



## Speed Test Services Testing and Evaluation Terms and Conditions

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These terms and conditions (this "Agreement"), together with the Speed-Test Services Registration form (the "Registration Form") and the applicable Description of Service Exhibit, form the agreement between the Customer executing the Registration Form (hereinafter, the "Client") and the ADTRAN entity ("ADTRAN") providing the Services contemplated therein.

### 1. Definitions

1.1 In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

- (a) Agreement means this agreement entered into between ADTRAN and the Client;
- (b) Charges shall have the meaning given in [Clause 5.1](#);
- (c) Confidential Information means all information in whatever form or manner presented which: (i) is disclosed pursuant to, or in the course of the provision of Services pursuant to, this Agreement; and (ii) is disclosed in writing, electronically, visually, orally or otherwise howsoever and is marked, stamped or identified by any means as confidential by the Disclosing Party (defined in Clause 7.1) at the time of such disclosure; and/or (iii) is information, howsoever disclosed, which would reasonably be considered to be confidential by the Receiving Party (defined in Clause 7.1);
- (d) Description of Services describes the Services provided to the Client by ADTRAN;
- (e) Intellectual Property Right(s) means copyrights, trademarks (registered or unregistered), patents, patent applications (including the right to apply for a patent), service marks, design rights (registered or unregistered), trade secrets and other like rights howsoever existing;
- (f) Report(s) shall have the meaning as set out in [Clause 2.5](#) below;
- (g) Services means the CAF Speed-Test Server Access services and/or the CAF Speed-Test

Managed Service, as the case may be, set out in the ADTRAN Registration Form or any relevant ADTRAN invoice, as applicable, and may comprise or include a Description of Services.

1.2 The headings in this Agreement do not affect its interpretation.

### 2. The Services

2.1 ADTRAN shall provide the Services to the Client in accordance with the terms of this Agreement.

2.2 In the event of any inconsistency between the terms of this Agreement and the Description of Services, the terms of the Description of Services shall take precedence. This Agreement takes precedence over any terms and conditions set forth in any Client purchase order or otherwise, all of which Client terms are hereby rejected. Acceptance of Services constitutes acceptance of all terms and conditions set forth in this Agreement. Neither ADTRAN's commencement of performance or delivery of the Services constitutes an acceptance of Client's terms or conditions.

2.3 ADTRAN is not obligated to perform any additional services not specified in the accepted Registration Form, including, but not limited to, repeat testing. If ADTRAN agrees to perform additional services requested by Client's change to the accepted Order (hereinafter, a "Change Order"), ADTRAN's price and schedule shall be equitably adjusted for the additional work commensurate with the changed requirements, the status of ADTRAN's work in process at the time of ADTRAN's receipt of the Client's Change Order, and ADTRAN's written acceptance of the changed or added work.

2.4 If for any reason beyond ADTRAN's control, the Services are interrupted at Client's direction, or are interrupted or delayed due to: (i) a failure or malfunction of items or systems under test; (ii) a



failure or malfunction of Client's support equipment; (iii) additional services (e.g., repeat tests) necessitated by specimen failure, standby charges may accrue until resumption or termination of testing is directed by Client in writing. Unless otherwise stated in the Registration Form, standby charges will begin to accrue, in whole business day increments, four (4) business hours after ADTRAN's notification (by telephone, e-mail and/or in-person) to Client of the interruption or delay, and will accrue at the average daily rate, per business day, of the delayed line items. The average daily rate for standby charges is calculated by dividing the line item price by the estimated duration, as stated in the Registration Form and Description of Services. If no such daily rate or duration is set forth in the Registration Form or Description of Services, ADTRAN's standby rate will be mutually agreed between ADTRAN and Client prior to the resumption of Services. ADTRAN will use best efforts to mitigate such stand-by charges. Re-setup charges may apply at resumption of testing. Rescheduling shall be at the discretion of ADTRAN.

2.5 The Services provided by ADTRAN under this Agreement and any memoranda, laboratory data, calculations, measurements, estimates, notes, certificates and other material prepared by ADTRAN in the course of providing the Services to the Client, together with status summaries or any other communication in any form describing the results of any work or services performed ("Report(s)") shall be only for the Client's use and benefit.

2.6 The Client acknowledges and agrees that if in providing the Services ADTRAN is obliged to deliver a Report to a third party, ADTRAN shall be deemed irrevocably authorized to deliver such Report to the applicable third party. For the purposes of this Clause an obligation shall arise on the instructions of the Client, or where, in the reasonable opinion of ADTRAN, it is implicit from the circumstances, trade, custom, usage or practice.

2.7 The Client acknowledges and agrees that any Services provided and/or Reports produced by ADTRAN are done so within the limits of the terms agreed with the Client in relation to the Description of Services and pursuant to the Client's specific instructions or, in the absence of such instructions, in accordance with any relevant trade custom, usage or practice. The Client further agrees and acknowledges that the Services are not designed or intended to address all matters of quality, safety, performance or condition of any product, material, services, systems or processes tested, inspected or certified and the scope of work does not necessarily reflect all standards which may apply to product, material, services, systems or process tested, inspected or certified. The Client understands that reliance on any Reports issued by ADTRAN is limited to the facts and representations set out in the Reports which represent ADTRAN's review and/or analysis of facts, information, documents, samples, systems and/or other materials in existence at the time of the performance of the Services only.

2.8 Client is responsible for its actions and use of any Report. Neither ADTRAN nor any of its officers, employees, agents or subcontractors shall be liable to Client nor any third party for any actions taken or not taken by the Client or any third party instructed or advised by the Client, on the basis of such Report.

2.9 The estimated schedule and pricing, which may be included in the Registration Form or Description of Services are based upon ADTRAN's current commitments at the time the Registration Form is received, ADTRAN's standard business hours (Monday through Friday), and ADTRAN's acceptance of Client's supplied documents and materials (if any). Due to the uncertain nature of testing services, ALL WORK SCHEDULE DATES AND TEST DURATIONS ARE APPROXIMATE and are stated in calendar days.

2.10 In agreeing to provide the Services pursuant to this Agreement, ADTRAN does not abridge, abrogate or undertake to discharge any duty or



obligation of the Client to any other person or any duty or obligation of any person to the Client.

### 3. ADTRAN Warranties

3.1 ADTRAN warrants exclusively to the Client:

- (a) that it has the power and authority to enter into this Agreement and that it will comply with relevant legislations and regulations in force as at the date of this Agreement in relation to the provision of the Services;
- (b) that the Services will be performed in a professional and workman-like manner; and
- (c) that prior to the Client attending any premises for the performance of the Services, if applicable, to inform the Client of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided.

3.2 ADTRAN will modify or correct any such Services that have not been so performed if written notice of any such failure is given to ADTRAN within thirty (30) calendar days following the date of such failure ("Warranty Period"). ADTRAN shall be given ample opportunity to re-perform the Services at its expense in the event of a warranty claim. Client's SOLE REMEDY IN THE EVENT OF BREACH OF WARRANTY DURING THE WARRANTY PERIOD IS RE-PERFORMANCE OF THE SERVICES BY ADTRAN AT NO COST TO Client.

3.3 ADTRAN makes no other warranties, express or implied. All other warranties, conditions and other terms implied by statute or common law (including but not limited to any implied warranties of merchantability and fitness for purpose) are, to the fullest extent permitted by law, excluded from this Agreement. No performance, deliverable, oral or other information or advice provided by ADTRAN (including gits agents, sub-contractors, employees, or other representatives) will create a warranty or otherwise increase the scope of any warranty provided.

### 4. Client Warranties and Obligations

4.1 The Client represents and warrants:

- (a) that it has the power and authority to enter into this Agreement and procure the provision of the Services for itself;
- (b) that it is securing the provision of the Services hereunder for its own account and not as an agent or broker, or in any other representative capacity, for any other person or entity;
- (c) that any information, access to systems, samples and related documents it (or any of its agents or representatives) supplies to ADTRAN (including its agents, sub-contractors and employees) is, true, accurate, complete and is not misleading in any respect. The Client further acknowledges that ADTRAN will rely on such information, access to systems, samples, or other related documents and materials provided by the Client (without any duty to confirm or verify the accuracy or completeness thereof) in order to provide the Services.

4.2 The Client further agrees:

- (a) to co-operate with ADTRAN in all matters relating to the Services and appoint a manager in relation to the Services who shall be duly authorized to provide instructions to ADTRAN on behalf of the Client and to bind the Client contractually as required;
- (b) to provide ADTRAN (including its agents, sub-contractors and employees), at its own expense, any and all samples, information, material, access to systems, or other documentation necessary for the execution of the Services in a timely manner sufficient to enable ADTRAN to provide the Services in accordance with this Agreement. The Client acknowledges that any samples provided may become damaged or be destroyed in the course of testing as part of the necessary testing process and undertakes to hold ADTRAN harmless from any and all responsibility for such alteration, damage or destruction;
- (c) that it is responsible for providing the samples/equipment, if applicable, to be tested together, where appropriate, with any specified



additional items specified in the Description of Services.

(d) to provide instructions and feedback to ADTRAN in a timely manner;

(e) to provide ADTRAN (including its agents, sub-contractors and employees) with access to its premises or systems as may be reasonably required for the provision of the Services and to any other relevant premises or systems at which the Services are to be provided;

(f) prior to ADTRAN attending any premises for the performance of the Services, to inform ADTRAN of all applicable health and safety rules and regulations and other reasonable security requirements that may apply at any relevant premises at which the Services are to be provided;

(g) to notify ADTRAN promptly of any risk, safety issues or incidents in respect of any item delivered by the Client, or any process or systems used at its premises or otherwise necessary for the provision of the Services;

(h) to inform ADTRAN in advance of any applicable import/export restrictions that may apply to the Services to be provided, including any instances where any products, information or technology may be exported/ imported to or from a country that is restricted or banned from such transaction;

(i) in the event of the issuance of a certificate, to inform and advise ADTRAN immediately of any changes during the term of the certificate which may have a material impact on the accuracy of the certification;

(j) to obtain and maintain all necessary licenses and consents in order to comply with relevant legislation and regulation in relation to the Services;

(k) that it will not use any Reports issued by ADTRAN pursuant to this Agreement in a misleading manner and that it will only distribute such Reports in their entirety;

(l) in no event will the contents of any Reports or any extracts, excerpts or parts of any Reports be distributed or published without the prior written consent of ADTRAN (such consent not to be unreasonably withheld) in each instance; and

(m) that any and all advertising and promotional materials or any statements made by the Client will not give a false or misleading impression to any third party concerning the Services provided by ADTRAN.

4.3 ADTRAN shall be neither in breach of this Agreement nor liable to the Client for any breach of this Agreement if and to the extent that its breach is a direct result of a failure by the Client to comply with its obligations as set out in this Clause 4. The Client also acknowledges that the impact of any failure by the Client to perform its obligations set out herein on the provision of the Services by ADTRAN will not affect the Client's obligations under this Agreement for payment of the Charges pursuant to Clause 5 below.

## **5. Charges, Invoicing, and Payment**

5.1 The Client shall pay ADTRAN the charges set out in the Registration Form, if applicable, or as otherwise contemplated for provision of the Services (the "Charges"). If the Registration Form is received prior to receipt and review by ADTRAN of all applicable specifications, documents and/or information requested from Clients, Charges are subject to revision once missing information is received. Charges are contingent upon receiving accurate and timely information from Client in response to inquiries by ADTRAN.

5.2 The Charges are expressed exclusive of any applicable taxes. The Client shall pay any applicable taxes on the Charges at the rate and in the manner prescribed by law, on the issue by ADTRAN of a valid invoice.

5.3 The Client agrees that it will reimburse ADTRAN for any expenses incurred by ADTRAN relating to the provision of the Services and is wholly responsible for any freight or customs clearance fees, if applicable, relating to any testing samples.

5.4 The Charges represent the total fees to be paid by the Client for the Services pursuant to this Agreement. Any additional work performed by



ADTRAN will be charged on a time and material basis.

5.5 Services are offered for annual 12-month terms, payable in advance. Client agrees to pay each invoice within thirty (30) days following the delivery thereof.

5.6 If any invoice is not paid on the due date for payment, ADTRAN shall have the right to charge, and the Client shall pay, reasonable collection costs and interest on the unpaid amount, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 3% per cent per annum above the base rate from time to time of HSBC Bank in the relevant currency.

## 6. Intellectual Property Rights

6.1 All Intellectual Property Rights belonging to a party prior to entry into this Agreement shall remain vested in that party. Nothing in this Agreement is intended to transfer any Intellectual Property Rights from either party to the other.

6.2 Any use by the Client (or the Client's affiliated companies or subsidiaries) of the name "ADTRAN" or any of ADTRAN's trademarks or brand names for any reason must be prior approved in writing by ADTRAN. Any other use of ADTRAN's trademarks or brand names is strictly prohibited, and ADTRAN reserves the right to terminate this Agreement immediately as a result of any such unauthorized use.

6.3 In the event of provision of certification services, Client agrees and acknowledges that the use of certification marks may be subject to national and international laws, regulations, and a separate certification agreement.

6.4 All Intellectual Property Rights in any Reports, document, graphs, charts, photographs, or any other material (in whatever medium) produced by ADTRAN pursuant to this Agreement shall belong to ADTRAN. The Client shall have a license to use any such Reports, document, graphs, charts, photographs, or other material provided such

usage is in compliance with the terms of this Agreement.

6.5 The Client agrees and acknowledges that ADTRAN retains any and all proprietary rights in concepts, ideas and inventions that may arise during the preparation or provision of any Report (including any deliverables provided by ADTRAN to the Client) and the provision of the Services to the Client.

## 7. Confidentiality

7.1 Where a party (the "Receiving Party") obtains Confidential Information of the other party (the "Disclosing Party") in connection with this Agreement (whether before or after the date of this Agreement) it shall, subject to Clauses 7.2 to 7.4: (a) keep that Confidential Information confidential, by applying the standard of care that it uses for its own Confidential Information; (b) use that Confidential Information only for the purposes of performing obligations under this Agreement; and (c) not disclose that Confidential Information to any third party without the prior written consent of the Disclosing Party.

7.2 The Receiving Party may disclose the Disclosing Party's Confidential Information on a "need to know" basis: (a) to any legal advisers and statutory auditors that it has engaged for itself; (b) to any regulator having regulatory or supervisory authority over its business; (c) to any director, officer or employee of the Receiving Party provided that, in each case, the Receiving Party has first advised that person of the obligations under Clause 7.1 and ensured that the person is bound by obligations of confidence in respect of the Confidential Information no less onerous than those set out in this Clause 7; and (d) where the Receiving Party is ADTRAN, to any of its subsidiaries, affiliates or subcontractors.

7.3 The provisions of Clauses 7.1 and 7.2 shall not apply to any Confidential Information which: (a) was already in the possession of the Receiving Party prior to its receipt from the Disclosing Party without restriction on its use or disclosure; (b) is or



becomes public knowledge other than by breach of this Clause 7; (c) is received by the Receiving Party from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or (d) is independently developed by the Receiving Party without access to the relevant Confidential Information.

7.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by law, a valid subpoena or other court order, provided that the Receiving Party has given the Disclosing Party prompt written notice of the requirement to disclose and where possible given the Disclosing Party a reasonable opportunity to prevent the disclosure through appropriate legal means.

7.5 Each party shall ensure the compliance by its employees, agents and representatives (which, in the case of ADTRAN, includes procuring the same from any sub-contractors) with its obligations under this Clause 7.

7.6 No license of any Intellectual Property Rights is given in respect of any Confidential Information solely by the disclosure of such Confidential Information by the Disclosing Party.

7.7 With respect to archival storage, the Client acknowledges that ADTRAN may retain in its archive for the period required by its quality and assurance processes, or by the testing and certification rules of the relevant accreditation body, all materials necessary to document the Services provided.

## **8. Amendment**

8.1 No amendment to this Agreement shall be effective unless it is in writing, expressly stated to amend this Agreement and signed by an authorized signatory of each party.

## **9. Force Majeure**

9.1 Neither party shall be liable to the other for any delay in performing or failure to perform any obligation under this Agreement to the extent that

such delay or failure to perform is a result of: (a) war (whether declared or not), civil war, riots, revolution, acts of terrorism, military action, sabotage and/or piracy; (b) natural disasters such as violent storms, earthquakes, tidal waves, floods and/or lighting; explosions and fires; (c) strikes and labor disputes; (d) failure of supply; or (e) failures of utilities companies such as providers of telecommunication, internet, gas or electricity services.

9.2 For the avoidance of doubt, where the affected party is ADTRAN any failure or delay caused by failure or delay on the part of a subcontractor shall only be a Force Majeure Event (as defined below) where the subcontractor is affected by one of the events described above.

9.3 A party whose performance is affected by an event described in Clause 9.1 (a Force Majeure Event) shall: (a) promptly notify the other party in writing of the Force Majeure Event and the cause and the likely duration of any consequential delay or non-performance of its obligations; (b) use all reasonable endeavors to avoid or mitigate the effect of the Force Majeure Event and continue to perform or resume performance of its affected obligations as soon as reasonably possible; and (c) continue to provide Services that remain unaffected by the Force Majeure Event.

9.4 If the Force Majeure Event continues for more than sixty (60) days after the day on which it started, either party may terminate this Agreement by giving at least ten (10) days' written notice to the other party.

## **10. Limitations and Exclusions of Liability**

10.1 The maximum aggregate liability of ADTRAN in contract, tort (including negligence and breach of statutory duty) or otherwise for any breach of this Agreement or any matter arising out of or in connection with the Services to be provided in accordance with this Agreement shall be the amount of Charges due by the Client to ADTRAN under this Agreement.



10.2 In the event the Services are interrupted or delayed due to events beyond ADTRAN's reasonable control, including without limitation due to ADTRAN equipment failure; interruption in Customer internet or network functionality; or unavailability of necessary equipment, materials, or personnel, Client's sole remedy shall be the re-performance of the Services at no cost to Client. Under no circumstances shall ADTRAN be liable for any delay in performance unless otherwise mutually agreed in writing.

10.3 Neither party shall be liable to the other in contract, tort (including negligence and breach of statutory duty) or otherwise for any: (a) loss of profits; (b) loss of sales or business; (c) loss of opportunity (including without limitation in relation to third party agreements or contracts); (d) loss of or damage to goodwill or reputation; (e) loss of anticipated savings; (f) cost or expenses incurred in relation to making a product recall; (g) loss of use or corruption of software, data or information; or (h) any indirect, consequential loss, punitive or special loss (even when advised of their possibility).

10.4 Any claim by the Client against ADTRAN (always subject to the provisions of this Clause 10) must be made within ninety (90) days after the Client becomes aware of any circumstances giving rise to any such claim. Failure to give such notice of claim within ninety (90) days shall constitute a bar or irrevocable waiver to any claim, either directly or indirectly, in contract, tort or otherwise in connection with the provision of Services under this Agreement.

10.5 "Client's Property" as defined herein, includes but is not limited to: Client's owned, leased, borrowed or hired property or systems furnished to ADTRAN, or by ADTRAN, in connection with the performance of the Services. Transfer of Client's Property to ADTRAN's premises or network shall not constitute a bailment or transfer of title to ADTRAN, and such property shall remain at all times under the stewardship, care, and primary insurance coverage of Client. CLIENT ACKNOWLEDGES AND UNDERSTANDS THAT

THERE ARE UNKNOWN HAZARDS ASSOCIATED WITH THE GOODS AND SERVICES PROVIDED UNDER THESE TERMS AND CONDITIONS WHICH ADTRAN CANNOT SAFEGUARD AGAINST. Regardless of claim, form or theory of law applied, ADTRAN shall not be liable for loss, damage or destruction of Client's Property caused by the administration of the tests to the Client's Property or associated activities, except for, and only in proportion to the extent such loss is caused by or results from the negligence or willful misconduct of ADTRAN, nor shall ADTRAN be liable for any loss, damage or destruction due to the accidental malfunction of ADTRAN's equipment. ADTRAN shall not be liable for maintenance, loss, damage or destruction of Client's Property while on ADTRAN's premises, including during storage, preparation for shipment, mounting and demounting, except where ADTRAN acted with negligence or willful misconduct.

#### **11. Indemnity**

11.1 Each Party shall indemnify and hold harmless the other party from and against any and all claims, suits, liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with: (a) any claims or suits by any governmental authority or others for any actual or asserted failure of the indemnifying party to comply with any law, ordinance, regulation, rule or order of any governmental or judicial authority; (b) claims or suits for personal injuries, loss of or damage to property, economic loss, or (c) loss of or damage to Intellectual Property Rights incurred by or occurring to any person or entity and arising in connection with or related to the indemnifying party products or equipment and the Services provided hereunder.

11.2 The Client shall indemnify and hold harmless ADTRAN, its officers, employees, agents, representatives, contractors and sub-contractors from and against any and all claims, suits liabilities (including costs of litigation and attorney's fees) arising, directly or indirectly, out of or in connection with: (a) the breach or alleged breach by the Client



of any of its obligations set out in Clause 4 above; (b) any claims made by any third party for loss, damage or expense of whatsoever nature and howsoever arising relating to the performance, purported performance or non-performance of any Services to the extent that the aggregate of any such claims relating to any one Service exceeds the limit of liability set out in Clause 10 above; (c) any claims or suits arising as a result of any misuse or unauthorized use of any Reports issued by ADTRAN or any Intellectual Property Rights belonging to ADTRAN (including trademarks) pursuant to this Agreement; or (d) any claims arising out of or relating to any third party's use of or reliance on any Reports or any reports, analyses, conclusions of the Client (or any third party to whom the Client has provided the Reports) based in whole or in part on the Reports, if applicable.

11.3 The obligations set out in this Clause 11 shall survive termination of this Agreement.

## 12. Insurance Policies

12.1 Each party shall be responsible for the arrangement and costs of its own company insurance which includes, without limitation, professional indemnity, employer's liability, motor insurance and property insurance.

12.2 ADTRAN expressly disclaims any liability to the Client as an insurer or guarantor.

12.3 The Client acknowledges that although ADTRAN maintains employer's liability insurance, such insurance does not cover any employees of the Client or any third parties who may be involved in the provision of the Services. If the Services are to be performed at premises belonging to the Client or third parties, ADTRAN's employer's liability insurance does not provide cover for non-ADTRAN employees.

## 13. Termination

13.1 This Agreement shall commence upon the date of the Registration Form and shall continue, unless terminated earlier in accordance with this Clause 13,

for twelve (12) months ("Initial Term"). Clients may request renewal of the Services by contacting Technical Support at least sixty (60) days prior to the expiration of the initial and any 12-month renewal term. Services will be disconnected if not renewed by the Customer. ADTRAN is not responsible for maintaining Services beyond expiration of the then-current term.

13.2 This Agreement may be terminated by:

(a) either party if the other continues in material breach of any obligation imposed upon it hereunder for more than thirty (30) days after written notice has been dispatched by that Party by recorded delivery or courier requesting the other to remedy such breach;

(b) ADTRAN on written notice to the Client in the event that the Client fails to pay any invoice by its due date and/or fails to make payment after a further request for payment; or

(c) either party on written notice to the other in the event that the other makes any voluntary arrangement with its creditors, or becomes subject to an administration order, or becomes bankrupt, or goes into liquidation, or a trustee takes possession or a receiver is appointed of any of the property or assets of the Client, or the other party otherwise ceases, or threatens to cease, to carry on business.

13.3 In the event of termination of the Agreement for any reason and without prejudice to any other rights or remedies the parties may have, the Client shall pay ADTRAN for all Services performed up to the date of termination. This obligation shall survive termination or expiration of this Agreement.

13.4 Any termination or expiration of the Agreement shall not affect the accrued rights and obligations of the parties nor shall it affect any provision which is expressly or by implication intended to come into force or continue in force on or after such termination or expiration.





#### 14. **Assignment and Sub-Contracting**

14.1 ADTRAN reserves the right to delegate the performance of its obligations hereunder and the provision of the Services to one or more of its affiliates and/or sub-contractors when necessary. ADTRAN may also assign this Agreement to any company within the ADTRAN group.

#### 15. **Governing Law and Dispute Resolution**

15.1 This Agreement, and any work performed pursuant to this Agreement, shall be governed by the laws of the jurisdiction within which the ADTRAN facility performing the Services is located. Any action brought hereon shall be venued in said jurisdiction.

#### 16. **General Terms**

16.1 Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, such provision shall be severed and the remainder of the provisions shall continue in full force and effect as if this Agreement had been executed without the invalid illegal or unenforceable provision. If the invalidity, illegality, or unenforceability is so fundamental that it prevents the accomplishment of the purpose of this Agreement, ADTRAN and the Client shall immediately commence good faith negotiations to agree an alternative arrangement.

16.2 No Partnership or Agency. Nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association, joint venture, or other co-operative entity between the parties or constitute any party the partner, agent, or legal representative of the other.

16.3 Waivers. Subject to Clause 10.3 above, the failure of any party to insist upon strict performance of any provision of this Agreement, or to exercise any right or remedy to which it is entitled, shall not constitute a waiver and shall not cause a diminution of the obligations established by this Agreement. A waiver of any breach shall not constitute a waiver of any subsequent breach. No waiver of any right or remedy under this Agreement shall be effective unless it is expressly

stated to be a waiver and communicated to the other party in writing.

16.4 Whole Agreement. This Agreement and the Registration Form and Description of Services contain the whole agreement between the parties relating to the transactions contemplated by this agreement and supersedes all previous agreements, arrangements and understandings between the parties relating to those transactions or that subject matter. No purchase order, statement or other similar document will add to or vary the terms of this Agreement, and ADTRAN expressly rejects any such terms that conflict with this Agreement. Each party acknowledges that in entering into this Agreement it has not relied on any representation, warranty, collateral contract or other assurance (except those set out or referred to in this Agreement) made by or on behalf of any other party before the acceptance or signature of this Agreement. Each party waives all rights and remedies that, but for this Clause, might otherwise be available to it in respect of any such representation, warranty, collateral contract, or other assurance.

16.5 Third Party Rights. A person who is not party to this Agreement has no rights to enforce any of the terms of this Agreement.

16.6 Further Assurance. Each party shall, at the cost and request of any other party, execute and deliver such instruments and documents and take such other actions in each case as may be reasonably requested from time to time in order to give full effect to its obligations under this Agreement.

16.7. Notices. Notice shall be deemed effective when received or refused if sent prepaid to the other Party at the address provided on the face of the Registration Form, and if sent by email, upon receipt thereof.

16.8 "Client Data" means any data, information, or material of the Client that the Client transmits to ADTRAN or provides access to in connection with the Services. Client Data is Confidential



Information of the Client. ADTRAN applies security practices in compliance with industry standards to protect Client Data from unauthorized access, theft, and misappropriation. The Client hereby grants to ADTRAN a royalty-free, nonexclusive, worldwide, right and license to use, copy, store, process, transmit and display Client Data solely as provided by Client to ADTRAN and solely as necessary to provide the Services hereunder. The Client represents and warrants that it possesses sufficient license rights in and to the Client Data, and that it has obtained all the required consents from data owners, as may be necessary, to permit the use contemplated under this Agreement. The Client bears all responsibility and liability for the accuracy and completeness of the Client Data and ADTRAN's access, possession and use as permitted herein. As between the parties, the Client is considered the controller of Client Data and the Client will have sole responsibility for determining if the collection, storage, and use of its Client Data complies with applicable law. Client

acknowledges and consents (i) that the Service provided may require Client Data to be transferred to a country outside of the Client's country or the country where Client Data originated, and (ii) ADTRAN may share Client Data with its affiliates and business partners for the sole purpose of providing the Services hereunder, provided that at all times ADTRAN and its affiliates shall comply with the confidentiality and data protection obligations described hereunder. Unless otherwise expressly agreed in a written document signed by an authorized representative of ADTRAN, ADTRAN shall have no obligation to store Client Data beyond any period specified in a Registration Form or Description of Services, and ADTRAN has no obligation to retain Client Data following thirty (30) days after complete termination of the Services. The Client shall have thirty (30) days from the date of termination of the Services in which to request a copy of their Client Data, which will be made available to the Client in the same format maintained by ADTRAN.