



**IRON MOUNTAIN®**  
**MANAGED SERVICES CUSTOMER AGREEMENT**

This Managed Services Customer Agreement (the “Agreement”) is entered into by and between Iron Mountain Information Management Services Canada, Inc. and its Affiliates, with a principal place of business at One Federal Street, Boston, MA 02110 (“Iron Mountain”) and the Customer (each a “Party” and collectively the “Parties”). The Schedule(s) to this Agreement shall set forth whether Customer is licensing Services, Software, or related hardware as part of Iron Mountain’s provision of managed services. By signing the initial Schedule under this Agreement, Customer agrees to be bound by the terms set forth in this Agreement. This Agreement shall be effective as of the date of Customer’s signature on the initial Schedule executed under this Agreement (“Effective Date”).

1. **Definitions.**

“**Affiliate**” means those entities controlling, controlled by, under common control with, or having a common parent with, either Iron Mountain or Customer as applicable. For purposes of the foregoing definition, “control” (including “controlling”, “controlled by” and “under common control with”) shall mean direct or indirect ownership of: (a) not less than fifty percent (50%) of the voting stock of a corporation, (b) the right to vote not less than fifty percent (50%) of the voting stock of a corporation, or (c) not less than fifty percent (50%) ownership interest in a partnership or other business entity.

“**Agent**” means the software or virtual appliance (including any new releases, error corrections, or updates) that will enable Customer’s Data to be transmitted to and retrieved from Iron Mountain’s servers for the Services described in the applicable Schedule.

“**Appliance Hardware**” means Supplier hardware (including any Appliance Software) resold by Iron Mountain to Customer as set forth in the applicable Schedule.

“**Appliance Software**” means any operating system and any other software preloaded or otherwise installed onto the Appliance Hardware.

“**Customer**” means the legal entity receiving the Services specified on the Schedule, which shall include any division and/or Affiliate of such entity.

“**Data**” means all data and information provided by Customer to Iron Mountain under this Agreement in connection with the performance by Iron Mountain of the Services.

“**Documentation**” means user manuals for the Services, the applicable installation guides, service descriptions, technical specifications, and online help files provided by Iron Mountain or its Suppliers or available on Iron Mountain’s online portal.

“**Encrypted**” or “**encrypted**” shall mean data that has been rendered through algorithmic transformation or any other means available into an unrecognizable form in which meaning cannot be understood without the use of a confidential process or key.

“**Leased Appliance**” means any hardware device (including any Agent, operating system and any other software preloaded or otherwise installed onto the hardware) leased by Iron Mountain to Customer as part of the Services, and described in the applicable Schedule.

“**Licensed Software**” means the machine-readable, object-code version of Iron Mountain’s or its Suppliers’ proprietary software, including without limitation the Agent and Appliance Software, including all related

Documentation and any modified, updated or enhanced versions of the program that Iron Mountain may provide to Customer.

“**Personal Data**” means any information relating to an identified or identifiable natural person.

“**Professional Services**” means the installation, consulting, training, or data shuttling services performed by Iron Mountain or Supplier personnel for the benefit of Customer as set forth in a Schedule.

“**Schedule**” means a document annexed to this Agreement, either physically or by reference, describing the Services and pricing.

“**Services**” means the managed services, Support Services, Professional Services, and any Leased Appliances or Agents necessary to provide Services, all as set forth in the applicable Schedule.

“**Suppliers**” means Iron Mountain’s licensors, vendors, and/or third party providers of the Services.

“**Support Services**” means the service and related maintenance in support of the Services purchased by Customer as described in an Exhibit to this Agreement.

## 2. License.

2.1. License Grant for Services. Iron Mountain shall perform the Services at the rates and charges set forth in a Schedule. Iron Mountain grants to Customer a non-exclusive, non-transferable license for the term of this Agreement to: (i) install and configure the Agent in executable form on Customer’s computers or servers in the number and type described in the applicable Schedule; (ii) use the Agent only for Customer’s internal business needs; (iii) use the Documentation to support the use of the Services; (iv) make a commercially reasonable number of copies of the Agent in executable form only for non-productive backup purposes; provided, however, that Customer reproduces and includes all of Iron Mountain’s and its Suppliers’ copyright notices and proprietary legends on each such copy. Customer shall not sublicense, sell, rent, lease, transfer, distribute or otherwise commercially exploit or make the Agent, Services and/or Documentation available to any third party. Customer and all of its users for whom Agents are licensed shall be bound by and comply with this Agreement, and Customer is solely responsible for the activities of its users and for the accuracy, integrity, legality, reliability, and appropriateness of all Data.

2.2. License Grant for the Leased Appliance. If the Services include an Leased Appliance, as described on an applicable Schedule, Iron Mountain grants to Customer a non-exclusive, non-transferable license for the term of this Agreement to use the Leased Appliance in accordance with the Documentation and the terms of this Agreement. Iron Mountain or its Suppliers retain all right, title and interest to the Leased Appliance and related Documentation and reserve all rights not expressly granted to Customer. Effective upon Iron Mountain’s shipment of the Leased Appliance to Customer, Customer will bear the risk of and shall be responsible for any loss, theft or destruction of or damage to the Leased Appliance, except for normal wear and tear. The Leased Appliance will remain the property of Iron Mountain or its Suppliers, will not become a fixture or realty, and Customer shall return the Leased Appliance to Iron Mountain within thirty (30) days following the expiration or termination of this Agreement.

2.3. License Grant for Software. If Customer is licensing Licensed Software (excluding the Agent and Appliance Software) from Iron Mountain, as set forth on the applicable Schedule, Iron Mountain hereby grants to Customer a limited non-exclusive, non-transferable, perpetual license to: (i) install the Licensed Software in executable form in an aggregate amount equal to the number and type described in the applicable Schedule; (ii) use the Licensed Software only for Customer’s internal business needs; (iii) use the Documentation to support the use of the Licensed Software and Services; and (iv) make a commercially reasonable number of copies of the Licensed Software in executable form only, for non-productive backup purposes; provided, however, that Customer will reproduce and include all of Iron Mountain’s or its Supplier’s copyright notices and proprietary legends on each such copy. At no time will Customer sublicense, sell, rent, lease, transfer, distribute or otherwise

commercially exploit or make the Licensed Software or Documentation available to any third party. Customer and all of its users for whom licenses are purchased hereunder shall be bound by and comply with this Agreement. If applicable, delivery of Licensed Software will be Ex Works, premises of Iron Mountain's Supplier, as such term is defined by Incoterms 2000.

2.4. Appliance Hardware Terms. With respect to Appliance Hardware purchased by Customer from Iron Mountain as set forth in a Schedule, (i) Customer shall pay all shipping and handling fees for delivery of Appliance Hardware, where applicable; and (ii) delivery of Appliance Hardware will be will be Ex Works, premises of Iron Mountain's Supplier, as such term is defined by Incoterms 2000. Iron Mountain will arrange for and manage shipment of Appliance Hardware to Customer's designated destination, including purchasing insurance (for the full value of the Appliance Hardware) for Customer's benefit, at Customer's cost and expense, subject to Customer's prior written approval. Title to the Appliance Hardware and risk of loss passes to Customer when Iron Mountain or its Supplier delivers the Appliance Hardware to the selected carrier. All Appliance Hardware are deemed accepted upon delivery. With respect to Appliance Software, Iron Mountain grants to Customer a non-exclusive, non-transferable, perpetual license to use the Appliance Software on the applicable Appliance Hardware for internal business purposes only and in accordance with the Documentation, subject to the restrictions set forth in Attachment I.

2.5. Restrictions. Customer shall not (i) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code of the Licensed Software or Services; (ii) modify, port, translate, localize or create derivative works of the Licensed Software or Documentation; (iii) use the Services to (a) infringe on the intellectual property rights, publicity rights, or privacy rights of any third party; (b) violate, or cause Iron Mountain or its Suppliers to violate, any law, statute, ordinance or regulation; (c) store defamatory, trade libelous, or otherwise unlawful Data; (d) store obscene, pornographic or indecent Data in violation of applicable law; or (e) propagate any virus, worms, Trojan horses or other programming routine intended to damage any system or data; (iv) use the Services in any application that may involve risks of death, bodily injury, property damage or environmental damage (including life support applications, devices or systems); (v) use the number or type of Agents in excess of the number or type specified in the applicable Schedule; (vi) attempt to gain unpermitted access to any Iron Mountain or Supplier computer system, network, or database; or (vii) file copyright or patent applications that include the Services or any portion thereof.

2.6. Data License Grant. Customer grants to Iron Mountain and its Suppliers a limited, non-exclusive, and non-transferable license to the Data only to the extent necessary for Iron Mountain or its Suppliers to perform the Services. In the event that Iron Mountain needs to access the Data to respond to any technical problems, queries, or requests from Customer, Customer shall ensure that both Customer and Iron Mountain are permitted to do so.

2.7. Password Protection of Service. Customer shall be responsible for protecting and safeguarding any keys (including encryption keys), certificates, passwords, access codes, user IDs or other login information (collectively, "Passwords") provided to Customer for the purpose of accessing and using the Services. In the event that Customer makes such Passwords available to any third party, Customer shall be responsible for all actions taken by such third party in connection with the Services. Customer shall not disclose or make available Customer's Passwords other than to Customer's authorized employees and shall use all commercially reasonable efforts to prevent unauthorized access to, or use of the Services, and will notify Iron Mountain promptly of any such unauthorized use. In no event will Iron Mountain be liable for any loss of Data or other claims arising out of or in connection with the unauthorized acquisition of a Password.

2.8. Flow Down Terms. Customer acknowledges and agrees to comply with the supplemental terms and conditions set forth in Attachment I.

### 3. **Term and Termination.**

3.1. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall continue for so long as the applicable Schedule(s) are in effect. In the event that Iron Mountain or its Suppliers continue to hold Data after the expiration or termination of this Agreement, the terms of this Agreement shall

continue to apply until all Data has been removed from Iron Mountain's or its Suppliers' facilities, except that Iron Mountain may adjust rates upon thirty (30) days' written notice.

3.2. Termination for Material Breach. Either Party may terminate this Agreement upon written notice to the other Party in the event that the other Party breaches any of its material obligations under this Agreement, unless the breaching Party cures such default within forty-five (45) days after the non-breaching Party's written notice, subject to the Fees in the applicable Schedule(s).

3.3. Termination for Changes to Applicable Law or Supplier Termination. This Agreement or any Schedule may be terminated immediately by either Party upon written notice to the other Party if (i) the relationship and/or the transactions contemplated in this Agreement would violate any applicable law or would result in unanticipated material costs or liabilities to the terminating Party; or (ii) if an agreement between Iron Mountain and a Supplier expires or terminates, resulting in Iron Mountain's inability to provide the Services to Customer.

3.4. Effect of Termination. Upon termination of any Schedule, Customer shall (i) return, uninstall, or destroy (along with all copies in any form) the applicable Documentation, Agent, and any other software or materials provided to Customer for such Services under the applicable Schedule; (ii) return the applicable Leased Appliance to Iron Mountain or its Supplier in accordance with Iron Mountain's written instructions; and (iii) pay any fees and other accrued and unpaid amounts due to Iron Mountain under the applicable Schedule(s). Upon termination of any Schedule, Iron Mountain shall (a) have no further obligation to make the applicable Service(s) available to Customer; (b) securely destroy the applicable Data or, upon Customer's prior written request, return the applicable Data to Customer, subject to the Fees on the applicable Schedule; and (c) upon written request by Customer and payment of the applicable Fees, provide a written certification to Customer that all Data has been returned or destroyed. Upon termination or expiration of a Schedule, Iron Mountain may delete all Data stored pursuant to the expired or terminated Schedule and will have no liability for such action to Customer or anyone claiming by or through Customer.

#### 4. **Prices and Payment.**

4.1. Charges. Customer shall pay the charges for the Services as set forth in the applicable Schedule(s) (collectively, the "Fees"). All applicable sales and use taxes and similar governmental charges will be stated separately on Iron Mountain's invoice and shall be the responsibility of Customer.

4.2. Payment Terms. Unless otherwise set forth in a Schedule, payment terms are net, thirty (30) days from date of invoice; if Customer is delinquent, Iron Mountain may (in its discretion) charge Customer late fees totaling one percent (1%) per month of the outstanding balance.

5. **Ownership Warranty; Customer Instructions.** Customer warrants that it is the owner or legal custodian of the Data and has full authority to store the Data and direct its disposition in accordance with this Agreement. Iron Mountain will perform Services pursuant to the direction of Customer's agent(s) identified pursuant to Iron Mountain's standards. Authority granted to any persons on standard authorization forms shall constitute Customer's representation that the identified persons have full authority to order any Service, including deletion of Data. Such orders may be given in person, by telephone or in writing (fax, email or hard-copy). Customer releases Iron Mountain from all liability by reason of the destruction or deletion of Data pursuant to Customer's authorization.

6. **Operational Procedures.** Customer shall comply with Iron Mountain's reasonable operational requirements regarding the Services, including but not limited to, interaction with the Data, network requirements, access to Customer locations, security, access and similar matters. Customer shall (i) comply with all Documentation; (ii) provide all hardware systems necessary to support the Services; and (iii) implement reasonable security and environmental precautions for use of the Services. If Customer exceeds the storage capacity purchased in the applicable Schedule, Iron Mountain may move Customer to the appropriate Services tier and adjust rates accordingly to reflect Customer's actual usage of the Services.

## 7. **Intellectual Property; Ownership; Data Disclaimer.**

7.1. Intellectual Property. Iron Mountain or its Suppliers are the sole and exclusive owner of all right, title, and interest in and to the Services (excluding any open source third-party software), and all copies thereof including all derivations and modifications thereto including, but not limited to, ownership of all intellectual property rights (collectively, "Intellectual Property"). This Agreement does not provide Customer with title or ownership of the Intellectual Property, but only a right of limited use. Modification of source code will void the warranty set forth in Section 8. Customer agrees to inform Iron Mountain promptly following discovery of any infringement or other improper action with respect to the Intellectual Property. Customer recognizes and acknowledges the exclusive right of Iron Mountain and/or its Suppliers in and to all intellectual property and proprietary rights in and to Intellectual Property and that such Intellectual Property is the sole and exclusive property of Iron Mountain and/or its Suppliers. Customer waives its right to contest the validity and/or ownership of such Intellectual Property.

7.2. Ownership of Customer Data. All rights, title, and interest in Data will remain with Customer. This Agreement does not provide Iron Mountain with title or ownership of the Data, but only a right of limited use as set forth in Section 2.6.

7.3. Data Disclaimer. CUSTOMER EXPRESSLY AGREES THAT IRON MOUNTAIN DOES NOT CREATE, OPERATE, CONTROL OR ENDORSE ANY DATA, INFORMATION, OR THIRD-PARTY PRODUCTS USED IN CONJUNCTION WITH THE SERVICES PROVIDED HEREUNDER.

## 8. **Warranties.**

8.1. Iron Mountain Service Warranty. Iron Mountain warrants to Customer that for a period of ninety (90) days from the Effective Date of the applicable Schedule, the Services will perform in substantial conformance with the Documentation. Iron Mountain does not warrant that the Services will be error-free in all circumstances, and Customer will provide prompt written notice to Iron Mountain of any non-conforming Service. In the event of Iron Mountain's breach of the foregoing warranty, Customer's exclusive remedy and Iron Mountain's sole liability will be for Iron Mountain to use commercially reasonable efforts to repair or replace such Services. This warranty is limited and shall not apply where the failure of the Services to satisfy this warranty results from (i) Customer's failure to use the Services in accordance with the Documentation; or (ii) Customer's failure to update the Licensed Software to the latest version available from Iron Mountain or its Suppliers. Customer shall make all warranty claims under this section in writing within fifteen (15) days after delivery of the non-compliant Services, otherwise, Customer irrevocably waives such claim.

8.2. Iron Mountain Professional Services Warranty. Iron Mountain warrants that it will perform the Professional Services using reasonable care and skill in accordance with professional industry standards. This warranty is limited and shall not apply to any Professional Services where the failure of the Professional Services to satisfy this warranty results from improper use by Customer of the Services or from Customer's decision not to implement any reasonable practices to which the Services apply that may be recommended by Iron Mountain. In the event of Iron Mountain's breach of the foregoing warranty, Customer's exclusive remedy and Iron Mountain's sole liability will be the re-performance of the applicable Professional Service, at no charge to Customer. Customer shall make all warranty claims under this section in writing within fifteen (15) days after delivery of the non-compliant Professional Services, otherwise, Customer irrevocably waives such claim.

8.3. Iron Mountain Resold Appliance Warranty.

8.3.1. Appliance Hardware Warranty. With respect to Appliance Hardware, Iron Mountain will transfer, pass along and upon the request of Customer, assert for the benefit of Customer any warranties of the manufacturer or other commitments or obligations of the manufacturer. The warranty passed through to Customer will be, at a minimum, the same warranty as Iron Mountain's Supplier receives from the applicable hardware manufacturer, and in no event will be less than the standard warranty Iron Mountain's Supplier passes through to its direct customers purchasing the same Appliance Hardware. Iron Mountain will ensure that its Supplier acts as

Customer's single point of contact for any warranty claims. During the term of the warranty offered by the hardware manufacturer, Iron Mountain will arrange for return of the defective product, shipment of replacement parts or, as applicable, shipment of replacement hardware on Customer's behalf. To initiate a warranty claim, Customer must notify Iron Mountain of a problem with the Appliance Hardware in question and provide sufficient information so that Iron Mountain can troubleshoot and determine whether the failure is hardware or software related. Iron Mountain will not accept any returns for defective Appliance Hardware except in accordance with the applicable Appliance Hardware warranty. In the case of physical damage upon delivery, Iron Mountain will assist Customer in filing a claim under the shipping insurance referenced in Section 2.4.

8.4. Licensed Software Warranty. Iron Mountain warrants that for a period of ninety (90) days following the date of delivery of Licensed Software to Customer, the applicable Licensed Software, under normal use, shall perform substantially in accordance with the Documentation. To the extent not otherwise covered by a support and maintenance agreement for such Licensed Software, Customer's exclusive remedy and Iron Mountain's sole liability will be for Iron Mountain to use reasonable efforts to correct promptly any documents, reproducible errors and defects to make such Licensed Software operate as warranted. Customer shall make any claim that the Licensed Software fails to comply with any implied warranties arising under applicable law within one (1) year following delivery of the Licensed Software. Customer's exclusive remedy and Iron Mountain's sole liability for any breach of an implied warranty will be for Iron Mountain to use reasonable efforts to correct promptly any documents, errors and defects to make the Licensed Software operate in conformance with such implied warranties. If Suppliers of third party software provide their own warranties, Iron Mountain shall provide such warranty statements to Customer, if available.

8.5. Limitation and Disclaimer. UNLESS EXPRESSLY SET FORTH HEREIN OR OTHERWISE SPECIFIED BY AN IRON MOUNTAIN SUPPLIER, IRON MOUNTAIN AND ITS SUPPLIERS PROVIDE ALL APPLIANCES, DOCUMENTATION, LICENSED SOFTWARE AND SERVICES WITHOUT WARRANTIES OF ANY KIND. IRON MOUNTAIN DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE SERVICES OR LICENSED SOFTWARE, OR THAT IRON MOUNTAIN OR ITS SUPPLIERS WILL CORRECT ALL DEFECTS. IRON MOUNTAIN MAKES NO WARRANTY THAT THE LICENSED SOFTWARE WILL RUN PROPERLY ON ALL HARDWARE (EXCLUDING APPLIANCE SOFTWARE), THAT THE APPLIANCE HARDWARE WILL MEET THE NEEDS OR REQUIREMENTS OF CUSTOMER OR ITS USERS, OR THAT THE SERVICES, LICENSED SOFTWARE, OR APPLIANCE HARDWARE WILL OPERATE IN THE COMBINATIONS SELECTED FOR USE BY CUSTOMER. THE WARRANTIES SET FORTH ABOVE IN THIS SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES OF IRON MOUNTAIN UNDER THIS AGREEMENT AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED BY IRON MOUNTAIN AND WAIVED BY CUSTOMER. THE WARRANTIES EXTEND ONLY TO CUSTOMER AND IRON MOUNTAIN WILL NOT BE LIABLE FOR ANY THIRD PARTY CLAIM OR DEMAND AGAINST CUSTOMER IN CONNECTION WITH THIS SECTION 8.

## 9. **Limitation of Liability; Indemnification.**

9.1. Negligence Based Liability. Iron Mountain shall have no liability for any losses, costs, damages or expenses arising out of or in connection with for loss, destruction or damage to Data, unless and to the extent caused by its failure to exercise such care as a reasonably careful person would exercise under like circumstances.

9.2. Maximum Liability for the Services. Iron Mountain's maximum aggregate liability arising out of or in connection with this Agreement regardless of the cause of action and whether arising in contract, tort (including negligence), indemnity, warranty or any other legal theory shall be limited to the Fees paid by Customer in the immediately preceding six (6) months. With respect to any claims arising out of or in connection with Appliance Hardware, Iron Mountain and its Suppliers' liability is limited to the replacement cost of the hardware giving rise to the claim. Data is not insured by Iron Mountain against loss or damage, however caused and Customer shall cause its insurers of Data to waive any right of subrogation against Iron Mountain. Customer is solely responsible

for encrypting its Data. Customer agrees that the terms of this Agreement apply only to Data in Iron Mountain's possession in the performance of the Services. Data in the custody of third-party transportation providers is not in Iron Mountain's possession, and Iron Mountain shall have no liability for loss, damage or destruction that occurs while Data is in the custody of such persons. Iron Mountain assumes no liability whatsoever for Data that is (i) unencrypted; or (ii) modified or deleted by Customer.

9.3. **No Consequential Damages.** Except for liability arising from Customer's indemnification obligations in this Agreement or Customer's breach of the supplemental terms and conditions in Attachment I, in no event will either Party or Iron Mountain's Suppliers be liable for any indirect, incidental, consequential, special, punitive, exemplary or similar such losses or damages arising out of or in connection with this Agreement including any loss of profits, interruption of business, or the loss of or cost of recreating any data, however caused, under any theory of liability (whether in contract, tort, warranty, or otherwise), and regardless of whether any remedy set forth herein fails of its essential purpose and even if a Party knew of or should have known of the possibility of such loss or damage.

9.4. **Customer Environment.** Iron Mountain shall bear no liability to Customer and Customer shall indemnify and hold Iron Mountain harmless from and against any third-party claims (including reasonable attorneys' fees) arising out of or in connection with: (a) Customer's decision not to implement any reasonable change to Customer's technical environment that supports the Services that may be advised by Iron Mountain in writing; (b) Customer's combination, operation, or use of the Licensed Software or Documentation with any product, data, apparatus, or business method that Iron Mountain or its Suppliers did not provide; (c) Customer's modification of the Documentation; (d) Customer's distribution, operation or use of the Documentation for the benefit of a third party; (e) Customer's failure to update the Licensed Software to the latest version available from Iron Mountain or its Suppliers; or (f) Customer's failure to use the Services in accordance with the Documentation. Further, Customer shall inform Iron Mountain of any system change that may reasonably be expected to affect Iron Mountain's ability to provide the Services. Customer warrants that it shall (i) purchase encryption as part of the Services; or (ii) encrypt Data prior to transmission to Iron Mountain or its Suppliers using at least 256 bit encryption.

9.5. **Customer Indemnification.** Customer shall indemnify, defend, and hold harmless Iron Mountain and its Suppliers, Affiliates, subsidiaries, officers, directors and employees from and against any and all third party claims or demands and all liabilities arising out of or in connection with (i) the infringement or misappropriation of any intellectual property right by Customer, its users, customers, or otherwise arising out of the Data; and (ii) violation of applicable law by Customer, its users, customers, or otherwise arising out of the Data. Iron Mountain shall provide Customer prompt written notice of any such claim or demand and Customer shall have sole control of the defense and all related settlement negotiations. Iron Mountain shall provide any necessary assistance, information and authority and Customer will reimburse Iron Mountain for any reasonable, documented, out-of-pocket expenses incurred by Iron Mountain in providing such assistance. Iron Mountain shall have the right to participate, at its own expense, in the claim or suit. This paragraph shall survive the expiration or termination of this Agreement.

9.6. **Construction.** This Section 9 "Limitation of Liability; Indemnification" is not intended to and will not be construed as excluding or limiting any liability contrary to applicable law or public policy, including but not limited to, liability for death or bodily injury. If applicable law or public policy renders any portion of this Section 9 unenforceable or invalid, the remainder of the Section will remain in full force and effect.

10. **Confidentiality.** "Confidential Information" means any (i) proprietary, confidential, or trade secret information disclosed by a Party to the other Party during negotiations or discussions regarding various business activities under this Agreement, (ii) information regarding this Agreement or Schedule(s), and (iii) information regarding Iron Mountain's processes and procedures; except for information that was previously known to the receiving Party free of any obligation to keep it confidential, is subsequently made public by the disclosing Party, or is disclosed by a third party having a legal right to make such disclosure. Confidential Information shall be used only in the manner and for the purposes contemplated by this Agreement and shall not be intentionally disclosed to third parties without the disclosing Party's written consent. Neither Party shall obtain any rights in or

to the Confidential Information of the other Party. Each Party shall implement and maintain reasonable safeguards designed to protect the other Party's Confidential Information.

11. **Data Protection.** Iron Mountain shall implement and maintain appropriate administrative, physical and technical safeguards designed to protect Personal Data processed by Iron Mountain against loss, damage or disclosure. Iron Mountain shall process Personal Data only to the extent required to carry out its obligations or exercise its rights under this Agreement or in accordance with the instructions of Customer. Customer hereby instructs Iron Mountain to take such steps in the processing of Personal Data as are reasonably necessary to the performance of Iron Mountain's obligations under this Agreement, and agrees that such instructions constitute its full and complete instructions as to the means by which Personal Data shall be processed by Iron Mountain. Except as authorized by Customer or pursuant to Section 12 below, Iron Mountain will not disclose Personal Data to any third party other than subcontractors and agents who have agreed to comply with obligations substantially similar to those set forth herein. To the extent that any privacy or data protection laws impose an obligation upon Iron Mountain to comply with an individual's request for access to or correction of their Personal Data, Customer agrees that it shall satisfy such obligations. Upon termination of this Agreement, Iron Mountain shall return Personal Data to the Customer or destroy such Personal Data in accordance with Customer's written instructions, subject to the Fees on the applicable Schedule(s).

12. **Governmental Orders.** Iron Mountain cannot prevent access by governmental entities to Data. However, in the event Iron Mountain receives any subpoena, warrant, court order or similar such governmental agency or legal requirement ("Order") that purports to compel disclosure of Data, Iron Mountain shall promptly notify Customer of such Order (unless such notice is prohibited by law or judicial order) and shall cooperate with Customer, at Customer's expense, in the exercise of Customer's right to protect the confidentiality of Data. Iron Mountain may comply with any such Order, except to the extent Customer obtains a court order quashing or limiting such Order.

13. **Audit.** During the Term of this Agreement, Customer shall maintain records reasonably required to verify its compliance with this Agreement and all applicable Schedules. Upon at least thirty (30) calendar days' notice to Customer, and not less than twelve (12) months since a prior audit, Iron Mountain may audit and inspect the applicable records of Customer, at Customer's principal place of business, during Customer's normal business hours and in such a manner as to avoid unreasonable interference with Customer's business operations.

14. **Force Majeure.** Any failure or delay by either Party in the performance of its obligations under this Agreement shall not be deemed a default or grounds for liability or termination hereunder if such failure or delay is caused by an event beyond the affected Party's reasonable control, or by acts of God, governmental actions, labor unrest, acts of terrorism or war, unusually severe weather, riots, or fire (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the affected Party shall be excused from any further performance of its obligations pursuant to this Agreement affected by the Force Majeure Event for as long as such Force Majeure Event continues. The affected Party shall promptly notify the other Party in writing of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event. If a Party's inability to perform under the Agreement due to a Force Majeure Event persists for a period of sixty (60) days following the Force Majeure Event, the other Party may terminate only the portion of the Agreement or applicable Schedule(s) directly affected by the Force Majeure Event. Notwithstanding any provision to the contrary, a Force Majeure Event shall not excuse payment obligations under this Agreement.

15. **Customer Default.** In the event Customer fails to pay any undisputed fees as and when due pursuant to this Agreement or the applicable Schedule and such failure continues for a period of thirty (30) days, Iron Mountain may, at its option, by written notice to Customer: (a) suspend the provision of Services to Customer; or (b) restrict Customer's access to the Data then held by Iron Mountain. If such failure persists for a period of six (6) months, Iron Mountain may securely destroy Data, provided that Iron Mountain shall have given ninety (90) days' prior written notice to Customer. Customer shall pay Iron Mountain's standard price for such secure destruction. A final notice will be sent to Customer ten (10) days prior to secure destruction of the Data. In the event Iron Mountain takes any actions pursuant to this Section, it shall have no liability to Customer or any agent, representative or other third party claiming by or through Customer. The foregoing rights of Iron Mountain shall



be without prejudice to any other rights it may have at law or in equity or as may be otherwise set forth in this Agreement.

16. **Notice of Loss.** When Data has been lost, damaged or destroyed, Iron Mountain shall, upon confirmation of the event, report the matter in writing to Customer.

17. **General Provisions.**

17.1. **Notices.** All notices relating to this Agreement shall be in writing and shall be delivered (i) by overnight courier or hand; (ii) postage prepaid certified or registered first-class mail with return receipt requested; (iii) electronic transmission; or (iv) facsimile. Notices shall be sent to the address of the other Party set forth in this Agreement or the applicable Schedule and shall be deemed given upon personal delivery, five (5) calendar days after deposit in the mail, or upon acknowledgment or receipt of electronic transmission.

17.2. **Relationship with Third Parties.** No customer, end user or other person or entity not a Party to this Agreement shall be considered a third-party beneficiary of this Agreement.

17.3. **Severability.** If applicable law or public policy renders any portion of this Agreement unenforceable or invalid, the remainder of the Agreement shall remain in full force and effect. The following provisions shall survive any termination of this Agreement: Section 2, "License"; Section 3.4, "Effect of Termination"; Section 4, "Prices & Payment"; Section 7, "Intellectual Property; Ownership; Data Disclaimer"; Section 9, "Limitation of Liability; Indemnification"; Section 10, "Confidentiality"; Section 17 "General Provisions."

17.4. **Choice of Law; Waiver of Jury Trial.** This Agreement will be governed by the law of the state in which the Customer's principal place of business is located. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this Agreement.

17.5. **Export.** Customer may not use or otherwise export or re-export any agent or product provided by Iron Mountain hereunder except as authorized by United States law and the laws of the jurisdiction in which the such agent or product was obtained. In particular, but without limitation, an agent may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to any person on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Persons List or Entity List. By receiving any such agent or product Customer represents and warrants that it is not located in any such country or included on any such list.

17.6. **Assignment.** Without the consent of the other Party, neither Party shall assign any right under the Agreement, except Iron Mountain may assign any such right to an Affiliate. The non-assigning Party shall not unreasonably withhold its consent.

17.7. **Government End-User Notice.** The Licensed Software is a "Commercial Item," as that term is defined at 48 C.F.R. § 2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. § 12.212 and 48 C.F.R. § 227.7202, as applicable. Consistent with 48 C.F.R. §§ 12.212, 227.7202-1 through 227.7202-4, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end-users (i) only as Commercial Items and (ii) with only those rights as are granted to all other end-users pursuant to the terms and conditions herein.

17.8. **ITAR/EAR/CGA Compliance.** Customer represents that none of the Data stored by Iron Mountain or its Suppliers pursuant to this Agreement (i) requires protection from access by foreign persons because it contain technical information regarding defense articles or defense services within the meaning of the International Traffic in Arms Regulations (22 CFR 120) or technical data within the meaning of the Export Administration Regulations (15 CFR 730-774); or (ii) is goods or controlled technology within the meaning of the *Defence Production Act* (R.S.C., 1985, c. D-1) and the *Controlled Goods Regulations* (SOR/2001-32). If any of

Customer's Data does contain any such information, Customer shall notify Iron Mountain of the specific Data that contains such information and acknowledges that special rates shall apply thereto.

17.9. Cumulative Remedies. Unless expressly stated to the contrary in this Agreement, all rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the Parties, whether provided by law, equity, statute, in any other agreement between the Parties or otherwise.

17.10. Waiver. Each Party agrees that the failure of the other Party at any time to require performance by such Party of any of the provisions herein shall not operate as a waiver of the rights of such Party to request strict performance of the same or like provisions, or any other provisions hereof, at a later time.

17.11. Purchase Orders. In the event that Customer issues a purchase order to Iron Mountain covering the Services, any terms and conditions set forth in the purchase order which are in addition to or establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.

17.12. Entire Agreement. This Agreement and its Schedules constitutes the complete and exclusive statement of the agreement between the Parties and supersedes all prior or contemporaneous proposals, oral or written, and all other communications between the Parties relating to the subject matter of this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed and delivered this Managed Services Customer Agreement as of the date first set forth above. Each person signing below represents and warrants that (i) he or she is duly authorized and has legal capacity to execute and deliver this Agreement, (ii) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized, (iii) this Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms and conditions, and (iv) this Agreement may be delivered by either or both Parties by delivery of scanned copies of signed signature pages, and will thereupon be legally effective and binding for all purposes.

## Attachment I

### 1. Definitions.

“**End User**” means the final purchaser or licensee that has acquired the Services for its own internal use and not for distribution, resale or remarketing.

“**Executable Code**” means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.

“**Products**” means the Leased Appliance and any Appliance Hardware.

“**Source Code**” means the human-readable version of a software program than can be compiled into Executable Code.

“**System**” means the computer hardware and software (including, without limitation, the Licensed Software and other software applications, software interfaces, operating system and databases), data storage and all other resources (including, without limitation, telecommunications equipment) used by Iron Mountain or its Suppliers to make the Licensed Software and Customer’s Data available to, and usable by, Customer via the Internet.

2. Restrictions on Use. Customer acknowledges that the Licensed Software and its structure, organization and Source Code constitute valuable intellectual property of Supplier. Accordingly, unless otherwise authorized by Supplier, Customer will not, directly or indirectly, intentionally do any of the following: (a) modify, adapt, alter, translate, or create derivative works from the Licensed Software; (b) merge the Licensed Software with other software; (c) sublicense, lease, rent, loan, distribute, sell, transfer or make available the Licensed Software or Services to any third party except as specifically permitted under this Agreement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Source Code for the Licensed Software; (e) use the Services or Products to provide any service bureau activity for any third party; (f) disable, circumvent or otherwise avoid any security device, mechanism, protocol or procedure established by Supplier or permit others to do so; (g) circumvent or otherwise enable unauthorized users to access or use the license key(s), registration code(s) or serial number(s) related to the Services or Products, if any; (h) violate any local, state, federal or foreign law, treaty, regulation or convention applicable to Customer in connection with its use of the Services or Products; (i) willfully tamper with the security of the any of the Systems or tamper with any customer accounts; (j) attempt to access data on the System not intended for Customer; (k) attempt to probe, scan or test the vulnerability of any Systems or to breach the security or authentication measures without proper authorization; (l) willfully render any part of the Systems unusable; (m) publish or disclose to third parties any evaluation of the Services or Products without Supplier’s prior written consent; or (n) enable, encourage or allow an End User or anyone else to do any of the foregoing.

## Exhibit A

### Support Services

1. **UPDATES.** Iron Mountain shall make available to Customer when and if available, and within a reasonable time after publication, one (1) copy of each maintenance release, new version, and any associated Documentation for each copy of the Licensed Software licensed by Customer; provided, however, that new versions for third party software are not included but may be purchased separately for an additional fee. Any license keys provided may be used only with the specific Licensed Software, Leased Appliance, or Appliance Hardware for which it is issued and may not be used for unlicensed equipment for which Customer has not purchased Support Services.

2. **SUPPORT.**

2.1 Support Services.

(a) Generally. Standard support of the Services includes: (i) assistance related to questions on the installation and operational use of the Licensed Software and Services; (ii) assistance in identifying and verifying the causes of suspected errors in the Licensed Software and Services; (iii) providing workarounds for identified errors or malfunctions in the Licensed Software, where reasonably available to Iron Mountain; and (iv) access to Iron Mountain's or its Supplier's Customer Service Portal.

(b) Appliances. Standard support of the Appliance Software (if applicable) is as set forth in Section 2.1(a) of this Exhibit A; provided, however, that if Appliance Software includes an operating system, support and maintenance may be provided through Iron Mountain, Supplier, or the Appliance Hardware manufacturer, as applicable. Standard support of Appliance Hardware includes: (i) assistance related to questions on the installation and operational use of the Appliance Hardware; (ii) identification of hardware related issues; and (iii) a warm hand off to the hardware manufacturer, which is responsible for providing support for all hardware related issues in accordance with the terms of such hardware manufacturer's support terms and conditions.

2.2 Availability. Support Services will be available 24 hours per day, 7 days per week, 365 days per year.

2.3 Methods of Support. Support Services will be available via web submission, e-mail and telephone.

2.4 Error Correction. Iron Mountain shall use commercially reasonable efforts to correct any reproducible error in the Licensed Software in accordance with the following schedules. Upon identification of any error, Customer shall notify Iron Mountain of such error and provide Iron Mountain with enough information to allow Iron Mountain to reproduce the error. Notwithstanding anything to the contrary in this Agreement, Iron Mountain shall have no obligation to correct all errors in the Licensed Software. Each support request will be assigned a priority in accordance with the following guidelines:

Priority Level	Definition	Examples
Critical	Severe problem impacting the customer's business operations <ul style="list-style-type: none"><li>• Production system crash or hang</li><li>• Disaster Recovery</li></ul>	<ul style="list-style-type: none"><li>• Vault down</li><li>• Critical restore failure</li><li>• Corrupt data index</li><li>• Appliance does not start</li></ul>
High	Production system adversely impacted. <ul style="list-style-type: none"><li>• Performance of job function degraded, severely limited, or is incorrect and unavailable.</li></ul>	<ul style="list-style-type: none"><li>• License activation failed</li><li>• Backups failing 2+ times</li><li>• Restore failures</li></ul>
Medium	Non-critical questions, problems or defects. <ul style="list-style-type: none"><li>• Performance of job function is largely unaffected.</li></ul>	<ul style="list-style-type: none"><li>• License key expiration</li><li>• Backup failing for first time</li><li>• Configuration or installation questions</li></ul>

Low	Informational	<ul style="list-style-type: none"> <li>• Questions on product use</li> <li>• Requests for documentation</li> <li>• Requests for features</li> </ul>
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Iron Mountain shall use commercially reasonable efforts to correct any reproducible error in the Licensed Software with a level of effort commensurate with the severity of the error in the following time frames:

Priority Level	Initial Response	Status Updates	Workaround / Fix Target	Solution
Critical	1 hour	Every 4 hours (excluding data restores; notification will occur at the beginning and end of the restore process)	Commercially reasonable continuous effort until workaround or emergency Hot Fix (a single use emergency patch) is created	Workaround or Hot Fix, if required. Use commercially reasonable effort to include fix in next release for general distribution
High	2 hours	Every 8 hours	2 business days / 5 business days	Workaround or Hot Fix, if required. Use commercially reasonable effort to include fix in next release for general distribution
Medium	4 hours	Every day	5 business days / 10 business days	Use commercially reasonable effort to include fix in next release for general distribution
Low	Within 1 business day	Every two days	N/A	N/A

2.5 **Limitations.** Iron Mountain shall not be responsible for correcting any errors not reproducible by Iron Mountain on the unmodified Licensed Software or errors caused by any of the following: (a) Customer's failure to implement all maintenance releases or new versions issued by Iron Mountain or its Supplier; (b) changes to Customer's operating system or environment that adversely affect the Licensed Software; (c) any alterations of or additions to the Licensed Software or Services made by parties other than Iron Mountain; (d) use of the Licensed Software or Services in a manner for which it was not designed; (e) accident, negligence, or misuse of the Licensed Software; or (f) use of the Licensed Software on a CPU other than the designated CPU(s) for the Licensed Software at issue. Iron Mountain shall only be obligated to support a particular version of the Licensed Software for a period of one (1) year from the date of commercial release of such version or through six (6) months following the date of commercial release of the subsequent Licensed Software version (maintenance release or new version), whichever is longer.

2.6 **Training and Consulting Services.** Upon request of Customer, Iron Mountain or its Suppliers can provide training and/or consulting services for an additional fee and subject to the signing of a Statement of Work describing such services. Support for any earlier versions of the Licensed Software or for errors not covered under this Exhibit A will be provided only in accordance with a Statement of Work.

3. **CUSTOMER RESPONSIBILITIES.** Customer shall ensure that only persons properly trained in the operation and usage of the Licensed Software will utilize the Support Services. Customer's principal contacts for Support Services are set forth in the applicable Schedule. Upon request, Customer shall allow the use of on-line diagnostics of the Licensed Software during error diagnosis.