



BRAVO MASTER SERVICES AGREEMENT

IMPORTANT: PLEASE READ THIS MSA CAREFULLY AND PRINT THEM OR GO TO [HTTP://WWW.BRAVOCONSULTING.NET/AGREEMENTS/BRAVOONLINEMSA.PDF](http://www.bravoconsulting.net/agreements/bravoonlinemsa.pdf) TO OBTAIN A DOWNLOADABLE COPY OF THE CURRENT VERSION OF THE MSA TO MAINTAIN A COPY FOR YOUR RECORDS.

BY RECEIVING OR OTHERWISE USING BRAVO OR BRAVO SUPPLIED SERVICES, EXECUTING AN ORDER FORM WITH BRAVO (WETHER IT REFERENCES THIS MSA OR NOT) OR BY CLICKING THE "ACCEPT" BUTTON OR CHECK BOX DISPLAYED AS PART OF THE PROCUREMENT OF THE SERVICES, YOU ACCEPT AND AGREE TO BE BOUND BY THE "AGREEMENT". YOU REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THE AGREEMENT.

BRAVO OFFERS SERVICES ONLY SUBJECT TO THE AGREEMENT AND THEREFORE YOU MUST ACCEPT THE AGREEMENT BEFORE YOU CAN ORDER, RECEIVE OR OTHERWISE USE BRAVO OR BRAVO-SUPPLIED SERVICES. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THE AGREEMENT, THEN BRAVO IS UNWILLING TO OFFER, SELL OR PROVIDE SERVICES TO YOU.

1. **DEFINITIONS.** As used in this Agreement, the following terms shall have the meanings set forth in this Section 1. Certain other terms may be defined in the context of their use elsewhere in the Agreement.

- 1.1 **"Affiliate"** means an entity that directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, "control" means ownership of at least fifty percent (50%) of the outstanding voting shares of the subject entity.
- 1.2 **"Agreement"** means this MSA, Order Forms, Documentation and the other items referenced herein and therein.
- 1.3 **"Bravo Entities"** means Bravo and any partners, licensors, subcontractors, and suppliers creating, marketing or otherwise providing any part of the Services; and all subsidiaries, Affiliates, officers, employees, consultants, and agents of any of the foregoing.
- 1.4 **"Confidential Information"** means any and all confidential or proprietary information or materials which have been or are hereafter disclosed or made available by one party (the **"Disclosing Party"**) to the other (the **"Receiving Party"**) in connection with this Agreement, whether provided orally or in writing and in any form or media, including without limitation: (i) all trade secrets; (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering techniques, methodologies and concepts and any related information; (iii) information relating to business plans, sales or marketing methods and customer lists or requirements; (iv) Customer-specific terms or pricing set forth in business proposals or this Agreement; and (v) each of the party's Intellectual Property.
- 1.5 **"Customer Intellectual Property"** means: (a) Intellectual Property owned by Customer in existence as of the Effective Date of the applicable Order Form, (b) Intellectual Property owned or developed by Customer other than with respect to the Agreement, and (c) all improvements, modifications, enhancements, or extensions to or derivative works of the foregoing.
- 1.6 **"Documentation"** means the official Bravo provided user manuals and guides, regardless of media, that explain or facilitate the use of the Services.
- 1.7 **"Intellectual Property"** means any and all patents, inventions, copyrights, works of authorship, trademarks, trade secrets, know-how, and all other intellectual property (whether registered or unregistered and including the right to register such intellectual property) that are, in each case, protected under the laws of any governmental authority having jurisdiction.
- 1.8 **"Order Form"** means the Bravo form evidencing the Customer order, and which may specify, among other things, the Services purchased, the applicable fees, the billing period, the Installment Schedule, Term and other items, each such Order Form to be incorporated into and to become a part of the Agreement; and depending on the Services ordered, the Order Form may be completed online, may be Customer's invoice or billing statement, or may be an SOW.
- 1.9 **"Bravo Intellectual Property"** means: (a) Bravo Entity Intellectual Property in existence as of the Effective Date of the applicable Order Form, (b) all tools, utilities, connectors, scripts, methods, processes, know how, templates, approaches, design elements or other similar items used by the Bravo Entities, and (c) all improvements, modifications, enhancements, or extensions to or derivative works of the foregoing.
- 1.10 **"Services"** means the managed service, support, consulting, training and related services provided by the Bravo Entities as set forth in an applicable Order Form and Documentation.
- 1.11 **"Statement of Work" or "SOW"** means a statement of work executed by the parties that describes Services to be provided by Bravo to Customer under this Agreement.
- 1.12 **"Third-Party Client"** means a person or entity to whom you provide information technology services through use of the Services.



- 1.13 **"Work Product"** means only the items produced pursuant to an SOW which are specifically marked in the SOW as "Work Product," if any, and which are delivered to and paid for by Customer; provided, however, that Work Product shall not include Bravo's Intellectual Property.

2. SERVICES.

- 2.1 **Bravo Obligations.** Subject to the terms and conditions of this Agreement, Bravo will provide to Customer the Services set forth in applicable Order Forms. All Order Forms and all Services provided by Bravo will be governed by the Agreement. Bravo provides Services that are for Customer's internal use and for use by Third-Party Clients.
- 2.2 **Customer Obligations.** Customer Agrees to the following:
- (a) Customer's representative must be readily available to Bravo. The representative must have sufficient authority to schedule testing, implement changes, and address any issues that may arise.
 - (b) Customer will provide resources and information as needed or requested to enable Bravo to sufficiently perform the Services. This will include access to personnel who can provide information related to the business operations, organizational structure, network architecture, security controls, disaster recovery and general daily operational processes and procedures. Customer is solely responsible for providing access to and coordinating any required interviews or testing with Customer's Third Party clients, third parties or service providers.
 - (c) Customer agrees to provide Bravo access to Customer's computers and information systems via remote data communications with proper authorization by Customer and/or by visits to Customer's site as reasonably required to perform any Services. All supplies, information and computer resources, including software licenses (including any third party software downloaded or installed by Bravo in performing the Services), required to perform or used in conjunction with the Services is the Customer's responsibility and will be provided to Bravo at Customer's expense.
 - (d) You agree not to interfere with the proper operation of any network or system utilized by Bravo (including but not limited to defeating identification procedures, obtaining access beyond that which you and Third-Party Clients are authorized for, and impairing the availability, reliability, or quality of service for other customers of Bravo) or with the proper operation of other systems reachable through the Internet, including any attempt at unauthorized access.
- 2.3 **Third Party Clients.** Customer is solely responsible for contracting with Third Party Clients and, if applicable, for the compliance with the Agreement by all Third Party Clients. Customer agrees to furnish such information to Bravo, and to adopt and utilize (and to

cause Third-Party Clients to adopt and utilize) such other measures as Bravo reasonably may prescribe, in order to enable that the Services are furnished by Bravo to Third-Party Clients. Customer agrees to defend, indemnify, and hold harmless the Bravo Entities from and against any and all claims, liabilities, damages, and/or costs (including, but not limited to, fees, costs and other expenses of attorneys and expert witnesses) arising out of or related to any claims by Third Party Clients or arising out of or relating to Customer's relationship with any Third Party Client.

3. FEES AND PAYMENT.

- 3.1 **Fees and Expenses.** In consideration for the Services, Customer will pay Bravo the fees set forth in the applicable Order Form. In the absence of a fee schedule, or for work done outside the scope of an Order Form, Customer agrees to pay Bravo's standard rates for the Services. All payment obligations are non-cancelable and all amounts paid are nonrefundable. Customer will also reimburse Bravo for all reasonable out-of-pocket travel, living, and other expenses incurred by Bravo in the provision of the Services so long as such expenses are attributable to travel relating to Customer or Services performed under the Order Form. Bravo is happy to submit expense related documentation in the format or system requested by Customer. Customer is responsible for all incidental charges related to using the Services including, for example, charges for Internet access, third party software licenses mobile text messaging, or other data transmission. All pricing terms are Confidential Information of Bravo.
- 3.2 **Payment Terms.** Customer will pay all invoiced amounts in full within thirty (30) days of the date of each invoice, without setoff, counterclaim, or deduction of any kind. All invoiced amounts not paid by Customer when due will accrue interest at the rate of one and a half percent (1.5%) per month or the maximum amount permitted by law, whichever is lower. You must pay for all reasonable costs we incur to collect any past due amounts which costs may include reasonable attorneys' fees and other legal fees and costs. Bravo may, in its sole discretion and upon ten (10) days prior written notice to Customer, suspend the provision of all Services if any invoice is more than ten (10) days past due. This right of suspension will not limit any other of Bravo's rights or remedies.
- 3.3 **Taxes.** All fees and expenses charged by Bravo under this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government, and Customer agrees to pay for any and all federal, state, or local sales, use, excise, privilege, or other taxes, duties or assessments, however designated or levied, relating to this Agreement, exclusive of taxes based on Bravo's net income.
- 3.4 **Subscription Pricing and Changes.** With respect to Services purchased on a Subscription basis, Customer agrees that Bravo may from time to time either increase

or decrease the fee(s) for all or any portion thereof, and that any such adjustment, when made by Bravo, shall apply effective at the expiration of the current Term to the applicable fees that Customer must pay. Customer's sole remedy in such a case, if it does not wish to pay the adjusted fees, is to elect to terminate the Service at the expiration of the current Term. Any one time, ongoing, or related account or other fees are non-refundable and nontransferable even if prices for related Services are changed. If Customer adds Subscription Services in the middle of a billing month, Customer may be charged in full for that billing month.

3.5 **Payment method; Credit Card Authorization.** If paying by credit card, you must provide Bravo with an approved valid credit card or other electronic or standard purchase order and payment processing information. Until all amounts due have been paid in full, you hereby authorize Bravo to charge any credit card provided by you to Bravo, all amounts due under the Agreement from time to time, including without limitation, ongoing Subscription and Installment and other payments, taxes, and additional fees. You agree to update your payment information to keep it current at all times and agree that Bravo may submit charges for processing even if the payment information appears to have expired. All prices are given and must be paid in the currency listed.

3.6 **Invoices; Errors.** We may only provide you with a single invoice and we may provide it via electronic means including via an online billing statement. If we make an error on your invoice, we will correct it promptly after you tell us and we investigate the charge. YOU MUST TELL US WITHIN NINETY (90) DAYS AFTER AN ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU). YOU RELEASE US FROM ALL LIABILITY AND CLAIMS OF LOSS RESULTING FROM ANY ERROR THAT YOU DO NOT REPORT TO US WITHIN (90) DAYS AFTER THE ERROR FIRST APPEARS ON YOUR INVOICE (WHETHER IN YOUR ONLINE BILLING STATEMENT OR IF SENT TO YOU). If you do not tell us within this time, we will not be required to correct the error. We can correct billing errors at any time.

4. PROPRIETARY RIGHTS.

4.1 **Customer Retained Property.** Customer owns and retains all worldwide right, title, and interest in and to all of Customer's Intellectual Property, Work Product and Customer's Confidential Information (together, the "**Customer Retained Property**"). Bravo hereby assigns to Customer all worldwide right, title, and interest in and to any and all Work Product (including without limitation all related Intellectual Property) that Bravo has or may hereafter acquire. Customer hereby grants to the Bravo Entities a limited, non-exclusive, non-transferable, worldwide right and license to use, execute, reproduce, display, and perform Customer Retained Property solely

to the extent required to perform the Services. Except as expressly set forth herein, nothing in this Agreement conveys any right, title, or interest in or to the Customer Retained Property to Bravo or any other third party.

4.2 **Bravo Retained Property.** Bravo owns and retains all worldwide right, title and interest in and to all Bravo Intellectual Property and Confidential Information (together, the "**Bravo Retained Property**"). To the extent that any Bravo Retained Property is included in a deliverable provided to Customer as part of any Services (including any Work Product), Bravo hereby grants to Customer a limited, non-exclusive, non-transferable, worldwide right and license to use, execute, reproduce, display, and perform such Bravo Retained Property solely to the extent required to receive the intended benefit of the Services. Except as expressly set forth herein, nothing in this Agreement conveys any right, title, or interest in or to the Bravo Retained Property to Customer or any other third party.

5. CONFIDENTIALITY.

5.1 **Obligations.** For a period of three (3) years from the date of disclosure of the applicable Confidential Information, the Receiving Party will (i) hold the Confidential Information of the Disclosing Party in trust and confidence and avoid the unauthorized disclosure or release thereof to any other person or entity by using the same degree of care as the Receiving Party uses to avoid unauthorized use, disclosure, or dissemination of its own confidential information of a similar nature, but, in any event, not less than a reasonable degree of care, and (ii) not use Confidential Information for any purpose except as expressly contemplated under this Agreement or any Order Form ; provided that, to the extent Confidential Information constitutes a trade secret under applicable law, the Receiving Party agrees to protect such information for so long as it qualifies as a trade secret. Notwithstanding any other provision of this Agreement, the Receiving Party may disclose Confidential Information to those of the Receiving Party's employees and contractors having a need to know such Confidential Information, provided that the Receiving Party takes reasonable measures to ensure that such employees and contractors comply with the provisions of this Section 5. Each party shall be liable for all violations of this Section 5 by its employees and contractors.

5.2 **Exclusions.** The obligations of the Receiving Party under this Section 5 will not apply to information of the Disclosing Party that the Receiving Party can demonstrate (i) was in the possession of the Receiving Party at the time of disclosure without any restrictions as to confidentiality of such information, (ii) was generally available to the public at the time of disclosure or became generally available to the public after disclosure through no breach of this Agreement or other wrongful act by the Receiving

Party, (iii) was rightfully received by the Receiving Party from a third party without restriction on disclosure, or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information. The Receiving Party may disclose Confidential Information to the extent required to comply with binding orders of governmental entities that have jurisdiction over it; provided that, to the extent legally permitted, the Receiving Party gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, discloses only such Confidential Information as is required by the governmental entity, and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information disclosed.

5.3 **Return and Destruction.** Upon the written request of the Disclosing Party, the Receiving Party shall promptly return or destroy the Confidential Information, including all copies thereof (certifying the fact of such destruction to the Disclosing Party).

5.4 **Equitable Relief.** The parties acknowledge and agree that any breach of the obligations of this Section 5 may cause the non-breaching party irreparable harm for which an adequate remedy at law may not be available and that, therefore, the non-breaching party shall be entitled to seek injunctive relief, in addition to all other remedies available at law.

6. TERM AND TERMINATION.

6.1 **Term.** The term of this Agreement will commence on the Effective Date and will continue whenever there is any Order Form in effect. The term for the provision of Services provided under each individual Order Form will be as set forth in such Order Form. For subscription services, upon the expiration of the initial term, the subscription will automatically renew for successive renewal terms equal in duration to the initial term at Bravo's then current fees. For month to month subscriptions, either party may terminate any such subscription, effective only upon the expiration of the then current term, by notifying the other party in writing at least five (5) business days prior to the expiration date of the current term. For all other subscriptions, either party may terminate any such subscription, effective only upon the expiration of the then current term, by notifying the other party in writing at least thirty (30) days prior to the expiration date of the current term. With respect to each Service item, the current term shall be referred to as the "Term" herein.

6.2 **Termination.** In addition to the rights otherwise set forth in the Agreement and not in limitation thereof, Bravo may terminate the Agreement and the rights granted herein in whole or in part with respect to all or any portion of the Services purchased by Customer upon written notice to Customer in the event of a material breach by Customer

of the Agreement, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Customer's receipt of such written notice. Customer may terminate the affected Order Form upon written notice to Bravo in the event of a material breach by Bravo of the Agreement with respect to such Order Form, provided that if the breach is curable, the termination shall be effective only if the breach is not cured within ten (10) days following the Bravo's receipt of such written notice. Any free, trial, or Pre-Release Services may be terminated by either party at any time with or without notice to the other. Bravo will have no responsibility to notify any Third Party Clients or any other third party, of any termination or suspension of the Agreement, nor will Bravo have any liability for any consequences resulting from any termination, suspension or lack of notification.

6.3 **Effects of Termination.** In the event of termination, cancellation, or expiration: Customer's rights to the Services shall immediately terminate; Customer shall de-install and destroy all copies of Bravo Intellectual Property in its possession or control; Customer shall immediately pay Bravo for all amounts due through the effective date of termination, cancellation, expiration (including any works in progress); sections 1, 3, 4, 5, 6.3, 7.2, 8, 9 and 10 will survive; and except where Customer terminates for Bravo's breach Customer agrees to pay any future installment or subscription payments due for the entire subscription Term as consideration for pricing accommodations and other consideration and as a fair approximation of damages and not as a penalty. Any payments due hereunder will be immediately due and payable and can be charged by Bravo against any Customer card on file without further prior authorization from Customer and Customer agrees not to dispute any such charges.

7. WARRANTY.

7.1 **Limited Warranties.** Bravo warrants that the Services will be performed by qualified personnel in a professional and workmanlike manner consistent with applicable industry standards. Customer must notify Bravo in writing of any alleged failure by Bravo to perform Services in accordance with the foregoing warranty within thirty (30) days of the delivery of the affected Services or the Services are deemed accepted and a warranty claim is barred. Bravo's entire liability and Customer's sole and exclusive remedy for Bravo's failure to perform in accordance with the above warranty shall be for Bravo to: (i) use commercially reasonable efforts to cure or correct such failure, or (ii) if Bravo is unable to cure or correct such failure, terminate the affected Services and refund that portion of fees paid by Customer to Bravo that corresponds to such failure to perform.

7.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, BRAVO DOES NOT MAKE OR GIVE ANY REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND, WHETHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER AND ALL SERVICES ARE PROVIDED ON AN AS-IS BASIS. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BRAVO EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION, WARRANTY, OR COVENANT BASED ON COURSE OF DEALING OR USAGE IN TRADE. SERVICES MAY BE SUBJECT TO LIMITATIONS, SECURITY RISKS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. BRAVO ENTITIES ARE NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, SECURITY BREACHES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. THE SERVICES CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE OR SERVICES COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

8. INDEMNIFICATION.

- 8.1 **General.** Each party (the "Indemnitor") agrees, at its own expense, to (a) defend the other party (the "Indemnitee") from and against any third party claim, suit, or action brought against the Indemnitee for death, bodily injury, or damage to or loss of any real or tangible personal property to the extent arising out of the Indemnitor's (including its employees and agents) gross negligence or willful misconduct in the performance of this Agreement, and (b) indemnify the Indemnitee against any and all liabilities, losses, damages, costs, and expenses finally awarded by a court of competent jurisdiction or agreed by the Indemnitor in settlement with regard to any such claim.
- 8.2 **Intellectual Property Infringement.** Subject to the remainder of this Section 8, Bravo shall, at its own expense (a) defend Customer against any third party claim, suit, or action brought against Customer alleging that any Work Product infringes such third party's United States patent, trademark, or copyright, or misappropriate such third party's trade secrets under the laws of the United States, and (b) indemnify Customer from the resulting costs and damages finally awarded against Customer to the third party making such claim by a court of competent jurisdiction or agreed to in settlement with regard to any such claim. If your use of the Work Product is determined in a final, enforceable judgment to infringe a third-party patent or copyright, Bravo, at its own

expense, shall either (1) procure for you the right to continue using the Work Product, or (2) modify the Work Product so that it becomes non-infringing while giving acceptable performance, or (3) in the event that neither of the foregoing options (1) and (2) are reasonably available to Bravo, terminate the SOW with respect to the infringing Work Product (and/or any related Services) and refund to you an amount equal to all sums received by Bravo from you on account of the Work Product furnished by Bravo to you, multiplied by a factor the numerator of which is 1095 minus the number of days during which your license to use the Work Product was effective and the denominator of which is 1095. Notwithstanding any other terms or conditions of this Agreement, Bravo shall have no liability or obligations under this Section 8.2 if the alleged infringement is based on (i) combination of the Work Product with non-Bravo products, (ii) use of the Work Product for a purpose or in a manner for which it was not designed or beyond its reasonably intended use, (iii) use of any older version of the Work Product when use of a newer version provided by Bravo would have avoided the infringement, (iv) any modification or alteration of the Work Product by a party other than Bravo or without Bravo written and express direction, (v) Bravo's compliance with any materials, designs, specifications or instructions provided by Customer, (vi) Customer using the Work Product after Bravo notifies Customer to discontinue use due to an infringement claim. THIS SECTION 8.2 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND BRAVO'S ENTIRE LIABILITY FOR INTELLECTUAL PROPERTY CLAIMS RELATED TO THIS AGREEMENT.

- 8.3 **Conditions to Indemnification.** As conditions to indemnification under this Section 8, the indemnified party must (a) notify the indemnifying party promptly in writing of the claim, as applicable, for which the indemnified party is seeking indemnification, (ii) grant the indemnifying party sole control over the defense and settlement of each claim, as applicable, and (iii) provide the indemnifying party with reasonable cooperation in response to such party's requests for assistance. The indemnified party may not settle or compromise a claim unless for money damages alone, as applicable, except with prior written consent of indemnifying party.

9. LIMITATION OF LIABILITY.

- 9.1 IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY ALL SPECIAL, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES; DAMAGES FOR LOSS OF PROFITS OR CONFIDENTIAL OR OTHER INFORMATION, FOR BUSINESS INTERRUPTION, FOR PERSONAL INJURY, FOR LOSS OF PRIVACY, FOR FAILURE TO MEET ANY DUTY INCLUDING OF GOOD FAITH OR OF REASONABLE CARE, OR FOR NEGLIGENCE OR NEGLIGENT MISREPRESENTATION; AND FOR ANY OTHER PECUNIARY

OR OTHER LOSS WHATSOEVER OTHER THAN "DIRECT DAMAGES" AS DESCRIBED BELOW. THE FOREGOING DAMAGES WILL BE EXCLUDED EVEN IN THE EVENT OF THE FAULT, TORT (INCLUDING NEGLIGENCE), STRICT OR PRODUCT LIABILITY, AND/OR BREACH OF CONTRACT AND EVEN IF THE CUSTOMER OR BRAVO ENTITIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 EXCEPT FOR DAMAGES THAT ARE REQUIRED BY LAW TO BE PAID AND CANNOT BE LIMITED BY CONTRACT, IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THE ORDER FORM GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH LIABILITY AROSE.

9.3 THESE LIMITATIONS OF LIABILITY WILL REMAIN IN FULL FORCE AND EFFECT, REGARDLESS OF WHETHER EITHER PARTY'S REMEDIES HEREUNDER ARE DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE ABOVE LIMITATIONS WILL NOT, HOWEVER, LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Services. Customer acknowledges and agrees that Bravo has set its prices and entered into the Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the parties. Customer understands, acknowledges and agrees that if Bravo takes any corrective action because of an action of Customer or any Third-Party Clients, that corrective action may adversely affect other Third-Party Clients, and Customer agrees that Bravo shall have no liability to you, or to any Third-Party Clients, or any other third party due to such corrective action by Bravo. The limitations and exclusions provided for by this section reflect an informed and voluntary allocation of risks between the parties and applies to risks both known and unknown that may exist in connection with the Agreement.

10. GENERAL.

10.1 **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, except that either party may assign this Agreement or rights granted hereunder without the consent of the other party to its Affiliate or in connection with a merger, divestiture, corporate reorganization, or sale or acquisition of assets. Any attempted assignment or transfer in violation of this Section 10.2 shall be null and void.

10.2 **Governing Law and Venue.** This Agreement is governed by the laws of the State of California, without regard to conflict of law principles. The parties acknowledge and agree that this Agreement relates solely to the performance of services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code. In addition, the provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in Santa Clara County, California, and the parties expressly consent to personal jurisdiction and venue therein.

10.3 **Federal Government End Use Provisions.** We provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

10.4 **Independent Contractors.** The relationship between the parties established under this Agreement is that of independent contractors, and nothing in this Agreement shall be construed to create an employment, partnership, joint venture, or agency relationship between the parties.

10.5 **Notices.** All notices required or permitted under this Agreement must be in writing. Notices will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices must be sent to the addresses set forth above or as updated from time to time by the parties.

10.6 **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party may hire, or directly or indirectly solicit, any employee of the other party; provided, however, that nothing herein will prevent a party from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business or who approaches the other party on a wholly unsolicited basis.

10.7 **Publicity.** Customer agrees that Bravo may reference and use Customer's name and trademarks in Bravo marketing

and promotional materials, including, but not limited to, the Bravo website, solely for purposes of identifying Customer as a customer of Bravo. Otherwise, neither party may use the trade names, trademarks, service marks, or logos of the other party without the express written consent of the other party.

- 10.8 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to achieve the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.
- 10.9 **No Waiver.** The failure of a party to enforce any provision or exercise any right under this Agreement shall not constitute a waiver of such provision or right and shall not preclude such party from enforcing such provision or exercising such right at any later time.
- 10.10 **Force Majeure.** The performance of the Agreement is subject to existing laws and legal process, and we each agree that the other may comply with law enforcement or regulatory requests or requirements notwithstanding any contrary term of the Agreement. Each party's obligation to perform its obligations hereunder (other than your obligation to pay fees when due) shall be suspended during any period that the party is rendered incapable of performing by virtue of any criminal acts of third parties, war, viruses, acts of public enemies, severe weather conditions, utility failures, strikes or other labor disturbances, fires, floods, other natural disasters, other acts of God, unforeseeable acts of employees, telecommunication or interruption of Internet service, or any causes of like or different kind beyond any reasonable control of the party.
- 10.11 **Third Party Beneficiaries.** The terms of this Agreement are intended to be, and are solely for the benefit of the Bravo Entities and Customer and do not create any right in favor of any other party.
- 10.12 **Compliance with Laws.** The Services, Work Product, Documentation and any other technology we make 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 access or use any Service, Work Product or Documentation in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. Export law or regulation.
- 10.13 **Counterparts and Signature.** This MSA and all Order Forms may be executed in counterparts and by electronic means, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Facsimile and electronic copies of signatures shall have the same effect as originals. If a party elects to sign Order Forms electronically, it expressly acknowledges and agrees that such electronic signature is the legal equivalent of, and has the same force and effect as, a manual signature.
- 10.14 **Entire Agreement.** This Agreement, together with any Order Forms, constitutes the entire agreement between the parties concerning the subject matter hereof. Customer purchase orders related to Services only evidence Customer's intent to be bound to the applicable Order Form but are otherwise solely business aids, do not form a part of the Agreement between the parties and are not binding. This Agreement supersedes all prior or contemporaneous discussions, proposals, and agreements between the parties, whether written or oral, relating to the subject matter hereof. No amendment, modification, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.
- 10.15 **Precedence. Agreement Priority.** The terms of the Agreement govern the Services, provided that to the extent: there is an applicable separate non-electronic agreement manually signed by authorized representatives of the parties, to the extent of a conflict between the provisions of the foregoing, the order of precedence shall be (X) the signed agreement, (Y) the Agreement. Except as set forth in the preceding sentence or otherwise indicated in this MSA, in the event of a conflict between the terms of any Order Form with the terms of this MSA, the terms of the MSA shall control unless (a) only with respect to the specific Services purchased under such Order Form, and (b) only if the Order Form specifically references the conflicting provision(s) of this MSA with the intention to supersede such provision(s). Customer hereby agrees that if Customer accepts this MSA at any time, it shall apply to all Services provided by or through Bravo at any time, past, present or future.