

## User Agreement

This User Agreement ("Agreement") is an agreement between Awecomm ("Awecomm") and the party set forth in the related order form incorporated herein by reference (together with any subsequent order forms submitted by User, the "Order Form"), and applies to the purchase of all services (collectively, the "Services") ordered by User on the Order Form. Such party is referred to in this Agreement as "User" or "you".

PLEASE READ THIS AGREEMENT CAREFULLY. YOU ARE AGREEING THAT YOU HAVE READ THE AGREEMENT AND THAT YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND ALL TERMS AND CONDITIONS INCORPORATED BY REFERENCE IN THIS AGREEMENT, INCLUDING AWECOMM'S AUP, AWECOMM' SLA, AND AWECOMM'S DEFINITIONS. YOUR USE OF THE SERVICES CONSTITUTES ACCEPTANCE OF THIS AGREEMENT.

Awecomm reserves the right to reject this Agreement for any reason or no reason, prior to acceptance thereof by Awecomm. Activation of the Services shall indicate Awecomm's acceptance of this Agreement. Subject to the terms and conditions of this Agreement, Awecomm will provide to User the Services selected by User.

### 1. AUP

For the purpose of this Agreement the Acceptable Use Policy ("AUP") currently available at [www.awecomm.com](http://www.awecomm.com) shall be referred to as "current AUP". Under this Agreement, User shall comply with Awecomm's current AUP (i) upon initiation of this Agreement, or (ii) upon renewal of Services. Awecomm's current AUP can be viewed at <http://www.awecomm.com/legal.aspx>. User hereby acknowledges that it has read and reviewed the AUP and agrees that the terms of the AUP are incorporated herein by reference. In the event of any inconsistencies between this Agreement and the AUP, the terms of the AUP shall govern. Awecomm does not intend to systematically monitor the content which is submitted to, stored on or distributed or disseminated by User via the Service (the "User Content"). User Content includes content of User's Users and/or users of User's website. Accordingly, under this Agreement, you will be responsible for your Users content and activities on your website. Notwithstanding anything to the contrary contained in this Agreement, Awecomm may immediately take corrective action, without notice to you, including removal of all or a portion of the User Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by User of the AUP. In the event Awecomm takes corrective action due to a violation of the AUP, Awecomm shall not refund to User any fees paid in advance of such corrective action. User hereby agrees that Awecomm shall have no liability to User, any of User's Users or any other third party, due to any corrective action that Awecomm may take (including, without limitation, disconnection of Services).

## 2. SLA

For the purposes of this Agreement the Service Level Agreement ("SLA") currently available at [www.awecomm.com](http://www.awecomm.com) shall be referred to as "current SLA". Under this Agreement, User shall comply with Awecomm's current SLA (i) upon initiation of this Agreement, or (ii) upon renewal of Services. Awecomm's current SLA can be viewed at <http://www.awecomm.com/legal.aspx>. User hereby acknowledges that it has read and reviewed the SLA and agrees that the terms of the SLA are incorporated herein by reference. In the event of any inconsistencies between this Agreement and the SLA, the terms of the SLA shall govern.

## 3. Amendment

Awecomm may amend, modify or update this Agreement, the AUP, or the SLA at any time in its sole discretion, and User, upon renewal of Services, shall be bound by any such amendment, modification or update. Awecomm may, but is under no obligation to, provide notice of any amendment, modification or update of this Agreement or the AUP. Any modification is effective on the earlier of two days after posting on Awecomm's website or two days after the sending of a notice by Awecomm to User by email or conventional mail. If any material modification to this Agreement or the AUP is unacceptable to you, you may terminate your subscription as provided in Section 4. However, if you do not terminate the Agreement, or if you renew the Services following effectiveness of the modification, it will mean that you have accepted that modification and agree to be bound by the terms thereof. Awecomm reserves the right to amend its service offerings and add, delete, suspend or modify the terms and conditions of the Services at any time and from time to time, and to determine whether and when any such changes apply to both existing and future Users.

## 4. Term; Termination; Cancellation Policy

The initial term of this Agreement shall be as set forth in the Order form (the "Initial Term"). The Initial Term shall begin upon commencement of the Services to User. After the Initial Term, this Agreement shall automatically renew for successive terms of equal length as the Initial Term, unless terminated or cancelled by either party as provided in this section. The Initial Term and all successive renewal periods shall be referred to, as the "Term".

This Agreement may be terminated by Awecomm (i) in the event of nonpayment by User, (ii) if in Awecomm's judgment User is in violation of any term or condition of the AUP or SLA provided by Awecomm and such breach is not cured to Awecomm's judgment within 30 days of written notice of such breach, (iii) User's use of the Service disrupts or, in Awecomm's judgment could disrupt Awecomm's business operations, (iv) in accordance with Sections 1, 5, and 9 of this Agreement provided Awecomm issues written notification of termination and additionally allows User 30 days to move services.

This Agreement may be terminated by User (i) with cause for violations of Awecomm's SLA by Awecomm, provided User allows Awecomm 30 days to correct

the issue, and 30 days written notice of termination if the issue is not fixed (ii) without cause, providing user allows 30 days written notice of cancellation and provided Services are not Sprout services, defined here within by section 31 or Dedicated Solutions ("dedicated") as defined by Awecomm Definitions, which currently can be viewed at <http://www.awecomm.com>, and which is incorporated in this Agreement by reference.

If User cancels this Agreement with cause, prior to the end of the Term, User shall only be obligated to (i) buy-out all dedicated equipment in use per the Services provided, (ii) buy-out and/or pay any remaining service contracts or associated fees and charges in use per the Services provided. If any services are transferrable to the user, Awecomm will assist with completing the transfer from the 3<sup>rd</sup> party provider to the user and the user will assume all future financial obligations for these transferred services.

If User cancels this Agreement without cause, prior to the end of the Term, Awecomm shall not refund to User any dedicated fees paid in advance of such cancellation and (i) User shall be obligated to pay all dedicated fees and charges accrued prior to the effectiveness of such cancellation, (ii) User shall be obligated to buy-out all dedicated equipment in use per the Services provided, (iii) buy-out and/or pay any remaining service contracts or associated fees and charges in use per the Services provided. If any services are transferrable to the user, Awecomm will assist with completing the transfer from the 3<sup>rd</sup> party provider to the user and the user will assume all future financial obligations for these transferred services. (iv) User shall be obligated to pay a prorated portion of remaining contract services based on the schedule here within.

<b>Cancellation Month</b>	1-12	13-24	25-36	37-62
<b>Prorated Cancellation Fee</b>	Equal to 3 months	Equal to 2 month	Equal to 1 month	Equal to ½ month

### 5. Billing and Payment

All fees for the Services shall be in accordance with Awecomm’s fee schedule as listed on the Order Form then in effect, and shall be due at the times provided therein. A fee of 2% of the invoice amount will apply to accounts past due more than ten (10) calendar days from the due date. In addition, in the event that any amount due Awecomm remains unpaid twenty (20) days after such payment is due, Awecomm, in its sole discretion, may immediately terminate this Agreement, and/or withhold or suspend Services. There will be a \$250.00 charge to reinstate accounts that have been suspended or terminated.

### 6. Awecomm as Reseller or Licensor

Awecomm is acting only as a reseller or licensor of the hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-Awecomm Product"). Awecomm shall not be responsible for any changes in the Services that cause the Non-Awecomm

Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of Non-Awecomm Product, either sold, licensed or provided by Awecomm to User or purchased directly by User used in connection with the Services will not be deemed a breach of Awecomm's obligations under this Agreement. Any rights or remedies User may have regarding the ownership, licensing, performance or compliance of Non-Awecomm Product are limited to those rights extended to User by the manufacturer of such Non-Awecomm Product. User is entitled to use any Non-Awecomm Product supplied by Awecomm only in connection with User's permitted use of the Services. User shall use its best efforts to protect and keep confidential all intellectual property provided by Awecomm to User through any Non-Awecomm Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. User shall not resell, transfer, export or re-export any Non-Awecomm Product, or any technical data derived therefore, in violation of any applicable United States or foreign law.

## **7. IP Address Ownership**

If Awecomm assigns User an Internet Protocol address for User's use, the right to use that Internet Protocol address shall belong only to Awecomm, and User shall have no right to use that Internet Protocol address except as permitted by Awecomm in its sole discretion in connection with the Services, during the term of this Agreement. Awecomm shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to User by Awecomm, and Awecomm reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole discretion.

## **8. Caching**

User expressly (i) grants to Awecomm a license to cache the entirety of the User Content and User's website, including content supplied by third parties, hosted by Awecomm under this Agreement; and (ii) agrees that such caching is not an infringement of any of User's intellectual property rights or any third party's intellectual property rights.

## **9. Disk Usage and Bandwidth**

User agrees that disk usage and/or bandwidth shall not exceed the number of megabytes per month for the Services ordered by User on the Order Form (the "Agreed Usage"). Awecomm will monitor User's server resource usage. Awecomm, without notice to User, shall have the right to take corrective action if User's server resource usage exceeds the Agreed Usage or adversely affects other Users. Such corrective action may include the assessment of additional charges, or disconnection or discontinuance of any and all Services.

## **10. General Support Services**

Awecomm provides "remote hands" services at no charge for the same incident if it does not exceed fifteen (15) minutes. Regular billing rates for the requested service

will apply for work exceeding this time frame. In the event that the User requests diagnosis and analysis of a problem (either hardware or software issues) and those issues are the result of the Users environment and not areas covered by Awecomm warranties or responsibilities, the User will be billed at then current rates for the time spent conducting the diagnosis and any remediation services.

**11. Equipment Replacement Policy.**

Awecomm will replace User’s equipment specifically identified in the Order Form, with current technology equivalent to what the User was using at the time the Order Form was initiated, or as specified in a customer Hardware Specification Sheet. Original equipment will be left with the User. Awecomm shall not be responsible to remove, destroy, or maintain any equipment.

Awecomm will replace equipment specifically identified in the Order Form adhering to the rules below.

**Workstations**

	With Insurance	Without Insurance
Replacement	YES	YES
Damaged	YES	NO
Lost	*YES	NO
Stolen	*YES	NO

\*\* As dictated by general business insurance terms and conditions.

**Networking Equipment**

	With Insurance	Without Insurance
Replacement	YES	YES
Damaged	YES	NO
Lost	*YES	NO
Stolen	*YES	NO

\*\* As dictated by general business insurance terms and conditions.

**12. Equipment Upgrade Policy**

User may upgrade their equipment upon written notice to Awecomm.

**Workstations**

- Awecomm will provide User with a quote.
- Total cost of the equipment upgrade that exceeds the quoted Standard Build will be amortized over the remaining months in the contract.
- Alternatively, a one-time payment can be made to cover the cost of the upgrade and the monthly invoice amount will not change.

**Networking Equipment**

- All equipment upgrades as a result of increasing demands on the network due to normal business activities, are included. Normal business activities **do not**

**include:** traffic caused by personal software use, traffic caused by software, hardware or services added outside of the Sprout contract, or traffic caused by 3<sup>rd</sup> parties engaged outside of the Sprout contract. Awecomm has the right to make final determination of what constitutes normal business activities for network usage.

- All equipment upgrades based on the addition of software and services will be factored into the new pricing and amortized over the remaining months in the contract.
- All cost for equipment selected based solely on customer preferences will be amortized over the remaining months of the contract.

### **13. Customer Move Policy.**

#### ***Covered services and costs***

Awecomm will help to plan the technical aspects of User moving the items specifically identified as included within the Order Form. This includes reasonable assistance with vendors, engineering of the network, coordinating access and verify functionality at the new location.

Awecomm will also provide wiring (1 physical drop) for each user identified in the Order Form. Wiring services can either be used for a move or can be used in customers' current facility. Not both.

#### ***Services and costs not covered***

Awecomm does not cover any third party costs charged or incurred as a result of moving equipment. This includes but is not limited to: Internet lines, phone systems, shipping services, moving services, or any 3<sup>rd</sup> party charges not specifically included above.

Awecomm does not include the physical moving of equipment, nor does it insure items in transport. User must provide the physical moving of equipment, as well as provide insurance for all equipment provided by Awecomm.

### **14. Equipment Ownership Policy**

#### ***Workstations and On-Premise Networking Devices***

Any and all equipment provided on premises by Awecomm needs to be returned to Awecomm within 48 hours of the early termination of a contract. Equipment not returned or damaged will be billed out as per the schedules below based upon Unfulfilled Contract Months (UCM) which is calculated by the total number of months in the term of the complete contract minus total number of months paid in full by customer.

If a new contract is signed at the expiration of the current contract, ownership of on premise equipment from the original contract will be transferred to the customer 1.) as it is retired or replaced under the new contract, or 2.) as requested by the

customer. If customer chooses not to take ownership Awecomm will remove and dispose of the equipment.

If a new contract is signed prior to the expiration of the previous contract, the UCM will be divided by the total term of the original contract to determine the Equipment Transfer Percentage (ETP). This percentage will be compared against the total amount of equipment provided before the new contract was signed, any discrepancies must be rectified within 90 days by either party.

Once a piece of equipment has been retired/replaced it is no longer covered under the Sprout contract.

### *Schedule for 36-39 months*

UCM	Buyout amount (per device)
23 or less	Fair Market Value
24+	Purchase Price

### *Schedule for 60-63 months*

UCM	Buyout amount (per device)
48 or less	Fair Market Value
49+	Purchase Price

### *Sprout Cloud Platform*

The Sprout Cloud Platform is not purchasable by the User. Upon termination of this Agreement, User will be provided access to snapshots of all virtual machines active during the term of the Agreement. User will have 30 days to migrate all snapshots to their environment. At the end of 30 days, Awecomm may delete such information and have no further responsibility to User.

### **15. Remote Management Software**

Awecomm installs remote management software on the equipment we manage, service and provide. We reserve the right to put remote management software on equipment we support. If there are any members of your Executive staff who do not want this software, please provide the names to us.

### **16. Software Licensing**

Awecomm will not run illegal software, nor can we support it through our services. If we find a compliancy issue we will work with you and the software vendor(s) to rectify the situation. If we are aware of a compliancy issue that continues to exist with no effort to correct the situation, our policy dictates that we report the violation to you and if necessary to the proper licensing agency.

### **17. Software Upgrade Policy**

Awecomm will install in-line upgrades to supported software as required by the customer. These upgrades do not include data conversions, migrations, or training.

## 18. Supported Software

Awecomm offers support on a wide variety of software applications. This being said it is nearly impossible to account for every application that exists. As such it is our policy to only support items that comply with the rules below:

- 1.) Software must be installed by Awecomm, or must have been known and documented in the contract prior to the support incident.
- 2.) Free software for individuals is supported at best effort support.
- 3.) If greater than 5% of support efforts are spent on free software application support, adjustments to the contracts will need to be made to compensate for the business critical need for the free software packages.
- 4.) Software purchased externally to Awecomm is not covered, unless specifically included in the contract.
- 5.) Free software utilized by more than one person, i.e. network applications, or multi-user applications, is not covered unless specifically included in the contract.

## 19. Third Party Price Changes

Pricing for Contract is based on market conditions at the time the Contract is signed. In the event of price changes from third party vendors or changes in usage of services, we will notify customers of the new price and adjust future invoicing to reflect.

## 20. Third Party Contracts and Charges

**Third Party Contracts.** We may provide references for third party vendors that provide certain services or products. Awecomm is not responsible for their products or work. It is the customer's responsibility to select, negotiate and pay these vendors. The customer will also be responsible for any work done by any of their vendors that may have a negative effect on the services provided by Awecomm.

**Subcontractors.** Occasionally Awecomm may use subcontractors to provide specific services. The management and financial arrangements with these subcontractors will be Awecomm's responsibility.

## 21. Training

From time to time Awecomm will help provide information and instructions for usage of specific software applications. We will do our best to assist our customers, but do not provide training services. If there is an issue that requires additional



training, we will bring that issue to your attention with a possible recommendation on what the training should include.

## **22. Add On Approval Policy**

In the event a request for support comes in that is outside of the Sprout contract and could result in billable time and/or materials, from a person who does not have authorization to approve that billing, we will handle the request in one of the following three ways based on the organization's directive:

- Provide no support and have the caller contact the appropriate person in their organization to get approval.
- Provide support up to a specified dollar amount
- Provide whatever is needed regardless of the cost

If the request comes in as a 911 request outside of business hours we will follow the 911 directives provided.

## **23. Property Rights**

Awecomm owns all right, title and interest in and to the Services and Awecomm's trade names, trademarks, service marks, inventions, copyrights, trade secrets, patents, know-how and other intellectual property rights relating to the design, function, marketing, promotion, sale and provision of the Services and the related hardware, software and systems ("Marks"). Nothing in this Agreement constitutes a license to User to use or resell the Marks. Any and all goodwill associated with the Marks shall inure to the benefit of Awecomm.

## **24. User Website; Ecommerce; User Warranties**

User shall be solely responsible for the development, operation and maintenance of User's website, online store and ecommerce activities, for all products and services offered by User or appearing online and for all contents and materials appearing online or on User's products, including, without limitation (i) the accuracy and appropriateness of the User Content and content and material appearing in its store or on its products, (ii) ensuring that the User Content and content and materials appearing in its store or on its products do not violate or infringe upon the rights of any person, and (iii) ensuring that the User Content and the content and materials appearing in its store or on its products are not defamatory or otherwise illegal. User shall be solely responsible for accepting, processing and filling User orders and for handling User inquiries or complaints. User shall be solely responsible for the payment or satisfaction of any and all taxes associated with its website and online store.

User shall be responsible for the security and confidentiality of any User information (including, without limitation, User credit card numbers) that User may receive as a result of its website, online store or other ecommerce activities.

User represents and warrants to Awecomm that User owns or has the right to use the User Content and material contained therein, including all text, graphics, sound, music, video, programming, scripts and applets, and the use, reproduction, distribution and transmission of the User Content and any information and materials contained therein does not, and will not, (i) infringe or misappropriate any copyright, patent, trademark, trade secret or any other proprietary right of a third party, (ii) violate any criminal laws or (iii) constitute false advertising, unfair competition, defamation, an invasion of privacy, violate a right of publicity or violate any other law or regulation. User grants Awecomm the right to reproduce, copy, use and distribute all and any portion of the User Content to the extent needed to provide and operate the Services.

## **25. Disclaimer of Warranty**

User agrees to use all Services and any information obtained through or from Awecomm, at User's own risk. User acknowledges and agrees that Awecomm exercises no control over, and accepts no responsibility for, the content of the information passing through Awecomm's host computers, network hubs and points of presence or the Internet. THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS, WITH ALL FAULTS, IN ACCORDANCE WITH THE CURRENT SLA. NONE OF AWECOMM'S EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, AGENTS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE (EACH, AN "AWECOMM PERSON") MAKE ANY WARRANTIES OF ANY KIND (except to the extent specified in relevant SLA), EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON- INFRINGEMENT, FOR THE SERVICES OR ANY EQUIPMENT AWECOMM PROVIDES. NO AWECOMM PERSON MAKES ANY WARRANTIES THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE (except to the extent specified in relevant SLA); NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. AWECOMM IS NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM USER OR STORED BY USER OR ANY OF USER'S USERS VIA THE SERVICES PROVIDED BY AWECOMM. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY AWECOMM PERSON, WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE. The terms of this section shall survive any termination of this Agreement.

## **26. Indemnification**

User and Awecomm mutually agree to indemnify, defend and hold harmless each other, their parents, subsidiaries and affiliated companies, and each of their respective officers, directors, employees, shareholders and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable

attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to (i) User's use of the Services, (ii) any violation by User of the AUP, (iii) any breach of any representation, warranty or covenant of User contained in this Agreement or (iv) any acts or omissions of User. The terms of this section shall survive any termination of this Agreement.

## **27. Limitation of Liability**

For purposes of all indemnity obligations, exclusive remedies and limitations of liability set forth in this Agreement, Awecomm shall be defined as Awecomm, its affiliates, its subsidiaries, and its and their employees, directors, officers, agents, representatives, subcontractors, interconnection service providers and suppliers; User shall be defined as User, its affiliates, and its and their employees, directors, officers, agents and representatives; and Damages will refer collectively to all injury, damage, liability, loss, penalty, interest and expense incurred.

User and Awecomm will make every commercially reasonable effort, as dictated by the current SLA and AUP, to ensure that neither party incurs Damages as a result of actions or inactions of the other party. Nevertheless:

Either party's entire liability, and the other party's exclusive remedies, for any damages caused by any service defect or failure, or for other claims arising in connection with any service or performance or non-performance of obligations under this agreement shall be limited to proven direct damages provided that Users exclusive remedy shall not exceed in the aggregate during any twelve (12) month period the amount equal to the total net payments payable by customer for the affected service during the one (1) month preceding the month in which the damage occurred. This does not limit User's responsibility for the payment of any and all properly due charges under this agreement.

In no event shall Awecomm be liable for any indirect, incidental, consequential, punitive, reliance or special damages, including without limitation, damages for lost profits, advantage, savings or revenues of any kind or increased cost of operations, whether or not either party has been advised of the possibility of such damages. NO CLAIM MAY BE BROUGHT BY USER UNDER THIS AGREEMENT MORE THAN ONE (1) YEAR ACCRUAL OF SUCH CLAIM.

Awecomm also shall not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by Awecomm; service interruptions or lost or altered messages or transmissions (except to the extent credit allowances are specified in relevant SLA); or unauthorized access to or theft, alteration, loss or destruction of your, users' or third parties' applications, content, data, programs, information, networks or systems.

The limitations of liability set forth in this Section shall apply: regardless of the form of action, whether in contract, tort, strict liability, equity or otherwise; and whether or not damages were foreseeable. These limitations of liability shall survive (i) failure

of any exclusive remedies provided in this Agreement, and (ii) any termination of this Agreement.

### **28. Force Majeure**

Awecomm shall not be liable for failure or delay in performing its obligations hereunder if such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of any governmental body, war, insurrection, sabotage, terrorism, embargo, fire, flood, strike or other labor disturbance, interruption of or delay in transportation, unavailability of, interruption or delay in telecommunications or third party services (including DNS propagation), failure of third party software or hardware or inability to obtain raw materials, supplies or power used in or equipment needed for provision of the Services.

### **29. Governing Law; Jurisdiction; Arbitration**

This Agreement shall be governed in all respects by Michigan law without regard to the conflict of law provisions thereof. Both parties submit to personal jurisdiction in Michigan. Any controversy or claim arising out of, relating to or in connection with this Agreement, or the breach thereof, shall be subject to arbitration administered by the American Arbitration Association ("AAA") in accordance with its then existing Commercial Arbitration Rules (collectively, the "AAA Rules") and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The place of arbitration shall be Southfield, Michigan, or any other place selected by mutual agreement of the parties. An award rendered in connection with an arbitration pursuant to this Section shall be final and binding upon the parties and the parties agree and consent that the arbitral award shall be conclusive proof of the validity of the determinations of the arbitrations set forth in the award, and any judgment upon such an award may be entered and enforced in any court of competent jurisdiction. The parties agree that the award of the arbitral tribunal will be the sole and exclusive remedy between them regarding any and all claims and counterclaims between them with respect to the subject matter of the arbitrated dispute. The parties hereby waive all in personal jurisdictional defenses in connection with any arbitration hereunder or the enforcement of an order or award rendered pursuant thereto. In any legal action, the prevailing party will be entitled to recover all legal expenses incurred in connection with the action, including but not limited to its costs, both taxable and non-taxable, and reasonable attorney's fees. The terms of this section shall survive any termination of this Agreement.

### **30. Assignment**

User shall not have the right to assign this Agreement without the prior written consent of Awecomm. Awecomm may use subcontractors or third party service providers to provide some or all of the services under this Agreement. The management and financial arrangements with these subcontractors will be Awecomm's responsibility. This Agreement shall be binding upon and inure to the benefit of User and Awecomm and their successors and permitted assigns.

User acknowledges that Awecomm may provide references for third party vendors that provide certain services or products. Awecomm is not responsible for their products or work. It is the customer's responsibility to select, negotiate and pay these vendors. The customer will also be responsible for any work done by any of their vendors that may have a negative effect on the services provided by Awecomm.

### **31. Definitions**

**Sprout Cloud Platform (Sprout).** Sprout consists of the private cloud environment, colocation devices, dedicated devices, shared hosting, networking infrastructure and physical environment at Awecomm that is used to provide application hosting or managed IT services. The Sprout platform does not include equipment located outside of the Awecomm datacenter.

**Standard Build.** Standard Build is considered current technology equivalent to what the customer was using at the time the contract was initiated, or as specified in customer Hardware Specification Sheet

**Hardware Specification Sheet.** An optional document that specifies standard builds for equipment being replaced by the sprout contract.

### **32. Entire Agreement; Serviceability**

This Agreement, together with the Order Form and any other documents or agreements specifically identified in this Agreement, represents the entire agreement between the parties, and supersedes all previous representations, understandings or agreements. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

User hereby represents that he, she or it is either, an individual entering this Agreement for his or her personal use and is over 18 years of age, or a corporation, limited partnership or other legal entity, duly organized, validly existing and in good standing under the laws of the state of its organization and the person acting on behalf of User is duly authorized to accept, execute and deliver this Agreement on behalf of User.