



This Master Services Agreement (including these General Terms, all SOFs hereunder, the Service Level Agreement and the Data Center Control Policy, collectively the "Agreement"), is made and entered into as of the earlier of the date on which any Services first commence under a SOF and the date last signed below (the "Effective Date") by and between n+2 LLC, an Illinois Limited Liability Company having a principal place of business at 1331 E. Business Center Drive, Mount Prospect, IL 60056 ("n+2") and the Client listed on the applicable SOF ("Client"). n+2 and Client are sometimes collectively referred to as "Parties", and each individually as a "Party". In consideration of the rights and obligations set forth below, the receipt and sufficiency of which is acknowledged, the Parties agree to the following:

## GENERAL TERMS

### 1. ADMINISTRATION

1.1 Terms Applicable. From time-to-time n+2 will provide Services and/or Goods to Client as set forth in an applicable signed service order form or statement of work or other written order for services (each a "SOF"). This Agreement shall apply to each SOF, and each SOF shall be a separate and individually enforceable agreement between Client and n+2. In the event of a conflict between a SOF and this Agreement, the SOF shall control to the extent of the conflict.

1.2 Goods and Services. Subject to this Agreement and each applicable SOF, n+2 shall perform all services ("Services") and provide all products, including hardware and server cabinets, sold to Client ("Goods") described in each SOF. The Services may include collocation of Client's equipment within n+2's data center located at the address listed above or in an applicable SOF ("Data Center"). Any third-party software resold or otherwise provided to Client by n+2 shall be subject to the third-party's applicable licensing terms.

1.3 Requirements. Client and n+2 may each designate an individual to be responsible for overseeing each project in a SOF and who are authorized to make decisions for their respective Party. Client will provide timely information, individuals, and access to systems as needed for performance of the Services, and such other resources as reasonably requested by n+2. For any third-party software provided by Client and managed by n+2, Client shall have and continuously maintain manufacturer support for updates.

### 2. DATA CENTER SERVICES; GOODS

2.1 Ordering. Client may from time-to-time submit a completed SOF to n+2 for acceptance or rejection. n+2 shall not be obligated to deliver Goods or perform Services in the absence of an applicable fully executed SOF.

2.2 Title. Title to Goods sold to Client shall pass upon full payment therefore. Title to all hardware owned by n+2 and used in connection with providing Services, including without limitation all such hardware in the nature of power systems, cooling and ventilating systems, routers, circuits, transit connections, racks and fixtures, together with all firmware and system software associated therewith ("n+2's Equipment") and all facilities furnished by n+2 shall remain with n+2. n+2 may make UCC-1 filings on Goods sold to Client until full payment therefore.

2.3 Inspection. Client shall notify n+2 and the shipping company if applicable, in writing, within 2 business days after delivery of any defective, non-conforming or damaged Goods. Failure to do so shall constitute acceptance of any such Goods and a waiver of any claim against n+2.

2.3 Changes. Any Client requests for changes to Services or Goods under an applicable SOF shall be in writing (each a "Change Order"), including changes to pricing or project scheduling, if any, which changes shall, if mutually agreed by the Parties, become a

part of this Agreement. If Client requests that n+2 perform any Services not listed on a SOF and n+2 agrees, such Services shall be billable at n+2's then-current hourly rates and are subject to availability of personnel.

2.4 Activities. In addition to such Services as are described in a SOF, activities including project management, preparing recommendations and Change Orders, problem research and/or resolution not covered by a SOF, development of specifications, attending meetings, writing reports, performing activities under a project plan not listed in a SOF, status updates, project preparation, appointments canceled by Client with less than three (3) business days' notice, and/or performing administrative tasks, are all billable Services hereunder.

### 3. INVOICES AND PAYMENT.

3.1 Billing. Billing contact may be changed upon written notice to the other Party's billing contact. One time set-up fees are due upon order. Subscription Services are billed monthly in advance. Subscription Service charges commence upon the earlier of the commencement date set forth in the applicable SOF, or upon notification to Client that the Services are ready for use. If Service activation requires action or information from Client, in the event such action or information is not promptly providing billing will automatically begin on the earlier of the commencement date set forth in the SOF or five days after the date of n+2's request for such action or information. Payment must be received by n+2 within 30 days of the invoice date. If Client consumes Services or uses any facilities, bandwidth and/or network capacity in an amount that exceeds Client's limit, Client shall pay any overages within 5 business days of its receipt of an invoice for the same. Invoices are deemed accepted by Client unless written notice of disputed items (containing the reasons and disputed amount) is received by the applicable n+2 account executive not less than 5 business days prior to the due date. Client agrees to timely pay the undisputed portion and n+2's acceptance of such partial payment shall not waive any of its rights as to the remaining balances nor constitute accord and satisfaction. Disputed amounts resolved in favor of n+2 shall be paid with interest within 10 days of resolution of the dispute. n+2 may charge interest on all past due amounts at the lesser of (a) 1.5% per month, or (b) the greatest amount allowed by law in the applicable jurisdiction. In the event of late payment or a payment dispute not resolved within 30 days of the invoice due date, n+2 may: (a) terminate or suspend performance under any SOF; (b) proceed for the collection of the overdue amount and be reimbursed for any related loss, cost or expense of collection including reasonable attorneys' fees, court costs and administrative charges; and/or (c) reclaim or hold any unpaid Goods. To resume Services, a reconnection fee will apply and pre-payment may also be required.

3.2 Credit Approval and Pre-payments. Client's Service may be subject to credit approval, and upon request Client shall provide information as requested by n+2 to apply for and continue to qualify for such approval. Client agrees to notify n+2 of any materially



adverse change in Client's credit status. In the event of adverse credit information, upon 5 days' prior notice n+2 may suspend or cancel Services until an agreed upon pre-payment is made.

3.3 Taxes and Shipping. Prices for Goods and/or Services are exclusive of federal, state, and local taxes or regulatory fees (collectively, "Taxes"), or shipping, insurance and handling. Shipping, handling and insurance charges shall be invoiced. For Clients located in Illinois, Texas, California, New York and Wisconsin, n+2 will pay state Taxes it is required to pay by law and invoice Client for the same (including Taxes that may be assessed after termination. For all other states and all local jurisdiction taxes, Client will self-assess and pay Taxes.

3.4. Cost Recovery Fees. Charges for some Services may be subject to monthly cost recovery fees to offset costs n+2 actually incurs providing certain Services such as regulatory fees, licenses and other obligations imposed by, and inquiries made by, federal, state, municipal regulatory bodies/governments, or any underlying carriers, and related legal and billing expenses.

3.5 Regulatory and Operational Changes. During any Term of Service, in the event of the imposition of any new regulatory requirement, tax, tariff, increased power or supplier costs or similar circumstance that necessitates a material change in the Service or increases the cost of Services, n+2 may increase the prices accordingly. Client shall have 30 days after receipt of notice of the related price increase or change in Service to terminate the affected portion of the Service without early termination charges.

**4. TERM AND TERMINATION**

4.1 Term. The term of this Agreement begins on the Effective Date and continues until terminated in accordance with this Section 4. The commencement of any Term of Service shall be set forth on the applicable SOF, and if no commencement date is provided, it shall be the first day that n+2 provides the applicable Service. Each Term of Service shall remain in effect until stated expiration or earlier termination as permitted hereunder. Upon expiration each Term of Service shall automatically renew for successive 1-year terms at then-current rates unless written notice of non-renewal is provided by either Party to the other at least 90 days prior to expiration of the then-current Term of Service. For the purposes of this Agreement, "Term of Service" refers to the period of time during which n+2 is obligated to provide Services as set forth in the relevant SOF.

4.2 Termination. n+2 may terminate this Agreement or an applicable SOF for Client's breach, or suspend Services (including suspending access to the Data Center) until the default is cured, for the following reasons: (1) if any amount is past due; (2) if Client materially breaches any of the terms of this Agreement and has not cured such breach within 5 days of receipt of notice of the breach, provided that Services may be suspended in advance of such notice if, in n+2's sole but reasonable determination, Client's breach is likely to subject n+2 to liability or jeopardize n+2's systems, facilities, or commitments to other clients; (3) upon any regulatory decision or governmental order requiring n+2 to suspend Services or which is reasonably likely to result in the loss of n+2's operating authority; or (4) the assignment by Client of its business for the benefit of creditors, or the filing of a petition under the Bankruptcy Code or any similar statute, or the filing of such a petition which is not discharged or stayed within 60 days, or the appointment of a receiver or similar officer to take charge of Client's property, or any other act indicative of bankruptcy or insolvency that can be reasonably expected to place Client in payment default. Client

acknowledges that termination or disconnection of certain Services may require Client to provide n+2 with a disconnect firm order commitment (DFOC) from a relevant third-party and, in this event, Client acknowledges that its failure to timely obtain and provide such DFOC to n+2 may result in delays to terminating or disconnecting Services which may result in additional charges for the Services in connection with the delay.

4.3 Effects of Termination or Suspension. Upon the effective date of expiration or termination of the applicable Term of Service, n+2 will immediately cease providing Services. Termination or suspension in accordance with this Agreement shall not result in the accrual of applicable service credits or a breach by n+2. Suspension shall not be a waiver of any right of termination. If Services have been suspended other than for Client's breach, Services shall be restored as soon as reasonably possible and the applicable service charges shall be ratably abated. If Services have been suspended for Client's breach and Client requests that Services be restored, n+2 may restore Services after satisfaction of conditions and imposition of charges as n+2 reasonably requires. Notwithstanding any termination or expiration of this Agreement, the terms of this Agreement will remain in effect with respect to any non-terminated SOFs unless otherwise agreed in writing by the Parties.

4.4 Duties Upon Termination. Upon termination of this Agreement or a SOF by either Party, Client shall immediately pay n+2 all amounts due up to the effective date of such termination, including payment of all non-cancelable items, decommissioning expenses, and, unless termination was by n+2 pursuant to a regulatory decision or governmental order, payment of all amounts remaining due for the full term for Services with a term commitment. In the event that a SOF with a term commitment is terminated by Client, such termination shall not be effective until Client has paid the full amount due for the committed term. If Client fails to pay n+2 all amounts owed under any SOF in a timely manner, Client agrees that without notice, n+2 may, remove from the Data Center and take possession of any of Client's Equipment and store it, at Client's expense until taken in full or partial satisfaction of any lien or judgment; or liquidate the Equipment in a commercially reasonable manner and apply the proceeds to any amounts due under this Agreement or any SOF. Any termination will be without prejudice to any other right or remedy afforded to each Party.

**5. CONFIDENTIAL MATERIAL AND DATA PRIVACY**

5.1 Non-Disclosure of Confidential Information. "Confidential Information" means, with respect to a Party hereto, any information of such Party that is marked "confidential" or "proprietary" or any other similar term and all other information which the receiving Party should reasonably understand to be confidential based on the nature or context of the disclosure. Confidential Information includes n+2 pricing and the terms of this Agreement, but does not include information that is (i) rightfully in the receiving Party's possession without prior obligation of confidentiality from the disclosing Party; (ii) a matter of public knowledge; (iii) rightfully furnished to the receiving Party by a third Party without confidentiality restriction; or (iv) independently developed by the receiving Party without reference to the disclosing Party's Confidential Information. Each Party shall (i) use the Confidential Information of the other Party only for the purposes of exercising rights or performing obligations in connection with this Agreement or any SOF hereunder; and (ii) protect from disclosure to any third parties any Confidential Information disclosed by the other Party for



a period commencing upon the date of disclosure until 2 years thereafter, except with respect to Client data to which n+2 may have access in connection with the provision of Services, which shall remain Confidential Information until one of the exceptions stated in the above definition of Confidential Information applies. Notwithstanding the foregoing, either Party may disclose Confidential Information (a) to an Affiliate for the purpose of fulfilling its obligations or exercising its rights hereunder as long as such Affiliate complies with the foregoing; or (b) if required by law provided the receiving Party has given the disclosing Party prompt notice unless precluded by law.

**5.2 Client Personal Data.** “Client Personal Data” means data provided by or on behalf of Client which consists of data or information naming or identifying a natural person such as: (a) personally identifying information that is explicitly defined as a regulated category of data under any data privacy or data protection laws applicable to Client; (b) non-public information, such as a national identification number, passport number, social security number, driver’s license number; (c) health or medical information, such as insurance information, medical prognosis, diagnosis information or genetic information; (d) financial information, such as a policy number, credit card number and/or bank account number; (e) sensitive personal data, such as mother’s maiden name, race, marital status, gender or sexuality; and/or (f) any other non-public personal information regarding individual consumers or customers of Client. n+2 shall only use Client Personal Data provided to it under this Agreement for purposes of fulfilling its obligations under this Agreement or an applicable SOF.

**5.3 No Access to or Control over Client Data.** Client acknowledges and agrees that, n+2 exercises no control over, and accepts no responsibility for, Client’s Data (including Client Personal Data) passing through n+2’s network or the Internet to or from hardware owned by Client and located within the Data Center, including without limitation servers and storage units, together with all relevant firmware and software (“Client’s Equipment”). The Parties acknowledge that n+2 will not access Client Data (including Client Personal Data) in any circumstances unless specifically requested in writing by the Client. Client understands further that the Internet contains materials some of which are socially inappropriate or may be offensive; and is accessible by persons who may attempt to breach the security of n+2 and/or its network(s). n+2 has no control over and expressly disclaims any liability or responsibility whatsoever for such materials or third-party actions. Client and its users and end users access the Services at their own risk. n+2 is not liable for Client’s Data or any data transferred either to or from Client or stored by Client or any of Client’s customers via the Services provided by n+2. Notwithstanding the foregoing, Client acknowledges that authorized n+2 staff routinely have unrestricted access to n+2’s entire Data Center including Client areas in order to perform physical inspections, respond to alarms, and to investigate issues, and that such staff will not access or control Client Equipment unless (a) instructed in writing by a Client representative verified to have permanent access (e.g., hands-on request), or (b) if a life-safety issue exists. For the purposes of this Agreement, “Client’s Data” refers to the digital content provided by Client that is stored on or passed through the equipment utilized for Client’s benefit hereunder. Finally, n+2 acknowledges to Client it will maintain all applicable Payment Card Industry (“PCI”) Data Security Standard requirements to the extent that they could impact the physical security of a Client’s cardholder data environment.

**5.4 Data Privacy Laws.** The Parties shall comply with their respective obligations under applicable data privacy and data protection laws and regulations (the “Data Privacy Laws”), including but not limited to with respect to Client Personal Data. n+2’s Privacy Policy Notice and Statement is available at <http://netrixllc.com/privacy>. In no event shall n+2 be required to monitor or advise on the Data Privacy Laws applicable to Client with respect to Client Personal Data. In the event that there are any changes to any of the Data Privacy Laws which require a change to the provision of all or any part of the Services or a method of delivery of such Services in use by n+2 prior to such change, including the terms of this Section 5.4, Client shall bear the cost of such changes; further, the Parties shall make appropriate adjustments to the terms of this Agreement and the Services (and corresponding charges) pursuant to a Change Order.

## 6. PERFORMANCE BY N+2.

**6.1 Warranties.** n+2 will furnish Services in accordance with the applicable SOF and the Service Level Agreement (the “SLA”) and the Data Center Control Policy as may be amended from time to time (the “Control Policy”), which are available at [www.nplus2.com/contracts](http://www.nplus2.com/contracts). The service credits stated in the SLA are Client’s sole and exclusive remedy for n+2’s failure to meet the guarantees for which service credits apply.

**6.2 Exclusions.** n+2 is not liable for claims involving Goods (for which n+2 will pass through available manufacturer warranties); selection, installation, maintenance, compatibility, or performance of any of Client’s Equipment or Client’s Data; services not performed by n+2, defects or changes in Client’s computer systems, Client’s failure to take reasonable security measures to protect its data and networks; Client’s choice of Goods or Services; claims resulting from Client’s instructions to n+2; claims alleging infringement after Client was provided with modifications to remedy such alleged infringement; and any issue that is outside the scope of Services in a SOF or not under the reasonable control of n+2. n+2 shall have no obligation or liability for any reconfiguration, modification, misuse or abuse of n+2 facilities or Client’s Equipment therein by Client or its agents.

**6.3 Disclaimer.** EXCEPT FOR THE SERVICE LEVEL REFERENCED ABOVE, THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS AND n+2 DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND TITLE. n+2 DOES NOT WARRANT THAT THE SERVICES WILL CAUSE CLIENT’S EQUIPMENT OR ANY OTHER GOODS TO OPERATE WITHOUT FAULT, ERROR OR INTERRUPTION. This disclaimer of warranty may not be enforceable in all jurisdictions and if not enforceable shall be interpreted to provide the broadest possible enforceable disclaimer.

## 7. PERFORMANCE BY CLIENT

**7.1 Client Warranty.** Client warrants and represents (i) that Client has the authority to allow n+2 to use all facilities, equipment, software, Client Confidential Information and all other materials provided by Client, including without limitation all necessary right, title and interest in the Client’s Data, and/or that it has obtained all consents, licenses, permissions and releases necessary to grant n+2 the right to distribute the Client’s Data for the purpose of n+2’s performance of the Agreement; (ii) that n+2 may rely on the accuracy and completeness of all information provided by Client; (iii) it will, and will communicate to and cause its personnel



(including any contractors/subcontractors) to, comply with the Control Policy; and (iii) it will not permit use of the Services or Client's Equipment in violation of the n+2 Acceptable Use Policy located at [www.nplus2.com/contracts](http://www.nplus2.com/contracts). When Services occur at Client's location, Client shall provide: (i) space, utilities, and HVAC necessary to maintain the proper environment for the Services, (ii) a safe, hazard free, working environment complying with applicable laws and regulations, and (iii) access and cooperation as may be reasonably required for provision of Goods and Services; and (iv) shall ensure n+2's Equipment remains free and clear of any liens or encumbrances.

**7.2 Compliance.** Client shall comply with all applicable laws and regulations, the Control Policy posted at [www.nplus2.com/contracts](http://www.nplus2.com/contracts), and all other security procedures in place at the Data Center as communicated to Client. Client's personnel (including any authorized vendors or contractors) may be required to sign an acknowledgement of n+2's Control Policy and other security policies. Client shall designate a primary security contact to whom n+2 may direct all security-related communications, including authorizing to access Client's Equipment. Client will provide n+2 with written notice of any changes in this contact. Client shall be liable for any loss or damage to any Equipment, regardless of ownership, to the extent caused by Client failure to comply with the foregoing.

**7.3 Usage Restrictions.** Neither Client's Equipment nor any of n+2's Equipment available for use in connection with the Services shall be used by Client for any purpose except as set forth on a SOF or otherwise approved in writing by n+2. Unless expressly permitted on a SOF, Client shall not permit any Client's Equipment to be used for the resale of Internet access or managed services provided by n+2 to its clients. If Client or any third-party attempts to operate or maintain any such equipment without first obtaining n+2's written approval, then Client shall pay to n+2, in addition to any other remedies to which n+2 is entitled, for any damage incurred, or repair and/or replacement (at n+2's option) required and service charges relating to the maintenance or inspection of said equipment. If any of Client's Equipment impairs the Services or any of n+2's operating systems, Client shall be liable for any resulting damages. If any of Client's Equipment causes or is likely to cause any hazard or service obstruction, Client shall, upon notice, remedy the situation as quickly as reasonably possible. If Client fails to remedy the situation, n+2 may, at Client's expense, render consulting services at n+2's then standard rates for such services to remedy the difficulties caused by any of the foregoing.

**7.4 Responsibility for Data and Equipment.** Client at its own cost shall protect and maintain the space assigned to it for the provision of colocation Services ("Client's Space") and Client's Equipment, and shall ensure that neither it nor its employees, agents, contractors or invitees damage any part of the Data Center, n+2's Equipment, Client's Space or any of Client's Equipment located in or about the Data Center, and shall not allow any debris or supplies to be left therein. Client agrees to reimburse n+2 for any costs incurred for the removal of such items or the repair of any damage caused by Client or its employees, agents, contractors or invitees. Client shall not maintain or permit any nuisances or violations of any regulations or ordinances with respect to the Data Center. Client shall not, and shall not permit others to, rearrange, disconnect, remove, attempt to repair, or otherwise tamper with any of the facilities, n+2's Equipment or n+2-owned Goods, except upon n+2's prior written consent. Client shall ensure that its employees, agents

or invitees shall not permit any explosive, combustible, hazardous, or toxic materials, as defined under state, federal or local laws or regulations, to be located in or about the Data Center or Client's Space. Client will be solely responsible for all Client's Data and any person's use thereof, including n+2's use in accordance with Client instructions.

**7.5 Insurance.** For colocation Service only, Client shall obtain and/or maintain in full force and effect during the applicable Term of Service: (i) comprehensive general liability insurance insuring Client against any liability arising out of the colocation, use, occupancy or maintenance of the Data Center which policy shall be in an amount not less than \$5,000,000 per occurrence for bodily injury and property damage to tangible property (including loss of use) in an occurrence, and which policy shall insure the hazards of the Data Center and Client's operations thereon, independent contractors, and contractual liability (including covering Client's indemnity obligation contained in this Agreement); (ii) workers' compensation insurance in an amount not less than the statutory requirements and employer's liability insurance in an amount not less than \$1,000,000 per occurrence; and (iii) Standard form property insurance for Client's Equipment, if any, insuring against the perils of fire, extended coverage, vandalism, malicious mischief, special extended coverage ("all-risk") and sprinkler leakage, which policy shall be on all Client's Equipment and other property owned by Client, for which Client is legally liable or that was installed at Client's expense, and which is located in the Data Center, in an amount not less than 90% of the full replacement cost thereof. Client shall furnish n+2 with a Certificate of Insurance evidencing such coverage and naming n+2 as an additional insured. Client will be solely responsible for ensuring that its agents (including consultants, contractors and subcontractors) maintain separate insurance at levels no less than those required above. Client is solely responsible for obtaining and/or maintaining appropriate property coverage for all Client's Equipment located on n+2's premises. Further, Client shall cause casualty and/or property damage insurance carried by it to be written to provide that the insurance company issuing such insurance waives all right of recovery by way of subrogation against n+2 in connection with any damage covered by any such policy. Client's failure to carry the required insurance shall not invalidate this waiver.

**7.6 Indemnification by Client.** Client shall indemnify, defend and hold harmless n+2, its affiliates, and their respective officers, directors, members, employees, subcontractors, representatives, landlords and/or mortgagees from claims, losses, damage, expense (including reasonable attorney's fees and court costs), or liability (including liability for infringement of a third party's intellectual property rights), personal injury, death or property damage caused by or arising from: (i) the Client's Data or any communication transmitted via the Services or maintained in connection with any Goods provided hereunder; and (ii) the acts or omissions of Client or a third party under Client's control, including their respective employees or representatives, in connection with the Goods or Services provided hereunder.

**8. LIMITATION OF LIABILITY**

IN NO EVENT SHALL N+2 BE LIABLE FOR ANY LOST OR MISAPPROPRIATED DATA OR CONTENT, IDENTITY THEFT, GOVERNMENTAL FINES OR PENALTIES, LOST PROFITS OR LOST REVENUES, BUSINESS INTERRUPTION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR



RELATING TO THE GOODS AND SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF N+2 HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CLIENT ACKNOWLEDGES THAT WITHOUT THESE DISCLAIMERS AND LIMITATIONS SET FORTH IN THIS SECTION THE COST OF THE GOODS AND SERVICES WOULD BE GREATER. For all losses arising out of or related to any matter addressed in the SLA, n+2's total liability shall be limited to the extension of credit allowances described in the SLA. In such case, the extension of such credit allowances or refunds shall be client's sole remedy. The total liability of n+2 for all other damages hereunder in any form of action is limited to the amount paid by Client in the preceding twelve (12) months for the Services causing the damage.

**9. GENERAL PROVISIONS.**

**9.1 Force Majeure.** Except for payment obligations hereunder, neither Party shall be held responsible for any failure to perform hereunder if such failure is a result of acts of God, foreign or domestic enemies, fire, flood or other catastrophes; any law, order, regulation, or governmental action; sabotage; accidents; computer/network viruses that are not preventable through generally available retail products; catastrophic hardware failures or attacks on its servers; or for any other matter beyond the nonperforming Party's reasonable control (each a "Force Majeure Event"). Neither Party is entitled to terminate this Agreement in such circumstances unless such Force Majeure Event continues for a period of thirty (30) days or more.

**9.2 Relationship of the Parties.** n+2 is an independent contractor to Client and nothing in this Agreement entitles n+2 to act as a legal representative, partner, or agent of Client. Client shall not have any actual, potential or other control over n+2 or its employees, agents, or subcontractors except as provided in this Agreement. This Agreement is for Goods and/or Services only and is neither intended to nor does it constitute an agreement relating to real property. Client acknowledges and agrees that (i) it has been granted only a revocable license to use any applicable Client Space and appropriate n+2 facilities in accordance with this Agreement, and (ii) Client has no rights or responsibilities as a tenant or otherwise under any real property or landlord/tenant theory, laws, regulations, or ordinances.

**9.3 Non-Solicitation.** It is agreed that for the term of this Agreement, and for a period of one (1) year following the termination of this Agreement (the "Non-Solicitation Period"), neither Party shall, directly or indirectly, solicit, hire, retain or otherwise engage any employee, independent contractor, consultant, sub-contractor, person or entity retained or contracted by the other Party at any time during the Non-Solicitation Period without the express written consent of the other Party. Should either Party hire any employee of the other Party, a placement fee of 100% of the employee's last full calendar year's total annual compensation shall be paid by the hiring Party within five (5) business days of the applicable employee commencing work.

**9.4 Legal Notices.** All notices of breach or termination or nonpayment to be given under this Agreement shall be in writing and shall be delivered via overnight courier with delivery confirmation to the respective Parties at the addresses set forth above or at such other address last specified in writing to the Party providing such notice. Notices to n+2 shall be to the attention of

n+2's legal department, with a copy to: Netrix, LLC, ATTN: CFO & General Counsel – Notice, 2801 Lakeside Drive, Suite 125, Bannockburn, IL 60015.

**9.5 Waiver.** No waiver or modification of any of the terms of this Agreement shall be valid unless in writing and signed by each of the Parties. No waiver of any breach hereunder shall be deemed a waiver of any repetition of such breach or in any way affect any of the other provisions herein.

**9.6 Entire Agreement.** This Agreement and any SOF or other related documents executed hereunder contain the entire agreement of the Parties with respect to the matters covered and may only be modified in writing signed by both Parties.

**9.7 Governing Law.** This Agreement shall be governed by the laws of the State of Illinois, except for its conflict of law principles. The Parties agree that this Agreement shall be deemed executed in the State of Illinois and that any legal proceeding shall be brought in the State or Federal courts located in Lake or Cook County, Illinois, and that these courts shall have subject matter jurisdiction over all such disputes.

**9.8 Export Control.** Client further acknowledges and agrees that the Goods purchased and any software licensed under this Agreement may be subject to restrictions and controls imposed by the United States Export Administration Act and the regulations thereunder. Client agrees to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, Client covenants that it shall not, directly or indirectly, sell, export, reexport, transfer, divert or otherwise dispose of any Goods or software received from n+2 under this Agreement to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations.

**9.9 High Risk Activities.** Unless otherwise indicated in a SOF, the Goods and Services may not be used for high risk activities, including for any purpose for which failure could result in death, personal injury, loss of critical data, or severe physical, property or environmental damage.

**9.10 Severability.** If any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, the remainder of the Agreement shall be enforceable and the subject provision shall be interpreted by the court in a manner that is enforceable and consistent with the intent of the Parties. If this is not possible, the unenforceable provision shall be stricken and the remainder of the Agreement shall be valid and enforceable.

**9.11 Counterparts.** This Agreement may be executed in counterparts, including or electronically transmitted copies, each of which shall be deemed an original against any Party whose signature appears on such counterpart and all of which together shall constitute one and the same Agreement

**9.12 Survival.** All provisions concerning confidentiality, license grant and restrictions, IP ownership, warranty disclaimers, limitation of liability, and indemnity (as well as any other terms which, by their nature, are intended to survive termination) of this Agreement will survive any termination of this Agreement.