



A Microsoft 365 Cloud Solutions Provider

## Managed IT Services Terms and Conditions

1. **SCOPE OF AGREEMENT.** This Agreement serves as a master agreement and applies to Client's purchases from MSP, of services ("Services"), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, "**Product**"). Client hereby engages and retains MSP to render Services as more particularly set forth in **Managed IT Services Agreement** (the "Statement of Work"). No Product or Services will be provided under this Agreement alone, but may require the execution of a written or electronic purchase order form, or other mutually acceptable order documentation such as a signed quotation for products or services, which contains terms relating to this Agreement, each of which must be executed by both parties and, upon such execution, is deemed incorporated in this Agreement for all purposes. The parties hereby further agree that the parties may execute multiple Orders and Statements of Work under this Agreement. In the event of any conflict between the

terms of the Purchase Order and Statement of Work and those of this Agreement, the terms of the Purchase Order or Statement of Work will prevail.

2. **TERM AND TERMINATION.** This Agreement will begin on the Effective Date and will continue until each Order expires or is terminated. MSP may: (a) terminate a specific Order if Client fails to pay any applicable fees due for that Order within 30 days after receipt of written notice from MSP of non-payment; and/or (b) terminate this Agreement or an Order if Client commits any other material breach of this Agreement and fails to cure such breach within fifteen (15) days after receipt of written notice from MSP. If an Order for Services is terminated, Client will promptly pay MSP for Services rendered, and for all remaining months through the end of the current term.

3. **PAYMENT.** Client will pay MSP all fees due upon receipt of an invoice specifying the amounts due ("**Fees**"). All Fees payable under this



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Agreement are exclusive of sales, use, excise, and any other applicable transaction taxes, which Client will pay (excluding taxes based upon the net income of MSP). If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) (or any other interest rate in accordance with the states law) per month from the date due until paid in full. Client shall pay all expenses, including actual attorneys' fees, incurred by MSP or its representatives in enforcing its rights under this Agreement, provided that MSP is successful on the merits. Client's obligation to pay undisputed amounts due for Services and MSP's right to all such amounts are absolute and unconditional. Client is not entitled to setoff of such amounts. All Fees will be detailed in an Order. Unless otherwise stated in a Purchase Order, Client agrees to pay or reimburse MSP for all actual, necessary, and reasonable expenses incurred by MSP in performance of such Purchase Order, which are capable of verification by receipt.

MSP will submit invoices to Client for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Purchase Order.

**4. CONFIDENTIALITY AND NON-DISCLOSURE.** Both Parties to this Agreement recognize that, from time to time, they may come into contact with information that the other Party considers confidential. Confidential Information is defined for this Agreement as all information (whether written or oral) that comes into a Party's possession under or in connection with this Agreement that is reasonably considered by the disclosing Party to be confidential and is clearly identified as confidential. The Parties shall keep all Confidential Information in strict confidence.

The recipient will use a reasonable standard of care in protecting Confidential Information, which will not be less than the standard of care the recipient uses to protect its own confidential information; only use Confidential Information to perform its obligations and exercise its rights under this Agreement; not disclose Confidential Information to any third party; when requested by the disclosing Party,



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return or destroy the Confidential Information.

**5. PROVISION OF MATERIALS AND SERVICES TO MSP.** Client agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe work spaces for purposes of MSP performing the services. Client will also provide MSP with access to all information, passwords and facilities requested by MSP that is necessary for MSP 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 the MSP may be unable to perform their duties adequately and if such a situation should exist, the MSP will be held harmless.

**6. WORKING ENVIRONMENT.** Client shall provide a suitable working environment for any Equipment located at Client's facility. Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each

piece of Equipment. Client shall bear the risk of loss of any Equipment located at Client's facility.

**7. CLIENT 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's systems may be required in order for MSP to meet Client's requirements. In connection therewith, Client agrees to work in good faith with MSP to effectuate such purchases or changes. In the event that 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 unless specifically stated otherwise in writing. Client will be responsible for the quality, completeness and workmanship of any item or service furnished by it and for ensuring that the materials provided to MSP do not infringe or violate the rights of any third party. Client will maintain adequate backup for all data and other items furnished to MSP.



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It is the Clients 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.

**8. 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 proprietary submitted by Client to MSP.

**8.1. 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 act of providing any software to MSP will be deemed Client's affirmative acknowledgement to MSP that Client has a valid license that permits MSP to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor Client's

equipment for the installation of unlicensed software unless MSP in a written statement of work ("SOW") expressly agrees to conduct such monitoring. Client will indemnify and hold harmless MSP against all damages and expenses it may incur (including reasonable attorney's fees and disbursements) related to Client providing infringing materials to MSP or any Client breach of this Section.

**9. 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. Client acquires no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement.

9.1. Client may only use and disclose Product in accordance with the terms of this Agreement and applicable Order. MSP reserves all rights in and to the Product not expressly granted in this Agreement. Client may not disassemble or reverse engineer any software



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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 or an Order, Client may not (a) distribute the Product to any third party (whether by rental, lease, sublicense or other transfer), or (b) operate the Product 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 Product - applicable installation instructions or release notes will contain the relevant details.

#### 9.2. **License Agreements.**

**(a) License.** Subject to the terms of this Agreement, MSP grants Client a perpetual, non-exclusive, non-transferable license to use and

modify all programming, documentation, reports, and any other product provided as part of the Services solely for its own internal use.

**(b) 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.

**9.3. Third-Party Products.** Product warranties for third party products, if any, are provided by the manufacturers thereof and not by MSP. MSP'S sole obligation is to act on behalf of Client to assist in the satisfaction of any such warranty.

#### **10.WARRANTY.**

MSP warrants that it will perform the Services substantially in accordance with the specifications set forth whether under this Agreement, a purchase order, other work order or otherwise in connection with any of them. For any breach of the foregoing warranty, MSP will exercise commercially reasonable efforts to re-perform any non-conforming services that



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were performed within the ten (10) business day period immediately preceding the date of Client's written notice to MSP specifying in reasonable detail such non-conformance. If MSP concludes that conformance is impracticable, then MSP will refund all fees paid by Client to MSP hereunder, if any, allocable to such nonconforming Services.

MSP does not warrant its products or services beyond a reasonable standard or skill consistent with industry standards. MSP does not warrant against any promises of cost savings, profits, returns on investment, delay in delivery of performance (unless delay was a consequence of a negligent act or omission)

**11.SOFTWARE HARDWARE & SECURITY.** Client understands and agrees that data loss or network failures may occur, whether or not foreseeable, if the Client fails to maintain proper security for its computer and information system including software and hardware updates. Client therefore warrants that it will follow software and hardware updates and maintain specific security standards, policies, procedures set forth in **Addendum B** (the "Network Security") attached hereto and incorporated herein by reference.

**12.CYBER TERRORISM.** In no event, including the negligent act or omission on its part, shall MSP, whether under this Agreement, a purchase order, 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) if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, 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 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, civil commotion or assuming the proportions of or amounting to an uprising, or any





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action taken in controlling, preventing or suppressing any of these things. Cyber Terrorism shall mean an 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.

**13. TELEMARKETING & UNSOLICITED EMAILS.** In no event, including the negligent act or omission on its part, shall MSP, whether under this Agreement, a purchase order, 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) if and to the extent that they might otherwise not constitute indirect or consequential losses or expenses, loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable if the Client's data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders", "spybots", "spyware", wire tapping, bugging, video cameras or identification tags.

**14. LIMITATIONS OF LIABILITY.** EXCEPT AS OTHERWISE NOTED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL MSP BE LIABLE TO CLIENT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR FOR ANY AMOUNT IN EXCESS OF THE LICENSE FEE OR FOR 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,



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EXCEPT WITH RESPECT TO INDEMNITIES ARISING OUT OF IP CLAIMS, UNDER NO CIRCUMSTANCES, SHALL MSP'S AGGREGATE LIABILITY ARISING FROM OR OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE FEES PAID UNDER THIS AGREEMENT.

**15. INSURANCE.** MSP agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extent this Agreement creates 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 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 owned, 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).

**16. DISCLAIMERS.** The express remedies set forth in this Agreement 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.

MSP shall not be responsible for impairments to the Services caused by acts within the control of Client or its employees, agents, contractors, suppliers or licenses, the interoperability of Client applications, or other cause reasonably within Client's control and not reasonably related to services provided under this Agreement.

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.

MSP DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CLIENT REQUIREMENTS NOT SET





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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 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.

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.

**17.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 this Agreement.

**18.AMENDMENT.** This Agreement may not be amended except by a

writing executed by an authorized individual MSP.

**19.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.

**20.LAW.** This Agreement 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.

**21.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.

**22.FORCE MAJEURE.** With the exception of Client payment for service rendered, neither party shall be responsible for any failure to perform or delay caused where such



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failure or delay is due to circumstances reasonably beyond the party's control. This includes, but not limited to, fire, flood, earthquake, volcanic eruption, explosion, lightening, wind, hail, tidal wave, landslide, pandemic, risk of bacterial or viral infection, act of God or any other event.

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

**24.RENEWAL.** This Agreement shall automatically renew for the same term as the current term unless B2B receives written notification within 60 (sixty) days notification. Notification shall be given in written form and

mailed, certified to the current mailing address for B2B.

**25.OFF-BOARDING FEE.** Upon termination of this Agreement, any services or assistance required by Client from B2B shall be billable and not included in monthly subscription fee.

**26.ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement by and between the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous undertakings and agreement of the Parties, whether written or oral, with respect to such subject matter.