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## Terms and Conditions of Compute and Storage Product Sales and Service Projects

### 1. General

a. THE TERMS AND CONDITIONS OF PRODUCT SALES AND SERVICE PROJECTS (THE "PRODUCT/SERVICES TERMS AND CONDITIONS") ARE LIMITED TO THOSE CONTAINED HEREIN. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS IN ANY FORM DELIVERED BY YOU ("CUSTOMER") ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS AND NOTICE OF OBJECTION TO THEM AND REJECTION OF THEM IS HEREBY GIVEN.

BY ACCEPTING DELIVERY OF THE PRODUCTS OR BY ENGAGING MERIPLEX COMMUNICATIONS, LTD ("MERIPLEX") TO PROVIDE PRODUCT OR PERFORM OR PROCURE ANY SERVICES, CUSTOMER AGREES TO BE BOUND BY AND ACCEPTS THESE PRODUCT/SERVICES TERMS AND CONDITIONS UNLESS CUSTOMER AND MERIPLEX HAVE SIGNED A SEPARATE AGREEMENT, IN WHICH CASE THE SEPARATE AGREEMENT WILL GOVERN.

ANY GENERAL DESCRIPTION OF THE TYPES OF PRODUCTS OR SERVICES AND RESULTS THEREOF POSTED ON MERIPLEX'S WEBSITE DO NOT CONSTITUTE PART OF THE AGREEMENT BETWEEN MERIPLEX AND CUSTOMER.

b. These Product/Services Terms and Conditions constitute a binding contract between Customer and Meriplex and are referred to herein as the "Product/Services Terms and Conditions." Customer accepts these Product/Services Terms and Conditions by making a purchase from or placing an order with Meriplex or otherwise requesting products or equipment (the "Products") or engaging Meriplex to perform or procure any Services (as this and all capitalized terms are defined herein). These Product/Services Terms and Conditions are subject to change without prior notice, except that the Product/Services Terms and Conditions posted on the Meriplex web site (the "Site") at the time Customer places an order or signs a Sales Order will govern the order in question, unless otherwise agreed in writing by Meriplex and Customer. Meriplex will notify you of any change to the Terms and Conditions by e-mail or U.S. Mail. You agree that any one of the foregoing will constitute sufficient notice of such changes. If you do not agree to the changes, you must notify Meriplex in writing of your objection and the impact on your use of the service no later than ten (10) days after our notice of the change to the Terms and Conditions. If we cannot accommodate your objection and the change materially affects your use of our service, we will agree to terminate the service without penalty within forty-five (45) days after our receipt of your objection. If Meriplex does not receive a notice of objection from you within the 10-day period described above, you shall be deemed to have agreed to proposed change(s), which shall thereafter by a part of this Agreement.

Customer consents to receiving electronic records, which may be provided via a Web browser or e-mail application connected to the Internet; individual consumers may withdraw consent to receiving electronic records or have the record provided in non-electronic form by contacting Meriplex. In addition, Internet connectivity requires access services from an Internet access provider, such as Meriplex. Contact Meriplex or your local access provider for details. Electronic signatures (or copies of signatures sent via electronic means) are the equivalent of written and signed documents.

Customer may issue a purchase order for administrative purposes only. Additional or different terms and conditions contained in any such purchase order will be null and void. No course of prior dealings between the parties and no usage of trade will be relevant to determine the meaning of these Product/Services Terms and Conditions or any purchase order, invoice for the purchase of products or goods (each, a "Purchase Order" or "Sales Order"), or any Sales Order or other document in electronic or written form that is signed and delivered by each of the parties for the performance of Services other than Third Party Services (each such Purchase Order, Sales Order or other document, a "Sales Order"). These Product/Services Terms and Conditions and the applicable Sales Order to which they are attached or in which these Products/Services Terms and Conditions are referred to or described (collectively, this "Agreement") contain the entire understanding of the parties with respect to the matters contained herein and supersede and replace in their entirety any and all prior communications and contemporaneous agreements and understandings, whether oral, written, electronic or implied, if any, between the parties with respect to the subject matter hereof.

### 2. Choice of Law and Forum

THESE PRODUCT/SERVICES TERMS AND CONDITIONS, ANY STATEMENTS OF WORK, THE SERVICES HEREUNDER, AND ANY SALE OF PRODUCTS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS WITHOUT REGARD TO CONFLICTS OF LAWS RULES. ANY ARBITRATION, ENFORCEMENT OF AN ARBITRATION, OR LITIGATION WILL BE BROUGHT EXCLUSIVELY IN HARRIS COUNTY, TEXAS, AND CUSTOMER CONSENTS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED THEREIN, SUBMITS TO THE JURISDICTION THEREOF, AND WAIVES THE RIGHT



TO CHANGE VENUE. CUSTOMER FURTHER CONSENTS TO THE EXERCISE OF PERSONAL JURISDICTION BY ANY SUCH COURT WITH RESPECT TO ANY SUCH PROCEEDING. Customer waives all rights to bring any claim, suit or proceeding more than one (1) year after the date the cause of action arose. The rights and remedies provided Meriplex under these Product/Services Terms and Conditions are cumulative, in addition to, and do not limit or prejudice any other right or remedy available at law or in equity.

### 3. Title; Risk of Loss

If Customer provides Meriplex with Customer's carrier account number or selects a carrier other than a carrier that regularly ships for Meriplex, title to Products and risk of loss or damage during shipment pass from Meriplex to Customer upon shipment from Meriplex's facility (F.O.B. Origin, freight collect). For all other shipments, title to Products and risk of loss or damage during shipment pass from Meriplex to Customer upon receipt by Customer (F.O.B. Destination, freight prepaid and added). Notwithstanding the foregoing, title to software will remain with the applicable licensor(s), and Customer's rights therein are contained in the license agreement between such licensor(s) and Customer. Meriplex retains a security interest in the Products until payment in full is received.

### 4. Services

a. Customers may order services (collectively, "Services") from or through Meriplex from time to time. Certain Services, such as extended warranty service by manufacturers, are sold by Meriplex as a distributor or sales agent ("Third Party Services").

b. In the case of Third Party Services, the third party shall be the party responsible for providing the services to the Customer and Customer agrees to look solely to the third party for any loss, claims, or damages arising from or related to the provision of such Third Party Services. CUSTOMER HEREBY RELEASES, DEFENDS, INDEMNIFIES, AND HOLDS HARMLESS MERIPLEX AND THE ENTITIES THAT CONTROL, ARE CONTROLLED BY, OR ARE UNDER COMMON CONTROL WITH MERIPLEX ("AFFILIATES") AND THEIR RESPECTIVE EMPLOYEES, AGENTS AND CONTRACTORS FROM ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THE PURCHASE OR PROVISION OF ANY SUCH THIRD PARTY SERVICES. Any amounts, including but not limited to taxes associated with Third Party Services which may be collected by Meriplex will be collected solely in the capacity as an independent sales agent.

c. Where Services are ordered in a Sales Order, each Sales Order hereby incorporates these Product/Services Terms and Conditions and constitutes a separate agreement with respect to the Services performed. In the event of an addition to or a conflict between any term or condition of the Sales Order and these Product/Services Terms and Conditions, the Product/Services Terms and Conditions will control, except as expressly amended in the applicable Sales Order by specific reference to the Product/Services Terms and Conditions. Each such amendment will be applicable only with respect to such Sales Order and not to future Statements of Work. Changes to the scope of the Services described in a Sales Order will be made only in a writing executed by authorized representatives of both parties. Meriplex will have no obligation to commence work in connection with any such change, unless and until the change is agreed upon in writing executed by both parties. All such changes to the scope of the Services will be governed by these Product/Services Terms and Conditions and the applicable Sales Order. Each Sales Order may be signed in separate counterparts each of which shall be deemed an original and all of which together will be deemed to be one original.

### 5. Cooperation

a. In addition to any specific Customer duties set forth in any applicable Sales Order, Customer agrees to cooperate with Meriplex in connection with performance of the Services by providing (i) timely responses to Meriplex's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Meriplex which are necessary or useful as determined by Meriplex in connection with providing the Services, including, but not limited to, physical and computer access to Customer's computer systems, and (iii) all Required Consents necessary for Meriplex to provide the Services. "Required Consents" means consents or approvals required to give Meriplex, its Affiliates, and its and their employees, agents or subcontractors the right or license to access premises as necessary to provide the services and/or to access, use, and/or modify all data and third party products. Customer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of the agents, employees, or subcontractors ("Personnel") engaged or appointed by Customer who are selected by Customer to work with Meriplex.

b. Meriplex will follow all reasonable Customer security rules and procedures, as communicated in writing by Customer to Meriplex from time to time.

### 6. Access

Meriplex may perform the Services at Customer's place of business, at Meriplex's own facilities, or such other locations as Meriplex and Customer deem appropriate. When the Services are performed at Customer's premises, Meriplex will attempt to perform such

Services within Customer's normal business hours unless otherwise jointly agreed to by the parties. Customer agrees to provide Meriplex access to Customer's staff and any other Customer resources (and when the Services are provided at another location designated by Customer, the staff and resources at such location) that Meriplex determines are useful or necessary for Meriplex to provide the Services. When the Services are provided on Customer's premises or at another location designated by Customer, Customer agrees to maintain adequate insurance coverage to protect Meriplex and Customer's premises. **CUSTOMER AGREES TO RELEASE, INDEMNIFY AND HOLD HARMLESS MERIPLEX, ITS AFFILIATES, AND ITS AND THEIR CONTRACTORS, AGENTS AND EMPLOYEES FROM ANY LOSS, COST, DAMAGE, OR EXPENSE (INCLUDING, BUT NOT LIMITED TO, ATTORNEYS FEES AND EXPENSES) ARISING OUT OF ANY PRODUCT LIABILITY, DEATH, PERSONAL INJURY OR PROPERTY DAMAGE OR DESTRUCTION OCCURRING AT SUCH LOCATION IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES, INCLUDING THAT ARISING FROM THE SOLE NEGLIGENCE OF MERIPLEX, OTHER THAN THAT CAUSED SOLELY AS A RESULT OF MERIPLEX'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

## 7. Payment

a. Orders are not binding upon Meriplex until accepted by Meriplex. Customer agrees to pay the total purchase price listed in the Sales Order plus shipping (to the extent shipping is not prepaid by Customer). Terms of payment are within Meriplex's sole discretion. In connection with Products and Services being performed pursuant to a Sales Order, Customer will pay for the Products and Services in the amounts and in accordance with any payment schedule set forth in the applicable Sales Order. If no payment schedule is provided, Customer will pay for the Products and Services as invoiced by Meriplex. Invoices are due and payable within the time period specified on the invoice, measured from the date of invoice, normally thirty (30) days from the date of billing, subject to continuing credit approval by Meriplex. Meriplex may invoice Customer separately for partial shipments of Products, and Meriplex may invoice Customer for all of the Services described in a Sales Order or any portion thereof. Customer agrees to pay interest on all past-due sums at the lower of one and one-half percent (1.5%) per month or the highest rate allowed by law. Meriplex reserves the right to change the late fee at any time in the future pursuant to Section 1.b above and as permitted by applicable law. Customer agrees to and will pay for and will indemnify and hold Meriplex and its Affiliates harmless from any applicable sales, use, transaction, excise or similar taxes and any federal, state, or local fees or charges (including, but not limited to, environmental or similar fees), imposed on, in respect of, or otherwise associated with any Sales Order, the Products, or the Services. Customer must claim any exemption from such taxes, fees or charges at the time of purchase and provide Meriplex with the necessary supporting documentation.

b. In the event of a payment default, Customer will be responsible for all of Meriplex's costs of collection, including, but not limited to, court costs, filing fees and attorneys' fees. In addition, if payments are not received as described above, Meriplex reserves the right to suspend Services until payment is received.

c. Meriplex may charge a service fee for all returned checks and bankcard or charge card charge backs. The current late fee is listed in the list of charges or can be provided upon request.

d. Except as otherwise specified on an applicable Sales Order, Customer will reimburse Meriplex for all reasonable out-of-pocket expenses incurred by Meriplex in connection with the performance of the Services, including, but not limited to, travel and living expenses.

## 8. Export Sales

If this transaction involves an export of items (including, but not limited to commodities, software or technology) subject to the Export Administration Regulations, such items were exported from the United States by Meriplex in accordance with the Export Administration Regulations. Customer agrees that it will not divert, use, export or re-export such items contrary to United States law. Customer expressly acknowledges and agrees that it will not export, re-export, or provide such items to any entity or person within any country that is subject to United States economic sanctions imposing comprehensive embargoes without obtaining prior authorization from the United States Government. Customer also expressly acknowledges and agrees that it will not export, re-export, or provide such items to entities and persons that are ineligible under United States law to receive such items, including but not limited to, any person or entity on the United States Treasury Department's list of Specially Designated Nationals or on the United States Commerce Department's Denied Persons List, Entity List, or Unverified List. In addition, manufacturers' warranties for exported Products may vary or may be null and void for Products exported outside the United States.

## 9. Warranties

Customer understands that Meriplex is not the manufacturer of the Products purchased by Customer hereunder and the only warranties offered are those of the manufacturer, not Meriplex or its Affiliates. In purchasing the Products, Customer is relying on the manufacturer's specifications only and is not relying on any statements, representations, specifications, photographs or other illustrations representing the Products that may be provided by Meriplex or its Affiliates. MERIPLEX AND ITS AFFILIATES HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES EITHER EXPRESS OR IMPLIED, RELATED TO PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF TITLE, ACCURACY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR



PURPOSE, WARRANTY OF NONINFRINGEMENT, OR ANY WARRANTY RELATING TO THIRD PARTY SERVICES. THE DISCLAIMER CONTAINED IN THIS PARAGRAPH DOES NOT AFFECT THE TERMS OF ANY MANUFACTURER'S WARRANTY. Customer expressly waives any claim that it may have against Meriplex or its Affiliates based on any product liability or infringement or alleged infringement of any patent, copyright, trade secret or other intellectual property rights (each a "Claim") with respect to any Product and also waives any right to indemnification from Meriplex or its Affiliates against any such Claim made against Customer by a third party. Customer acknowledges that no employee of Meriplex or its Affiliates is authorized to make any representation or warranty on behalf of Meriplex or any of its Affiliates that is not in this Agreement.

Meriplex warrants that the Services will be performed in a good and workmanlike manner. Customer's sole and exclusive remedy and Meriplex's entire liability with respect to this warranty will be, at the sole option of Meriplex, that Meriplex either (a) use its reasonable commercial efforts to reperform or cause to be reperformed any Services not in substantial compliance with this warranty or (b) refund amounts paid by Customer related to the portion of the Services not in substantial compliance. In the event of a breach of the foregoing warranty, Meriplex's obligations under clause (a) or (b), as elected by Meriplex, shall only apply if Customer notifies Meriplex of the alleged breach in writing within five (5) business days after performance of the applicable Services.

EXCEPT AS SET FORTH HEREIN OR IN ANY SALES ORDER THAT EXPRESSLY AMENDS MERIPLEX'S WARRANTY, AND SUBJECT TO APPLICABLE LAW, MERIPLEX EXPRESSLY DISCLAIMS AND MAKES NO OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY RELATING TO THIRD PARTY SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN PERFORMING SERVICES AND ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER ACKNOWLEDGES THAT NO REPRESENTATIVE OF MERIPLEX OR OF ITS AFFILIATES IS AUTHORIZED TO MAKE ANY REPRESENTATION OR WARRANTY ON BEHALF OF MERIPLEX OR ANY OF ITS AFFILIATES THAT IS NOT IN THESE PRODUCT/SERVICES TERMS AND CONDITIONS OR IN A SALES ORDER EXPRESSLY AMENDING MERIPLEX'S WARRANTY.

Customer shall be solely responsible for daily back-up, security, and other protection of its data, network, and software against loss, damage, or corruption. Customer shall be solely responsible for reconstructing data (including but not limited to data located on disk files and memories) and software that may be lost, damaged, or corrupted during the performance of Services. **CUSTOMER HEREBY RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS MERIPLEX, ITS AFFILIATES, AND THEIR SUPPLIERS, CONTRACTORS, EMPLOYEES AND AGENTS FROM ALL LIABILITY, INCLUDING THAT ARISING FROM THE SOLE NEGLIGENCE OF MERIPLEX, ITS AFFILIATES AND THEIR SUPPLIERS, CONTRACTORS, EMPLOYEES AND AGENTS, IN CONNECTION WITH THE LOSS, DAMAGE, OR CORRUPTION OF DATA AND/OR SOFTWARE, AND CUSTOMER ASSUMES ALL RISK OF LOSS, DAMAGE, OR CORRUPTION OF DATA, NETWORK AND/OR SOFTWARE IN ANY WAY RELATED TO OR RESULTING FROM THE SERVICES.**

Meriplex will not be responsible for and no liability shall result to Meriplex or any of its Affiliates for any delays in delivery or in performance which result from any circumstances beyond Meriplex's reasonable control, including, but not limited to, Product unavailability, manufacturer delays, carrier delays, delays due to fire, severe weather conditions, failure of power, labor problems, acts of war, terrorism, embargo, acts of God or acts or laws of any government or agency. Any shipping dates or completion dates provided by Meriplex or any purported deadlines contained in a Sales Order or any other document are estimates only.

## 10. Pricing Information; Availability Disclaimer

Meriplex reserves the right to make adjustments to pricing, Products, and Service offerings for reasons including but not limited to changing market conditions, Product discontinuation, Product unavailability, manufacturer price changes, supplier price changes, and errors in advertisements. All orders are subject to Product availability and the availability of Personnel to perform the Services. Therefore, Meriplex cannot guarantee that it will be able to fulfill Customer's orders. If Services are being performed on a time and materials basis, any estimates provided by Meriplex are for planning purposes only.

## 11. Limitation of Liability

**NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY SET FORTH HEREIN, UNDER NO CIRCUMSTANCES, WILL MERIPLEX, ITS AFFILIATES OR ITS OR THEIR SUPPLIERS, EMPLOYEES, CONTRACTORS, OR AGENTS BE LIABLE FOR: (A) ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS, BUSINESS, REVENUES OR SAVINGS, WHETHER A CLAIM FOR ANY SUCH LIABILITY IS PREMISED UPON BREACH OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY OF LIABILITY; (B) ANY CLAIMS, DEMANDS, OR ACTIONS AGAINST CUSTOMER BY ANY THIRD PARTY; (C) ANY LOSS OR CLAIM ARISING OUT OF OR IN CONNECTION WITH CUSTOMER'S IMPLEMENTATION OF ANY**

**CONCLUSIONS OR RECOMMENDATIONS BY MERIPLEX OR ITS AFFILIATES BASED ON, RESULTING FROM, ARISING OUT OF, OR OTHERWISE RELATED TO THE PRODUCTS OR SERVICES; OR (D) ANY UNAVAILABILITY OF THE PRODUCT FOR USE OR ANY LOST, DAMAGED, OR CORRUPTED DATA OR SOFTWARE. THIS LIMITATION OF LIABILITY APPLIES TO THE PARTIES TO THIS CONTRACT EVEN IF MERIPLEX HAS BEEN ADVISED OF THE POSSIBILITIES OF SUCH DAMAGES OR IF SUCH DAMAGES ARE OTHERWISE FORESEEABLE, IN EACH CASE.**

**IN THE EVENT OF ANY LIABILITY INCURRED BY MERIPLEX OR ANY OF ITS AFFILIATES, THE ENTIRE LIABILITY OF MERIPLEX AND ITS AFFILIATES FOR DAMAGES FROM ANY CAUSE WHATSOEVER WILL NOT EXCEED THE LESSER OF: (A) THE DOLLAR AMOUNT PAID BY CUSTOMER FOR THE PRODUCT(S) GIVING RISE TO THE CLAIM OR THE SPECIFIC SERVICES GIVING RISE TO THE CLAIM; OR (B) \$25,000.00.**

## **12. Limited License**

Customer's sole rights to the work product, materials and other deliverables to be provided or created (individually or jointly) in connection with the Services, including but not limited to, all inventions, discoveries, methods, processes, formulae, ideas, concepts, techniques, know-how, data, designs, models, prototypes, works of authorship, computer programs, proprietary tools, methods of analysis and other information (whether or not capable of protection by patent, copyright, trade secret, confidentiality, or other proprietary rights) that is created (individually or jointly) or discovered in the course of performance of this Agreement that are embodied in such work or materials ("Work Product") will be, upon payment in full, a non-transferable, non-exclusive, royalty-free license to use such Work Products solely for Customer's internal use. Customer will have no ownership or other property rights thereto and Customer shall have no right to use any such Work Product for any other purpose whatsoever. Customer acknowledges that Meriplex may incorporate intellectual property created by third parties into the Work Product ("Third Party Intellectual Property"). Customer agrees that its right to use the Work Product containing Third Party may be subject to the rights of third parties and limited by agreements with such third parties.

## **13. Confidential Information**

a. Each party anticipates that it may be necessary to provide access to information of a confidential nature of such party, the Affiliates, or a third party (hereinafter referred to as "Confidential Information") to the other party in the performance of any Sales Order. Confidential Information includes any information or data in oral, electronic or written form which the receiving party knows or has reason to know is proprietary or confidential and which is disclosed by a party in connection with any Sales Order or which the receiving party may have access to in connection with any Sales Order, including but not limited to the terms and conditions of each Sales Order. Confidential Information will not include information which: (a) becomes known to the public through no act of the receiving party; (b) was known to the receiving party, or becomes known to the receiving party from a third party having the right to disclose it and having no obligation of confidentiality to the disclosing party with respect to the applicable information; or (c) is independently developed by agents, employees or subcontractors of the receiving party who have not had access to such information. To the extent practicable, Confidential Information should be clearly identified or labeled as such by the disclosing party at the time of disclosure or as promptly thereafter as possible, however, failure to so identify or label such Confidential Information will not be evidence that such information is not confidential or protectable.

b. Each party agrees to hold such Confidential Information confidential for a period of three (3) years following the date of disclosure and to do so in a manner at least as protective as it holds its own Confidential Information of like kind. Disclosures of Confidential Information will be restricted (i) to those individuals who are participating in the performance of any Sales Order and need to know such Confidential Information for purposes of providing or receiving the Products or Services or otherwise in connection with any Sales Order or these Product/Services Terms and Conditions, or (ii) to its business legal and financial advisors, each on a confidential basis. Upon the written request of a party, the other party will either return or certify the destruction of the Confidential Information of the other party.

c. If a receiving party is required by law, rule, or regulation, or requested in any judicial or administrative proceeding or by any governmental or regulatory authority to disclose the Confidential Information, the receiving party will give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order or similar protective measure.

## **14. Return Privileges**

To obtain Meriplex's return policy, Customer should contact Meriplex Customer Support at 866.637.4235 or e-mail at [Support@Meriplex.com](mailto:Support@Meriplex.com). Customer must notify Meriplex Customer Support of any damaged Products within ten (10) days of receipt.

## 15. Termination

Either party may terminate performance of a Service or a Sales Order for cause if the other party fails to cure a material default in the time period specified herein. Any material default must be specifically identified in a written notice of termination. After written notice, the notified party will, subject to the provision of warranties herein, have thirty (30) days to remedy its performance except that it will only have ten (10) days to remedy any monetary default. Failure to remedy any default within the applicable time period provided for herein will give cause for immediate termination, unless such default is incapable of being cured within the time period in which case the defaulting party will not be in breach (except for Customer's payment obligations) if it commences curing reasonably promptly within the cure period and thereafter pursues such claim with commercially reasonable diligence to completion. In the event of any termination of the Services or a Sales Order, Customer will pay Meriplex for all Services performed, Products procured, and expenses incurred up to and including the date of termination for the applicable Sales Order, plus any termination fee if one is set forth in the Sales Order. Customer will also pay Meriplex for any out-of-pocket demobilization or other direct costs resulting from termination. Upon termination, all rights and obligations of the parties under these Product/Services Terms and Conditions will automatically terminate except for any right of action occurring prior to termination, payment obligations, and obligations that expressly or by implication are intended to survive termination (including, but not limited to, limitation of liability, indemnity, confidentiality, or licensing of Work Product and this survival provision).

## 16. Provisions Related to Custom Imaging

If in connection with the provision of Products or Services, Customer desires to have Meriplex provide installation of custom software images, Customer will be required to execute an Installation Indemnity Agreement, a form of which is provided at <http://www.meriplex.com/indemnity>.

## 17. Miscellaneous

Meriplex may assign or subcontract without Customer's consent all or any portion of Meriplex's rights or obligations with respect to the sale of Products or the performance of Services or the right to receive payments. Customer may not assign these Product/Services Terms and Conditions, or any of its rights or obligations herein or under any Sales Order or Scope of Work without the prior written consent of Meriplex. Subject to the restrictions in assignment contained herein, these Product/Services Terms and Conditions will be binding on and inure to the benefit of the parties hereto and their successors and assigns. No provision of these Product/Services Terms and Conditions or any Sales Order will be deemed waived, amended, or modified by either party unless such waiver, amendment, or modification is in writing and signed by both parties. The relationship between Meriplex and Customer is that of independent contractors and not that of employer/employee, partnership, or joint venture. If any term or condition of these Product/Services Terms and Conditions or a Sales Order is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or conditions hereof or thereof. Notices provided under these Product/Services Terms and Conditions will be given in writing and deemed received upon the earlier of actual receipt or three (3) days after mailing if mailed postage prepaid by regular mail or airmail or one (1) day after such notice is sent by courier or facsimile transmission. No delay or failure by Meriplex to enforce all or any portion of these Product/Services Terms and Conditions shall be interpreted as a waiver or material breach of such terms and conditions.

## 18. Customer Responsibilities

Prior to performing any scheduled services to Customer's computer system(s) a minimum of one full data back-up, of the serviced system, must be completed. This back-up must be performed within 24 hours of the scheduled service. Meriplex Solutions may require additional back-ups and/or precautions. Customer will immediately notify Meriplex Solutions during normal business hours of failure or malfunction. Customer will notify Meriplex of all modifications and/or additions made on its network that are not directly covered by this Agreement. In such case, Meriplex is relieved of all responsibilities, regarding such modifications unless in Meriplex's judgment it is determined that it is practical for Meriplex to render services and the parties agree on the additional costs. Customer will designate a primary contact that can authorize services to be performed, or authorize changes to or modifications of any agreed upon "Scope of Work." All requests for services, or changes to or modifications of any agreed upon Scope of Work must be directed through the Customer's primary contact. A secondary contact may be assigned for emergency situations. In addition to any specific Customer duties set forth in any applicable Sales Order, Customer agrees to cooperate with Meriplex in connection with performance of the Services by providing (i) timely responses to Meriplex's inquiries and requests for approvals and authorizations, (ii) access to any information or materials reasonably requested by Meriplex which are necessary or useful as determined by Meriplex in connection with providing the Services, including, but not limited to, physical and computer access to Customer's computer and network systems, and (iii) all Required Consents necessary for Meriplex to provide the Services. "Required Consents" means consents or approvals required to give Meriplex, its Affiliates, and its and their employees, agents or subcontractors the right or license to access premises as necessary to provide the services and/or to access, use, and/or modify all data and third party products. Customer acknowledges and agrees that the Services are dependent upon the completeness and accuracy of information provided by Customer and the knowledge and cooperation of the agents, employees, or subcontractors ("Personnel") engaged or appointed by Customer who are selected by Customer to work with Meriplex. For all on-site services performed, the Customer will be responsible for Meriplex's normal fees related to travel time.