ECHOWORX™

IT PAYS TO BE SECURE

Echoworx Terms and Conditions of Service

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Terms of Service

SECTION 1 **SERVICE AND LICENCES**

1.1 **Defined Terms.** "**Service**" shall mean Echoworx Email Encryption Platform. "**User**" shall mean each person that is provisioned to use the Service. "**Administrator**" means each person who is responsible for administering Users. "**Client Software**" means the software installed on each User's computer that enables the use of the Service. "**including**" means "including without limitation". "**Documentation**" means all documentation provided to you from time to time in any form or medium, as each may be corrected, updated, modified, enhanced or replaced by Echoworx from time to time. **"Enterprise Software"** means the software installed on your computer systems, other than the Client Software. "**Software**" means the Client Software and the Enterprise Software. "**Personal Data**" means personal information or personally identifiable information that is protected under applicable laws for the protection of personally identifiable information, including all information that is, or in the European Union would be, subject to the EU General Data Protection Regulation ("**GDPR**"), including emails and other communications that are processed through the Service. "**Data Protection Laws**" means the laws operative in the jurisdiction of Customer including the GDPR, the *Personal Information Protection and Electronic Documents Act* in Canada, and the *Health Insurance Portability and Accountability Act* in the United States of America, or any other law, regulation, or directive established for the protection of Personal Data. "**Data Subject**" means any identified or identifiable natural person. "**Expiry Period**" means the number of days that an email will be stored in the Service. "**Affiliate**" means an entity that owns or controls, is owned or controlled by, or is or under common control or ownership with, another entity, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise. "**Processing**" means any operation or set of operations that are performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. "**Confidential Information**" means any and all information, whether written, graphic, electronic, communicated orally or otherwise disclosed by or on behalf of one Party (the "**Disclosing Party**") to the other Party (the "**Recipient**") pursuant to this Agreement that at the time of disclosure is reasonably understood as being confidential or proprietary to the Disclosing Party. Such Confidential Information shall specifically include but shall not be limited to source code for any computer programs developed by or for either of us, non-public cryptographic keys, and any disclosure, independent of the physical medium through which the information is disclosed, made by the Disclosing Party to the Recipient and that at the time of disclosure is marked as "Confidential" or "Proprietary". Confidential Information shall exclude information that the Recipient can show by competent evidence: (i) is or becomes public or available to the general public otherwise than through the fault of the Recipient; (ii) is obtained by the Recipient from a third party who is lawfully in possession of such Confidential Information and is not subject to an obligation of confidentiality or non-use owed to the Disclosing Party; (iii) is previously known to the Recipient prior to disclosure to the Recipient by or on behalf of the Disclosing Party under this Agreement and not obtained or derived directly or indirectly from the Disclosing Party; or (iv) is independently developed, discovered or arrived at by the Recipient without use of the Confidential Information. Notwithstanding the foregoing, no Personal Data is subject to the aforementioned exceptions for Confidential Information but is instead subject to applicable laws for the protection of personally identifiable information. All other capitalized terms are defined in the Service Order to which these Terms of Service are attached.

1.2 **Licence Grants.** We hereby grant you a revocable, non-exclusive, non-transferable, limited licence during the Term only to (i) access and use the Service; (ii) install and use one (1) copy of the Client Software on each device from which a User accesses the Service; (iii) install and use the Enterprise Software for the purpose of accessing the Service; and (iv) print and use, but not further reproduce, a reasonable number of copies of the Documentation solely for the purpose of accessing and using the Service.

1.3 **Limited Rights.** Your rights in the Software and use of the Service are limited solely to the rights stated above in Section 1.2. You may not sell, rent, lease, sublicense, lend, make derivative works of, distribute, or charge or receive any fee for use of the Software or the Service. In addition, except as otherwise provided by law, you may not (i) assign or transfer this Agreement to any third party without the prior written consent of Echoworx; (ii) alter, remove, or obscure trademarks, copyright, or other proprietary notices or legends in or on the Service; (iii) copy (except for back-up purposes), reverse engineer, reverse compile, disassemble, or otherwise attempt to derive information from any Software or from the Service provided to you; (iv) use the Service for service bureau purposes; (v) use the Service as a method of sending automated email messages without Echoworx' prior authorization; or (vi) use the Service in the operation of critical data systems, such as those used for the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control systems, patient data systems, or life support machines.

1.4 **Ownership.** The Software and Documentation are the property of Echoworx or its licensors or its suppliers, and is protected by copyright, patent and other intellectual property laws. The Software and Documentation are licensed, not sold, to you for use only according to the terms of this Agreement, and Echoworx and its licensors and its suppliers reserve all rights not expressly granted to you under this Agreement. Echoworx retains all right, title and interest to the intellectual property in any customizations, modifications or derivative works resulting from any service provided by Echoworx hereunder and relating to the Software or the Service.

1.5 **No Other Obligations**. This Agreement creates no obligations on the part of either party other than as specifically stated herein.

1.6 **Administrator(s)**. Administrators shall perform certain administrative functions on the Service, including but not limited to (i) searching for secure email messages based on sender or recipient address to confirm successful processing, and (ii) performing recipient password resets, and (iii) other recipient-account related management such as deleting or unlocking the account, and (iv) serving as technical contact for the Service. Your Administrator(s) shall participate, prior to the Launch Date, in one (1) Administrator training Session at no charge. Additional Sessions, or Sessions requested after the Launch Date, may be purchased at our then-current fees. A "**Session**" will include up to one (1) hour of training by telephone with our Administrator trainers.

1.7 **Export Restrictions.** The Software contains encryption technology that is controlled for export by various governments and may be subject to import and/or use regulations in various jurisdictions. It is your responsibility to comply with all applicable laws and regulations relating to the export, import and use of the Service. You represent, warrant and covenant that you, your Administrators and your Users will not export, directly or indirectly, the Software, or any product or service utilizing the Software to any country for which a relevant government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval. You, your Administrators and your Users will not, in any manner whatsoever, remove, convey, export, re-export or transmit the Software in a manner that would contravene the spirit or the letter of any export law, regulations or policies in any country, including any international treaties or agreements, and you will not permit, encourage, assist or facilitate such activities by any other person or entity.

SECTION 2 TERM AND TERMINATION

2.1 **Term.** The term of this Agreement will commence on the Effective Date and shall continue until the end of the Initial Term, and shall automatically renew after the expiration of the Initial Term under the same terms and conditions, for additional terms equal to the Renewal Term (each "**Renewal Term**" together with the Initial Term is referred to as the "**Term**") unless either you or Echoworx provides the other with written notice of your or our intention not to renew at least sixty (60) days' prior to the expiration of the then-current Term.

2.2 **Early Termination.**

(a) Notwithstanding any conflicting term herein, we may terminate the Service as follows: (i) thirty (30) days after written notice that you have failed to pay fees for the Service when due, and if such fees remain unpaid, we may

immediately terminate the Agreement and the Service, or (ii) thirty (30) days after written notice that we intend to terminate the Service to all of our customers generally.

(b) Notwithstanding any conflicting term herein, you shall have the right to terminate this Agreement

(i) forthwith on written notice to Echoworx upon Echoworx making any assignment for the benefit of creditors, filing a petition in bankruptcy, being adjudged bankrupt, being adjudged insolvent by a court of competent jurisdiction, or being placed in the hands of a receiver, or if the equivalent of any of the proceedings or acts described in this Section 2.2(b) occurs; provided that the provisions of subsection 365(n) of the United States *Bankruptcy Code* and paragraph 65.11(7) of the Canadian *Bankruptcy and Insolvency Act* (and its equivalent provision in the Canadian *Companies' Creditors Arrangement Act*) shall apply, at your option, to your ongoing right to use the Service and the Software notwithstanding such proceeding or act; or

(ii) for Echoworx' material breach of this Agreement, upon ten (10) days' written notice to Echoworx (during which period Echoworx shall have the right to cure the breach).

2.3 **Effect of Termination.** If the Agreement is terminated or expires, then this Section 2.3 (Effect of Termination), SECTION 4 (Fees and Payment Terms), SECTION 5 (Warranties, Liability and Indemnity), SECTION 6 (Protection of Personal Data) SECTION 7 (Confidentiality), SECTION 10 (General Provisions), and the obligation to pay any unpaid fees owed and any other provision intended to survive termination, will survive. Upon termination of the Agreement, you agree to use best efforts to (i) remove all copies of the Software from your servers and your Users' and Administrators' devices, or otherwise render such Software permanently unusable, and (ii) certify to us in writing by one of your officers that you and your Users and Administrators have removed or destroyed all such Software. You agree that we may also take such technical steps as may be necessary to bar any further use of the Service by Users and Administrators

2.4 Upon termination of this Agreement for any reason, Echoworx will make available to you, on mutually agreeable media, all data belonging to you that is in Echoworx' possession.

2.5 Upon termination of this Agreement for any reason other than your breach, Echoworx will refund to you any Subscription Fees under this Agreement paid for the Service that have not yet been received as of the cessation of the Service. Notwithstanding any conflicting term herein, you may, by written notice to Echoworx, terminate this Agreement upon a material breach by Echoworx with no termination fee, liquidated damages, or penalties of any kind.

SECTION 3 INFRINGEMENT INDEMNITY

3.1 Echoworx warrants to you that neither the Software nor the Service infringes upon any patent, copyright, trade secret, or other proprietary right of any other person. In defence of a claim of infringement, Echoworx may either (i) obtain for you and your Users the right to continue using the Service and the Software, or (ii) modify the Service or Software so that it is non-infringing or, (iii) if Echoworx can demonstrate that neither of the options in (i) and (ii) are available on a commercially reasonable basis, terminate this Agreement by notice to you. In the event of such termination of this Agreement, Echoworx will refund to you any Subscription Fees under this Agreement paid for the Service that have not yet been received, but, subject to Section 3.2, will have no other obligation to you relating to such infringement.

3.2 Echoworx will indemnify you against costs and damages awarded under any final judgment by a court of competent jurisdiction or agreed to by Echoworx in final settlement for infringement of intellectual property rights in respect of the Service and the Software used within the scope of this Agreement, provided that:

(a) you make no statement prejudicial to nor act in any way that may compromise Echoworx,

(b) such infringement is not caused by or contributed to by your acts, other than your use of the Service and Software in accordance with this Agreement,

(c) Echoworx is promptly notified, in writing, of the details of the claim,

(d) you give Echoworx all reasonable assistance in connection with the claim, and

(e) Echoworx will have sole conduct and control of any trial, its settlement or compromise.

3.3 Echoworx will have no liability for any claim of intellectual property infringement arising from (i) use or continuation of the use of the Service or Software supplied by Echoworx with programs or data not supplied by Echoworx (if such infringement could have been avoided had the combination not been made) or (ii) your own infringing activities, independent of any infringement by the Service or the Software.

3.4 THE FOREGOING IN THIS SECTION 3 STATES THE ENTIRE LIABILITY OF ECHOWORX WITH RESPECT TO INFRINGEMENT OF ANY COPYRIGHTS, PATENTS, REGISTERED DESIGNS, TRADE SECRETS OR OTHER INTELLECTUAL PROPERTY RIGHTS BY THE SERVICE.

SECTION 4 FEES AND PAYMENT TERMS

4.1 **Fees.** You agree that you will pay us the fees for the Service as listed in this Agreement for the Minimum Users and also for each additional User who was provisioned during each Billing Period on the Service and who is not counted in the Minimum Users during such Billing Period. We will invoice you (i) in advance of a Billing Period for Minimum Users, and (ii) at the end of each month for the difference between the actual number of distinct Users provisioned for the Service during the Billing Period and the Minimum Users. Additional fees may apply, such as customization services or out-of-pocket expense, in each case, only being undertaken with your prior written consent. You agree to pay all undisputed amounts invoiced under this Agreement upon receipt of the invoice. You also agree to pay all duties, sales taxes and use taxes on all fees payable under this Agreement. Deployment will commence upon receipt of payment. If you wish to dispute an invoice, you must do so within 15 days of presentment of the invoice. You and Echoworx will consult together for 30 days to try to resolve the dispute, failing which either party may submit the matter to a court of competent jurisdiction for resolution.

4.2 **Termination Fees.** Except for your termination of this Agreement due to our material breach of this Agreement, our insolvency or our termination of the Service pursuant to Section 2.2(a)(ii) (Termination of a Service generally), or by written notice given pursuant to the terms of SECTION 2 above, in the event this Agreement is terminated prior to the end of the then current Term, you will pay us within ten (10) days after the date of such termination, in addition to any amounts accrued up to such termination, a cancellation fee equal to the Subscription Fee, multiplied by the Minimum Users and the remaining Billing Periods, including any part thereof, in the Term of this Agreement. The parties agree that, if the Service is cancelled prior to the completion of the then current Term, Echoworx' damages shall be difficult or impossible to ascertain and therefore, the amounts set forth in this Section 4.2 are intended to establish liquidated damages in the event of a cancellation and are not intended as a penalty.

SECTION 5 WARRANTIES, LIABILITY AND INDEMNITY

5.1 **Warranty of Customer.** You hereby represent and warrant to us that (i) you have obtained consent from your Users, Administrators and any Data Subjects whose consent is needed for the collection, use and transfer of their Personal Data, to be used solely for Echoworx to provide the Service, and in conjunction with their use of the Service, and such consent is in an intelligible and easily accessible form, using clear and plain language; and (ii) Users and Administrators have the necessary authority required to disclose the names and email addresses of the recipients of the email messages they send via the Service, and that you have policies in place to discourage illegal use of the Service.

5.2 **Limited Warranty and Disclaimer**. Echoworx hereby represents and warrants that (a) it has and for the duration of this Agreement shall have all rights, titles or interests in the Service, the Software and the Documentation (collectively, the "**Properties**") required for the performance of its obligations hereunder and has and for the duration of this Agreement shall have the authority and the legal right to enter into this Agreement and (b) it is and for the duration of this Agreement shall be in compliance with all federal, state, provincial, local and foreign laws, governmental regulations, rules and requirements and binding administrative and court orders (collectively "**Laws**") applicable to Echoworx, including all Laws applicable to its provision of the Service. ECHOWORX WARRANTS THAT THE SERVICE AND SOFTWARE WILL FUNCTION IN ACCORDANCE WITH THEIR FUNCTIONAL DESCRIPTION

PROVIDED IN THE USER MATERIALS DISTRIBUTED BY ECHOWORX. ECHOWORX WILL MAINTAIN TECHNOLOGICAL AND PHYSICAL PROTECTION IN PLACE TO DISCOURAGE, AND TO THE EXTENT POSSIBLE HAVING REGARD TO THE STATE OF TECHNOLOGY FROM TIME TO TIME, TO PREVENT, UNAUTHORIZED THIRD PARTIES FROM ACCESSING OR INTERFERING WITH DATA OR E-MAIL MESSAGES SENT, RECEIVED OR STORED USING THE SERVICE AND THE SOFTWARE, OR STORED DATA ENCRYPTED USING THE SERVICE AND THE SOFTWARE. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT TO THE CONTRARY, ECHOWORX HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS OF MERCHANTABLE QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU OR YOUR USERS.

5.3 **Limitation of Liability.** WITH THE EXCEPTION OF ECHOWORX' BREACH OF SECTION 7, AND ITS GROSS NEGLIGENCE AND WILFUL MISCONDUCT, AND ECHOWORX' INDEMNITIES HEREIN, ECHOWORX' AND ITS LICENSORS' AND ITS SUPPLIERS' LIABILITY TO YOU WILL, IN ALL CIRCUMSTANCES, BE LIMITED TO DIRECT DAMAGES ONLY AND WILL NOT, IN THE AGGREGATE, EXCEED THE AMOUNT OF TWELVE MONTHS' SUBSCRIPTION FEES FOR ALL CAUSES OF ACTION IN THE AGGREGATE. IN NO EVENT WILL ECHOWORX OR ITS LICENSORS OR ITS SUPPLIERS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), EQUITY OR ANY OTHER LEGAL THEORY (INCLUDING FUNDAMENTAL BREACH AND FAILURE OF ESSENTIAL PURPOSE) FOR ANY LOST REVENUE, LOST PROFIT, LOSS OF ANTICIPATED SAVINGS, LOSS OF DATA OR OTHER ECONOMIC LOSS (INCLUDING DAMAGES RESULTING FROM A BREACH OF SECURITY), OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OF OR INABILITY TO USE THE SERVICE, EVEN IF ECHOWORX OR ITS LICENSORS OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

5.4 **Indemnifications.** You agree to indemnify, defend and hold Echoworx and its licensors and its suppliers, and their respective officers, directors, employees, representatives and assigns ("**Echoworx Indemnified Person(s)**") harmless for any damages, costs, liabilities and attorney's fees they incur from any claim arising from your or your Users' or your email recipients' use of the Service or any breach of this Agreement or applicable laws by you. In such event, you agree to conduct the defense and have control of the litigation and settlement, if any. However, you agree not to consent to any judgment or enter into any settlement that adversely affects the rights or interests of Indemnified Person(s) without the prior written consent of the affected party. Echoworx and its licensors and its suppliers will give you prompt notice of all claims and to cooperate in defending against the claim.

5.5 Subject to Section 5.4, we agree to indemnify, defend and hold you and your officers, directors, employees, Users, representatives and assigns ("**Customer Indemnified Person(s)**"), but for clarity, not your email recipients, harmless for any damages, costs, liabilities and attorney's fees they incur from any claim arising from our negligent provision of the Service or any breach of this Agreement or applicable laws by us. In such event, we agree to conduct the defense and have control of the litigation and settlement, if any. However, we agree not to consent to any judgment or enter into any settlement that adversely affects the rights or interests of Customer Indemnified Person(s) without the prior written consent of the affected party. You will give us prompt notice of all claims and will cooperate in defending against each claim.

SECTION 6 PROTECTION OF PERSONAL DATA

6.1 Echoworx shall:

(a) comply with all applicable Data Protection Laws; and

(b) not Process Personal Data other than in strict accordance with the Customer's documented instructions.

6.2 In furtherance of Section 6.1(b) above, Customer hereby instructs Echoworx to Process Personal Data using the Service as reasonably necessary, but only to the extent necessary, for the provision of the Service under this Agreement. Customer acknowledges that the Processing that is performed using the Service is limited to automatically encrypting and decrypting email messages for purposes of ensuring that email messages are secure and not vulnerable to interception and disclosure of their contents or any other function related to the operation of the Service.

6.3 Echoworx shall take reasonable steps to ensure the reliability of any individual who may have access to Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know and access the relevant Personal Data, as strictly necessary for the purposes of the provision of the Service under this Agreement, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

6.4 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing Personal Data as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Echoworx shall in relation to the Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, encryption of messages, technical and organizational controls as part of an information security program, and regular testing of such controls.

6.5 In assessing the appropriate level of security, Echoworx shall take into account the risks that are presented by Processing, in particular from a breach involving Personal Data.

6.6 Echoworx shall not engage a sub-processor for Processing Personal Data but shall instead perform all Processing itself automatically and without human intervention using the Service.

6.7 Taking into account the nature of the Processing, Echoworx shall assist Customer by implementing appropriate technical and organizational measures, insofar as possible, for the fulfilment of the Customer's obligations, as reasonably understood by Customer, to respond to requests to exercise Data Subject rights under Data Protection Laws.

6.8 Echoworx shall:

(a) promptly notify Customer if it receives a request or demand from a Data Subject in respect of Customer Personal Data; and

(b) not respond to that request except on the documented instructions of Customer or as required by applicable laws in relation to privacy and personal information protection to which the Echoworx is subject, in which case Echoworx shall to the extent permitted by such laws inform Customer of that legal requirement before responding to the request.

6.9 Echoworx shall notify Customer without undue delay upon Echoworx becoming aware of a breach of Personal Data, providing Customer with sufficient information to allow it to meet any obligations to report or inform Data Subjects of the breach as required by applicable laws.

6.10 Echoworx shall co-operate with Customer or Customer's regulators and take such reasonable commercial steps as are directed by Customer or Customer's regulators to assist in the investigation, mitigation and remediation of each such breach of Personal Data.

6.11 Echoworx shall provide reasonable assistance to Customer with any data protection impact assessments and consultations with competent data privacy authorities that Customer reasonably considers to be required by Data Protection Laws, taking into account the nature of the Processing and the information available to Echoworx.

6.12 Upon termination of this agreement, emails that are processed and stored as part of the Service shall be allowed to expire and be deleted according to the configured Expiry Period under which the Service operated prior to termination. Once the Expiry Period has passed, Echoworx shall remove all User and Administrator accounts associated with this Agreement except for such User account as may be associated with another active agreement.

6.13 Echoworx shall make available to Customer on request all information necessary to demonstrate compliance with this SECTION 6, and, subject to SECTION 9, shall allow for and cooperate with audits, including inspections, by Customer or an auditor mandated by Customer in relation to the Processing of the Personal Data. In no event will such audits, examinations or inspections include review of any data or information relating to other customers of Echoworx by Customer, nor shall Customer's regulator have access to any data or information pertaining to Data Subjects outside regulator's jurisdiction.

6.14 Customer shall give Echoworx reasonable notice of any audit or inspection to be conducted under Section 6.13.

SECTION 7 CONFIDENTIALITY

7.1 For purposes of the Service, Customer and Echoworx may be required to disclose to one another Confidential Information. In the protection of the confidentiality of such information, each of you and Echoworx shall use at least the same degree of care as it customarily uses to protect its own Confidential Information of like kind. Each of us agrees to take reasonable actions and precautions to prevent the unauthorised use and disclosure of, and keep confidential, all such Confidential Information. You and we agree that the specific terms and conditions of this Agreement shall be considered Confidential Information unless otherwise required by law or ordered by a Court of law.

7.2 If you or we are required to disclose the other's Confidential Information pursuant to any applicable law or decision of any court or tribunal of competent jurisdiction, that is permitted provided that the disclosing party provides the other with prompt notice in order to allow the other an opportunity to seek a protective order for the Confidential Information.

7.3 You acknowledge that our Software and the Service are our Confidential Information.

SECTION 8 STANDARDS

8.1 Throughout the term, Echoworx shall maintain a documented and audited information security programme suitable for the protection of Personal Data processed by the Service.

SECTION 9 AUDIT

9.1 Echoworx will provide you and your inspectors and regulators upon thirty (30) days' prior written notice (or, in the case of an audit conducted by a regulatory authority, with such lesser notice as such regulatory authority deems appropriate) with reasonable access to all facilities, systems, data, records, personnel and assets used by Echoworx to provide the Service and to all relevant books and records in order to conduct audits, examinations and inspections to assess the design and operational effectiveness and the adequacy of Echoworx' internal controls, including security procedures of Echoworx surrounding the delivery of the Service. Such audits may include: (i) audits of amounts billed to you by Echoworx for the Service (but, for clarity, not of Echoworx' costs other than pass-through expenses, if any); (ii) audits of compliance with this Agreement, if any, and all confidentiality and Data Protection Laws; (iii) audits of compliance with other applicable laws and regulations; (iv) audits of the physical data and access security and the quality and accuracy of controls and processes relating to any of this Agreement and the Service; and (v) audits of any other subject matter as may be required by applicable laws and regulations.

9.2 Where Customer seeks an audit on the internal and technical controls that are covered in other audits performed for Echoworx, Echoworx shall have the right to supply the audit reports in respect of such audits to minimize the scope of any Customer initiated audit. Echoworx shall not be required to undergo audits and testing on areas covered by other audit reports that can be provided to Customer.

9.3 You will bear your own costs and the costs of engaging any external auditor in connection with its right of audit, examination or inspection under this SECTION 9.

9.4 Echoworx will provide to you and the auditors, inspectors and regulators any assistance and access that you or they may reasonably require in connection with such audits, examinations and inspections.

9.5 Notwithstanding anything herein to the contrary, audits may only be conducted during Echoworx' regular business hours and in no event will such audits, examinations or inspections include review of any data or information relating to other customers of Echoworx or Echoworx' costs (other than pass-through expenses, if any).

SECTION 10 GENERAL PROVISIONS

10.1 **General.** This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which will be deemed to be a single agreement. A facsimile or electronic signature will have the same force and effect as the original signature counterpart. Any handwritten changes to these Terms of Service will not be accepted and will be considered void. These Terms of Service and the Service Order forms the entire agreement between you and us with respect to the subject matter set forth herein. In any conflict between the documents, the documents will control in the following order: Terms of Service and then Service Order.

10.2 **Assignment.** Neither you nor Echoworx may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably or arbitrarily withheld. Either party may assign this Agreement as part of a sale of all or substantially all its assets, creation of an Affiliate, or other restructuring of its business, provided that it notifies the other party as soon as possible following completion of such transaction. Echoworx may not subcontract all or substantially all its obligations in this Agreement without your prior written consent.

10.3 **Governing Law.** You and Echoworx agree that the substantive and procedural laws of England will be applied to govern, construe and enforce all of the rights and duties of the parties arising from or relating in any way to the subject matter of this Agreement. YOU AND ECHOWORX CONSENT TO THE EXCLUSIVE PERSONAL JURISDICTION OF AND VENUE IN ENGLAND AND WALES FOR ANY SUITS OR CAUSES OF ACTION CONNECTED IN ANY WAY, DIRECTLY OR INDIRECTLY, TO THE SUBJECT MATTER OF THIS AGREEMENT OR TO THE SERVICE. Each of the parties hereby waives: (a) the right to trial by jury of any such suit, action or proceeding; and (b) any right, claim or entitlement to any punitive or exemplary damages whatsoever.

10.4 **Data Protection Law.** The jurisdiction for disputes in this Agreement set out in Section 10.3 shall not apply to disputes in respect of Data Protection Laws, in which case, the jurisdiction shall be as required by the applicable Data Protection Laws.

10.5 **Public Announcements.** Echoworx may announce the relationship between you and us and name you as a customer of Echoworx publicly, including listing you as a customer on Echoworx' website. You may name Echoworx as your provider.

10.6 **Modifications.** This Agreement constitutes the entire agreement between you and Echoworx concerning the subject matter hereof and cancels and supersedes all prior agreements. Any representation, promise or condition in connection with the subject matter hereof, not incorporated herein, will not be binding upon either you or Echoworx. Notwithstanding the foregoing, Echoworx may revise the terms and conditions of this Agreement from time to time

(including any of the policies that may be applicable to usage of the Service) by prior written notice to you. Increases of 3 percent to the monthly price of the Service shall be effective annually on the anniversary of the Effective Date. Revisions to any other terms and conditions shall be effective sixty (60) days after you receive our written notice. If you do not agree with such revisions, you may terminate your Service with no termination fee, liquidated damages, or penalties of any kind by giving notice of termination to Echoworx within sixty (60) days of your receipt of our notice of the changes, in which case Echoworx shall refund to you the pro rata unused portion of any prepaid fees.

10.7 **Data Protection Law Change.** Customer may:

(a) upon at least 30 calendar days' written notice to Echoworx from time to time propose any variations to SECTION 6 that are required solely as a result of any change in, or decision of a competent authority under, applicable Data Protection Laws; and

(b) propose any other variations to SECTION 6 that Customer reasonably considers to be necessary to address the requirements of any applicable Data Protection Laws.

10.8 **Ibid.** If Customer gives notice under Section 10.7, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Customer's notice as soon as is reasonably practicable, and within any timelines required by applicable Data Protection Laws.

ECHOWORX™

IT PAYS TO BE SECURE

Echoworx protects the privacy of people and businesses throughout the world by making email data protection easier. Our customizable email encryption platform helps organizations easily share protected email, statements, and documents from anywhere and from any device. Our passionate encryption experts transform communication chaos into order for world leading organizations who understand — it pays to be secure.

Encryption is an investment in brand, maximizing competitive advantage.

Clients in 30 countries use Echoworx and more than 5,000 business, public sector, and institutional deployments are serviced through our data centers in the U.S., Canada, Germany, Ireland, and the U.K.

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