

## Master Services Agreement

CUSTOMER ("Customer"):	
Customer Contact Information	
Legal Name:	Tax ID (EIN):
Corporate form (Inc., LLC etc.):	State of incorporation or formation (DE, IA etc.):
Address:	DUNS # (if, any):
Authorized Contacts	
Primary Contact	Billing Contact
Name:	Name:
Title:	Title:
Address (if different than Customer address):	Address (if different than Customer address):
E-mail:	E-mail:
Phone:	Phone:
LIGHTEDGE ("Lightedge")	
Lightedge Solutions, LLC	Phone/ Fax: 515-471-1000/ 515-471-1112
909 Locust Street, STE 301	E-mail: <a href="mailto:legal@lightedge.com">legal@lightedge.com</a>
Des Moines, IA 50309	

This Master Services Agreement (the "**Agreement**") is between Lightedge and Customer. Lightedge and Customer may be referred to as the "**Parties**", each a "**Party**". Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them under Section 1.

### 1. **Definitions.**

"**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the entity referred to, but only for so long as such control exists. As used in this definition "control" means control of more than a 50% interest in an entity.

"**Business Day**" means any day except any Saturday, any Sunday, or any day which is a federal legal holiday in the United States.

"**Confidential Information**" means non-public information disclosed by one party to the other in any form that: (i) is designated as "Confidential"; (ii) a reasonable person knows or reasonably should understand to be confidential; or (iii) includes either party's products, customers, marketing and promotions, know-how, or the negotiated terms of the Agreement; and which is not independently developed by the other party without reference to the other's Confidential Information or otherwise known to the other party on a non-confidential basis prior to disclosure.

"**Customer Content**" means information, data and content originating with Customer that is transmitted to or from, or stored by Customer in connection with the Services.

"**End User**" means Customer's own customers or Affiliates.

**"Intellectual Property Rights"** means copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights.

**"MRC"** means Monthly Recurring Charges.

**"NRC"** means Non-Recurring Charges.

**"Policies"** shall mean those policies set forth at <http://www.lightedge.com/legal> including but not limited to the Acceptable Use Policy, Privacy Policy, and Security and Data Protection Policy.

**"Service or Service(s)"** shall mean each service delivered to Customer as defined within the Service Order(s).

**"Service Level Agreement"** or **"SLA"** shall mean the agreement which sets forth the terms and conditions which govern the provision and maintenance of the Services and provides details on remedies available when Lightedge does not meet specific service level commitments defined within the Service Level Agreement. This agreement can be found at <http://www.lightedge.com/legal>.

**"Service Order(s)"** shall mean the agreement(s) entered into, from time to time, between Lightedge and Customer which detail, among other things, the Services to be provided by Lightedge and the amounts paid by Customer for those Services.

**"Service Portal"** refers to the web-based, Customer accessible portal by which Services can be managed and tickets against Service incidents and Service requests can be opened. Service Portal can be accessed at <https://my.lightedge.com>.

**"Service Schedule"** means those service descriptions providing additional terms pursuant to which Lightedge may provide and Customer may purchase the Services described therein. The Service Schedule can be found at <http://www.lightedge.com/legal>.

**"Software Use Agreement"** shall mean the agreement entered into between Lightedge and Customer which details the specific terms and conditions under which Lightedge directly or indirectly provides third-party software licenses to customer as either a specific Service or as part of a Service provided to the Customer. The Software Use Agreement can be found at <http://www.lightedge.com/legal>.

## 2. Services.

**2.1. Performance of Services.** Lightedge shall provide to Customer the Services set out in one or more Service Order(s) to be issued by Lightedge and accepted by Customer. Once executed by Customer and Lightedge, a Service Order shall be subject to and incorporate the terms of this Agreement. Lightedge shall provide the Services in accordance with (i) all laws applicable to Lightedge; (ii) this Agreement; and (iii) as described in more detail in each Service Order. Lightedge shall provide support only to those individuals designated by Customer in the Service Portal (each, an **"Authorized Contact"**) and is not required to provide any support directly to Customer's end users. Customer remains liable for the acts and omissions of Customer's end users.

**2.2. Receipt of Services by Customer's Affiliates.** To the extent set forth in a Service Order, Lightedge will provide Services to an identified Affiliate of Customer. In such cases, references to "Customer" in the Service Order will be deemed references to both Customer and its Affiliate(s), all of which will be jointly liable for compliance with the Service Order and this Agreement. As between Lightedge and Customer, Customer accepts full liability for the acts and omissions of its Affiliate(s).

**2.3. Delivery of Services.** Lightedge and Customer will schedule installation and agree upon a start date for the Services. Unless otherwise specified in the Service Order, Lightedge will schedule installation/service start based on available resources and industry standard installation times for the applicable Services. Once a Service is on line, Lightedge will issue a notice to Customer (the "**Start of Service Notification**" or "**SOSN**") which shall set forth the date upon which the Initial Term commenced (the "**Billing Commencement Date**"). Customer is responsible for installation, testing and operations of its facilities, equipment and non-Lightedge services as well as for ensuring that the Services are compatible with its existing systems and equipment.

**2.4. Delivery of Supplemental Services.** The purpose of this provision is to enable Lightedge to provide Customer, at Customer's initiative only, with certain limited services and equipment needed by Customer on a "one-off" or emergency basis where such services are not included within the scope of the Services as described in the Service Order (the "**Supplemental Services**"). Supplemental Services may include, as an example, a request from Customer to Lightedge via telephone that Lightedge immediately replace a problem Customer server with a Lightedge server for a temporary period of time or a response to a security incident occurring at Customer's level. Lightedge shall notify Customer of the fees for any Supplemental Services requested by Customer and, except as provided in emergency, obtain Customer's written approval prior to providing such Supplemental Services. Lightedge shall bill Customer a reasonable fee for such Supplemental Services as determined by Lightedge based on the services performed. Customer will be charged for the Supplemental Services performed in the invoice issued the month following delivery of the Supplemental Services. Notwithstanding the foregoing, nothing in this Section 2.4 shall obligate Lightedge to determine the need for or provide the Supplemental Services. IN THE EVENT LIGHTEDGE ELECTS TO PERFORM ANY SUPPLEMENTAL SERVICES SUCH SUPPLEMENTAL SERVICES ARE PROVIDED ON AN "AS-IS" BASIS AND EXCLUDE WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

**2.5. Upgrade and Modification of Services.** Lightedge may upgrade or modify Services at any time, as long as such changes do not: (i) decrease the functionality of the Service; (ii) decrease security features of Services or the Service Portal; (iii) alter the commercial terms of the Service, including, but not limited to fees, taxes, and usage billing and related matters. Lightedge will make reasonable effort to coordinate any such Service change with the Customer prior to such Service upgrade or modification.

**2.6. Outside Services.** If any portion of the Services include services performed by a third party provider other than Lightedge (e.g. telecommunications circuits, managed services, security services, professional services) ("Outside Services"), Customer agrees and acknowledges that the term applicable for the Outside Services may extend beyond the Term of this Agreement and the Customer shall be liable for all charges related to those Outside Services even if invoiced subsequent to the termination or expiration of this Agreement. Outside Services will be expressly identified on a separate Service Order.

**3. Customer Obligations.** Customer is responsible for keeping its account permissions, list of Authorized Contact(s), billing, and other account information up to date, including maintaining the integrity and/ or changing any password provided by Lightedge. Customer is responsible for determining the suitability of the Services and Customer's own compliance with any applicable laws, including data privacy laws. Customer shall cooperate with Lightedge's reasonable investigation of outages, security or licensing problems and is responsible for all authorized or unauthorized use of the Services, whether by an employee of Customer, third-party, which was granted access by Customer, or third party, which gained access to the Services through failure of Customer to use reasonable security precautions to protect password and administrative access. Customer shall use reasonable security measures and precautions in connection with its use of the Services (including appropriately securing and encrypting in transit and at rest any information that is subject to legal or regulatory security requirements). Lightedge does not monitor or exercise control over the Customer Content, and Customer assumes all responsibility for such information. Lightedge shall only back up data to the extent stated on a Service Order. The Services may only be used for lawful purposes and in compliance with the Acceptable Use Policy. Unless otherwise expressly authorized by Lightedge in writing, Customer may not sell, resell, lease, or provide the Services as a service.

**4. Customer Content.** As between the Parties, Customer owns all right, title and interest in and to Customer Content, including all associated Intellectual Property Rights. Customer, on behalf of itself and its Affiliates, hereby grants to Lightedge a non-exclusive, royalty-free, right and license during the Term to, if applicable under a Service Order, use, reproduce, transmit, perform, display and store Customer Content solely for Lightedge to fulfill Lightedge's obligations and provide the Services under the Agreement.

**5. Term and Termination.**

**5.1. Term.** The term of this Agreement shall begin upon the date that the first Service Order is executed under this Agreement and shall continue thereafter until completion of all the Services under all Service Orders entered into between Lightedge and Customer, unless terminated sooner in accordance with its terms. The initial term for each Service Order shall be as set forth in the said Service Order (the "**Initial Term**"). Service Orders shall automatically renew for successive terms equal in length to the Initial Term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), unless either Lightedge or Customer provides written notice of its intent not to renew at least sixty (60) days prior to the end of the Initial Term or any Renewal Term.

**5.2. Termination for Convenience.** Customer may terminate all or part of any Service Order, without cause, by providing at least thirty (30) days prior written notice to [terminations@lightedge.com](mailto:terminations@lightedge.com) subject to an early termination fee equal to the MRC for the terminated Services times the number of months remaining in the then current Term for the terminated Service Order(s).

**5.3. Termination for Cause.**

**5.3.1.** Either party may terminate this Agreement and/ or the affected Service Order for cause, on written notice, if the other party materially breaches any provision of this Agreement and/ or the affected Service Order and either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching Party within thirty (30) days after the breaching Party's receipt of written notice of such breach;

**5.3.2.** Lightedge may terminate this Agreement and/ or the affected Service Order for cause if Customer fails to pay any amount when due hereunder and such failure continues for thirty (30) days after Customer's receipt of written notice of nonpayment;

**5.3.3.** Either Party may terminate this Agreement and/ or the affected Service Order for cause, on written notice, if the other Party (A) becomes insolvent, (B) is generally unable to pay, or fails to pay, its debts as they become due, or ceases for any reason to carry on business, (C) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, (D) makes or seeks to make a general assignment for the benefit of its creditors, or (E) applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property or business.

**5.4. Effect of Termination.** In the event Lightedge terminates this Agreement and/ or the affected Service Order in accordance with section 5.3, the Fees for the Services through the conclusion of all Service Order(s) shall become due immediately. In the event Customer terminates this Agreement and/ or the affected Service Order in accordance with section 5.3, Customer shall pay the Fees for the Services provided through the termination of this Agreement and/ or the affected Service Order.

## **6. Fees.**

**6.1. Billing.** In consideration of the provision of the Services by Lightedge and the rights granted to Customer under this Agreement, Customer shall pay the fees set out in each Service Order (the "Fees"). For convenience, a single Lightedge entity may invoice Customer for Services provided by another Lightedge Affiliate. Customer's payment obligations for Services shall begin on the Billing Commencement Date. Except as set forth in the applicable Service Order, (i) monthly recurring charges ("MRC") will be billed monthly in advance, (ii) variable or usage-based charges will be billed monthly in arrears and (iii) installation or other non-recurring charges ("NRC") are invoiced on the Billing Commencement Date or upon completion of non-recurring Services. All invoices will be delivered to Customer via electronic mail to the billing contact provided by Customer.

**6.2. Payments.** Invoiced amounts are due in full within thirty (30) days of receipt by the Customer of an invoice from Lightedge. If Customer's undisputed payment is overdue by fifteen (15) days or more, Lightedge may suspend the performance of the Services Customer receives from Lightedge and restrict Customer's access to Lightedge's data center on written notice. Invoices that are not disputed within ninety (90) days of the invoice date are conclusively deemed to be accepted as accurate by Customer. Lightedge may charge interest on undisputed overdue amounts at the greater of one point five percent (1.5%) per month or the maximum legal rate, and may charge Customer for any cost or expense arising out of Lightedge's collection efforts.

**6.3. Good Faith Disputes.** If Customer, in good faith, disputes any invoice, in whole or in part, Customer shall notify Lightedge of the dispute, including sufficient detail of the nature of the claim, the amount, the relevant invoices, and information allowing Lightedge to identify the affected Services, within the time required for payment of the relevant invoice. Payment of the disputed amount may be withheld until settlement of the dispute, but payment of the undisputed portion shall be made in accordance with Section 6.2. Upon resolution of a dispute, Customer shall promptly pay to Lightedge such amounts as are due and payable, and if a dispute is resolved against Customer, Lightedge may additionally request Customer to pay any late fees associated with the disputed

amount, such late fees to be calculated in accordance with Section 6.2 from the date the disputed invoice was originally due and payable.

**6.4. Taxes.** Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges arising out of the provision of the Services or provide Lightedge with satisfactory evidence of Customer's exemption from said taxes in advance of invoicing; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, Lightedge's income, revenues, gross receipts, personnel, or real or personal property or other assets.

**6.5. Holdover Rates.** If Customer continues to use any Services following termination of the Agreement or applicable Service Order, Customer shall be responsible for payment of such Services at Lightedge's then-current market rates.

**6.6. Fee Increases.** MRC shall be subject to an annual upward adjustment of three percent (3.0%) of the then-current MRC. The first such adjustment shall become effective commencing on the first annual anniversary of the Billing Commencement Date, and subsequent adjustments shall become effective on every successive annual anniversary of the Billing Commencement Date during the Term.

## **7. Representations & Warranties.**

### **7.1. By Lightedge.**

**7.1.1. Authority and Validity.** Lightedge represents and warrants that: (i) it is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder and (ii) the person signing this Agreement and any other documents on behalf of Lightedge is authorized to do so, and upon Lightedge signing a such Agreement, this Agreement is legally binding on Lightedge.

**7.1.2. Services.** Lightedge represents and warrants to Customer that it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement.

**7.1.3. Exception.** with respect to reliance on information provided by Customer. Lightedge will perform the Services set forth in this Agreement on the basis of data, information, and instructions furnished by Customer. Lightedge shall be entitled to rely upon any such data, information, or instructions provided by Customer. If any error results from incorrect data, information, or instructions supplied by Customer, Lightedge shall not be liable for any damages or delays arising therefrom and Customer shall be responsible for discovering and reporting such error and supplying the data, information, or instructions necessary to correct such error.

**7.2. By Customer, Authority and Validity.** Customer represents and warrants that: (i) Customer is duly organized and has the authority to enter into this Agreement and to perform its obligations hereunder and (ii) the person signing this Agreement and any other documents on behalf of Customer is authorized to do so, and upon Customer signing a such Agreement, this Agreement is legally binding on Customer.

**8. DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF LIGHTEDGE AND CUSTOMER, RESPECTIVELY, SET FORTH IN SECTIONS 7.1 AND 7.2 OF THIS AGREEMENT, LIGHTEDGE AND CUSTOMER HEREBY EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY LAW, WHETHER WRITTEN, ORAL, EXPRESSED, OR IMPLIED. IN ADDITION, LIGHTEDGE DOES NOT REPRESENT OR WARRANT THAT THE SERVICES WILL BE ENTIRELY FREE FROM ERROR OR DEFECT. USE OF LIGHTEDGE SERVICES IS NOT SUITABLE FOR SITUATIONS WHERE FAILURE OR FAULT OF SUCH SERVICES COULD LEAD TO DEATH OR SERIOUS BODILY INJURY OR ENVIRONMENTAL DAMAGE. LIGHTEDGE DISCLAIMS ALL RESPONSIBILITY FOR ANY SITUATION WHERE THE SECURITY, AVAILABILITY, OR STABILITY OF THE SERVICES IS COMPROMISED BY: (I) ACTIONS OF CUSTOMER OR ANY END USER; (II) SOFTWARE PROVIDED BY CUSTOMER, OR (III) ANY ACTIONS TAKEN BY LIGHTEDGE WHICH ARE REQUESTED BY CUSTOMER AND NOT BASED ON THE ADVICE OR RECOMMENDATION OF LIGHTEDGE. LIGHTEDGE SHALL NOT BE LIABLE FOR ANY FAILURE TO COMPLY WITH ITS OBLIGATIONS IN THE AGREEMENT TO THE EXTENT THAT SUCH FAILURE ARISES FROM A FAILURE OF CUSTOMER TO COMPLY WITH ITS OBLIGATIONS UNDER THE AGREEMENT. IF THE SERVICES ARE PROVIDED TO CUSTOMER WITHOUT CHARGE, THEN LIGHTEDGE WILL HAVE NO LIABILITY TO CUSTOMER WHATSOEVER, INCLUDING SLA CREDITS.

**9. LIMITATION OF LIABILITY.**

**9.1.** Neither Party, its Affiliates, and respective directors, officers, agents or employees shall be liable to the other under any theory of tort, contract, strict liability or other legal or equitable theory for consequential, indirect, incidental, exemplary, special, punitive, or similar damages, including loss of profits, data, revenue, business opportunities, customers, contracts, goodwill or reputation, each of which is hereby excluded by agreement of the Parties regardless of whether or not such Party has been advised or should have been aware of the possibility of such damages. The maximum aggregate monetary liability of Lightedge and any of its Affiliates, and respective directors, officers, agents or employees in connection with the Services or the Agreement under any theory of law shall not exceed the actual damages incurred up to the total amount paid by Customer to Lightedge for the Services that are the subject of the claim in the twelve (12) months immediately preceding the event(s) that first gave rise to the claim. Remedies under this Agreement are the exclusive remedies for recovery under this Agreement and are limited to those expressly described in this Agreement.

**9.2. Service Level Agreement.** As an essential part of the Agreement, the liquidated damages payable under the SLA shall be the credits stated in the SLA which are Customer's sole and exclusive remedy for Lightedge's failure to meet those guarantees for which credits are provided; and the parties agree that the credits are not a penalty, are fair and reasonable and represent a reasonable estimate of loss that may reasonably be anticipated from any breach. Customer is not entitled to a credit if Customer is in breach of the Agreement at the time of the occurrence of the event giving rise to the credit, until such time as Customer has remedied the breach.

**10. Mutual Indemnification.**

**10.1. Indemnification by Customer.** Subject to Section 10.3, Customer agrees to defend, indemnify and hold harmless Lightedge, its Affiliates and their employees, agents, contractors, officers and directors (collectively, "Lightedge Indemnitees"), from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including without limitation attorneys' fees) (collectively, "Losses") arising out of or related to any claim, suit, action or proceeding (each, an

"Action") by a third party alleging that Customer's use of the Services breaches the Agreement, infringes or misappropriates the Intellectual Property Rights of a third party or violates applicable law.

**10.2. Indemnification by Lightedge.** Subject to Section 10.3, Lightedge agrees to defend, indemnify and hold harmless Customer, its Affiliates and their employees, agents, contractors, officers and directors (collectively, "Customer Indemnitees"), from and against any and all Losses arising out of or related to any Action by a third party alleging that use of the Services in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights (each, a "Customer Infringement Claim"). If the Services become, or in Lightedge opinion are likely to become, the subject of a Customer Infringement Claim, Lightedge may in its discretion and at its own expense: (a) obtain for Customer the right to continue using the Services; (b) modify the Services so that they no longer infringe or misappropriate; or (c) terminate this Agreement and the affected Service Order(s) and Customer shall not be obligated to pay any additional amounts specified in the Service Order following the effective date of termination. Lightedge will have no liability for any Customer Infringement Claim to the extent it arises from: (i) Customer's breach of the Agreement; (ii) Customer Content; (iii) Lightedge's compliance with Customer's instructions; or (iv) continued use of the Services after Lightedge notifies Customer to discontinue use due to a Customer Infringement Claim.

**10.3. Indemnification Procedure.** A Customer Indemnitee or Lightedge Indemnitee (each, an "Indemnitee") seeking indemnification shall promptly notify the other Party (each, an "Indemnifying Party"), in writing of any action for which it seeks indemnification pursuant to Sections 10.1 or 10.2 (as applicable) and cooperate with the Indemnifying Party at the Indemnifying Party's expense. The Indemnifying Party shall promptly take control of the defense and investigation of such action and shall employ counsel of its choice to handle and defend the same, at the Indemnifying Party's expense. An Indemnitee may participate in and observe the proceedings at its own expense with counsel of its own choice. A Party's failure to perform any obligations under this Section 10 will not relieve the Indemnifying Party of its obligations under Sections 10.1 or 10.2 (as applicable) except to the extent that the Indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnifying Party shall not settle an action without the Indemnified Party's written consent if such settlement shall require action or payment by the Indemnified Party.

## **11. Intellectual Property.**

**11.1. Background Rights.** Each party shall retain exclusive ownership of their Intellectual Property Rights created, authored, or invented by it prior to the commencement of the Services. Neither this Agreement nor any Service Order is intended to transfer ownership of any existing Intellectual Property.

**11.2. Foreground Rights.** Unless otherwise specifically stated in the applicable Service Order, Lightedge shall own all documents, work product, and other materials that are delivered to Customer hereunder or prepared by Lightedge in the course of performing the Services ("Deliverables") and, subject to Customer's compliance with the terms of this Agreement, hereby grants to Customer a perpetual, worldwide, non-exclusive, non-transferable, royalty-free right and license to use such Deliverables solely for Customer's internal use.

**12. Confidentiality.** Each party agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, the exercise of its legal rights under the Agreement, or as required by law; and shall use reasonable care to protect Confidential Information from



unauthorized disclosure. Each party agrees not to disclose the other's Confidential Information to any third party except: (i) to its Representatives, provided that such Representatives agree to confidentiality measures that are at least as stringent as those stated in this Agreement; (ii) as required by law; (iii) in response to a subpoena or court order or other compulsory legal process, provided that the party subject to such process shall give the other written notice of at least seven days prior to disclosing Confidential Information unless the law forbids such notice; or (iv) with the other party's consent. "**Representatives**" means a party's respective service providers, officers, directors, employees, contractors, Affiliates, suppliers, and agents.

**13. Force Majeure.** Neither party shall be liable or be in breach of the Agreement if the failure to perform the obligation is due to an event beyond its control, including failure of a part of the power grid, failure of the internet, natural disaster or weather event, fire, acts or orders of government, war, riot, insurrection, epidemic, strikes or labor action, or terrorism. This clause shall not apply to the payment of any sums due under this Agreement by either Party to the other.

**14. Notices.** Except as otherwise specified in this Agreement, Customer routine communications to Lightedge regarding the Services should be sent by Customer to Lightedge support team through the Service Portal or toll-free number. Lightedge's routine communications regarding the Services and legal notices shall be posted on the Service Portal, via the ticketing system, or sent by email or postal service to Customer's Administrative contact(s). To give a notice regarding breach of Agreement, indemnification, or other legal matter, Customer shall send it by electronic mail and overnight postal service to:

[legal@lightedge.com](mailto:legal@lightedge.com)

Lightedge Solutions, LLC  
909 Locust Street, STE 301  
Des Moines, Iowa 50309  
Attn: Legal Notice

Notice shall be deemed given as of the time posted or delivered, or if that time does not fall within a Business Day, as of the beginning of the first Business Day following the time posted or delivered.

**15. Dispute Resolutions.** The Parties agree that upon receipt of a written notice from either Party of the existence of a dispute between them, the Parties shall submit the dispute for informal resolution to their designated senior management who are not legal personnel. Any dispute remaining unresolved after a period of thirty (30) days after the receipt of such written notice of a dispute by the other Party may be submitted to the competent jurisdiction pursuant to Section 16.

**16. Choice of Law & Arbitration.** Except for attempts by Lightedge to collect amounts owed under this Agreement or any Service Order, which may be pursued, among other ways, through the federal and state judicial systems, any dispute arising out of or relating to this Agreement or the breach thereof, shall be referred to arbitration by either party hereto and finally settled by arbitration in accordance with the rules of the American Arbitration Association as the exclusive method of dispute resolution. The arbitration panel shall consist of three (3) arbitrators, to be appointed by each party and the third to be appointed by the first two arbitrators so selected. The arbitration shall take place in Des Moines, Iowa. The arbitration award shall be final, binding upon the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto. Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for judicial recognition of the award or an order of enforcement thereof, as the case may be. This Agreement shall be governed by the

laws of the State of Iowa, without regard to its conflict of laws principles. Venue for disputes that may be brought to the courts shall be in the state and federal courts sitting in Des Moines, Iowa. CUSTOMER AND LIGHTEDGE EACH HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR ANY SERVICE ORDER.

**17. Attorneys' Fees.** In the event that any party institutes any legal suit, action, or proceeding, including arbitration, against the other party to enforce the covenants contained in this Agreement or Service Order, the prevailing party in the suit, action or proceeding shall be entitled to receive, in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action, or proceeding, including reasonable out-of-pocket documented attorneys' fees, expenses and court costs.

**18. Assignment, Subcontracting.** Neither Party may assign this Agreement or any Service Order without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that either Party may freely assign this Agreement along with all existing Service Orders to an (i) Affiliate or (ii) successor as part of a corporate reorganization or a sale of some or all of its business. Any purported assignment or delegation in violation of this section 18 shall be null and void. Lightedge may permit its Affiliates or subcontractors to perform any of the Services; provided that Lightedge remains responsible under the Agreement for work performed by its Affiliates and subcontractors to the same extent as if Lightedge performed the Services itself.

**19. Relationship of the parties.** The Parties intend to create an independent contractor relationship and nothing contained herein shall be construed to create a joint venture or partnership between the parties hereto or an employer/employee or agency relationship. Neither party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement, or undertaking with any third party.

**20. No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

**21. Severability.** If any provision of this Agreement is found invalid, illegal, or unenforceable, it shall not affect any other provision of this Agreement, which shall remain in full force and effect while the invalid, illegal, or unenforceable part shall be deemed modified to the most limited extent required in order to cause such provision to be in accordance with applicable law while most fully carrying out the intent of the parties as set forth herein.

**22. Waiver.** No delay or omission by Lightedge to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by Lightedge of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by Lightedge.

**23. Headings.** The headings of the sections, subsections, and paragraphs of this Agreement are inserted for convenient reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**24. Entire Agreement, Amendments & Order of Precedence.** This Agreement constitutes the entire understanding and agreement between the Parties related to the subject matter hereof and shall supersede and/or replace any and all prior or contemporaneous oral and written communications. Service Orders incorporate the terms of the Agreement. The Agreement incorporates the terms of the relevant Service Schedule, the SUA, if applicable, the SLA, and the Policies. Any terms and conditions of any other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. This Agreement may be modified only by a written instrument duly executed by authorized representatives of the Parties; provided, however, that Lightedge reserves the right modify the web-based versions of the Service Schedule, the SUA, the SLA, and the Policies incorporated herein by reference. In the event of ambiguity, conflict or inconsistency among the documents comprising the Agreement, the documents shall be given a descending order of precedence as follows (i) the Service Order; (ii) the Master Services Agreement; (iii) the SLA but solely with respect to the Service(s) to which the SLA is applicable to; the Service Schedule but solely with respect to the relevant Service(s) to which it is applicable to, the SUA but solely with respect to the cloud Service(s) to which the SUA is applicable to; and (iv) the Policies.

**25. Counterparts, Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. Electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

**26. Survival, Statute of Limitation.** Any section of this Agreement shall survive to the extent required for the performance of such provision in accordance with the terms hereof. Each party agrees that it shall not bring a claim under the Agreement more than one year after the time that the claim accrued and waive their right to file an action under any longer statute of limitations.

**27. Insurance.** Each Party shall maintain a "Commercial General Liability Insurance" policy with limits of not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate covering injuries or damage to any person or property which results from their operations or activities under this Agreement. Customer shall maintain property/casualty insurance with limits not less than the replacement value of any equipment or assets in the facilities, or under the control, of Lightedge, covering damage to any such equipment or assets. Lightedge shall also maintain a "Professional Liability" insurance policy to cover its errors and omissions with limits of not less than \$1,000,000 each occurrence/claim, \$2,000,000 in the aggregate. Each Party will, upon request, furnish the other Party with certificates of insurance that evidence the minimum levels of insurance set forth herein. Each Party will endeavor to provide prior written notice to the other Party of any non-renewal or cancellation of the policies referenced above if replacement coverage is not procured. Failure to maintain, or cause to be maintained, the insurance listed above does not limit nor change the responsibilities of the Parties. These insurance requirements do not serve to, and should not be construed to, limit the Parties' respective liabilities or obligations hereunder.

**28. Publicity.** Customer hereby grants to Lightedge permission to publicly identify Customer as one its customers. Customer may revoke this permission at any time by giving notice of such revocation to Lightedge.

**29. Export Compliance.** The Services, other technology Lightedge makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit

end users to access or use Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

**30. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If a party learns of any violation of the above restriction, that party will use reasonable efforts to promptly notify the other party's legal department.

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