

# TERMS AND CONDITIONS

THIS MANAGED SERVICES AGREEMENT (hereinafter called the “AGREEMENT”) is entered into on the date hereinafter written by and between Techellence (DBA of Sciturus, LLC) and “CUSTOMER,” (hereinafter called “Customer”) to furnish certain computer-related services as provided in the Managed IT Services Proposal and Scope of Work as provided to the Customer.

## 1. INTRODUCTION

Techellence is in the business of technology consulting and managing computer hardware and software systems; and Customer desires that Techellence manage and support, for the particular use of the Customer, certain hardware and software programs to be used by the Customer and supplied to the Customer from Techellence and/or sources other than Techellence. This Agreement, the Managed IT Services Proposal and the Scope of Work (SOW) are hereinafter known as the “Techellence Solutions.” In accordance with the foregoing and the agreement hereunder, the parties hereto agree as follows:

## 2. OBLIGATIONS AND RESPONSIBILITIES OF TECHELLENCE.

### 2.1 TECHNOLOGY SYSTEM MANAGEMENT

The parties agree that operating Customer's Technology System requires continual supervision, maintenance, upgrades, training and research. By this Agreement, Customer appoints Techellence as its IT Management Staff. Customer understands that following the advice and instructions of Techellence is necessary in order to maintain the integrity of its Technology System.

Techellence shall provide skilled and certified engineers who will monitor and perform work on the Technology System. The work to be done will be determined by Techellence. Techellence personnel shall be available at the site of Customer's Technology System, in accordance with the Plan(s) described in the Managed IT Services Proposal.

### 2.2 SERVICES PROVIDED AND SELECTION OF PLANS

- a. **Plans.** Customer will pay for and Techellence will provide those services listed in the Managed IT Services Proposal. Customer agrees that it has reviewed and been advised by Techellence of the services offered under the various Plans. The Customer understands the services offered under the Plan or Plans it has selected.
- b. **Network Documentation.** In addition to those services specified in the Techellence Solutions, Techellence will provide and maintain network documentation for the Customer throughout the duration of this Agreement for Server or Network coverage. Network documentation will be available to Customer electronically upon request. Network documentation includes:
  1. Administrative Access Methods and Credentials
  2. Network Hardware Connectivity & Configuration Summary
  3. Internet Service Provider Contact Information
  4. Network Element OS Versions
  5. Network Schematic
  6. Overview of Computer Network Assets
- c. **Software Update Release Schedule.** Techellence will provide the following Microsoft software updates and patches, according to the priorities and time frames described as:
  1. **Critical Updates.** Required to resolve security vulnerabilities that create a risk of a worm or virus are considered critical. Techellence will test and then approve or reject the updates as needed. Once the update is approved, Techellence will initiate the deployment process defined in the Request for Change (RFC) process (see section 3.4. of this Agreement).

2. **Important Updates.** Required to resolve security vulnerabilities that create a risk of compromise of confidentiality, integrity or availability of Customer's data, or of the integrity or availability of covered devices or services, or that resolves a major functionality flaw or results or that significantly improves software performance are considered important. Techellence will test and then approve or reject the updates as needed. Once the update is approved, Techellence will initiate the deployment process defined in the Request for Change (RFC) process (see section 3.4. of this Agreement).
  3. **Moderate and Low Updates.** Required to resolve security vulnerabilities that can be significantly mitigated by management factors such as default configuration or auditing, or that are extremely hard to exploit or that have minimal impact, or that resolve a minor functionality flaw or result in marginally improved software performance, are considered moderate and low. Techellence will test and then approve or reject the updates as needed. Once the update is approved, Techellence will initiate the deployment process defined in the Request for Change (RFC) process (see section 3.4. of this Agreement).
  4. **Other Updates.** Including Driver updates, BIOS, firmware or other types of updates not specified elsewhere in the Techellence Solutions shall be installed only if they are expected to resolve an open service request or a critical security flaw in the current configuration, or if they are a prerequisite for a patch or other update being applied.
- d. **Additional Services.** Techellence will provide additional services as agreed upon by the parties as enumerated in the Additional Services section of the Techellence Solutions. Techellence shall provide, at Customer's election and cost, those services, and at the prices, listed in Standard Hourly Rates Section, unless otherwise agreed upon. These include:
1. Service releases add or modify major functionality to software or are a bundled package of updates accumulated over several months or years (commonly referred to as a service pack, service release, maintenance release or functionality release). These releases are identified by a change in the minor version number (for example, Adobe Photoshop CC 14.1 to 14.2) and are usually released by the manufacturer at no cost. Techellence will test and then approve or reject the service release. Once the update is approved, Techellence will initiate the deployment process defined in the Request for Change (RFC) process (see section 3.4. of this Agreement). There is no additional charge to Customer if Customer has selected the Premium PC and Server plan(s).
  2. Major revisions are identified by the vendor as a new product version. Usually, these updates require payment or a maintenance contract and are generally identified by a change in the major version number (e.g., Adobe Photoshop CC 14.2 to CC 15). Major

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- revisions are included in the 'free patching' service for Premium PC and Server plans. Techellence will test and then approve or reject updates. Once the update is approved, Techellence will submit a change request and will work with Customer to define architecture or functionality changes, the implementation schedule, and cost involved.
3. iOS Major Revision updates identified by the manufacturer as a new product version. Usually, these updates require payment or a maintenance contract and are generally identified by a change in the major version number (e.g., Adobe Photoshop CC 14.2 to CC 15). Major revisions are included in the 'free patching' service only for Premium PC and Server plans. Techellence will test and then approve or reject updates. Once the update is approved, Techellence will submit a change request and will work with Customer to define architecture or functionality changes, the implementation schedule, and cost involved.

## 3. CUSTOMER OBLIGATIONS AND RESPONSIBILITIES

### 3.1 CUSTOMER STAFF CONTACT

Customer shall provide a staff member according to the Techellence Solutions and herein referred to as the Assigned IT Liaison, to help Techellence coordinate its efforts under this Agreement. Customer staff shall be available throughout the duration of this Agreement unless changed by management. The Assigned IT Liaison will be the central contact between Techellence personnel and Customer personnel. Unless otherwise specified requested in writing, the Assigned IT Liaison is empowered to make security and coverage related decisions for Customer.

### 3.2 PAYMENT

Customer shall pay, on the date of this Agreement, for services provided under the Plan(s), the Initial Fee and, thereafter, the Monthly Fee, all as set forth in the Managed IT Services Proposal. Techellence will invoice Customer each month for the services to be provided the following month. Additional services as listed in the Managed IT Services Proposal, requested by Customer and provided by Techellence will be invoiced monthly at the agreed-upon rates and will be due and payable within fifteen (15) days after Customer receives the invoice. Upon written notice to Customer, Techellence can adjust the hourly rates specified in the Managed IT Services Proposal, provided that these rates stay fixed for at least six (6) months from the date of this Agreement. Customers placed on Credit Hold for non-payment are still liable for all monthly fees that may accrue.

### 3.3 CUSTOMER SITE REQUIREMENTS

Customer shall provide Techellence with all infrastructure services required to provide the managed IT services described in the Managed IT Services Proposal. These include, but are not limited to, network and internet connectivity; adequate hardware; adequate power and remote access to covered devices, including access to the Management Console and all servers included in the Managed IT Services Proposal. Customer agrees to have available and provide to Techellence the following:

- a. Antivirus software and signature update subscription
- b. Basic network documentation
- c. Hardware redundancy
- d. Hardware warranties
- e. High-speed (broadband or equivalent) internet access
- f. Imaging of desktops and servers that include important data
- g. Keeping covered applications and operating systems no more than two (2) generations from the current version

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- h. Managed switches
- i. Off-site backup for all critical data
- j. Software license compliance (not responsible for monitoring or installing unsupported unlicensed or expired software)
- k. Proof of insurance of Techellence-Owned Network Equipment (see Section 3.5 of this Agreement)

### 3.4 CHANGE & SERVICE REQUEST PROCESS

Customer will not change, add or delete applications that are specified in the Managed IT Services Proposal without first submitting an Request for Change order (RFC) and receiving approval from Techellence. Before changing, adding, or deleting any applications as specified in the Techellence Solutions, Customer will submit a RFC to Techellence. Techellence shall evaluate the RFC to determine its impact on Customer's Technology System and the ability of Techellence to provide the services specified in the Managed IT Services Proposal. Customer shall pay any costs incurred by Techellence in evaluating Customer's RFC regarding its impact on the Technology System.

- a. If the Customer changes, adds or deletes any applications to or from its Technology System without this submission and approval step, Techellence shall not be responsible for delays or damages that result and Customer shall pay, in accordance with the Techellence Solutions for services performed by Techellence to correct any such delays or damage to Customer's Technology System.
- b. The Customer and Techellence recognize and agree that the Customer's Technology System may host services or applications outside the scope of this Agreement ("Excluded Applications"). In this case, Customer shall maintain all aspects of the most current version of antivirus software for these Excluded Applications. Customer will also use an automated update process to deploy antivirus signature files to any Excluded Applications within three (3) business days of release from the manufacturer. Techellence shall verify the antivirus software to assure both its functionality and the automatic update process itself. ###?
- c. The Customer shall submit all RFCs via e-mail to the Techellence Administrative Contact. Urgent RFCs can be submitted via telephone to the Administrative Contact and Techellence will respond to it within one (1) business day. Techellence will respond to all other RFCs within two (2) business days. Once Techellence approves the RFC, Techellence will then determine whether the change will be made by Customer or by Techellence.
- d. If the Customer makes a change to systems not included within the Technology System that could affect the Technology System, the Customer shall provide Techellence with four (4) hours advance notice before making the change. This includes infrastructure changes or hardware

maintenance of the Technology System. If a Customer change to a system which is not included within the Technology System creates an error or a loss of function to the Technology System without this four-hour advance notice, responses by Techellence to correct errors or loss of function shall be charged in accordance with the terms and conditions of the Techellence Solutions.

### 3.5 INSURANCE

If you are supplied with Techellence-owned or Techellence-licensed equipment or software (collectively, “Techellence Network Equipment”), you agree to acquire and maintain, at your sole cost, insurance for the full replacement value of that equipment. Techellence Network Equipment must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to us. Upon our request, you agree to provide proof of insurance to us including proof of payment of any applicable premiums or other amounts due under the insurance policy.

## 4. WARRANTIES

### 4.1 HARDWARE AND SOFTWARE WARRANTY

Techellence is a reseller, integrator and technology management service provider. Techellence does not provide its own warranties for hardware or third-party software. Instead, Techellence will assign to the Customers the warranties, if any, provided by the manufacturer or supplier of the hardware or third-party software, resale or sub-license, to the extent such warranties are transferrable, except as expressly set forth pursuant to the Techellence Solutions. Techellence does not offer, and specifically disclaims, any warranty of its own, expressed or implied.

### 4.2 SERVICES WARRANTY

Techellence warrants that the services will be performed in a manner consistent with generally accepted industry practice. If a failure to comply with this warranty emerges within thirty (30) days following the completion of services, and if notified within seven (7) days of discovery by the Customer, Techellence at its option, shall either provide the services anew or refund the price charged for such non-conforming services. This performance anew or refund is the customer's exclusive remedy and shall constitute Techellence's fulfillment of all liabilities with respect to nonconformity of or defect and/or deficiency in services furnished to Customer. The maximum refund provided is equal to one (1) month of the total managed services recurring invoice.

### 4.3 OTHER WARRANTIES

The foregoing warranties are exclusive and in lieu of all warranties of quality and performance, written, oral or implied. Techellence specifically disclaims all other warranties, including but not limited to, implied warranties of merchantability, fitness for a particular purpose, or that software or equipment is free of the rightful claim of any third person by way of infringement or the like.



## 5. LIMITATION OF LIABILITY

Techellence's, liability on any claim, whether in contract, negligence, tort, strict liability or otherwise, arising in whole or in part out of services performed, or equipment and or custom software provided, pursuant to the Techellence Solutions, shall in no case exceed the lesser of the monthly fees paid to Techellence under the Techellence Solutions or the fees paid to Techellence for the portion of services or equipment or custom software which give rise to the claim. All causes of action against Techellence arising out of or relating to the Techellence Solutions, or the performance or breach of them shall expire unless brought within six (6) months after the first date of performance or breach which in whole or in part gives rise to the claim. These remedies are exclusive and in lieu of all other remedies available at law or in equity for any act performed in connection with this Agreement, or for any breach of this Agreement, whether brought under a theory of tort liability, contract liability or any other legal theory.

## 6. HIRING OF TECHELLENCE PERSONNEL

For a period of two (2) years following the conclusion of this Agreement, the Customer will not directly or indirectly hire Techellence personnel or subcontractors to service the Customer.

## 7. CONFIDENTIALITY OF INFORMATION

During the performance of this Agreement, Techellence and the Customer may have access to information concerning the products and business of the other. Neither party shall use information of the other party except in connection with the exercise of its rights and responsibilities under this Agreement. Techellence and the Customer will take all necessary and prudent steps to prevent the disclosure of such information to third parties, at least equivalent to the most stringent steps used by such party in protecting its own confidential and proprietary information. The commitments of confidentiality and non-use set forth above do not apply to that information that can be documented to be known to recipient or the general public before disclosure hereunder, or that, through no act on the part of the recipient hereunder becomes generally available to the public.

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## 8. MISCELLANEOUS PROVISIONS

### 8.1 AMENDMENTS

The Techellence Solutions may only be changed by written amendment executed by the authorized representatives of both parties. Amendments adding computers, servers or networks apply to the remainder of the term selected in Plan Selection and Pricing in the Managed IT Services Proposal from the date of the addition.

### 8.2 AUTHORIZED REPRESENTATIVES

The signatories below represent and warrant that they are authorized by their respective organizations to enter this Agreement.

### 8.3 COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which will be considered an original copy of this Agreement and all of which, when taken together, will constitute one and the same Agreement.

### 8.4 EXCHANGE OF TECHELLENCE PERSONNEL

Techellence shall provide the Customer written notice if Techellence chooses to replace an employee that is providing services to Customer.

### 8.5 TERMINATION

This Agreement shall remain in full force and effect unless the Event of Default or other termination by either party. In the Event of Default occurs:

- a. **Event of Default by Techellence.** Techellence shall be in default under this Agreement if Techellence fails to materially perform or comply with the terms and conditions of this Agreement. Techellence is not considered to be in default if it suspends service due to Customer non-payment. The Customer shall provide Techellence with written notice of the non-performance or non-compliant provision within three (3) days of the Customer's discovery of such failure. The notice shall be delivered via courier such as United States Postal Service registered mail, UPS, or Federal Express, and clearly identified as "Non-Performance Notice" to Techellence, 250 Pehle Ave, Suite 200, Saddle Brook, NJ 07663. Techellence shall use its best efforts to reasonably cure the alleged non-performance or non-compliance within thirty (30) days of receipt of the Non-Performance Notice. If Techellence is unable to cure the alleged non-performance or non-compliance in a reasonably acceptable manner in accordance with reasonable industry standards, the Customer's sole remedy

shall be termination of this Agreement and the reimbursement of any unearned monies paid to Techellence related to the non-performance or non-compliance of the specified items.

- b. **Event of Default by Customer.** Customer shall be in default under this Agreement if Customer fails to make payment of any undisputed invoice within thirty (30) calendar days after it is delivered, or if Customer fails to materially perform or comply with the terms and conditions of the Agreement.
1. **Equipment / Software Removal.** Upon termination of this Agreement or applicable SOW for any reason, you will provide us with access, during normal business hours, to your premises or any other locations at which Techellence Network Equipment is located to enable us to remove all such equipment from the premises. If you fail or refuse to grant us access as described herein, or if any of the Techellence Network Equipment is missing, broken or damaged (normal wear and tear excepted) or any of Techellence Network Equipment-related software is missing, we will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items.
  2. **Repayment of Discounted Fees.** If you are provided with a price discount or fee waiver based on your commitment to retain our services for a minimum term and if, under that scenario, we terminate the Agreement due to the Customer's default, then in addition to any other remedy available to Techellence the Customer agrees to pay Techellence the amount of the fee waiver or, if applicable, the difference between the discounted rates and the non-discounted rates under the Managed IT Services Proposal, calculated from the effective date through the date of termination.
  3. **Transition and Deletion of Data.** In the event that the Customer requests the assistance of Techellence to transition away from the services provided, Techellence will provide such assistance if (i) all fees due and owing are paid in full prior to Techellence providing assistance to the Customer, and (ii) the Customer agrees to pay the then-current hourly rate for such assistance, with up-front amounts to be paid to Techellence as may be required. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. Unless otherwise expressly stated in the Techellence Solutions, Techellence will have no obligation to store or maintain any Customer data in our possession or control beyond fifteen (15) calendar days following the termination of this Agreement. Techellence will be held harmless for, and indemnified by the Customer against any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, our deletion of the Customer's data beyond the time frames described in this paragraph.

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- c. **Twelve (12) Month “Guarantee.”** If the Customer is not satisfied with the performance and service(s) provided by Techellence before the end of twelve (12) months, the Customer may withdraw from this Agreement if Customer previously informed Techellence of the cause of dissatisfaction and allowed Techellence an appropriate opportunity to remedy the problem. If the Customer withdraws from this Agreement, it remains responsible as specified in the Techellence Solutions for payment in full for the first twelve (12) months of service, and the net of implementation paid and the twelve (12) months standard implementation fee, plus any used but unearned project credits. Additionally, if you are provided with a price discount or fee waiver based on your commitment to retain our services for a minimum term and if, under the scenario that the customer chooses to terminate the Agreement through the 12 Month “Guarantee”, the Customer agrees to pay Techellence the amount of the fee waiver and the difference between the discounted rates and the non-discounted rates under the Managed IT Services Proposal, calculated from the effective date through the date of termination. This guarantee does not apply to Website maintenance and hosting plans.
- d. **Other Termination.** This Agreement shall renew for additional terms, as defined in the Managed IT Services Proposal, unless either party gives the other at least thirty (30) days written notice before the end of the then current term. Should the CUSTOMER decide to withdraw from this Agreement for reasons other than default by either party or non-renewal of the term, Customer shall be liable to Techellence for six (6) months of the highest monthly cost of the total managed services recurring invoice; any price discount or fee waiver the Customer received to retain Techellence.; and any other remedy available, calculated from the immediate six (6) months before the written notice to terminate this Agreement through the date of termination. Techellence reserves the right to reduce the number of months the CUSTOMER is liable under this paragraph upon receipt of the written notice to terminate this Agreement.

## 8.6 TERM

The initial term of this Agreement will be for a minimum of ninety (90) days, as specified in the “Highlights” of the Managed IT Services Proposal, following the date of this Agreement. This Agreement shall renew for additional terms, as defined in the Managed IT Services Proposal, unless either party gives the other at least thirty (30) days written notice before the end of the then current term. For customers choosing one (1)- three (3)- and five (5)-year terms, fees increase a minimum of three percent (3%) annually but up to fifteen percent (15%) (dependent upon the term chosen) upon renewal unless otherwise communicated by Techellence in writing prior to renewal. For customers with Month-to-Month terms, fees will increase a minimum of five percent (5%) annually but up to fifteen percent (15%) annually at the conclusion of each contract year.

## 8.7 DISPUTE RESOLUTION

- a. **Governing Law.** The Techellence Solutions shall be governed by and construed in accordance with the law, without reference to principles of conflicts of laws, of the State of New York.
- b. **Arbitration.** Except for undisputed collections actions to recover fees due to us, any dispute, claim or controversy arising from or related to the Techellence Solutions, including the determination of the scope or applicability of the Techellence Solutions to arbitrate, shall be settled by arbitration before one arbitrator who is mutually agreed upon by the parties. In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. The arbitrator will be experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, each party shall select an arbitrator and the two (2) arbitrators shall agree on a third arbitrator to preside over the dispute. The arbitration shall take place in Bergen County, New Jersey or Rockland, New York. The arbitrator shall determine the scope of discovery in the matter; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent. The cost of the arbitration shall be split evenly between the parties; however, the party prevailing in the arbitration shall be entitled to an award of its reasonable attorneys' fees and costs.

## 8.8 ASSIGNMENTS

The Techellence Solutions and the rights hereunder may be assigned or otherwise transferred by either party, to any corporation controlled by or under common control with the assigning party, or in connection with the acquisition of, or the sale of substantially all of the assets of the business to which this Agreement pertains.

## 8.9 ELECTRONIC EXECUTION

This Agreement may be validly executed by the electronically signing a copy of this Agreement. Either the fully executed electronic copy or a physically executed original shall be evidence of the existence of this Agreement.

## 8.10 INDEMNIFICATION

Each party (an "Indemnifying Party") agrees to indemnify, defend and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of the Techellence Solutions. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole

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cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.

## 8.11 NON-DISCLOSURE AND NON-USE OBLIGATIONS

The Customer will maintain confidence and will not disclose, disseminate or use any Confidential Information belonging to Techelligence whether or not in written form. The Customer agrees to treat all Confidential Information of Techelligence with at least the same degree of care as the Customer accords its own confidential information. The Customer represents that it exercises at least reasonable care to protect its own confidential information. If the Customer is not an individual, the Customer agrees that it shall disclose Confidential Information only to those of its employees who need to know such information and certifies that such employees have previously signed a copy of this agreement or an equivalent non-disclosure agreement.

## 8.12 NON-DISPARAGEMENT

Neither Techelligence nor CUSTOMER shall make any statements, in any form, whether oral or in writing, that in any manner disparages or criticizes the other.

## 8.13 SEVERABILITY

If any provision or provisions of the Techelligence Solutions are found to be invalid, illegal or unenforceable, the validity, legality and unenforceability of the remaining provisions shall not in any way be affected or impaired thereby.

## 8.14 FORCE MAJEURE

Each party shall be excused from performance for any period and to the extent that the party is prevented from performing any services, in the whole or in part, as a result of delays caused by the other party, acts of God, war, acts of government, fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, inability to secure raw materials or transportation facilities, acts or omissions of carriers, civil disturbances, court orders, labor disputes, third-party nonperformance, or other cause beyond that party's reasonable control, including failure or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, or any and all causes beyond control of Techelligence. Such nonperformance shall not be a default or a ground for termination.

## 8.15 MODIFICATIONS

Techelligence Solutions can be modified only by a written agreement signed by authorized representatives of Techelligence and Customer. Variances from or addition to the terms and conditions of the Techelligence Solutions

in any order from the Customer will be of no effect. Techellence and Customer agree not to enter into any oral agreement or understanding that conflicts with Techellence Solutions. Techellence and Customer further agree that any oral communication allegedly or purportedly constituting such an agreement shall be absolutely null, void and without effect except as outlined in the paragraph herein. The Customer is permitted to raise or lower plan levels under these circumstances:

- a. The coverage level remains the same, but the quantity of items under management changes. For example, if five (5) employees are terminated and their PCs or Phones are removed from service.
- b. The coverage level changes, but the total monthly payment stays the same or increases. For example, if you add a new server but lower the PC level such that the total monthly payment stays the same or increases. PCs or Servers used by guests for more than five business days and all PCs or Servers that don't have current and properly functioning security software are considered security breaches and are thus not allowed on a managed network. Guests who use the network more than forty (40) business hours in a contract month must purchase coverage. PCs, Phones or Servers added or removed from service require amendments issued via mail or email to change the quantity under coverage.

## 8.16 NOTICES

Any notice, request, demand or other communication required or permitted by, or relating to, the terms of the Techellence Solutions is considered properly given when it is delivered to the United States Postal Service, sent certified mail–return receipt requested, or postage prepaid addressed to the party to receive notice as previously requested by notice hereunder, delivered via e-mail, or as provided in conjunction with such party's signature below. Any notice given by either party hereto to the other party shall be in writing and shall be signed by the party giving notice. Any notice or other document to be delivered to either party hereto by the other party shall be deemed delivered if mailed postage prepaid to the party to whom it is directed at the address of such party stated in the signature block below.

## 8.17 VENUES AND JURISDICTION

The Customer (i) agrees that any litigation, action or proceeding arising out of or relating to the Techellence Solutions be instituted in a state or federal court in Bergen County, New Jersey or Rockland County, New York, to this venue, (iii) irrevocably submits to the jurisdiction of any court in such litigation, action or proceeding, and (iv) hereby waives any claim or defense to inconvenient form.

## 8.18 COUNTERPARTS

This Agreement may be executed simultaneously in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same original.

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## 8.19 ENTIRE AGREEMENT

The Techellence Solutions constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior contemporaneous written or oral agreements and representations between the parties with respect thereto. This Agreement shall not be deemed to extinguish or mitigate any payments, which are owed to Techellence by Customer pursuant to the terms of any previous or other existing agreements between Techellence and the Customer. The Customer acknowledges that it has read Techellence Solutions, understands them and agrees to be bound by their terms and conditions.

## 8.20 ATTORNEYS' FEES

In the event of a dispute under the Techellence Solutions, the prevailing party will be entitled to reasonable attorneys' fees and costs.

## 8.21 CAPTIONS AND HEADINGS

The captions and headings are inserted in this Agreement for convenience only. They must not be considered to define, limit or describe the scope or intent of this Agreement, or of any provision hereof, nor in any way affect the interpretation of this Agreement.