

# TruAdvantage Solutions, LLC Master Services Agreement

## A. SERVICE

- A.1) *Scope.* This This master services agreement (this “Agreement” or “MSA”) all services that **TruAdvantage Solutions, LLC., a California limited liability company with an office located at 3031 Tisch Way, Suite 110PW, San Jose, California 95128** (“us”, “our”, “we” or “TruAdvantage”) performs for as well as any licenses or products that we sell or re-sell, to the Client (collectively, the “Services”), including the Initial Assessment of the Client’s computer network, system, peripherals, and devices for a fee of \$ \_\_\_\_\_ (and such fee has been waived) which are installed or operated by Client (“you” or “your”) and all software, equipment and other goods supplied by TruAdvantage (collectively, the “Products”) and replaces all other agreements between the parties.
- A.2) *Quotes.* The Services are not described in this Agreement; instead, you will be provided with an electronic quote, proposal, and/or order (“Quote”) that describes the Services through which you agree to purchase the Services from us. The Quote may have one or more statements of work (each a “SOW”) attached to it that further describe, summarize, and/or define the scope of the Services. From this point forward in this Agreement, Quotes and SOWs will be collectively referred to as “SOW.”

## B. GENERAL REQUIREMENTS

- B.1) *Environment.* For the purposes of this Agreement, “Environment” means, collectively, any computer network (cloud-based or otherwise), computer system, peripheral or device (virtual or physical) installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the Environment or installing software in the Environment, unless we expressly authorize such activity.
- B.2) *Requirements.* At all times, all software on the Environment must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW (“Minimum Requirements”), you agree to do so as an ongoing requirement of us providing our Services to you. In addition, any hardware must be under warranty. Hardware without warranty is not covered under this Agreement or any SOW(s). All hardware and software must not be past its End-of-Life (as defined in the applicable SOW); any hardware or software beyond its End-of-Life will be priced at a higher rate to continue support, and such support is provided on a “best-efforts” basis.
- B.3) *Third Party Support.* If, in our discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and invoice you for all fees and costs involved in that process. If the fees or costs are anticipated in advance or exceed \$500, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise. Vendor support is required for all hardware, software, and web applications and services in use by Client, and hardware without vendor support is not covered under this Agreement or any SOW(s).
- B.4) *Advice; Instructions.* From time to time, we may provide you with specific advice and directions related to the Services (“Advice”). You are strongly advised to promptly follow our advice which, depending on the situation, may require you to make additional purchases or investments in the Environment at your sole cost. We are not responsible for any issues (such as downtime or security-related issues) caused by your failure to promptly follow our Advice. If, in our discretion, your failure to follow our Advice, renders part or all of the Services economically or technically unreasonable to provide, then we may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in an SOW, any services required to remediate issues caused by your failure to follow our Advice, or your unauthorized modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements, are out-of-scope.
- B.5) *Authorized Contact(s).* We will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent (“Authorized Contacts”). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed the Quote and/or (ii) who, given the totality of the circumstances, reasonably appears to have been given the authority by you to provide us with directions or consent. If you notify us in writing (e.g. by email), your change will take effect no later than three (3) business days after we receive your notice; and, if notice is given in person or by telephone, your change will take effect on the business day on which you provide us with your notice.
- B.6) *Insurance.* If you are supplied with TruAdvantage Equipment (defined below), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. TruAdvantage must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to TruAdvantage. Upon TruAdvantage’s request, you agree to provide proof of insurance to TruAdvantage, including proof of payment of any applicable premiums or other amounts due under the insurance policy.

## C. FEES; PAYMENT

- C.1) *Fees.* You agree to pay the fees, costs, and expenses described in each SOW. Any Services beyond the scope detailed within the SOW(s) or within the scope of an SOW but required due to unauthorized modifications to System by Client (“Out of Scope

Work”) shall be billed to Client and Client shall pay for such Out of Scope Work according to TruAdvantage’s then-current rate schedule. Different hourly rates may apply based upon overtime, weekends or holidays time, different levels of personnel experience, sophistication of work. You are responsible for sales tax and any other taxes or governmental fees associated with the Services. If you qualify for a tax exemption, you must provide us with a valid certificate of exemption or other appropriate proof of exemption. You are also responsible for all freight, insurance, and taxes (including but not limited to import or export duties, sales, use, value add, and excise taxes).

- C.2) *Schedule; Nonpayment.* All undisputed fees will be due and payable in advance of the provision of the Services. All recurring payments will be made by ACH and will be deducted from your designated bank account on the first day of the month in which the Services are to be provided. For your convenience and bookkeeping purposes, invoices are provided on the fifteenth (15<sup>th</sup>) day of the month preceding the provision of the Services. If Client disputes an invoice, Client must provide written notice to TruAdvantage prior to the invoice due date regarding the disputed amount(s). Fees that remain unpaid for more than five (5) days after the due date on the invoice will be subject to a \$100 late fee for each billing cycle that payment is delayed plus interest on the unpaid amount(s) until and including the date payment is received at the lower of either 1.5% per month or the maximum amount allowable under applicable law. Services shall be suspended due to your nonpayment, and a reconnection fee will apply. Time is of the essence with regard to all payment obligations by Client.
- C.3) *Auto-Payment.* Generally, all prices quoted in a SOW anticipate automatic monthly recurring payment by you via electronic check (ACH) setup on our payment portal. Payments by any other method or not set up for automatic withdrawal will result in increased fees by a minimum of five percent (5%). Payment made via paper check will incur a \$100 processing fee.
- C.4) *True-Downs.* Client may not adjust the number of support hours, users, endpoints, or devices under an applicable SOW below the number of support hours, users, endpoints, or devices identified in the most recent SOW or the most recent renewal without prior written approval of TruAdvantage. In no event may Client reduce the number of users, endpoints, or devices below ninety percent (90%) of the initially contracted-for levels.
- C.5) *Out-Of-Scope Work.* TruAdvantage shall provide out-of-scope services only with confirmation from Client. The parties agree that verbal conversation documented in the ticketing system, email communication, or Client’s acceptance of an invoice without objection within three business days of receipt of such invoice is deemed written confirmation and approval of the services outlined on such invoice.

#### **D. TERM; TERMINATION**

- D.1) *Term.* This Agreement begins on the date of Client’s signature to this Agreement and shall continue until one (1) year after the expiration or termination of all SOW(s). The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other SOW between the parties. The term of all SOWs shall be provided for in each Quote executed by the Parties, with an annual price adjustment equal to the greater of: (i) 5%; or (ii) the annual Consumer Price Index (all items) published by the U.S. Bureau of Labor Statistics prior to renewal (“CPI Adjustment”).
- D.2) *Termination in First Ninety (90) Days.* Client may terminate an SOW within the first ninety (90) days of the Initial SOW Term, without penalty, if Client is dissatisfied with TruAdvantage’s services. In order to exercise this termination right, Client must provide written notice to TruAdvantage of its intent to terminate within the first ninety (90) days of the Initial SOW Term and must provide objective reasoning for its dissatisfaction with the TruAdvantage services along with reimbursement to TruAdvantage for any onboarding fees waived or discounted based upon Client’s commitment period.
- D.3) *Termination for Cause.* Either party may terminate an SOW for a material breach of the performance obligations hereunder (“Cause”) by first providing the other party thirty (30) days’ written notice setting forth the basis for such proposed Cause and an opportunity to cure. If the basis of the Cause is not remedied within the thirty- (30) day written notice period, the particular SOW for which the Cause existed may be terminated by the nonbreaching party. TruAdvantage may, in addition to any other remedy, terminate or suspend Products or Services if Client fails to make timely payment within ten (10) days of written notice.
- D.4) *Equipment Removal.* Upon termination of an SOW for any reason, Client shall provide TruAdvantage with access, during normal business hours, to Premises (or any other locations at which TruAdvantage-owned equipment is located) to enable TruAdvantage to remove all TruAdvantage-owned equipment (if any) from Premises. In the alternative, the Parties may mutually agree to have any TruAdvantage-owned equipment shipped to TruAdvantage, with shipping costs being the sole responsibility of Client unless expressly agreed to otherwise.
- D.5) *Transition.* If Client requests TruAdvantage’s assistance to transition to a new service provider and all fees due and owing to TruAdvantage under this MSA are paid by Client, TruAdvantage shall provide such assistance upon Client’s payment, in advance, of an amount which TruAdvantage estimates is required to facilitate transition assistance at TruAdvantage’s then-current hourly rate. TruAdvantage shall have no obligation to store or maintain any Client data in TruAdvantage’s possession or control for more than fifteen (15) days following the expiration or termination of an applicable SOW. TruAdvantage shall be held harmless for and indemnified by Client against any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, TruAdvantage’s deletion of Client data beyond the time frames described in this Section. In furtherance of TruAdvantage’s transition assistance services, Client may retain a different or new managed service provider to take over the services being transitioned. Client understands and agrees that TruAdvantage will cooperate with the different or new managed service provider, and that Client ultimately remains responsible for any amounts payable resulting from the transition efforts,

whether requested by Client or required to be performed by Client's different or new managed service provider in order to ensure a full transition.

- D.6) *Release of Credentials.* Whether due to termination or transition, upon TruAdvantage's release of the credentials pertaining to Client's environment, TruAdvantage shall possess no liability whatsoever for actions, omissions, damages, incidents, or other issues to Client's environment that occur after TruAdvantage releases the credentials applicable to Client's IT environment.

#### **E. ACCESS**

You hereby grant TruAdvantage and its designated third-party vendors the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the Environment solely as necessary to enable us to provide the Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Services, any necessary rights of entry, licenses (including software licenses), permits or other permissions necessary for TruAdvantage to provide Services to the Environment and, if applicable, at your designated premises, both physically and virtually. Proper and safe environmental conditions must be provided and assured by you at all times. TruAdvantage shall not be required to engage in any activity or provide any Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.

#### **F. LIMITED WARRANTIES; LIMITATIONS OF LIABILITY**

- F.1) *Warranties.* TruAdvantage warrants that its technicians have the requisite qualifications and experience to provide the Services. TRUADVANTAGE MAKES NO OTHER SERVICE OR PRODUCT WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR WARRANTY OF MERCHANTABILITY. TruAdvantage's liability, and Client's sole and exclusive remedy, for a breach of this warranty shall be to terminate the SOW pursuant to a written notice after providing TruAdvantage notice of such breach in writing and a reasonable period of time of at least 30 days to cure such breach. The foregoing remedy shall not be available if Client fails to provide a written notice of such breach within 30 days after delivery of the services to Client. It shall not be a TruAdvantage breach if Client, its contractors, or agents modified any TruAdvantage Products or Services except as authorized by TruAdvantage in writing.

- F.2) *LIABILITY LIMITATIONS.* **THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT OR ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF OUR BUSINESS RELATIONSHIP WITH YOU.** YOU ACKNOWLEDGE AND AGREE THAT TRUADVANTAGE WOULD NOT ENTER INTO ANY SOW OR THIS AGREEMENT UNLESS TRUADVANTAGE COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS LOST REVENUE, LOSS OF PROFITS (EXCEPT FOR FEES DUE AND OWING TO TRUADVANTAGE), SAVINGS, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, ANY SOW, OR THE SERVICES, OR FOR ANY LOSS OR INTERRUPTION OF DATA, TECHNOLOGY OR SERVICES, OR FOR ANY BREACH HEREOF OR FOR ANY DAMAGES CAUSED BY ANY DELAY IN FURNISHING SERVICES UNDER THIS AGREEMENT OR ANY SOW, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; HOWEVER, REASONABLE ATTORNEYS' FEES AWARDED TO A PREVAILING PARTY (AS DESCRIBED BELOW) SHALL NOT BE LIMITED BY THE FOREGOING LIMITATION. EXCEPT FOR YOUR PAYMENT OBLIGATIONS AND YOUR INDEMNIFICATION OBLIGATIONS DESCRIBED IN THIS AGREEMENT, A RESPONSIBLE PARTY'S ("RESPONSIBLE PARTY'S") AGGREGATE LIABILITY TO THE OTHER PARTY ("AGGRIEVED PARTY") FOR DAMAGES FROM ANY AND ALL CLAIMS OR CAUSES WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY SUCH ACTION(S), THAT ARISE FROM OR RELATE TO THIS AGREEMENT (COLLECTIVELY, "CLAIMS"), WHETHER IN CONTRACT, TORT, INDEMNIFICATION, OR NEGLIGENCE, SHALL BE LIMITED SOLELY TO THE AMOUNT OF THE AGGRIEVED PARTY'S ACTUAL AND DIRECT DAMAGES, NOT TO EXCEED THE AMOUNT OF FEES PAID BY YOU (EXCLUDING HARD COSTS FOR LICENSES, HARDWARE, ETC.) TO TRUADVANTAGE FOR THE SPECIFIC SERVICE UPON WHICH THE APPLICABLE CLAIM(S) IS/ARE BASED DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE ON WHICH THE CAUSE OF ACTION ACCRUED. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO THE EXTENT THAT THE CLAIMS ARE CAUSED BY A RESPONSIBLE PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE. SIMILARLY, A RESPONSIBLE PARTY'S LIABILITY OBLIGATION SHALL BE REDUCED TO THE EXTENT THAT A CLAIM IS CAUSED BY, OR THE RESULT OF, THE AGGRIEVED PARTY'S WILLFUL OR INTENTIONAL MISCONDUCT, OR GROSS NEGLIGENCE. NOTWITHSTANDING ANYTHING TO THE CONTRARY, ANY SERVICE NOT INCLUDED UNDER AN APPLICABLE SOW IS NOT A RESPONSIBILITY OF TRUADVANTAGE AND TRUADVANTAGE SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES, SUCH AS LOST REVENUE, LOSS OF SAVINGS, OR OTHER INDIRECT OR CONTINGENT EVENT-BASED ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH SUCH SERVICES.

#### **G. INDEMNIFICATION**

Each party (an "Indemnifying Party") agrees to indemnify, defend, and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.

## **H. CONFIDENTIALITY**

- H.1) Defined.* For the purposes of this Agreement, Confidential Information means any and all non-public information provided to us by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of TruAdvantage, (ii) was developed independently by us, or (iii) is or was lawfully and independently provided to us prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.
- H.2) Use.* We will keep your Confidential Information confidential and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill our obligations under this Agreement.
- H.3) Due Care.* We will exercise the same degree of care with respect to the Confidential Information we receive from you as we normally take to safeguard and preserve our own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.
- H.4) Compelled Disclosure.* If we are legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand, or similar process) to disclose any of the Confidential Information, we will immediately notify you in writing of such requirement so that you may seek a protective order or other appropriate remedy and/or waive our compliance with the provisions of this Section. We will use our best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, we may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that we have been advised, by written opinion from our counsel, that we are legally compelled to disclose.

## **I. ADDITIONAL TERMS: THIRD PARTY SERVICES**

- I.1) EULAs.* Portions of the Services may require you to accept the terms of one or more third party end user license agreements ("EULAs"). If the acceptance of a EULA is required in order to provide the Services to you, then you hereby grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. **You agree to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs.** If, while providing the Services, we are required to comply with a third-party EULA and the third-party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third-party EULA.
- I.2) Third Party Services.* Portions of the Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as data hosting services, help desk services, domain registration services, and data backup/recovery services ("Third Party Service"). Not all Third-Party Services may be expressly identified as such in a SOW, and at all times we reserve the right to utilize the services of any third-party provider or to change third party providers in our sole discretion as long as the change does not materially diminish the Services to be provided to you under a SOW. We will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to TruAdvantage or to you.
- I.3) Microsoft 365 Licensing Fees.* The Services may require us to purchase certain "per seat" licenses from Microsoft (which Microsoft refers to as New Commerce Experience or "NCE Licenses") to provide you with one or more of the following applications: Microsoft 365, Office 365, Dynamics 365, Windows 365, Microsoft Power Platform, or any future Microsoft offerings (each, an "NCE Application"). As per Microsoft's requirements, NCE Licenses cannot be canceled once they are purchased and cannot be transferred to any other customer. If we purchase NCE Licenses for you on an order, then those licenses may require a term of duration, or you will be assessed additional monthly fees by Microsoft. For that reason, you understand and agree that regardless of the reason for termination of the Services, you are required to pay for all applicable NCE Licenses in full for the entire term of those licenses. Microsoft 365 must be managed by TruAdvantage, and a Business Premium license is required for all users and/or employees of Client.
- I.4) Google Workspace.* If Client obtains a Google Workspace service pursuant to an SOW, Client must obtain Google Workspace Business Plus with Enhanced Support for all of Client's users and/or employees.

## **J. Cyber Security**

- J.1) *Security.* You understand and agree that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are downloaded or installed into the Environment. We do not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined, or removed, or that any data deleted, corrupted, or encrypted by such malware (“Impacted Data”) will be recoverable. **You are strongly advised to educate your employees to properly identify and react to “phishing” activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email).**
- J.2) *Cyber Liability Insurance.* **Client is required to obtain and maintain , at Client’s expense, cyber liability insurance covering Client’s Environment with financially sound and reputable insurers covering at a minimum against cyberattacks, data loss, malware-related matters, theft or misuse of private or confidential information, privacy-related breaches, the breach of network or any systems, and any failure to prevent the transmission of computer malware, as such incidents can occur even under a “best practice” scenario. Unless a malware-related incident is caused by our intentionally malicious behavior or our gross negligence, we are held harmless from any costs, expenses, or damages arising from or related to such incidents. Upon request, Client will provide TruAdvantage with a certificate of insurance from Client’s insurer evidencing the insurance coverage. TruAdvantage will assist Client in adopting an appropriate cyber insurance policy during the onboarding process if Client does not have cyber insurance upon execution of an SOW.**

#### **K. OWNERSHIP**

Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights, and other intellectual property owned by such party (“Intellectual Property”), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party’s Intellectual Property to the other party. If we provide licenses to you for third party software under a SOW, then you understand and agree that such software is licensed, and not sold, to you. You are allowed to use such third-party software subject to the terms and conditions (i) of this Agreement, (ii) of the applicable SOW, and (iii) any applicable EULA; no other uses of such third-party software are permitted. To the maximum extent permitted by applicable law, we make no warranty or representation, either expressed or implied with respect to third party software or its quality, performance, merchantability, or fitness for a particular purpose.

#### **L. ARBITRATION**

Except for undisputed collections actions to recover fees due to us (“Collections”), any *dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by arbitration before one arbitrator who is mutually agreed upon by the parties. The arbitration shall be administered and conducted by the American Arbitration Association (the “AAA”) or if there is no AAA-certified arbitrator available within a ten (10) mile radius of our office, then by any arbitration forum as determined by us, pursuant to that forum’s arbitration rules for commercial disputes (the “Rules”).* In the event of any inconsistency between the Rules and the procedures set forth in this paragraph, the procedures set forth in this paragraph will control. *The arbitrator will be experienced in contract, intellectual property, and information technology transactions.* If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, the arbitration venue shall select the arbitrator. The arbitration shall take place in our office unless we agree to a different venue. The arbitrator will determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. Initially, the cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys’ fees and costs.

#### **M. MISCELLANEOUS**

- M.1) *Compliance; Data Processing Agreements.* Unless otherwise expressly stated in a SOW, the Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client’s business or operations. Depending on the Services provided, the Services may aid Client’s efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution. TruAdvantage will ensure that any third party or subcontractor involved in the processing of personal data in connection with the services provided to Client are subject to a documented agreement. This agreement shall include terms that meet or exceed the requirements of applicable data protection and privacy legislation, including but not limited to provisions on the purpose, duration, and nature of the data processing; types of personal data processed; and the obligations and rights of both parties. TruAdvantage will obtain necessary assurances from any such parties to protect personal data in accordance with applicable laws, regulations, and industry standards.
- M.2) *Placement Fee.* Client agrees that during the term of this MSA and for a period of one (1) year following the termination of this MSA, Client will pay TruAdvantage the Placement Fee (defined below) for, individually or in conjunction with others, hiring or retaining, directly or indirectly any of TruAdvantage’s employees or subcontractors (“TruAdvantage Resource”) in order to compensate TruAdvantage for the internal and external costs of recruitment, interviewing, placement expenses, training, certification and other efforts of TruAdvantage relative to such person. “Placement Fee” means one hundred fifty percent (150%)

of that employee or subcontractor's annualized compensation with TruAdvantage (including any bonuses) which shall be due and payable fifteen (15) days following Client's hiring of a TruAdvantage Resource.

- M.3) *Versioning.* Client agrees that Client may not be more than three (3) years removed from a given totalCARE SOW. For example, if Client executes a totalCARE 2024 SOW with TruAdvantage, Client must execute a totalCARE 2027 SOW. For avoidance of doubt, Client must execute a renewed totalCARE SOW within three (3) years of the effective date of the previously executed totalCARE SOW.
- M.4) *Assignment.* Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all the assets of our business, or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that such assignee expressly assumes our obligations hereunder.
- M.5) *Amendment.* Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by TruAdvantage, specifically refers to this Agreement or the SOW being amended and is accepted in writing (email or electronic signature is acceptable) by you.
- M.6) *Time Limitations.* The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- M.7) *Severability.* If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility, or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.
- M.8) *No Waiver.* The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- M.9) *Merger.* This Agreement, together with any and all Quotes and SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services.
- M.10) *Force Majeure.* Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- M.11) *Survival.* The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- M.12) *Governing Law; Venue.* This Agreement and any SOW will be governed by, and construed according to, the laws of the state of California. You hereby irrevocably consent to the exclusive jurisdiction and venue of Santa Clara County, California, for any and all claims and causes of action arising from or related to this Agreement.
- M.13) *No Third-Party Beneficiaries.* The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- M.14) *Notices; Writing Requirement.* Where notice is required to be provided to a party under this Agreement, such notice may be sent by U.S. mail, overnight courier, fax or email as follows: notice will be deemed delivered three (3) business days after being deposited in the United States Mail, first class mail, certified or return receipt requested, postage prepaid, or one (1) day following delivery when sent by FedEx or other overnight courier, or one (1) day after notice is delivered by fax or email. Notice sent by email will be sufficient only if (i) the sender emails the notice to the last known email address of the recipient, and (ii) the sender includes itself in the "cc" portion of the email and preserves the email until such time that it is acknowledged by the recipient. Notwithstanding the foregoing, any notice from you to TruAdvantage regarding (a) any alleged breach of this Agreement by TruAdvantage, or (b) any request for indemnification, or (c) any notice of termination of this Agreement or any SOW, must be delivered to TruAdvantage either by U.S. mail or fax, unless such requirement is expressly and specifically waived by TruAdvantage.
- M.15) *Counterparts.* The parties intend to sign, accept and/or deliver any Quote, this Agreement, SOW or any amendment in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement.
- M.16) **Unlimited Support Hours.** Except as otherwise provided in an applicable SOW, support and Services are only provided between the hours of 8:30 AM and 5:30 PM Pacific Time, Monday through Friday, exclusive of holidays.