

## TERMS AND CONDITIONS

These Terms & Conditions (“Terms”) apply to Client purchases of services (“Services”), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, “Product”) from MSP, LLC (known as “MSP”) a Florida corporation. MSP and Client, together, are known as (“Parties”). All of the Terms listed in this document between Parties are known as the (“Agreement”). Client hereby engages and retains MSP to render Services or provide Product, as specifically set forth and limited in the Statement of Work (SOW), or any work order as agreed among the Parties (each a “Work Order”) under such SOW. Except as otherwise stated therein, subsequent SOWs or Work Orders shall be made a part of and subject to these Terms. No Product or Services will be provided under these Terms alone but will require the execution of a written or electronic SOW or subsequent SOW, or other mutually acceptable Work Order documentation, or verbal agreement, each of which must be executed by both Parties and, upon such execution, is deemed incorporated in these Terms for all purposes. In the event of any conflict between the SOW and these Terms, the terms of the SOW will prevail over these Terms.

MSP reserves the right to change the Terms at any time, and any such change shall apply to any SOW entered into after such change, including any repeat or renewal of a SOW.

### I. GENERAL REQUIREMENTS & CONDITIONS.

- a. **System.** For the purposes of these Terms, “System” means, collectively, any computer, computer network, computer system, peripheral or device installed, maintained, supported, monitored, or operated by MSP pursuant to and as specifically identified in an SOW. To avoid a delay or negative impact on our provision of any Services, during the term of each SOW, Client agrees to refrain from modifying or moving the System (except for a System specifically designated for transportation between two or more locations, such as laptop computers or tablets), or installing software on the System, unless MSP expressly authorizes such activity. MSP will not be responsible for any consequences arising out of or relating to any unauthorized movement or installation taken by Client.
- b. **Maintenance; Updates.** If patches and other software-related maintenance updates (“Update(s)”) are provided under an SOW, MSP will install the Updates only if MSP has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. MSP will not be responsible for any downtime or losses arising from or related to the installation or use of any Updates installed by MSP, provided that the Update was installed in accordance with the manufacturer or applicable vendor’s instructions.
- c. **Third-Party Service Providers.** “Third-Party Service Providers” means Services provided by an entity or a Party other than the MSP in fulfillment of the SOW. Client’s right to use the Third-Party Services is subject to Client’s understanding of, compliance with and consent to these Terms and of any Third-Party agreements, which MSP does not have authority to vary, alter or amend. Therefore, MSP may utilize a Third-Party Service Provider in its discretion to provide the Services in accordance with these Terms. The Third-Party Service Provider may require the MSP to sign a contract with the Third-Party

Service Provider for its services ("Third-Party Contract") and the terms of the Third-Party Contract may impose conditions and requirements upon Client. Access to the terms and conditions of any such Third-Party Contract(s) may be provided to Client, or are generally provided online by the Third-Party vendors on their website which identifies the terms and conditions. Client hereby agrees to review all Third-Party Terms and Conditions, and consent to those Third-Party Terms and Conditions which Client has consented MSP to contract upon its behalf. The links are being provided as a courtesy, Client should monitor the links for the 3rd Party Providers to determine if they have the most current Terms and Conditions.

- d. **Third-Party Product Vendors.** "Third-Party Product Vendors" means software, machinery, equipment and/or products inclusive of component parts purchased from vendors in fulfillment of the SOW or subsequent SOW requirements. MSP will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Product Vendor to Client, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and MSP will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any Third-Party Product. The Third-Party Product Vendor may require the MSP to sign a contract with the Third-Party Product Vendor for its products ("Third-Party Contract") and the terms of the Third-Party Contract may impose certain conditions and requirements upon Client. Access to the terms and conditions of any such Third-Party Contract(s) can be found online on the Third-Party vendor's website. Client hereby agrees to review all Third-Party terms and conditions, and consent to those Third-Party terms and conditions which Client has consented MSP to contract upon its behalf. Third-Party Product Vendor terms and conditions are usually available online, as an example, Microsoft at <https://www.microsoft.com/en-us/servicesagreement>.
- e. **Third-Party Products.** Unless otherwise stated in an SOW or subsequent SOW, all hardware, software, peripherals or accessories purchased through MSP ("Third-Party Products") are nonrefundable once the applicable SOW or subsequent SOW is placed in our queue for delivery. MSP will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third-Party Products to Client, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and MSP will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third-Party Products. Unless otherwise expressly stated in a SOW or subsequent SOW, all Third-Party Products are provided "as is" and without any warranty whatsoever as between MSP and Client (including but not limited to implied warranties).
- f. **Third-Party Support.** If, in MSP's discretion, a hardware or software issue requires vendor or OEM support, MSP may contact the vendor or OEM (as applicable) on Client's behalf and pass through to Client all fees and costs incurred in that process. If such fees or costs are reasonably anticipated in advance to exceed \$100, MSP will obtain Client consent before incurring such expenses on Client's behalf unless exigent circumstances require otherwise.

- g. **Subcontractors.** “Subcontractors” means third-party to whom MSP contracts to provide specified services to complete the services indicated in the applicable SOW or subsequent SOW.
- h. **Conditions of Service.** Client’s System is eligible for provision of Services as set forth in an SOW, provided the System is in good condition and the following serviceability requirements and site environmental conditions are met:
- i. Client shall provide adequate workspace, heat, light, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by MSP’s representatives.
  - ii. MSP’s representatives shall have, and Client shall provide full access to the System in order to affect the necessary monitoring and/or supplemental services.
  - iii. MSP reserves the right to suspend or terminate the provision of any Service if, in MSP’s sole discretion, conditions at the service site pose a health or safety risk.
  - iv. It is the responsibility of Client to promptly notify MSP of any events/incidents that may impact the services defined within these Terms and/or any supplemental service needs.
  - v. Unless otherwise specified in any subsequent SOW, MSP shall provide Services during MSP’s regular business hours, in accordance with MSP’s Service policies then in effect, which may be modified or amended at any time, in MSP’s sole discretion.  
Client agrees that Client will inform MSP, prior to, Client making any modification, installation, or service performed on the System by individuals not employed or contracted by MSP in order to assist MSP in providing an efficient and effective System support response. Client will be billed the full cost, at MSP’s hourly rate, to remediate and restore the Systems and/or Services to a state prior to change.
  - vi. Only representatives authorized by MSP will be eligible to access and service Client’s System. Any unauthorized access or service conducted on the System without the explicit consent of MSP, which results in negative System performance, will not be covered by the monthly plan fee as documented in the SOW or subsequent SOW or other contract documents and will be billed according to MSP’s labor rates as outlined in the SOW or subsequent SOW.
  - vii. MSP shall be obligated to provide service only at (a) the Service Site(s) as identified in the SOW or subsequent SOW; and (b) client systems as identified which is defined as client covered devices in the Remote Monitoring Management (“RMM”) platform. If Client desires to relocate, add or remove locations, Client shall give appropriate notice to MSP of Client’s intention to relocate sixty (60) days in advance. MSP reserves the right to renegotiate service terms with respect to any relocation and/or addition of locations by Client. Such right includes the right to refuse service at the relocation and/or new site.

- i. **Service Limitations.** In addition to other limitations and conditions set forth in these Terms, the following service and support limitations are expressed:  
Cost of consumables, replacement parts, hardware, software, network upgrades and associated services are outside the scope of these Terms. MSP will provide consultative specification, sourcing guidance and/or Time and Material/Project offerings.  
Any unauthorized changes made to the System without MSP's written consent which causes issues or failures to the System, are beyond the responsibility of MSP and Client will be billed the full cost of all labor, equipment, materials and related items or services to restore the System to the condition prior to any such unauthorized action.
- j. **Onboarding Process.** Client acknowledges and agrees that MSP will have no responsibility for any deficiencies in the current operating systems and infrastructure until the MSP has had a reasonable opportunity to conduct a review of the current system and to provide Client with its recommendations, and Client has accepted and implemented same.
- k. **Offboarding Process.** In the event of the suspension, expiration or termination of any SOW by either party, except as otherwise set forth in an SOW, MSP will make reasonable accommodations to transition the provision of Client's Services to Client or such third party designated by Client (collectively the "Onboarding Provider"). Client shall indemnify and hold harmless MSP, any Third-Party Service Provider and their respective directors, officers, members, employees, consultants and agents from and against any and all claims or losses resulting from the activities of Client or the Onboarding Provider during the transition period from MSP to the Onboarding Provider.
- l. **Network Devices, Hardware and Systems:** MSP shall only be responsible for providing services to network devices, hardware and systems identified by the Client and MSP and set forth in the latest SOW or subsequent SOW and covered by Remote Management Monitoring (Hereafter referred to as RMM.) MSP may, in its sole discretion, deny requests to add devices, hardware or systems. The Client shall bear the responsibility to isolate and protect the system by not allowing additional devices, hardware or system on the system unless approved by MSP. MSP shall have no responsibility for any devices, hardware or systems or damage resulting therefrom that are added to the System without MSP's approval. MSP shall have the right to cancel this contract if devices, hardware or systems are added without their approval. If Client obtains new devices, hardware or systems and wishes to request MSP's services to extend to new devices, hardware or systems, said extension shall not take effect unless and until both Parties agree in writing to a new SOW and the device is added to the RMM. Said written, signed SOW shall then become an addendum to this contract and incorporated herein. MSP reserves the right to deny any requests for additional services and/or additional hardware/systems for any reason in their sole discretion.
- m. **Authorized Contact(s).** Client understands and agrees that MSP will be entitled to rely on any directions or consent provided to MSP by any of Client Authorized Contacts, as indicated in an applicable SOW will subsequent SOW. If no Authorized Contact is identified in an applicable SOW, then Client Authorized Contact will be the person(s) (i)

who signed the Quote, SOW or SOW, and/or (ii) who signed the applicable SOW or subsequent SOW. If Client desires to change Client Authorized Contact(s), please notify MSP of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

- n. **Shared Administrator Credentials.** If Client shares server, network, or software application administrative credentials, MSP will not be held legally liable or responsible for any outages, errors, breaches, data loss and misconfiguration since multiple administrators from different companies jeopardizes the integrity of the support outlined in these Terms.

## II. SPECIFIC REQUIREMENTS & CONDITIONS

- a. **Start & Length of Service.** MSP shall begin providing services to Client via an agreed upon date by Parties (via email or otherwise) after the signature (the "**Start Date**"). If not defined in a SOW or Work Order, this Agreement shall remain in full force and effect for a period of one (1) year (the "**Term**") from the Start Date.
- b. **Auto-Renewal.** If not terminated in accordance to Section II. d., or terminated by Client in writing before 60 days of the end of the Term, this Agreement will auto-renew for an additional one (1) year Term for up to six (6) years from the original Start Date. MSP reserves the right to increase monthly fees by no more than 5% with each annual auto-renewal.
- c. **Hourly Support.** For service not covered by this Agreement, Client agrees to pay MSP's standard hourly rate for PC support (Hereinafter "PC Hourly Rate"), and MSP's standard hourly rate for Server support (Hereinafter "Server Hourly Rate"). Parties agree that both the PC Hourly Rate and Server Hourly Rate are defined by MSP for each calendar year.
- d. **Termination.** This Agreement may be terminated only as follows:
  - i. Either party may terminate this Agreement at the end of the Term by providing written notice to the other party at least sixty (60) days before the end of the Term;
  - ii. Client may terminate this Agreement at any time by providing sixty (60) days notice plus payment of a cancellation fee equal to three (3) month's of Client's regular monthly fees; and
  - iii. MSP may terminate this Agreement at any time and the termination does not excuse Client's obligation to make payment for any services provided to, and/or equipment already purchased on behalf of, Client by MSP prior to the effective end date of this Agreement.
- e. **Payment.** All payments for services covered under this Agreement, except for hourly services and one time installation fees are due thirty (30) days after receipt of MSP's monthly invoice. Additional services will not be scheduled for Client until payment is received by MSP. Any additional hourly charges, one time installation fees, reimbursable expenses, or other expenses shall be due upon receipt of invoice.
- f. **Late Fees.** A late fee of \$25 will be assessed for any and all late payments. A payment is late if payment in full for an invoice is not received by MSP within thirty (30) days of the invoice date. If payment in full is not received within thirty (30) days of the invoice date, MSP may charge interest on the unpaid balance at the lesser of (i) one percent (1%) per month, or (ii) the highest rate allowable by law, in each case compounded monthly to the extent allowable by law. Interest may be calculated from the date when

the payment becomes overdue until payment is received.

- g. **Non-Payment/Default.** If MSP does not receive Client's payment within forty-five (45) days of the invoice date, MSP reserves the right to terminate this Agreement or any part of thereof without further notice, and Parties agree the remaining balance of any monthly or annual Agreements will become immediately due from Client. MSP reserves the right to shut-off, disconnect or disable any and all access of MSP's systems, licenses or Third-Party systems, applications, or access to online portals. Client agrees that MSP has no obligation to "notify" Client of a disconnection, and Client agrees a past due amount notice is sufficient. MSP has no liability for disconnecting a service Client fails to pay for from MSP. MSP may charge a "re-connect" fee if Parties agree to restart the services provided by MSP, and Client pays all past due invoices.
- h. **Other Expenses.** MSP shall invoice Client for any expenses MSP incurs in connection with providing the services hereunder including, but not limited to:
  - i. Any equipment or part purchased for Client by MSP;
  - ii. Any software purchased for Client by MSP;
  - iii. Any software subscription renewals purchased for Client by MSP; and
  - iv. Parking expenses.
  - v. MSP shall furnish Client with statements and vouchers for all expenses incurred upon request and on a monthly basis. Payment for any expense reimbursement is due ten (10) days after Client's receipt of the invoice for such expense.
- i. **Acknowledgement of Service.** MSP shall provide periodic invoices to Client, and Client agrees to review the invoices promptly upon receipt. Client shall raise any objections to invoices within five (5) days of receipt. If Client does not raise any objections to an invoice within five (5) days of receipt, the charges shall be deemed to be accurate and Client hereby waives the right to dispute such charges. If Client pays any invoice from MSP, Client is acknowledging and agreeing to these Terms.
- j. **Business Hours.** MSP's normal business hours, are subject to change, but are generally from 8:30 a.m. to 5:30 p.m. EST, Monday through Friday, except on nationally recognized holidays ("**Business Hours**"). Services rendered outside of MSP's Business Hours are subject to an increased hourly rate at MSP's discretion.

### III. CONFIDENTIALITY AND NON-DISCLOSURE.

- a. **Definition of Confidential Information.** As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.
- b. Client Confidential Information shall include any personally identifiable information or protected health information of Client employees, Client customers, and Client Data. Client acknowledges and agrees that these Terms do not constitute a Business Associates Agreement ("BAA") as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996 and as amended), and that the requirement for any such agreement in addition to these Terms may be necessary to provide the Services hereunder. Client shall be solely responsible for the consequences, if any, of moving forward with the Services hereunder

without such a BAA and shall be the sole judge of the necessity for a BAA in addition to these Terms. Furthermore, Client hereby agrees to defend, indemnify and hold harmless MSP and any affiliated company, and MSP's respective present and former shareholders, officers, directors and employees and its attorneys and agents, and MSP's predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "Indemnatee"), from and against any and all claims, demands, causes of action, actions, judgments, liabilities, losses, costs and expenses, including attorneys' fees and costs, as they occur, brought against, imposed upon, or incurred or suffered by, the Indemnatee which in any way relate to the failure of Client to comply with these Terms in proper handling of protected health information to the extent not caused by MSP's gross negligence and/or due to the absence of any necessary BAA, or failing to notify MSP of the necessity of same.

- c. Confidential Information of each Party shall include the terms and conditions of these Terms and all SOW or subsequent SOW's, and/or other contract documents as well as business and marketing plans, technology and technical information, products, services, product plans and designs, trade secrets, and business processes disclosed by such Party.
- d. Confidential Information (other than Client Data) shall not include any information that: is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, is received from a third-party without breach of any obligation owed to the Disclosing Party, or was independently developed by the Receiving Party.
- e. Protection of Confidential Information. The Receiving Party shall:
  - (a) protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care,
  - (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms or otherwise in any manner to the Disclosing Party's detriment, and
  - (c) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, subcontractors and agents who need such access for purposes consistent with these Terms.
- f. Non-disclosure. Neither Party shall disclose the terms of any SOW or subsequent SOW and/or other contract documents to any third-party other than its affiliates, legal counsel, and accountants without the other Party's prior written consent.
- g. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing

Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

- h. **Return or Destruction of Confidential Information.** Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (a) required by applicable law or (b) it would be unreasonably burdensome to destroy. In the event that return or destruction of Confidential Information is unduly burdensome, or not feasible, the Parties shall extend the protections of these Terms to the retained Confidential Information.

#### IV. PROVISION OF MATERIALS AND SERVICES TO MSP.

- a. Client agrees to timely furnish, at Client's own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe workspaces for purposes of MSP or its subcontractors, performing the Services. Client will also provide MSP or its subcontractors, with access to all information, passwords and facilities requested by MSP that is necessary for MSP or its subcontractors, to perform the Services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Client understands that MSP or its subcontractors, may be unable to perform their duties adequately. and if such a situation should exist, Client will hold the MSP harmless.

#### V. RESPONSIBILITY FOR EQUIPMENT.

- a. Client acknowledges that from time to time (a) MSP may identify additional items that need to be purchased by Client, and (b) changes in Client system may be required in order for MSP to meet Client requirements. In connection therewith, Client agrees to work in good faith with MSP to effectuate such purchases or changes, and such changes shall be set forth in a new SOW or subsequent SOW. If MSP is required to purchase any assets, including computer hardware and/or software, in connection with MSP providing the Services, all such assets will remain the sole property of MSP, except those assets sold by MSP to Client or procured by MSP on Client's behalf shall be the sole property of Client. Client will take such reasonable precautions to ensure the quality, completeness and workmanship of any item or equipment or hardware furnished by Client, and for ensuring that the materials provided to MSP or its subcontractors, do not infringe or violate the rights of any third-party. Unless otherwise specified in the SOW or subsequent SOW and/or other contract documents that it is not the intent, nor does the MSP provide any type of backup of Client data. Client will maintain adequate backup for all data and other items furnished to MSP.
- b. It is the Customers responsibility for any failure or malfunction of electrical or telecommunications infrastructure or services that causes damage to MSP's products or services and MSP disclaims all responsibility for any loss including data.



VI. CLIENT DATA OWNERSHIP AND RESPONSIBILITY.

- a. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any data, information or material proprietary submitted by Client to MSP.

VII. INTELLECTUAL PROPERTY.

- a. Client acknowledges and agrees that any written program materials, protocols, research papers, or other writings, as well as any improvements, inventions new techniques, programs or products (collectively the “Work”) made or develop by MSP before, during or after the commencement or expiration or earlier termination of a SOW shall be deemed to be made by MSP for the sole and exclusive benefit of MSP, and that Client disclaims any benefits of the so-called “work made for hire doctrine within the meaning of the United States Copyright Act, Title 17, United States Code. MSP retains all right, title and interest in and to in any Work invented, created or composed prior to, during the course of, or incident to the performance of a SOW, as well as any code, software, materials, or methods created prior to, during the course of or after the conclusion of any SOW (all such Work collectively referred to as the “Intellectual Property”). Client acquires no right or interest in any such Intellectual Property, by virtue of a SOW or the work performed under any SOW.
- b. Client may only use and disclose Intellectual Property in accordance with the terms of these Terms and applicable SOW or subsequent SOW and/or other contract documents. MSP reserves all rights in and to the Intellectual Property not expressly granted in these Terms. Client may not disassemble or reverse engineer any Intellectual Property or decompile or otherwise attempt to derive any software source code within the Intellectual Property from executable code, except to the extent expressly permitted by applicable law despite this limitation or provide a third-party with the results of any functional evaluation, or benchmarking or performance tests on the Intellectual Property, without MSP’s prior written approval. Except as expressly authorized in these Terms or any SOW or subsequent SOW and/or other contract documents, Client may not (a) distribute the Intellectual Property to any third-party (whether by rental, lease, sublicense or other transfer), or (b) operate the Intellectual Property in an outsourcing or MSP business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Intellectual Property – applicable installation instructions or release notes will contain the relevant details.

VIII. LICENSE AGREEMENTS.

- (a) License.** Subject to these Terms, MSP grants Client a perpetual, non-exclusive, non-transferable license to use all programming, documentation, reports, and any other product provided as part of the Services solely for Client own internal use. At all times, all software on the System must be genuine and licensed, and Client agrees to provide MSP with proof of such licensing upon it’s request. If MSP requires Client to implement certain minimum hardware or software

requirements ("Minimum Requirements"), Client agrees to do so as an ongoing requirement of MSP providing its Services to Client.

- (b) Software Installation or Replication.** If MSP is required to install or replicate Client software as part of the Services, Client will independently verify that all such software is properly licensed. Client act of providing any software to MSP will be deemed Client affirmative acknowledgement to MSP that Client have a valid license that permits MSP to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor Client equipment for the installation of unlicensed software. Customer will indemnify and hold harmless MSP against all damages and expenses it may incur (including reasonable attorney's fees and disbursements) related to Customer providing infringing materials to MSP or any Customer breach of this Section.
- (c) Pre-Existing License Agreements.** Any software product provided to Client by MSP as a reseller for a third-party, which is licensed to Client under a separate software license agreement with such third-party, will continue to be governed by the third-party license agreement.
- (d) EULA.** Portions of the Services may require Client to accept the terms of one or more third-party end user license agreements ("EULAs"). If the acceptance of a EULA is required to provide the Services to Client, then Client hereby grants MSP permission to accept the EULA on Client behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in these Terms. Client agrees to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs. If, while providing the Services, MSP is required to comply with a third-party EULA and the third-party EULA is modified or amended, MSP reserves the right to modify or amend any applicable SOW or subsequent SOW with Client to ensure its continued compliance with the terms of the third-party EULA. Client agrees to hold harmless and Indemnify MSP against Client violation of any of the terms and conditions included in the subject EULA.

#### IX. MSP'S EMPLOYEE'S, AGENTS OR SUBCONTRACTORS.

- a. Client acknowledges that MSP has incurred substantial recruitment, screening, training, and administrative expenses with respect to its agents, including its employees, vendors and independent subcontractors. To the extent permitted by law from the Effective Date of the last SOW and up to one (1) calendar year after the date of termination of any SOW or subsequent SOW, Client shall not hire or contract directly or indirectly with any of the MSP's employees, agents or subcontractors who have communicated with and/or worked on any Service for Client. Client and MSP mutually acknowledge and agree that it would be impractical and extremely difficult to ascertain the amount of monetary damages that would be caused by a breach by Client of this provision. Therefore, Client

and MSP mutually agree that in the event of a breach by Client in any way of this provision, Client shall pay to MSP as liquidated damages, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00). this amount is an effort by both parties to properly and reasonably assess the damages that MSP would suffer as a direct result of a breach by Client, taking into account the following facts and circumstances: (a) an average employee working for MSP will generate significant net revenue for the MSP and remain employed by the MSP for an extended period of time; (b) MSP will lose significant revenue and incur significant costs in connection with attempting to replace such employee; (c) there is no guarantee that such employee can be replaced; and (d) accurately assessing the value of such employee to the MSP upon such breach is virtually impossible. In light of these circumstances, Client and MSP mutually agree that this liquidated damages provision represents reasonable compensation to MSP for the losses that it would incur due to any such breach. Client and MSP further acknowledge and agree that nothing in this paragraph shall limit MSP's rights to obtain injunctive relief or any other damages including, but not limited to punitive, consequential, special, or any other damages, as may be appropriate in connection with Client breach of this section.

X. WARRANTY.

- a. Except as set forth in an SOW, no warranty shall be provided by MSP. Any warranties shall be limited to those provided by a Third-Party Product Vendor.
- b. Notwithstanding any provision to the contrary in these Terms, any warranty offered and provided directly by MSP product shall be deemed null and void if the applicable product is (i) altered, modified or repaired by persons other than MSP, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by MSP (ii) misused, abused, or not operated in accordance with the specifications of MSP or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than MSP or persons approved or designated by MSP.
- c. Notwithstanding the above, MSP does not warrant its products or services beyond a reasonable standard or skill consistent with industry standards. MSP does not guarantee or promise any cost savings, profits, or returns on investment, delay in delivery or performance.

XI. SOFTWARE HARDWARE & SECURITY.

- a. Client understands and agrees that data loss or network failures may occur, whether or not foreseeable. Therefore, Client must maintain proper security for Client System including but not limited to software and hardware updates that are made available by the manufacturer. Client will adhere to software and hardware updates and maintain specific security standards, policies, procedures set forth by the NIST Cybersecurity Framework available at <https://www.nist.gov/cyberframework>.

XII. CLIENT CYBER SECURITY.

- a. It is understood that within the Services provided, it is not the intent, nor does the MSP provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for Client unless otherwise specified in the SOW or subsequent SOW. As cyber threats are always evolving it is strongly recommended that Client engage the services of a cyber protection third-party vendor to independently monitor the cyber controls and cyber activities in Client System.

XIII. REGULATORY COMPLIANCE.

- a. Any software or service provided by MSP is not intended to bring Client into full regulatory compliance with any rule, regulation, National Standard or requirement. The software, service, or solutions may aid Client's efforts to achieve regulatory compliance, however, MSP does not provide comprehensive compliance solutions.

XIV. UNAUTHORIZED INFORMATION TRANSFER.

- a. In no event, except for the willful misconduct or gross negligence on its part, shall MSP or its subcontractors, whether under these Terms, an SOW, a SOW, a Work Order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach or other form of cyberattack, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if Client's data or Systems are breached because of the distribution of and Client's response to, unsolicited email, direct mail, facsimiles, unsolicited text messages, voice calls, telemarketing or because of the collection of information by means of any form of electronic malware, wiretapping, bugging, video cameras or identification tags.

XV. EXTRAORDINARY EVENTS.

- a. In no event shall MSP or its subcontractors, whether under these Terms, an SOW or subsequent SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of a cyberattack or any other event not contemplated by these Terms.

XVI. RELEASE WITH LIMITATION OF LIABILITY.

- a. THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THESE TERMS OR ANY SOW OR SUBSEQUENT SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THESE TERMS. THE PARTIES ACKNOWLEDGE AND AGREE THEY WOULD NOT ENTER INTO THESE TERMS UNLESS THEY COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH.

EXCEPT FOR MSP'S FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE, CLIENT AND ANY OF CLIENT AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS AGREE TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE NOTED IN THESE TERMS, INCLUDING INDEMNIFICATION OBLIGATIONS AGREE TO RELEASE THE OTHER PARTY AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. MSP'S AGGREGATE LIABILITY RELATING TO ANY OF THE SERVICES SHALL BE QUANTIFIED IN THE SOW OR SUBSEQUENT SOW OR OTHER CONTRACT DOCUMENTS. MSP SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY DELAY IN DELIVERY OR PERFORMANCE, OR FAILURE TO DELIVER OR PERFORM AT OR WITHIN THE DEADLINES SET FORTH IN THESE TERMS.

XVII. MUTUAL INDEMNIFICATION AND HOLD HARMLESS.

- a. EACH PARTY AGREES TO THE FULLEST EXTENT PERMITTED BY LAW SHALL AT ALL TIMES DEFEND, INDEMNIFY, PAY, SAVE AND HOLD THE OTHER PARTIES AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, SUBCONTRACTORS, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "MUTUALLY INDEMNIFIED PARTIES") HARMLESS FROM EACH AND ANY AND ALL LIABILITIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES), COSTS, EXPENSES, SUITS, CIVIL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, LOSSES, CLAIMS, ACTIONS, VIOLATIONS, FINES AND PENALTIES (INCLUDING WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEY'S FEES AND ANY OTHER REASONABLE COSTS OF LITIGATION) (HEREINAFTER COLLECTIVELY, THE "CLAIMS") THAT ANY OF THE MUTUALLY INDEMNIFIED PARTIES MAY SUFFER, SUSTAIN OR INCUR TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE MUTUALLY INDEMNIFIED PARTIES ARISING OUT OF THESE TERMS.
- b. THE PRECEDING INDEMNIFICATION OBLIGATIONS ARE CONDITIONED ON ANY OF THE INDEMNIFIED PARTIES: (I) NOTIFYING THE INDEMNIFYING PARTY PROMPTLY IN WRITING OF SUCH ACTION; (II) REASONABLY COOPERATING AND ASSISTING IN SUCH DEFENSE; AND (III) GIVING SOLE CONTROL OF THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS TO THE INDEMNIFYING PARTY WITH THE UNDERSTANDING THAT THE INDEMNIFYING PARTY MAY NOT SETTLE ANY CLAIM IN A MANNER THAT ADMITS GUILT OR OTHERWISE PREJUDICES THE INDEMNIFIED PARTY, WITHOUT CONSENT.

XVIII. MSP INSURANCE.

- a. MSP agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by these Terms and by law. Without limiting the foregoing, to the extend these Terms create exposure generally covered by the following insurance policies, MSP will

maintain at its own sole cost and expense at least the following insurance covering its obligations under these Terms: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence; (b) Business Automobile Liability for hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for each accident; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance covering errors and omissions and wrongful acts in the performance of the Services. Such insurance will bear a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000).

XIX. CLIENT INSURANCE.

- a. **Commercial Property Insurance.** Client shall secure at Client own cost and expense Property Insurance for Client equipment that is part of the provisions of the service agreement.
- b. **Cyber Insurance.** Client acknowledges that Client is solely responsible for obtaining and maintaining, for the duration of these Terms, its own Cyber Liability Insurance to adequately insure its cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine Client's specific coverage and policy limit requirements. Client acknowledges that MSP does not provide Client with any form of Cyber Liability or other insurance coverage in connection with the Services or an executed SOW or subsequent SOW, and that Client's use of the Services does not, in any way: (i) replace a Cyber Liability policy, (ii) mitigate Client's need for Cyber Liability insurance coverage or (iii) relieve Client's responsibility for obtaining its own Cyber Insurance coverage.
- c. **Mutual Waiver of Subrogation.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW) AND EMPLOYERS LIABILITY, PROFESSIONAL LIABILITY, GENERAL LIABILITY, PROPERTY INSURANCE, COMMERCIAL UMBRELLA/EXCESS, CYBER OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD MSP ITS SUBCONTRACTORS AND/OR THIRD-PARTY SERVICE PROVIDERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT CLIENT INSURANCE POLICIES REFERENCED ABOVE PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THE TERMS OF SERVICE.

XX. DISCLAIMERS.

- a. The express remedies set forth in these Terms will constitute Client's exclusive remedies, and MSP's sole obligation and liability, for any claim (a) that a Service or deliverable provided hereunder does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.
- b. EXCEPT FOR THE WARRANTIES MADE BY MSP IN SECTION 10, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CLIENT, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." MSP DOES NOT MAKE ANY ADDITIONAL

WARRANTIES, EXPRESSED, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

- c. MSP DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY OF CLIENT REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION (E.G., "ALPHA" OR "BETA") RELEASES OF SOFTWARE ARE PROVIDED TO CLIENT, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.
- d. No statement by any MSP employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify these Terms in any way whatsoever.

XXI. SEVERABILITY.

- a. If any provision of these Terms is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or equity while preserving its original intent. The invalidity of any part of these Terms shall not render invalid the remainder of the Terms.

XXII. AMENDMENT.

- a. These Terms may not be amended except by a writing executed by an authorized individual of the MSP.

XXIII. RELATIONSHIP.

- a. The Parties are independent parties; and these Terms do not make the Parties principal and agent, partners, employer and employee; nor does it create a joint venture. It is further understood that there is no relationship, including but not limited to a partnership, joint venture, subcontractor or other commission-based relationship, between any party that referred MSP or Client to the other party to these Terms.

XXIV. LAW.

- a. These Terms shall be governed by and construed in accordance with the laws of the State of Florida without reference to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Florida.

XXV. WAIVER.

- a. Failure by either Party to insist upon strict performance of any provision herein shall not be deemed a waiver by such Party of its rights or remedies, or a waiver by it of any subsequent default by the other Party.

XXVI. FORCE MAJEURE.

- a. Neither party will be liable to the other party for delays or failures to perform its obligations under these Terms and Conditions or any SOW or subsequent SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, pandemic, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware solution, or if such loss, delay or failure to perform was the result of or arose from any act of terrorism, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God, national or global pandemic, or other physical event and civil commotion assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom.

XXVII. DATA ACCESS/STORAGE.

- a. Depending on the Service provided, a portion of Client data may occasionally be accessed or stored on secure servers located outside of the United States. Client agrees to notify MSP if Client company requires MSP to modify Our standard access or storage procedures.

XXVIII. MARKETING USE

- a. Client understands and agrees MSP may use Clients names, pictures or otherwise as public marketing material for MSP's sales and marketing purposes.

XXIX. ASSIGNMENT

- a. Client may not assign Client rights or obligations under these Terms without MSP's prior written consent which shall not be unreasonably withheld. MSP has the full right to assign any and all SOW's Work Orders and Agreement's to another party via acquisition, merger or otherwise, without Client's prior approval.