# CONFIDENTIALITY

## “Confidential Information” Defined

### “***Confidential Information***” of a Party means any non-public, commercially proprietary or sensitive information (or materials) belonging to, concerning or in the possession or control of the Party or its Affiliates (the “***Furnishing Party***”) that is furnished, disclosed or otherwise made available to the other Party (the “***Receiving Party***”) (or entities or persons acting on the other Party’s behalf) in connection with this Agreement or a Services Agreement and which is either marked or identified in writing as confidential, proprietary, secret or with another designation sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be commercially sensitive. In the case of Customer, “Confidential Information” includes any information to which Service Provider Personnel have access in Customer Facilities or via Customer systems, all Customer Developed Material and information pertaining to it, Customer Data, Customer’s Software, systems access codes and information concerning Customer’s and/or its Affiliates’ products, marketing strategies, financial affairs, employees, customers or suppliers, regardless of whether or how it is marked. Except for certain third party proprietary information set forth in the Agreement or a Services Agreement and designated as such, the terms of the Agreement and each Services Agreement will be considered the Confidential Information of each Party.

### “***Confidential Information***” does not include any particular information of the Furnishing Party (other than Customer Data or personal identifying information) that the Receiving Party can demonstrate: (i) was in the possession of, or was rightfully known by, the Receiving Party without an obligation to maintain its confidentiality prior to receipt from the Furnishing Party; (ii) was or has become generally available to the public other than as a result of disclosure by the Receiving Party or its agents; (iii) after disclosure to the Receiving Party, was received from a third party who, to the Receiving Party’s knowledge, had a lawful right to disclose such information to the Receiving Party without any obligation to restrict its further use or disclosure; (iv) was independently developed by the Receiving Party without use of or reference to any Confidential Information of the Furnishing Party; or (v) that the Furnishing Party has disclosed to unaffiliated third parties without similar restrictions.

## Obligations of Confidentiality

### Each Party acknowledges that it may be furnished, receive or otherwise have access to Confidential Information of the other Party in connection with this Agreement or a Services Agreement.

### As necessary to accomplish the purposes of this Agreement and the corresponding Services Agreement, the Receiving Party may disclose Confidential Information of the Furnishing Party to any employee, officer, director, contractor, Service Recipient, agent or representative of the Receiving Party who has a legitimate need to know the information in question for the purposes of this Agreement or the corresponding Services Agreement and who is bound to the Receiving Party in writing to protect the confidentiality of the information in a manner substantially equivalent to that required of the Receiving Party. The Receiving Party may also disclose Confidential Information of the Furnishing Party to the Receiving Party’s regulatory agencies and auditors provided they are made aware of the Receiving Party’s obligations of confidentiality with respect to the Furnishing Party’s Confidential Information.

### The Receiving Party may disclose the terms of this Agreement or the corresponding Services Agreement to a third party that (i) has expressed bona fide interest in consummating a significant financing, merger or acquisition transaction between such third party and such party, (ii) has a reasonable ability (financial and otherwise) to consummate such transaction, and (iii) has executed a nondisclosure agreement that (1) includes within its scope the terms of this Section 15, (2) limits distribution to those with a need to know in connection with such transaction, and (3) allows use only in connection with the transaction. The Receiving Party shall endeavor to delay the disclosure of the terms and conditions of this Agreement or the corresponding Services Agreement under the preceding sentence until the status of discussions concerning such transaction warrants such disclosure.

### Customer may disclose the terms of this Agreement and a corresponding Services Agreement to a Benchmarker; provided, however, that the Benchmarker has agreed in writing with Customer to (i) protect the confidentiality of such information in a manner substantially equivalent to that required of Customer under this Agreement; (ii) limit distribution of such terms to those with a need to know in connection with performing the Benchmarker’s responsibilities in connection with a benchmarking under Section 5.2, and (iii) use such terms only in connection with performing the Benchmarker’s responsibilities in connection with a benchmarking under Section 5.2, and for no other purpose.

### Subject to Sections 15.2(b), 15.2(c), 15.2(d) and 15.4, the Receiving Party will keep the Confidential Information of the Furnishing Party confidential and secure and will protect it from unauthorized use or disclosure by using at least the same degree of care as the Receiving Party employs to avoid unauthorized use or disclosure of its own Confidential Information of a similar nature, but in no event less than reasonable care.

### If any actual or suspected unauthorized disclosure, loss of, or inability to account for any Confidential Information of the Furnishing Party occurs, the Receiving Party will promptly so notify the Furnishing Party and will cooperate with the Furnishing Party and take such actions as may be necessary or reasonably requested by the Furnishing Party to minimize the violation and any damage resulting from it.

### The Receiving Party will be liable for the conduct of any of its employees, officers, directors, contractors, service providers, agents, or representatives to whom the Confidential Information of the Disclosing Party is disclosed.

## No Implied Rights

Each Party’s Confidential Information will remain the property of that Party. Nothing contained in this Section 15 will be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or by implication, any rights or license to the Confidential Information of the other Party. Any such obligation or grant will only be as provided by other provisions of this Agreement or express provisions of a Services Agreement.

## Compelled Disclosure

If the Receiving Party becomes legally compelled to disclose any Confidential Information of the Furnishing Party in a manner not otherwise permitted by this Agreement or a Services Agreement, the Receiving Party will provide the Furnishing Party with prompt notice of the request (unless legally precluded from doing so) so that the Furnishing Party may seek a protective order or other appropriate remedy. If a protective order or similar order is not obtained by the date by which the Receiving Party must comply with the request, the Receiving Party may furnish that portion of the Confidential Information that it determines it is legally required to furnish.

## Return or Destruction

As requested by the Furnishing Party during the Term, the Receiving Party will return or provide the Furnishing Party a copy of any designated Confidential Information of the Furnishing Party. When Confidential Information of the Furnishing Party is no longer required for the Receiving Party’s performance under the Agreement or a Services Agreement, or in any event upon expiration or termination of the Agreement or a Services Agreement, the Receiving Party will return all materials in any medium that contain, refer to, or relate to Confidential Information of the Furnishing Party under such agreement or, at the Furnishing Party’s election, destroy them. At the Furnishing Party’s request, the Receiving Party will certify in writing that it has returned or destroyed all copies of the Furnishing Party’s Confidential Information in the possession or control of the Receiving Party’s or any of its Affiliates or contractors.

## Duration of Confidentiality Obligations

The Receiving Party’s obligations under this Section 15 apply to Confidential Information of the Furnishing Party disclosed to the Receiving Party before or after the Effective Date and will continue during the Term and survive the expiration or termination of this Agreement as follows:

### The Receiving Party’s obligations under Section 15.5 will continue in effect until fully performed but not extending for more than seven years after termination or expiration of the Agreement;

### As to any portion of the Furnishing Party’s Confidential Information that constitutes a trade secret under applicable law, the obligations will continue for as long as the information continues to constitute a trade secret;

### As to any portion of the Furnishing Party’s Confidential Information that constitutes Customer Data or personal data, the obligation will continue in perpetuity; and

As to all other Confidential Information of the Furnishing Party, the obligations will survive for two years after the Receiving Party’s fulfillment of its obligations under Section 15.5 with respect to the Confidential Information in question.