

# Contour Master Cloud & Managed Services Agreement

*June 2020*

## **Contour Data Solutions**

4259 West Swamp Road, Suite 301

Doylestown, PA 18902

This Contour Master Cloud and Managed Services Agreement (this “Agreement”) is by and between Contour Data Solutions LLC (“Contour,” “we,” or “our”) and you, and, if applicable, a business or employer on whose behalf you are acting (together, “Customer” or “you”) and applies to the Services (as defined below). This Agreement includes all Services selections and configurations made through the Cinch Portal (as defined below), and all service orders, order forms, statements of work, and other similar documents that reference this Agreement Signed (as defined below) by both parties (individually and collectively, a “Service Order”), and all exhibits, addendums, attachments and other documents, including online, expressly referenced herein. “Signed,” “Sign,” or “Signing” means that a party has indicated its binding acceptance of this Agreement or an applicable Service Order or other terms, whether by digital signature, signature on paper, by clicking “I accept,” “I agree” or an equivalent message, or by using the Cinch Portal.

By Signing this Agreement you accept and agree to all of the terms of this Agreement, including the Contour Online Privacy Policy (available at <https://www.contourds.com/legal/>). You represent and warrant that you have all necessary powers to enter into, and bind Customer to, this Agreement.

You may use the Cinch administrative portal (the “Cinch Portal”) to select and manage the Contour Cloud (as defined in Section 1a below) services made available by Contour, as well as third party software and services made available through the Cinch Portal (“Third Party Services”). Additional terms may also apply to your use of individual services made available with the Cinch Portal. For example, the Cinch Portal may be used to enable certain Contour Cloud services, which may be subject to service-specific terms or another agreement for services, if applicable. Additional terms may also apply if you are using the Cinch Portal through a pooled purchasing program.

## 1. Cinch Services

### a. Overview

- (1) The Cinch Portal is used to order and manage certain cloud services made available by Contour (the “Contour Cloud”) as well as Third Party Services (collectively, the “Cloud Services”). The Cloud Services consist of certain categories of services which you can choose from, including infrastructure as a service (“IaaS), disaster recovery as a service (“DRaaS”), backup as a service (“BaaS”), database as a service (“DBaaS”), infrastructure management and monitoring services (“Infrastructure Management and Monitoring Services”), helpdesk services (“Helpdesk Services”), colocation services (“Colocation Services”) and desktop as a service (“DTaaS”), which may ordered individually or as part of packages of configurable offerings, such as a “Dedicated Private Cloud” and “Virtual Data Center” (collectively, and together with their individual components and configurations, the “Service Offerings”). The Service Offerings are Customer-managed. Upon request by Customer, Contour may manage or assist in managing the Service Offerings (“Managed Services”). Managed Services are subject to additional costs and terms. “Support Services” means technical and other support services. Contour may also provide hosting, colocation, and other services (“Additional Services”) as specified by a Service Order Signed by both parties. “Professional Services” means consulting and other professional services provided by Contour pursuant to a Service Order Signed by both parties. “Services” means, collectively, the Cloud Services,

Managed Services, Professional Services, Additional Services, Third Party Services, and Support Services.

(2) Some Service Offerings and available configurations will vary by region. Additional professional services may be made available under separate terms.

**b. Specific Additional Terms**

(1) If you use any of the following Services, the accompanying additional terms apply to your use thereof. For the avoidance of doubt, other additional terms may be specified in an applicable Service Order.

Service	Applicable Terms
<b>Cloud Services</b>	Contour Service Level Agreement (available in the Cinch Customer Center)
<b>Colocation Services</b>	Contour Colocation Services Addendum (available in the Cinch Customer Center)
<b>Disaster Recovery as a Service</b>	Contour Disaster Recovery as a Service Addendum (available in the Cinch Customer Center)
<b>Backup as a Service</b>	Contour Backup as a Service Addendum (available in the Cinch Customer Center)
<b>Desktop as a Service</b>	Desktop as a Service Addendum (available in the Cinch Customer Center)
<b>Infrastructure Management and Monitoring Services</b>	Infrastructure Management and Monitoring Services Addendum (available in the Cinch Customer Center)
<b>Helpdesk Services</b>	Helpdesk Services Addendum (available at in the Cinch Customer Center)
<b>Infrastructure as a Service</b>	Infrastructure as a Service Addendum (available in the Cinch Customer Center)
<b>Microsoft Products and Services</b>	Microsoft Products and Services

**2. Pricing and Payment**

**a. Contour Cloud - Pay as you Go**

- (1) “Pay as you Go” pricing allows you to add, change, and remove Service Offerings at any time. You pay only for the resources you select and configure. As you select and configure each Service Offering, the Cinch Portal will display current pricing information. You will be billed for a selected Service Offering until you turn it off in the Cinch Portal.
- (2) Pricing varies for each Service Offering. Service Offerings may consist of one or more Billable Component (as defined in the next sentence). “Billable Component” means an element of a Service Offering that is billed based on a specified method of calculation. “Metered Billing” means the billing for a Billable Component of a Service Offering is calculated based on actual use of the Service Offering as measured by the Cinch Portal.

- “Storage Billing” means the billing for a Billable Component of a Service Offering is calculated based on the amount of Storage made available or actually used, as applicable. “Provision Billing” means the billing for a Billable Component of a Service Offering is calculated based on making a provisioned resource available, regardless of whether it is used. “Bandwidth” means network capacity between your Contour Cloud environment and the public Internet using our Internet service providers. Bandwidth is consumed when data is either transferred or received by your Service Offering instance. “Compute” is an allocation of a virtual server resource available to you through your purchased Service Offering. “Storage” is an allocation of block level storage volumes made available to you through your purchased Service Offering. “Standard Storage” is data Storage provided on spinning magnetic hard drives. “High-Performance Storage” means data Storage provided in whole or in part on solid state Storage devices. “IP Addresses” are publicly addressable internet protocol addresses used to provide connectivity from the public Internet.
- (3) “Billing Period” is the calendar month for which the Service Offering is being billed. If a Service Offering is not provided for a full Billing Period, then the fees for that Billing Period may be prorated (i) from the day the Service Offering was first provided through the end of the Billing Period, or (ii) from the beginning of the Billing Period through the last day in the Billing Period on which the Service Offering was provided, as appropriate. If you make configuration changes to a Service Offering that impact the fees owed for that Service Offering during a Billing Period, then the fees for that Billing Period will be calculated based on the duration that an applicable configuration was effective or the resources consumed by a configuration, as applicable.

### **3. Contour Cloud - Reserved Capacity**

- a. “Reserved Capacity” pricing provides a discount for making a minimum commitment. Based on the specific Reserved Capacity selections you sign up for, we will make available to you a set of Service Offerings (the “Reserved Capacity Tier”) for the term of your Reserved Capacity (the “Reserved Capacity Term”) at a fixed, discounted price. Reserved Capacity Terms are one or three years. Pricing for Reserved Capacity depends on the Reserved Capacity Tier, the Reserved Capacity Term, and the Reserved Capacity Payment Schedule (as defined below). The “Reserved Capacity Payment Schedule” may be full pre-payment, partial pre-payment with the remainder paid monthly, or monthly only.
- b. During the Reserved Capacity Term if you wish to sign up for additional Service Offerings not covered in your Reserved Capacity Tier, you may do so at Pay as you Go pricing. Additionally, during the Reserved Capacity Term, you may add additional Service Offerings to your Reserved Capacity Tier, in which event the Reserved Capacity Term will automatically be extended by the number of days that has elapsed since the then-current Reserved Capacity Term went into effect.

### **4. Non-Recurring**

- a. “Non-Recurring” means a Service, such as Offline Data Transfers, is provided on a single, as-requested basis. “Offline Data Transfer” means a data migration service where, subject to the terms below, Contour ships a Storage device to you for the purpose of transferring large amounts of data.

### **5. Bundled Offerings**

- a. “Bundled Offerings” are discounted Services made available through Contour’s agreements with certain third parties (“Bundling Terms”). Additional terms and conditions may apply to Bundled

Offerings, which may be made available to you by the applicable third party. If the applicable Bundling Terms terminate, Contour may terminate Bundled Offerings upon notice to you.

## **6. Other Services**

- a. Pricing and payment terms for other Services, including Managed Services, Support Services, Professional Services, and Additional Services will be specified in a Service Order Signed by the parties.

## **7. Extension**

- a. If you request that Contour provide additional hardware for your use, Contour may at its reasonable discretion, upon written notice to Customer (email sufficing), extend the term of any applicable Service Orders for a length commensurate with the cost of the additional hardware being provided for your use but not to exceed thirty six (36) months from the date of request.

## **8. Customer-Requested Service Order Changes**

- a. Customer may, from time to time, submit to Contour a request for changes to an existing Service Order. 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, 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 Signing by both parties. Any Contour change order proposal will be considered rejected if not Signed 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 any Service Orders, to the contrary, no changes that effect project time or cost will be permitted without the prior written approval from Contour.

## **9. Payments**

- a. Pay as you Go, and Non-Recurring Services are billed after the end of each calendar month during which the service was provided or requested, as applicable. Reserved Capacity services are billed based on the Reserved Capacity Payment Schedule you select. Bundled Offerings are billed at the end of each calendar month during which the service was provided or as otherwise provided by Contour's agreement with the third party sponsoring the Bundled Offering. Unless otherwise specified in an applicable Service Order Signed by the parties, Managed Services, Support Services, Professional Services, and Additional Services are billed after the end of each calendar month during which the service was provided or requested, as applicable.
- b. You agree to pay all amounts owed to us for the Services. All payments shall be made in U.S. dollars. Except as expressly provided in this Agreement, all payments to Contour are non-refundable. You must maintain valid credit card or other payment account information with us in order to receive the Services. If applicable, you hereby authorize us to charge your credit card or other payment account for the Services. Any failure to maintain valid, up-to-date payment information with us or to keep your payments current will constitute a material breach of this Agreement, for which we may suspend or terminate your access to the Services with or without notice.

- c. We may, at our sole and absolute discretion, provide a service credit to you if you have a reasonable dispute about amounts charged to you. To be eligible, the service credit request must (i) include sufficient detail for us to determine whether a service credit should be issued; and (ii) be received by email or through the Cinch Portal within fifteen (15) days after the end of the Billing Period to which the disputed amount applies. If Contour elects to provide a service credit, Contour will apply the service credit your next Billing Period. Customer's failure to provide the request and other information as required above will disqualify Subscriber from receiving a Service Credit. We reserve the right to charge interest on all unpaid delinquent amounts not subject to a reasonable dispute at the rate of 1.5% per month or the highest rate permitted by applicable law, whichever is lesser. You agree to reimburse us for all collection agency fees, attorneys' fees and other costs we may incur to collect delinquent amounts you owe to us.

## **10. Ordering and Invoicing**

- a. You may add, remove, and configure Pay as you Go Service Offerings at any time through the Cinch Portal. You may add and configure Reserved Capacity and Non-Recurring Service Offerings at any time through the Cinch Portal.

## **11. Taxes**

- a. Customer is solely responsible for all sales, use, excise, value-added other taxes and duties levied by any governmental authority or otherwise payable with respect to the transactions or amounts payable to Contour under this Agreement, except for any taxes based upon Contour's net income or unless Customer provides in writing documentation of an applicable exemption. In the event that a governmental authority determines that the taxes owed for any 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.

## **12. Service Offering Terms**

### **a. Modification and Cancellation**

- (1) We may add, remove, or modify functionality, features, and configurations of the Service Offerings, and we may suspend or stop any or all Service Offerings altogether. If we choose to suspend or stop providing a Service Offering for customers generally, we will provide notice within the Cinch Portal or by email at least 30 days before the effective date of such action.

### **b. Pricing**

- (1) Contour will notify you of price increases for the Services by posting the new prices to the Cinch Portal or by email and the effective date (the "New Pricing Date") of the new prices. Price increases for Pay as you Go, and Non-Recurring services will go into effect as of the New Pricing Date. Price increases for Reserved Capacity services will go into effect as of the first renewal after the New Pricing Date.

### **c. Third Party Fees**

- (1) In providing the 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. In addition to Section 12b above, 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).

### 13. General Services Terms

#### a. Modification

(1) We reserve the right to modify this Agreement by providing notice to you. We will provide notice of these modifications by posting notice of modifications to this Agreement in the Cinch Portal or by email. By continuing to use the Cinch Portal after the effective date of the modifications, you agree that you will be subject to the modified Agreement.

#### b. Suspension

(1) If you fail to pay for any Services when payment is due or otherwise breach this Agreement or other applicable terms, we may suspend your use of the Services (with or without notice).

#### c. Third Party Services

(1) By utilizing 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 includes any service level agreements then such service level agreements, not any service level agreements provided by Contour, 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).

#### d. Customer-Provided Materials

(1) In the event that Customer or its end-users provide software, code, services, information, content, data or other materials (“Customer-Provided Materials”) to be utilized with the Services, Customer represents and warrants that (i) it has all necessary rights and permissions for its and Contour’s use of the Customer-Provided Materials, and (ii) it will comply with any third party terms and conditions applicable to its use of the Customer-Provided Materials. Customer-Provided Materials are not included in any Contour-provided warranties or service level commitments.

#### e. Contractors

(1) Contour may use contractors and third-party service providers (together, “Service Providers”) to provide the Contour Cloud services. Subject to Section 20 below, Contour shall be responsible for any Service Providers used to provide the Contour Cloud services to Customer.

#### f. Acceptable Use

(1) Customer and its employees, representatives, and end-users shall comply at all times with Contour’s Acceptable Use Policy, available at [https://www.contourds.com/wp-content/uploads/2018/05/acceptable\\_use\\_policy.pdf](https://www.contourds.com/wp-content/uploads/2018/05/acceptable_use_policy.pdf), as may be amended from time to time. Additionally, Customer may not conduct load testing of the Cinch Portal or any Services (such as through the use of automated or manual stress tests) without prior written approval from Contour, which may be granted, denied, or conditioned at Contour’s sole and absolute discretion. In addition, Customer and its employees, representatives, and end-users will not use the Services in violation of law or third-party rights, or in a manner that disrupts or may harm Contour’s facilities or network, or other Contour customers.

(2) Contour may suspend or terminate its provision of Services to Customer, or remove or disable access to Customer’s content or files with or without notice: (i) in the event of Customer’s material breach of this Agreement, (ii) if Contour in its sole and absolute discretion believes any Customer-Provided Materials or any other content or files are illegal, violate any third party’s copyright, patent, trademark, trade secret, privacy or other third-party proprietary right, or contain or disseminate viruses, spyware or other malware, (iii) if Contour reasonably believes Customer has violated the Acceptable Use Policy, or (iv) as

otherwise necessary to protect Contour, its products or services, or customers from material harm.

**g. Cooperation**

- (1) Customer agrees to cooperate with Contour as reasonably necessary for Contour to provide the Services in a timely, uninterrupted fashion. Contour shall not be responsible for any delays, defects, losses, failures, or outages due to Customer's failure to provide timely assistance or information requested by Contour.

## 14. Term and Termination

**a. Term**

- (1) The term of this Agreement commences on the date you accept this Agreement or, if applicable, this Agreement is Signed by both parties (the "Effective Date") and shall continue until terminated in accordance with this Agreement. Individual Services made available under this Agreement may have a specific term.

**b. Termination**

- (1) Either party may terminate this Agreement and all Services provided hereunder (i) upon 90 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- (2) "Last Service Date" means the first date on which Customer has no active Service Orders under this Agreement. On the earlier of the following, this Agreement will terminate: (i) automatically, one (1) year after the Last Service Date, or (ii) upon written notice by either party at least 30 days after the Last Service Date.
- (3) For the avoidance of doubt, neither party may terminate this Agreement except as expressly provided in this Section 14b or otherwise in this Agreement.

**c. Effect of Termination**

- (1) Upon the expiration or termination of this Agreement or a Service, all applicable licenses and Services shall terminate. In no event shall any termination relieve Customer of the obligation to pay any fees and other amounts payable to Contour for the period prior to the effective date of termination, or otherwise payable under this Agreement. After the expiration or termination of this Agreement or a Service, each party shall return or destroy the other party's Confidential Information and Contour shall delete all Customer-Provided Materials and any other content or data associated with the terminated Service(s).

## 15. Survival

Sections 16d, 17, 19, 20, 22, and 23 shall survive any termination or expiration of this Agreement.

## 16. Licenses and Ownership

**a. By Customer**

- (1) As part of its use of the Services, Customer may provide Customer-Provided Materials to Contour. Customer gives Contour a royalty-free, worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable (except to Service Providers), limited license to use, reproduce, modify, transmit, perform, translate, distribute and display Customer-Provided Materials, in connection with the provision of the Services. Except as contemplated by this Agreement,



Customer reserves all right, title and interest in and to Customer-Provided Materials. Customer is solely responsible for all Customer-Provided Materials. Customer may not resell the Services.

**b. By Contour**

- (1) Contour may provide or make available certain data, information, and other materials (collectively, "Contour Materials"). Contour Materials include, without limitation, all 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. During the term of this agreement or an applicable Service Offering, Contour hereby grants Customer a limited, non-transferable and non-sublicensable (except in connection with a permitted assignment of this Agreement), worldwide license to access and use the Services and Contour Materials solely for its internal business purposes during the applicable Service term and solely in accordance with the terms of this Agreement, including the relevant Order Form(s). Additional terms apply to use of Third Party Services and are available from the applicable third party. Except as expressly provided in this Agreement, Contour shall retain all right, title, and interest in and to the Services and Contour Materials and all copies, derivatives, modifications, and enhancements thereto.

**c. Contour-Provided Equipment**

- (1) 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 expiration or termination of this Agreement and/or an applicable Service Order, or (ii) any amounts owed by Customer under this Agreement, including any Service Orders, are more than forty-five (45) days past due, then Contour may, upon twenty-four (24) hours prior written notice (email sufficing), remove any Contour Equipment from any Customer Location.

**d. Notices**

- (1) Customer shall not delete, alter, cover, or distort any copyright, trademark, or other proprietary notice placed by Contour on or in the Services or Contour Materials and shall ensure that all such notices are reproduced on all copies thereof.

**e. Suggestions and Usage Data**

- (1) From time to time Customer may provide suggestions, enhancement or modification requests, recommendations or other feedback relating to the provision, operation, performance, or functionality of the Services (the "Suggestions"). Contour owns all right, title and interest in any Suggestions, and Customer hereby assigns and transfers to Contour all right, title and interest in and to the Suggestions.
- (2) Notwithstanding anything in this Agreement to the contrary, Contour may retain and use aggregated data which is derived from use of the Services and does not identify Customer or its end-users in order to conduct research and analysis, and to provide and improve the Services.

## 17. Confidentiality

### a. Confidential Information

- (1) “Confidential Information” means any information of a confidential, proprietary or competitively sensitive nature, or that a reasonable business person would consider confidential, whether marked or unmarked, relating to the disclosing party or its affiliates that is disclosed to or obtained by the receiving party in connection with this Agreement, whether before or after the effective date of this Agreement. Confidential Information of Contour includes without limitation all business partner information, customer information, and employee information, pricing policies, profit margins, operating methods, marketing plans, technology, configurations, system accounts, user IDs, passwords, security plans, measures and settings, disaster recovery or business continuity plans and measures, databases, networks, systems, the results of any Service benchmark test or performance information, and any other non-public information related to Contour’s business or the Services.
- (2) Notwithstanding anything in this Section 17a to the contrary, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (b) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (c) is received from a third party without breach of any obligation owed to the disclosing party, or (d) was independently developed by the receiving party.

### b. Protection of Confidential Information

- (1) Except as necessary to perform its obligations under the Agreement, the receiving party shall not disclose such other party’s Confidential Information to any third party. Each party shall exercise the same degree of care with the other party’s Confidential Information as it exercises with its own confidential and proprietary information, and in no event less than a reasonable degree of care. The receiving party shall disclose Confidential Information only to those employees, service providers and agents have a “need to know” in connection with this Agreement and are subject to written or fiduciary obligations of confidentiality equivalent to those of this Section 17. The receiving party shall not use any Confidential Information except in accordance with this Agreement for the sole purpose of performing its obligations or exercising its rights under this Agreement.

### c. Compelled Disclosure

- (1) Each party may disclose Confidential Information to comply with any applicable law or regulation, or in response to a lawfully issued subpoena, document request, or court order, provided that the party being required to disclose Confidential Information shall (unless prohibited by applicable law or a law enforcement authority), promptly upon receipt of such a request or court order, give written notice to the other party and provide reasonable assistance to the other party (at the other party’s expense) in seeking an injunction, protective order, or other relief to prevent disclosure. Contour reserves the right to charge Customer you at Contour’s then-current rate for professional services if Contour is

requested or required to respond to subpoenas and/or document requests with respect to Customer-Provided Materials or other Customer information.

**d. Remedies**

- (1) Contour and Customer acknowledge that the remedy at law for any breach of this Section 17 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 receiving party's obligations under these provisions without the necessity of proving the actual damage to the disclosing party or the inadequacy of a legal remedy or posting bond. 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.

## **18. Warranties and Disclaimers**

**a. Mutual Warranties**

- (1) Each party represents and warrants that it has all rights and powers necessary to enter into this Agreement.

**b. Contour Warranties**

- (1) Contour warrants that (i) it shall perform all Managed Services, Professional Services, and Support Services in a professional, workmanlike manner with a level of care and skill ordinarily exercised in similar circumstances by providers of the same or similar services; (ii) all Service Offerings shall conform materially to the applicable user documentation published by Contour; and (iii) the Services will comply with all laws generally applicable to Contour's business as a technology services provider. As Contour's sole liability and Customer's sole and exclusive remedy for any breach of the foregoing warranties in this Section 18b, Contour shall re-perform any defective Services at no additional cost and use diligent efforts to remediate any material non-conformities in the Services within a reasonable time or, if Contour has failed to remediate any such non-conformity or provide a reasonable workaround within thirty (30) days, Customer may at its option terminate the applicable Service Order with respect to the defective Services with no additional liability upon written notice to Contour. Notwithstanding the foregoing, Contour shall not be responsible for any defects or non-conformities that arise from (w) Customer's misuse of Services or Customer-Provided Materials or breach of this Agreement, (x) any modification or configuration of Services or Customer-Provided Materials by a person other than Contour or its authorized subcontractors, (y) Customer's failure to maintain minimum technology standards for use of the Services as specified by Contour from time to time, or (z) an event of Force Majeure (as defined below).

**c. Customer Warranties**

- (1) Customer warrants that (i) Customer's use of the Services and the provision of any Customer-Provided Materials to Contour hereunder is in compliance with Customer's privacy policies, if applicable, and all applicable federal, state, local, and foreign laws, statutes, rules and regulations, including without limitation any laws relating to data privacy and data security ; (ii) Customer-Provided Materials do not and shall not infringe, misappropriate, or violate any patent, copyright, trademark, trade secret, privacy or other proprietary rights of any third party or constitute libel or defamation; (iii) Customer-Provided Materials will not contain any viruses, spyware, or other malware; and (iv)

Customer has obtained all permissions and consents required, or Customer otherwise has a sufficient legal basis, for Customer's use of the Services and provision of Customer-Provided Materials, and Customer will provide Contour with evidence of any required permission, consent, or other legal basis upon request.

**d. Disclaimers**

- (1) Except as expressly provided in Sections 18a and 18b, the Services are provided to Customer "as-is." Contour makes no representations or warranties of any kind whatsoever, express or implied, in connection with this Agreement or the Services. Additionally, Contour disclaims any warranty (i) that the Services will be error free or uninterrupted or that all errors will be corrected, (ii) that the Services will be free of viruses or other malicious code, (iii) with respect to the security of the Services, or to 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, and (iv) for issues arising from inadequate bandwidth at your locations, whether on-site or remote. No advice or information, whether oral or written, obtained from Contour or elsewhere shall create any warranty not expressly stated in Sections 18a and 18b. Contour is not responsible for issues arising from inadequate bandwidth at Customer's locations. Contour has no responsibility whatsoever for any Third-Party Services.
- (2) **CUSTOMER IS SOLELY RESPONSIBLE FOR SELECTING AND CONFIGURING CLOUD SERVICES THAT ARE APPROPRIATE TO ITS NEEDS. CONTOUR SHALL HAVE NO RESPONSIBILITY WHATSOEVER ARISING FROM CUSTOMER'S SELECTIONS AND CONFIGURATIONS.**
- (3) No advice or information, whether oral or written, obtained from Contour or elsewhere shall create any warranty not expressly stated in this Section 18.

## **19. Indemnification**

**a. Indemnification by Contour**

- (1) 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, 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 the (i) infringement or misappropriation of any U.S. patent, copyright or other U.S. intellectual property right of any third party by the source code and/or other materials contained in the Services, the Contour Cloud, or the Contour Materials (excluding Third Party Services, Customer-Provided Materials, or other materials not provided by Contour), as used in accordance with this Agreement, or (ii) gross negligence or willful misconduct of Contour.
- (2) Notwithstanding the foregoing, Contour shall not be responsible to the extent that any alleged infringement or misappropriation arises from (i) alterations made by Customer or third parties to Services or Contour Materials without Contour's consent, (ii) any specifications, instructions or other information provided by Customer or its representatives, including, but not limited to, Customer-Provided Materials, (iii) breach of this Agreement or improper or unauthorized use of the Services or Contour Materials by Customer or any third party obtaining access through Customer, or (iv) combination of the Services or Contour Materials with products or services that are not provided by Contour.

Should any Services or Contour Materials become, or in Contour's opinion likely to become, the subject of a claim of infringement or misappropriation, Contour shall, at its option and expense either: (a) procure for Customer the right to continue to use the Services or Contour Materials, or (b) replace or modify the infringing Services or Contour Materials to make their use non-infringing without loss of substantial functionality (together, the "Remedial Options"). Notwithstanding the foregoing, if Contour, in its sole discretion, determines that the Remedial Options are not available to it on commercially reasonable terms, Contour, at its option, may terminate the provision or Customer's use of the allegedly infringing Service or Contour Materials and shall promptly provide a refund of prepaid, unused fees for the terminated Service or Contour Materials or a service credit for other Services. This section 19a provides Customer's sole and exclusive remedy and Contour's sole obligation and liability for any intellectual property infringement by the Services and Contour Materials.

**b. Indemnification by Customer**

- (1) Customer shall indemnify, defend and hold harmless Contour, its affiliates and its and their respective 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, (iii) any products and/or services provided by Customer to its customers, offered by Customer to any prospective customer, or used to provide Customer's products and/or services, (iv) any Third Party Services, and any materials, information and/or specific instructions provided by Customer to Contour, including all Customer-Provided Materials, (v) any violation of the Acceptable Use Policy by Customer its end-users, or (vi) the use of the Services or any Third Party Services by Customer.

**c. Indemnification Process**

- (1) 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 19, 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 material 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").
- (2) 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. 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 and has commenced and diligently pursued the defense of such Claim if such amount was agreed to without the written consent of the Indemnifying Party.

(3) 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.

## **20. Limitation of Liability**

### **a. Aggregate Liability**

(1) Customer agrees that Contour's maximum, aggregate liability under this Agreement, for any and all claims, damages and 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 latest claim.

### **b. Consequential Damages**

(1) 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, business interruption 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 and even if a remedy fails of its essential purpose. Contour is not liable for the costs of data recovery or substitute goods or services. Contour and Customer acknowledge that the limitations of liability contained in this Section 20 are a material part of the Agreement and the allocation of risk between the parties on which pricing depends.

## **21. Audits**

a. Customer acknowledges that certain products and services provided to Customer under this Agreement, including Third Party Services, may have use restrictions, limits on the number of authorized installations, and other licensing restrictions (collectively, "Use Limitations"), which may be required by a third party provider of a product or service. During the term of this Agreement and for one (1) year after any expiration or termination hereof, Customer shall make available all relevant information related to Customer's compliance with such Use Limitations for Contour's (or its authorized agent's) inspection at Contour's reasonable request at Customer's location during Customer's regular business hours and without unreasonably disrupting Customer's business operations. In the event that such inspection reveals non-compliance with such Use Limitations, Customer shall promptly pay to Contour any applicable amounts underpaid by Customer, interest on late amounts owed to Contour (calculated as 1.5% per calendar month of underpayment), and Contour's reasonable out-of-pocket costs for such inspection.

## 22. Non-Solicit

a. 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.

## 23. General Provisions

### a. Relationship of the Parties

(1) The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

### b. No Third-Party Beneficiaries

(1) There are no third-party beneficiaries to this Agreement.

### c. Notices

(1) Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) upon delivery by first class mail with delivery confirmation, or (iii) upon delivery by nationally known overnight courier with delivery confirmation. Notices to Contour shall be addressed to the attention of CEO, Contour Data Solutions LLC, 4259 West Swamp Road, Suite 301, Doylestown, PA, 18902. All notices to Customer shall be addressed to the then-current address provided by Customer in the Cinch Portal. Contour may change its notice address by providing notice to Customer in accordance with this Section 23c or by providing updated information in the Cinch Portal.

### d. No Waiver

(1) No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

### e. Severability

(1) If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

### f. Assignment

(1) This Agreement may not assigned, in whole or in part, by either party without the prior written consent of the other party; provided, however, that either party may assign this Agreement, upon written notice to the other party, (i) to any successor to substantially all its business or assets by merger, reorganization, combination, consolidation, purchase of assets or otherwise, or to any party acquiring substantially all of the assets or business of the business unit of such party to which this Agreement relates, or (ii) to an affiliate.

### g. Governing Law

(1) 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 and venue of the federal and state courts sitting in the Eastern District of Pennsylvania in any dispute arising under this Agreement.

**h. Force Majeure**

(1) Except for Customer's payment obligations under this Agreement, neither party will be liable for any failure or delay in performance under this Agreement which might be due in whole or in part, directly or indirectly, to any contingency, or cause of, any nature beyond the reasonable control of such party (individually and collectively, a "Force Majeure Event"). Force Majeure Events include, but are not limited to, fire, explosion, earthquake, storm, flood or other weather, unavailability or failures of necessary utilities or communications services (including the Internet) or raw materials, power outage, strike, lockout, unavailability of components, acts or omissions of common carriers, any act by a third party, act of war, act of terrorism, insurrection, riot, act of God or a public enemy, any act of government or other public authorities including, any law, ordinance, act, order, regulation, decree, 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 and 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 Event at any time prior to resumption of performance by the party suffering the Force Majeure Event.

**i. Entire Agreement**

(1) This Agreement, including any Service Orders Signed by both parties or any request for Service Offerings made through the Cinch Portal that is accepted by Contour, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as expressly provided in this Agreement, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless it is in writing and Signed or accepted electronically by the party against which the modification, waiver or amendment is sought to be enforced. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or in any other Customer order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**24. Conflicts**

a. Notwithstanding anything to the contrary in this Agreement, including all exhibits, addendums, attachments and any documents directly or indirectly referenced therein, the following order of precedence (from highest to lowest) shall apply in the event of any conflict between the terms (if applicable) of this Agreement:

- (1) Business Associate Agreement.
- (2) Standard Contractual Clauses.
- (3) Security, Privacy and Data Processing Addendum.
- (4) The body of the Contour Master Cloud and Managed Services Agreement.
- (5) Service Level Addendum.
- (6) Infrastructure as a Service Addendum.
- (7) Infrastructure Management and Monitoring Addendum.
- (8) Hosting Addendum.
- (9) Desktop as a Service Addendum.



- (10) Disaster Recovery as a Service Addendum.
  - (11) Backup as a Service Addendum.
  - (12) Helpdesk Addendum;
  - (13) Any other Contour exhibits, addendums or documents referenced directly or indirectly by the Agreement; and
  - (14) Any third-party terms and conditions.
- b. In the event of a conflict between any documents or terms of this Agreement that are required by applicable laws or in the event that any documents or terms of this Agreement are in conflict with applicable laws due to the order of precedence above in this Section 24, then the applicable terms shall be interpreted to allow for compliance with applicable laws in the following order of precedence: United States federal laws, Pennsylvania laws, the laws of Customer’s jurisdiction of formation (if in the U.S.), the laws of any other U.S. state, the laws of Customer’s jurisdiction of formation (if outside the U.S.), the laws of the European Union, and the laws of any foreign nation.

**25. Counterpart Signatures**

- a. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one agreement.

**Revision History**

<b>Contour Data Solutions Public Information</b>					
<b>Type</b>	<b>Title</b>	<b>Date</b>	<b>Version</b>	<b>Description of Changes</b>	<b>Author</b>
Terms & Conditions	Contour Master Cloud and Managed Services Agreement	05/05/2020	1.0	Initial Draft	Rocco Guerriero
Terms & Conditions	Contour Master Cloud and Managed Services Agreement	06/03/2020	1.0	Final Release	Rocco Guerriero
Terms & Conditions	Contour Master Cloud and Managed Services Agreement	06/08/2020	2.0	Complete review	Rocco Guerriero
Terms & Conditions	Contour Master Cloud and Managed Services Agreement	06/08/2020	2.0	Organizational Format / Layout Changes	Rocco Guerriero