PowerSuite Terms of Service

These PowerSuite Terms of Service, together with the PowerSuite Service Description, (collectively, the "Agreement") apply to PowerSuite Services purchased through a Unisys reseller unless otherwise agreed in writing by Unisys. Unisys' obligations and Client's rights relating to the Services shall be governed solely by this Agreement and the Order unless otherwise agreed in writing by Unisys and Client for that Order. By clicking "Accept" or by accessing or using the Services, you, the "Client", agree to this Agreement. If you are an individual accepting this Agreement on behalf of an entity, the entity is the "Client" and you represent that you have the legal capacity and authority to enter, and you are entering, into this agreement on the Client's behalf. IF YOU DO NOT AGREE, DO NOT ACCESS OR USE THE SERVICES OR CLICK "ACCEPT".

1) Definitions

(a) "**Affiliate**" means, with respect to an entity, any person or entity owns, is owned by, or is commonly owned with a party. "Own" means having more than 50% ownership or the right to direct the management of the entity.

(b) "**Authorized PowerSuite Users**" means individuals who are employees or contractors of Client or its Affiliates and who will use the PowerSuite Software.

(c) "**Client Software**" means Unisys proprietary PowerSuite Software components to be installed on Client or its Affiliate's computer systems.

(d) "**Client Data**" means data and information (including personal data), software access or use and documentation disclosed, collected, accessed, transferred from Client to Unisys.

(e) "**Documentation**" means Unisys-provided user documentation, in all forms, relating to the PowerSuite Software (e.g., user manuals, on-line help files).

(f) "**Enabled Account**" means an enabled account for a Platform for which Unisys is collecting and analyzing data. An Enabled Account is a unique account which has logged on at least once and participated in either a communications activity (for example a conference call or phone call) or a collaboration activity (for example a 1- 1 or 1-many chat, or a document sharing/posting) using one or multiple supported Platforms in the past billing cycle. For the avoidance of doubt, Platform accounts which are enabled, but (for whatever reason) inactive and nonoperational will not be considered an Enabled Account

(g) "**Local Provider**" means a business entity in the Unisys international service channel that agrees to provide services on Unisys's behalf in the Local Provider's Territory under the terms of the Agreement.

(h) "**Order**" means an order between Reseller and Client that sets out fees and describes the Services to be provided by Unisys.

(i) "**Platform**" means the collaboration or communications solution(s) for which Services are purchased as set out in an Order.

(j) "**Platform Update**" means a patch, bug fix, or other update to one or more of the Platforms supported by Unisys.

(k) "**PowerSuite**" means PowerSuite Software and optionally includes PowerSuite Cloud Managed Services depending on the package purchased by Client, as described in the Service Description, Service Level Agreement and applicable Order.

(l) "**PowerSuite Cloud Managed Services**" means Unisys's remote managed services (an optional component of PowerSuite) associated with Client's use of each Platform identified in an Order, and as set out in the Service Description"

(m) **PowerSuite Software**" means the Unisys proprietary software identified in an Order, and set out in the Service Description that is provided on a software-as-a service, subscription basis and including all patches, bug fixes, upgrades and Releases to the PowerSuite Software that Unisys makes available for general release at no additional charge to its Clients. References to PowerSuite Software in this Agreement include Client Software.

(n) "**PowerSuite Software Technical Support**" means support and other services related to the PowerSuite Software, as described in the Service Level Agreement and Service Description.

(o) "**Release**" means a version of the PowerSuite Software that incorporates corrections or provides functional or performance improvements.

(p) "**Reseller**" means the reseller or distributor authorized by Unisys to resell the Services.

(q) "**Room**" means a room audio/video conferencing system (e.g., speaker phone or huddle room, up to a full executive conference room) for one of the supported Platforms.

(r) "**Service Description**" means the descriptions of PowerSuite, available at www.unifysquare.com/support, as it may be amended from time-to-time, which is incorporated into and made a part of this Agreement.

(s) "**Service Level Agreement**" or "SLA" means, as applicable, the service level agreement for the PowerSuite Software or PowerSuite Cloud Managed Services, available at www.unifysquare.com/support, as it may be amended from time-to-time, which is incorporated into and made a part of this Agreement. Notwithstanding the terms of the SLA, the "Applicable Service Fees" (as defined in the SLA) on which "Service Credits" (as defined in the SLA) are calculated will be the fees the Reseller pays Unisys for the relevant Services, not the fees paid by Client to the Reseller, and any Service Credits will be paid directly to the Reseller.

(t) "**Services**" means the services identified in an Order which may consist of, collectively or individually, the PowerSuite Software, PowerSuite Cloud Managed Services, PowerSuite Software Technical Support and/or Professional Services.

(u) "**Success Services**" means the standard planning, installation/setup/configuration and knowledge-transfer services related to the PowerSuite Software, as described in the Service Description.

(v) **System and Usage Data**" means information about the Services, including access, performance, and technical information, derived from Unisys's monitoring of the (i) Services (to provide support, updates and other services); and, (ii) Authorized PowerSuite Users' access to and use of the Services that is captured and used by Unisys in an aggregated and anonymized manner with statistics of other subscribers and users.

(w) "**Term**" means the term of the Services subscription identified in an Order.

2) Orders

a) Ordering Services. Services are ordered when Client places an Order listing the Services purchased by Client with the Reseller and the Reseller provides the order information to Unisys. An Order shall not alter the terms of this Agreement, change Unisys standard Services packages and offerings,

b) Place any additional obligations or liabilities on Unisys or give Client any additional rights not provided in this Agreement. Orders are subject to Unisys' acceptance. In the event of a conflict between the terms of this Agreement and an Order, the terms of this Agreement will govern unless the Order or accompanying SOW expressly states an intent to supersede this Agreement.

c) Client Affiliates. Services outside of the United States will be provided the Local Provider responsible for the jurisdiction where Services supply will be made.

3) PowerSuite Software

(a) PowerSuite Software .

During the Term, Client and its Authorized PowerSuite Users may access and the PowerSuite Software during the Term for the number of Enabled Accounts identified in the Order solely for use by Authorized PowerSuite Users in connection with Client's internal business operations related to the applicable Platform(s). Unisys may provide Client Software to Client to install on its computer system. Client Software is licensed on a limited, worldwide, non-exclusive, non-transferable basis for the Term to use solely in connection with the PowerSuite Software and Client may maintain up to two copies of the Client Software solely for back-up purposes. Notices and license terms for open source and other third party software included in PowerSuite are listed in the License and Attribution Document set forth at https://public.support.Unisys.com/common/ShowWebPage.aspx?id=63 16&pla=ps&nav=ps which is incorporated in this Agreement by reference and will apply to that software.

(a) Documentation. Unisys grants to Client a limited, worldwide, non-exclusive, non-transferable right to reproduce, without modification, and internally use a reasonable number of copies of the Documentation during

the term of the applicable Order solely in connection with the use of the PowerSuite Software.

(b) <u>PowerSuite Software</u> Technical Support. Unisys will provide PowerSuite Software Technical Support to Client so long as subject to payment of the associated fees specified in the applicable Order to Unisys.

(c) <u>Availability of PowerSuite Software</u>. Unisys will use reasonable efforts to make the PowerSuite Software available in accordance with the Service Level Agreement. Client's sole and exclusive remedy, and Unisys's sole and exclusive liability, for any non- conformity with this Section 3(d) is set forth in the Service Level Agreement for PowerSuite Software.

(d) <u>Restrictions</u>. PowerSuite Software may only be accessed or used by Authorized PowerSuite Users and accounts cannot be shared. Client will ensure that Authorized PowerSuite Users comply with the terms of this Agreement and will be directly responsible to Unisys for their conduct and any breach of this Agreement by them. Client is responsible at all times for the accuracy, quality and legality of the Client Data and the means by which Client acquires, stores, discloses or otherwise uses Client Data, as well as for determining access privileges and rights for Authorized PowerSuite Users. Client agrees to provide any required disclosures to and obtain any required consents for the disclosure, access or transfer of Client Data to Unisys. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Client will not:

    I. Rent, lease, or otherwise permit any third party to use the PowerSuite Software (including Client Software) or Documentation, other than an

    II. Authorized PowerSuite User;
Use PowerSuite Software to provide services to third parties (e.g., as a service bureau) or to demonstrate the PowerSuite Software to third parties who are not Authorized Users;

    III. circumvent or disable any security or other technological features or measures of the PowerSuite Software;

    IV. Reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer or otherwise attempt to discover the source code, or create derivative works of the PowerSuite Software (including Client Software);

    V. Upload or provide for processing any information or materials that are illegal, defamatory, offensive, abusive, obscene, or that violate privacy or intellectual property rights;

    VI. Use the PowerSuite Software to harm, threaten or harass another person or organization;

    VII. Send, store or distribute any viruses, worms, Trojan horses, or other malware component harmful to a network or system;

    VIII. Attempt to access any modules or functionality that have not been purchased for PowerSuite Software; or

    IX. Use the PowerSuite software in connection with any system where malfunction can reasonably be expected to result in personal injury, death, or damage to tangible property or to the environment, including any life support or patient care system, nuclear facility, aircraft operation, air traffic control, or other application representing a similar degree of hazard. Client agrees to indemnify, defend and hold harmless Unisys and its officers, directors, employees, and affiliates from any claims or losses resulting from any of the foregoing prohibited uses of the Software.

(e) <u>Acceptable Use Policy</u>. Client will ensure that users of the PowerSuite Software will not use the PowerSuite Software: (i) in a way prohibited by law, regulation, governmental order or decree; (ii) to violate the rights of others; (iii) to try to gain unauthorized access to or disrupt any service, device, data, account or network; (iv) to spam or distribute malware; (v) in a way that could harm Microsoft Azure or the PowerSuite Software or impair anyone else's use of it; or (vi) in any application or situation where failure of Microsoft Azure or the PowerSuite Software could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

(f) <u>Protection against Unauthorized Use</u>. Client shall prevent any unauthorized use of the PowerSuite Software and Documentation and immediately notify Unisys in writing of any unauthorized use that comes to Client's attention. If there is unauthorized use by anyone who obtained access to the PowerSuite Software or Documentation directly or indirectly through Client, Client will take all steps reasonably necessary to terminate the unauthorized use. Client will cooperate and assist with any actions taken by

Unisys to prevent or terminate unauthorized use of the PowerSuite Software and Documentation.

(g) <u>System and Usage Data</u>. Unisys may monitor Client's use of the Services and may collect and compile System and Usage Data. As between Unisys and Client, Unisys owns and retains all right, title, and interest in System and Usage Data, and all intellectual property rights in System and Usage Data. Client acknowledges that Unisys may compile System and Usage Data based on Client Data. Client agrees that Unisys may:

   I.   Make System and Usage Data publicly available in compliance with applicable law, and

   II.   Use System and Usage Data to the extent and in the manner permitted under applicable law provided that if System and Usage Data is made available to others for a purpose other than to perform and to provide the Services, the System and Usage Data does not identify Client or its Authorized PowerSuite Users or contain and reveal Client's Confidential Information, including personal information of an Authorized PowerSuite User, unless required by law.

(h) <u>Cloud hosting</u>. The Services are instantiated in the Microsoft Azure platform and Client agrees that the terms of the Microsoft Client Agreement published at https://www.microsoft.com/licensing/docs/customeragreement are included in this Agreement. Unisys's duties to Client for the elements of the Services that use or rely on the Microsoft Azure platform are coextensive with Microsoft's duties to Unisys for the Microsoft Azure platform (used or relied upon by the Service) according to such Microsoft agreement.

(i) U.S. Government Terms. THE SOFTWARE AND ANY ACCOMPANYING DOCUMENTATION ARE COMMERCIAL ITEMS THAT HAVE BEEN DEVELOPED ENTIRELY AT PRIVATE EXPENSE. THEY ARE DELIVERED AND LICENSED AS COMMERCIAL COMPUTER SOFTWARE AND COMMERCIAL SOFTWARE DOCUMENTATION WITHIN THE MEANING OF THE APPLICABLE ACQUISITION REGULATION(S). THE LICENSE CONTAINED IN THIS AGREEMENT PRESCRIBES EXCLUSIVELY THE GOVERNMENT'S USE AND DISCLOSURE OF THE SOFTWARE AND DOCUMENTATION.

(j) Enabled Account or Room Counting.

1. Initial Count Confirmation. Within thirty (30) days of the implementation of PowerSuite, Unisys and/or Reseller will audit the actual number of Enabled Accounts/Rooms. To the extent, the actual Enabled Accounts/Rooms exceeds the number of Enabled Accounts/Rooms set forth in the initial Order (in number and/or type of Enabled Accounts/Rooms), the Order will be automatically adjusted with the number of actual Enabled Accounts/Rooms and Reseller will invoice, and Client shall pay, the fees for such additional Enabled Accounts/Rooms for the full term of the initial Order.

2. True Ups. PowerSuite subscriptions are based and priced on (i) a per Enabled Account, per month basis; and/or (ii) a per Room, per month basis (in the case of Room systems services), in each case as further described in the Service Description and the applicable Order, or on any other basis as provided in the applicable Order. Unless a different frequency is specified in the applicable Order, and as further described in the Service Description, Unisys and/or Reseller will audit and adjust the Enabled Account/Rooms count to the actual number of Enabled Accounts/Rooms on the same periodic basis as the Client's billing period. Unisys and/or Reseller may also audit and adjust the actual number of Enabled Accounts/Rooms any time if the number of Enabled Accounts/Rooms has increased by fifteen percent (15%) or more from the start of the then- current billing period. True-ups and resulting subscription adjustments will be handled as follows:

   1.   Subscriptions for added Enabled Accounts/Rooms are co- terminus with the original subscription term of the applicable Order;

   2.   Subscriptions for added Enabled Accounts/Rooms will be priced based on the aggregate number of Enabled Accounts/Rooms and invoiced on a pro-rated basis following each periodic true- up for the remainder of the then-current billing period; and

   3.   At the next billing period, the subscription for the then-current aggregate number of Enabled Accounts/Rooms will be priced at the aggregate price point and invoiced accordingly.

3. Enabled Account/Room Fee basis. Because Enabled Account and Room metrics are constantly changing, the Enabled Account/Room number will be determined for

billing purposes based on the peak unique cumulative Enabled Account/Room value during the month. For billing purposes, if the peak Enabled Account/Room value drops below the number of purchased subscriptions under the applicable Order, the number of purchased subscriptions under the applicable Order will continue to be used.

4) PowerSuite Cloud Managed Services

Unisys will provide the PowerSuite Cloud Managed Services purchased under an Order in accordance with the Service Description and Service Level Agreement.

Client Responsibilities

(a) General. Client shall cooperate with Unisys in the performance of the Services, and provide reasonable facilities and timely access to data, information and personnel of Client to Unisys. Client acknowledges and agrees that Unisys's performance is dependent upon the timely and effective satisfaction of Client's responsibilities and timely decisions and approvals of Client in connection with the Services in accordance with, and subject to, this Agreement, the Service Description and the applicable Order. Client shall assign personnel having skills commensurate with their role to work with Unisys. Unisys shall not be liable for any failure to comply with, and be relieved from, its obligations under this Agreement or an Order to the extent caused by acts or omissions of Client, Client affiliates, or their subcontractors, employees, agents or suppliers or Client's or its affiliates' failure to perform their obligations under this Agreement or an Order. If the failure results in an increase of the volume of resources and/or the duration of said resources necessary to complete the Services, Unisys shall have the right to charge Client for such increased level and/or duration of such resources at Unisys's then current time and material rates for the location in which the Services are performed

    (a) Use of the Services. Client is solely responsible for (i) its use of any information obtained via the Services including recommendations provided by Unisys; (ii) any results produced by the Services, and (iii) any fees charged by third parties related to Client's use of the Services, e.g., charges by Client's telephone, Internet, Platform or other third-party service providers.

(b) Remote Access. Client will provide remote access into Client's network and systems as needed for Unisys to perform the Services.

(c) Installation of Releases. Client will promptly (but consistent with Client's change management practices) implement all Platform Updates, Releases, bug fixes, service packs and workarounds designated as mandatory by Unisys.

(d) Platform License. Client must obtain and maintain a valid license agreement for each Platform at all times during the term of the applicable Order to which purchased Services apply. For Platform Updates installed by Unisys, Client's use of the Platform Update will be governed by Client's license agreement with the Platform supplier and Client grants Unisys the right to accept any click wrap software license on its behalf.

(e) Third Party Software Licenses. Client is solely responsible for obtaining licenses to any third-party software that may be required to operate each Platform, and for determining that all products and services received under this Agreement comply with all legal requirements applicable to Client.

(f) Client Satisfaction Surveys. Client will make reasonable efforts to participate in Client satisfaction surveys as reasonably requested by Microsoft, Unisys, or a designee, in order to help Unisys improve its products and services.

(g) Client Data. Services are dependent upon the accuracy and completeness of Client Data and the knowledge and cooperation of Client personnel. Client warrants to Unisys that it has the right to use, disclose to Unisys and allow Unisys to use all Client Data. Client will, at its own expense, indemnify and hold Unisys harmless against any loss or damage arising from any claim based on the absence of such right in whole or in part to the extent permissible under applicable law.

(h) Compliance. Client will use the Services and Documentation in compliance with all applicable laws and regulations. Client will be responsible for compliance with and instructions relating to all legal and regulatory requirements governing the Client's operations and any violations of this Agreement by its affiliates, subcontractors, personnel, or agents.

(i)   Publicity. Client agrees that (i) Client will make one or more representatives reasonably available to participate in reference inquiries from Unisys's potential Clients and partners; (ii) provided that Unisys agrees not to disclose any of Client's Confidential Information in such case study, Unisys may create and publish a case study regarding the nature of Client's use of PowerSuite and/or Unisys Professional Services and return on investment and Client will reasonably cooperate in the preparation of such case study; and (iii) Unisys may identify Client – by name and logo – as a Client in Unisys's published Client lists.

(j)   Phone Number Management (PNM) feature. Client agrees that by enabling Phone Number Management in PowerSuite, Client accepts sole responsibility for the accuracy, completeness, and quality of the information used in connection with the PNM feature, including emergency location, and compliance with applicable regulations and laws related to or arising out of PNM use with any emergency services, including emergency location services. Client must verify the accuracy of the information used in connection with the PNM feature, including the emergency location information in the Platform, even if entered in the Platform by Unisys, before the use of PNM. To the fullest extent permitted by applicable law, Unisys and its affiliates disclaim any responsibility for:

   1.   Emergency services and emergency location information,

   2.   The choice, design, configuration and maintenance of Client's emergency calling solution, including any recommendations for that solution, and

   3.   Call failures, misrouted calls, or other circumstances related to emergency services and emergency location services. Which remain the sole responsibility of Client from which Client will protect and save harmless Unisys and its affiliates.

Unisys provides the Phone Number Management feature "**as is with all faults**" and Client's only remedy, and Unisys's only liability, is to re-enter the phone number management/ emergency location data in the Platform if Unisys performed

that task as part of the service requirements. Unisys may terminate the Phone Number Management feature on thirty (30) days advance written notice to Client. Client shall defend, indemnify, and hold harmless Unisys and its Affiliates (including their respective employees, officers, directors, and other agents) from and against claims asserted against Unisys or its Affiliates, including any claims caused by or resulting from the negligence of Unisys, its Affiliates, their employees or agents, and any resulting damages and liability, arising out of or related to the Unisys PowerSuite Phone Number Management feature, including any damages and liability that relate to emergency services or emergency location services, or both.

5) **Intellectual Property**

(a)   PowerSuite. Client acknowledges and agrees that Unisys exclusively owns all right, title and interest in and to the PowerSuite Software and Documentation and all portions thereof, together with all other information, materials and deliverables provided hereunder, including copyrights, patents, trade secret rights and other intellectual property and proprietary rights relating thereto, as well as all updates, upgrades, improvements, enhancements, modifications, configurations, extensions, and derivative works of any of the foregoing, notwithstanding any other provision in this Agreement. Client shall not challenge Unisys's ownership of or rights in the foregoing. Unisys reserves all rights not expressly granted to Client under this Agreement.

(b)   Client Data. Unisys acknowledges that, as between Unisys and Client, Client owns all intellectual property and other proprietary rights in and to the Client Data, including all copyrights, patent and trade secret rights therein. Subject to the rights granted by Client under this Agreement, Unisys acquires no right, title or interest from Client or Client's licensors under this Agreement in or to Client Data, including any intellectual property rights therein. Client hereby grants to Unisys a worldwide, nonexclusive, fully-paid up, royalty-free right to use the Client Data as reasonably necessary to carry out Unisys's business operations and to provide the Client Data to its vendors to the extent necessary to provide the Services to Client. For clarity, any personal data that has been anonymized and aggregated such that it no longer describes an identifiable individual will not be considered Client Data. Client warrants to Unisys that it has the right to use, disclose to Unisys and allow Unisys to use all

Client Data. Client will, at its own expense, indemnify and hold Unisys harmless against any loss or damage arising from any claim based on the absence of such right in whole or in part to the extent permissible under applicable law.

(c) Proprietary Rights Notices. Client will neither alter nor remove any copyright notice or other proprietary rights notices that may appear on the PowerSuite Software, Documentation or any other materials provided by Unisys.

(d) Feedback. If Client provides any communications or materials to Unisys concerning the functionality or performance of the Services (including identifying potential errors and improvements) or suggesting or recommending changes to the Services, including without limitation, new features or functionality, or any comments, questions, or suggestions ("Feedback"), Client hereby assigns to Unisys on its behalf, and on behalf of its Authorized Users, employees, contractors and agents, all right, title, and interest in and to any ideas, know-how, concepts, techniques, or other intellectual property rights in the Feedback, and Unisys is free to use the Feedback for any purpose without attribution, payment or restriction.

6) Data Security

(a) Data Privacy and Security.
The parties will comply with the Data Processing Addendum published at https://www.unisys.com/client-contract-terms/ (the "DPA"). Client acknowledges that use of the Services will involve transmission of Client Data and other communications over the Internet and other networks, and that such transmissions could potentially be accessed by unauthorized parties. Unisys is not responsible for any Client Data which is delayed, lost, altered, intercepted or stored during transmission across networks not owned or operated by Unisys and its subcontractors, including but not limited to the Internet and Client's local network. Client shall protect its user login names and passwords from access or use by unauthorized parties, and shall ensure that its users do so as well, and Client is solely responsible for its or its users' failure to do so.

(b) Malicious Code. Unisys will use measures consistent with prevailing practices in the United States software-as-a-service industry to screen the PowerSuite Software prior to making it available or providing it Client, for the purpose of avoiding the introduction of any Malicious Code into Client Data or Client's computer hardware or software. For the purposes of this Agreement, "Malicious Code" means software (including, without limitation, code, instructions, programs, routines and/or scripts) that is designed to (i) permit unauthorized access to and/or copying of Client's data, hardware or software; or (ii) damage, delete, delay, disable, erase, interfere with, modify, shut-down or otherwise harm Client's data, hardware or software, including, but not limited to, components that are commonly referred to as "back doors," "bots", "drop dead devices", "malware", "time bombs," "Trojan Horses," "viruses", and "worms". In the event Unisys introduces Malicious Code into Client Data or Client's computer hardware or software, Unisys will reasonably assist Client in removing such virus and/or Malicious Code at no additional charge.

7) Confidential Information

Confidential Information is Software, diagnostics, support materials, documentation, and any other information and materials confidential to Unisys, its licensors, or Client. All materials containing Confidential Information will be marked "Proprietary", "Confidential", or in a manner which gives notice of its confidential nature. Software and the results of any evaluation of Unisys Services or Services are Unisys Confidential Information even if not marked. Unisys disclaims any liability relative to Client's personal data. Confidential Information may not be copied nor shared with third parties except for a party's subcontractors, agents, advisors and service providers under substantially similar confidentiality obligations, in each case as essential for authorized use and performance or administration of this Agreement. Each party agrees to reproduce all notices on any copies. If Confidential Information is disclosed in intangible form, the disclosing party will identify the confidential nature of the information before disclosure and will provide a written description of that Confidential Information to the recipient within 20 days of the disclosure. Each party will use reasonable measures to protect Confidential Information provided by the other party from unauthorized use or disclosure. Ownership of Confidential Information will remain with the disclosing party.

The obligations stated in this Section do not apply to Confidential Information: (i) already known to the recipient at the time of disclosure; (ii) independently generated by the recipient and not derived from the Confidential Information supplied by the disclosing party; (iii) publicly known or available, except where such knowledge or availability is the result of unauthorized disclosure by the recipient of the

Confidential Information; (iv) rightfully disclosed to the recipient without a similar restriction by a third party; or (v) required to be disclosed by the recipient by law, regulation, court order, or other legal process, provided the recipient provides, to the extent possible, reasonable advance notice to the other party of such disclosure. When this Agreement, a license or an Order ends, or upon request, the recipient agrees to return or destroy Confidential Information received under the Agreement, license or Order, including all copies made, and all writings, descriptions and summaries involving or based on such Confidential Information. Each party agrees to continue with these confidentiality obligations after this Agreement ends.

8) Term and Termination

(a) Term of an Order. This Agreement will commence on the date Unisys accepts the first Order and will continue until the earlier of expiration or termination of the last-to-expire Order, unless earlier terminated in accordance with the terms of this Agreement.

(b) Suspension; Termination for Material Breach. Without limiting any other remedy available to Unisys, Unisys may immediately suspend performance of any of its obligations under this Agreement, and Client's access and use of the Services, if Client fails to (i) make any payment to Unisys when due; or (ii) is using the Services in violation of the use restrictions in sections 3(d) - 3(f). Unisys may terminate this Agreement if Client does not cure a material breach of its obligations under this Agreement within thirty (30) days of written notice.

(c) Material Adverse Modification of Service Description or SLA. If Unisys makes a modification to the Service Description or SLA that materially decreases the level of service provided to Client for the Services purchased under a given Order as compared to the level of service at the effective date of such Order, Client has sixty (60) days from the effective date of such modification to give Unisys written notice of concern with such modification. The Parties' representatives shall meet within ten (10) business days of Unisys's receipt of such written notice to resolve Client's concerns with such modification. If the matter cannot be resolved to Client's reasonable satisfaction within fifteen (15) business days thereafter, Client may terminate such Order upon thirty (30) days written notice to Unisys.

(d) Post-Termination Obligations. If this Agreement is terminated for any reason any and all liabilities accrued prior to the effective date of the termination will survive.

(e) Survival. The provisions of this Agreement that, by their nature, require performance following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and remain in effect until fulfilled.

9) Warranties

(a) General. Each Party warrants to the other that: (i) this Agreement has been duly executed and delivered and constitutes a valid and binding Agreement enforceable against such Party in accordance with its terms; and (ii) no authorization or approval from any third party is required in connection with such Party's execution, delivery, or performance of this Agreement.

(b) PowerSuite Software. Unisys warrants to Client that the PowerSuite Software shall perform substantially as specified in the Documentation when used in accordance with such Documentation. Unisys will make reasonable efforts to provide a workaround or correction for material errors in the PowerSuite Software that Client reports in writing to Unisys within thirty (30) days of the date on which the condition giving rise to the claim first appeared. This warranty does not extend to non-conformities resulting from accident, misuse, disaster, or alterations, modifications or services not provided or authorized by Unisys and Unisys does not warrant that the PowerSuite Software will achieve Client's intended results, or that the PowerSuite Software will meet the individual requirements of Client.

(c) Intellectual Property. Unisys warrants to Client that Unisys has sufficient right, title and interest in the PowerSuite Software to license the PowerSuite Software to Client in accordance with this Agreement, and to Unisys's knowledge, Client's use of the PowerSuite Software in accordance with this Agreement will not infringe, misappropriate or otherwise violate any third party intellectual property or other proprietary rights. Client's sole and exclusive remedy for breach of this warranty is the indemnity provided in section 14 of this Agreement.

(d) Open Source. Unisys warrants to Client that PowerSuite Software (including Client Software) is not subject to any obligation or condition (including without limitation any "copyleft" or other obligation or condition under any "open source" license such as without limitation the GNU Public License, Lesser GNU Public License or Mozilla Public License) that will when used in compliance with this Agreement,: (i) require the inclusion of any terms or

conditions in connection with any use or distribution of any of the PowerSuite Software, or the disclosure, licensing, or distribution of any source code owned or controlled by Client; (ii) condition the copying, modification, use or distribution of any of the PowerSuite Software on (i) above; or (iii) impose any limitation, restriction, or condition (other than those set forth explicitly in this Agreement) on the right or ability of Client to use the PowerSuite Software.

(e) Computing Environment. Unisys warrants to Client that it will operate and maintain the server(s) and computing environment(s) on which PowerSuite Software (excluding Client Software) is running and on which the Client Data is stored in good working order with access restricted to qualified personnel of Unisys and its contractors.

(f) PowerSuite Cloud Managed Services, Professional Services, and PowerSuite Software Technical Support. Unisys warrants that the PowerSuite Cloud Managed Services, Professional Services and PowerSuite Software Technical Support will be performed in a competent and workmanlike manner using individuals of suitable training and skills.

(g) Disclaimer. NEITHER PARTY OT ITS AFFILIATES MAKES ANY OTHER WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), STATUTORY, OR OTHERWISE AS TO ANY MATTER WHATSOEVER UNLESS REQUIRED BY LOCAL LAW. TO THE EXTENT PERMITTED BY LAW, EACH PARTY AND ITS AFFILIATES EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. UNISYS AND ITS AFFILIATES DO NOT WARRANT THAT THE SERVICES ARE ERROR-FREE OR THAT OPERATION OF THE SERVICES WILL BE SECURE OR UNINTERRUPTED. UNISYS AND ITS AFFILIATES DO NOT WARRANT THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES IS ACCURATE OR COMPLETE OR THAT ANY INFORMATION PROVIDED THROUGH THE SERVICES WILL ALWAYS BE AVAILABLE. UNISYS AND ITS AFFILIATES EXERCISE NO CONTROL OVER AND EXPRESSLY DISCLAIM ANY LIABILITY ARISING OUT OF OR BASED UPON THE RESULTS OF CLIENT'S USE OF THE SERVICES. UNISYS AND ITS AFFILIATES DO NOT WARRANT THAT THE SERVICES, ANY OF THE CONTENT, RECOMMENDATIONS OR INFORMATION PROVIDED BY UNISYS WILL MEET CLIENT'S REQUIREMENTS OR ACHIEVE ANY INTENDED RESULT. UNISYS'S WARRANTIES EXTEND SOLELY TO CLIENT. EXCEPT AS OTHERWISE SET FORTH HEREIN, THE SERVICES, ALL CONTENT, RECOMMENDATIONS, INFORMATION, AND UNISYS'S AND ITS AFFILIATES' EFFORTS, ARE PROVIDED "AS IS WITH ALL FAULTS", AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH CLIENT.

10) Limitations of Liability

CLIENT'S SOLE AND EXCLUSIVE REMEDIES FOR DAMAGES FROM ANY CAUSE RELATED TO OR ARISING OUT OF THIS AGREEMENT REGARDLESS OF THE LEGAL THEORY, WHETHER BASED ON NEGLIGENCE, BREACH OF CONTRACT, WARRANTY OR OTHER LEGAL THEORY, WILL BE THOSE PROVIDED IN THIS AGREEMENT.

IN NO EVENT SHALL UNISYS, ITS AFFILIATES, SUPPLIERS, OR SUBCONTRACTORS BE LIABLE FOR (I) INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES; (II) LOST PROFITS, LOSS OF USE OR LOSS OF REVENUE (WHETHER DIRECT OR INDIRECT); (III) DAMAGE TO OR LOSS OF DATA; (IV) LOSS OF GOODWILL OR OTHER DIMINUTION IN THE VALUE OF THE CLIENT'S BUSINESS; OR (V) CLAIMS AGAINST CLIENT FROM OTHERS EXCEPT FOR AMOUNTS FOR WHICH CLIENT IS INDEMNIFIED UNDER THE PATENT AND COPYRIGHT SECTION OF THIS AGREEMENT, IN ALL CASES EVEN IF KNOWN OR FORESEEABLE.

EXCEPT FOR AMOUNTS FOR WHICH CLIENT IS INDEMNIFIED UNDER THE INFRINGEMENT INDEMNIFICATION SECTION OF THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF UNISYS, ITS AFFILIATES, SUPPLIERS AND SUBCONTRACTORS WILL NOT EXCEED THE GREATER OF

$100,000 OR THE CHARGES PAID UNISYS OR ITS AFFILIATES FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM DURING THE 12 MONTHS BEFORE THE CLAIM.

11) Infringement Indemnification

Unisys will defend Client from third party claims that the PowerSuite Software directly infringes a patent or copyright or misappropriates a trade secret protected under the laws of the country where the software is used by Client, provided Client: (i) gives Unisys prompt written notice, control and authority to defend and/or settle the claim; and (ii) cooperates in the defense of the claim. Unisys will pay the costs of the defense and any settlement or damage award for the claim(s). If a claim is made Unisys may obtain the right(s) to allow Client to continue to use the PowerSuite Software or Unisys may replace or modify the PowerSuite Software. Client will, upon Unisys request, stop using the PowerSuite Software and return it to Unisys, whereupon any applicable license and charges for the PowerSuite Software will end, and Unisys will give Client a credit for any unused prepaid fees for the PowerSuite Software. Unisys shall have no liability for claims from a legal entity related to Client, or any claim based on based solely on: (i) Client's design or modification of the PowerSuite Software; (ii) Client's use of the PowerSuite Software in combination with anything that Unisys did not provide to Client or arising out of the use of the PowerSuite Software in a manner other than as described in the Documentation, this Agreement or the Order; (iii) a non Unisys product, open source or a third party component in the PowerSuite Software.; or (iv) Client's failure to use the latest release of the PowerSuite Software made available to Client or to comply with instructions provided by Unisys. This Section states Unisys entire liability and Client's sole and exclusive remedies for patent and copyright infringement or misappropriation and trade secret misappropriation

12) Client Indemnification

Client will defend Unisys from any actual or threatened third party claim arising out of or based upon Client's use of the Services, including that its use of the PowerSuite Software infringes a patent or copyright or misappropriates a trade secret(excluding those claims for which Unisys indemnifies Client under Section 14), a third party's use of the Services, any Client Data or third party software, specifications, content or other Client-provided materials provided or made available to Unisys, or Client's breach of any of the provisions of this Agreement; provided Unisys gives Client prompt written notice, control and authority to defend and/or settle the claim; and (ii) cooperates in the defense of the claim. Client will pay the costs of the defense and any settlement or damage award for the claim(s).

13) Dispute Resolution

Any claim or controversy relating to or arising out of this Agreement, whether in contract, in tort or otherwise, will be resolved on a confidential basis under the commercial mediation and arbitration rules of the American Arbitration Association according to the following process, by first delivering a written notice describing the dispute and the amount involved ("demand") to the other party: (a) Mediation - After receipt of a demand, either party may start mandatory non-binding mediation before a single mediator; (b) Arbitration - If the dispute remains unresolved 45 days after the receipt of the demand, either party may start binding arbitration before a single arbitrator. No statements by, or communications between, the parties during negotiation or mediation, or both, will be admissible for any purpose in arbitration. The arbitrator will have no authority to award punitive damages, and its decision must be consistent with this Agreement. Each party will pay its own expenses and attorney's fees. Either party may use a court of competent jurisdiction to (a) enforce an arbitration award; (b) seek temporary equitable relief to protect its interests; or (c) recover specific property, including an action in replevin. Nothing in this Section will preclude or delay Unisys recourse for a suspected violation of Unisys' intellectual property rights; and Unisys may at its option bring any such action in either court or by arbitration. No action arising out of or relating to this Agreement, other than an action by Unisys for a suspected violation of its intellectual property rights, may be brought more than 2 years after the cause of action first accrued, except if a demand is made within 45 days before the end of this 2 year period, the parties shall have an additional 60 days from the demand to start mediation under this Agreement.

14) Miscellaneous

a. Neither party will be liable for failure to fulfill its obligations when due to causes beyond its reasonable control, excluding payment of monies due. Any failure or delay by either party in exercising any right or remedy will not be a waiver. Each provision of this Agreement is severable. This Agreement and each Order are the entire agreement between the parties for the Services that are the subject of the Order and supersede all prior written or oral communications between the parties and any preprinted terms on a purchase order. Notwithstanding the foregoing, Unisys may amend the Service Description and SLA from time-to time and Client's continued use of the Services following the posting of any such changes constitutes

acceptance of and agreement to be bound by those changes. THE LOCAL LAW OF THE COMMONWEALTH OF PENNSYLVANIA WILL GOVERN THIS AGREEMENT, WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS. This Agreement or an Order may only be modified by a writing signed by a duly authorized representative of Unisys. Client may not assign or transfer Client's rights or obligations under this Agreement without the prior written consent of Unisys. Unisys may subcontract Services to third parties. All notices under this Agreement shall be addressed at the address stated above for each Party and, for notices under Infringement indemnification, Dispute Resolution, Miscellaneous, provide a copy to the Unisys Law Department, 801 Lakeview Drive, Suite 100, Blue Bell, PA 19422.

(b) <u>Non-Solicitation of Employees</u>. Neither Party shall, during the term of this Agreement and for two (2) years after its termination or expiration, solicit for hire as an employee, any of the other Party's personnel who have had direct involvement with the Services, without such other Party's express written consent, unless such restrictions are not allowed by local laws.

(c) <u>U.S. Government Terms</u>.
To the extent prohibited by applicable law the following provisions will not apply to U.S. public sector entities: advance payment for Services; Client indemnities; and binding arbitration. If Client is a U.S. state or local government entity, this Agreement will be governed by the local law of the State or Commonwealth in which the Client is located. If the government body that appropriates Client's funds does not allocate such funds beyond the then-current fiscal period, Client may terminate all or any portion of any Order under this Agreement. Client will be liable for any accumulated payments due prior to the effective date of the new fiscal year. Client is not permitted to obtain any similar data processing equipment, software or service from any third party following such termination notice to Unisys.

(d) <u>Export Compliance</u>. Client shall comply with import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations ("Trade Laws"), including Trade Laws that apply to a U.S. company, including U.S. Export Administration Regulations, International Traffic in Arms Regulations, and economic sanctions programs

implemented by the Office of Foreign Assets Control regardless of whether the use of the Services transited from, to, or through the United States, such that a U.S. person could lawfully participate in any of the use of the Services. Client is solely responsible for its and its Authorized Users' compliance with Trade Laws and how Client and its Authorized Users choose to use the Services, including the transfer and processing of Client Data and the provision of Client Data to Authorized Users. Client assures Unisys that:

(i) Client and the financial institutions used by Client to process payment for the Services, or any person or entity that owns or controls Client or the financial institutions used by Client to process payment for Services are not; and

(ii) Each Authorized User is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government (for example, the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce), the European Union or its Member States, or other applicable government authority.Client shall maintain a compliance program designed to ensure compliance with the EAR. If Client learns that the use of the Services involve a jurisdiction, state, government, entity, or individual that is the subject of sanctions or prohibitions under U.S. sanctions laws, executive orders, or regulations, it shall promptly notify Unisys. Failure by Client to comply with this section 17d is a material default.

(e) <u>Independent Contractor</u>. Unisys is performing the Services as an independent contractor and does not undertake to perform any obligation of Client, whether regulatory or contractual, or to assume any responsibility for Client's business or operations. Unisys' personnel shall be not entitled to receive any compensation, benefits or other incidents of employment from Client. Nothing in this Agreement shall be deemed to constitute a partnership, joint venture, agency or fiduciary relationship between Client and Unisys.

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