



NEXUS IT
CONSULTANTS

We have prepared a quote for you

***MASTER CUSTOMER SERVICE AGREEMENT**

PREPARED FOR

PREPARED BY

Earl Foote

This **MASTER CUSTOMER SERVICE AGREEMENT** (hereinafter referred to as the "Agreement") is effective from the date that the Customer has agreed to these terms – as evidenced by the timestamp on MSP's order portal - ("Effective Date") by and

BETWEEN: Nexus IT Consultants LLC, a limited liability company incorporated under the laws of Utah, having its Corporate office at 650 South 500 West Suite 193, Salt Lake City, Utah 84101 ("Managed Service Provider" or "MSP");

AND: You, the customer, a legal person, who hereby agrees to the terms of this Agreement (the "Customer").

MSP and Customer may individually refer to hereinafter as "Party" collectively refer to hereinafter as the "Parties". This Agreement sets forth the general terms and conditions to which MSP and Customer have jointly agreed.

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TERMS AND CONDITIONS:

The prices in this proposal applicable to this Agreement are good for 30 days from the date of initial estimate.

Where applicable, a 100% advance payment towards hardware & software costs and a 50% advance payment of expected consulting costs are required prior to commencement of the above estimates with the balance due upon completion of work.

The proposed computer system(s) are covered by a limited 2 year in shop hardware warranty. This warranty covers replacing any defective components at the Nexus IT shop free of labor or component charges. If Nexus IT is requested to replace a defective component on site at your location, there will be no charge for the defective components, but Nexus IT will charge for the onsite labor at our normal hourly rates.

This warranty does not cover any software, virus or malware related issues. This warranty will be voided in the event of accidental damage, misuse, abuse, lack of maintenance or any unauthorized entry into the internal components of this computer system not performed by Nexus IT staff ("Abuse") – the decision of Nexus IT with respect to what constitutes Abuse shall be final and binding on both Parties.

This is the ONLY warranty given by Nexus IT. All other warranties, whether express or implied, applicable by way of contract or statute, are hereby **DISCLAIMED** fully or to the maximum extent permitted under applicable law."

EXPECTATIONS:

IT products and software may be neither error free nor prone to bugs and performance issues. The performance and stability of IT systems can often be affected by factors that are outside our reasonable expectation and control. It is not uncommon during or immediately after a migration to run into previously unanticipated issues. We will use commercially reasonable methods to resolve these issues in a timely manner.

This statement is an assurance that we communicate beforehand to set the right expectations with regard to a few things that may need to be worked through during or following your migration, we ask for your patience in this process. We will also be compelled to bill all time spent to address such issues given such issues are typically glitches in the product or software. These issues are outside of our control as we are not the manufacturers of any of the items supplied. All time spent in this regard will be billable time and invoices will be raised in that regard.

1. SCOPE OF AGREEMENT:

1.1 This Agreement serves as a master agreement and applies to Customer's and its Affiliates' purchases from MSP, or any of its Affiliates, of services/products (collectively "Purchases"), in accordance with the proposal submitted by MSP to Customer (the "Proposal"), a copy of which is attached hereto and the terms of which are expressly incorporated herein by

reference.

1.2 For purposes of this Agreement, "Affiliate" means any entity that, directly or indirectly through one or more intermediaries, controls or is controlled by or under common control with Customer or MSP, as the case may be. "Control" as used in this Agreement with respect to any person, means the power to direct or cause the direction of, the management and policies of that person, directly or indirectly, whether through the ownership of equity interests, by contract, or otherwise. "Controlling" and "Controlled" have meanings correlative thereto

1.3 All Purchases under this Agreement may require the execution of a written or electronic order form, or other mutually acceptable order documentation (each, an "Order"), which contains terms relating to this Agreement, each of which must be executed by both Parties.

1.4 Any additional services not otherwise described herein or in the Proposal and provided by MSP in connection with this Agreement shall be provided pursuant to a written, fully executed and mutually agreeable Order covering, without limitation, pricing and payment terms, schedule and responsibilities for such work ("Order"). ANY and ALL additional services or products will carry additional charges, documentation and agreement between the Parties. It is expressly clarified that pre-existing issues of Customer's existing infrastructure, software or systems are not covered under the scope of the Proposal and this Agreement. Resolution of pre-existing issues will be considered new scopes of work and any work in that regard will be undertaken with the mutual agreement of both Parties.

1A. SCOPE OF IT SUPPORT:

IT support under this Agreement is limited to enrolled systems, devices and/or users and the Number of Hours per month ("Monthly Hours") as stated in the Proposal provided by the MSP. All additional support in addition to the Monthly Hours, in whatever form, in respect of other non-enrolled users, devices, systems, hardware and/or software, will be independently billed and shall not be considered a part of the Monthly Hours IT support program offered by MSP. The Monthly Hours support under this Agreement also does not automatically apply in any capacity to any future projects executed between the Parties. Further, unless specified otherwise in the Proposal, this Agreement does not include the initial project labor and material cost as a part of the Monthly Hours IT support offered under this clause 1A.

2. TERM AND TERMINATION:

2.1 The Initial Term of this Agreement shall be for the period specified in the Proposal commencing as of the Effective Date (the "Initial Term").

2.2 MSP is authorized to: (a) terminate this Agreement (and/or associated Order(s)) if Customer fails to pay any applicable fees due under this Agreement or any Order within 60 days of the date of becoming due; or (b) terminate this Agreement if Customer commits any other material breach of this Agreement and fails to cure such breach within thirty (30) days from the receipt of written notice from MSP directing the Customer to cure such breach; or (c) terminate this Agreement in case of prolonged Force Majeure that extends for a cumulative period of 30 (thirty) days – as defined herein.

2.3 Upon any termination of the right to use a product/service, Customer will immediately uninstall (if the product/service is software) and cease to use the terminated product/service and, upon MSP's written request, where applicable, immediately return such product to MSP, together with all related documentation, and copies thereof. Upon written request from MSP, Customer will promptly certify in writing, in the format at **Schedule 1**, to MSP that all copies of the product have been returned, and that any copies not returned have been destroyed and that the Customer shall refrain from any further use of the product/service.

2.4 If the termination is with respect to a service, Customer will promptly pay MSP for all services rendered along with all expenses incurred through the termination date. MSP may terminate any license granted for a Deliverable (as defined below) if:

- (i) Customer does not pay MSP for that Deliverable in accordance with this Agreement, or
- (ii) if Customer materially breaches any part of this Agreement that affects this clause 2.4 and the obligations herein

2.5 It is expressly recorded that all dues outstanding and payable as of the date of termination of this Agreement shall remain payable even after termination.

2.6 After the Initial Term, this agreement shall automatically renew for subsequent periods of the same length as the Initial Term unless either Party gives the other written notice of termination at least sixty (60) days prior to expiration of the Initial Term.

2A. EARLY TERMINATION BY CUSTOMER:

2A.1 This Agreement cannot be terminated by the Customer during the Initial Term of this Agreement except in the case of an un-cured material breach of the terms of this Agreement by MSP. Subject to as otherwise provided herein, the Agreement may only be terminated prior to the expiry of the Initial Term with the prior consent in writing from MSP. In any case of early termination, Customer shall pay to the MSP an amount equal to all sums payable and outstanding till the end of the Initial Term ("Early Termination Payment"). The Early Termination Payment shall be calculated from the date of the letter received by MSP whereunder the Customer seeks termination upto the end of the Initial Term ("Early Termination Notice").

2A.2 The term 'un-cured material breach' for the purposes of this clause 2A shall mean a breach by MSP, which is material in nature and not just an ordinary breach and where such breach remain uncured for a period of 60 (sixty) days from the date that the Customer notifies MSP of such breach.

3. TERMINATION EFFECT:

Upon termination of this Agreement for any reason, all rights, obligations and licenses provided to the Customer hereunder shall cease, unless expressly agreed to otherwise between the Parties. The Customers' liability to pay for all amounts outstanding (including any balance amount, non-cancellable expenses, damages and covered losses incurred by MSP) made hereunder prior to the termination date shall not be extinguished, and shall remain due and payable as on the termination date.

4. PAYMENT AND DELIVERY:

4.1 The fees due and payable will be paid by the Customer against periodic invoices raised by MSP ("Fees"). The Fees shall be charged and billed in accordance with the Proposal.

4.2 All Fees payable under this Agreement are exclusive of applicable sales tax, customs duties, excise, and any other applicable transaction taxes, which will be borne by the Customer (excluding income taxes, which will be to the account of MSP). Where the Customer is liable by applicable law to deduct tax at source or withhold tax, the Customer shall provide MSP with necessary documentation evidencing the deposit of such withheld amounts with the relevant government agency.

4.3 All products will be shipped as FOB shipping point.

4.4 Unless otherwise agreed to, Customer agrees to pay or reimburse MSP for all actual, necessary, and reasonable expenses incurred by MSP in performance of its obligations herein, which are capable of verification by receipt.

4.5 MSP will submit invoices to Customer for such fees and expenses either upon completion of the services, or at stated intervals, in accordance with the terms of the applicable Proposal. Non-payment of fees, due under this Agreement or any SOW, within 60 (sixty) days from the due date, will result in suspension of services or termination of the contract and repossession of the equipment (if applicable) as per section 10 of this agreement. Delay in payment will also make the Customer liable to pay interest on the entire amount outstanding. Interest shall be calculated at the rate of 18 percent p.a. or at the permitted statutory maximum rate

4A. ACH PAYMENT:

Customers agree that all payments due and owed under this Agreement or any Order or in accordance with the proposal submitted by MSP to Customer, shall be made through automated clearing house (ACH) transfers from the Customers designated operating account (the "Payment Account") directly to MSP. In this regard the Customer hereby agrees to execute and deliver to MSP an authorization agreement with the payment link that will be sent by MSP, for direct payments whereby, among other things, MSP shall be irrevocably authorized to initiate ACH transfers from the Payment Account to MSP in the amounts required or permitted under this Agreement or SOW. For the purpose of this section all payments will be due and paid on the 1st day of each calendar month for such month and will require a valid backup credit card on system/file.

4B. CREDIT CARD CHARGES:

Where payments towards the Fees are made by the customer through a credit card, 3% of transaction value will be charged towards credit card fees.

4C. INFLATION ADJUSTMENT:

The Fee under this Agreement and any subsequent renewals thereof shall be increased by a minimum rate of three percent (3%) annually to reflect inflation.

5. PROPRIETARY RIGHTS:

5.1 MSP, or its Affiliates or licensors, retains all rights, title and interest in any and all intellectual property, informational, industrial property and moral rights in the product/services, and copies thereof. MSP neither grants nor otherwise transfers any rights of ownership in the product/services to Customer. The product/services are protected by applicable copyright and trade secrets laws, and other forms of intellectual property, informational and industrial property protection.

5.2 All works of authorship, designs, inventions, software, improvements, technology, developments, discoveries, and trade secrets conceived, made, used, supplied or discovered by MSP during the period of this Agreement, solely or in collaboration with others, that relate in any manner to the precuts/services (collectively, "**Inventions**") will be the sole property of MSP.

5.3 Customer may only use and disclose product/services in accordance with the terms of this Agreement. MSP reserves all rights in and to the product/services not expressly granted in this Agreement. Customer may not disassemble or reverse engineer any software product, or decompile or otherwise attempt to derive any software product's source code 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 products, without MSP's prior written approval. Except as expressly authorized in this Agreement, Customer may not (a) distribute the product/services to any third Party (whether by rental, lease, sublicense or other transfer), or (b) operate the product in an outsourcing or service provider business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the product - applicable installation instructions or release notes will contain the relevant details.

5A. SUB-CONTRACTING:

5A.1 MSP is expressly authorized to sub-contract some or all of the services under this Agreement without the need for any prior permission from the Customer.

5A.2 MSP shall ensure a commercially reasonable standard of services from all its sub-contractors and will further ensure that all confidentiality obligations under this Agreement are mirrored in its agreements with sub-contractors.

5A.3 Customer undertakes not to process or make any payments to the sub-contractor directly. Any breach of this provision shall be considered a material breach of this Agreement.

6. NON-SOLICITATION:

During the term of this Agreement and continuing for 24 (twenty four) months after the termination of this Agreement, Customer shall not directly or indirectly, for its own account or for the account of others, urge, induce, entice, or in any manner whatsoever solicit any employee of MSP either directly or indirectly involved in the activities conducted pursuant to this Agreement to leave the employment of MSP or any of its Affiliates. Customer is liable to pay to MSP, by way of liquidated damages, 100% of the gross yearly salary offered by Customer to such solicited employee if there is a violation of the terms of this provision of the Agreement.

7. NON-COMPETE:

During the initial term of this Agreement and 24 month(s) after its termination, Customer, or any Affiliate, agents or representatives under Customer's control, shall not compete with MSP, directly or indirectly, for itself or on behalf of any other person, firm, partnership, corporation or other entity in the sale or promotion of products/services the same as or similar to Company's products/services. Under no circumstances and at no time will Customer disclose to any person any of the secrets, methods or systems used by MSP in its' business. All lists, brochures, reports, and other such information of any nature made available to Customer by MSP shall be held in strict confidence during the term of this Agreement and after its termination.

8. NON-DISCLOSURE:

8.1 For purposes of this Agreement, "**Confidential Information**" shall mean any information or material that is proprietary to a Party or designated as Confidential Information by a Party and not generally known by non-Party personnel, including but not limited to, all confidential and proprietary information relating to the business of the Parties, and includes (but is not limited to) business plans, intellectual property matters, source codes, trade secrets, contracts, programming data, written materials, computer or software programs, studies, work in progress, visual demonstrations and employee matters. The term Confidential Information includes information in both oral and written form, or contained in any other type of storage medium. Information relating to the providing Party's consultants, employees, customers, vendors, research and development is also considered Confidential Information.

8.2 All Confidential Information disclosed by the disclosing Party (the "Owner") to the receiving Party (the "Recipient") shall be treated by the Recipient and by its agents and employees, as confidential and shall be maintained by the Recipient and its agents and employees in confidence and shall not be disclosed to anyone in any form without the prior written consent of the Owner. 8.3 The Confidential Information shall not be used by the Recipient or its agents or employees other than in connection with the products/services.

8.4 The Recipient shall transmit the Confidential Information only to those persons who are informed by the Recipient of the confidential nature of the Confidential Information, who shall have previously agreed to be bound by the terms and conditions of this Agreement and who are required to see the Confidential Information in connection with the Products/services. In any event, the Recipient shall be responsible for any breach of this Agreement by any of its agents or employees. The following shall not be deemed to constitute Confidential Information and shall not be subject to the restrictions set forth in this Agreement:

- (a) Information that is known by the Recipient at the time of receipt from the Owner, and that is not subject to any other non-disclosure agreement between the parties;
- (b) Information that is now or later becomes generally known in the industry through no fault of the Recipient, is later distributed or generally disclosed to the public by the Owner, or is obtained from a third party by the Recipient and the Recipient believes that the third party has a legal right to transmit the information; and
- (c) Information that is otherwise lawfully developed by the Recipient, or lawfully acquired by the Recipient from a third party. "Lawfully developed" shall mean information that is independently developed as shown by the books and records of the developer. "Lawfully acquired" shall mean acquired from a

third party without restrictions on further disclosure when the third party had the right to provide the information to the Party receiving the information.

(d) Any disclosure of Confidential Information under orders of a court of competent jurisdiction shall not constitute an unauthorized disclosure under this Agreement.

8.5 In the event that the Recipient or anyone to whom the Recipient transmits the Confidential Information becomes legally compelled to disclose the Confidential Information, the Recipient shall provide the Owner with prompt written notice so that the Owner may seek a protective order or other appropriate remedy. The Recipient shall cooperate with the Owner in its efforts to obtain such remedies, but the Recipient shall not be required to undertake litigation or legal proceedings in its name. In the event that the Recipient is legally obligated to disclose any Confidential Information, the Recipient shall furnish only the portion of the Confidential Information which is legally required and will exercise its reasonable best efforts to assure that confidential treatment will be accorded the Confidential Information.

8A PERSONAL DATA:

8A.1 Customer hereby provides MSP with authorization to access Customer systems and records including but not limited to personal data in possession of the Customer. The authorization shall subsist for the entire duration of the Term.

8A.2 Customer hereby provides its consent for the processing of personal data by the MSP as and when required.

8A.3 Both Parties will comply with all applicable requirements of applicable data protection legislation. This clause 8A is in addition to, and does not relieve, remove or replace, a party's obligations or rights under applicable law.

9. EQUIPMENT REPLACEMENT AND INSURANCE:

9.1 Where applicable and subject to other provisions of this Agreement, MSP shall have the right to replace any of the hardware equipment included as part of the Contract ("Equipment") at the time of contract renewal as long as contract is kept in force and account is current, provided that MSP notifies Customer in writing prior to replacing any of the Equipment and the same is replaced with Equipment of at least equal quality and capability.

9.2 In case on non-renewal of Agreement, all Equipment will be immediately returned to MSP. Upon execution and during the term of this Agreement, the Customer agrees to maintain, with financially sound and reputable insurers, insurance of all Equipment received from the MSP to protect MSP and any director, officer, employee or agent of the MSP or another corporation, partnership, joint venture, trust or other enterprise against any such expense, liability or loss - whether or not the MSP would have the power to indemnify such person against such expense, liability or loss - from natural disasters, fire, theft, damage etc. The insurance policy will name MSP as a beneficiary under the policy. A certificate in this regard will be provided by the Customer to MSP upon request.

9.3 MSP permits certain seasonal Customers to reduce their overall subscriptions under this Agreement by up to 25 percent ("Reduction"). The Customer must notify MSP in writing at least 60 (sixty) days prior to such proposed reduction to avail of the facilities under this clause 9.3. MSP will provide Customer with credit against the Reduction. Such credit will be set-off against the Fees for other MSP services or adjusted at the end of contract.

10. REPOSSESSION; AUTOMATIC DEBIT:

10.1 Where applicable, Customer acknowledges that, pursuant to section 10 hereof, MSP and its representatives have been given the right to enter into the premises without prior notice and repossess all the Equipment in case of Customer's default of its obligations hereunder or after the termination of this Agreement. Customer hereby waives the right, if any, to require MSP to give Customer notice and a judicial hearing prior to exercising such right of repossession.

10.2 Through the Initial Term and thereafter, until the point that the Equipment is repossessed, the Customer shall bear the entire risk of loss, theft, damage or destruction of Equipment in whole or in part from any reason whatsoever. MSP will charge the Customer in case of such loss, theft, damage or destruction of Equipment.

10A. AUTOMATIC DEBIT:

The Customer hereby irrevocably authorizes the MSP to debit the Customer's account (via ACH or credit card) to make payment of all sums due hereunder when and as such payments are due and payable pursuant to the terms of this agreement, including all past dues and damages for all unreturned, lost or damaged equipment.

11. SERVICES DELIVERABLES LICENSED UNDER THIS AGREEMENT.

- (a) **License.** Subject to the terms of this Agreement, MSP grants Customer a perpetual, non-exclusive, non-transferable license to use and modify all programming, documentation, reports, and any other deliverables provided as part of the services ("Deliverables") solely for its own internal use.
- (b) **Pre-Existing License Agreements.** Any software product provided to Customer by MSP as a reseller for a third party, which is licensed to Customer under a separate software license agreement with such third party (such agreement, an "SLA"), will continue to be governed by the SLA. The fulfillment of the services will not relieve or alter the obligations or responsibilities of either Party or of any third party in regard to the software product licensed under the SLA.
- (c) **Ownership.** MSP owns all rights, title and interest in the Deliverables, including all intellectual property rights embodied therein. Nothing in this Agreement is intended to or will have the effect of vesting in or transferring to Customer rights in MSP's or its Affiliates' or its or their suppliers' software, methods, know-how or other intellectual property, regardless of whether such intellectual property was created, used or first reduced to practice or tangible form in the course of performance of the services, whether solely by MSP or jointly with Customer.

12. ALLOCATION OF RISK

- (a) **Disclaimer of Damages:** EXCEPT FOR VIOLATIONS OF AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY, NOR ITS AFFILIATES AND LICENSORS, ARE LIABLE TO THE OTHER PARTY, OR ITS AFFILIATES OR LICENSORS, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PRODUCT (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST COMPUTER USAGE, AND DAMAGE OR LOSS OF USE OF DATA), EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND IRRESPECTIVE OF THE NEGLIGENCE OF EITHER PARTY OR WHETHER SUCH DAMAGES RESULT FROM A CLAIM ARISING UNDER TORT OR CONTRACT LAW.
- (b) **Limitation of Liability:** EXCEPT FOR VIOLATIONS AS OTHERWISE PROVIDED HEREIN, MSP'S LIABILITY FOR DIRECT DAMAGES ARISING OUT OF, OR RELATING TO THIS AGREEMENT IS LIMITED TO THE AMOUNT PAID BY CUSTOMER FOR THE APPLICABLE MONTH OF PRODUCT/SERVICES.
- (c) **Injunctive Relief.** Both Parties acknowledge that their violation of certain provisions herein may cause the other Party immediate and irreparable harm. In the event of such breach, the breaching Party agrees that the other Party may seek, in addition to any and all other remedies available at law, an injunction, specific performance or other appropriate relief.

13. SERVICES-SPECIFIC TERMS

- (a) **All Necessary Rights.** If, as part of MSP's performance of services, MSP is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Customer, then prior to MSP's performance of such services, Customer will acquire all rights necessary for MSP to perform such services.
- (b) **Limited Warranty.** MSP warrants that the services performed will be of a quality conforming to generally accepted practices that are standard within the technology services industry for a period of thirty (30) days from completion of the services under the applicable Proposal. Customer's exclusive remedy and MSP's entire liability under this warranty will be for MSP to re-perform any non-conforming portion of the services within a reasonable period of time, or if MSP cannot remedy the breach during such time period then refund the portion of the Fee attributable to such non-conforming portion of the services. This warranty will not apply to the extent Customer, its contractors or agents have modified any Deliverable, unless otherwise authorized by MSP in writing. THIS WARRANTY AND CONDITION IS IN LIEU OF ALL

OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

14. INTELLECTUAL PROPERTY INDEMNITY

(a) **Infringement Claims.** If a third party asserts a claim against Customer asserting that the Deliverables and/or MSP's performance of the services in accordance with the terms of this Agreement violates a patent, trade secret or copyright (an "Intellectual Property Right") owned by that third party ("Infringement Claim"), then MSP will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if Customer promptly notifies MSP of any Infringement Claim, MSP retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by MSP. MSP will not be liable for any expenses or settlements incurred by Customer without MSP's prior written consent.

(b) **Remedies.** If an injunction or order is obtained against MSP performing the services for Customer and/or Customer using the Deliverables by reason of the allegations of infringement, or if in MSP's opinion the services and/or Deliverables may violate a third party's proprietary rights, then MSP will, at its expense: (a) procure for Customer the right to continue to receive the services and/or use the Deliverables; (b) modify or replace the services and/or Deliverables with a compatible, functionally equivalent substitute; or (c) if neither (a) nor (b) are commercially practical, terminate this Addendum and release Customer from its obligation to make future payments for the services and/or Deliverables. Sections 14 (a) and (b) contain Customer's exclusive remedies and MSP's sole liability for claims of infringement.

15. INSURANCE

MSP will provide and maintain during its rendition of the services, but only for losses arising out of MSP's work for Customer: (a) Worker's Compensation and related insurance as prescribed by the law of the state applicable to the employees performing such services; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for the use of subcontractors, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; and (d) professional liability insurance covering the effects of errors and omissions in the performance of professional duties in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with services.

16. INDEPENDENT CONTRACTOR

Nothing in this Agreement will be construed to make either Party an employer, employee, agent or partner of the other, and this Agreement will not be construed to create rights, express or implied, on behalf of or for the use of any Party other than MSP and Customer. All of the services performed by MSP will be performed as an independent contractor. MSP will perform such services under the general direction of Customer, but MSP will have sole discretion to determine the manner, method and means of performing such services subject to the provisions of this Agreement and applicable Proposal. Neither Party will have any authority to make any contract in the name of or otherwise to bind the other Party. MSP will be responsible for and will pay all unemployment, social security and other payroll taxes, and all workers' compensation claims, workers' compensation insurance premiums and other insurance premiums, with respect to MSP and MSP's employees.

17. MUTUAL INDEMNITY

Each Party will indemnify, defend and hold harmless the other Party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, to the extent caused by the gross negligence or willful misconduct of the indemnifying Party's employees or contractors arising out of this Agreement and while at the Customer's premises. The foregoing indemnities are contingent upon the Party seeking indemnity giving prompt written notice to the indemnifying Party of any claim, demand or action, and cooperating with the indemnifying Party in the defense or settlement of any such claim, demand or action.

18. MISCELLANEOUS/OTHER PROVISIONS

1. **Severability.** Should any provision of this Agreement be invalid, or unenforceable, the remainder of the provisions will remain in effect. The invalid provision may also be excised completely, and the remainder of the Agreement shall continue to remain valid without such provision.
2. **Notices.** Unless otherwise provided, notices to either Party will be in writing to the address indicated above, or as later amended, and deemed effective when received. The notices shall be deemed to have been received – when sent through first class post – within 3 (three) days of the date of dispatch and one day after transmission in case of electronic communication.
3. **Verification.** Upon MSP's written request, Customer will provide MSP with a certification signed by an officer of Customer verifying that product is being used pursuant to the terms of this Agreement, including without limitation the licensed capacity of the product. MSP may, at its expense, audit Customer's use of product to confirm Customer's compliance with this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid Fees to MSP, Customer will make good such underpaid Fees by paying the amounts due. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Customer will also pay MSP's reasonable costs of conducting the audit.
4. **Assignment.** Customer may not assign this Agreement or any rights granted in this Agreement to any third party, except with the prior written consent of MSP. MSP shall not be similarly restricted.
5. **No Waivers.** Failure of a Party to require performance by the other Party under this Agreement will not affect the right of such Party to require performance in the future. A waiver by a Party of any breach of any term of this Agreement will not be construed as a waiver of any continuing or succeeding breach.
6. **Force Majeure.** Any delay or failure of any Party to perform any obligation under this Agreement caused by governmental restrictions, labor disputes, acts of god – including but not limited to storms, earthquakes, hurricanes or similar natural disasters, pandemic(s), national, state or municipal emergencies, or other causes beyond the reasonable control of the Party, will not be deemed a breach of this Agreement.
7. **Entire Agreement.** This Agreement, together with all Schedules, Proposals, Orders and Statements of Work, constitutes the entire agreement between Customer and MSP, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning this subject matter. This Agreement may be modified only in a mutually signed writing between Customer and MSP. In the event of a conflict between this Agreement, any Proposals, the terms of the Proposal will prevail.
8. **Export Controls.** Customer will cooperate with MSP as reasonably necessary to permit MSP to comply with the laws and regulations of the United States and all other relevant countries, relating to the control of exports ("Export Laws"). Customer may not import, nor export or re-export directly or indirectly, including via remote access, any part of the product into or to any country for which a validated license is required for such import, export or re-export under applicable Export Laws, without first obtaining such a validated license.
9. **Referencing.** Customer agrees that MSP and its Affiliates may refer to Customer as a customer of MSP, both internally and in externally published media. Customer also agrees to instruct appropriate personnel within its organization that Customer has agreed to receive and participate in calls, from time to time, with potential customers of MSP who wish to evaluate the technical specifications of Product.
10. **Dispute Resolution and Governing Law.** Any controversy or claim arising out of or relating to THE PRODUCT AND/OR SERVICES provided under this agreement WILL be subject to arbitration administered by the American Arbitration Association under its commercial arbitration rules. the award and any findings of the arbitrator must be filed within THIRTY (30) days of the final arbitration hearing. Judgment on ANY award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Nothing contained in this section will limit either Party's ability to seek INJUNCTIVE relief in any court. THE PARTIES WILL ARBITRATE DISPUTES IN CONFIDENCE. THIS AGREEMENT WILL BE GOVERNED BY



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THE SUBSTANTIVE LAWS OF THE STATE OF UTAH. THE CHOICE OF LAW RULES OF ANY JURISDICTION AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY.

In the event of a dispute, the prevailing Party in any litigation or arbitration will be entitled to recover its attorneys' fees and cost incurred from the other Party.

11. **Survival.** Sections 2, 5, 8, 11, 12, 13, 14, 15, 16, 17 and 18 will survive the termination or expiration of this Agreement. The prevailing Party in any litigation or arbitration proceeding is entitled to recover, from the other Party, its reasonable attorneys' fees and necessary costs incurred in such proceeding.



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SCHEDULE 1

This is to certify that I/we the undersigned have:

1. Returned all materials, information, software, samples, literature and other materials, including Confidential Information ("Materials") to MSP as on [Date]; and
2. For materials that may have inadvertently remained in our possession, we undertake to destroy such materials as soon as we become aware of having such materials in our possession; and
3. That we, in so far as we are aware, as on date, have returned all Materials to MSP.

Signature: _____

Name: _____

Designation: _____