Computer Systems Development Services Inc. Master Service Agreement

This Master Service Agreement ("MSA" or this "Agreement") is entered into as of the date of the full execution hereof on the last page, between Computer Systems Development Services Inc. ("MSP"), and the client who has executed this Agreement on the last page hereof ("Client") and shall apply to all purchases by Client from or through MSP of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "Products").

1. ENGAGEMENT

Client hereby engages and retains MSP to render Services and/or provide Products, as specifically set forth and limited in the "Proposal" or "Quote" provided by MSP, which, upon approval by both parties becomes a "Statement of Work" ("SOW"), including any subsequent executed work orders or service tickets under any SOW. Except as otherwise stated therein, subsequent SOWs shall be made a part of and subject to the terms contained in this MSA. No Product or Services will be provided as part of this Agreement without the execution of a written or electronically executed SOW or other mutually acceptable documentation, each of which must be executed by both parties hereto. Upon such execution, all terms and conditions of this MSA shall for all purposes be deemed incorporated into each SOW. In the event of any conflict between an SOW or Work Order and this MSA, the express terms of the SOW will prevail over this MSA with respect to the provision of Products and Services under the SOW.

Client understands and acknowledges that MSP's pricing may be subject to change during the term of the Agreement. Except as and to the extent such price changes may be made on other terms and conditions contained in Client's SOW, MSP will provide Client with written notification prior to the effective date of such price changes.

2. GENERAL REQUIREMENTS & CONDITIONS

<u>System.</u> For the purposes of this Agreement, "System" means, collectively, all computer network, computer system, peripheral or device installed, maintained, monitored, or operated by MSP pursuant to and further identified in a SOW with Client. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW Client agrees to refrain from modifying or moving the System, or installing software on the System, unless MSP expressly authorizes such activity in writing. MSP will not be responsible or liable for changes made by client to the System without MSP's authorization.

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. MSP will not be responsible or liable for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed by MSP in accordance with the manufacturer or applicable vendor's instructions.

Third-Party Service Providers. "Third-Party Service Providers" means Services provided by an entity or a party other than MSP in fulfillment of the SOW requirements whose terms and conditions MSP and Client may be legally bound. MSP may, in its discretion, utilize a Third-Party Service Provider to provide the Services hereunder. The Third-Party Service Provider may require the MSP to sign or otherwise consent to a contract with the Third-Party Service Provider for the Third-Party Services (a "Third-Party Contract") and the terms of the Third-Party Contract may impose conditions and requirements upon Client, and may contain reserved rights of the Third-Party Service Provider to change its pricing during the term of the Third-Party Contract. Client's right to use the Third-Party Services is subject to Client's compliance with and consent to the terms and conditions of any Third-Party Contracts, which terms and conditions MSP does not have authority to vary, alter or amend. Access to the terms and conditions of any such Third- Party Contract(s) may be provided to Client or appear on our website which identifies the Third- Party Service Provider and a link to the Third-Party Contract or End User License Agreement ("EULA"). Client acknowledges it is bound by all Third-Party Contracts which MSP enters into on Client's behalf in connection with MSP's provision of Products and Services hereunder.

The Third-Party Service Provider links below are being provided for convenience. Client should monitor the links for the Third-Party Providers related to Products and Services provided to Client hereunder to be certain Client has the most current Terms and Conditions.

ConnectWise Connect EULA- Connectwise EULA Link
Cisco EULA- Cisco EULA Link
Microsoft EULA- Microsoft EULA Link
Threatlocker EULA Link
Todyl EULA Link
Sentinel One EULA Link
Webroot EULA Link
Axcient EULA Link

Third-Party Products. Unless otherwise stated in an SOW, all hardware, software, peripherals or accessories purchased through MSP ("Third-Party Products") are nonrefundable once the applicable SOW is placed in MSP's queue for delivery. The Third-Party Product vendor may require the MSP to sign a contract with the Third-Party Product vendor for its products ("Third-Party Product Contract") and the terms of the Third-Party Product Contract may impose certain conditions and requirements upon Client and may contain reserved rights of the Third-Party Service Provider to change its pricing during the term of the Third-Party Product Contract. Access to the terms and conditions of any such Third-Party Product Contract(s) will be provided to the Client or attached to the SOW which identifies the Third-Party. Client hereby agrees to review all Third-Party Contract terms and conditions, and consent to those Third-Party Product Contracts with Third-Party Product vendors with whom Client has consented MSP to contract on Client's behalf. MSP will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) provided by 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 responsible or liable for the performance, uptime or usefulness of any Third-Party Products. Unless otherwise expressly stated in a 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).

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 anticipated in advance to exceed $100, MSP will obtain Client permission before incurring such expenses on Client behalf unless exigent circumstances require otherwise.

Subcontractors. "Subcontractors" means third parties with whom MSP contracts to provide specified services to complete the services indicated in an SOW. MSP agrees to identify in Client's SOW all Subcontractors MSP intends to use in connection with the Products and Services provided to Client hereunder. If, during the course of the MSP's provision of Products and Services hereunder, it determines it requires the engagement of a Subcontractor not identified in an SOW, MSP will identify the Subcontractor and the intended services the Subcontractor is to provide and will give Client seven (7) days from and after that notice to object to the engagement of that Subcontractor. If Client objects to a Subcontractor, MSP agrees to attempt to engage a replacement Subcontractor, and Client acknowledges that the schedule and charges for such replacement Subcontractor may be on terms less beneficial to Client.

<u>Conditions of Service.</u> Client's System is eligible for provision of MSP's Services as outlined in this Agreement and an SOW only if the System is in good condition and MSP's following serviceability requirements and site environmental conditions are met:

- 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.

- MSP's representatives shall have, and Client shall provide, full access to the System in order to effect the necessary monitoring and/or supplemental services.

- MSP reserves the right to suspend or terminate this Agreement performance under this Agreement and any SOW if, in its sole discretion, conditions at the service site pose a health or safety threat to any of MSP's representatives.

- Client shall promptly notify MSP of any events/incidents that may impact the services defined within this Agreement, any SOW, and/or any supplemental service needs.

- MSP shall provide Services as defined in this Agreement in accordance with MSP's IT Service policies then in effect, and only during MSP's regular business hours, unless otherwise specified in any SOW or other contract documents.

    - MSP regular business hours are defined as Monday through Friday 8:00 AM to 5:00 PM Eastern Time excluding U.S. holidays.

- MSP shall be obligated to provide service only at (a) the Service Site(s) as identified in the SOW, and (b) Client's Systems including Client's covered devices in any 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 no less than 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.

- Client agrees to timely furnish, at Client's expense, all personnel, 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, the Client will hold the MSP harmless.

<u>Service Limitations.</u> In addition to other limitations and conditions set forth in this Agreement, 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 this Agreement. MSP will provide consultative specification and sourcing guidance to Client, 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 to restore the System to its original state.

- Exclusive System Access of MSP/Unauthorized Changes to System. Only representatives authorized by MSP will be eligible to access and service the System during the term of this Agreement and MSP is neither liable nor responsible for any issues or failures of the System or Services resulting from any unauthorized modification, installation, or service performed on the System by individuals not employed or contracted by MSP. Any unauthorized access or service conducted on the System, or the addition or connection of any additional devices, hardware or systems of any kind to the System, without the prior written consent of MSP is a breach of this Agreement. In the event of any such unauthorized access, service or connections to the System, MSP may, at its option, either: (a) remediate and restore the Systems and/or Services to a state prior to the unauthorized changes and bill Client at MSP's then applicable hourly labor rate(s) (in addition to all other charges under this Agreement and the SOWs) for all Services and Products necessary and appropriate to resolve and correct any negative System performance resulting therefrom or, (b) terminate this Agreement and all SOWs upon written notice to Client.

- MSP shall have no responsibility for any failure or malfunction of electrical or telecommunications infrastructure or services that causes damage to MSP's Products or Services, nor shall MSP have any liability or responsibility for any loss of Client data from any such failure or malfunction.

- <u>Onboarding Process.</u> 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, provide Client with its recommendations, and Client has accepted and implemented such recommendations.

- Offboarding Process. In the event of termination of Services by either party, MSP will make reasonable accommodations to transfer Client's account to Client or Client's new managed service provider or other authorized agent (the "Onboarding Provider"). Client shall indemnify and hold harmless MSP, its Subcontractors and their respective directors, officers, employees, consultants and agents for any claims or losses resulting from the activities of Client or the Onboarding Provider during the transition period from MSP to the Onboarding Provider, inclusive of when Client obtains access to all super administrator accounts of their infrastructure. Transfer will require that Client's account be fully paid at time of transfer inclusive of any offboarding charges.

- 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 agreed upon System and RMM in the then most recent SOW. From time to time, SOWs will be updated with new devices, hardware or systems that have been agreed upon by the parties. 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 be 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.

- 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 the Client Authorized Contacts, as indicated in an applicable SOW. If no Authorized Contact is identified in an applicable SOW, then Client Authorized Contact will be any person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. MSP is under no obligation to inquire into the authority of any employee or representative of Client who so engages MSP and has the right to rely on the authority of any employee or representative of Client who contracts with MSP for Products or Services and electronically executes an SOW or Work Order under this Agreement. Client is liable for all SOWs hereunder entered into and executed by any employee or representative of Client and acknowledges its duty to have internal policies and procedures in effect to prohibit or prevent any of its employees and representatives who lack such authority from contacting, engaging or contracting with MSP. If Client

desires to change Client Authorized Contact(s), Client shall notify MSP of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

3. CONFIDENTIALITY & NON-DISCLOSURE

- As used herein, "Confidential Information" means all 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.

- 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 this Agreement does not constitute a Business Associates Agreement ("BAA") as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Public Law 104–191, 110 Stat. 1988, enacted August 21, 1996 and as amended), and that such an agreement in addition to this Agreement 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 solely responsible for determining the necessity of a BAA in addition to this Agreement. 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 our attorneys and agents, and our predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "Indemnitees"), 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 Indemnitees which in any way relate to the failure of Client to comply with applicable law and regulations as to the proper handling of protected health information, the absence of any necessary BAA, or failing to notify MSP of the necessity of same.

- Confidential Information of each Party shall include, without limitation, the terms and conditions of this Agreement, and all 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.

Confidential Information 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

Protection of Confidential Information. The Receiving Party shall:

- 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,

- not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement or otherwise in any manner to the Disclosing Party's detriment, and

- 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 this Agreement.

4. RESPONSIBILITY FOR EQUIPMENT

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 System performance 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. 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 that 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.

5. NO BACKUP OF CLIENT DATA BY MSP

Unless otherwise expressly specified in an SOW and/or other contract documents, MSP does not provide any type of backup of Client data, and Client shall be responsible for maintaining adequate backup for all data and other items furnished to MSP.

6. CLIENT DATA OWNERSHIP AND RESPONSIBILITY.

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 submitted by Client to MSP.

7. INTELLECTUAL PROPERTY

MSP retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of this Agreement, as well as any software, materials, or methods created prior to or after conclusion of any work ("Intellectual Property"). Client acquires no right or interest in any such Intellectual Property by virtue of this Agreement or the work performed under this Agreement. Client may only use Intellectual Property in accordance with the terms of this Agreement and applicable SOW and/or other contract documents. MSP reserves all rights in and to the Intellectual Property not expressly granted in this Agreement. 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 this Agreement or an 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 Intellectual Property – applicable installation instructions or release notes will contain the relevant details.

8. LICENSE AGREEMENTS

- License. Subject to this Agreement, 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's 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 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.

- 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's provision of any software to MSP will be deemed Client's affirmative representation to MSP that Client has a valid license that permits MSP to perform the Services related thereto. In addition, Client shall be responsible for monitoring Client equipment for the installation of unlicensed software unless MSP in a written SOW expressly agrees to conduct such monitoring. Client will indemnify and hold harmless MSP against all damages and expenses MSP may incur (including reasonable attorney's fees and disbursements) related to Client providing infringing unlicensed materials to MSP in violation of this Section.

- 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.

- End User License Agreements. 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 this Agreement. 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 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.

9. RESTRICTIONS AS TO MSP'S EMPLOYEES, AGENTS OR SUBCONTRACTORS

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. From the Effective Date of the last SOW and up to one (1) calendar year after the date of termination of any 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.

10. LIMITED EXCLUSIVE WARRANTY

The express warranties set for the in this Agreement constitute Client's sole 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 otherwise performed improperly. MSP warrants that it and its Subcontractors will perform the Services substantially in accordance with the specifications set forth in this Agreement, SOWs, and/or other written agreements between the Parties. For any claimed breach of the foregoing warranty, Client shall provide MSP written notice of the claim, specifying in reasonable detail such claim of non-conformance, within ten (10) days of Client's discovery of the claimed breach. MSP, or its contracted subcontractors, will exercise commercially reasonable efforts to re-perform any non-conforming services. If MSP concludes that conformance is impracticable, then MSP will refund all fees paid by Client to MSP hereunder, if any, directly allocable to such

nonconforming Services. The re-performance of services or refund of the directly allocable fees provided in this Section shall be Client's sole remedies regarding such warranty claims. Notwithstanding any provision to the contrary in this Agreement, any warranty offered and provided directly by MSP shall be deemed null and void if the applicable product or service 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, repair or replacement by persons other than MSP or persons approved or designated by MSP. 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. **EXCEPT FOR THE WARRANTIES MADE BY MSP IN THIS 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 AND DISCLAIMS ANY ADDITIONAL WARRANTIES (INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT), WHETHER 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. MSP DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY OF CLIENT'S REQUIREMENTS NOT EXPRESSLY SET FORTH HEREIN OR IN AN SOW OR WORK ORDER, 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 OR CAN 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.**

11. CLIENT CYBER SECURITY

MSP does not provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for Client except as, and only to the extent, expressly specified in the SOW. As cyber threats are always evolving it is strongly recommended that Client directly engage the services of a cyber protection third-party vendor to monitor the cyber controls and cyber activities in Client System.

12. REGULATORY COMPLIANCE

The software, Products and Services provided by MSP are not intended or warranted to bring Client into regulatory compliance with any rule, regulation, local, state or national law, standard or requirement. The software, Services Products, and solutions provided hereunder may aid Client's efforts to such achieve regulatory compliance, however, MSP does not provide comprehensive compliance analysis and solutions.

13. UNAUTHORIZED INFORMATION TRANSFER

In no event shall MSP or its subcontractors, whether under this Agreement, a SOW, 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.

14. EXTRAORDINARY EVENTS

In no event shall MSP or its subcontractors, whether under this Agreement, an SOW, 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 this Agreement.

15. RELEASE LIMITATION AND LIABILITY

THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THIS AGREEMENT AND ANY SOW AND IS A BARGAINED-FOR AND MATERIAL PART OF THIS AGREEMENT. CLIENT ACKNOWLEDGES AND AGREES THAT MSP WOULD NOT ENTER INTO THIS AGREEMENT UNLESS IT COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. EXCEPT FOR CIRCUMSTANCES WHERE MSP HAS BEEN FOUND BY A COURT OF COMPETENT JURISDICTION TO HAVE COMMITTED 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 (COLLECTIVELY, THE "RELEASING PARTIES") AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO RELEASE MSP AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "RELEASED PARTIES") FROM AND AGAINST 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, AND EXEMPLARY OR PUNITIVE DAMAGES. MSP SHALL NOT BE LIABLE TO CLIENT FOR ANY DELAY IN DELIVERY OR PERFORMANCE, OR FAILURE TO DELIVER OR PERFORM AT OR WITHIN THE DEADLINES SET FORTH IN THIS AGREEMENT RESULTING FROM ACTIONS OR INACTIONS OF CLIENT OR ANY THIRD PARTY.

16. MSP INSURANCE

MSP agrees to maintain sufficient insurance coverage, as and to the extent such coverage is available on commercially reasonable terms, to enable it to meet its obligations created by this Agreement, SOWs, or applicable law. Without limiting the foregoing, to the extent this Agreement creates liability of MSP 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 this Agreement: (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).

17. CLIENT INSURANCE

- Commercial Property Insurance. Client shall secure at Client's own cost and expense Property Insurance for Client equipment that is part of the System.

- Cyber Insurance. Client is solely responsible for obtaining and maintaining, for the duration of this Agreement, its own Cyber Liability Insurance to adequately insure its cyber exposures and MSP has no responsibility to provide such insurance. 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, any SOW or Work Order, and MSP's provision 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 Liability Insurance coverage.

- <u>Mutual Waiver of Subrogation.</u> 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.

18. SEVERABILITY

If any provision of this Agreement 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 this Agreement shall not render invalid the remainder of the Terms.

19. AMENDMENT

This Agreement may not be amended except by a writing executed by an authorized individual of the MSP. 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 this Agreement in any way whatsoever.

20. RELATIONSHIP

The Parties are independent parties; and this Agreement does 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 this Agreement.

21. LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without reference to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Ohio.

22. WAIVER

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.

23. FORCE MAJEURE

Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any 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.

24. DATA ACCESS/STORAGE

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 its standard access or storage procedures.

25. ASSIGNMENT

Client may not assign Client rights or obligations under this Agreement without MSP's prior written consent which shall not be unreasonably withheld.

26. CONSENT TO USE OF ELECTRONIC SIGNATURES

The parties agree that this Agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility of this Agreement. If Client elects to opt out of the use of electronic signatures, it may do so upon written notice to MSP, provided the Parties agree to create instructions as to obtaining handwritten signatures on documentation hereunder from and after that election. Client is advised that the timing and efficiency of the relationship between the Parties will be delayed in the event of such an election.

All customers/clients of MSP agree to the terms of this published Master Service Agreement as part of their acceptance of any proposal or statement of work (SOW.)