

By executing a Service Order referencing this Service Agreement ("SA"), ShareTech, LLC, a Minnesota limited liability company, with offices at 2136 Ford Parkway, PMB 153, Saint Paul, MN 55116 ("**ShareTech**") and the Client identified in the Service Order, ("**Client**") agree to the terms of this SA, which governs ShareTech's provision of and Client's use of the Services. ShareTech and Client may be referred to hereunder individually as a "Party" and collectively as the "Parties".

1. **Definitions and Interpretation.** Capitalized terms not otherwise defined herein shall have the following meanings:

1.1. "**Acceptable Use Policy**" means ShareTech's then-current acceptable use policy generally applicable to all of ShareTech's clients, which is available at <http://www.sharetech.org/legal/aup.pdf>.

1.2. "**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at Law, in equity, or otherwise.

1.3. "**Affiliate**" means any person or entity controlled by, controlling, or under common control with, a Party. "Control" means the legal, beneficial, or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the aggregate of all voting equity interests in the entity.

1.4. "**Agreement**" means this SA, including any Exhibits hereto, any Service Orders (including any Special Terms referenced therein), now or hereafter existing, and the Policies.

1.5. "**Client Information**" means content provided by Client (or at its direction) or a User by, through, or in connection with the Services, and any Personal Data obtained by, ShareTech or to which ShareTech has access, in connection with its provision of the Services to Client. For the avoidance of doubt, Client Data does not include Resultant Data.

1.6. "**Client Systems**" means Client's information technology infrastructure, including computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services.

1.7. "**Confidential Information**" means any non-public, confidential, or proprietary information or other Material disclosed or made available to the other Party by or on behalf of the disclosing Party, including all non-public technical and business information relating to the Parties, whether in written, oral, graphic, electronic or other format. Confidential Information includes but is not limited to Personal Data, staffing levels, policies, analyses, compilations, projections, studies, financial, marketing, and business plans and records, business strategies, relationships with third parties, client and competitor lists, pricing information, credit card information, and information relating to clients and suppliers, present and proposed products, trade secrets, the terms of this Agreement, technologies, source code, computer hardware designs, and systems, and in particular, with

respect to Client, plans and policies related to access to or use of the Services.

1.8. "**Expenses**" includes costs related to travel; Third Party Offerings; any sales, use, excise, or similar tax on products or services purchased on Client's behalf by ShareTech; shipping costs incurred to ship hardware or other tangible items to Client; and any third-party fees, including but not limited to those resulting from credit card payments, wire transfers, or bounced checks of Client. Unless otherwise agreed in a Service Order, Expenses do not require Client approval.

1.9. "**Fees**" means the fees set forth in the Service Order and any other amounts due to ShareTech under this Agreement, including but not limited to any Reinstatement Fees.

1.10. "**Intellectual Property Rights**" means current and future worldwide rights under patent, copyright, trade secret, trademark, and moral rights laws, and other similar rights.

1.11. "**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or of any arbitrator, court, or tribunal of competent jurisdiction.

1.12. "**Losses**" means any and all losses, damages, deficiencies, claims, Actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance coverage.

1.13. "**Materials**" means information, data, documents, materials, works, and other content, devices, methods, processes, software, and other technologies and inventions.

1.14. "**Personal Data**" means any information or set of information relating to an identified or identifiable individual including all information that any Law treats as personal information, personal data, or similarly protected information, regardless of the medium in which such information is displayed.

1.15. "**Policies**" means the Privacy Policy, Acceptable Use Policy, and any other policies adopted by ShareTech and posted on ShareTech's website or sent to Client via email or other means, provided that such policies are generally applicable to ShareTech's clients receiving the same Services, in each case as such policies are amended from time to time by ShareTech.

1.16. "**Privacy Policy**" means ShareTech's then-current Privacy Policy generally applicable to all ShareTech's clients, which is available at <http://www.sharetech.org/legal/privacy.pdf>.

1.17. "**Provider**" is any provider of a Third Party Offering.

1.18. "**Representatives**" means, with respect to a Party, that Party's and its

Affiliates' employees, officers, managers, governors, directors, contractors, and financial and legal advisors.

1.19. "**Resultant Data**" means data and information related to Client's use of the Services and Third Party Offerings, including but not limited to data used to compile statistical and performance information related to the provision and operation of the same. Resultant Data is the property of ShareTech and/or a Provider.

1.20. "**Server**" means a software or hardware device of Client that provides resources, data, or services to other computers, called "clients," over a network or the internet, on which ShareTech has installed and is actively managing Supported Applications.

1.21. "**Service Order**" means a document executed by the Parties and referencing this SA, which outlines the Services to be provided by ShareTech, or any similar document executed by the Parties which does not include a reference to underlying terms or agreements.

1.22. "**Services**" means all products delivered and services performed by ShareTech pursuant to this Agreement, excluding Third Party Offerings.

1.23. "**ShareTech Parties**" means ShareTech, each Provider, and their respective Representatives, successors, and assigns.

1.24. "**SLA**" means a Service Level Agreement referenced in the applicable Service Order.

1.25. "**Special Terms**" mean any Service-specific terms referenced in a Service Order, including but not limited to ShareTech's Server Backup Service Terms.

1.26. "**Supported Applications**" means the applications listed at <http://www.sharetech.org/legal/supportedapps.pdf>, as updated from time to time, and any other applications specifically identified in a Service Order. All other applications are "**Non-Supported Applications**".

1.27. "**Supported Hardware**" means Workstations, Servers, and Supported Network Firewalls. All other hardware is "**Non-Supported Hardware**", unless otherwise agreed in the applicable Service Order.

1.28. "**Supported Network Firewalls**" means the firewalls listed at <http://www.sharetech.org/legal/firewalls.pdf>, as updated from time to time.

1.29. "**Third Party Offering**" means any software, hardware, services, and other Materials, in any form or medium, relating to the Services, that are not proprietary to ShareTech, whether or not purchased by Client.

1.30. "**User**" means an individual user covered under a Service Order.

1.31. **"Workstation"** means any individual workstation covered under a Service Order.

1.32. **Order of Precedence.** In the event of any conflict in their respective provisions, the parts of this Agreement will control in the following order, except for exceptions expressly set forth therein: (a) first, each Service Order, but solely as to Services provided under that particular Service Order, (b) second, the applicable Special Terms, if any, (c) third, the applicable SLA to such Service Order, if any, (d) fourth, this SA (including any Exhibits hereto), and (e) finally, any other documents incorporated in this SA or the Service Order by reference (including the Policies). A Service Order may also contain additional terms. The provisions of this Agreement will control over any standard or boilerplate terms and conditions included on any document provided by Client to ShareTech, including but not limited to purchase orders. Any such terms are unacceptable to and expressly rejected by ShareTech, are hereby waived by Client, and are not part of this Agreement.

1.33. **Interpretation.** The use of the terms "including," "include", or "includes" will in all cases herein mean "including without limitation," "include without limitation", or "includes without limitation," respectively.

1.34. **No Primary Drafter.** The Parties acknowledge and agree that they have mutually negotiated the terms and conditions of this Agreement, as reflected by each Service Order, and that any provision contained herein with respect to which an issue of interpretation or construction arises will not be construed to the detriment of the drafter on the basis that such Party or its professional advisor was the drafter, but will be construed according to the intent of the Parties as evidenced by the entire Agreement.

## 2. Services.

2.1. **Service Orders.** Subject to the terms hereof, ShareTech agrees to provide the Services described in this Agreement. All Services will be performed under an individual Service Order, provided that if Client requests that ShareTech perform additional Services not covered by a Service Order, and ShareTech performs such Services, Client will compensate ShareTech for such Services at ShareTech's then-current rates, and the Services will be subject to the terms of this SA.

2.2. **Location of Performance.** ShareTech shall determine the location of the Services, unless otherwise agreed in an SA. Onsite Services are subject to higher minimum Fees and may require payment of travel and other Expenses.

2.3. **Time and Materials.** Services completed at an hourly rate are designated as "**Time and Materials**" projects. To the extent an SA or other communication specifies a number of hours necessary to complete a particular project, such number shall serve only as a good faith estimate, and Client will be billed for every hour worked and every hour in transport. Client shall be responsible for all Expenses incurred.

2.4. **Workstations and Supported Hardware.** Unless otherwise agreed by ShareTech, the Services are limited to Supported Applications and Supported Hardware. At

Client's request, ShareTech may, but is not required to, undertake certain Services in connection with Non-Supported Applications and Non-Supported Hardware. Notwithstanding anything to the contrary contained herein, ShareTech makes no representations or warranties in connection with Services related to or impacting Non-Supported Applications and Non-Supported Hardware, and any such Services will be provided on a Time and Materials basis. Workstations or other Supported Hardware may be added to or removed from a Service Order by written agreement of ShareTech and Client (including via email). ShareTech reserves the right to increase per-Workstation pricing should the number of Workstations drop below the original number listed in the applicable Service Order. Increases in the number of Workstations will result in corresponding Fee increases, and Fees for additions of other Supported Hardware will be at ShareTech's then-current rates.

### 3. Term and Termination.

3.1. **Term.** The term of this SA shall commence on the date listed on the first Service Order and shall continue until terminated as set forth below (the "**Term**"). The term of each Service Order is as set forth therein.

3.2. **Automatic Termination.** This SA shall automatically terminate ninety (90) days after the later of (a) termination or expiration of the last remaining Service Order and (b) the last date on which ShareTech provided Services to Client.

3.3. **Termination for Convenience.** Either Party may terminate this SA for its convenience upon written notice to the other Party, in which case such termination shall be effective on the last day of the month following the month in which a notice of termination is provided, provided that the SA will continue in effect for any Service Orders not yet terminated in accordance with their terms.

3.4. **Termination for Cause.** Without limiting ShareTech's suspension rights under Section 12, and in addition to any other express termination right set forth elsewhere in this Agreement, either Party may terminate this Agreement (including any Service Orders hereunder) immediately upon five (5) days' written notice to the other Party if: (a) the other Party ceases its business operations or becomes subject to bankruptcy or insolvency proceedings and the proceedings are not dismissed within ninety (90) days; or (b) of such Party's material breach of this Agreement, unless the breaching Party has cured such breach (if capable of being cured) during such five (5) day period.

3.5. **Termination of Service Order.** Termination or expiration of a Service Order in accordance with its terms shall not automatically terminate this SA.

3.6. **Effect of Termination or Expiration.** Upon any expiration or termination of this Agreement, except as otherwise provided in this Agreement: (a) Client will pay all Fees and Expenses incurred prior to the effective date of termination (whether or not such amounts are due prior to or after the date of termination), and any other noncancellable Expenses; (ii) Client's rights hereunder will cease, except as to Third Party Offerings for which continued use has been expressly agreed in writing (including via the terms of the applicable Provider license); (c) any tangible property provided by one Party to the other

Party shall be returned at the expense of the returning Party; and (d) within thirty (30) days of request, each Party will use commercially reasonable efforts to return or destroy all Confidential Information of the other Party as described in Section 8.3.

3.7. **Data Retrieval.** CLIENT'S DATA AND ACCOUNT SETTINGS ARE IRREVOCABLY DELETED AFTER ACCOUNT TERMINATION, INCLUDING BUT NOT LIMITED TO, WEBSITE CONTENT, DATABASES, AND EMAIL MESSAGES. CLIENT IS SOLELY RESPONSIBLE FOR SECURING ALL NEEDED DATA FROM CLIENT'S ACCOUNT PRIOR TO ACCOUNT TERMINATION.

#### 4. **Fees and Payment.**

4.1. **Invoices.** Unless otherwise agreed in writing, Client shall pay all monthly Fees in advance, without deduction or set-off, on or before the first day of the month for which Services are to be provided, and shall pay fixed Fees and any other estimated Fees prior to the commencement of the applicable Services. Client shall pay all other amounts due to ShareTech within thirty (30) days of the date of invoice. Except as expressly set forth herein, all Fees are nonrefundable.

4.2. **Late Payments.** Any payment not received within the specified time period set forth hereunder, or on the invoice, except with respect to charges then under a reasonable and good faith dispute, will accrue interest at the lesser of (a) a rate of 1.5% per month, or (b) the highest rate allowed by applicable Law. Client shall also pay to ShareTech all costs and Expenses incurred by ShareTech in exercising any of its rights under this Agreement or applicable Law with respect to recovering any amount owed to ShareTech hereunder, including, but not limited to, reasonable attorneys' fees and costs. In addition, ShareTech reserves the right, in its discretion, to modify Client's payment terms to require quarterly or annual prepayment following a late payment.

4.3. **Taxes.** All fees or payments and any additional charges payable under this Agreement are exclusive of any applicable sales, use, or similar taxes, duties, and charges levied or assessed by any governmental authority ("**Sales Taxes**") that may be applicable to Client. Client shall be responsible for any such Sales Taxes, and in the event such Sales Taxes are to be paid by ShareTech, shall reimburse ShareTech for all such amounts.

4.4. **Pricing Adjustments.** Unless otherwise agreed in a Service Order, ShareTech's pricing is subject to adjustment by ShareTech from time to time, upon thirty (30) days' notice to Client (including via email), provided that pricing for recurring monthly Services is guaranteed for a period of one (1) year from commencement of the applicable Service Order.

#### 5. **Intellectual Property Rights and Third Party Offerings.**

5.1. **Third Party Terms.** Client acknowledges and agrees that the Services involve the use and/or provision of Third Party Offerings and, notwithstanding anything to the contrary in this Agreement, the use of Third Party Offerings is at all times subject to the terms and conditions set forth in their respective licenses, terms of use, acceptable use policies, and/or other agreements. In addition, Client may be subject to additional or



different terms, which shall be provided to Client, if an applicable agreement between ShareTech and Provider requires flow-down of such terms. Client agrees to comply with all of the foregoing, as amended from time to time. ShareTech makes no representations or warranties of any kind with respect to the Third Party Offerings.

5.2. **No Transfer of Ownership.** Except for rights expressly granted herein, this Agreement does not transfer any Intellectual Property Rights or other property or proprietary rights to Client. Client agrees that all right, title, and interest in any products and Services provided to Client, whether through ShareTech or any Provider, is solely the property of ShareTech or the applicable Provider. These products and Services are only for Client's internal use as outlined in this Agreement, and no other rights are provided by implication, estoppel, or any other legal theory. As between Client and ShareTech, Client is and will remain the sole and exclusive owner of all right, title, and interest in and to all Client Data, including all Intellectual Property Rights relating thereto, subject to the rights and permissions granted in this Agreement.

5.3. **Client Feedback.** At its option, Client may provide feedback, ideas, modifications, enhancement requests, recommendations, suggestions, or other derivative works (regardless of the source of inspiration) to the Services or Third Party Offerings or other ShareTech or Provider products or services ("**Improvements**") to ShareTech, Providers, or their respective Representatives. For the avoidance of doubt, all rights to Improvements are and will remain with ShareTech or the applicable Provider, and Client hereby irrevocably assigns to ShareTech or such Provider all right, title, and interest, if any, in Improvements based on such feedback or suggestions.

## 6. Client Responsibilities.

6.1. **Suitability.** Client acknowledges that it is solely responsible for assessing the suitability of the Services and Third Party Offerings for Client's business and acknowledges that unless otherwise agreed in a Service Order, the Services and Third Party Offerings are not intended to fulfill the requirements of any industry-specific regulations or standards. In addition, any Third Party Offerings or other software or technology offered by ShareTech may contain technology that is not fault tolerant. ACCORDINGLY, CLIENT ACKNOWLEDGES THAT THE SERVICES, THIRD PARTY OFFERINGS, AND ANY OTHER RELATED SOFTWARE AND TECHNOLOGY MAY CONTAIN COMPONENTS THAT ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY, OR ENVIRONMENTAL DAMAGE, AND CLIENT'S USE WILL NOT INVOLVE ANY OF THE FOREGOING ENVIRONMENTS OR APPLICATIONS.

6.2. **Corrective Action and Notice.** If Client becomes aware of any actual or threatened activity prohibited by this Agreement, Client shall, and shall cause its Users and other personnel to, immediately: (a) take all reasonable and lawful measures within their respective control that are necessary to stop the activity or threatened activity and to mitigate its effects (including, where applicable, by discontinuing and preventing any unauthorized access to the Services and/or Third Party Offerings and permanently erasing from their systems and destroying any data or other Material to which any of them have gained unauthorized access); and (b) notify ShareTech of any such actual or threatened

activity.

## 7. Representations and Warranties.

7.1. Each Party represents and warrants that:

(a) upon execution of a Service Order, it has validly entered into this Agreement, and that it will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms, and that entering into such Agreement and performing its obligations will not result in any breach of or constitute a default under any other agreement to which it is a Party;

(b) it will comply with all Laws in connection with its provision, receipt, or use of the Services, and in the case of Client, use of the Third Party Offerings; and

(c) at all times during the Term it will maintain, at its own expense, appropriate insurance coverage in connection with the performance of its obligations under this Agreement, including, as applicable, general commercial liability, worker's compensation, automobile liability, and as applicable, professional liability coverages.

7.2. ShareTech represents and warrants that the Services will be provided in a workmanlike and professional manner, and in compliance with the applicable SA in all material respects.

7.3. Client represents and warrants that:

(a) any Material which Client uses, posts, or otherwise transfers to or by way of ShareTech's servers will not (i) infringe upon any Intellectual Property Rights of any person, business or entity; (ii) violate any law, statute, ordinance, or regulation, governmental or otherwise; (iii) result in product liability, tort, breach of contract, personal injury, death or property damage; or (iv) constitute a disclosure of any confidential information owned by a third party; and

(b) without limiting the terms of any applicable license or agreement, it will not export or re-export, either directly or indirectly, the Services or any Third Party Offerings, or any other related Material, in violation of U.S. or foreign export control Laws, including but not limited to the Export Administration Act of 1979, 50 U.S.C. App. §§ 2401-2420, the Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-1707, the Arms Export Control Act, 22 U.S.C. 2778, and any regulations, orders, or rules issued pursuant thereto ("**U.S. Export Controls**"). Client further covenants that it will not export or re-export the Services or any Third Party Offerings to a party listed on any of the lists maintained by the U.S. Department of Commerce, the U.S. Department of the Treasury or the U.S. Department of State, found at [www.bis.doc.gov/images/consolidated\\_list/consolidated\\_party\\_list.txt](http://www.bis.doc.gov/images/consolidated_list/consolidated_party_list.txt), to any person owned or controlled by such person or to any embargoed country in violation of U.S. export control Laws; and



(c) it is liable to all ShareTech Parties (including Providers), for any breach of this Agreement or any other licenses or agreements with Providers.

**7.4. NO OTHER REPRESENTATIONS OR WARRANTIES. CLIENT AGREES THAT THE USE OF SHARETECH'S SERVICES AND THE THIRD PARTY OFFERINGS ARE AT CLIENT'S SOLE RISK. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, THE SHARETECH PARTIES PROVIDE THE SERVICES AND THIRD PARTY OFFERINGS "AS IS, WITH ALL FAULTS," AND MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, AND EXCEPT AS SET FORTH IN THE APPLICABLE SA, SHARETECH MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES, THIRD PARTY OFFERINGS, OR RELATED MATERIALS, OR THE USE OF ANY OF THE FOREGOING, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF MALICIOUS CODE, OR ERROR FREE. UNLESS MEMORIALIZED IN A SERVICE ORDER, NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SHARETECH OR ANY OF ITS AUTHORIZED REPRESENTATIVES WILL CREATE A WARRANTY. CLIENT AND SHARETECH FURTHER AGREE THAT THE TERMS OF THIS AGREEMENT SHALL NOT BE ALTERED DUE TO CUSTOM OR USAGE OR DUE TO THE PARTIES' COURSE OF DEALING OR COURSE OF PERFORMANCE UNDER THIS AGREEMENT.**

## **8. Confidentiality and Data Security.**

**8.1. Obligation of Confidentiality.** In connection with this Agreement each Party (as the "**Disclosing Party**") will have access to Confidential Information of the other Party (as the "**Receiving Party**"). The Receiving Party shall (a) protect the Disclosing Party's Confidential Information using the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care); (b) not use, disclose, or reproduce any Confidential Information of the Disclosing Party for any purpose other than to exercise its rights and perform its obligations under this Agreement, and (c) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to Receiving Party's Representatives with a need to know such information and who have agreed in writing (or in the case of professional advisors are otherwise legally bound) to keep it confidential. The Disclosing Party is responsible for any breach of this Section 8 by its Representatives.

**8.2. Exclusions.** Confidential Information shall not include information that: (a) was in the public domain at or subsequent to the time such portion was communicated to Receiving Party, through no fault of Receiving Party; (b) was rightfully in the possession of Receiving Party, free of any obligation of confidence at or subsequent to the time such portion was communicated to Receiving Party by Disclosing Party; (c) was developed by employees or agents of Receiving Party independently of and without reference to any information communicated to Receiving Party by Disclosing Party; or (d) is approved (via

written authorization) by Disclosing Party for release by Receiving Party. A disclosure of the Confidential Information of Disclosing Party either: (x) in response to a valid order by a court or other governmental body, (y) as is otherwise required by Law, or (z) as necessary to establish the rights of either Party under this Agreement, shall not be considered to be a breach of this Agreement by Receiving Party or a waiver of confidentiality for other purposes. If Receiving Party is required by Law to disclose Confidential Information (pursuant to a subpoena, discovery, warrant, or similar legal process), Receiving Party shall, to the extent allowed by Law, promptly notify Disclosing Party upon receipt of such demand and reasonably cooperate with Disclosing Party (at the expense of Disclosing Party) in any attempt to quash such legal process or to seek a protective order or other appropriate relief requested by Disclosing Party.

**8.3. Ownership and Return of Confidential Information and Other Materials.** All Confidential Information of each of the Parties shall remain the property of Disclosing Party, and no license or other rights to such Confidential Information is granted or implied hereby. Except as otherwise agreed in writing, all Material furnished by Disclosing Party to Receiving Party shall remain the property of Disclosing Party. Upon written request of Disclosing Party, Receiving Party shall destroy or return to Disclosing Party all Confidential Information, except that Receiving Party may (a) retain copies of Confidential Information that it is required by Law or regulation to retain and (b) retain copies of Confidential Information in accordance with disaster, data recovery or records retention purposes as part of archival back-up systems maintained by Receiving Party in the ordinary course of business.

## **9. Security; Processing of Personal Data.**

**9.1. ShareTech Systems and Security Obligations.** ShareTech will use commercially reasonable security measures in providing the Services, and along with its subprocessors shall implement and maintain appropriate organizational, administrative, physical, and technical safeguards for the protection of the security, confidentiality and integrity of Personal Data and to protect against unauthorized access to or alteration, disclosure, destruction, or loss of Personal Data.

**9.2. Personal Data.** With respect to any processing of Personal Data by ShareTech and its subprocessors on behalf of Client, ShareTech shall be regarded as "data processor" and Client shall be regarded as "data controller" within the terms of the applicable data protection Laws. As data processor, ShareTech shall process Personal Data only in accordance with Client's instruction, which instruction is set out in full in this Agreement. Client will ensure that it (a) discloses Client's privacy practices and any other required information in accordance with all applicable Laws, and (b) identifies the collection (via cookies, web beacons and other applicable means), tracking and use of information gathered or processed in connection with the Services to the extent required by applicable Law. If required by applicable Law, Client shall provide third parties all required information about such processing. Client will obtain and maintain any required consents to permit the processing of Client Data, including Personal Data, under this Agreement. Notwithstanding anything to the contrary in this Section 9, unless otherwise agreed in an SA, Client acknowledges that ShareTech's need to process Personal Data to perform the Services is limited to names and email addresses of Authorized Users. Client represents and warrants

that it will not provide, and it will take steps during implementation to ensure that ShareTech does not obtain Personal Data of European Union citizens unless Client and ShareTech have executed a compliant Data Processing Agreement.

9.3. **California Consumer Privacy Act.** For purposes of Personal Data protected by the California Consumer Privacy Act, Client is a business and ShareTech is a service provider as those terms are defined in the California Consumer Privacy Act. ShareTech shall not: (a) sell the Personal Data; (b) retain, use, or disclose the Personal Data for any purpose other than for the specific purpose of performing the Services; (c) retain, use, or disclose the Personal Data for a commercial purpose other than providing the Services; or (d) retain, use, or disclose the Personal Data outside of the direct business relationship between ShareTech and Client.

9.4. **Investigations.** Upon request, and at Client's sole expense (including payment of ShareTech's then standard hourly rates and any legal fees), ShareTech and its subprocessors will provide Client with reasonable cooperation and assistance in connection with any complaint or request made by a supervisory authority if Client is unable to respond to the complaint or request without such assistance.

9.5. **Use of Data.** ShareTech is permitted to use Client Data, and to transfer and permit its subcontractors and Providers to use Client Data, (a) to provide the Services and facilitate provision of the Third Party Offerings, and prevent or address service or technical problems, (b) as required by Law, (c) to improve and enhance the Services and Third Party Offerings and for other development, diagnostic and corrective purposes in connection with the Services, and (d) as expressly permitted by Client in writing. ShareTech shall have the right to (and to retain third parties to) collect and analyze Resultant Data and to use it for any purpose.

9.6. **Data Backup.** Client shall be solely responsible for maintaining backups of Client Data, both during and after the Term of this Agreement. SHARETECH'S SOLE OBLIGATION AND CLIENT'S SOLE REMEDY FOR LOSS OF DATA IS TO REQUEST THAT SHARETECH USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE CLIENT WITH THE MOST RECENT VERSION OF THE APPLICABLE CLIENT DATA IN SHARETECH'S POSSESSION. EXCEPT FOR THE OBLIGATION DESCRIBED IN THE PRIOR SENTENCE, SHARETECH HAS NO OBLIGATION OR LIABILITY FOR ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CLIENT DATA.

9.7. **Client's Control and Responsibility.** Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and other Material provided by or on behalf of Client or any User; (c) Client Systems, including their compliance with the Americans with Disabilities Act and all other applicable Laws; and (d) all access to and use of the Services and Third Party Offerings directly or indirectly by or through the Client Systems or its Users, with or without Client's knowledge or consent. Without limiting the foregoing, Client will, and will ensure that each of its Users, comply with the Policies, as amended from time to time in the sole discretion of ShareTech, which are incorporated herein by reference. Any such amendments may be made by posting to ShareTech's website, via email notification, or by any other means determined by ShareTech in its sole discretion.

10. **Non-Solicitation.** During the term of any Service Order and for a period of one (1) year thereafter, neither Party shall, without the prior written consent of the other Party: (a) directly solicit, induce, recruit, encourage, request, or attempt to influence any employee of the other Party to terminate their employment; or (b) employ, hire, or take away any employee of the other Party, either for itself or for any other person or entity. The foregoing limitation is only applicable to personnel of each Party that are materially involved in the project governed by the applicable Service Order. Notwithstanding the foregoing, nothing shall prevent either Party from employing an employee of the other Party who (x) responds to a general employment advertisement when such solicitation is not specifically directed at that individual; or (y) contacts the other Party on his or her own initiative without any direct or indirect solicitation by the hiring Party.

11. **Publicity.** Client expressly consents to ShareTech identifying Client to third parties as a client of ShareTech, including reproducing and publicizing its trading name, trademarks, and logos, on the corporate website of ShareTech and in its marketing materials.

## 12. **Suspension of Services.**

12.1. **Suspension.** Without limiting any other right or remedy of ShareTech or any Provider, ShareTech retains the right to suspend the recurring monthly Services, Client's access to any ShareTech technology, and/or any Third Party Offering (without incurring any obligation or liability to Client or any other person by reason of such suspension) in the event of (a) Client's failure to make a payment when due or other breach of this Agreement, where such failure or breach continues for a period of ten (10) days following written notice from ShareTech; (b) a Provider's demand as to such Provider's Third Party Offering; or (c) any suspected security threat, in which case prior notice is not required. ShareTech will terminate any such suspension as soon as, in the case of (a), Client has cured such breach, in the case of (b), upon approval by Provider, and in the case of (c), as soon as ShareTech determines that the risk underlying the suspension has been mitigated, in each case subject to payment of the Reinstatement Fee by Client. In addition, in the event of any breach of this Agreement by Client, ShareTech may elect to cancel or postpone any Time and Materials or other non-recurring Services without notice.

12.2. **Reinstatement.** Reinstatement following suspension shall require advance payment of an administrative fee equal to fifty percent (50%) of Client's average monthly Fees for each Service to be reinstated, or if no monthly Fee is applicable, ShareTech's then current reinstatement charge for Services of a similar type (the "**Reinstatement Fee**").

## 13. **LIMITATION OF LIABILITY AND INDEMNIFICATION.**

13.1. **Exclusive Remedy. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE SLA PROVIDED UNDER THE SERVICE ORDER FROM WHICH THE CLAIM AROSE CONSTITUTES CLIENT'S SOLE AND EXCLUSIVE REMEDY AND SHARETECH'S ENTIRE LIABILITY FOR LOSSES ARISING FROM, BASED ON, OR RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES; FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, ERRORS,**

**DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION; OR FROM ANY FAILURE OF PERFORMANCE.**

**13.2. Excluded Damages. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NO SHARETECH PARTY IS RESPONSIBLE OR LIABLE UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), AND STRICT LIABILITY, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT, OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE, INTERRUPTION, OR DELAY OF THE SERVICE; (c) LOSS, DAMAGE, OR CORRUPTION OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT PRODUCTS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES IN CONNECTION WITH SERVICES, THIRD PARTY OFFERINGS, RELATED MATERIALS, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE.**

**13.3. LIMITATION OF LIABILITY. EXCEPT FOR MATTERS WHERE SUCH LIMITATION IS PROHIBITED BY LAW, BUT REGARDLESS OF WHAT CAUSE OF ACTION (INCLUDING NEGLIGENCE) OR CLAIM FOR RELIEF IS ASSERTED, THE LIABILITY OF THE SHARETECH PARTIES TO CLIENT FOR ANY ACTIONS OR OTHER DAMAGES RELATED TO OR ARISING IN CONNECTION WITH THE SERVICES, THIRD PARTY OFFERINGS, RELATED MATERIALS, OR OTHERWISE IN CONNECTION WITH THIS AGREEMENT, IS LIMITED TO THE TOTAL FEES PAID BY CLIENT TO SHARETECH IN THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO SUCH CLAIM OR UNDER THE SERVICE ORDER UNDER WHICH THE CLAIM AROSE, WHICHEVER IS LESS.**

**13.4. Allocation of Risk.** The Parties agree that the limitations specified in this Section 13 represent an allocation of risk between the Parties, are an essential and material part of this Agreement, and will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

#### **14. Indemnification.**

**14.1. Client Indemnification.** Client shall indemnify, defend, and hold harmless the ShareTech Parties from and against any and all Losses incurred by each such ShareTech Party in connection with any Action arising out of or resulting from, or which is alleged to arise out of or result from: (a) Client Data, including any processing of Client Data by or on behalf of ShareTech in accordance with this Agreement; (b) any other information or other Materials provided by or on behalf of Client or any User; (c) allegation of facts that, if true, would constitute Client's or a User's breach of any provision of this Agreement; (d) negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any User, or any third party on behalf of Client or any User, in connection with this Agreement; or (e) any product or service provided by Client to a third party.

**14.2. Indemnification Procedure.** Upon becoming aware of an Action to which Client's indemnification obligations apply, the indemnitee will promptly notify Client in writing of the applicable Action, and unless otherwise required by a Provider, Client will defend such Action with counsel reasonably acceptable to the indemnitee. Any settlement shall require the indemnitee's consent unless it unconditionally releases the indemnitee of all liability. Upon request, the indemnitee will cooperate with Client in the defense of the claim (at Client's expense). The indemnitee's failure to perform any obligations under this Section 14.2 will not relieve Client of its obligations, except to the extent that Client can demonstrate that it has been materially prejudiced as a result of such failure.

## 15. Remedies.

**15.1. Timing.** Any and all claims arising out of or relating to this Agreement, except for any claim against Client for the amount Client owes ShareTech for Services rendered, will expire unless filed within one (1) year after the first date of performance or breach which in whole or in part gives rise to the claim, whether brought under a theory of tort liability, contract liability, or any other theory.

**15.2. Governing Law and Disputes.** This Agreement will only be governed by and construed in accordance with the Laws of Minnesota, except for its conflicts of law rules and principles. The Parties agree that, in the event of any suit or proceeding arising out of or related to this Agreement, the courts of Minnesota will have exclusive jurisdiction and the Parties shall submit to the jurisdiction of such courts. Except as set forth in Section 15.1, nothing in this Agreement limits either Party's ability to seek equitable relief.

## 16. General Provisions.

**16.1. Relationship of the Parties.** ShareTech is an independent contractor. Nothing in this Agreement will be construed as creating any joint venture, partnership, employment, or agency relationship between the Parties.

**16.2. Waiver.** No failure of either Party to exercise, and no delay in exercising, any right, power, or privilege under this Agreement is a waiver of that right, power, or privilege. Any single or partial exercise of any right under this Agreement does not preclude any other or further exercise of that right or the exercise of any other right. Any waiver of any provision of this Agreement is effective only in the specific instance and for the specific purpose for which the waiver is given.

**16.3. Assignment.** This Agreement is binding upon and will inure to the benefit of the Parties, their legal representatives, successors, and permitted assigns. This Agreement, and the rights and obligations created hereunder, may not be assigned or otherwise transferred by Client without the written consent of ShareTech, and any attempt to do so is null and void.

**16.4. Notices.** Except as otherwise set forth herein, all notices and demands hereunder shall be in writing and shall be personally delivered or sent by certified or registered mail, return receipt requested, or by a nationally recognized private express courier. Notices to Client shall be sent to the address of Client listed on the applicable



Service Order and notices to ShareTech shall be sent to the address below (or in either case to such different address as may be designated by such Party by notice to the other Party in accordance with this Section 16.4).

To ShareTech:

ShareTech, LLC  
2136 Ford Parkway, PMB 153  
Saint Paul, MN 55116  
[legal@sharetech.org](mailto:legal@sharetech.org)  
Attn : Michael Nolette

**16.5. Force Majeure.** Neither Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any payment obligations hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's reasonable control, including, but not limited to, acts of God, strikes, walkouts, riots, acts of war, failure of Providers or other suppliers to perform, governmental regulations, power failure(s), telecommunications failures, earthquakes, pandemic or epidemic, or other uncontrollable events.

**16.6. No Third Party Beneficiary.** This Agreement is solely for the benefit of the Parties hereto and does not confer any rights to any other person or business entity as a third party beneficiary or otherwise, except that to the extent required under their respective terms and any agreements with ShareTech, Providers shall be entitled to enforce any provisions hereof against Client in connection with their Third Party Offerings.

**16.7. Survival.** Survival. The provisions set forth in Sections 3.6, 3.7, 5, 6, 8-11, and 13-16, all of Client's payment obligations hereunder, and any other right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement shall so survive.

**16.8. Headings.** Headings contained in any portion of this Agreement are for convenience of reference only and do not form part of this Agreement.

**16.9. Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective to the extent of such prohibition or unenforceability in that jurisdiction alone. The validity, enforceability, or legality of the remaining provisions will not be affected.

**16.10. Counterparts.** Any Service Order or other document executed in connection with this Agreement may be executed in any number of counterparts. Each counterpart is an original and all of which when taken together constitute one and the same instrument. One or more counterparts may be delivered electronically in PDF or other format; these formats have the same effect as an original executed counterpart.

**16.11. Entire Agreement.** This Agreement (including the Service Orders executed hereunder and the Exhibits hereto) constitutes the entire agreement of the Parties and prior

communications, understandings, commitments, or agreements, oral or written, with respect to the subject matter hereof. The Parties are not relying on any representations or warranties other than those expressly provided herein. Except where prohibited by Law, ShareTech may make changes to this SA and the content of any links at any time by posting the modified SA, at [http://www.sharetech.org/legal/service\\_agreement.pdf](http://www.sharetech.org/legal/service_agreement.pdf), or with respect to links, at the URLs listed herein. Changes will become effective thirty (30) days following posting, except that changes to the SA related to any new features or functionality or that ShareTech deems necessary under Law will be effective immediately upon posting. ShareTech may, but is not required to, provide email notice to Client of such changes. Changes to any Service Order require the mutual written consent of the Parties (which may be provided in an email referencing such Service Order).