

## **HOSTED MASTER SERVICE AGREEMENT**

**This Master Service Agreement (“MSA”) is entered into between GiaSpace Inc. (“Company”) and the customer (“You” or “Your”).**

**You agree to be bound by all of the terms and conditions of (i) this MSA and (ii) the following:**

- **GiaSpace’s Privacy Policy (the “Privacy Policy”);**
- **GiaSpace’s product specific Service Level Agreement (the “SLA” or “Service Level Agreement”);**
- **GiaSpace’s Acceptable Use Policy (“AUP”); and**
- **GiaSpace’s product specific Accepted Order(s).**

**The MSA, Privacy Policy, SLA, AUP, and specific Accepted Order(s) shall collectively be referred to herein as the “Agreement”.**

**Each of the foregoing are expressly incorporated herein by reference and may be updated from time-to-time by GiaSpace by positing on our website and you agree to be bound by each of them.**

**Definitions.** For the purposes of this MSA, the following definitions apply:

**“Access Information”** means information that alone or together with other information, can provide access to any portion of Your Account, including but not limited to, Your Account number, login names, passwords and any other similar information. For the  
Version 2.0 2.3.23

avoidance of doubt, Your Access Information will include any such information for each of Your Users.

**“Account”** means the account created with GiaSpace in connection with this Agreement that relates to Your subscription to and use of Services by You and Your Users.

**“Applicable Law”** means any applicable foreign, federal, state or other laws, statutes, rules, regulations or interpretations of relevant Governmental Authorities or self-regulatory bodies.

**“Data”** means all data submitted by You and/or Your Users to GiaSpace in connection with the Services, including all content, material, IP and similar addresses, recordings, messages, software, Account Information and Account-related settings, and any other electronically-stored information.

**“Governmental Authority”** means a government, regulatory organization, self-regulatory organization, court of competent jurisdiction or similar body of lawful authority.

**“Services”** means GiaSpace’s hosting and other services, software and products, and such other services, software and products that are offered by GiaSpace from time-to-time in its discretion and subscribed to, purchased by, or used by You.

**“Third-Party Service”** means any service or product offered by a party that is not GiaSpace.

**“User”** means any of Your employees, consultants or independent contractors to whom You grant permission to access the

Services in accordance with GiaSpace's entitlements procedures and this Agreement.

"You" and "Your" means and refers to the Customer accepting this Agreement, its officers, shareholders, members, employees, and/or representatives, with the further understanding and agreement that any User with an administrative designation shall have the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

## **1. Scope; Access; Security.**

1.1. Access to Services. Subject to and in accordance with the terms of this Agreement, GiaSpace grants You a non-exclusive, non-sublicensable, nontransferable, non-assignable, revocable license for the term of this Agreement (as defined in Section 2) to access and use the Services. Services may be used by Your Users for Your internal business purposes only.

1.2. Account Information and Ownership. You agree to maintain accurate Account information by providing written updates to GiaSpace promptly, but no later than five (5) business days after any of Your Account Information requires change, including any relevant Account contact information. Failure by You, for any reason, to respond within five (5) business days to any inquiries made by GiaSpace to determine the validity of information provided by You will constitute a material breach of this Agreement and may affect the ability of GiaSpace to provide the Services. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any GiaSpace account or any portion thereof, including Your Account, You and GiaSpace shall resolve such dispute in good faith and on commercially reasonable terms. In

addition, in the event that such a dispute cannot be promptly and amicably resolved, GiaSpace retains the sole and exclusive right to immediately suspend, alter or terminate any relevant Account, including Your Account, or any portion thereof without cost, penalty or any liability. You acknowledge, agree, and warrant that (i) the legal owner of all Data on the Account is You, and not any individual User, and (ii) GiaSpace may request and shall be entitled to prompt receipt of any documentation it reasonably requires to establish ownership and rights to Your Account and any related Data.

1.3. Account Security and Activity. You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your Access Information, and (ii) all activities that occur in connection with Your Account, whether initiated by You or by anyone acting on your behalf. You will notify GiaSpace immediately at [helpdesk@giaspace.com](mailto:helpdesk@giaspace.com) of any unauthorized use of Your Account, Access Information or any other actual or attempted breach of security. You acknowledge and agree that GiaSpace will not be liable for any data breach or related loss that You may incur as a result of any individual using Your Access Information, with or without Your knowledge and/or authorization. You shall be solely responsible for keeping Your Access Information secure and take the necessary precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. **GiaSpace specifically disclaims all liability for any improper or unauthorized activity associated with Your Account.**

1.4. Failure of a Line Test. With respect to voice services, if a specific site fails a "VOIP line test" as part of the installation process, and You are unable or unwilling to upgrade the data circuit, router, switch, or faulty

component responsible for the failure, GiaSpace reserves the right to cancel the Accepted Order(s) for such site.

## **2. Term and Termination.**

2.1. Term. This Agreement shall be effective from Your acceptance of an Accepted Order(s) and shall continue until the expiration or termination of all Accepted Order(s) ("Agreement Term"). The term of each Accepted Order(s) shall be either the Initial Term or Renewal Term as defined herein.

2.1.1. The Initial Term. The Initial Term of this Agreement and the Accepted Order(s) shall be three (3) years, commencing from the date of Your acceptance of the Accepted Order(s) and continuing through the remainder of that calendar month and thereafter for an next thirty-six (36) calendar months, unless the parties have agreed in writing and as part of an Accepted Order to a different term.

2.1.2. Automatic Renewal. A Renewal Term for this Plan of the Accepted Order(s) is defined as the twelve (12) month period beginning at the end of the Initial Term and including each subsequent twelve month period thereafter. Each Accepted Order(s) will renew automatically at the end of the then-current Accepted Order(s) Term for a Renewal Term unless terminated in accordance with this Agreement by either You or GiaSpace. In the event that either You or GiaSpace wish to cancel automatic renewal of your Agreement, written notice shall be delivered 30 days prior before to the expiration of the Initial or Renewal Term as applicable.

2.2. Termination by You. You may terminate this Agreement for a material breach committed by GiaSpace, after 30-day notice and opportunity to cure.

2.3. Termination by GiaSpace.

2.3.1. 30-Day Termination. GiaSpace may terminate this Agreement for any reason without cause and without cost or penalty by providing 30 calendar days' advance written notice.

2.3.2. Immediate Termination. GiaSpace may terminate this Agreement and any Accepted Orders (or suspend Your Account) immediately and without prior notice for any of the following reasons:

2.3.2.1. Any material breach of this Agreement by You, as determined by GiaSpace in its sole discretion, including, but not limited to, failure to make any payment when due, failure to maintain the minimum user count contracted for, violation of the AUP or any other GiaSpace policy or procedure; or

2.3.2.2. If Your use of the Services results in, or is the subject of, actual, potential, or threatened legal action or investigation against GiaSpace or any of its affiliates, vendors, partners, representatives or customers, without consideration for whether such actual or potential legal action or threatened legal action is eventually determined to be with or without merit.

2.3.3. Termination or Suspension of Users. In lieu of terminating or suspending Your entire Account, GiaSpace may suspend any part of Your Account or terminate or suspend individual Users.

2.3.4. No Refunds; Further Payment Due. If GiaSpace terminates this Agreement, including any Accepted Order(s), pursuant to this Section 2.3.2 GiaSpace will not refund You any paid fees for Services rendered and shall be entitled to collect any fees that would have been owing under and for the remaining Term of the Accepted Order.

2.4. Post-Termination. Termination will not cancel or waive the obligation by You to pay any fees owed to GiaSpace, whether incurred prior to or upon termination. You agree that GiaSpace may charge such unpaid balance to Your Account on file or otherwise bill You for such unpaid balance. Upon termination, You must promptly uninstall all software provided by GiaSpace in connection with the Services. All of Your Data may be irrevocably deleted within fourteen (14) calendar days of termination (without further notice to You), including but not limited to, databases, contacts, calendars, e-mail, website content, and any Data hosted by GiaSpace. It will be solely Your responsibility to secure all necessary Data from Your Account prior to termination. You agree and acknowledge that GiaSpace shall not be responsible or otherwise liable for any loss of Your Data or any damages arising from the deletion of Your Data following termination of the Services.

Upon expiration or termination of the Agreement, You must discontinue use of Services and relinquish use of IP addresses and server names assigned to You by GiaSpace in connection with Services,

including without limitation pointing the DNS for Your domain name(s) away from GiaSpace. Customer agrees GiaSpace may, in its sole discretion, make modifications to records and zones on its Network, managed and/or operated servers, and/or other services.

### **3. Billing.**

3.1. Billing and Payment Arrangements. GiaSpace will bill You monthly for all established and recurring fees, and any applicable one-time fees in that month. Pro rata billing may occur throughout the course of a billing cycle for feature add-ons that You enable on your Account during any given month. All payments shall be made in U.S. dollars and will be due on Your receipt of the applicable invoice. You shall be responsible for all taxes, withholdings, duties and levies arising from the Services (excluding taxes based on the GiaSpace net income. GiaSpace reserves during the Term to impose a 3% annual rate increase to cover increased costs of Software and/or Security.

3.2. Payment by Automated Means. Prior to the commencement of each month during which Services shall be provided, GiaSpace will apply the current monthly charges to Your automated payment method. You are responsible for and agree to update GiaSpace with any changes to Your billing and/or automated payment information (e.g., new or updated credit card, credit card expiration date or other payment account information).

3.3. Late Payment. If GiaSpace does not receive complete payment within 15 calendar days after the date of your invoice, Your payment will be considered late and not paid in full. GiaSpace may suspend or terminate Your Account in accordance with Section 2.3.2.1. for failure to timely pay in full. Late payments are subject to a late-payment charge of the greater of (i) interest calculated

at eighteen percent (18%) or (ii) the maximum amount permitted by law. Any interest shall accrue and compound daily from the date payment on an invoice is due until the date of actual payment of the overdue amount. You agree to pay all collection costs incurred by GiaSpace (including, without limitation, reasonable attorneys' fees and court costs).

3.4. Fees for Excess Use. You agree to monitor and maintain Your Accounts within all GiaSpace-specified limits and in a manner that does not disrupt the activities of GiaSpace and other GiaSpace customers and users. If Your usage exceeds the limits for Your Account or may disrupt the activities of other GiaSpace customers, You agree that GiaSpace may immediately, in its sole discretion, (i) charge You for such excess usage via invoice, (ii) upgrade You to a plan or increase the limits on Your Account to address this excess usage, and/or (iii) suspend or terminate Your Account without further notice To You. Usage and associated charges for excess usage will be determined based solely upon GiaSpace collected usage information. Unused monthly allotments will not accrue or carryover from any given month to any other month. Upon any upgrade or increase on the limits of Your Account, You will be responsible for the new costs and fees.

3.5. Set-Up and Initial Term Fees: Set-up fees, related service charges, and any applicable first payments for payment plan installments are due at the time You submit an order, order Services, and/or upon the provision of Services by GiaCare. You accept and acknowledges that You will be responsible for paying for any network resources that are used to connect Your Services, even if You are not utilizing Services. You may initiate non-renewal and/or a cancellation request in accordance with this Agreement but shall be responsible

for paying for any GiaSpace resources (including without limitation space provisioned for Your Services) up to the point of non-renewal or cancellation.

3.6. Promotional Offers: All promotional offers may be invalidated by GiaSpace, in its sole discretion, if You (i) fail to make timely and full payment; (ii) if You cancel Services within 30 calendar days of the Effective Date of an Accepted Order; or (iii) you materially reduce the Services negotiated for in an Accepted Order, including but not limited reducing or not meeting User minimums. In the event of one or more of the above situations, You will be charged the full price Services. Any "money-back" guarantees do not apply to collocation plans, self-managed dedicated server plans, or upgrades and/or downgrades from one plan to another.

3.7. You further agree and acknowledge that cancellations made after submission of an Accepted Order and/or provisions Services will not nullify Customer's obligation for set-up fees, related service charges. All set-up fees are non-refundable, in whole or in part, even if Your Account is suspended, cancelled, or transferred prior to the end of the Initial Term. Any suspension, termination, and/or cancellation by You or GiaSpace shall not relieve You of the obligation to pay all fees accrued prior to such suspension, termination and/or cancellation.

3.8. Billing Disputes. You will notify GiaSpace of any dispute relating to charges billed to Your Account by submitting a billing dispute notification in writing to GiaSpace within thirty (30) days of the invoice date the invoices where the disputed charges appeared. The existence of a dispute will not relieve You from paying any and all amounts billed hereunder. You waive all rights to dispute any charges not timely disputed by written notice as required above.

3.9. Electronic Billing. All billing for Services may be provided electronically (“Electronic Billing”). You acknowledge and agree that You are able to view all Electronic Billing and consent to receiving Electronic Billing and decline to receive hard copies of any such materials.

#### **4. USE OF THE SERVICES.**

4.1. Internal Use. You agree to use the Services for Your own internal business and non-personal use. You acknowledge and agree that You will not allow any third party, including Your vendors and service providers, to access or use the Services unless such third party is allowed access by GiaSpace in writing.

4.2. Restricted Activities. You will not (A) use any Service for any purpose outside the Service’s intended scope, features, and function set, (B) use any Service for third-party training, (C) use any Service as an application service provider or service bureau, unless You have entered into a separate written agreement with GiaSpace to provide such services, (D) use any Service for timesharing or rental, (E) use any Service to design software or other materials or services with similar or competitive functionality for any purpose, including distribution to third parties, (F) except with respect to Your Data, duplicate any portion of the Services or display, distribute, publish, or otherwise disclose any Service; and (G) store, maintain, or use on or through the Service any “Protected Health Information” or “PHI” as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder, as amended from time to time, unless a formal Business Associate Agreement has been executed between GiaSpace and You.

4.3. Applicable Law. You acknowledge and agree that access and use of the Services may be restricted or limited as a result of Applicable Laws and that You will not use, or allow the use of the Services in contravention of, and will comply with, any Applicable Law. You represent that (i) You and Your Users are not named on any Government Authority list of persons or entities prohibited from receiving exports, and (ii) You will not permit Users to access or use Services in violation of any export embargo, prohibition or restriction or any other unlawful purpose. You acknowledge and agree that it is Your sole responsibility to use the Services in a lawful manner.

#### **5. YOUR DATA; FEEDBACK.**

5.1. Submission of Your Data. Any Data You provide to GiaSpace in connection with the Services must comply with the AUP. You shall not provide to GiaSpace any in connection with the Services shall not be PHI, unless a formal Business Associate Agreement has been executed between GiaSpace and You. Attempting to place or transmit, or requesting placement or transmission, of Data that does not comply with the AUP or is PHI is a material breach of this Agreement. GiaSpace may, in its sole discretion, reject or remove any such Data that You have used or attempted to use with respect to the Services. You agree and warrant that any Data used with respect to the Services by or through You will be free of any and all malicious code, including without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, viruses and similar mechanisms that may disable or negatively impact the Services or GiaSpace’s servers or property. You hereby represent and warrant that You have the right to use any patented, copyrighted, trademarked, proprietary or other material in connection with Data that

You use, post, or otherwise transfer or transmit or host on GiaSpace servers in connection with this Agreement.

5.2. Public Disclosure of Data. You are solely responsible for ensuring that You do not accidentally make any private Data publicly available. Any Data made public may be publicly accessible through the internet and may be crawled and indexed by search engines or other third parties. By making any Data publicly available on any of the Services You affirm that You have the consent, authorization or permission, as the case may be from every person who may claim any rights in such Data to make such Data available in such manner.

5.3. Data Retention Policy. Data is permanently deleted once a user profile is deleted unless that data is immediately transferred to another user.

5.4. Data Takedown. By making any Data publicly available in the manner aforementioned, You expressly agree that GiaSpace will have the right to block access to or remove such Data made available by You, if GiaSpace receives complaints, inquiries or notices concerning any illegality or infringement of rights in such Data. You expressly consent to having GiaSpace determine questions of illegality or infringement of rights in such Data.

5.5. Filtering. GiaSpace may employ various filtering methods to reduce unwanted content, such as SPAM e-mail, from reaching Your GiaSpace Account. You acknowledge and agree that such methods may prevent legitimate content from reaching Your Account and that GiaSpace will not be liable therefor.

5.6. Control. GiaSpace is not obligated to exercise control over the content of information, including Your Data, passing

through GiaSpace's network except any controls expressly provided in this Agreement.

5.7. Feedback. Any feedback, suggestions, testimonials, endorsements, information or materials conveyed to GiaSpace by You or Your Users in connection with the Services shall be collectively deemed "Feedback." You agree to grant and hereby grant to GiaSpace a non-exclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Feedback without restriction.

## **6. CONFIDENTIALITY AND PRIVACY.**

6.1. Confidential Information. "Confidential Information" is all confidential information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information may include Your Data. GiaSpace's Confidential Information will include the Services (and any portion thereof), the terms and conditions of this Agreement and any Accepted Order(s). Confidential Information does not include (i) information that at the time of its disclosure was available to the public by publication or otherwise; or (ii) information that was already in the possession of the party at the time of the disclosure.

6.2. Protection of Confidential Information. Except as otherwise permitted by this Agreement or in writing by the

Disclosing Party, the Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and the Receiving Party will limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who are bound by confidentiality obligations at least as protective of Disclosing Party and its Confidential Information as the provisions of this Agreement.

6.3. Use and Disclosure by GiaSpace. Notwithstanding the foregoing, GiaSpace may use or disclose Your Data (a) as expressly permitted in writing by You, (b) as expressly provided in this Agreement, including (i) in accordance with the Privacy Policy (as if such Data were “Information” as defined under the Privacy Policy), and (ii) to access Your Data to provide the Services or prevent or address service or technical problems, or at Your request in connection with customer support matters. **You expressly consent to the foregoing use and disclosure.**

## **7. LIMITED WARRANTY; LIMITATION ON LIABILITY; THIRD-PARTY SERVICES.**

### 7.1. Limited Warranty; Limitation on Liability.

**7.1.1. GIASPACE WARRANTS FOR A PERIOD OF THIRTY (30) DAYS ONLY THAT THE SERVICES WILL SUBSTANTIALLY CONFORM TO THE DELIVERABLES SPECIFIED IN THE**

**APPLICABLE ACCEPTED ORDER(S) AND WILL BE PERFORMED IN ACCORDANCE WITH GENERALLY APPLICABLE INDUSTRY STANDARDS (THE “LIMITED WARRANTY PERIOD”). THEREAFTER, THE SERVICES SHALL CARRY NO WARRANTY, EXPRESS OR IMPLIED, AND YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SERVICES IS “AS IS” AND AT YOUR SOLE RISK. EXCEPT AS SET FORTH HEREIN, GIASPACE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, ORAL OR WRITTEN, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. YOU HEREBY AGREE THAT THE TERMS OF THIS AGREEMENT WILL NOT BE ALTERED DUE TO CUSTOM OR USAGE OR DUE TO THE PARTIES’ COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT.**

**WITHOUT LIMITING OR ALTERING THE LIMITED WARRANTY ABOVE, YOU ACKNOWLEDGE AND AGREE THAT GIASPACE DOES NOT WARRANT THAT THE SERVICES, ACCESS TO THE HOSTED SERVERS OR ANY DELIVERABLES WILL MEET**



**ANY OF YOUR REQUIREMENTS NOT SET FORTH IN AN ACCEPTED ORDER, THAT ANY SERVICES, ACCESS TO THE HOSTED SERVERS OR ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT YOU MAY SELECT FOR USE, THAT THE OPERATION OF ANY SERVICES, ACCESS TO THE HOSTED SERVERS OR ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO YOU, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.**

You shall be responsible for securing at Your expense a warranty on all hardware and parts for any company owned equipment and agree to keep mission critical hardware i.e., servers and firewall under warranty for the duration of this Agreement at its expense.

GiaSpace's sole liability (and Your exclusive remedy) for any breach of this Limited Warranty shall be for GiaSpace to have an opportunity to cure any deficient Services at its discretion, or, if GiaSpace is unable to remedy such deficiency within thirty (30) days, to void the invoice for any deficient Service(s). GiaSpace shall have no other obligation or liability with respect to a warranty claim or a claimed breach or alleged failure of the Services.

YOU MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE WARRANTY PERIOD.

7.1.2. GiaSpace and its successors, assigns, shareholders, directors, officers, principals, trustees, stockholders, investors, partners, members, managers, parents, subsidiaries, agents, attorneys, representatives, employees, affiliates and/or affiliated companies will not be liable for any indirect, incidental, special, punitive or consequential damages (including but not limited to damages for lost profits, business interruption, loss of programs or information, and the like) that result or in any way arise from this Agreement including without limitation from the delivery, use or inability to use the Services, the Services not meeting Your requirements or expectations, omissions, hardware failures, translations and system wordings, functionality of filters, migration issues, interruptions, deletion of files or directories, unavailability of backups, errors, defects, delays in operation, or transmission, regardless whether GiaSpace has been advised of such damages or their possibility. GiaSpace will not be liable for any harm that may be caused by Your access to application programming interfaces or the execution or transmission of malicious code or similar occurrences, including

**without limitation, disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, viruses and similar mechanisms. You agree that the total liability of GiaSpace and Your sole remedy for any claims regarding the Services under this Agreement, including any Accepted Order(s), or otherwise is limited to any applicable credits set forth in the Service Level Agreement.**

**In addition and without limiting the above, in no case shall GiaSpace liability to You exceed the fees paid by You to GiaSpace in the twelve (12) months preceding the alleged breach.**

7.2. Third-Party Services. GiaSpace may link to or offer Third-Party Services. **Any purchase, enabling, or engagement of Third-Party Services, including but not limited to implementation, customization, consulting services, and any exchange of Data between You and any Third-Party Service, is solely between You and the applicable Third-Party Service provider and is subject to the terms and conditions of such Third-Party Provider. GiaSpace does not warrant, endorse or support Third-Party Services and is not responsible or liable for such Services or any losses or issues that result as Your use of such services.** If You purchase, enable or engage any Third-Party Service for use in connection with the Services, You acknowledge that GiaSpace may allow providers of those Third-Party Services to access Your Data used in connection with the Services as required for the interoperation of such Third-Party Services with the Services. You represent and warrant that Your use of any Third-Party Service signifies Your independent consent to the access and use of

Your Data by the Third-Party Service provider, and that such consent, use, and access is outside of GiaSpace's control. You agree that GiaSpace shall not be responsible or liable for any disclosure, modification or deletion of Data resulting from any such access by Third-Party Service providers.

## **8. OWNERSHIP AND CONTROL.**

8.1. No Transfer. Except for rights expressly granted in this Agreement, GiaSpace does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any Service provided to You, including without limitation any copyright, trade secret, trademark, and patent rights, is solely the property of GiaSpace and its vendors and licensors. As between You and GiaSpace, all materials distributed by GiaSpace in connection with the Services will at all times remain the property of GiaSpace, and upon the request of GiaSpace or upon termination of this Agreement or any Accepted Order(s), You will promptly return any and all such materials.

8.2. Control. GiaSpace will have sole and complete control over, and reserves the right at any time to make changes to the configuration, appearance, content, and functionality of the Services. In addition, GiaSpace reserves the right, at any time, without prior notice, to the exercise of its sole discretion to suspend or terminate any Service for the protection of the security and integrity of the Services or other business, technical or financial considerations as determined by GiaSpace.

8.3. GiaSpace shall retain all right, title and interest in and to all of its intellectual property, including all GiaSpace hardware and software, and shall be, as between the parties, the sole owner of all right, title and interest in and to any and all derivative works

thereof, and updates, enhancements and modifications thereto (the "Service Provider Works"), subject to any licenses provided to You under this Agreement. For the avoidance of doubt, Service Provider Works shall include, and GiaSpace shall exclusively own, all right, title and interest in and to, any and all updates, enhancements, derivative works or other modifications of or to the GiaSpace intellectual property regardless of whether or not such updates, enhancements, derivative works or other modifications were made, created, developed or conceived at Your request in connection with this Agreement; and whether developed solely by GiaSpace or jointly by You and GiaSpace. You hereby assign and fully transfer without cost to GiaSpace all of Your right, title and interest in and to the Service Provider Works and any associated intellectual property therein, together with the right to sue and recover damages for future, present and past infringements.

## **9. INDEMNIFICATION.**

You agree to defend, indemnify, save and hold GiaSpace and its successors, assigns, shareholders, directors, officers, principals, trustees, stockholders, investors, partners, members, managers, parents, subsidiaries, agents, attorneys, representatives, employees, affiliates and/or affiliated companies harmless from any and all third-party demands, liabilities, losses, costs, and claims, including reasonable attorneys' fees, asserted against them that arises out of, relates to, or in connection with Your use of the Services or, Your breach of this Agreement.

## **10. MODIFICATION OF TERMS.**

10.1. GiaSpace may, without notice to You, update, amend, modify or supplement the terms and conditions of this MSA, including any Accepted Order(s), the SLA, AUP and

Privacy Policy, from time to time and will be published on our website <http://www.giaspace.com>. Such changes will take effect immediately. **Your continued use of Your Account or the Services after GiaSpace posts a new version of the Agreement will be conclusively deemed to be acceptance by You of any such new version.**

## **11. MISCELLANEOUS.**

11.1. Governing Law; Jurisdiction; Forum; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida without regard to its conflicts of laws or its principles. Any and all claims or suits arising out of or in any way relating to this Agreement shall be exclusively brought in a court of competent jurisdiction located in Broward County, Florida. You agree to submit to the sole and exclusive jurisdiction of said courts and agree not to contest personal jurisdiction or claim that the Broward County, Florida venue is improper or inconvenient.

11.2. In any action to enforce this Agreement, including, without limitation, any action by GiaSpace for the recovery of fees due hereunder, You agree to pay GiaSpace's reasonable attorneys' fees and costs in connection with such action if GiaSpace prevails in such action. **YOU AND GIASPACE BOTH AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

11.3. **Any claim or action, regardless of form, arising out of or in any way related to this Agreement or the Services contemplated herein, must be brought by You no later than one (1) year after the cause of action arose. Any claim or action**

**brought after this time period shall be deemed time-barred forever.**

11.4. Written Communications and Notice. You accept that communication from GiaSpace may be provided electronically. GiaSpace may contact You by e-mail or provide You with information by posting notices on GiaSpace's website. You agree to this electronic means of communication and You acknowledge that all contracts, notices, information and other communications that GiaSpace provides to You electronically are acceptable and effective as notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given (i) immediately upon personal delivery or verifiable electronic delivery by e-mail, (ii) the second business day after mailing, or (iii) the second business day after sending by confirmed facsimile. Notices to You may be addressed by GiaSpace to any e-mail address, postal address or facsimile number registered with GiaSpace, or through means of online posting through GiaSpace website. Notices to GiaSpace can be sent via email or mail.

11.5. Age and Capacity. You hereby represent and warrant that You and each User has reached the older of (i) the age of eighteen (18) or (ii) the age of majority/consent in the User's jurisdiction, and that You are not subject to a limitation on Your ability to enter into this Agreement.

11.6. Severability. If any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement will be construed as if such provision(s) had never been contained herein, provided that such provision(s) are curtailed, limited, or

eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

11.7. Waiver. No waiver by either party of any breach by the other party of any of the provisions of this Agreement will be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver will be effective except as expressly set forth in writing and signed by You and GiaSpace.

11.8. Remedies. The rights and remedies of the parties hereunder shall not be mutually exclusive, i.e., the exercise of one (1) or more of the provisions hereof shall not preclude the exercise of any other provision hereof. The parties acknowledge, confirm and agree that damages may be inadequate for a breach or a threatened breach of this Agreement and, in the event of a breach or threatened breach of any provision hereof, the respective rights and obligations hereunder shall be enforceable by specific performance, injunction or other equitable remedy. Nothing contained in this Agreement shall limit or affect any rights at law or statute or otherwise for a breach or threatened breach of any provision hereof, it being the intent of this provision to clarify that the respective rights and obligations of the parties shall be enforceable in equity as well as at law or otherwise.

11.9. No Assignment. No benefit to or duty of You under this Agreement will, without the consent of GiaSpace, be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt to do so will be void. GiaSpace may assign this Agreement without Your consent and without notice to You.

11.10. Force Majeure. Except for monetary obligations, neither party shall be liable to the other for failure or delay in the performance of a required obligation hereunder if such

inability or delay is caused by reason of Force Majeure Event. "Force Majeure Event" is any cause beyond a party's reasonable control or anticipation, including, without limitation, acts of war, acts of god, terrorism, earthquake, hurricanes, flood, fire or other casualty, embargo, riot, sabotage, labor shortage or dispute, governmental act, insurrections, epidemics, quarantines, inability to procure materials or transportation facilities, failure of power, restrictive governmental laws or regulations, condemnation, acts of third parties, failure of the Internet or other reason that is beyond a party's reasonable control or anticipation.

11.11. Survival. Sections 2, 3, 6, 9, and 11 shall survive termination of this MSA.

11.12. Independent Parties. Notwithstanding anything to the contrary herein, the parties acknowledge, confirm, and agree that GiaSpace is an independent contractor and for all intents and purposes, including, without limitation, federal taxation. This Agreement does not create an employment relationship, a partnership, JV or other relationship. Accordingly, neither party shall have or hold itself out as having any right, authority nor agency to act on behalf of the other party in any capacity or in any manner, except as be expressly authorized by this Agreement.

11.13. Non-Solicitation/Hire of Employees. You acknowledge and agree that GiaSpace has a substantial investment in its employees. In consideration of this investment, You agree not to solicit or employ (as an employee or independent contract) any of GiaSpace's employees for a period of twelve (12) months after the expiration or termination of this Agreement, unless expressly agreed to by GiaSpace in writing. In the event You employ a GiaSpace employee, You agree that a fair, appropriate, and reasonable damage to GiaSpace is **no less than** the employee's

annual compensation for the previous year or, if none, then the anticipated total compensation of the employee for the year during which the employee was employed by You.

11.14. Entire Agreement; Third Party Beneficiaries. This Agreement, as defined in the preamble of this MSA including any Accepted Order(s), constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and GiaSpace with respect to the Services. You understand and agree that GiaSpace and You are the only parties to this Agreement and that there are no intended or incidental third party beneficiaries. This Agreement cannot be changed or amended by You except by written agreement signed by both parties. **Any terms that form part of Your purchase order and/or any other business forms furnished by You to GiaSpace shall not become and are not a part of this Agreement.**

11.15. No Separate Execution. This MSA, and any other document necessary for the consummation of the Agreement shall be deemed executed and accepted by You by virtue of Your acceptance and execution of an Accepted Order(s). Each party acknowledges that it has read and understands this Agreement and agrees to be bound by its terms and conditions. By signing an Accepted Order(s) and accepting the Services, You accept and acknowledge your agreement with the terms of this Agreement. You further acknowledge that the use of an electronic signature is in accordance with the Electronic Signatures in Global and National Commerce Act ("E-Sign Act"), Title 15, United States Code, §§ 7001 et seq., the Uniform Electronic Transaction Act ("UETA") and any applicable state law.