

**UTIMACO INC.  
CRYPTOSERVER CLOUD SERVICES  
TERMS AND CONDITIONS**

These Terms and Conditions govern the Order entered into by and between Utimaco Inc. (“Utimaco”) and the entity identified as the “Customer” on such Order. This Agreement excludes any Customer terms and conditions which may be included or referenced in the Order, and any such terms and conditions shall be of no force of effect.

**1. DEFINITIONS**

1.1 **“Agreement”** means the Order together with these Terms and Conditions.

1.2 **“API”** means the application programming interface of the CSCS which is made available for Customer’s use hereunder. For the avoidance of doubt, the API is part of the CSCS and references to the CSCS herein encompass the API.

1.3 **“Call”** means a request sent to the API.

1.4 **“CryptoServer Cloud Service”** or **“CSCS”** means Utimaco’s hosted managed service through which it provides customers with use of its proprietary hardware security module technology.

1.5 **“Customer Data”** means data, text, audio, images, software, and other content stored on or processed through CSCS by Customer.

1.6 **“Effective Date”** means the date specified on the Order as the “Effective Date”.

1.7 **“HSM”** means the Utimaco proprietary hardware security module provisioned and operated by Utimaco for purposes of providing functionality of the CSCS to Customer hereunder.

1.8 **“Initial Term”** means the period of time set forth in the Order Form as the “Initial Term.”

1.9 **“Integration Software”** means any software provided by Utimaco to Customer for purposes of integrating Customer’s systems with the API such that Customer can send Calls and receive Responses, including any bug fixes, error corrections, updates and new versions thereof or thereto.

1.10 **“Intellectual Property Rights”** means all forms of proprietary rights, titles, interests, and ownership relating to patents, copyrights, trademarks, trade dresses, trade secrets, know-how, mask works, *droit moral* (moral rights), and all similar rights of every type that may exist now or in the future in any jurisdiction, including without limitation all applications and registrations therefor.

1.11 **“Order”** means the written order for Customer’s use of the CSCS executed by both Customer and Utimaco and referencing these Terms and Conditions, which written order sets forth the fees due from Customer hereunder, applicable Usage Limitations, and such other terms and conditions as may be agreed to by the parties.

1.12 **“Renewal Term”** means the period(s) of time set forth in the Order Form as the “Renewal Term”, if any.

1.13 **“Response”** means a response from the CSCS sent through the API in response to a Call.

1.14 **“Services”** means any services relating to the CSCS which Utimaco may agree to perform for Customer hereunder, including (by way of example) training services or API integration assistance.

1.15 “**Term**” means the Initial Term and any and all Renewal Terms (subject to early termination of this Agreement as provided for herein).

1.16 “**Usage Limitations**” means the Customer Data storage limits, Call quantity and/or rate limits and/or bandwidth caps and other limits and restrictions applicable to Customer’s use of the CSCS, as set forth in the Order.

1.17 “**Utimaco Materials**” has the meaning set forth in Section 2.4.

## 2. CRYPTOSERVER CLOUD SERVICE

2.1 Access. Subject to compliance with all terms and conditions of this Agreement (including all Usage Limitations), Customer shall have the right during the Term to access and use the CSCS through the API for its business purposes, solely in the manner enabled by Utimaco and in accordance with any applicable documentation provided by Utimaco. Customer is responsible for obtaining and configuring all computer hardware, software and telecommunications services required for use of the CSCS. Utimaco reserves the right to modify and update the features and functionality of the CSCS from time to time as it determines in its sole discretion, provided that Utimaco will not materially degrade the functionality of the CSCS from that provided as of the Effective Date.

2.2 API Use. Any use of the API must be in accordance with all applicable documentation made available by Utimaco and in accordance with any applicable Usage Limitations. Customer acknowledges that Utimaco may suspend, throttle or otherwise limit usage of the API at any time, in its reasonable discretion and with reasonable notice.

2.3 Integration Software. Subject to all terms and conditions of this Agreement, Utimaco hereby grants to Customer during the Term a limited, non-exclusive, non-transferable license to use the Integration Software that Utimaco may provide on systems owned or controlled by Customer solely for purposes of integrating with the API and solely in accordance with all applicable documentation and other instructions and requirements provided by Utimaco.

2.4 Restrictions. Customer acknowledges that use of the CSCS (inclusive of the HSM), Integration Software and any related documentation (the “Utimaco Materials”) is provided solely for Customer’s benefit, and agrees not to use the Utimaco Materials for the benefit of any other third parties unless otherwise agreed between the parties. Customer agrees not to, not to attempt to, nor allow any third party to: (i) copy the Utimaco Materials, use the Utimaco Materials (ii) decompile, reverse engineer, or disassemble the Utimaco Materials or otherwise attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Utimaco Materials, (iii) create derivative works based on the Utimaco Materials; (iv) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Utimaco Materials or during the use and operation thereof; (v) publicly disseminate performance information or analysis (including benchmarks) relating to the Utimaco Materials; (vi) utilize any software or technology designed to circumvent any access restrictions or copy protection used in connection with the Utimaco Materials; (vii) scrape, export, store, or otherwise retain any copies of raw data (except Customer Data) which Customer may access through Utimaco Materials; (viii) use the Utimaco Materials to develop a competitive product or service offering; or (ix) use the Utimaco Materials in a manner which violates or infringes any laws, rules, regulations, Intellectual Property Rights, privacy rights or other rights of a third party. Customer may not use any automated means, including agents, robots, scripts, or spiders, to access or use the Utimaco Materials, except solely for use of the API to the extent specifically enabled and authorized by the Utimaco.

2.5 Suspension/Termination. Utimaco may terminate Customer’s access to or use of the CSCS and/or terminate this Agreement at any time if: (i) in the sole discretion of Utimaco, such action is necessary to prevent material errors or harm to any system or network, or to limit Utimaco’s liability; (ii)

Customer attempts to access or use the CSCS in an unauthorized manner, including without limitation any attempt to gain access to data or information relating to other Utimaco customers or any use that infringes third party Intellectual Property Rights or violates any applicable law, rule or regulation; or (iii) Customer is more than ten (10) days past due with respect to any payment obligation hereunder.

2.6 Credentials. Customer is solely responsible for the activities of any and all persons accessing and using the CSCS using any credentials issued to or generated by Customer. Customer shall, and shall instruct its employees to, use all reasonable means to secure API keys, user names and passwords, and shall promptly notify Utimaco if it suspects that any of the foregoing has been compromised. Customer acknowledges that use of a CSCS account by any person other than an employee of Customer shall constitute a material breach of this Agreement.

2.7 CSCS Operation. If the Order specifies that the CSCS will be operated by Utimaco from within a specific geographic area, then the HSM and Customer Data will reside and execute from a data center located within such geographic region. If the Order does not so specify a geographic area, then Utimaco may operate the CSCS from such data center as Utimaco elects in its sole discretion.

2.8 Customer Responsibilities. Customer agrees to use the CSCS in compliance with all applicable laws, rules and regulations, and not in any manner that causes, or may cause, damage to the CSCS or impairment of the availability or accessibility of the CSCS. Customer acknowledges that Utimaco's ability to operate the CSCS for Customer will depend on Customer's reasonable and timely cooperation and the accuracy and completeness of any information from Customer that is reasonably necessary for such operation. Customer acknowledges that the CSCS is not a data backup, archiving or disaster recovery service, and Customer is responsible for making its own backups of the Customer Data. If necessary to restore the data on the CSCS, the Customer shall again transfer the data to CSCS free of charge.

### **3. DATA**

3.1 Customer Data. Customer hereby grants to Utimaco a non-exclusive, royalty-free right and license during the Term and Retention Period (as defined below) to store, reproduce and process the Customer Data in connection with the operation of the CSCS.

3.2 Compliance. Customer represents and warrants that it has all rights, title and interest, in and to the Customer Data that is necessary for its provision to Utimaco and for Utimaco to store and process the Customer Data in connection with the CSCS without causing a violation of any law, rule or regulation (including any privacy laws) or any rights of any third party. Customer shall not provide any Customer Data consisting of or including any information that identifies any natural person (such as name, e-mail address or mailing address) without Utimaco's prior written consent. If, in the course of providing CSCS, Utimaco agrees in writing to process any such Customer Data, Utimaco shall process such Customer Data only as permitted under this Agreement and in compliance with data protection legislation to which Utimaco is subject as a service provider and processor of such Customer Data.

3.3 Usage Data. As between the parties, Utimaco shall own all right, title and interest in and to all data collected by Utimaco in connection with the operation of the CSCS and Customer's use thereof ("Usage Data"). Usage Data may include, by way of example and not limitation, when and how often End Users use the CSCS and which CSCS features are used the most often. Usage Data does not include Customer Data. Utimaco will not disclose Usage Data to any third party in a manner that identifies Customer without Customer's consent other than: (i) disclosure to Utimaco's third party service providers who use it for the benefit of Utimaco and subject to reasonable confidentiality terms; or (ii) as may be required by law or legal process.

#### 4. SERVICE LEVELS, SUPPORT

Subject to timely payment by Customer of all fees due hereunder, Utimaco shall during the Term operate the CSCS and provide Customer with support relating to the CSCS in accordance with Utimaco's then-current CSCS Service & Support document, subject to any limited remedies specified therein. The current CSCS Service & Support document is available from Utimaco upon request.

#### 5. SERVICES

5.1 Performance of Services. Customer acknowledges that the Services will be performed on the basis of Utimaco using its commercially reasonable efforts and judgment based on the information available to Utimaco. To the extent Utimaco utilizes subcontractors in the performance of the Services, it shall remain liable for their performance and compliance with Utimaco's obligations hereunder.

5.2 Customer Resources. Customer shall provide, maintain and make available to Utimaco, at Customer's expense and in a timely manner, the following resources, and such other additional resources as Utimaco may from time to time reasonably request in connection with Utimaco's performance of the Services qualified Customer personnel or representatives who will be designated by Customer to consult with Utimaco on a regular basis in connection with the Services and provide Utimaco with documentation or other information necessary to perform the Services. To the extent Customer does not provide any such resources in a timely manner (regardless of whether such failure is by Customer or by any third party vendor, supplier, licensor or contractor of Customer), Utimaco's time for performance of the applicable Services shall be extended by the amount of time corresponding to such delay.

5.3 Changes. Either party may, request in writing changes to the Services. The parties shall evaluate and agree on factors that, at a minimum, include scope of the changes and additional deliverables, commensurate fee increases, time extensions, and pass-through of additional costs and expenses to Customer. If the parties agree on at least the minimum terms listed above, the parties will memorialize the agreement in a written change order signed by both parties and implement all such changes.

#### 6. ECONOMIC TERMS

6.1 Fees. Customer shall pay such fees as are as set forth in the Order. Unless otherwise set forth in the Order, all such fees are due and payable on a monthly basis in arrears unless otherwise set forth in the relevant Order. All payments are due within thirty (30) days of Utimaco's invoice. Any payments due to Utimaco under this Agreement not received by the date due will be subject to a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less. All payments are non-refundable and must be made in U.S. dollars.

6.2 Taxes. Customer shall pay all amounts hereunder without deducting any taxes that may be applicable to such payments. Customer is responsible for paying any and all withholding, sales, value added or other taxes, duties or charges applicable to this Agreement, other than taxes based on Utimaco's net income.

6.3 Service Credits: The following conditions apply to Service credits:

- a) Customer must apply for the Service credit by giving Utimaco notice of its claim within thirty (30) calendar days of the end of the Term to which the credit applies;
- b) the Service credit can only be applied as a credit to Customer's account, and cannot be redeemed for cash;

- c) the maximum Service credit available for each Service in a Term will not exceed one-hundred per cent (100%) of the total recurring charges for that Term for that CSCS; and
- d) Service credits are not available if Customer has failed to pay charges for the CSCS when due and payable.

6.4 Price adjustment: Utimaco is entitled to adjust the prices to be paid on the basis of this Agreement at its reasonable discretion to the development of the total costs which are decisive for the price calculation, but no more than 3% per calendar year. A price increase shall be considered and a price reduction shall be made if the total costs increase or decrease. The Customer will be notified of any price changes pursuant to Section 6.4 at least six weeks before they take effect.

## 7. OWNERSHIP

As between the parties, Utimaco owns all right, title and interest (including without limitation all Intellectual Property Rights) in and to the Utimaco Materials and any software, technology, materials and information owned by Utimaco prior to the Effective Date or created, acquired, authored, developed, conceived or reduced to practice by Utimaco after the Effective Date, whether alone or jointly with others. Customer is not required to provide any ideas, feedback or suggestions regarding the CSCS or any of Utimaco's products or services ("Feedback") to Utimaco. To the extent Customer does provide any Feedback to Utimaco, Customer agrees that Utimaco may use, reproduce, modify, distribute, make, have made, sell, offer for sale, import and otherwise exploit in any manner such Feedback on a perpetual, non-exclusive basis and without payment of any royalties or other consideration to Customer. As between the parties, Customer owns all right, title and interest in and to all Customer Data.

## 8. TERM

8.1 Term. This Agreement shall be effective as of the Effective Date, and shall continue in full force and effect during the Initial Term. If a Renewal Term is specified in the Order, then at the end of the Initial Term, this Agreement shall renew for subsequent successive Renewal Terms unless either party provides written notice of non-renewal is provided by either party at least fourteen (14) days prior to the end of the Initial Term or then-current Renewal Term (as applicable).

### 8.2 Termination

(a) Either party may terminate this Agreement effective immediately if the other party is in material breach of any obligation, representation or warranty hereunder and fails to cure such material breach (if capable of cure) within thirty (30) days (or ten (10) days with respect to a breach of payment obligations) after receiving written notice of the breach from the non-breaching party.

(b) Each party shall have the right to terminate this Agreement immediately upon written notice in the event that the other party becomes insolvent, files for any form of bankruptcy, has bankruptcy proceedings filed against it that are not dismissed in such party's favor within sixty (60) days, makes any assignment for the benefit of creditors, or dissolves or ceases to conduct business.

(c) Utimaco may terminate this Agreement as described in the CSCS Service & Support document.

8.3 Data Retention. Upon expiration or termination of this Agreement, Customer Data will be preserved and made accessible to Customer through the API for a period of five (5) days (the "Retention Period"). After the Retention Period, the Customer Data may be permanently deleted from the HSM and

be irretrievable by the Customer. After the Retention Period, Utimaco makes no representations or warranties as to the preservation or integrity of Customer Data. Customer hereby agrees that Utimaco shall have no obligation to retain Customer Data after Retention Period.

8.4 Effect of Termination. All rights and obligations of the parties hereunder shall terminate upon expiration or termination of this Agreement, provided that Sections 1, 2.4, 3.1, 3.2, 3.3, 6, 7 (with respect to accrued but unpaid amounts), 8.3, 8.4, 9, 10, 11, 12, and 13 shall survive. Upon any expiration or termination, Customer shall destroy all copies of the Integration Software and any API credentials in its possession or control and shall cease sending any Calls to the API.

## **9. WARRANTIES, DISCLAIMER**

9.1 Representations and Warranties. Each party represents and warrants that: (i) it has the legal right, capacity and authority to enter into this Agreement and the execution, delivery and performance of this Agreement by such party has been duly authorized by all necessary corporate action; and (ii) the execution, delivery and performance of this Agreement by such party will not violate, conflict with, or cause a default under (a) its charter documents or bylaws or (b) any material agreement, lease, mortgage, instrument or other contract to which such party is bound.

9.2 Disclaimer. THE UTIMACO MATERIALS DELIVERABLES ARE MADE AVAILABLE ON AN “AS-IS” BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESSED OR IMPLIED, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND EACH PARTY EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. UTIMACO DOES NOT WARRANT THAT THE FUNCTIONALITY PROVIDED BY THE CSCS WILL BE CORRECT, EFFECTIVE, SECURE, UNINTERRUPTED OR ERROR-FREE, WILL MEET CUSTOMER’S NEEDS OR EXPECTATIONS OR THAT DEFECTS WILL BE CORRECTED. UTIMACO MAKES NO WARRANTY THAT IT WILL BE ABLE TO IDENTIFY, PREVENT, STOP OR REMEDIATE ANY INTRUSION INTO THE CSCS.

9.3 High-Risk and Regulated Activities. WITHOUT LIMITING THE GENERALITY OF SECTION 9.2, CUSTOMER ACKNOWLEDGES THAT THE UTIMACO MATERIALS ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR AIR TRAFFIC CONTROL, WEAPONS SYSTEMS, LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH ERROR OR FAILURE COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR PROPERTY DAMAGE OR ENVIRONMENTAL DAMAGE (COLLECTIVELY, “HIGH RISK ACTIVITIES”). UTIMACO EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED GUARANTEE OF FITNESS FOR SUCH HIGH RISK ACTIVITIES. IN ADDITION, CUSTOMER ACKNOWLEDGES THAT THE CSCS HAS NOT BEEN APPROVED OF BY ANY REGULATORY AGENCY, THAT CUSTOMER’S INTENDED USE OF THE CSCS MAY BE SUBJECT TO REGULATORY REQUIREMENTS AND THAT NOTHING HEREIN SHALL BE CONSTRUED AS A REPRESENTATION, WARRANTY OR COVENANT BY UTIMACO REGARDING THE USE OF THE CSCS IN ANY MANNER THAT WOULD REQUIRE ANY FORM OF REGULATORY APPROVAL. AS BETWEEN THE PARTIES, CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR DETERMINING WHETHER ITS USE OF THE CSCS REQUIRES ANY REGISTRATION, APPROVAL OR PERMIT WITH OR FROM ANY GOVERNMENT AGENCY OR IS OTHERWISE SUBJECT TO ANY FORM OF RESTRICTION OR LIMITATION IMPOSED BY LAW, RULE OR REGULATION (COLLECTIVELY, A “REGULATED USE”) AND FOR COMPLYING WITH ALL LEGAL REQUIREMENTS RELATING TO ANY REGULATED USE.

## 10. CONFIDENTIALITY

10.1 Confidential Information. “Confidential Information” means any and all information that is disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, which if disclosed in writing or tangible form is marked as “Confidential” or with some similar designation, or if disclosed orally or by inspection or observation, is identified as being proprietary and/or confidential at the time of disclosure and is confirmed as such in writing within fifteen (15) days of the disclosure. In the case of Utimaco, Confidential Information includes without limitation information regarding the performance, features and functionality of the CSCS and HSM, all API credentials provided to Customer, and any specifications or documentation relating to any of the foregoing. In the case of Customer, Confidential Information includes without limitation the Customer Data. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

10.2 Use and Disclosure Restrictions. Each party (the “receiving party”) shall not use the other party’s (the “disclosing party”) Confidential Information except as authorized under this Agreement or as otherwise authorized by the disclosing party. Each receiving party shall not disclose the disclosing party’s Confidential Information to any third party except to those of its employees and contractors that need to know such Confidential Information hereunder, provided that each such employee and contractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective of Confidential Information as those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all Confidential Information of the other party in its possession or control, but in no event less than the efforts that party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement or (ii) on an as-needed, confidential basis to its legal or financial advisors. In addition, each party may disclose the terms and conditions of this Agreement to current or prospective investors in or acquirers of such party.

10.3 Filings. Customer shall not (a) use the Utimaco Materials or any Confidential Information of Utimaco provided under this Agreement to investigate, threaten or assert any claim of infringement or misappropriation against Utimaco or any of its affiliates, licensees or customers (direct or indirect); or (b) prepare, file, prosecute or enforce any patents or patent applications based upon or using the Utimaco Materials or any Confidential Information of Utimaco. If, notwithstanding this Section 10.3, Customer or any of its affiliates prepares, files, prosecutes or enforces any patents or patent applications in breach of the foregoing, then Utimaco shall have (and Customer hereby grants to Utimaco) a paid-up, royalty-free, worldwide license under such patents to make, have made, use, sell, offer for sale, import, otherwise exploit and sublicense; provided, however, that this shall not be construed as limiting any other rights or remedies available to Utimaco for Customer’s breach of this Section 10.3.

## 11. INDEMNIFICATION

11.1 By Utimaco. Subject to Section 11.3 below, Utimaco agrees to, at its own expense, defend and/or settle any claim made by a third party against Customer or its directors, officers or employees (the “Customer Indemnitees”) to the extent alleging that the CSCS infringes such third party’s United States patent, copyright, trademark or trade secret, and Utimaco agrees to indemnify the Customer Indemnitees against those amounts finally awarded by a court of competent jurisdiction against the Customer Indemnitees (including any damages, interest, losses, costs and expenses including attorneys’ fees) or payable pursuant to a settlement agreed to by Utimaco with respect to such claim. If Utimaco, in its sole discretion, believes a claim or an adverse judgment in connection with a claim described in the foregoing

is likely, then Utimaco may, at its option, (a) obtain a license from the claimant that allows Customer to continue to use the CSCS, (b) modify or replace the CSCS so as to be non-infringing, or (c) if neither (a) nor (b) is available to Utimaco on commercially reasonable terms, terminate this Agreement upon written notice to Customer and refund any fees pre-paid by Customer hereunder associated with the time period for which the CSCS will not be provided. Utimaco shall have no obligation or liability with respect to any claim arising out of or relating to: (1) any modification or unauthorized use of the CSCS; (2) any combination or use of the CSCS by Customer with any non-Utimaco software, technology or services; (3) Customer Data or any other materials, information or data provided by Customer, or any use by Utimaco of the foregoing; or (4) Utimaco's implementation of any feature or functionality requested by Customer where the claim would not have arisen but for such implementation. This Section 11.1 sets forth the entire liability of Utimaco and the sole and exclusive remedy of Customer in the event of any claim that the CSCS or use thereof infringes any third party Intellectual Property Rights.

**11.2 By Customer.** Subject to Section 11.3 below, Customer agrees to, at its own expense, defend and/or settle any claim made by a third party against Utimaco or its directors, officers or employees (the "Utimaco Indemnitees") to the extent resulting directly or indirectly from: (i) the actual or alleged gross negligence or willful misconduct of Customer; (ii) the actual or alleged breach by Customer of any of its representations or warranties hereunder; or (iii) the Customer Data or Customer's use of the CSCS (including any use in connection with a High Risk Activity or a Regulated Use, and including any claim arising from any representations or warranties relating to the CSCS made by Customer to third parties, but excluding a claim to the extent encompassed by Utimaco's obligations under Section 11.1 above), and Customer agrees to indemnify the Utimaco Indemnitees against those amounts finally awarded by a court of competent jurisdiction against the Utimaco Indemnitees (including damages, interest, losses, costs and expenses including attorneys' fees) or payable pursuant to a settlement agreed to by Customer with respect to such claims.

**11.3 Procedure.** Each party's obligations under Sections 11.1 and 11.2 are conditioned on the indemnified party ("Indemnitee") providing the indemnifying party ("Indemnitor") with (i) prompt written notice of the third party claim, provided that failure to give notice promptly shall only relieve the Indemnitor of its obligation to the extent its defense is materially prejudiced by the delay, (ii) sole control over the defense of the claim and any related settlement negotiations, and (iii) reasonable cooperation, at the Indemnitor's expense, in connection with such defense or settlement. The Indemnitor shall not, without the Indemnitee's prior written consent (not to be unreasonably withheld, delayed or conditioned), admit fault or agree to any settlement of any the claim that does not include a complete release of the Indemnitee from all liability with respect thereto or that imposes any material obligation or restriction on the Indemnitee (other than payment obligations to be satisfied by the Indemnitor).

**12. LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO SECTION 11 OR CUSTOMER'S BREACH OF SECTION 10: (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY ARISING OUT OF OR IN RELATION TO THIS AGREEMENT FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES ARISING FROM OR RELATING TO UNAUTHORIZED ACCESS TO OR LOSS OF DATA, LOSS OF USE OR LOST BUSINESS, REVENUE, OR PROFITS, WHETHER OR NOT THE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES; AND (B) UNDER NO CIRCUMSTANCES WILL UTIMACO'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE TO UTIMACO HEREUNDER DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM. THE PARTIES AGREE THAT THE LIMITATIONS AND DISCLAIMERS OF LIABILITY SET FORTH IN THIS SECTION 12 ARE A FUNDAMENTAL BASIS OF THE BARGAIN AND WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE.



### 13. MISCELLANEOUS

13.1 Marketing. During the Term, Utimaco may use Customer's name and logo to indicate that Customer is a customer of Utimaco on websites owned or controlled by Utimaco and in marketing materials relating to Utimaco's products and services. In addition, Utimaco may prepare and distribute a case study describing Customer's experience with the CSCS, subject to Customer's prior review and approval of such case study, such approval not to be unreasonably withheld or delayed. Customer agrees to provide reasonable information and cooperation in connection with the production of such case study at Utimaco's request, including provision of one or more quotes from Customer senior technical executives for use in such case study.

13.2 Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever, and (except to the extent expressly provided in Section 11) nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.

13.3 Assignment. Customer may not assign any of its rights or obligations under this Agreement without the prior written consent of Utimaco, such consent not to be unreasonably withheld. Any merger (by operation of law or otherwise), consolidation, reorganization or change in control of Customer, or any sale of all or substantially all of Customer's assets related to this Agreement or similar transaction, shall be deemed an attempted assignment of this Agreement for which such consent is required. Subject to the foregoing, this Agreement inures to the benefit of and shall be binding on the parties' successors and assigns. Utimaco is entitled to transfer the Agreement to another party without Customer's consent.

13.4 Force Majeure. Except for payment obligations, neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

13.5 Amendments. An amendment of this Agreement shall be binding upon the parties so long as it is in writing and executed by both parties. No regular practice or method of dealing between the parties shall modify, interpret, supplement or alter in any manner the express terms of this Agreement.

13.6 Severability, Waiver, Counterparts. If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect. This Agreement may be signed in counterparts. Each of them is an original, and all of them constitute one agreement.

13.7 Governing Law, Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without reference to conflicts of laws principles. The parties agree that the state and federal courts in the Northern District of California will have exclusive jurisdiction and venue under this Agreement, and the parties hereby agree to submit to such jurisdiction exclusively.

13.8 Entire Agreement. This Agreement and the CSCS Service & Support document constitute the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.