 5; and (e) any allegation that Customer's receipt of the Services under this Agreement, excluding Third Party Services, infringes any of such third party's copyrights, or any such third party's patents issued in the United States as of the Effective Date, or misappropriates any of such third party's trade secrets (each an "**IP Claim**"); and (ii) Logicalis shall pay any final award of damages (or settlement amount approved by Logicalis in writing and) paid to the third party that brought any such Claim.

11.2. Indemnification by Customer. Customer will indemnify, defend and hold harmless Logicalis and its officers, directors, shareholders, employees, agents, successors and assigns from any and all liabilities, damages, costs and expenses, including reasonable attorney's fees and expenses, arising out of any claim, suit or proceeding (threatened or otherwise) made or brought by a third party against Logicalis or its officers, directors, shareholders, employees, agents, successors and assigns based upon (a) any breach by Customer of any of its representations and warranties under Section 9; (b) real property damage or personal injury, including death, directly caused by Customer; (c) any breach by Customer of Section 7 but only with respect to the Disclosure of Confidential Information and to the extent the Disclosure is the result of actions predominantly attributable to Customer; (d) any breach by Customer of its obligations under Section 6.1, Section 6.3, or Section 6.8; (e) any breach by Customer of Section 13.2; (f) any breach or alleged breach by Customer of the applicable end user terms or Upstream Terms for Third Party Services, including the IBM Marketplace Terms and any terms applicable to the IBM Platform; and (g) any claim that Logicalis' possession, storage, or transmission of the Content or possession or use of the Customer Components, infringes on, violates, or misappropriates any patent, copyright, trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party.

11.3. Procedure. A Party (or other person) having a right to defense and indemnification under this Agreement ("Indemnified Party") that desires such indemnification shall tender to the Party having an obligation to defend and indemnify under this Agreement ("Indemnifying Party") sole control of the defense and settlement of the Claim for which indemnity is sought, provided that the Indemnified Party shall notify the Indemnifying Party promptly in writing of each Claim and the Indemnified Party shall give the Indemnifying Party information and assistance to defend and settle the Claim. The Indemnified Party, at its own expense, shall have the right to employ its own counsel and to participate in any manner in the defense against any claim for which indemnification is sought under this Section 10. The Indemnified Party shall cooperate in all reasonable respects with the Indemnifying Party and its attorneys in the investigation, trial, and defense of any Claim. In no event shall either Party make any settlement of a Claim that involves a remedy relating to admission of liability or wrongdoing by, injunctive relief against, or other affirmative obligations by the Indemnified Party without the other Party's prior written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

11.4. Mitigation for IP Claims. At any time after notice of an IP Claim, or if Logicalis believes there is a basis for an IP Claim, Logicalis has the right, at Logicalis' sole option and expense, to either (a) procure the right for Customer to continue receiving the Services as provided in this Agreement, or (b) replace or modify the applicable Service with a service that has substantially similar functionality and that Logicalis believes would not be subject to the IP Claim. If Logicalis deems (a) or (b) not feasible or not commercially reasonable, Logicalis has the right to terminate the applicable SOW. In the event of any such termination, any refund or credit of amounts prepaid by Customer for the unused portion of the affected Service will be administered

by IBM in accordance with the IBM Marketplace Terms, and Logicalis will provide IBM with the information reasonably necessary to effect such refund or credit. In addition, upon any such termination, Customer shall cease the use of the applicable Service.

11.5. Limitations as to IP Claims. Notwithstanding anything to the contrary, Logicalis shall have no obligations or liability under Section 10.1 (Indemnification by Logicalis) if the IP Claim is based upon, arises out of, is related to, in whole or in part, or if any of the following apply: (a) the combination of the applicable Service with any product, software, solution, or service not entirely developed and provided by Logicalis, (b) use of the applicable Service outside the scope of the licenses or rights set forth in this Agreement or in violation of any law or any restriction or limitation set forth in this Agreement, (c) Customer's failure to comply with Logicalis' direction to cease any activity that in Logicalis' reasonable judgment may result in an IP Claim, (d) any allegation by a third party that does not specifically reference a Logicalis Service, or that does not reference a feature or function of a Logicalis Service, or (e) any IP Claim for which Customer does not promptly tender control of the defense thereof to Logicalis.

11.6. Sole Remedy. THE TERMS IN THIS SECTION 10 (INDEMNIFICATION) SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND LOGICALIS' SOLE AND EXCLUSIVE LIABILITY AND OBLIGATION WITH RESPECT TO THIRD PARTY CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10 (INDEMNIFICATION), LOGICALIS SHALL NOT HAVE ANY OBLIGATION TO DEFEND OR INDEMNIFY CUSTOMER FOR THIRD PARTY CLAIMS.

12. LIMITATION OF LIABILITY

12.1. Limit on Types of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL (AND LOGICALIS' SUPPLIERS AND LICENSORS WILL NOT) BE LIABLE TO THE OTHER PARTY OR ANY OTHER THIRD PARTY CLAIMING THROUGH A PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, LOST OR DAMAGED DATA, INVESTMENTS MADE, AND LOSS OF BUSINESS OPPORTUNITY OR INTERRUPTION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, STRICT LIABILITY AND NEGLIGENCE), EVEN IF (A) SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, (B) DIRECT DAMAGES DO NOT SATISFY A REMEDY, OR (C) A LIMITED REMEDY SET FORTH IN THIS AGREEMENT OR ANY SOW FAILS OF ITS ESSENTIAL PURPOSE.

12.2. Limit on the Amount of Damages Recoverable. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LOGICALIS' TOTAL CUMULATIVE LIABILITY UNDER OR RELATING TO THIS AGREEMENT AND THE SERVICES, REGARDLESS OF THE NATURE OF THE OBLIGATION, FORM OF ACTION OR THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, AND NEGLIGENCE), SHALL BE LIMITED IN ALL CASES TO AN AMOUNT WHICH SHALL NOT EXCEED, IN THE AGGREGATE, THE CHARGES PAID OR PAYABLE FOR THE SERVICES THAT ARE THE BASIS OF THE PARTICULAR CLAIM AND UNDER THE APPLICABLE SOW OR ORDER DOCUMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. FOR THE AVOIDANCE OF DOUBT, SUCH CHARGES INCLUDE AMOUNTS PAID BY CUSTOMER FOR THE SERVICES TO LOGICALIS, TO IBM, OR TO AN IBM AUTHORIZED RESELLER, AND EXCLUDE AMOUNTS PAID FOR ANY IBM PLATFORM, THIRD PARTY SERVICES, PRODUCTS, OR OTHER ITEMS NOT PERFORMED BY LOGICALIS.

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

12.4. Applicability. The terms in this Section 11 shall apply to the maximum extent permitted by applicable law. If applicable law precludes a party from excluding liability for certain types of damages for certain acts or omissions or capping its liability for certain acts or omissions, then the terms in this Section 11 shall not limit liability for such acts and omissions to the extent prohibited but will apply for all other acts and omissions and in all other respects. Customer may not avoid or circumvent the limitations, disclaimers, exclusions, or exclusive remedies in this Agreement by asserting claims in tort, statute, or otherwise where such claims arise from the same operative facts as a claim that would otherwise be subject to this Agreement.

12.5. Allocation of Risk. EACH PARTY ACKNOWLEDGES THAT THE FOREGOING DAMAGES EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 11 REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND ACKNOWLEDGES THAT THE OTHER PARTY WOULD NOT HAVE ENTERED INTO THIS AGREEMENT ABSENT SUCH EXCLUSIONS AND LIMITATIONS OF LIABILITY OR THAT THE PRICES PAID BY CUSTOMER FOR THE SERVICES WOULD HAVE BEEN HIGHER.

13. TERM AND TERMINATION

13.1. Term

13.1.1. This Agreement. This Agreement commences on the date Customer first accepts it as set forth above (the "Effective Date") and remains in effect until the expiration or termination of the last Statement of Work or Order Document then in effect, unless earlier terminated as provided in this Section 12.

13.1.2. Statement of Work. The term of each SOW, including any renewal and any termination rights applicable to the SOW, shall be as specified in that Statement of Work and, where applicable, the IBM Marketplace Terms.

13.2. Termination of this Agreement. Either Party may terminate this Agreement upon written notice. If there are any Statements of Work or Order Documents then in effect, termination of this Agreement shall be effective upon the expiration or termination of the last such SOW or Order Document, and the terms of this Agreement shall continue to govern each such SOW or Order Document until it expires or is terminated. If there are no Statements of Work or Order Documents then in effect, termination shall be effective upon receipt of the written notice. Termination of an individual SOW or Order Document, including any termination for convenience and any applicable early termination charge, is governed by the applicable SOW and the IBM Marketplace Terms.

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

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

13.3.2. No Opportunity to Cure. If: (a) the other Party breaches any representation or warranty in this Agreement, subject to the limitation set forth in Section 9.3.2; (b) any representation or warranty is inaccurate, incomplete, false or misleading in any material aspect; or (c) the breach is of a type or nature that is not capable of being cured within such time period (such as, by way of example and not limitation, an obligation relating to Confidential Information). The notice from the non-breaching Party shall specify the basis on which the Agreement or SOW is being terminated, including a description of any breach. Termination shall be effective immediately upon receipt of such notice by the breaching Party.

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

13.5. Suspension or Termination upon IBM Notice. Logicalis may suspend performance of the Services, or terminate this Agreement or any affected SOW, upon notice to Customer if (a) IBM notifies Logicalis that Customer is in default of its payment obligations to IBM for the Services or IBM is in default of its payment obligations to Logicalis; (b) Customer's agreement with IBM under which the Services were acquired expires or is terminated; or (c) IBM notifies Logicalis that Customer is in breach of the IBM Marketplace Terms. Logicalis will have no liability to Customer for any suspension or termination under this Section, and any Services suspended for non-payment will be resumed within a commercially reasonable time after IBM or Logicalis confirms the default has been cured.

13.6. Effects of Termination. Upon termination of this Agreement or an individual SOW, and provided Customer is not then in material breach of this Agreement or the applicable SOW, Logicalis will, to the extent applicable:

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

(b) Disclose to Customer all relevant information regarding the equipment, software and Third Party Services required to perform the Services;

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

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

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

Any additional transition services requested by Customer are out of scope and will be provided only pursuant to a PCR or a separate order placed through IBM.

13.7. Survival. Those provisions that by their nature should survive termination of this Agreement will survive termination. Without limiting the generality of the foregoing statement, Sections 7 (Confidential Information); 8 (Ownership Rights); 9 (Representations and Warranties); 10 (Indemnification); 11 (Limitation of Liability); and 13 (Miscellaneous) shall survive any termination of this Agreement.

14. MISCELLANEOUS

14.1. Force Majeure. Neither Party shall be liable to the other Party for any delay or failure to perform, where such delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of civil or military authority, national emergencies, labor strikes, fire, flood, or catastrophe, acts of God, insurrection, war, riots, or failure of transportation or a general and/or city-wide power failure. Further, Logicalis' performance of the Services is dependent upon Customer's timely performance of its obligations and Logicalis is not responsible for any failure or delay to the extent caused by Customer, Customer Components, or third-party systems or services not under Logicalis' control. Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, the Agreement may be terminated without liability by the non-delaying Party.

14.2. Export Compliance. Customer agrees to comply with all export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce, the International Traffic in Arms Regulations promulgated by the United States Department of State, and any of the regulations promulgated by the Office of Foreign Assets Control of the United States Department of the Treasury. Customer shall be solely responsible for such compliance with respect to Customer Data and the Content that it provides to Logicalis. Customer represents and warrants that neither Customer nor any entity that owns or controls Customer (a) is located in, organized under the laws of, or ordinarily resident in any country or region subject to comprehensive U.S. sanctions or identified by IBM as a prohibited destination for the Services; (b) is majority-owned by any such entity or by citizens of any such country or region; or (c) is identified on any U.S. government restricted-party list. Customer shall not access or use the Services from, or provide access to the Services to any person in, any such country or region, or for any prohibited end use. Logicalis may suspend or terminate the Services immediately if it reasonably determines that continued performance would violate applicable export control or sanctions laws.

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

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

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

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

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

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

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

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

If to Logicalis:

Logicalis, Inc.
Attn: General Counsel
2600 W. Big Beaver Rd., Ste 150
Troy, MI 48084

With a copy to: legalservices@us.logicalis.com

If to Customer: to the name, postal address, and electronic mail address provided by Customer in connection with its order for the Services, whether provided to Logicalis or to IBM, or to the individual who accepted this Agreement on Customer's behalf. Customer is responsible for keeping such contact information current and for ensuring that notices sent to such address are monitored. A Party may change its address for notices by sending a change of address notice using this notice procedure.

For greater certainty, routine communications such as service requests, maintenance notifications, or other operational matters may be made via email, through Logicalis' customer platform or through other agreed-upon channels without the need for formal Notice as described above.

14.11. Active Negotiations. Each Party acknowledges that this Agreement has been negotiated by the Parties and shall not be construed for or against either Party based on its role in drafting.

14.12. Amendments; Changes to These Terms. Except as set forth in this Section, no waiver of any right or remedy and no amendment, change or modification of the terms of this Agreement shall be binding on a Party unless it is in writing and is signed or accepted by the Party to be charged. Logicalis may modify this Agreement from time to time by posting a revised version at the URL identified above. Any such modification is prospective only and does not apply retroactively. The version of this Agreement in effect on the date Customer places an order for the applicable Services governs that order for the then-current term of the applicable SOW or Order Document. Modifications apply to orders placed, and to renewals occurring, on or after the effective date of the revised version. Customer's placement of a new order, or renewal of an existing order, after such effective date constitutes acceptance of the revised version. Customer agrees to review the posted Agreement periodically.

14.13. Publicity. Logicalis may identify Customer as a customer and disclose the general nature of the Services performed for Customer in internal reporting, in reporting to IBM as required under Logicalis' agreements with IBM, and to Logicalis' and IBM's personnel and advisors. Any other public use of Customer's name, logo, or trademarks in Logicalis' marketing or promotional materials requires Customer's prior written consent, which may be given by email.

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

14.15. No Third Party Beneficiaries. Except as provided in Section 10 (Indemnification), this Agreement does not and is not intended to confer any enforceable rights or remedies upon any person or party other than the Parties.

14.16. Entire Agreement. This Agreement and all schedules, attachments and/or other documents attached hereto or incorporated by reference, constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement. Nothing in this Section supersedes, modifies, or limits the IBM Marketplace Terms as between Customer and IBM.

This Agreement does not require a handwritten signature. Customer accepts this Agreement as set forth in the acceptance provisions above, and such acceptance constitutes a binding agreement under applicable electronic transactions law.