**MASTER SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT** ("Agreement"), dated as of \_\_\_\_\_\_\_\_, 202\_, is between Customer, a ("Customer"), and Sobo Networks LLC /dba Core12, a Georgia limited liability company ("Core12").

**Background Statement**

Customer is ***[insert description of Company business generally]***. Core12 provides information technology systems management support and related services. Customer desires to have Core12 provide information technology systems management and support services. This Agreement provides the terms and conditions under which Core12 will provide, and Customer will purchase, the Services. The Parties agree as follows:

**ARTICLE I - TERM**

1.1 ***Term*** . The term of this Agreement will commence on the Effective Date. The initial term of this Agreement (the "Initial Term") will continue for a period of one year unless earlier terminated in accordance with Article XVI ("Termination"). Upon expiration of the Initial Term, unless otherwise agreed by the Parties, the term of this Agreement will automatically be renewed on a month-to-month basis (the "Renewal Term"), unless or until either Party gives at least sixty (60) days written notice to the other Party of its intent to terminate. Unless otherwise agreed by the parties, the fees payable by the Customer will be increased by ten percent (10%) during the Renewal Term. The Initial Term, together with the Renewal Term, are, collectively, the " Term."

**ARTICLE II - SERVICES**

2.1 ***Overview***. Core12 will provide the Base Services to Customer in accordance with Exhibit A ("Base Services"), commencing on the Effective Date and during the remainder of the Term. Core12 will provide the Customer New Services in accordance with Section 2.3 ("New Services"). (Base Services and New Services are, collectively, the "Services"). During the Term, Core12 will be the exclusive provider to Customer of services of the type comprising the Services.

2.2 ***Customer Service Responsibilities*** . Customer will perform the obligations expressly allocated to Customer in Exhibit A ("Base Services") (the "Customer Service Responsibilities"). The Parties acknowledge that Core12's ability to perform the Services in accordance with the terms of this Agreement is dependent in part upon Customer's performance of the Customer Service Responsibilities. Accordingly, Core12's failure to perform Core12's responsibilities under this Agreement will be excused if (and to the extent that) that failure is caused in any material respect by Customer's failure to perform any Customer Service Responsibilities and notice of such failure has been provided to Customer. Core12 will be entitled to be compensated for any additional reasonable out-of-pocket costs actually incurred by Core12 as a result of any delay or failure to perform by the Customer. Customer's failure to perform Customer Service Responsibilities will not affect Customer's obligation to pay Service Charges in accordance with Article IX ("Service Charges").

2.3 ***New Services*** . Customer may request that Core12 provide services that are outside the scope of the Base Services ("New Services"). New Services include (1) services required to support entities acquired by Customer during the Term, and (2) services required to support additional Customer personnel, locations or new functions and systems. Any agreement of the Parties with respect to such New Services will be addressed in accordance with the Change Order Procedures.

**ARTICLE III - RESOURCES**

3.1 ***Customer Materials*** . Customer retains all financial, administrative and maintenance responsibility for any software, tools, data, databases and methodologies licensed by Customer and Customer acknowledges that Core12 will require access to such materials for purposes of this Agreement. Customer is responsible for (i) obtaining any consents required for Core12 to access, use, copy, modify and enhance such materials, all to the extent necessary for Core12's performance under this Agreement and (ii) maintenance of materials, including upgrades necessary to correct defects, at the most current release (or no more than two releases back from the most current release).

3.2 ***Core12 Materials***. Any content, software, tools, databases, data or methodologies that are (i) owned by Core12 or Core12 Affiliates before the Effective Date or acquired by Core12 or Core12 Affiliates after the Effective Date, (ii) developed by Core12 or Core12 Affiliates other than pursuant to this Agreement or any other agreement with Customer that requires that Core12 assign ownership thereof to Customer, or (iii) licensed by Core12 or Core12 Affiliates from a Third Party, including any such items used by Core12 or Core12 Affiliates to provide the Services to Customer, are collectively referred to as the "Core12 Materials." As between the Parties, Core12 will be the sole and exclusive owner of the Core12 Materials. Core12 will be responsible for (i) obtaining any consents required to provide the Services using the Core12 Materials, and (ii) maintenance of the Core12 Materials, including upgrades necessary to correct defects.

**ARTICLE IV - SERVICE LOCATIONS**

4.1 ***Service Locations*** . The Services will be provided at Customer Service Locations and Core12 Service Locations specified in Exhibit A (“Base Services”).

4.2 ***Service Location Policies***. When working at any Customer Service Locations or other Customer facilities, Core12 personnel will comply with Customer's standard workplace security, administrative, safety and other policies and procedures applicable to Customer's own employees. Customer will provide Core12 with a copy of each such policy and procedure and will notify Core12 of any subsequent modifications or amendments to those policies. If any such policies or procedures impose increased material costs or obligations on Core12, the Parties will seek to establish mutually acceptable alternative arrangements and to make appropriate adjustments to their respective obligations under this Agreement (including the charges payable to Core12).

**ARTICLE V - CONTRACT MANAGEMENT**

5.2 ***Customer Account Representative*** . Customer will appoint one individual (the "Customer Account Representative") to coordinate the performance of Customer's obligations under, and to act as Customer's representative regarding, this Agreement. The Customer Account Representative will act as the single point of contact for Customer under this Agreement and will have the authority on behalf of Customer to decide all questions of a day-to-day nature that may arise under this Agreement and to provide all approvals on behalf of Customer.

5.3 ***Core12 Account Advisor*** . Core12 will appoint one individual (the "Core12 Account Advisor") to coordinate the performance of Core12's obligations under, and to act as Core12's representative regarding, this Agreement. The Core12 Account Advisor will serve as the single point of contact under this Agreement and have the authority on behalf of Core12 to decide all questions of a day-to-day nature that may arise under this Agreement and to provide all approvals on behalf of Core12.

5.4 ***Change Order Procedures*** .

1. Either Party may request in writing that Core12 make changes, modifications or enhancements to the Services being provided pursuant to this Agreement ("Service Changes").
2. To request a Service Change, the requesting Party will deliver a written request (the "Change Order Request") to the Account Representative of the other Party, specifying (i) the proposed Service Change, (ii) the objective or purpose of such Service Change, (iii) the requirements and specifications of the deliverables to be delivered pursuant to such Service Change, and (iv) the requested prioritization and schedule for such Service Change. The Parties will cooperate with each other in good faith in discussing the scope and nature of the Change Order Request, and the time period in which such Service Change will be implemented. As soon as practicable after receipt of Customer's Change Order Request or after submission of a Change Order Request to Customer, and to the extent applicable, Core12 and/or Customer will prepare and deliver to the other Party an analysis (the "Change Order Analysis") (i) describing any changes in products and services that the Party believes would be required, (ii) estimating the increase or decrease in the Core12 charges that would be required due to such Service Change (if any), (iii) specifying how the proposed Service Change could be implemented, (iv) describing the effect, if any, such Service Change would have on this Agreement, (v) estimating all resources required to implement such Service Change, (vi) describing the delivery benefits or risks and associated risk mitigation plans, and (vii) containing such other information as may be relevant to the proposed Service Change. The Parties will meet to determine whether they desire for Core12 to proceed with the making of the proposed Service Change in accordance with the Change Order Analysis.
3. If the Parties agree that making the Service Change (either individually or in the aggregate when such Service Change is considered with other Service Changes) will affect the provision of the then existing Services or Core12's charges, then the Parties must provide approval (a "Change Order") to the Change Order Request to authorize the making of the Service Change. Change Orders will constitute part of this Agreement.

**ARTICLE VI - MARKETING ASSISTANCE**

6.1 ***Client Lists.*** Core12 may disclose that Customer is a client to other clients or potential clients, and may include a description of the general nature of the engagement provided for under this Agreement in one-to-one communications (e.g., responses to other requests for proposals). In making any such disclosures, Core12 will not disclose any Customer Confidential Information in violation of Section 10.1 ("Confidentiality").

**ARTICLE VII -** **HUMAN RESOURCE MATTERS**

7.1 ***General Principles Regarding Core12 Personnel .***

1. The personnel assigned to the Customer account by Core12 (or its subcontractors) will possess the training, education, experience, necessary certifications, and skill levels appropriate for the Services to be provided by such personnel.
2. The personnel assigned to the Customer account by Core12 (or its subcontractors) will be and remain employees of Core12 (or such subcontractors), and Core12 (or such subcontractors) will provide for and pay the compensation and other benefits of such personnel, including salary, health, accident and workers' compensation benefits and all taxes and contributions that an employer is required to pay with respect to the employment of employees.

7.2 ***Limitations on Recruiting*** . During the Term and for a period of twenty-four (24) months following expiration or termination of the Term, neither Party will, directly or indirectly, knowingly solicit for employment, offer employment to or employ or retain (whether as an employee, officer, agent, consultant, advisor or in any other capacity) any active employee of the other Party whose job responsibilities are substantially related to this Agreement, except for the right of each Party to engage in general solicitations (e.g., through mass media "want ads" or similar personnel recruiting not directed at the employees or consultants of a Party).

**ARTICLE VIII - PAYMENT**

8.1 ***Service Charges*** . Customer will pay Core12 for Services at the times and in the amounts specified in Exhibit A ("Base Services"). Customer will reimburse Core12 for certain expenses incurred by Core12 in connection with the performance of the Services, in accordance with the expense reimbursement provisions set forth in Exhibit A ("Base Services").

8.2 ***Invoices; Method of Payment; Finance Charges .***

1. Core12 will invoice Customer for the Service Charges on a monthly basis during the Term as more particularly set forth in Exhibit A ("Base Services"). Each invoice will include such detail as reasonably requested by Customer
2. Customer will pay each invoice within twenty (20) days after Customer’s receipt of the applicable invoice. Any amount owed by Customer to Core12 that is not paid on or before the date such amount is due will bear interest at the rate of one percent (1%) per month.

8.3 ***Disputed Charges*** . Customer may withhold payment of charges with respect to which Customer reasonably and in good faith disputes the calculation thereof. Any amounts not so disputed otherwise must be paid by the applicable payment due date. Customer will notify Core12 in writing on or before the payment due date of any disputed charges for which Customer is withholding payment and describe, in reasonable detail, the reason for such withholding. Customer and Core12 will diligently pursue an expedited resolution of such dispute in accordance with **Article XVI** ("Dispute Resolution").

8.4 ***Taxes .***

1. Each Party will be responsible for (i) any personal property taxes on property it owns or leases (other than property subleased to the other Party), and (ii) taxes based on its net income or gross receipts.
2. Customer will be responsible for sales, use, excise, value-added, services, consumption and other taxes that are due in accordance with applicable law with respect to the provision of the Services (including the reimbursement of expenses) or goods received by Customer from Core12 or Core12 Affiliates.
3. The Parties will reasonably cooperate with each other to more accurately determine each Party's tax liability and to minimize such liability to the extent legally permissible. Customer and Core12 will provide and make available to the other any resale certificates, information regarding out-of-state sales or use of equipment, materials or services, and other exemption certificates or information reasonably requested by either Party.

**ARTICLE IX - REPRESENTATIONS AND WARRANTIES**

9.1 ***Core12 Representations and Warranties .*** Core12 hereby represents and warrants to Customer as follows:

1. *Organization; Power.* Core12 is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. Core12 has all requisite power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
2. *Authority; Enforceability*. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by all requisite action on the part of Core12. This Agreement constitutes the legal, valid and binding agreement of Core12, enforceable against Core12 in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).
3. *Non contravention*. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or result in any violation of any provision of the charter or bylaws of Core12, each as amended to date; (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract or other instrument to which Core12 is a party or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statue, rule or regulation applicable to Core12.

9.2 ***Customer Representations and Warranties*** . Customer hereby represents and warrants to Core12 as follows:

1. *Organization; Power*. Customer is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Customer has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
2. *Authority; Enforceability*. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement, have been duly authorized by all requisite corporate action on the part of Customer. This Agreement constitutes the legal, valid and binding agreement of Customer, enforceable against Customer in accordance with its terms (except insofar as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, or by principles governing the availability of equitable remedies).
3. *Non contravention*. The execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or result in any violation of any provision of the charter or bylaws of Customer, each as amended to date; (ii) conflict with, result in any violation or breach of, constitute a default under, give rise to any right of termination or acceleration (with or without notice or the lapse of time or both) pursuant to, or result in being declared void or voidable, any term or provision of any note, bond, mortgage, indenture, lease, license, contract or other instrument to which Customer is a party or by which any of its properties or assets are or may be bound; or (iii) violate any order, writ, injunction, decree, statue, rule or regulation applicable to Customer.

9.3 ***Disclaimer .***

**EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE PARTIES MAKE NO REPRESENTATIONS OR WARRANTIES CONCERNING ANY MATTER UNDER THIS AGREEMENT, INCLUDING ANY DELIVERABLES OR WORK PRODUCT, AND THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS ARTICLE XI ARE MADE EXPRESSLY IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OR OTHERWISE. CORE12 EXPRESSLY DISCLAIMS ANY WARRANTY OF THE ACCURACY OR COMPLETENESS OF DATA, OPERATIONAL CRITERIA OR PARAMETERS PROVIDED BY THE CUSTOMER.**

**ARTICLE X - CONFIDENTIALITY**

10.1 ***Confidentiality .***

1. In connection with this Agreement, each of the Parties has disclosed and may continue to disclose to the other Party information that relates to the disclosing Party's business operations, financial condition, customers, products, services or technical knowledge. "Confidential Information" means all information of a Party marked confidential, restricted, proprietary or with a similar designation. The terms and conditions of this Agreement, and all correspondence, information and other materials disclosed during the negotiation of this Agreement will be deemed Confidential Information. In the case of Customer, Confidential Information also will include Customer-Owned Materials, Customer-Licensed Materials, customer lists, financial information, customer information, account information, information regarding Customer's businesses, plans, operations, markets or other such information or data stored on magnetic media or communicated orally, and obtained, received, transmitted, processed, stored, archived or maintained by Core12 under this Agreement. In the case of Core12, Confidential Information also will include Core12 Materials, Proprietary Items, financial information, account information, information regarding Core12's businesses, plans and operations, and software, content, tools and methodologies owned or licensed by Core12. The Parties acknowledge that third-party materials may be subject to additional confidentiality restrictions imposed by the applicable provider's license or other agreement.
2. Each Party's Confidential Information will remain the property of that Party except as otherwise expressly provided in this Agreement. Each of the Parties will use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure or publication of its own information (or information of its customers) of a similar nature, but in no event less than a reasonable degree of care. Each Party may disclose relevant aspects of the other Party's Confidential Information to its employees, Affiliates, subcontractors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations under this Agreement; provided, however, that such Party will use commercially reasonable efforts to ensure that such employees, Affiliates, subcontractors or agents comply with these confidentiality provisions. Each Party will be responsible for any improper disclosure of Confidential Information by such Party's employees, Affiliates, subcontractors or agents.
3. Neither Party will (i) make any use or copies of the Confidential Information of the other except as contemplated by this Agreement, (ii) acquire any right in or assert any lien against the Confidential Information of the other, or (iii) sell, assign, lease or otherwise commercially exploit the Confidential Information (or any derivative works thereof) of the other Party. Neither Party may withhold the Confidential Information of the other Party or refuse for any reason (including due to the other Party's actual or alleged breach of this Agreement) to promptly return to the other Party its Confidential Information (including copies thereof) if requested to do so. Upon expiration or any termination of this Agreement and completion of a Party's obligations under this Agreement, each Party will (except as otherwise provided in this Agreement) return or destroy, as the owner may direct, all documentation in any medium that contains or refers to the other Party's Confidential Information, and retain no copies. Subject to the foregoing confidentiality obligations, either Party may retain copies of the Confidential Information of the other Party to the extent required for (i) in the case of Core12, compliance with applicable professional standards or quality assurance purposes and (ii) in the case of Customer, its continuing operations or internal business purposes.
4. This **Section 10.1** will not apply to any particular information that either Party can demonstrate (i) was, at the time of disclosure to it, in the public domain; (ii) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (iii) was in the possession of the receiving Party at the time of disclosure to it and was not the subject of a pre-existing confidentiality obligation; (iv) was received after disclosure to it from a Third Party who had a lawful right to disclose such information to it; or (v) was independently developed by the receiving Party without use of the Confidential Information of the disclosing Party. In addition, a Party will not be considered to have breached its obligations under this **Section 10.1** for disclosing Confidential Information of the other Party to the extent required to satisfy any legal requirement of a competent governmental authority, provided that promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party prior to making such disclosure in order that the other Party may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate to protect the Confidential Information.
5. Nothing contained in this **Section 10.1** will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party.

10.2 ***Unauthorized Acts .*** Each Party will:

1. notify the other Party promptly of any material unauthorized possession, use or knowledge, or attempt thereof, of the other Party's Confidential Information by any Person that may become known to such Party;
2. promptly furnish to the other Party details of the unauthorized possession, use or knowledge, or attempt thereof, and use commercially reasonable efforts to assist the other Party in investigating or preventing the recurrence of any unauthorized possession, use or knowledge, or attempt thereof, of Confidential Information;
3. use commercially reasonable efforts to cooperate with the other Party in any litigation and investigation against third parties deemed necessary by the other Party to protect its proprietary rights; and
4. promptly use commercially reasonable efforts to prevent a recurrence of any such unauthorized possession, use or knowledge of Confidential Information.

The Party whose Confidential Information is the subject of such activity will reimburse any out-of-pocket expenses incurred by the other Party as a result of compliance with this **Section 10.2.**

10.3 ***Knowledge Capital.*** Nothing in this Agreement will preclude Core12 from marketing, developing or using for itself or others, services or products that are the same as or similar to those provided to Customer by Core12 pursuant to this Agreement. Furthermore, Core12 will continue to be free to use its general knowledge, skills and experience and any ideas, concepts, know-how and techniques related to the scope of this Agreement and used in the course of performing its obligations under this Agreement. This **Section 10.3** does not diminish Core12's obligations regarding Confidential Information under **Section 10.1** ("Confidentiality ").

**ARTICLE XI - AUDIT RIGHTS**

11.1 ***Financial Audits*** . Each Party will maintain complete and accurate records to support and document all amounts payable under this Agreement, in accordance with the requirements of this Agreement and otherwise in accordance with generally accepted accounting principles consistently applied with respect to prior periods. For a period of three (3) years following the Term hereof, each Party and any independent accountants selected by such Party will be entitled once per year, following reasonable notice to the other Party, to audit the other Party’s records with respect to the receipt of Revenues as described in this Agreement. Any such audit will be conducted during regular business hours and at the expense of the Party conducting the audit, unless such audit reveals a discrepancy of more than 5% in the applicable amount reported by the other Party, in which event the other Party will pay, or reimburse the Party conducting the audit for, the cost of such audit.

11.2 ***General Principles Regarding Audits .***

1. Each Party will use commercially reasonable efforts to conduct such audits and inspections in a manner that will result in a minimum of inconvenience and disruption to business operations. Customer and its representatives will not be entitled to audit or inspect data or information of other customers or customers of Core12.
2. Customer will not use any Core12 Competitor to conduct such audits and inspections.
3. Prior to conducting any audit or inspection, the auditors and other representatives of the Party conducting the audit will execute and deliver such confidentiality and non-disclosure agreements and comply with such security and confidentiality requirements as the other Party may reasonably request in connection with such audits and inspections.

**ARTICLE XII – INDEMNIFICATION**

12.1 ***Indemnification by Core12*** . Core12 will indemnify, defend and hold harmless Customer and Customer Affiliates from and against any and all Losses arising from claims by third parties, whether based in whole or in part in contract, tort, negligence, statute or otherwise, arising from any of the following:

1. the death of or bodily injury to any employee of Customer or any Customer Affiliate (or their respective subcontractors) to the extent caused by the negligence or willful misconduct of Core12 or any Core12 Affiliate in connection with the performance of Services under this Agreement;
2. the loss of or damage to the real or tangible personal property (whether owned or leased) of Customer, any Customer Affiliate or any of their respective employees or subcontractors to the extent caused by the negligence or willful misconduct of Core12 or any Core12 Affiliate in connection with the performance of Services under this Agreement;
3. the failure of Core12 to perform any obligations under any license, lease or other agreement between Core12 and a third party;
4. Core12's failure to obtain any consents for which Core12 is responsible pursuant to the provisions of this Agreement;
5. Core12's failure to pay and discharge any taxes (including interest and penalties) for which Core12 is responsible pursuant to the provisions of this Agreement;
6. any failure of Core12 to comply with laws and regulations applicable to Core12 relating to the Services, including any applicable export laws, except that Customer will be solely responsible for ensuring that the Customer Service Locations and any other Customer sites where Services are to be provided comply with all applicable laws and regulations.

12.2 ***Indemnification by Customer*** . Customer will indemnify, defend and hold harmless Core12 and Core12 Affiliates from and against any and all Losses arising from claims by third parties, whether based in whole or in part in contract, tort, negligence, statute or otherwise, arising from any of the following:

1. the death of or bodily injury to any employee of Core12 or any Core12 Affiliate (or their respective subcontractors) to the extent caused by the negligence or willful misconduct of Customer or any Customer Affiliate;
2. the loss of or damage to the real or tangible personal property (whether owned or leased) of Core12, any Core12 Affiliate or any of their respective employees or subcontractors to the extent caused by the negligence or willful misconduct of Customer or any Customer Affiliate;
3. the failure of Customer to perform any obligations under any license, lease or other agreement between Customer and a third party;
4. Customer's failure to obtain any consents for which Customer is responsible pursuant to the provisions of this Agreement;
5. any third-party claim that arises in connection with the use by Customer of any deliverable or services provided by Core12 to Customer under this Agreement, except to the extent covered by Core12's indemnities set forth in **Section 12.1 or 12.3**(a);
6. any failure of Customer to comply with laws and regulations applicable to Customer relating to the Services, including any applicable export laws, except that Core12 will be solely responsible for ensuring that the Core12 Service Locations and any other Core12 sites where Services are to be provided comply with all applicable laws and regulations.

12.3 ***Infringement Indemnity .***

1. Core12 will defend any third-party action brought or threatened against Customer or any Customer Affiliates to the extent that such action is based on a claim that any Work Product or Core12 Materials (or the access or other rights thereto) provided by Core12 to Customer pursuant to this Agreement (i) infringes a third party's copyright, or (ii) constitutes misappropriation or unlawful disclosure or use of a third-party's trade secrets (collectively, "Infringement Claims"). Core12 will bear the expense of such defense and pay any damages and costs finally awarded by a court of competent jurisdiction against Customer, or any settlement amount agreed to be paid, and related expenses incurred in such action which are attributable to such claim, provided that Customer has complied with **Section 12.4** ("Indemnification for Third Party Claims").
2. Customer will defend any third-party action brought or threatened against Core12 or any Core12 Affiliates to the extent that such action is based on a claim that any equipment, materials (including Customer-Owned Materials), information or other resources or items (or the access or other rights thereto) provided by Customer to Core12 pursuant to this Agreement (i) infringes a third party's copyright, or (ii) constitutes misappropriation or unlawful disclosure or use of a third party's trade secrets. Customer will bear the expense of such defense and pay any damages and costs finally awarded by a court of competent jurisdiction against Core12, or any settlement amount agreed to be paid, and related expenses incurred in such action which are attributable to such claim, provided that Core12 has complied with **Section 12.4** ("Indemnification for Third Party Claims").
3. Core12 will have no liability or obligation to Customer, Customer Affiliates or any other Person under paragraph (a) above to the extent that the Infringement Claim is based upon (i) the misuse or modification of the deliverables in a manner that causes the infringement; (ii) the use of the deliverables in combination with any hardware, software or information not owned, developed or provided by Core12; (iii) the failure of Customer to use corrections or enhancements to such deliverables which are made available by Core12 or (iv) information, specifications, software or materials provided by Customer or a third party. If any such deliverable provided by Core12 is, or in Core12's reasonable judgment is likely to become, the subject of an Infringement Claim, Core12, at its expense, will use commercially reasonable efforts to procure for Customer the right to use and continue using such deliverable or replace it with a non infringing equivalent or modify it to make its use hereunder non infringing, provided that such replacement or modification does not result in a degradation of the performance or quality of the deliverable. If such option is not available on commercially reasonable terms in Core12's good faith judgment, Core12 will so notify Customer, whereupon (A) Customer will cease use of such deliverable and return it to Core12 and (B) Core12 will refund to Customer the fees paid that are attributable to such deliverable, less a reasonable amount for Customer's use of such deliverable up to the time of return. In such event, the Parties will seek to establish mutually acceptable alternative arrangements and to make any appropriate adjustments to their respective obligations under this Agreement though the execution of a Change Order pursuant to Section 5.3 ("Change Order Procedures").
4. **THE FOREGOING PROVISIONS OF THIS SECTION 12.3 CONSTITUTE THE PARTIES' SOLE AND EXCLUSIVE REMEDIES AND EACH PARTY'S ENTIRE LIABILITY, WITH RESPECT TO INFRINGEMENT CLAIMS.**

12.4 ***Indemnification for Third-Party Claims*** . The following procedures will apply with respect to indemnification for third-party claims arising in connection with this Agreement:

1. Promptly after receipt by a Person entitled to indemnification hereunder (an "Indemnitee") of written notice of the assertion or the commencement of any claim, demand, action, cause of action or other proceeding by a Third Party, whether by legal process or otherwise (a "Claim"), with respect to any matter within the scope of **Section 12.1, Section 12.2, or Section 12.3**, the Indemnitee will give written notice thereof to the party from whom indemnification is sought pursuant hereto (the "Indemnitor") and will thereafter keep the Indemnitor reasonably informed with respect thereto; provided, however, that the failure of the Indemnitee to give the Indemnitor such prompt written notice will not relieve the Indemnitor of its obligations hereunder except to the extent such failure results in prejudice to Indemnitor's defense of such Claim. Within 15 days following receipt of written notice from the Indemnitee relating to any claim, but no later than 10 days before the date on which any response to a complaint or summons is due, the Indemnitor will notify the Indemnitee in writing that the Indemnitor will assume control of the defense and settlement of such claim (the "Notice").
2. If the Indemnitor delivers the Notice relating to any Claim within the required notice period, the Indemnitor will be entitled to have sole control over the defense and settlement of such claim; provided, however, that (i) the Indemnitee will 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 (ii) the Indemnitor will obtain the prior written consent of the Indemnitee before entering into any settlement of such claim or ceasing to defend against such claim. After the Indemnitor has delivered a Notice relating to any claim in accordance with the preceding paragraph, the Indemnitor will not be liable to the Indemnitee for any legal expenses subsequently incurred by such Indemnitee in connection with the defense of such claim. In addition, the Indemnitor will not be required to indemnify the Indemnitee for any amount paid or payable by such Indemnitee in the settlement of any claim for which the Indemnitor has delivered a timely Notice if such amount was agreed to without the written consent of the Indemnitor.
3. If the Indemnitor fails to assume the defense of any such Claim within the prescribed period of time, then the Indemnitee may assume the defense of any such Claim at the cost and expense of the Indemnitor. The Indemnitor will reimburse Indemnitee for its costs and expenses incurred as a result of Indemnitor's failure to assume the defense of such Claim. The Indemnitee will provide reasonable assistance to the Indemnitor (at the Indemnitor's expense), including reasonable assistance from the Indemnitor's employees, agents, independent contractors and Affiliates, as applicable.

**ARTICLE XIII - LIMITATION OF LIABILITY**

13.1 ***Limitation of Liability .***

1. **IF EITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY MATTER RELATING TO OR ARISING FROM THIS AGREEMENT, WHETHER BASED UPON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, INTENDED CONDUCT OR OTHERWISE (INCLUDING ANY ACTION OR CLAIM ARISING FROM THE ACTS OR OMISSIONS, NEGLIGENT OR OTHERWISE, OF THE LIABLE PARTY), THE AGGREGATE AMOUNT OF DAMAGES RECOVERABLE AGAINST THE LIABLE PARTY WITH RESPECT TO ANY AND ALL BREACHES, PERFORMANCE, NONPERFORMANCE, ACTS OR OMISSIONS UNDER THIS AGREEMENT WILL NOT EXCEED AN AMOUNT EQUAL TO THE CHARGES FOR SERVICES PAID TO CORE12 UNDER THIS AGREEMENT DURING THE TWELVE-MONTH PERIOD IMMEDIATELY PRECEDING THE MOST RECENT EVENT (OR IF SUCH EVENT OCCURS IN THE FIRST TWELVE MONTHS OF THE TERM, THE AMOUNT ESTIMATED TO BE PAID IN THE FIRST TWELVE MONTHS OF THE TERM).**
2. The dollar limit described in paragraph (a) above will not apply to (i) Core12's obligations under **Section 10.1** ("Confidentiality"), **Section 12.1** ("Indemnification by Core12") or **Section 12.3**(a) ("Infringement Indemnity"), (ii) Customer's obligations under **Section 10.1** ("Confidentiality"), **Section 12.2** ("Indemnification by Customer") or **Section 12.3** (b) ("Infringement Indemnity"), or (iii) Customer's payment obligations for Services provided or for termination or related charges pursuant to this Agreement.
3. Each Party will have a duty to mitigate damages for which the other Party is responsible.

13.2 ***Exclusion of Certain Damages .*** **IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING DAMAGES DUE TO BUSINESS INTERRUPTION OR LOST PROFITS, SAVINGS, COMPETITIVE ADVANTAGE OR GOODWILL) ARISING FROM OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE TYPE OF CLAIM, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY, AND REGARDLESS OF THE CAUSE OF SUCH DAMAGES EVEN IF SUCH DAMAGES WERE FORESEEABLE.**

13.3 ***Insurance .***

1. During the Term, each Party will maintain and require each of its material subcontractors to maintain the following insurance coverages:
   1. statutory workers' compensation in accordance with all Federal, state and local requirements;
   2. employer's liability insurance in an amount of $1,000,000 per occurrence, covering bodily injury by accident or disease, including death; and
   3. commercial general liability (including contractual liability insurance) in an amount of $5,000,000.
2. Each Party will use good faith efforts to have the other Party added as an additional named insured to the policies identified in **Section 14.3** (a) as soon as practicable after the Effective Date.
3. During the Term, Core12 will maintain E & O liability insurance in an amount of $1,000,000.
4. Upon request, each Party will provide the other Party with certificates of insurance or evidence of coverage before commencing performance of any Services under this Agreement.
5. Each Party shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance policy(ies) of the other Party.
6. Insurance companies providing coverage under this Agreement must be rated by A-M Best with at least an A- rating.

**ARTICLE XIV - TERMINATION**

14.1 ***Termination for Cause*** . Either Party may after (i) complying with **Section 15.1** ("Informal Dispute Resolution"), and (ii) giving at least 30 days prior written notice identifying specifically the basis for such notice and referring to this **Section 14.1**, terminate this Agreement for the material breach by the other Party of a material term of this Agreement (including a breach of the payment obligations under this Agreement) unless, in the case of any breach other than a payment breach, the breaching Party has within such 30-day period either (i) cured such breach (if such breach is curable) or (ii) made substantial progress to cure such breach (if such breach is curable) and implemented a plan that results in a cure of such breach within 90 days. Such notice will specify the effective date of such termination.

14.3 ***Survival of Provisions*** . Upon the expiration or termination of this Agreement for any reason, the provisions of **Article IIX** ("Payment"), **Article X** ("Confidentiality"), **Article XI** ("Audit Rights"), **Article XII** ("Indemnification"), **Article XIII** ("Limitations of Liability"), **Article XIV** ("Termination"), **Article XV** ("Disputes") and **Article XV** ("Miscellaneous") will survive indefinitely.

**ARTICLE XV - DISPUTES**

15.1 ***Informal Dispute Resolution.*** The Parties shall attempt in good faith to resolve any claim or dispute concerning the Agreement prior to the commencement of litigation. Upon the written request of either Party, each of the Parties will appoint a designated representative who does not devote substantially all of his or her time to the performance of this Agreement, whose task it will be to meet for the purpose of attempting to resolve the dispute. The designated representatives will meet in person or by telephone, as often as reasonably necessary, to gather and furnish to the other all information with respect to the matter in issue and which is pertinent to the understanding or resolution of the dispute. The representatives will discuss the problem and negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding. The specific format for the discussions will be left to the discretion of the designated representatives. If the designated representatives do not resolve the dispute within thirty (30) days of receipt of written notice of the dispute, then an executive officer of Core12 and an executive officer of Customer will meet in person or by telephone to review and attempt to resolve the dispute prior to the commencement of litigation.

15.2 ***Exceptions to Dispute Resolution Procedure*** . The provisions of **Section 15.1** ("Informal Dispute Resolution") will not be construed to prevent a Party from seeking a temporary restraining order or injunctive or other equitable relief with respect to a breach (or attempted breach) of this Agreement by the other Party.

**ARTICLE XVI - MISCELLANEOUS**

16.1 ***Force Majeure Events .***

1. Each Party will be excused from performance under this Agreement (other than obligations to make payments that have become due and payable pursuant to this Agreement) for any period and to the extent that it is prevented from performing any obligations pursuant to this Agreement, in whole or in part, as a result of a Force Majeure Event.
2. If either Party is prevented from, or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, it shall promptly notify the other Party by telephone (to be confirmed in writing within five days of the inception of the delay or if the particular Force Majeure Event renders written notice within five (5) days impossible, then as soon as commercially practicable) of the occurrence of a Force Majeure Event and describe, in reasonable detail, the circumstances constituting the Force Majeure Event and of the obligations, the performance of which are thereby delayed or prevented.
3. A "Force Majeure Event" means the occurrence of an event or circumstance beyond the reasonable control of a Party, *provided* that (i) the non-performing Party is without fault in causing or failing to prevent such occurrence and (ii) such occurrence can not be circumvented through the use of commercially reasonable alternative sources, workaround plans or other means. "Force Majeure Events" will include (i) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God, (ii) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage (including electronic sabotage and attacks) (iii) acts of federal, state, local or foreign governmental authorities or courts, and (iv) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful (except that Core12 will not be excused for delays caused by Core12's subcontractors or agents).

16.2 ***Injunctive Relief*** . Each Party will have the right to seek injunctive or other equitable relief to address breaches (or attempted breaches) of the obligations of the other Party under this Agreement.

16.3 ***Assignment .*** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign this Agreement or any part hereof or any benefit or interest therein without the prior consent of the other Party; provided, however, that either Party may assign this Agreement to (1) any successor to substantially all of the business of such Party, or (2) to any Affiliate of the assigning Party. In the event of any permitted assignment of this Agreement by either Party, the designated assignee must assume, in writing (in form and substance reasonably satisfactory to the other Party), the rights and obligations of the assigning Party under this Agreement, but the assignment will not relieve the assigning Party of its obligations under this Agreement.

16.4 ***Consents .*** Where agreement, approval, acceptance or consent of either Party is required by any provision of this Agreement, such action will not be unreasonably delayed or withheld.

16.5 ***Relationship of Parties .*** In providing Services to Customer under this Agreement, Core12 is acting as an independent contractor. Except as expressly provided in this Agreement, Core12 does not undertake to perform any obligation of Customer, whether regulatory or contractual, or to assume any responsibility for Customer's business or operations. This Agreement establishes and will only be construed as establishing a contract between unrelated business entities for the provision and purchase of certain services and does not and will not be deemed to create a partnership, joint venture, agency or any other type of joint relationship. In no event will Core12 be deemed to be acting in a fiduciary capacity for Customer. With respect to its own personnel, each Party is independently responsible for all obligations incumbent upon an employer.

16.6 ***Notice .*** Wherever under this Agreement one Party is required or permitted to give notice to the other Party, such notice must be in writing and must be delivered personally, sent by email, sent by nationally recognized express courier or sent by certified mail (return receipt requested). Any such notice will be deemed given when actually received and must be addressed as follows:

In the case of Customer:

Customer  
   
   
Attention:   
Email Address:

In the case of Core12:

Core12  
   
   
Attention:   
Email Address:

Either Party may change its address for notices upon giving ten days written notice of the change to the other Party in the manner provided above.

16.7 ***Severability*** . If any provision of this Agreement or the application of any such provision to any Person or circumstance, shall be declared judicially to be invalid, unenforceable or void, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, and it is the intent and agreement of the Parties that this Agreement shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal and enforceable while preserving its intent or, if such modification is not possible, by substituting therefor another provision that is legal and enforceable and that achieves the same objective.

16.8 ***No Third-Party Beneficiaries*** . Nothing contained in this Agreement is intended to confer upon any Person (other than the Parties hereto and the Indemnitees specifically identified in **Article XII** ("Indemnification) any rights, benefits or remedies of any kind or character whatsoever, and no Person shall be deemed a third-party beneficiary under or by reason of this Agreement.

16.9 ***Publicity*** . All advertising, press releases, public announcements and public disclosures by either Party relating to this Agreement which includes (i) the other Party's name, trade names, trademarks, logos, service marks or trade dress (collectively, "Name") or (ii) language from which the connection of such Name may be inferred or implied, will be coordinated with and subject to approval by both Parties prior to release; provided, however, that (i) either Party may indicate to third parties that Core12 is providing services to Customer and (ii) Core12 may use Customer as a reference.

16.10 ***Amendment .*** This Agreement may not be modified or amended except by a written instrument executed by or on behalf of each of the Parties to this Agreement.

16.11 ***Entire Agreement*** . This Agreement (including the Exhibits to this Agreement, each of which is incorporated in this Agreement by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, between the Parties with respect to the subject matter hereof. There are no representations, understandings or agreements relating to this Agreement that are not fully expressed in this Agreement.

16.12 ***Governing Law*** . This Agreement will be governed by and construed in accordance with the laws, other than choice of law rules, of the State of Georgia.

16.13 ***Rules of Construction*** . The article and section headings and the table of contents contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement. As used in this Agreement, unless otherwise provided to the contrary, (a) all references to days, months or quarters will be deemed references to calendar days, months or quarters and (b) any reference to a "Section," "Article," or "Exhibit" will be deemed to refer to a section or article of this Agreement or an exhibit or schedule to this Agreement. Unless the context otherwise requires, as used in this Agreement, all terms used in the singular will be deemed to refer to the plural as well, and vice versa. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." References in this Agreement to "$" will be deemed a reference to United States dollars unless otherwise specified. References to "this Agreement" includes each Change Order executed and delivered pursuant to this Agreement.

16.14 ***Inconsistencies*** . To the extent that the provisions of this Agreement and of any other exhibit or schedule hereto are in any respect inconsistent, the provisions of this Agreement will govern and control, provided that with respect to the description of the Services, the Exhibits will govern and control.

16.15 ***Counterparts .*** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement binding on the Parties, notwithstanding that both Parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, this Agreement has been duly executed by and on behalf of the Parties hereto as of the Effective Date.

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| --- | --- |
| ***[COMPANY]***  By:­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **Core12 LLC /dba Core12**  By:­­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |