

Sample Agreement Provisions for Managed Service Providers

NOTE: These sample provisions are provided for discussion, educational and illustrative purposes only. Contact your own lawyer for legal advice.

Company Obligations. Company agrees as follows:

- (1) to use reasonable efforts to perform its obligations hereunder, including delivery of the Services, in a timely and professional manner by reasonably qualified personnel consistent with generally acceptable standards of an IT service provider with business and resources similar to Company;
- (2) to properly train, monitor and supervise all employees and other representatives used hereunder by Company.

Company is not responsible for any services outside the specific scope of Services as set forth in this Agreement, the Cover Page or the Services Addendum. Any change to Services hereunder must be evidenced by a written agreement. This Agreement excludes the repair, replacement or support to the extent due to (a) the configuration or other changes made by any person other than a Representative of Company, (b) the use of any systems in any manner other than as contemplated by the Services or (c) the addition of any systems, software or services to the network other than as expressly contemplated per Services.

Customer Obligations. Customer agrees as follows:

- (1) to procure and abide by all Third-Party Licenses as may be required for delivery of the Services or any related IT functions;
- (2) to use Software and Hardware only in accordance with its licensing and purchase terms;
- (3) to provide Company with Software and Hardware only to the extent it has been lawfully obtained and deployed;
- (4) to indemnify Company and its Representatives from and against any liability, loss, damage or expense, including reasonable attorneys' fees, arising out of any breach of this Agreement (including any Services Addendum) by Customer or its Representatives or otherwise arising from the Services (other than due to the gross negligence of Company);
- (5) Customer shall have sole responsibility for understanding and ensuring the Services satisfy any regulatory or legal requirements related to the Services or the network, computer systems and data of Customer or any third party on behalf of Customer, including any obligations for safeguarding such data and implementing security measures that may be required whether by law, regulation, contract or otherwise. Notwithstanding any recommendation or implementation of any Service by Company, Customer understands and agrees that it shall be solely responsible for the

final actions, results, audits or deficiencies.

(6) Customer agrees to maintain, where required, a full time, dedicated Internet connection and to allow Company access to the Customer's network via that Internet connection.

(7) Customer agrees to allow Company and its Representatives access to its facilities and covered equipment in order to perform the Services (including via remote access).

(8) Customer represents and warrants that it has notified Company in writing of any minimum standards, requirements, methods, policies, procedures or other activities for which Customer expects Company to perform any Services hereunder ("Required Standards"). Customer agrees that any such Required Standards have been set forth in particular detail on the Services Addendum to the satisfaction of Customer. Customer further agrees to notify Company in writing (i) to the extent any such Required Standards change or (ii) in the event Customer or its Representatives suspect the Services hereunder are not meeting such Required Standards.

(9) Customer represents and warrants that it has not obtained cyber security insurance, and agrees to notify Company in the event it elects to procure cyber insurance coverage, including notice of any related Required Standards, copies of any application for such coverage (before and after submission for coverage), obtain a waiver of subrogation in form and substance satisfactory to the Company, and otherwise provide such information related thereto as Company may reasonably request.

Disclaimer of Warranties. COMPANY DOES NOT WARRANT THAT THE SERVICES OR ANY HARDWARE OR SOFTWARE USED THEREWITH ARE PROVIDED TO COMPANY OR ANY OTHER PERSON ERROR FREE OR WITHOUT INTERRUPTION OR THAT THE SERVICES OR RELATED PRODUCTS WILL MEET CUSTOMER REQUIREMENTS. THE SERVICES AND ANY RELATED HARDWARE OR SOFTWARE ARE PROVIDED ON AN "AS-IS" BASIS WITH NO WARRANTY, UNLESS COMPANY SEPARATELY AGREES OTHERWISE IN WRITING WITH CUSTOMER. COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY.

Limitation of Liability. Customer agrees that if Company or its suppliers shall be liable for damages in connection with the Services or related products, such damages payable to any person shall be limited to the lesser of the amounts actually paid by such person to Company in the immediately preceding six months or \$[_____], whether any such liability arises from claims in contract, tort or any otherwise. In no event shall Company or its suppliers (a) be responsible for incidental, special, consequential, or other indirect damages of any kind (including lost profits) arising from the Services or related products, even if Company has been advised of the possibility of such damages, (b) have any liability arising from or related to third party Software, Hardware, service or other materials, (c) have any liability for damages or losses of any kind arising from viruses, hackers, intrusions, malware of any kind or accidental destruction of systems, devices or data, or (d) have any liability for any loss or damages of any kind which could reasonably be expected to have arisen, directly or indirectly, from the activities of Customer or its Representatives in contravention of any recommendations, customary best practices, policies or other guidance provided in connection with the Services.

Assumption of Risk. Notwithstanding anything herein to the contrary (including any specified Services), Customer expressly assumes the risk of physical damage or data loss associated with any Services, including without limitation any loss which may arise by allowing Company and Company Representatives to have access to the network and computer systems of Customer or otherwise in connection with the Services (including via remote management).

Force Majeure. In no event shall Company be liable to Customer, its Representative or any other person or entity for failure to deliver the Services where such failure is due to fire, strike, labor trouble, war, loss of power, act of God, terrorism, cyber-terrorism, widespread Internet instability, inability to obtain Internet access, inability to obtain raw materials, laws or regulations of any governmental authority, incorrect, delayed or incomplete information provided to Company or any other cause or condition beyond Company's reasonable control.

"Services" means the services delivered by Company to Customer under this Agreement as selected and specified in writing on the Cover Page or the Service Addendum.

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