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Master Services Agreement

THIS MASTER SERVICES AGREEMENT (hereinafter referred to as the “MSA” or “Agreement”), is made by and between Louisville Geek, LLC (hereinafter the “Consultant”), and the “Client.”

WHEREAS, the Consultant works as a contractor for clients to implement technology services (hereinafter the Services);

WHEREAS, the Client desires to engage the Services of the Consultant; and, subject to the terms and conditions contained herein, the Consultant desires to accept said engagement;

NOW, THEREFORE, in consideration of the mutual promises, covenants and other good and valuable consideration hereinafter set forth, the parties hereto agree as follows:

SECTION 1 INTRODUCTION

1.1 *Overview Of MSA*. This MSA sets forth the terms and conditions of the Consultant’s delivery and Client’s receipt of any or all of the Services.

1.2 *Statement Of Work*. The specific Services to be provided under this MSA are identified and described in detail in the attached Statement Of Work (hereinafter the “SOW”). The MSA is incorporated into each SOW, and each SOW constitutes a separate order for Services.

SECTION 2 DELIVERY OF SERVICES AND TERM

2.1 *Services*.

(a) *General*. Client agrees to take and pay for, and, the Consultant agrees to provide, the Services during the applicable Service Term as detailed in the attached SOW.

(b) *Consultant’s Responsibilities*.

(i) **Services Not Requiring Hardware**. Upon the Consultant’s acceptance of this Agreement for Services not requiring Hardware, the Consultant will provide a means for the Client to directly activate the Service or will deliver to the email address specified by Client on the Statement of Work a link for purposes of enabling Client to activate the Service (“*Activation Link*”).

(ii) **Services Requiring Hardware**. Upon the Consultant’s acceptance of this Agreement for Services requiring Hardware, the Consultant will deliver the applicable Hardware to Client at the address specified by Client on the Statement of Work. Hardware provided by the Consultant to the Client as a service is loaned, not sold, to Client, for use solely during the applicable Service Term for the purpose of enabling the Services, and remains the property of the Consultant at all times.



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(c) *Client Responsibilities.*

- (i) **Provisioning.** Client will ensure (A) knowledgeable Client personnel are available to assist with the provisioning of Services; and (B) information provided by Client to the Consultant regarding Client systems is accurate and complete.
- (ii) **Consultant Assistance.** When requesting Consultant assistance regarding Services under this Agreement, Client agrees to: (A) follow the Consultant's procedures when requesting Services; (B) provide the Consultant reasonable access to knowledgeable personnel to answer questions or resolve problems reported by Client regarding the Services; (C) promptly implement all updates and error corrections provided by the Consultant under this Agreement; and (D) maintain Consultant-supported versions of required third party hardware and software, if any.
- (iii) **Contact People.** Client shall designate certain individuals (the "Client Contacts") within Client's organization to serve as contacts between Client and the Consultant, and shall keep the Consultant informed as to any changes in the names or contact information for the Client Contacts. These Client Contacts shall have been adequately trained on the Services and shall have technical expertise, training and experience to discuss the Services.

SECTION 3 PAYMENT TERMS FOR FEES AND EXPENSES

3.1 *Fees And Costs.*

- (a) ***Recurring Services.*** In consideration for the Services performed by the Consultant hereunder, the Client agrees to pay the Consultant the fees and costs set forth in the SOW (collectively the "Fees and Costs"), upon the schedule set forth in the SOW. The Fees and Costs represent the total fees, costs and charges for the Services and Recurring Services and will not be increased during the Term of this Agreement except pursuant to a mutually agreed upon change order.
- (b) ***Security Vulnerability Services.*** As part of the Services provided to Clients, the Consultant may use various vulnerability testing methods to evaluate the security of Client's systems. The Consultant is hereby authorized to perform security vulnerability assessment on Client's systems. The Consultant will take commercially reasonable precautions to avoid negative impact to Client's systems from any security vulnerability assessment, however; the Consultant cannot guarantee that adverse consequences will not result from security vulnerability assessment activity. The Consultant performing security vulnerability assessment services on Client's systems does not constitute a representation or warranty that Client's systems are secure from every form of attack.
- (c) ***Custom Services.*** Client will pay all fees and expenses due for Custom Services (as defined in Section 4.2(c) of the MSA) in accordance with the prices and terms set forth in the applicable Statement of Work.
- (d) ***Services Billing.*** Many Services are billed depending upon the number of workstations, licenses, users and/or devices the Client possesses within its organization and as initially defined within the SOW. The Client



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shall be billed for the entire number (as outlined in the applicable Statement of Work) upon the Service Commencement Date for the initial device. Client shall be responsible for initiating the integration of such devices by contacting the Consultant to schedule installation. The Client agrees that, as the Client adds workstations, licenses, users and/or devices to its operations, the Consultant may increase the Services billing as defined within the SOW.

(e) *Services Upgrades.* Consultant provides the Client the right to upgrade Services, including requesting additional Services, additional licenses, support for additional workstations, users and/or devices and/or higher capacity hardware, such as might be required to accommodate Client growth or expansion, before the Agreement term end. If the Client exercises the Upgrade right, the Client acknowledges and understands the corresponding Agreement Fees and Costs will increase correspondingly, as defined by the corresponding SOW. No SOW executed after this Agreement is executed changes any provisions, terms, materials, liabilities or warranties contained herein, with the sole and only exceptions being the Services received as part of the Consultant's Services and the corresponding Fees and Costs.

3.2 *Taxes.* All fees for Services are exclusive of all taxes and similar fees now in force or enacted in the future imposed on the transaction or the delivery of Services, all of which Client will be responsible for and will pay in full, except for taxes based on the Consultant's net income.

3.3 *Credit Card Fees.* The Client agrees to pay a credit card processing fee of 3.9% when paying any invoice pursuant to this Agreement by credit card.

3.4 *Payments.* The Consultant will provide the Client with an Invoice or Invoices for Services, as described within the SOW, each month. As is appropriate, mutually agreed upon and defined within the SOW, the Consultant may also provide the Client with periodic invoices for costs, fees and expenses incurred servicing the Client. The Client shall pay all Consultant Invoices in full within thirty (30) days after receiving an invoice.

3.5 *Interest Charges.* In the event the Client fails to make payment of the above fees and/or costs and expenses, on the dates indicated herein, Client shall be charged a late payment fee, which shall be equal to interest at rate of twelve percent (12%) per annum, compounded monthly.

3.6 *Collection Expenses.* The Client is responsible for all reasonable costs related to recovery of unpaid payments, including, but not limited to, administrative and attorney's fees that may be incurred by the Consultant and/or the Consultant's representatives in an effort to collect past due amounts owed to Consultant for more than sixty (60) days ("Collection Costs"), which Collection Costs shall be added to the amounts due to the Consultant and paid by the Client.

3.7 *Collections Process.* All payments made by Client following the incurrence of Collection Costs by Consultant shall first be credited to Collection Costs amounts and then to the past due invoice until the account is brought current. In the event any invoice remains unpaid for more than sixty (60) days, the Consultant may suspend Services hereunder, until the Client's account is brought current.



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3.8 *Consultant Services Suspension Rights.* In the event of service suspension due to unpaid payments, the Consultant reserves the right to repossess hardware/software for which payment has not been made, including but not limited to, network switches, routers, desktop and laptop computers, tablets, monitors, servers, telephone equipment, antivirus software, applications and wireless access points. In the event of such suspension, the Client shall waive all legal or equitable rights and remedies and release all applicable legal or equitable claims that the Client might have against the Consultant as a direct or indirect result of such suspension, disabling or repossession. In the event that any invoice remains unpaid for more than ninety (90) days, the Consultant shall have the right to pursue all legal collection efforts.

SECTION 4 – CONFIDENTIAL INFORMATION; INTELLECTUAL PROPERTY; OWNERSHIP; LICENSE GRANTS

4.1 *Confidential Information.* Each party hereto shall keep the other party's "Confidential Information", including, but not limited to, business secrets, Client, supplier, logistical, financial, research, technical and development information, as well as all other information which can reasonably be discerned to be confidential, and all information designated as confidential, strictly confidential and shall not disclose such information to any third party without the prior written consent of the confiding party.

Notwithstanding the foregoing, the term "Confidential Information" shall not include any information which: (i) can be demonstrated to have been in the public domain or was publicly known or available prior to the date of the information was shared with the other party; (ii) can be demonstrated in writing to have been rightfully in the possession of the other party prior to the sharing of such information; (iii) becomes part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorized act or omission on the part of the other party; or (iv) is supplied to the other by a third party without binder of secrecy, so long as such third party has no obligation to the confiding party to maintain such information in confidence.

Each party understands that its obligations hereunder with respect to any Confidential Information will terminate only at such time (if any) as said Confidential Information ceases to be confidential as set forth above. Notwithstanding the foregoing, the Client acknowledges that the Consultant's ability to carry out the Services is dependent upon the Consultant's past experience in the managed technology services industry and in providing similar services to others.

The Client acknowledges this Agreement and the corresponding SOW possess and present sensitive and proprietary Consultant information technology services, service strategies, pricing and discounts that are the intellectual property of the Consultant and that would, if shared with third parties, negatively impact the Consultant's rightful marketplace competitiveness. The Client agrees not to share the Agreement's terms, pricing, cost models, covered services, excluded services and/or any other details with any third party without the prior expressed and written consent of the Consultant.

4.2 *Intellectual Property.*

- (a) *Ownership.* Except for the rights expressly granted in this MSA, this MSA does not transfer from the Consultant to Client any Consultant Technology, and all right, title and interest in and to the Consultant Technology remains solely with the Consultant. Except for the rights expressly granted in this MSA, this MSA



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does not transfer from Client to Consultant any Client Technology, and all right, title and interest in and to Client Technology remains solely with Client. Each of Consultant and Client agree that it will not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code or other trade secrets from the other party. Client acknowledges and agrees that this MSA grants Client no title or right of ownership in or to the Services, or any component thereof, or to any associated materials including, but not limited to the Hardware, or intellectual property. Client shall not, at any time, take or cause any action, which would be inconsistent with or tend to impair the rights of the Consultant or its licensors.

- (b) *Client's Rights.* Consultant grants to Client and Client agrees to accept a non-exclusive, non-perpetual, terminable, and non-transferable right to access and to use the Services in accordance with the terms of this Agreement and pursuant to the Statement of Work, during the term of this Agreement. Client's rights under this Agreement will automatically terminate upon expiration of or termination of this Agreement.
- (c) *Customized Work Owned By Consultant.* Customer hereby acknowledges and agrees that, from time to time, Consultant may provide customized services to Customer, including but not limited to writing "scripts" or building "parsers" or reports, which may or may not be specifically designed for Customer's environment, business or information technology processes ("*Custom Integration Work*"). Customer hereby acknowledges and agrees that all Custom Integration Work remains the property of Consultant (and thereby included in the definition of "Consultant Technology"), whether provided solely by Consultant personnel or with participation by Customer personnel. Consultant shall own and be permitted to use any such work in its business, including but not limited to providing such Custom Integration Work to other customers of Consultant. Any custom services other than Custom Integration Work ("*Custom Services*") will be pursuant to a statement of work that references this Agreement and is signed by Customer and Consultant ("*Statement of Work*"), and which will specify the pricing and billing instructions for such Custom Services.
- (d) *Limitation On Reverse Engineering, Decompilation, And Disassembly.* Client may not reverse engineer, decompile, or disassemble the Services, and any software contained therein, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

4.3 Access Rights.

- (a) *General.* Subject to the terms of this MSA and to the extent required to receive the Recurring Services during the applicable Service Term, Consultant hereby grants to Client a non-transferable, non-exclusive, limited license for Client's employees (each referred to herein as a "*User*") to access and use the applicable Recurring Services (and Consultant Technology made available therein) solely for Client's internal business use.
- (b) *User Identifications And Passwords.* Each User may be provided with a specific user identification and password combination solely for the use by such User of the applicable Recurring Service and Consultant Technology. Client and each User will: (i) be responsible for the security and/or use of his or her user identification and password; (ii) not disclose such user identification and password to any third person or entity;



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and (iii) not permit any other person or entity to use his or her user identification and password. Client will be responsible for: (i) advising each User of his or her obligations under this MSA and of the restrictions set forth in this MSA; and (ii) each User's use of his or her user identification and password, the Recurring Services and Consultant Technology, including, without limitation, failure to comply with the terms of this MSA (including but not limited to any Statement of Work) or any of Consultant's other policies regarding use of any of the Recurring Services and Consultant Technology. The Consultant reserves the right to deny or revoke access to any of the Recurring Services and Consultant Technology if Consultant believes Client and/or its Users are in breach of this MSA (including but not limited to any Statement of Work) or are otherwise engaged in unauthorized or unlawful use of any of the Recurring Services and Consultant Technology. Client will be responsible solely for any damages to any of the Recurring Services and Consultant Technology caused by Client and/or its Users.

(c) *Restrictions.* Client agrees that Client and its Users will not: (i) sell, lease, license or sublicense access to, or use of, any of the Recurring Services and Consultant Technology; (ii) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile any of the Recurring Services and Consultant Technology in any way for any reason; (iii) provide, disclose, divulge or make available to, or permit use of any of the Recurring Services and Consultant Technology by, any third party; (iv) copy or reproduce all or any part of the Recurring Services and Consultant Technology; (v) interfere with the Recurring Services in any way; (vi) engage in spamming or any other fraudulent, illegal or unauthorized use of the Recurring Services; or (vii) introduce into or transmit through any of the Recurring Services and Consultant Technology any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design; or (viii) release to any third party the results of any evaluation of the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes without the prior written approval of Consultant.

SECTION 5 – CONSULTANT REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 *Authority And Performance.* Consultant represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA, and (ii) the performance of its obligations and delivery of the Services to Client will not violate, or cause a breach of, any agreements between Client and any third parties.

5.2 *Hardware.* HARDWARE PROVIDED AS A SERVICE IS PROVIDED ON AN “AS IS/WHEREAS” BASIS. In the event the Hardware fails to operate substantially in accordance with its technical specifications and such failure causes a material adverse effect on Client's ability to use the Recurring Services, then Client's sole and exclusive remedy and Consultant's sole and exclusive liability is for Client to return the Hardware to Consultant and for Consultant to provide replacement Hardware. In the event the Hardware fails to operate due to misuse, negligence or damages caused while in the possession of Client, the Client will be responsible for all replacement costs (including shipping and handling fees).

5.3 *Viruses.* Consultant will take commercially reasonable actions and precautions to screen for the introduction of viruses and similar programs designed to impede or harm use of the systems used by Consultant to provide the



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Services. In the event viruses or such similar programs are identified, Consultant will take commercially reasonable actions to eliminate and reduce the adverse effects of such viruses or programs on Client's use of the Services. The foregoing are Client's sole and exclusive remedies and Consultant's sole and exclusive liability for any breach of this Section 5.3.

5.4 No Other Warranty. Except as set forth in this Agreement, the services and Consultant Technology are provided "as is" and without any express or implied warranties including, without limitation, any warranties as to accuracy, functionality, performance, merchantability or non-infringement. Consultant and its third party licensors expressly disclaim all warranties, express, implied or statutory, including, without limitation, the warranties of merchantability, fitness for a particular purpose, non-infringement and any warranties arising from trade usage, course of dealing or course of performance. Consultant and its third party licensors make no representation, warranty or covenant concerning the accuracy, completeness, sequence, timeliness or availability of the services or Consultant Technology. No sales personnel, employees, agents or representatives of Consultant or any third party are authorized to make any representation, warranty or covenant on behalf of Consultant or any of its third party licensors. Accordingly, additional oral statements do not constitute warranties and should not be relied upon and are not part of this agreement. Neither Consultant nor any of its affiliates or third party licensors represent or warrant that the services or Consultant Technology will be uninterrupted or error-free. Client expressly agrees that use of the services or Consultant Technology is at Client's sole risk and that Consultant and its third party licensors shall not be responsible for any interruption of services, delays or errors caused by any transmission or delivery of the services, data or any other information or caused by any communications service providers. Deployment of Consultant Services in a Client network does not achieve the impossible goal of risk elimination, and therefore, Consultant makes no guarantee that intrusions, compromises, financial loss, data loss or any other unauthorized activity will not occur on a Client network. This section shall survive termination or expiration and non-renewal of the MSA.

5.5 Disclaimer Of Actions Caused By Or Under The Control Of Third Parties. CONSULTANT DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM CONSULTANT'S DATA CENTERS AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CLIENT'S OR CONSULTANT'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH CONSULTANT WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, CONSULTANT CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, CONSULTANT DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

5.6 Disclaimer With Regard To Certain Data. Consultant has implemented a variety of security measures for the purpose of maintaining reasonable safety of Client data which is sent to Consultant for processing and storage. However, Consultant does not interpret or segment data based upon its contents as a component of the Services it provides to Client. As a result Client must be aware of all data that it chooses to send to Consultant for



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processing. As Client is responsible for the information which is sent to Consultant, Client is responsible for ensuring that any data which should be protected or restricted on a need to know basis such as payment card information (“*PCT*”) or protected health information (“*PHI*”, as defined under the Health Insurance Portability and Accountability Act of 1996 “*HIPPA*”), cardholder data (as defined by the PCI Security Council), classified government information or private individual data should not be sent to Consultant or specifically should not be transmitted outside of Client’s network perimeter. Any data which is sent to Consultant is considered data which does not require additional security measures or segmentation based upon its contents. If Client elects to send this data to Consultant, Client will indemnify and hold Consultant harmless for any additional requirements that may be required to protect that data in addition to the security measures that Consultant applies to all Client data to validate that it is secured and maintained with data security standards. In any instances where the aforementioned data is discovered by Consultant personnel when performing their services to Client, (i) Consultant will make a reasonable effort to contact the client to notify Client that the aforementioned data has been sent to Consultant; (ii) Consultant will make reasonable effort to develop with Client a mutually agreeable remediation plan to ensure that additional sensitive data is not sent to Consultant on an ongoing basis; and (iii) Consultant will mask or purge the sensitive data from the record and inform the Client contact that the data has been removed from the Consultant systems. Consultant reserves the right to bill Client (and Client agrees to pay Consultant) for additional work performed by Consultant which is necessary or reasonable in Consultant’s discretion to manage Client’s sensitive data as described in this Section 5.6.

SECTION 6 – CLIENT REPRESENTATIONS, WARRANTIES AND OBLIGATIONS

6.1 *Authority And Performance; No Third Party Beneficiaries.* Client represents and warrants that (i) it has the legal right and authority to enter into this MSA and perform its obligations under this MSA (and to permit Consultant to perform the Services), (ii) the performance of its obligations and use of the Services (by Client, its Clients and users) will not violate, or cause a breach of, any agreements between Client and any third parties and (iii) no consent of any third party shall be required for Client to receive the Services.

In the event of any breach of any of the foregoing warranties, in addition to any other remedies available at law or in equity, Consultant will have the right, in its sole reasonable discretion, to suspend immediately any Services if deemed reasonably necessary by Consultant to prevent any harm to Consultant and its business. Consultant will provide notice and opportunity to cure if practicable depending on the nature of the breach. Once cured, Consultant will promptly restore the Services.

6.2 *Hardware.* If Client is using Hardware as a Service, Client will maintain and protect the Hardware in good working condition with the exception of any reasonable wear and tear. Client will not modify, disassemble, decompile, reverse engineer, rent, lease, loan, transfer, or copy the Hardware (including any software or firmware that is part of, incorporated into or running on the Hardware). Client assumes all risk of, loss, damage, theft, or destruction of the Hardware while it is in the Client’s possession or control or that of its agents, including any carrier (except any carrier transporting the Hardware from the possession of Consultant to Client), and Client will reimburse Consultant for any costs of necessary repair or replacement (including shipping costs). Client has no



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right to sell, give away, transfer, pledge or mortgage the Hardware. Client will keep the Hardware free of all security interests, liens, and other encumbrances.

SECTION 7 – LIMITATIONS OF LIABILITY

7.1 Consequential Damages Waiver; Limitation of Liability. Except for a party's breach of Section 4.1 ("Confidential Information") of this MSA or actual fees owing as a result of nonpayment by Client (not other consequential damages resulting from such nonpayment), in no event will either party be liable or responsible to the other for any type of incidental, exemplary, special, punitive, indirect or consequential damages, including, but not limited to, lost revenue, lost profits, replacement goods, loss of technology, rights or services, loss of data, or interruption or loss of use of service or equipment, even if advised of the possibility of such damages, whether arising under theory of contract, tort (including negligence), strict liability, breach of contract, breach of warranty, acts and omissions of the party claiming damages or the party from whom damages are sought or otherwise. Further, no cause of action which accrued more than two (2) years prior to the filing of a suit alleging such cause of action may be asserted against Consultant. The maximum total liability of Consultant to Client for any performance or non-performance of this MSA shall be limited as follows: (i) for recurring services, to the total fees paid to Consultant by Client in the six-month period preceding the date upon which any such claim first accrued; and (ii) with respect to Custom Services, the fees paid to Consultant by Client for the Custom Services under the affected Statement of Work if a one-time engagement or if for customized recurring services, to the total fees paid to Consultant by Client in the six-month period preceding the date upon which any such claim first accrued.

7.2 Basis Of The Bargain; Failure Of Essential Purpose. The parties agree that the limitations and exclusions of liability and disclaimers specified in this MSA represent the parties' agreement as to the allocation of risk between the parties in connection with Consultant's obligations under this MSA, and that such limitations, exclusions and disclaimers will survive and apply even if found to have failed of their essential purpose. The parties acknowledge that Consultant has set its prices and entered into this MSA in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in this MSA, and that the same form an essential basis of the bargain between the parties.

SECTION 8 – INDEMNIFICATION

8.1 Mutual Indemnification. Subject to any limitations set forth in this Agreement, each party will indemnify, defend and hold the other harmless from and against any and all costs, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees) (collectively, "Losses") resulting from any claim, suit, action, or proceeding brought by any third party (each, an "Action") against the other or its affiliates alleging damages caused by the gross negligence or willful misconduct of the indemnifying party.

8.2 Indemnification By Client. Client agrees to indemnify, defend, and hold Consultant harmless from and against any and all claims, losses, liabilities and damages, including reasonable attorney's fees, arising from any and all third party claims brought against Consultant that arise out of the delivery of the Services.



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8.3 *Indemnification Procedures.* Each party's obligations under this Section 9 shall arise only if: (a) the party seeking to be indemnified (the "*Indemnified Party*") promptly notifies the other party (the "*Indemnifying Party*") in writing of any such Action, provided that any delay shall not relieve the Indemnifying Party of its obligations hereunder except to the extent that it was prejudiced by the delay; (b) the Indemnifying Party has sole control of the defense and settlement of such Action, provided that the Indemnifying Party shall not enter into any settlement, without the Indemnified Party's prior written consent, that would require the Indemnified Party to take any action, or refrain from taking any action, other than permitting the Indemnifying Party to pay money damages on the Indemnified Party's behalf; and (c) the Indemnified Party fully cooperates with the Indemnifying Party.

SECTION 9 – TERMINATION

9.1 *Termination For Cause.* Either party may terminate this MSA, effective as of the date specified in written notice of termination provided to the other party, if: (i) the other party breaches any material term or condition of this MSA or the applicable Statement of Work and fails to cure such breach within thirty (30) business days after receipt of written notice of the same, except in the case of failure to pay fees, which must be cured within five (5) days after receipt of written notice from Consultant; (ii) the other party becomes the subject of a voluntary petition in bankruptcy or any voluntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors; or (iii) the other party becomes the subject of an involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if such petition or proceeding is not dismissed within sixty (60) days of filing. For the avoidance of doubt, the failure to cure the breach of a material term or condition of a Statement of Work may allow a party to terminate that specific Statement of Work; but all remaining Statement of Works shall remain in full force and effect.

9.2 *Effect Of Termination.* Upon the effective date of expiration and non-renewal or termination of this MSA or the applicable Statement of Work (the "*Date of Termination*"):

(a) Consultant will cease immediately providing the terminated Services, and Client's access to, and use of, the terminated Services will cease immediately;

(b) any and all payment obligations of Client under this MSA for the terminated Services will immediately become due (including payment for the remainder of the Service Term as liquidated damages), except that in the event of termination by Client pursuant to Section 9.1, Client will pay for the applicable Services through the date of termination;

(c) within thirty (30) days following written request following such termination, each party will return or destroy all Confidential Information of the other party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirements and with respect to data received in the performance of Consultant's Services, such data



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will be destroyed in accordance with Consultant's standard policies. Client will return to Consultant any Hardware or other Consultant Technology provided to Client; and

(d) If Client requests the physical return of data received in the performance of Consultant's Services, Client will first pay Consultant all expenses incurred by Consultant to return Client's Confidential Information, including, but not limited to, labor costs and the cost of storage media.

9.3 *Survival*. The following provisions will survive any expiration, cancellation or termination of this MSA: Sections 3, 4.1, 4.2, 5.2, 7, 8, 9 and 10.

SECTION 10 – MISCELLANEOUS PROVISIONS

10.1 *Force Majeure*. Neither party will be liable for any failure or delay in its performance under this MSA due to any cause beyond its reasonable control, including, but not limited to, acts of war, acts of God, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act, third-party discontinuation or removal from production of application interface protocols ("APIs") used for Services, or failure of the Internet (each a "Force Majeure Event"), provided that the delayed party: (a) gives the other party prompt notice of such cause, and (b) uses its reasonable commercial efforts to promptly correct such failure or delay in performance. If Client is unable to pay for Services for fifteen (15) business days, Consultant may terminate the applicable Statement of Work. If Consultant is unable to provide Services for a period of thirty (30) consecutive days as a result of a continuing Force Majeure Event, Client may cancel the Services and this MSA on written notice to Consultant. Such termination will be effective on the date specified in the written notice.

10.2 *No Third Party Beneficiaries*. Consultant and Client agree that, except as otherwise expressly provided in this MSA, there shall be no third party beneficiaries to this MSA, including but not limited to the insurance providers for either party or the Clients of Client.

10.3 *Governing Law; Jurisdiction*. This MSA and the rights and obligations of the parties created hereby will be construed and enforced in accordance with the laws of the Commonwealth of Kentucky. Any lawsuit arising out of this agreement shall be brought in a court located within Jefferson County, Kentucky.

10.4 *Severability*. If any provision of this MSA or an Statement of Work is determined to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of this MSA or the affected Statement of Work will continue in full force and effect insofar as it remains a workable instrument to accomplish the original intent and purposes of the parties, and, if possible, the parties will replace the severed provision with a provision that reflects the intention of the parties with respect to the severed provision but that will be valid and enforceable.

10.5 *Assignment*. This Agreement is binding upon and shall inure to the benefit of the respective successors, licensees and/or assigns of the parties hereto. Notwithstanding the foregoing, neither party may assign or transfer its rights or delegate its obligations under this Agreement without the other party's prior written consent, which consent will not be unreasonably withheld.



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10.6 *Notice.* Any notice or communication required or permitted to be given under this MSA may be delivered by hand, deposited with an overnight courier, confirmed by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, in each case to the address of the receiving party as listed on the Statement of Work or at such other address as may hereafter be furnished in writing by either party to the other party. Such notice will be deemed to have been given as of the date it is delivered, mailed, faxed or sent, whichever is earlier.

10.7 *Relationship of Parties.* Consultant and Client are independent contractors and this MSA will not establish any relationship of partnership, joint venture, employment, franchise or agency between Consultant and Client. Neither Consultant nor Client will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided in this MSA.

10.8 *Section Headings.* The article and section headings in this MSA are for reference purposes only and shall not affect the meaning or interpretation of this MSA.

10.9 *Entire Agreement.* This MSA and all documents incorporated into this MSA by reference, constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all of the prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter of this MSA.

10.10 *Amendments.* This MSA and any Statement of Work may be amended, modified, supplemented or changed only by a written document signed by authorized representatives of Consultant and Client.

SCHEDULE 1.1 – DEFINITIONS

The following defined terms are equally applicable in their singular and plural forms:

“Consultant Technology” means Consultant’s proprietary technology used by Consultant to provide the Services, including but not limited to, the Hardware, the software tools, scripts, parsers, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), network designs, know-how, trade secrets and any related intellectual property rights throughout the world.

“Client Technology” means Client’s proprietary technology, including Client’s Internet operations design, content, software tools, hardware designs, algorithms, software (in source and object forms), user interface designs, architecture, class libraries, objects and documentation (both printed and electronic), know-how, trade secrets and any related intellectual property rights throughout the world.

“Hardware” means any device provided by Consultant to Client for use in connection with the Services.

“Initial Term” means the minimum term for which Consultant will provide the Services to Client, beginning on the Service Commencement Date as indicated on the applicable Statement of Work.



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“Inline Device” means a Consultant device deployed in a way such that Client production network traffic passes through the device for purpose of inspection or active blocking.

“Recurring Services” means Services for which Consultant charges a recurring fee.

“Services” means the specific services provided by Consultant as described on the Statement of Work.

“Service Term” means, with respect to each Statement of Work, the Initial Term and all Renewal Terms.

The terms “written” and “in writing” mean anything reduced to a tangible form by a party, including a printed, photocopy, facsimile or hand written document, but excluding email or other electronic formats.

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