

# Contour Data Solutions, LLC

## Master Managed Services Agreement

**Contract ID:**

[Company]

[Company Address]

Pricing and/or promotional benefits in this Agreement may not be available if it is signed and delivered to Contour after [Publish Date]

By: \_\_\_\_\_

Acceptance Date \_\_\_\_\_

CONTOUR DATA SOLUTIONS, LLC

By: \_\_\_\_\_

Rocco Guerriero  
CEO

This MASTER MANAGED SERVICES AGREEMENT (together with the exhibits attached hereto, this "Agreement"), is by and between Contour Data Solutions, LLC, a Pennsylvania limited liability company ("Contour"), and [Company], a Insert State Type of Entity (the "Customer"). This Agreement is binding when executed by Customer and Contour.

NOW, THEREFORE, in consideration of the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

### 1. Scope of Agreement.

- (a) Scope of Agreement. As a "master" form of contract, this Agreement allows the parties to contract for multiple services without having to re-negotiate the terms and conditions set forth herein.
- (b) Services. Contour shall provide Customer with the hosting, infrastructure management, colocation, and other data management services ("Services") that are set forth in one or more service orders that have been signed by both parties and reference this Agreement (each a "Service Order"). Additionally, Contour shall provide Customer with professional services ("Professional Services") that are set forth in one or more "Statements of Work" that have been signed by both parties and reference this Agreement (each, an "SOW"). Customer may from time to time request additional Services or Professional Services, which, upon mutual agreement by the parties, shall be provided by Contour pursuant to a new Service Order or SOW signed by both parties. The Services and Professional Services will be provided in accordance with, and subject to, the terms and conditions set forth in this Agreement and set forth in the respective Service Order or SOW. This Agreement shall apply to all Service Orders and SOWs and to all Services and Professional Services performed pursuant thereto. In the event of a conflict or ambiguity between any term of this Agreement and a Service Order or SOW attached, the terms of this Agreement shall govern, unless the terms of the Service Order or SOW expressly provide otherwise.

### 2. Fees, Expenses and Taxes.

- (a) Fees and Taxes. Customer shall pay Contour the fees and expenses (the "Fees") for the Services and Professional Services as set forth in each respective Service Order or SOW, as applicable. Contour will provide Customer with a monthly invoice, in arrears, for all amounts due under each Service Order and SOW, at the rates set forth in the respective Service Order or SOW (as applicable) for Services and Professional Services performed during the previous month. Customer shall pay each invoice within thirty (30) days of the invoice date or as otherwise described in the applicable Service Order or SOW. All payments shall be made in U.S. Dollars. Interest, at the rate of 1.5% per month (or the highest rate permitted by applicable law, if less), calculated from the invoice date, shall be payable on all balances outstanding after their due date. All Fees are non-refundable unless explicitly provided herein. Contour reserves the right to terminate Customer's use of the Services to the extent the Fees due pursuant to such Service Order remain unpaid sixty (60) days after invoice date and Contour may, at its discretion, prohibit Customer's removal of equipment, software, applications or data from Contour's facility, or any subcontracted facilities, pending payment of all undisputed amounts owed to Contour by Customer. Customer shall reimburse Contour for any out-of-pocket expenses incurred by Contour in providing the Services, so long as such expenses were approved in advance and in writing by the Customer. Customer shall be responsible for reimbursing Contour for its reasonable costs of collecting unpaid amounts due hereunder including reasonable attorney's fees and collection agency fees, and other reasonable costs of collections. Customer shall also be responsible for any sales, use, excise and/or comparable taxes assessed or imposed by any governmental authority upon the services provided, except for those taxes

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imposed on Contour by reason of its income. In the event that an applicable governmental authority determines that the taxes owed for the Services or Professional Services provided hereunder exceed the amounts paid to it, Customer shall pay the amount required to be paid by the applicable authority, which shall be invoiced by Contour. In providing the Services or Professional Services, Contour may utilize certain software that it licenses from third parties. From time to time such third parties increase the fees charged to Contour for such software. Contour may from time to time increase the Fees it charges to Customer for Customer's use of such software upon written notice (email sufficing). No more than once per year during the Term, Contour may at its discretion increase the Fees it charges Customer the greater of 3% or the increase in the Consumer Price Index (as measured by the United States Bureau of Labor Statistics) over the immediately preceding one (1) year period.

- (b) **Consumption-Based Fees.** Certain Services selected by Customer may employ consumption-based Fees based on the amount of storage, bandwidth, memory, computing time, and backup capacity actually utilized by Customer (collectively, "Resource Consumption"). As further provided in any applicable Service Order, Customer shall be responsible for any applicable Fees based on its Resource Consumption.
- (c) **Credit Card Payments.** In addition to Section 2(a) above, Customer may elect in writing to make automatic monthly credit card payments. If Customer so elects, Customer shall maintain valid credit card information on file with Contour or its payment processor and hereby authorizes Contour to automatically charge such credit card for the full Fees as due each month. Any failure to maintain valid, up-to-date payment information with Contour or its payment processor may suspension or termination of the Services or Professional Services upon five (5) days' prior written notice (email sufficing), if not cured.
- (d) **Migration Period.** During the Migration Period (as provided in Section 3(a) below), the Services selected by Customer will be available to Customer for configuration and migration purposes. Customer is responsible for all applicable Fees during the Migration Period.
- (e) **Consulting Services.** At the Customer's request, Contour may perform technical consulting and computer systems related integration with respect to the Customer. Contour agrees that it will devote such time and effort as is necessary to perform the services.
- (f) **Persons Performing Services.** Contour shall perform the Services through one or more of its employees or other persons engaged by the Contour, herein called "Consultants." A designated representative from Contour will oversee the Services performed under this Agreement. Contour is responsible for the acts and omissions of all persons performing services on its behalf pursuant to this Agreement, including Consultants engaged by Contour.
- (g) **Travel Policy and Expenses:** Unless presented with a company travel policy, Contour will charge for travel and out-of-pocket expenses.
  - For work performed 50 miles outside of Contour's location we will charge:
    - \$50 per hour for travel time
    - 54.5 cents per mile or current IRS rates
    - All out of pocket expenses (i.e.: tolls, parking, etc.)
  - For work performed less than 50 miles outside of Contour's location we will charge:
    - All out of pocket expenses (i.e.: tolls, parking, etc.)
    - 54.5 cents per mile or current IRS rates

The Customer is obligated to reimburse Contour for all reasonable and agreed upon travel and out-of-pocket expenses incurred. Contour will submit to the customer copies of receipts and sufficient documentation of travel and out of pocket expenses with the applicable invoice setting out such charges.

- a. **Premium hour rates:** Contour's normal business operations hours are 8 am to 6 pm, EST, Monday through Friday. However, Systems Engineer work, in certain cases, requires after hours or weekend effort to complete. If work requested is performed after 5:00 pm, and before 8:00 am, or any weekend or holiday hours, then premium hourly charges may apply.

% Premium	Premium Hours
50% Premium	1.5 times hours worked for afterhours on weekdays/weekends
100% Premium	2.00 times hours worked for Holiday hours

- b. **Emergency hour rates:** Contour defines an emergency as a serious, unexpected, and often serious situation requiring immediate action by our staff. If work requested is performed as an emergency, then emergency hourly charges may apply.

% Premium	Emergency Hours
100% Premium	2.00 times the rate

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### 3. Term and Termination.

- (a) **Term.** This Agreement commences on the Acceptance Date above and continues, unless terminated earlier as provided herein, for a period consisting of [two (2)] months (the "Migration Period") plus [sixty (60)] months (together, with the Migration Period, the "Initial Term"). Notwithstanding the foregoing, should any Service Order or SOW entered into during the Term require Services or Professional Services to be performed beyond the expiration or termination date of this Agreement, then the terms of this Agreement shall remain in effect with respect to such Service Order(s) or SOW(s) until the expiration or termination thereof. This Agreement shall automatically renew for successive [twelve (12)] month periods (each a "Renewal Term"), unless a party gives written notice of non-renewal to the other party not less than Ninety (90) days prior to the expiration of the then-current Initial Term or any Renewal Term. The Initial Term, together with all Renewal Terms (if any), are hereinafter referred to as the "Term".
- (b) **Termination.**
- (i) Either party may immediately terminate this Agreement, including all Service Orders and SOWs, on written notice to the other party, if the non-terminating party is in material breach of any provision of this Agreement, including any Service Orders or SOWs, and does not cure such material breach within thirty (30) calendar days (except for a failure of Customer to pay Contour hereunder, in which case no cure period shall apply) after receipt of written notice of such failure.
- (ii) Either party hereto may immediately terminate this Agreement, including all Service Orders and SOWs, on written notice to the other party, if the non-terminating party: (A) dissolves, liquidates or winds up its operations, (B) ceases to function as a going concern or to conduct operations in the normal course of business, (C) becomes insolvent, or asks its creditors for a moratorium, or files a voluntary petition for bankruptcy or suffers appointment of a temporary or permanent receiver, trustee or custodian for all or a portion of its assets, (D) has a petition or action filed against it under any bankruptcy or insolvency law which petition or action has not been dismissed or set aside within sixty (60) days of its filing, or (E) makes an assignment for the benefit of its creditors, or if anything occurs which, under the law of any jurisdiction, is analogous to any of the acts or events specified in subsections (A) – (E) above.
- (c) **Duties Upon Expiration or Termination.** Upon expiration or termination of this Agreement for any reason, each party shall either: (i) return to the other party all Confidential Information (as defined below) owned by such party, or (ii) destroy such Confidential Information, including contained in any computer memory or data storage apparatus; provided that copies of such Confidential Information may be retained in each party's backup or archival systems, provided that such backups or archives were created in the normal course of that party's business. Each party shall certify, in writing to the other party, its compliance with this Section 3(c), promptly upon request.
- (d) **Effect of Expiration or Termination.** Upon termination or expiration of this Agreement, neither Contour nor the Customer shall have any further rights or obligations hereunder except for (i) Customer's obligation to pay Contour the Fees due and payable as of the date of expiration or termination of this Agreement, and (ii) the parties' respective obligations under Section 3(C). The following sections survive the termination or expiration of this Agreement: Sections 2, 3(c), 3(d), 4 and 6 through 12 hereof.
- (e) **Extension.** In the event that Customer requests that Contour provide additional hardware for Customer's use, Contour may at its reasonable discretion, upon written notice to Customer, extend the Term, including any Service Orders, and/or an applicable SOW for a length commensurate with the cost of the additional hardware being provided for Customer's use but not to exceed thirty six (36) months from the date of request.

### 4. Independent Contractor Status. The relationship of Contour to Customer shall be that of an independent contractor, and nothing in this Agreement is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship.

### 5. Change Order Proposal. Customer may, from time to time, submit to Contour a request for changes to an existing Service Order or SOW. If, in Contour's reasonable judgment, the requested changes can be implemented without requiring additional Contour time or resources and without affecting Contour's ability to maintain any respective project schedule, Contour will implement the change at no additional cost to Customer. Otherwise, Contour shall provide Customer with a written change order proposal for the additional work, including: (a) price change, (b) impact on project schedule, and (c) a revised Service Order or SOW, including additional requirements of Customer, if any. Customer may, at its discretion, accept or reject Contour's change order proposal. Change orders shall be considered effective upon execution by both parties. Any Contour change order proposal will be considered rejected if not executed within ten (10) business days by Customer. Each party shall use its commercially reasonable efforts to respond as expeditiously as possible to such change requests and change order proposals. Notwithstanding anything in this Agreement, including Service Orders or SOWs, to the contrary, no changes that effect project time or cost will be permitted without the prior written approval from Contour.

### 6. Ownership.

- (a) **Contour Materials and Information.** Notwithstanding anything in this Agreement or any Service Orders or SOWs to the contrary, Contour shall retain all exclusive right, title and interest to its software (in any form), technologies, processes, systems, platforms, techniques, documents, equipment, templates, programs, works of authorship, know-how or any other materials that are owned by or licensed to Contour including, but not limited to, any modifications or enhancements made to the foregoing while providing the Services or Professional Services hereunder.
- (b) **Notices.** Customer shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary notice placed by Contour on or in the products and shall ensure that all such notices are reproduced on all copies thereof.
- (c) **Contour-Provided Equipment.** In the event that Contour provides any equipment ("Contour Equipment") for use at a location owned, operated or otherwise controlled by Customer (each, a "Customer Location"), Customer represents and warrants that no lien, security interest or other encumbrance will be placed on the Contour Equipment pursuant to any indenture, mortgage, deed of trust, bank loan, credit agreement or any other instrument to which Customer is a party or by which it or its assets may be bound. In the event of (i) any termination or expiration of this Agreement including any applicable Service Order, or (ii) any amounts owed by Customer under this Agreement, including any Service Orders or SOWs, are more than forty-five (45) days past due, then Contour may, upon twenty-four (24) hours prior written notice, remove any Contour Equipment from any Customer Location.

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### 7. Third Party Services; Other Terms.

- (a) Provided by Contour. Contour may make available certain third-party software or services ("Third-Party Services") for use by Customer. By utilizing such Third-Party Services, Customer agrees to be bound by any terms and conditions applicable to such Third-Party Services. Additionally, if the terms of a Third-Party Service include any service level guarantees then such service level guarantees, not any service level guarantees provided in this Agreement, including any Service Orders or SOWs, shall be applicable to such Third-Party Service. If Customer utilizes any Contour-provided Microsoft software or services, Customer agrees to the Microsoft End User License Terms, available at [http://www.contourds.com/uploads/9/4/8/4/94848646/microsoft\\_end\\_user\\_license\\_terms\\_02272017.pdf](http://www.contourds.com/uploads/9/4/8/4/94848646/microsoft_end_user_license_terms_02272017.pdf).
- (b) Provided by Customer. In the event that Customer provides software, code, services, information, data or other materials ("Customer-Provided Materials") to be utilized with the Services, Customer represents and warrants that it (i) has all necessary rights for its and Contour's use of the Customer-Provided Materials, and (ii) it will comply with any terms and conditions applicable to its use of the Customer-Provided Materials. In the event that Customer ceases to maintain a support agreement with an applicable Customer-Provided Materials vendor, Contour may provide an equivalent product and invoice Customer in accordance with an applicable Service Order or SOW. Customer-Provided Materials are not included in any Contour-provided warranties or service level commitments.
- (c) Acceptable Use. Customer and its employees and representatives shall comply at all times with Contour's Acceptable Use Policy, available at <http://www.contourds.com/uploads/9/4/8/4/94848646/aup.pdf>, as may be amended from time to time. In addition, Customer and its employees and representatives will not use the Services in violation of law or third-party rights, or in a manner that disrupts Contour's facilities or network, or other Contour customers. Contour may suspend its provision of Services, or remove or disable access to Customer's content or files: (i) in the event of Customer's breach of the Agreement, (ii) if Contour in its sole and absolute discretion believes any Customer content or files are illegal or violate any third party's copyright, patent, trademark, trade secret, privacy or other third-party proprietary right, or (iii) as otherwise necessary to protect Contour, its products or services, or customers from material harm.
- (d)

### 7. Confidentiality.

- (a) Non-Disclosure. Each party (the "Disclosing Party") may deliver or make available to the other party (the "Recipient") certain Confidential Information (as defined below). The Recipient agrees that neither Recipient nor Recipient's Representatives (as defined below) will, directly or indirectly, (i) use the Disclosing Party's Confidential Information in any way other than for the purpose of providing or receiving the Services or Professional, or otherwise exercising its rights, hereunder, or (ii) disclose to any third party all or any part of the Disclosing Party's Confidential Information, except as expressly provided for herein. The Recipient shall be entitled to disclose the Disclosing Party's Confidential Information only to those employees, officers, agents, service providers, and advisers of the Recipient (collectively, the "Representatives") necessary for the purposes above provided that the Recipient advises each such Representative of the obligations contained herein and that by receiving such information, the Representatives are agreeing to be bound by this Agreement. The Recipient shall be responsible for any breach of this Agreement by Recipient's Representatives and shall indemnify and hold the Disclosing Party harmless from any such breach.
- (b) Definition. The term "Confidential Information" as used in this Agreement shall mean any proprietary or confidential information, whether in verbal, written or some other tangible medium, including, but not limited to, any prospective business opportunities, technical data, trade secrets, know-how, assets, operations, finances, technologies, patents, copyrights, trademarks, techniques, drawings, sketches, models, inventions, processes, apparatus, equipment, algorithms, formulae, software, research, experimental work, products, service plans, markets and market studies, design details and specifications, engineering information, procurement requirements, customer lists, customers, pricing and cost information, business forecasts, sales, distribution, merchandising and marketing plans and information, that is either: (i) in tangible form marked as "confidential" or "proprietary" or with a similar legend; (ii) in intangible form that is designated by the Disclosing Party as confidential at the time of disclosure; or (iii) based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential.
- (c) Exception. Confidential Information does not include (i) information which, at the time of disclosure, is already known or available to the public, can be obtained from public sources or is otherwise in the public domain, (ii) information which, after disclosure, becomes known or available to the public through no breach by the Recipient or Recipient's Representatives of this Agreement, (iii) information already in the Recipient's possession at the time of disclosure, as evidenced by written documentary records of the Recipient, (iv) information which was independently developed by or for the Recipient without the use of or reliance on the Disclosing Party's Confidential Information, or (v) information received by the Recipient from another person or entity who is not known by the Recipient to be under an obligation to the Disclosing Party to keep the same confidential.
- (d) Court Order. In the event that the Recipient and/or its Representatives are requested or required to disclose any of the Confidential Information in an investigatory, legal, regulatory or administrative proceeding, the Recipient shall provide the Disclosing Party with prompt notice thereof (to the extent permitted by law) so that the Disclosing Party may, in its discretion, seek a protective order or other appropriate remedy at the Disclosing Party's expense. The Recipient agrees to reasonably consult and cooperate with the Disclosing Party in seeking a protective order or other appropriate remedy; provided, that the Disclosing Party shall reimburse the Recipient for its reasonable out-of-pocket expenses incurred in connection with such consultation and/or cooperation provided by Recipient pursuant to this Section 7(d).
- (e) Remedies. Contour and Customer expressly acknowledge that the remedy at law for any breach of Section 7 will be inadequate, and that, upon any such breach or threatened breach, the Disclosing Party shall be entitled as a matter of right to seek injunctive relief in any court of competent jurisdiction, in equity or otherwise, and to enforce the specific performance of the Recipient's obligations under these provisions without the necessity of proving the actual damage to the Disclosing Party or the inadequacy of a legal remedy. The rights conferred upon the Disclosing Party by the preceding sentence shall not be exclusive of, but shall be in addition to, any other rights or remedies which the Disclosing Party may have at law, in equity or otherwise.

### 8. Indemnification.

- (a) Contour Indemnity. Contour shall indemnify, defend and hold harmless the Customer and its officers, directors, shareholders, employees, agents, successors and assigns (collectively, the "Customer Indemnified Parties"), from any and all out-of-pocket liabilities, judgments, costs,

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losses, damages and expenses (including reasonable attorneys' fees and court costs) (collectively, the "Losses") arising from any demand, claim, suit, action or other proceeding ("Claim") brought or threatened by a third party against any of the Customer Indemnified Parties, and relating to, based upon or arising out of or in connection with (i) any gross negligence or willful misconduct on the part of Contour or any of Contour's employees, or (ii) the breach of any representation, warranty or covenant made by Contour in this Agreement or any Service Order or SOW.

- (b) Customer Indemnity. Customer shall indemnify, defend and hold harmless Contour and its officers, directors, shareholders, employees, agents, successors and assigns (collectively, the "Contour Indemnified Parties"), from any and all out-of-pocket Losses arising from any Claim brought or threatened by a third party against any of the Contour Indemnified Parties, and relating to, based upon or arising out of or in connection with (i) any gross negligence or willful misconduct on the part of Customer or any of Customer's employees, (ii) the breach of any representation, warranty or covenant made by Customer in this Agreement or any Service Order or SOW, (iii) the products and/or services provided by Customer to its customers or offered by Customer to any prospective customer, (iv) the materials, information and/or specific instructions provided by Customer to Contour, or (v) the use of the Services by Customer.
- (c) Exceptions. Contour's obligations in this Section 8 do not apply to Claims arising from or relating to: (i) services, software, or equipment not provided by Contour; (ii) Customer's modification to any Services, software, or equipment provided by Contour; or (iii) Contour's compliance with Customer's instructions.
- (d) Procedure. With respect to indemnification claims, the following procedures shall apply:
  - (i) Promptly after receipt by a party (the "Indemnified Party") of notice of the commencement or threatened commencement of any action or proceeding involving a claim for which such Indemnified Party will seek indemnification pursuant to this Section 8, such Indemnified Party shall notify the other party (the "Indemnifying Party") of such claim in writing. No failure to so notify an Indemnifying Party shall relieve it of its obligations under this Agreement except to the extent that it can demonstrate damages or prejudice attributable to such failure. Within ten (10) days following receipt of written notice from the Indemnified Party relating to any claim, but not later than fifteen (15) days before the date on which any response to a complaint or summons is due, the Indemnifying Party shall notify the Indemnified Party in writing if the Indemnifying Party elects to assume control of the defense and settlement of that claim (a "Notice of Election").
  - (ii) If the Indemnifying Party delivers a Notice of Election relating to any claim within the required notice period, the Indemnifying Party shall be entitled to have sole control over the defense and settlement of such claim; provided that (A) the Indemnified Party shall be entitled to participate in the defense of such claim and to employ counsel at its own expense to assist in the handling of such claim, and (B) the Indemnifying Party shall obtain the prior written approval of the Indemnified Party before entering into any settlement of such claim or ceasing to defend against such claim. The Indemnifying Party shall not be required to indemnify the Indemnified Party for any amount paid or payable by the Indemnified Party in the settlement of any claim for which the Indemnifying Party has delivered a timely Notice of Election if such amount was agreed to without the written consent of the Indemnifying Party.
  - (iii) If the Indemnifying Party does not deliver a Notice of Election relating to any claim within the required notice period, the Indemnified Party shall have the right to defend the claim in such manner as it may deem appropriate, at the cost and expense of the Indemnifying Party. The Indemnifying Party shall promptly reimburse the Indemnified Party for all such costs and expenses including but not limited to any and all reasonable counsel fees.

### 9. Warranties; Disclaimer.

- (a) Warranties of Contour. Contour shall perform the Services and Professional Services (i) in a professional manner, (ii) in conformance with that level of care and skill ordinarily exercised in similar circumstances by providers of the same or similar services, and (iii) in compliance with all applicable federal, state and local laws, statutes, rules and regulations.
- (b) Disclaimer. Except as expressly provided in Section 9(a), the Services and Professional Services are provided to Customer on an "as is" basis, and Contour (i) makes no representations or warranties of any kind whatsoever, express or implied, in connection with this Agreement or the Services and Professional Services, (ii) disclaims any warranty that the Services and Professional Services will be error free or uninterrupted or that all errors will be corrected, and (iii) disclaims any and all warranties with respect to the Services and Professional Services as to security, loss of data, merchantability, accuracy of any information provided, fitness for a particular purpose, title, and non-infringement, and any and all warranties arising from course of dealing or usage of trade. No advice or information, whether oral or written, obtained from Contour or elsewhere shall create any warranty not expressly stated in Section 9(a).
- (c) Warranties of Customer. Customer represents and warrants that (i) it shall comply with all applicable federal, state and local laws, statutes, rules and regulations in its use of the Services and Professional Services, (ii) all data and materials it provides or its customers provide will not infringe any third party copyright, trademark, patent, trade secret or any other proprietary right of any third party, and (iii) it has and will take all reasonable precautions to protect Contour's, or Contour's subcontractor's, equipment and environment from infection by any computer virus and shall be responsible for all costs including, but not limited to, repairs, re-builds and/or re-creation of data to bring environment back to its prior state before the infection.

### 10. Limitations on Liability. Customer acknowledges that the limitations set forth in this Section 10 are integral to the amount of fees levied in connection with this Agreement, and that, were Contour to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

- (a) Aggregate Liability. Customer agrees that Contour's maximum, aggregate liability under this Agreement, including all Service Orders and SOWs, for all causes of action and regardless of the form of action (including, but not limited to, breach of contract, tort or any other legal or equitable theory), shall be limited to Customer's actual direct damages in an amount not to exceed the lesser of (i) \$500,000, or (ii) the total amount paid to Contour by Customer under this Agreement during the six (6) month period immediately preceding the date of the cause of action.

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- (b) **Consequential Damages.** Under no circumstances shall Contour be liable to Customer or any other person or entity, for special, incidental, exemplary, punitive, multiple, consequential or indirect damages (including, but not limited to, damages for loss of goodwill or business profits, loss of revenue, work stoppage, data loss or computer failure or malfunction), whether such damages are alleged in tort, contract or otherwise, even if Contour has been advised of the possibility of such damages.
11. **Non-Solicitation.** Neither party shall solicit, directly or indirectly, interview, make offers of employment or contractor arrangements to any current or former employee or contractor of the other party during the Term of this Agreement and for a period of twelve (12) months after (i) any termination or expiration of this Agreement or (ii) after the employee ceases to be employed or contracted to that party, unless otherwise agreed to, in writing, and signed by an authorized person of the other party. Nothing contained herein shall preclude the solicitation of, or hiring of, any such employee who responds to a general solicitation of employment through an advertisement not targeted specifically at the non-hiring party or its employees.
12. **Miscellaneous.**
- (a) **Force Majeure.** Except for Customer's payment obligations under this Agreement, neither party will be liable for any failure or delay in performance under this Agreement, including any Service Order or SOW, which might be due in whole or in part, directly or indirectly, to any contingency, delay, failure, or cause of, any nature beyond the reasonable control of such party. Such causes include, but are not limited to, fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or communications services (including access to the Internet) or raw materials, failures of the Internet, power outage, strike, lockout, unavailability of components, activities of a combination of workmen or other labor difficulties, war, act of terrorism, insurrection, riot, act of God or the public enemy, law, act, order, export control regulation, proclamation decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement). For the avoidance of doubt, Contour is not responsible for any internet connection or bandwidth, including connection speeds, that it has not provided or is not otherwise under its control. If, however, a party's performance is prevented for ninety (90) days or more, then the other party will be entitled to terminate this Agreement on written notice to the party suffering the force majeure at any time prior to resumption of performance by the party suffering the force majeure.
- (b) **Arbitration.** If a dispute develops between the parties to this Agreement, they will submit to non-binding mediation to address any controversy or claim arising out of, or relating to this contract or relating to any change orders or other changes or addendums to this contract. Prior to the beginning of the mediation process, the parties may agree that if there is one or more disputed items that remain unresolved at the end of the mediation, the parties will proceed with binding mediation where the mediator will render a final and binding decision on those unresolved items, or the parties may elect to submit the remaining unresolved items to a med-arb procedure where a new and separate binding arbitration session may be scheduled to settle any unresolved issues remaining after the mediation session has been concluded. The parties must mutually agree to utilize binding mediation or arbitration or the parties will be bound only to participate in the non-binding mediation process. The mediation and/or arbitration shall be conducted by and according to the Mediation and/or Arbitration Rules and Procedures of the laws of the Commonwealth of Pennsylvania. Any settlement agreement or arbitration award shall be binding upon the parties and shall be enforceable in any court of competent jurisdiction. Both parties shall share the cost of the dispute resolution process equally although personal attorneys and witnesses or specialists are the direct responsibility of each party and their fees and expenses shall be the responsibility of the individual parties.
- (c) **Severability.** If any provision of this Agreement is declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected and shall remain in full force and effect to the extent allowed by law.
- (d) **Assignment.** This Agreement may be assigned by either party upon written notice to the other party (i) In the event of a merger, reorganization, combination, consolidation or acquisition, to its successor or any entity acquiring all or substantially all of its assets or business, or the assets or business of the business unit to which this Agreement relates, or to an Affiliate. "Affiliate" means any entity directly or indirectly controlling, controlled by or under common control with a party, where "control" of an entity means ownership or the ability to direct the voting of at least fifty percent (50%) of the equity voting interests in such entity.
- (e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. This Agreement may be executed by facsimile or electronic signature.
- (f) **Notices.** All notices, requests, demands, payments and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given on receipt if delivered personally, upon receipt of a facsimile confirmation if faxed, two days after being sent by a nationally recognized overnight carrier, or three days after being mailed by certified mail, postage prepaid, return receipt requested. Notices shall be sent to the following addresses or to such other address as a party may specify in a notice pursuant to this Section 12(f):

If to [Company]	If to Contour:
<b>Name:</b>	Name: Contour Operations
[Company Address]	Address: 4259 W. Swamp Road Suite 301 Doylestown, PA 18902
<b>Attention:</b>	Attention: Operations

# Contour Data Solutions, LLC

## Master Managed Services Agreement

**Contract ID:**

<b>Fax#:</b>	<b>Fax#:</b> 215-245-4110
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- (g) Waiver. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.
- (h) Entire Agreement; Amendment. This Agreement (i) constitutes the binding agreement between the parties, (ii) represents the entire agreement between the parties and supersedes all prior and/or contemporaneous agreements relating to the subject matter contained herein, and (iii) may not be modified or amended except in a writing signed by the parties.
- (i) Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. The parties hereby consent to the exclusive personal and subject matter jurisdiction of the federal and state courts sitting in the Eastern District of Pennsylvania in any dispute arising under this Agreement.
- (j) Construction. The terms "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. Wherever appropriate in the context, terms used herein in the singular also include the plural and vice versa. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations.