



## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “**Agreement**”) is effective as of the recorded purchase date on *launch.k4connect.com/hotline* (the “Effective Date”) by and between K4Connect, Inc. (“**K4Connect**”), and (“**Customer**”). Each of K4Connect and Customer are referred to hereinafter as a “**Party**” and collectively as the “**Parties**”.

### 1. **Definitions**

“**Affiliate**” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a Party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such Party.

“**Authorized Individual**” means an individual who has been provided access to an Authorized Resident’s LifeCircle by such Authorized Resident or by Customer.

“**Authorized Individual Data**” means all photos, videos and messages submitted to or through K4Community by an Authorized Individual that is not otherwise Customer Data, Authorized Resident Data or K4Connect Data.

“**Authorized Resident**” means a Resident of a Community to whom Customer has provided access to K4Community.

“**Authorized Resident Data**” means all photos, videos and messages submitted to or through K4Community by an Authorized Resident that is not otherwise Customer Data, Authorized Individual Data or K4Connect Data.

“**Confidential Information**” means information disclosed by or on behalf of the disclosing Party to the receiving Party for purposes arising out of or in connection with the Agreement. The following shall not be deemed Confidential Information: (i) information that was in the public domain at the time of its disclosure, or which becomes available within the public domain through no fault of the receiving Party; (ii) information that was rightfully in the receiving Party’s possession without restriction prior to disclosure; (iii) information that was rightfully disclosed to the receiving Party by a Third Party without restriction; and (iv) information that was independently developed by employees and/or contractors of the receiving Party who did not have access to and without use of or reference to the disclosing Party’s Confidential Information.

“**Community**” means a residential setting where individuals, oftentimes seniors and/or individuals with disabilities, reside within Units with ready access to varying levels of care and support depending upon individualized needs.

“**Customer Data**” means all electronic data or information submitted to or through K4Community by Customer Personnel that is not otherwise Authorized Resident Data, Authorized Individual Data or K4Connect Data.

“**Customer Personnel**” means employees and contractors of Customer and its Affiliates who are authorized by Customer to access K4Community on behalf of Customer to administer, for Customer’s business purposes, use of K4Community for the benefit of Customer, Authorized Resident or Authorized Individuals.

“**Electronic Communications**” means any transfer of signs, signals, video, text, images, sounds, data or intelligence of any nature transmitted in whole or in part, electronically received, and/or transmitted through K4Community.

“**Help Documentation**” means the offline and/or online help documentation and information describing features of K4Community and/or Products, in whole or part, which may be updated from time to time.

“**K4Community**” means the provision of K4Community Application Software on a software as a service basis, which may include K4Community Family App, K4Community Resident App, K4Box and K4Community Dashboard.

“**K4Box**” means device with embedded K4Connect propriety software that is placed in a Unit and interoperates with Products and



other components of K4Community.

**“K4Community Family App”** means the then-current version of K4Community mobile application that enables Authorized Individuals to engage in certain interactions with the Authorized Resident, Community or K4Connect.

**“K4Community Resident App”** means the then-current version of K4Community mobile application that enables Authorized Residents to engage in certain interactions including controlling the Products in their Unit and engaging in certain interactions with the Customer, Authorized Individuals, K4Connect and other Authorized Residents.

**“K4Community Dashboard”** means the portion of K4Community that enables Customer to utilize K4Community and engage in certain interactions with Authorized Residents, Authorized Individuals and K4Connect.

**“K4Community Application Software”** means the K4Connect’s proprietary K4Community technology management and delivery software platform.

**“K4Connect Data”** means all (i) electronic data or information submitted to and/or stored within K4Community by or on behalf of K4Connect, (ii) diagnostic, system, and usage data regarding K4Community generated by or on behalf of K4Connect, and (iii) Anonymized Data (as defined in Section 2.09).

**“LifeCircle”** means a feature within K4Community that allows an Authorized Resident to interact with their Authorized Individuals.

**“Products”** means any tangible product, excluding the K4Box, that is connected to K4Community either through a hard-wired or wireless connectivity interface, that are expressly approved by K4Connect in writing to interoperate with K4Community, which may or may not be provided by K4Connect to the Customer for the benefit of the Customer or Authorized Resident pursuant to the terms set forth in the Agreement.

**“Professional Services”** means Standard Professional Services and Supplemental Professional Services.

**“Residents”** means an individual living in a Unit located within the Community, whether on a temporary, long-term or permanent basis.

**“Services”** means (i) the provision of access to and use of all or portions of K4Community and (ii) the provision of Professional Services.

**“Specifications”** means the text and/or graphical materials that describe the features, functions, and use of K4Community on K4Connect’s website, [www.K4Connect.com/](http://www.K4Connect.com/).

**“Standard Professional Services”** means the services K4Connect customarily provides as part of its base K4Community offering but may be altered via a Work Order between K4Connect and the Customer.

**“Supplemental Professional Services”** means additional general consulting, implementation, installation, training, or support services not usually included as part of the Standard Professional Services, to be provided to Customer pursuant to a Work Order.

**“Third Party”** means a person or entity other than K4Connect, Customer or either of their Affiliates.

**“Third Party Application”** means an application, integration, or other software as a service provided by a Third Party within or through K4Community.

**“Unit”** means a residential dwelling, occupied by an Authorized Resident, within which the Products are installed. A Unit can be, but is not limited to being, a single room, apartment, cottage or house.



“**Work Order**” means a written document executed by Customer and K4Connect that references this Agreement and specifies Products and Services to be provided by K4Connect pursuant to the terms of the Agreement and all associated fees.

## **2.0 | Provision of Services.**

**2.01 | Generally.** K4Connect shall provide to Customer the Services and Products set forth in a Work Order executed by Customer and K4Connect. Customer acknowledges and agrees that it is responsible for separately acquiring any Products not specified in the Work Orders.

**2.02 | K4Community Dashboard.** Customer acknowledges and agrees that the K4Community Dashboard includes certain administrative and messaging capabilities that are intended for Customer’s use only and not for use by any Authorized Resident, Authorized Individual, or other party. Customer shall not authorize access to the K4Community Dashboard other than to Customer Personnel.

**2.03 | Network Specifications.** The Customer shall establish and maintain adequate internet bandwidth, signal strength, device discovery/communication protocols and security environment profiles to meet the minimum standards designated by K4Connect as set forth upon the “**Network Specifications**” document published by K4Connect. The Network Specifications are dynamic in nature and are continually updated based upon numerous variables, including, but not limited to: (i) advancements in the technological capabilities of the Products and K4Community; (ii) updates to the Products and K4Community based upon security or functionality issues that are routinely discovered within the underlying system architecture, firmware and software, or communication networks utilized by the Products and K4Community; and, (iii) local, state and federal regulatory requirements which impact the Products and K4Community. Given the dynamic and fluid nature of the Network Specifications, the Customer agrees to be bound by all reasonable updates, modifications and changes made to the Network Specifications at the sole discretion of K4Connect. Failure by the Customer to achieve the minimum standards set forth within the Network Specifications shall void all warranties and remedies, express or implied, without condition, that the Customer may seek to pursue against K4Connect related to the Products and K4Community.

**2.04 | Authorized Residents and Individuals.** Customer shall be responsible for designating a person as an Authorized Resident to receive access to K4Community hereunder. As between K4Connect and Customer, Customer shall be responsible for the designation of any person as an Authorized Individual for an Authorized Resident. All decisions with respect to Authorized Individuals shall be between Customer and Authorized Residents (or their designees). K4Connect shall have no liability relating to the appointment of a person as either an Authorized Resident or an Authorized Individual.

**2.05 | General Restrictions.** Customer is responsible for all activities conducted under its user logins and for its Customer Personnel’s compliance with the terms of any Agreement entered into by and between the Customer and K4Connect. Customer’s use of K4Community shall be solely for the benefit of the Residents in the Units described in the Work Order and shall not include service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single user login, or time-sharing of K4Community. Customer shall not itself, nor shall the Customer permit any Customer Personnel to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile K4Community and Products or any part thereof, or otherwise attempt to discover any source code or modify K4Community or Products in any manner or form unless expressly allowed in the Help Documentation; (b) access or use K4Community to circumvent or exceed account limitations or requirements of K4Community or Products; (c) use K4Community or Products for the purpose of building a similar or competitive product or service, (d) obtain unauthorized access to K4Community or Products (including without limitation permitting access to or use of K4Community or Products via another system or tool, the primary effect of which is to enable input of requests, transactions or instructions by means other than by authorized Customer Personnel or by products approved for the input of requests, transactions or instructions expressly permitted for such use by K4Connect in writing); (e) use K4Community or Products in a manner that is contrary to applicable law or in violation of any Third Party rights of privacy or intellectual property rights; (f) publish, post, upload or otherwise transmit Customer Data that contains any viruses, trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (g) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark K4Community or Products. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of K4Community and Products, including without



limitation, those related to privacy, electronic communications and anti-spam legislation. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using K4Community and Products, obtaining any permits, licenses and authorizations required for such compliance. Unless expressly authorized by a separate agreement executed by K4Connect and Customer, Customer will not provide any Protected Health Information (as defined in 45 C.F.R. §160.103 or any successor regulations thereto) to K4Connect or otherwise send, submit, or transmit any such Protected Health Information to, through, or using K4Community. Customer will not send any Electronic Communication from K4Community that is unlawful, harassing, libelous, defamatory or threatening. Customer agrees not to access K4Community or Products by any means other than through the interfaces that are provided by K4Connect. Customer shall be responsible for Authorized Residents' use of K4Community, including their compliance with the requirements of this Section 2.05. Customer shall be responsible for Customer Personnel's and its Affiliates' compliance with the terms and conditions of this Agreement applicable to Customer and Customer Personnel and any action or breach of such terms and conditions by any Affiliate or Customer Personnel shall be deemed an action or breach hereof by Customer.

**2.06 | Transmission of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of K4Community and Products. Customer is responsible for securing its network and Internet connection and for using the most current version of "browser" software in order to utilize K4Community and Products in the manner intended by K4Connect as per the Network Specifications. Customer expressly consents to K4Connect's interception and storage of Electronic Communications, Customer Data and/or Authorized Resident Data and to the use by K4Connect and its Third Party service providers solely for the provision of the Services or as set forth herein. Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by K4Connect. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. K4Connect is not responsible for any Electronic Communications, Customer Data, Authorized Resident Data and/or Authorized Individual Data which may be delayed, lost, altered, intercepted or stored during the transmission thereof across networks not owned and/or operated by K4Connect, including, but not limited to, the Internet and Customer's local area network.

**2.07 | Service Level.** During the Term, the Products and K4Community will meet the service level specified in the "Service Level Agreement" (hereinafter, "SLA"), a copy of which can be found on the K4Connect website located at [www.K4Connect.com/sla](http://www.K4Connect.com/sla), which is incorporated herein by this reference. If K4Community fails to achieve the service level specified within the SLA, then Customer will be entitled, as its sole and exclusive remedy, to a credit for K4Community in accordance with the terms set forth in the SLA. The system logs and other records maintained by K4Connect for K4Community, if any, shall be the primary and ultimate source for calculating any service level incidents, provided that K4Connect shall reasonably consider any data and records that Customer provides to it in connection with any service level analysis.

**2.08 | Confidentiality.** Each Party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) and to not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under any Agreement. Either Party may disclose Confidential Information on a need to know basis to its and its Affiliates', employees, contractors and service providers who have executed binding written agreements that include confidentiality and non-use obligations at least as restrictive as those in this Section. Nothing in this Agreement or within any Agreement will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or regulation, order of a court or other governmental authority or regulation, or at the discretion of K4Connect, upon advice of K4Connect's legal counsel.

**2.09 | Ownership of Customer Data and Authorized Resident Data.** As between K4Connect and Customer, all title and intellectual property rights in and to the Customer Data are owned exclusively by Customer. As among K4Connect, Customer, and an Authorized Resident, all title and intellectual property rights in and to the Authorized Resident Data are owned exclusively by such Authorized Resident. Notwithstanding the foregoing, Customer acknowledges and agrees that K4Connect shall have the right to retain, use, analyze, and transfer the Customer Data, the Authorized Resident Data, and all data as set forth in this Agreement.



**2.10 | K4Connect Use of Data.** K4Connect shall have the right to retain, use, analyze, and transfer any Customer Data, Authorized Resident Data, and other data for system testing and to support, maintain, operate, and provide Services pursuant to this Agreement. K4Connect shall have the right to (i) retain, use, analyze, and transfer any Anonymized Data for statistical and analytical purposes, system testing, improvement of its Services, the creation of new intellectual property or services, the generation and dispersion of insights, and other commercially-reasonable purposes and (ii) to support, maintain, operate and provide Services pursuant to this Agreement. “Anonymized Data” means data from which all personally identifiable information has been removed. For the avoidance of doubt, Anonymized Data shall not include any photographs or videos. Notwithstanding the foregoing, K4Connect acknowledges and agrees that Anonymized Data must be aggregated with the anonymized data of other customers of K4Connect prior to the publication of any Anonymized Data, such that no publicized data identifies Customer or any Authorized Resident or contains descriptors that are unique to Customer or any Authorized Resident.

**2.11 | K4Connect Intellectual Property Rights.** All rights, title and interest in and to K4Community, including without limitation all intellectual property rights therein, all intellectual property derived from the use or analysis of the Anonymized Data, and all modifications, extensions, customizations, scripts or other derivative works of K4Community, the Services, and the Products provided or developed by K4Connect are owned exclusively by K4Connect or its licensors. Except as provided in any Agreement, the rights granted to Customer do not convey any rights in K4Community or Products, express or implied, or ownership in K4Community or Products, or any intellectual property rights thereto, not specifically set forth in a writing signed by an authorized representative of K4Connect. Customer grants K4Connect a royalty-free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into K4Community or Products (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, corrections or other feedback or information provided by Customer or any Customer Personnel related to the operation or functionality of K4Community or Products. Any rights in K4Community, Products or K4Connect’s intellectual property not expressly granted herein by K4Connect are reserved by K4Connect.

**2.12 | Marks.** K4Connect service marks, logos and product and service names are marks of K4Connect or its affiliates (hereinafter, the “K4Connect Marks”). K4Connect hereby grants Customer the limited right to use the K4Connect Marks solely in connection with the Services in each Community and only for so long as Customer uses the K4Connect Marks in compliance with all written instructions and policies concerning the use of the K4Connect Marks that K4Connect provides to Customer from time to time; provided, however, that K4Connect may revoke such right at any time in its sole discretion for any reason. The trademarks, logos and service marks of Third Party Application or Product providers (“Third Party Marks”) are the property of such third parties. Customer is not permitted to use any Third Party Mark without the prior written consent of the Third Party that owns such Third Party Mark. Customer hereby provides consent for K4Connect to publicly refer to Customer as a customer of K4Connect, including by way of press release or as a display on K4Connect’s website, and to use Customer’s name and logo.

**2.13 | K4Community Authorization.** Customer covenants that, prior to the installation of K4Community or Products in any Resident’s Unit, it has the authority to permit such installation. Customer represents and warrants that the installation and provision of K4Community as set forth in a Work Order does not and will not violate any (i) applicable laws, rules or regulations applicable to such Community, including without limitation with respect to its building and premises, or (ii) any contract to which Customer or any of its Affiliates is a party.

### **3.0 | Financial Terms**

**3.01 | Generally.** Customer agrees to pay K4Connect for Services and Products in accordance with the applicable Work Order executed by the Parties. Unless otherwise set forth in the Work Order, all payments shall be made in United States dollars no later than thirty (30) days after the date of invoice. All payments not received when due shall accrue interest at a rate per month of one and one-half percent (1.5%). Customer shall pay all Third Party collection costs incurred by K4Connect to collect past due amounts, including reasonable attorneys’ fees.

**3.02 | Taxes.** Customer is responsible for all taxes of any jurisdiction which may be assessed or imposed upon the Services or Products provided under this Agreement, or otherwise assessed or imposed in connection with the transactions contemplated by this Agreement, including without limitation, sales, use, excise, value added, personal property, and any interest and penalties which may be assessed with respect thereto. If Customer is exempt from any taxes, they must provide K4Connect with a valid tax



exemption certificate authorized by the appropriate taxing authority.

**3.03 | Suspension of Services and Acceleration.** If any amount owed by the Customer hereunder is thirty (30) or more days overdue, K4Connect may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations hereunder so that all such obligations become immediately due and payable, and suspend Services or delivery of Products to Customer until such amounts are paid in full.

#### **4.0 Warranties.**

**4.01 | Warranty.** K4Connect warrants that: (i) K4Community will achieve in all material respects the functionality described in the Specifications, (ii) such functionality of K4Community will not be materially decreased during the Term, and (iii) to K4Connect's knowledge, K4Community (specifically excluding Products) provided by K4Connect hereunder does not infringe upon the patents, copyrights or trademarks or any Third Party, or constitute misuse of the trade secrets of any Third Party. Customer's sole and exclusive remedies for K4Connect's breach of this warranty shall be (i) that K4Connect shall be required to use commercially-reasonable efforts to modify K4Community to achieve in all material respects the functionality described in the Specifications and if K4Connect is unable to restore such functionality within a commercially-reasonable period of time, Customer shall be entitled to terminate the Agreement in writing provided to K4Connect, and thereafter, receive a pro-rata refund of the fees paid under the Agreement for its use of K4Community for the terminated portion of the then-current Term, and (ii) the indemnification remedies set forth in Section 6. For the avoidance of doubt, K4Connect offers no warranty with respect to any Third Party Application. K4Connect shall have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent as set forth in Paragraph 9.02. The warranties set forth in this Section are made to and for the benefit of Customer only. Such warranties shall only apply if the applicable K4Community has been utilized in accordance with K4Community user and training manuals, any Agreement and all applicable state and federal law(s).

**4.02 | Warranty of Products and Professional Services.** Any Products provided by K4Connect are provided on an "as-is" basis, without any warranties, express or implied. K4Connect shall provide the Professional Services in a good and workmanlike manner. The Customer and any other Party seeking any remedy of any nature whatsoever as it pertains to the Products shall rely solely on the warranties, if any, granted by the manufacturer, vendor, contractor, Third Party, or other provider from whom K4Connect or the Customer procured the Products, and which are eligible to be passed through to the Customer, as applicable. K4Connect will reasonably assist the Customer in receiving replacement parts if still under warranty or procuring new Products via a revised Work Order for replaced Products. Customer, at its sole cost and expense, shall be responsible for the installation of any repaired or replaced Products.

**4.03 | Warranty of No Malicious Code.** Each Party warrants that it will not introduce viruses, trojan horses, worms, spyware, or other such malicious code into K4Community or Products.

**4.04 | Disclaimer of Warranties.** EXCEPT AS STATED IN SECTION 4.01, 4.02 and 4.03 ABOVE, K4CONNECT DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICES AND PRODUCTS WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICES, PRODUCTS AND/OR DOCUMENTATION OR SOFTWARE RELATED THERETO, WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES K4COMMUNITY AVAILABLE INCLUDING BUT NOT LIMITED TO, THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 4 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY K4CONNECT REGARDING THE PRODUCTS AND SERVICES. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 4.01, 4.02 and 4.03 ABOVE, K4COMMUNITY, ALL SERVICES AND ANY SOFTWARE PROVIDED IN CONNECTION THEREWITH ARE PROVIDED TO CUSTOMER ON AN "AS-IS" AND "AS-AVAILABLE" BASIS, AND ARE FOR COMMERCIAL USE ONLY. K4CONNECT EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT CUSTOMER'S USE OF K4COMMUNITY WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER K4CONNECT, OR



THE INFORMATION GENERATED THEREBY OR THROUGH THE USE THEREOF, IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

K4COMMUNITY IS PROVIDED STRICTLY FOR COMFORT, CONVENIENCE AND INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR PROFESSIONAL OR FAMILY CARE, SAFETY SYSTEMS, PLANS AND CONTROLS; OR SYSTEMS SPECIFICALLY DESIGNED FOR CALLING FOR ASSISTANCE OR HELP. K4COMMUNITY DOES NOT DIAGNOSE OR TREAT MEDICAL CONDITIONS AND IS NOT A SUBSTITUTE FOR PROFESSIONAL MEDICAL OBSERVATION, CARE OR ADVICE. NO MEDICAL OR OTHER IMPORTANT DECISIONS SHOULD BE BASED ON INFORMATION PROVIDED THROUGH K4COMMUNITY.

**5.0 | Limitations of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT WITH RESPECT TO (I) A PARTY'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6, OR (II) LIABILITY FOR A CLAIM OF DEATH OR BODILY INJURY CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT OR ANY AGREEMENT (WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES).

THE MAXIMUM LIABILITY OF K4CONNECT ARISING OUT OF OR IN CONNECTION WITH ANY AGREEMENT OR ANY USE OR OTHER EMPLOYMENT OF THE SERVICES OR PRODUCTS, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL BE NO GREATER THAN AN AMOUNT EQUAL TO THE AGGREGATE FEES (EXCLUDING FEES FOR PROFESSIONAL SERVICES) PAID TO K4CONNECT HEREUNDER IN THE TWELVE (12) MONTH PERIOD PRECEDING THE ACT GIVING RISE TO THE CLAIM FOR DAMAGES.

BOTH PARTIES ACKNOWLEDGE THAT THE FEES PAYABLE HEREUNDER REFLECT THE ALLOCATION OF RISK SET FORTH IN ANY AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO ANY AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY.

## **6.0 | Indemnification.**

**6.01 | K4Connect Indemnification of Customer.** Subject to the terms and conditions set forth in this Section 6, K4Connect shall, at its own expense, indemnify, defend, and hold harmless Customer and its officers, directors, employees and agents from and against any and all liability, damages, and costs, including, without limitation, reasonable attorneys' fees, (all of which shall be referred to hereinafter collectively as "**Losses**") arising from allegations, threats, claims, suits, and proceedings brought by a Third Party (collectively "**Third Party Claims**") (i) arising out of K4Connect's material breach of this Agreement; or (ii) alleging that K4Community infringes such Third Party's intellectual property rights (collectively an "**Infringement Claim**").

The preceding language notwithstanding, K4Connect will have no liability for an Infringement Claim arising from: (a) use of K4Community or Products in violation of this Agreement or any applicable state or federal law(s); (b) use of K4Community or Products after K4Connect notifies Customer to discontinue use because of an Infringement Claim; (c) modifications to K4Community or Products: (i) made by Customer, Customer Personnel, or any Authorized Resident; or, (ii) made without the written consent of K4Connect; or, (iii) made by K4Connect based on Customer specifications or requirements; (d) use of K4Community or Products in combination with any non-K4Connect software, application or service; or (e) services offered by Customer or where Customer has charged any type of fee for such services.

If an Infringement Claim as set forth above is brought or threatened, K4Connect shall, at its sole option and expense, use commercially-reasonable efforts either: (f) to procure a license that will protect Customer against such Infringement Claim without cost to Customer; (g) to modify or replace all or portions of K4Community as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or, (h) if (f) and (g) are not commercially feasible, terminate any Agreement and refund the Customer the fees pre-paid by Customer for the terminated portion of the Term or for Professional Services not yet completed; however, to the extent that the Products remain in place with the Customer in a manner functioning



similar to other like products not intended for use with K4Community, no refund shall be made. The rights and remedies granted Customer under this Section 6.01 state K4Connect's entire liability, and Customer's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a third Party.

**6.02 | Customer Indemnification of K4Connect.** Customer shall, at its own expense, indemnify, defend, and hold harmless K4Connect and its officers, directors, employees and agents from and against any and all Losses arising from Third Party Claims arising out of (i) Customer's breach of this Agreement or (ii) Customer's, its Affiliates', Customer Personnel's, Authorized Residents' or Authorized Individuals' access to or use of K4Community (or any component thereof) or a Product.

**6.03 | Indemnification Procedures and Survival.** In the event of a potential indemnity obligation under this Section 6, the indemnified Party shall: (i) promptly notify the indemnifying Party in writing of such Claim; (ii) allow the indemnifying Party to have sole control of its defense and settlement; and, (iii) upon request of the indemnifying Party, cooperate in all reasonable respects, at the indemnifying Party's cost and expense, with the indemnifying Party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 6.0 are expressly conditioned upon the indemnified Party's compliance with this Section 6.03 except that failure to notify the indemnifying Party of such Claim shall not relieve that Party of its obligations under this Section 6.0 but such Claim shall be reduced to the extent of any damages attributable to such failure to notify. The indemnification obligations contained in this Section 6.0 shall survive termination of any Agreement for twelve (12) full calendar months, starting on the first day of the calendar month subsequent to termination of the Agreement.

## **7.0 | Term; Suspension/Termination.**

**7.01 | Term.** Unless earlier terminated as provided below, the term of this Agreement shall commence on the Effective Date and shall continue until there are no Work Orders in effect hereunder (the "Term"). Each Work Order shall have the term set forth therein.

**7.02 | Suspension for Delinquent Account** K4Connect reserves the right to suspend the Customer's, Affiliates' and Customer Personnel's access to, and/or use of, K4Community and/or Products, or any right to receive Professional Services, if any payment is more than thirty 30 days past due. Customer agrees that K4Connect shall not be liable to Customer, any Customer Affiliate, any Customer Personnel, or to any other third Party for any suspension of K4Community or Products pursuant to this Section.

**7.03 | Suspension for Ongoing Harm.** K4Connect may suspend access to, or use of, K4Community or Products, if K4Connect reasonably concludes that Customer's use of K4Community or Products is contributing to denial of service attacks, spamming, or illegal activity, and/or Customer's use of K4Community or Products is causing immediate, material and ongoing harm to K4Connect or others. In the extraordinary event that K4Connect suspends access to K4Community or functionality of the Products, K4Connect will use commercially-reasonable efforts to limit the suspension to the offending portion of K4Community or Products, while working with Customer to resolve the issues causing the suspension of K4Community or the functionality of Products. Customer agrees that K4Connect shall not be liable to Customer, Affiliates, Customer Personnel nor to any third Party for any suspension of access to or use of K4Community or Products under such circumstances as described in this Section, including, but not limited to, liabilities that may arise due to the terms of the SLA. Customer will be responsible for continuing to pay all fees due hereunder during such suspension period. K4connect may bill and Customer is obligated to pay any reasonable fees related to the resolution of the event that led to the suspension.

**7.04 | Termination for Cause.** Either Party may terminate this Agreement and all Work Orders issued hereunder, in the event the other Party commits a material breach of any provision of any Agreement not otherwise cured within sixty (60) days of written notice from the non-breaching Party. Such notice by the complaining Party shall expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching Party a meaningful opportunity to cure such alleged breach.

**7.05 | Effects of Termination.** Upon termination or expiration of a Work Order under which the Customer is provided with access to K4Community, K4Connect shall cease providing Services thereunder, and shall terminate all access to and use of K4Community under such Work Order and neither the Customer (including Customer Personnel), its Affiliates, Authorized





Residents, nor Authorized Individuals nor Customer Personnel shall have any rights to continue use of K4Community. In addition, if this Agreement is terminated by K4Connect pursuant to Section 7.04, then K4Connect shall be entitled to all of the unpaid fees for Products and Services due under the Agreement for the entire Term (regardless of whether fully performed).

**7.06 | Handling of Customer Data Upon Termination/Expiration.** Following expiration or termination of any Work Order pursuant to which Customer is provided with access to K4Community, K4Connect shall be entitled to delete all Customer Data, Authorized Individual Data and Authorized Resident Data following a ninety (90) day waiting period. Customer further agrees that K4Connect shall not be liable to Customer nor to any Third Party for any such deletion. Upon the expiration or termination of any Work Order, K4 Connect shall provide Customer, (at its reasonable written request), then-current Authorized Individuals, and then-current Authorized Residents with a written communication (which may be provided by electronic mail) which shall include (a) the final date on which Customer Data, Authorized Individual Data, and Authorized Resident Data will be deleted; (b) instructions on how Customer, Authorized Individuals, and Authorized Residents may download or otherwise recover their respective Customer Data, Authorized Individual Data, and Authorized Resident Data from K4Community, all of which will be made available in a machine readable format, and (c) contact information for K4 Community technical support so that Customer, Authorized Individuals, and Authorized Residents can obtain reasonable assistance with recovering such data.

## **8.0 | Modifications; Discontinuation of support for Products.**

**8.01 | Modifications to K4Community.** K4Connect may, from time to time, make modifications to K4Community, and will use commercially-reasonable efforts to notify Customer of any material modifications and the schedule related thereto. K4Connect shall not be liable to the Customer, Affiliate, Customer Personnel, Authorized Residents, Authorized Personnel or to any Third Party for any modification of K4Community or to the functionality of the Products as described in this Section 8.01 provided that such modifications do not materially reduce the functionality of K4Community.

**8.02 Discontinuation of support of the Products.** K4Connect reserves the right to discontinue offering support for the Products under a Work Order at any time upon the conclusion of such Work Order's Term.

## **9.0 | Miscellaneous.**

**9.01 | Insurance.** K4Connect shall, at its own cost and expense, obtain and maintain in full force and effect the following insurance during the Term: (i) Commercial General Liability Insurance with a per-occurrence limit of not less than \$1,000,000; (ii) Automobile Liability Insurance (for non-owned autos only) with a combined single-limit of not less than \$1,000,000; (iii) Workers Compensation Insurance, with statutory limits for workers compensation; (iv) Errors and Omissions and Cyber Liability Insurance with a combined single limit of \$2,000,000; and (v) Umbrella Liability insurance with a per-occurrence limit of not less than \$1,000,000. In the event that any of the required policies of insurance are written on a claims-made basis, then such policies shall be maintained during the entire term and for a period of not less than three (3) years following the expiration or termination of this Agreement.

**9.02 | Governing Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of North Carolina, excluding any conflicts of law provisions. All disputes with respect to this Agreement shall be brought and heard either in the North Carolina state courts located in Wake County, North Carolina, or the federal district court for the Eastern District of North Carolina located in Raleigh, North Carolina. The parties to this Agreement each consent to the in personam jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, by telegram, by telefacsimile or by first class mail, and shall be deemed effectively given upon receipt.

**9.03 | Notices.** To be effective, all notices and other communications hereunder must be in writing and delivered personally or by overnight courier, billed to sender, or by certified or registered U.S. mail, return receipt requested, postage prepaid, to the Parties at the following addresses:



If to K4Connect:	If to Customer:
K4Connect 5511 Capital Center Drive Suite 350 Raleigh NC 27606	
Attn: Crystal Mayo	Attn:

1.

**9.04 | Waiver.** The failure of either Party to enforce at any time for any period any provision hereof will not be construed to be a waiver of such provision or of the right of such Party thereafter to enforce each such provision, nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy.

**9.05 | Relationship of Parties.** The relationship of the Parties established by this Agreement is that of an independent contractor and nothing contained herein will be construed to (a) give either Party any right or authority to create or assume any obligation of any kind on behalf of the other Party or (b) constitute the Parties as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

**9.06 | Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction will, to the extent the economic benefits conferred thereby to both parties remain substantially unimpaired, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions or affecting the validity or enforceability of any of such terms or provisions in any other jurisdiction.

**9.07 | Assignment.** Neither Party shall assign its rights under this Agreement nor delegate any performance (other than the right to receive payments) without the other Party's prior written consent, except that a Party may, without the other Party's consent, assign this Agreement to an Affiliate or pursuant to a corporate reorganization, merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates. Any attempted assignment or delegation in violation of the foregoing is void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

**9.08 | Entire Agreement; Amendment.** This Agreement, together with all Work Orders and the Service Level Agreement, (a) supersedes all previous understandings, agreements and representations between the Parties, written or oral and (b) constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof and incorporates all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither Party makes any covenant or other commitment concerning its future action nor does either Party make any promises, representations, conditions, provisions or terms related thereto. No modification, change, or amendment to this Agreement shall be effective unless in writing signed by each of the parties. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the body of this Agreement, (2) Work Orders, and (3) Service Level Agreement.