

## TERMS AND CONDITIONS FOR ALL CNS SERVICES AND PRODUCTS

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### 1. **TERMS AND CONDITIONS.**

- 1.1. These Terms & Conditions (“Terms”) apply to purchases of services (“Services”) or product (“Product”) made by Client (“Client” is the person or entity identified on the relevant signed quote) from Capital Network Solutions, Inc. (“CNS”) (Client and CNS are referred to herein collectively as “Parties” or individually as “Party”), as well as licenses for software, hardware, support, and maintenance services, and/or subscription services. Client hereby engages and retains CNS to render Services or provide products, as specifically set forth and limited in the “Master Service Agreement” or “REQUESTED SERVICES”, or subsequent Statements of Work (SOW), or any work order or quote for products or services as agreed among by the Parties (collectively hereafter referred to as “REQUESTED SERVICES.”) Except as otherwise stated therein, any and all subsequent REQUESTED SERVICES shall be made a part of and subject to these Terms. No Product or Services will be provided under these Terms alone but will require the execution of a written or electronic REQUESTED SERVICES each of which is deemed incorporated in these Terms for all purposes. In the event of any conflict between the REQUESTED SERVICES and these Terms, the terms of the REQUESTED SERVICES will prevail over these Terms.
- 1.2. CNS may change these Terms at any time providing notification via e-mail 30 days before the changes are to become effective. Using the Services after the changes to these Terms become effective, means Client agrees to the new terms. If Client does not agree to the new Terms, Client must notify CNS in writing of its objection to the new Terms, and CNS has the right to then terminate the Services.

### 2. **GENERAL REQUIREMENTS & CONDITIONS.**

- 2.1. **System.** For the purposes of these Terms, “System” or “Client System” means, collectively, any computer network, computer system, peripheral or device which is both used by Client and that is tracked using CNS’s Remote Monitoring and Management (“RMM”) tool. To avoid a delay or negative impact on CNS’s provision of the Services, during the term of each quote or REQUESTED SERVICES Client agrees to refrain from modifying or moving the System, or installing software on the System, unless CNS expressly authorizes such activity. CNS will not be held responsible or liable for changes made by the client without authorization.
- 2.2. **Maintenance; Updates.** If patches and other software-related maintenance updates (“Update(s)”) are provided under the REQUESTED SERVICES, CNS will install the Updates only if CNS has determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. CNS will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer or applicable vendor’s instructions.
- 2.3. **Third-Party Service Provider(s).** “Third-Party Service Provider(s)” means a person or entity, other than CNS, who provides Services in fulfillment of the Quote or “REQUESTED SERVICES.” CNS and Client may be legally bound by the requirements of Third-Party Service Providers. Client’s right to use the Services provided by a Third-Party Service Provider is subject to Client’s understanding of, compliance with and consent to these Terms and of any Third-Party Service Provider’s agreements, which CNS does not have authority to vary, alter or amend. Therefore, CNS may utilize a Third-Party Service Provider in its discretion to provide the Services in accordance with these Terms. The Third-Party Service Provider may require the CNS to sign a contract with the Third-Party Service Provider for its services (“Third-Party Contract”) and the terms of the Third-Party Contract may impose conditions and requirements upon Client. Access to the terms and conditions of any such Third-Party Contract(s) will be provided to Client or appear on our website which identifies the Third-Party Service Provider and a link to its terms and conditions or EULA (as defined in paragraph 7.4 below). Client hereby agrees to review all Third-Party Contracts, and consent to those Third-Party Contracts which are required for CNS to provide Client with the REQUESTED SERVICES. The Third-Party Contracts and/or links to Third-Party Contracts are being provided as a courtesy and Client should monitor the Third-Party Service Providers to determine whether the Third-Party Contracts are currently in effect and should monitor the Third-Party Service Providers on an ongoing basis to determine whether the Third-Party Contracts have been changed, amended or otherwise modified.

- 2.4. Third-Party Product Vendor(s). “Third-Party Product Vendor(s)” means a person or entity, other than CNS who provides software, machinery, equipment and/or products, inclusive of component parts purchased from vendors, in fulfillment of the REQUESTED SERVICES. CNS will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Product Vendor to Client, but will have no liability whatsoever for the quality, functionality or operability of any products of a Third-Party Product Vendor, and CNS will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any product of a Third-Party Product Vendor. Where applicable, a Third-Party Product Vendor may require the CNS to sign a contract with the Third-Party Product Vendor for its products (“Third-Party Product Vendor Contract”) and the terms of the Third-Party Product Vendor Contract may impose certain conditions and requirements upon Client. Client hereby agrees to review all Third-Party Product Vendor Contracts, and consent to those Third-Party Product Vendor Contracts which are required for CNS to provide Client with the REQUESTED SERVICES. The Third-Party Product Vendor Contracts and/or links to Third-Party Product Vendor Contracts are being provided as a courtesy below in section 7.4 and Client should monitor the Third-Party Product Vendors to determine whether the Third-Party Product Vendor Contracts are currently in effect and should monitor the Third-Party Product Vendors on an ongoing basis to determine whether the Third-Party Product Vendor Contracts have been changed, amended or otherwise modified.
- 2.5. Third-Party Products. Unless otherwise stated in REQUESTED SERVICES, all hardware, software, peripherals or accessories purchased through CNS (“Third-Party Products”) are nonrefundable once the applicable REQUESTED SERVICES is placed in CNS’s queue for delivery. Unless otherwise expressly stated in a REQUESTED SERVICES, all Third-Party Products are provided “as is” and without any warranty whatsoever as between CNS and Client (including but not limited to implied warranties).
- 2.6. Third-Party Support. If, in CNS’s discretion, a hardware or software issue requires vendor or OEM support, CNS may contact the vendor or OEM (as applicable) on Client’s behalf and pass through to Client all fees and costs incurred in that process. If such fees or costs are anticipated in advance to exceed \$100, CNS will obtain Client permission before incurring such expenses on behalf of Client unless exigent circumstances require otherwise.
- 2.7. Subcontractor(s). “Subcontractor(s)” means third-party(ies) to whom CNS contracts to provide specified services to complete the services indicated in the applicable REQUESTED SERVICES.
- 2.8. Conditions of Service. Client System is eligible for provision of CNS’s Services as outlined in the REQUESTED SERVICES, provided the System is in good condition and CNS’s serviceability requirements and site environmental conditions are met:
- (a) Client shall provide adequate workspace, heat, light, air conditioning, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by CNS’s representatives. CNS’s representatives shall have, and Client shall provide full access to the System in order to affect the necessary monitoring and/or supplemental services. CNS reserves the right to suspend or terminate these Terms or any REQUESTED SERVICES if, in CNS’s sole discretion, conditions at the service site pose a health or safety threat to any of CNS’s representatives.
  - (b) It is the responsibility of Client to promptly notify CNS of any events/incidents that may impact the services defined within these Terms and/or any supplemental service needs. CNS shall provide services as defined in the REQUESTED SERVICES during CNS’s regular business hours, unless otherwise specified in any subsequent SOW, or other contract documents, and in accordance with CNS’s IT Service policies then in effect. Client agrees that Client will inform CNS prior to Client making any modification, installation, or service performed on the System by individuals not employed or contracted by CNS in order to assist CNS in providing an efficient and effective System support response. Client will be billed the full cost, at CNS’s hourly rate, to remediate and restore the Systems and/or Services to a state prior to any such change. Only Authorized Contacts (as defined in paragraph 2.13 below) will be eligible to access and service Client System. Any unauthorized access or service conducted on the System without the explicit consent of CNS, which results in negative System performance, will not be covered by the monthly plan fee as documented in the REQUESTED SERVICES and will be billed according to CNS’s labor rates as outlined in the REQUESTED SERVICES or subsequent SOW. CNS shall be obligated to provide service only (a) at the Service Site(s) as identified in the “REQUESTED SERVICES Scope of work” and (b) to the Client System (i.e. client devices tracked in the RMM platform). If Client desires to relocate, add or remove locations, Client shall give appropriate notice to CNS of Client’s intention to relocate at least sixty (60) days in advance. CNS reserves the right to renegotiate service terms with respect to any relocation and/or addition of locations by Client. Such right includes the right to refuse service at the relocation and/or new site.
- 2.9. Service Limitations. In addition to other limitations and conditions set forth in these Terms, the following service and

support limitations are expressed:

- (a) Cost of consumables, replacement parts, hardware, software, network upgrades and associated services are outside the scope of these Terms. CNS will provide consultative specification, sourcing guidance and/or time and material/project offerings.
- (b) Any unauthorized changes made to the System without CNS's written consent which causes issues or failures to the System, are beyond the responsibility of CNS and Client will be billed the full cost to restore the System to its original state.

2.10. Onboarding Process. Client acknowledges and agrees that CNS will have no responsibility for any deficiencies in the current operating systems and infrastructure until the CNS has had a reasonable opportunity to conduct a review of the current system and to provide Client with its recommendations, and Client has accepted and implemented same.

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

2.12. Network Devices, Hardware and Systems: CNS shall only be responsible for providing services to devices, hardware and the System identified by the Client and CNS and set forth in the latest REQUESTED SERVICES and covered by the RMM program. CNS may, in its sole discretion, deny requests to add device(s), hardware or non-Client System(s) to the System. The Client shall bear the responsibility to isolate and protect the System by not allowing additional devices, hardware or non-Client Systems on the System unless approved by CNS. CNS shall have no responsibility for any devices, hardware or non-Client Systems, or damage resulting therefrom, that are added to the System without CNS's approval. CNS shall have the right to cancel this contract if device(s), hardware or non-Client System(s) are added without CNS's approval. If Client obtains new device(s), hardware or non-Client System(s) and wishes to request CNS's services to extend to such new device(s), hardware or non-Client System(s), said extension shall not take effect unless and until both Parties agree in writing to a new REQUESTED SERVICES and the device(s), hardware or non-Client System(s) is added to the RMM. Said REQUESTED SERVICES shall then become an addendum to these Terms and be incorporated herein. CNS reserves the right to deny, for any reason and in its sole discretion, any requests for additional services and/or additional device(s), hardware or non-Client System(s).

2.13. Authorized Contact(s). An "Authorized Contact" is a person or entity designated by Client to communicate with CNS. Client shall designate and Authorized Contact by written communication. Client understands and agrees that CNS will be entitled to rely on any directions or consent provided to CNS by any of Client Authorized Contacts, as indicated in an applicable REQUESTED SERVICES. If no Authorized Contact is identified in an applicable, REQUESTED SERVICES then Client Authorized Contact will be the person(s) (i) who signed the Quote, OR REQUESTED SERVICES, and/or (ii) who signed the applicable REQUESTED SERVICES. If Client desires to change Client Authorized Contact(s), Client must notify CNS of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.

2.14. Shared Administrator Credentials. Client agrees not to share server, network, or software application administrative credentials, with unauthorized personal. Allowing multiple administrators to share administrative credentials jeopardizes the integrity of the support outlined in these Terms. Client cannot hold CNS liable or responsible for any outages, errors, breaches, data loss and misconfiguration caused by sharing administrative credentials in violation of this paragraph, and Client waives any claim it might have against CNS arising from Client sharing such information in violation of this paragraph.

### **3. CONFIDENTIALITY AND NON-DISCLOSURE.**

3.1. Definition of Confidential Information. As used herein, "Confidential Information" means all confidential information disclosed by a Party ("Disclosing Party") to the other Party ("Receiving Party"), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each Party shall include these Terms and all REQUESTED SERVICES as well as business and marketing plans, technology and technical information, products, services, product plans and designs, trade secrets, and business processes disclosed by such Party.

- 3.2. Client's Confidential Information. Client's Confidential Information shall include (1) any personally identifiable information or protected health information of Client employees or Client customers and (2) any information stored on Client System (herein referred to as "Client Data"). Client acknowledges and agrees that these Terms do not constitute a Business Associates Agreement ("BAA") as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996 and as amended), and that the requirement for any such agreement in addition to these Terms may be necessary to provide the Services hereunder. Client acknowledges and agrees that Third-Party Service Providers (defined in Section 1.3 above) and Third-Party Product Vendors (defined in Section 1.4 above) are not parties to any SOW, these Terms or other agreement with CNS unless specifically agreed in writing and Client must obtain a separate BAA with the Third-Party Service Provider or Third-Party Product Vendor. Client shall be solely responsible for the consequences, if any, of moving forward with the Services hereunder without such a BAA and shall be the sole judge of the necessity for a BAA in addition to these Terms. Furthermore, Client hereby agrees to defend, indemnify and hold harmless CNS and any affiliated company, and CNS's respective present and former shareholders, officers, directors and employees and its attorneys and agents, and CNS's predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "Indemnatee"), from and against any and all claims, demands, causes of action, actions, judgments, liabilities, losses, costs and expenses, including attorneys' fees and costs, as they occur, brought against, imposed upon, or incurred or suffered by, the Indemnatee which in any way relate to the failure of Client to comply with these Terms in proper handling of protected health information to the extent (a) not caused by CNS's gross negligence (b) not caused by the absence of any necessary BAA, and/or (c) not caused by Client's failure to notify CNS of the necessity of a BAA.
- 3.3. Exclusions from Confidential Information. Confidential Information shall not include any information that: is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, is received from a third-party without breach of any obligation owed to the Disclosing Party, or was independently developed by the Receiving Party.
- 3.4. Protection of Confidential Information. The Receiving Party shall: protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care, not use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms or otherwise in any manner to the Disclosing Party's detriment, and except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its affiliates, employees, subcontractors and agents who need such access for purposes consistent with these Terms.
- 3.5. Non-disclosure. Neither Party shall disclose these Terms or any REQUESTED SERVICES to any third-party other than its affiliates, legal counsel, and accountants without the other Party's prior written consent.
- 3.6. Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 3.7. Confidential Information Access. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a legal proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 3.8. Return or Destruction of Confidential Information. Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (a) required by applicable law or (b) it would be unreasonably burdensome to destroy. In the event that return or destruction of Confidential Information is unduly burdensome, or not feasible, the Parties shall extend the protections of these Terms to the retained Confidential Information.

#### 4. PROVISION OF MATERIALS AND SERVICES TO CNS.

- 4.1. Expense. Client agrees to timely furnish, at Client's own expense, all personnel, all necessary computer hardware,

software and related materials and appropriate and safe workspaces for purposes of CNS or its subcontractors, performing the Services.

- 4.2. Access. Client will also provide CNS or its subcontractors, with access to all information, passwords and facilities requested by CNS that is necessary for CNS or its subcontractors, to perform the Services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Client understands that CNS or its subcontractors, may be unable to perform their duties adequately, and if such a situation should exist, Client will hold the CNS harmless.

## **5. RESPONSIBILITY FOR EQUIPMENT.**

- 5.1. Client acknowledges that from time to time CNS may identify additional items that need to be purchased by Client. Changes in Client system may be required in order for CNS to meet Client requirements. In connection therewith, Client agrees to work in good faith with CNS to effectuate such purchases or changes, and such changes shall be set forth in a new REQUESTED SERVICES. If CNS is required to purchase any assets, including computer hardware and/or software, in connection with CNS providing the Services, all such assets will remain the sole property of CNS, except those assets sold by CNS to Client or procured by CNS on Client's behalf which shall be the sole property of Client.
- 5.2. Client will take such reasonable precautions to ensure the quality, completeness and workmanship of any item or equipment or hardware furnished by Client, and for ensuring that any and all material provided to CNS or its subcontractors, does not infringe or violate the rights of any third-party.
- 5.3. Client will maintain adequate backup for all Client Data and other items stored on Client System, and for all Client Data and other items furnished to CNS. Unless otherwise specified in the REQUESTED SERVICES, it is not the intent, nor does the CNS provide any type of backup of Client Data.
- 5.4. It is the Customer's responsibility for any failure or malfunction of electrical or telecommunications infrastructure or services that causes damage to CNS's products or services. CNS disclaims all responsibility for any loss, including data loss, caused by such failure of malfunction.

## **6. INTELLECTUAL PROPERTY.**

- 6.1. 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 proprietary material submitted by Client to CNS.
- 6.2. CNS retains all intellectual property rights in any property invented or composed in the course of or incident to the performance of these Terms, as well as any software, materials, or methods created prior to or after conclusion of any work ("Intellectual Property"). Client acquires no right or interest in any such Intellectual Property, by virtue of these Terms or the work performed under these Terms.
- 6.3. Client may only use and disclose Intellectual Property in accordance with these Terms and applicable REQUESTED SERVICES. CNS reserves all rights in and to the Intellectual Property not expressly granted in these Terms. Client may not disassemble or reverse engineer any Intellectual Property or decompile or otherwise attempt to derive any software source code within the Intellectual Property from executable code, except to the extent expressly permitted by applicable law (notwithstanding the prohibition on Client disassembling or reverse engineering stated herein) or provide a third-party with the results of any functional evaluation, or benchmarking or performance tests on the Intellectual Property, without CNS's prior written approval. Except as expressly authorized in these Terms or any REQUESTED SERVICES, Client may not (a) distribute the Intellectual Property to any third-party (whether by rental, lease, sublicense or other transfer), or (b) operate the Intellectual Property in an outsourcing or CNS business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Intellectual Property.

## **7. LICENSE AGREEMENTS.**

- 7.1. License. Subject to these Terms, CNS grants Client a perpetual, non-exclusive, non-transferable license to use all programming, documentation, reports, and any other product provided as part of the Services solely for Client's own



internal use. At all times, all software on the System must be genuine and licensed, and Client agrees to provide CNS with proof of such licensing upon its request. If CNS requires Client to implement certain minimum hardware or software requirements (“Minimum Requirements”), Client agrees to do so as an ongoing requirement of CNS providing its Services to Client.

- 7.2. **Software Installation or Replication.** If CNS 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 CNS will be deemed Client’s affirmative acknowledgement to CNS that Client has a valid license that permits CNS to perform the Services related thereto. In addition, Client will retain the duty and obligation to monitor Client equipment for the installation of unlicensed software. Client will indemnify and hold harmless CNS against all damages and expenses which CNS may incur (including reasonable attorney’s fees and disbursements) related to Client providing infringing materials to CNS or any breach of this section by Client.
- 7.3. **Pre-Existing License Agreements.** Any software product CNS provides to Client, which is licensed to Client under a separate software license agreement with such third-party, will be governed end user license agreement EULA.
- 7.4. **EULA.** Portions of the Services may require Client to accept the terms of one or more third-party end user license agreements (“EULAs”). If the acceptance of a EULA is required to provide the Services to Client, then Client hereby grants CNS permission to accept the EULA on Client’s behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in these Terms. Client agrees to be bound by the terms of such EULAs and will look only to the applicable Third-Party Product Vendor for the enforcement of the terms of such EULAs. If, while providing the Services, CNS is required to comply with a third-party EULA and the third-party EULA is modified or amended, CNS reserves the right to modify or amend any applicable REQUESTED SERVICES with Client to ensure its continued compliance with the terms of the third-party EULA. Client agrees to hold harmless and Indemnify CNS against Client violation of any of the terms and conditions included in the subject EULA. CNS provides links for some, but not all, EULAs below as a convenience to Client and Client agrees to determine whether the EULAs found at the links below are currently in effect and, if they are not currently in effect, Client shall search for and locate, or request from the relevant Third-Party Product Vendor, the EULA currently in effect. The Third-Party Product Vendor EULAs include, but are not limited to, the EULAs found at the following URLs:

<https://www.microsoft.com/licensing/docs/customeragreement>

<https://www.n-able.com/legal/software-services-agreement>

<https://www.sentinelone.com/legal/terms-of-service/>

<https://www.kaseya.com/legal/kaseya-end-user-license-agreement-eula/>

<https://cloud.tenable.com/print-eula.html>

[https://www.barracuda.com/company/legal/prd\\_trm](https://www.barracuda.com/company/legal/prd_trm)

[https://www.cisco.com/c/en/us/about/legal/cloud-and-software/end\\_user\\_license\\_agreement.html?\\_ga=2.44576740.1780399662.1669924450-1185992441.1669924450](https://www.cisco.com/c/en/us/about/legal/cloud-and-software/end_user_license_agreement.html?_ga=2.44576740.1780399662.1669924450-1185992441.1669924450)

<https://www.sonicwall.com/legal/general-product-agreement/>

<https://smileback.com/terms>

8. **CNS’S EMPLOYEE’S, AGENTS OR SUBCONTRACTORS.** Client acknowledges that CNS has incurred substantial recruitment, screening, training, and administrative expenses with respect to its agents, including its employees, vendors and independent subcontractors. To the extent permitted by law from the Effective Date of the last SOW and up to one (1) calendar year after the date of termination of any REQUESTED SERVICES, Client shall not hire or contract directly or indirectly with any of CNS’s employees, agents or subcontractors who have communicated with and/or worked on any Service for Client. Client and CNS mutually acknowledge and agree that it would be impractical and extremely difficult to ascertain the amount of monetary damages that would be caused by a breach by Client of this provision. Therefore, Client and CNS mutually agree that in the event of a breach by Client in any way of this provision, Client shall pay to CNS as liquidated damages, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00). This amount is an effort by both parties to properly and reasonably assess the damages that CNS would suffer as a direct result of a breach by Client, taking into

account the following facts and circumstances: (a) an average employee working for CNS will generate significant net revenue for the CNS and remain employed by the CNS for an extended period of time; (b) CNS will lose significant revenue and incur significant costs in connection with attempting to replace such employee; (c) there is no guarantee that such employee can be replaced; and (d) accurately assessing the value of such employee to the CNS upon such breach is virtually impossible. In light of these circumstances, Client and CNS mutually agree that this liquidated damages provision represents reasonable compensation to CNS for the losses that it would incur due to any such breach. Client and CNS further acknowledge and agree that nothing in this paragraph shall limit CNS's rights to obtain injunctive relief or any other damages including, but not limited to punitive, consequential, special, or any other damages, as may be appropriate in connection with Client's breach of this section.

## 9. **WARRANTY.**

9.1. CNS warrants that it or its subcontractors, will perform the Services substantially in accordance with the specifications set forth whether under these Terms, REQUESTED SERVICES or otherwise in connection with any of them. For a breach of the foregoing warranty, CNS or its contracted subcontractors, will exercise commercially reasonable efforts to re-perform any non-conforming Services that were performed within the ten (10) business day period immediately preceding the date of Client's written notice to CNS specifying in reasonable detail such non-conformance.

9.2. Notwithstanding any provision to the contrary in these Terms, any warranty offered and provided directly by Third Party products shall be deemed null and void if the applicable product is (i) altered, modified or repaired by persons other than CNS, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by CNS (ii) misused, abused, or not operated in accordance with the specifications of CNS or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than CNS or persons approved or designated by CNS.

9.3. Notwithstanding the above, CNS does not warrant its products or services beyond a reasonable standard or skill consistent with commercial industry standards. CNS does not guarantee or promise any cost savings, profits, or returns on investment, delay in delivery or performance, including those delays caused by supply-chain delays or disruptions.

10. **SOFTWARE HARDWARE & SECURITY.** Client understands and agrees that data loss or network failures may occur, whether or not foreseeable. Therefore, Client must maintain proper security for Client System including but not limited to software and hardware updates that are made available by the manufacturer. Client will adhere to software and hardware updates and maintain specific security standards, policies, procedures set forth by the NIST Cybersecurity Framework available at <https://www.nist.gov/cyberframework>.

11. **CLIENT CYBER SECURITY.** It is understood that within the Services provided, it is not the intent, nor does the CNS provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for Client unless otherwise specified in the REQUESTED SERVICES. As cyber threats are always evolving it is strongly recommended that Client engage the services of a cyber protection third-party vendor to independently monitor the cyber controls and cyber activities in Client System.

12. **REGULATORY COMPLIANCE.** Any software or service provided by CNS is not intended to bring Client into full regulatory compliance with any rule, regulation, national standard or requirement. The software, service, or solutions may aid Client's efforts to achieve regulatory compliance, however, CNS does not provide comprehensive compliance solutions.

13. **UNAUTHORIZED INFORMATION TRANSFER.** In no event, except for the willful misconduct or gross negligence on its part, shall CNS or its subcontractors, whether under these Terms, a REQUESTED SERVICES, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach or other form of cyberattack, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if Client's data or Systems are breached because of the distribution of and Client's response to, unsolicited email, direct mail, facsimiles, unsolicited text messages, voice calls, telemarketing or because of the collection of information by means of any form of electronic malware, wiretapping, bugging, video cameras or identification tags.

14. **EXTRAORDINARY EVENTS.** In no event shall CNS or its subcontractors, whether under these Terms, REQUESTED SERVICES or subsequent SOW, 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 loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of a cyberattack or any other event not contemplated by these Terms.

**15. LIMITATION OF LIABILITY.** THIS PARAGRAPH LIMITS THE LIABILITIES ARISING UNDER THESE TERMS OR ANY REQUESTED SERVICES AND IS A BARGAINED-FOR AND MATERIAL PART OF THESE TERMS. THE PARTIES ACKNOWLEDGE AND AGREE THEY WOULD NOT ENTER INTO THESE TERMS UNLESS THEY COULD RELY ON THE LIMITATIONS DESCRIBED IN THIS PARAGRAPH. EXCEPT FOR CNS'S FRAUD, WILLFUL MISCONDUCT, OR GROSS NEGLIGENCE, CLIENT AND ANY OF CLIENT'S AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUCCESSORS AND ASSIGNS AGREE TO THE FULLEST EXTENT PERMITTED BY LAW AND EXCEPT AS OTHERWISE NOTED IN THESE TERMS, INCLUDING INDEMNIFICATION OBLIGATIONS, AGREE TO RELEASE CNS AND ANY OF THEIR AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES, SHAREHOLDERS, NOMINEES, CONSULTANTS, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. CNS'S AGGREGATE LIABILITY RELATING TO ANY OF THE SERVICES SHALL BE QUANTIFIED IN THE QUOTE FOR "REQUESTED SERVICES" AND CNS SHALL NOT BE LIABLE TO CLIENT FOR ANY DELAY IN DELIVERY OR PERFORMANCE, OR FAILURE TO DELIVER OR PERFORM AT OR WITHIN THE DEADLINES SET FORTH IN THESE TERMS.

**16. MUTUAL INDEMNIFICATION AND HOLD HARMLESS.** EACH PARTY AGREES TO THE FULLEST EXTENT PERMITTED BY LAW THAT IT SHALL AT ALL TIMES DEFEND, INDEMNIFY, PAY, SAVE AND HOLD THE OTHER PARTY AND ANY OF ITS AFFILIATES AND EACH OF THEIR RESPECTIVE AGENCIES, EMPLOYEES, OFFICERS, DIRECTORS, MEMBERS, SHAREHOLDERS, NOMINEES, SUBCONTRACTORS, CONSULTANTS, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "MUTUALLY INDEMNIFIED PARTIES") HARMLESS FROM EACH AND ANY AND ALL LIABILITIES, DAMAGES (INCLUDING, WITHOUT LIMITATION, DIRECT, SPECIAL AND CONSEQUENTIAL DAMAGES), COSTS, EXPENSES, SUITS, CIVIL OR ALTERNATIVE DISPUTE RESOLUTION PROCEEDING, LOSSES, CLAIMS, ACTIONS, VIOLATIONS, FINES AND PENALTIES (INCLUDING WITHOUT LIMITATION, COURT COSTS, REASONABLE ATTORNEY'S FEES AND ANY OTHER REASONABLE COSTS OF LITIGATION) (HEREINAFTER COLLECTIVELY, THE "CLAIMS," AND INDIVIDUALLY, THE "CLAIM") THAT ANY OF THE MUTUALLY INDEMNIFIED PARTIES MAY SUFFER, SUSTAIN OR INCUR TO THE EXTENT CAUSED BY THE NEGLIGENCE OF THE MUTUALLY INDEMNIFIED PARTIES ARISING OUT OF THESE TERMS.

**16.1. THE PRECEDING INDEMNIFICATION RIGHTS AND/ OR OBLIGATIONS ARE CONDITIONED ON A PARTY SEEKING INDEMNIFICATION (THE "INDEMNIFIED PARTY": (I) NOTIFYING THE PART FROM WHOM THE INDEMNIFIED PARTY IS SEEKING INDEMNIFICATION (THE "INDEMNIFYING PARTY") PROMPTLY IN WRITING OF ANY AND ALL SUCH CLAIMS; (II) REASONABLY COOPERATING AND ASSISTING IN THE DEFENSE OF ANY AND ALL SUCH CLAIMS; AND (III) GIVING SOLE CONTROL OF THE DEFENSE AND ANY RELATED SETTLEMENT NEGOTIATIONS TO THE INDEMNIFYING PARTY WITH THE UNDERSTANDING THAT THE INDEMNIFYING PARTY MAY NOT SETTLE ANY CLAIM IN A MANNER THAT ADMITS GUILT OR OTHERWISE PREJUDICES THE INDEMNIFIED PARTY UNLESS THE INDEMNIFIED PARTY GIVES ITS CONSENT TO THE SETTLEMENT.**

**17. CNS INSURANCE.**

17.1. CNS agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by these Terms and by law. Without limiting the foregoing, to the extent these Terms create exposure generally covered by the following insurance policies, CNS will maintain at its own sole cost and expense at least the following insurance covering its obligations under these Terms:

- (a) Commercial General Liability including Bodily injury, Property damage and Contractual liability coverage;
- (b) Personal injury, in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Business Automobile Liability for hired and non-owned vehicles in an amount of not less than One Million Dollars (\$1,000,000) for



each accident;

- (c) Workers Compensation at statutory limits;
- (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); and
- (e) CNS shall have Client included in the Professional Liability policy as an additional insured. Such status will provide protection, subject to the policy terms and conditions, where liability is imposed on Client because of the wrongful act of CNS.

## **18. CLIENT INSURANCE.**

18.1. **Commercial Property Insurance.** Client shall secure, at Client's own cost and expense, Property Insurance for any and all Client equipment for which CNS provides Services pursuant to the REQUESTED SERVICES.

18.2. **Cyber and Privacy Insurance.** Client acknowledges that Client is solely responsible for obtaining and maintaining, at its own cost and expense, for the time when MPS is providing Services pursuant to the REQUESTED SERVICES, its own Cyber and Privacy Liability Insurance to adequately insure its cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine Client's specific coverage and policy limit requirements. Client acknowledges that CNS does not provide Client with any form of Cyber and Privacy Liability or other insurance coverage in connection with the Services or an executed REQUESTED SERVICES and that Client's use of the Services does not, in any way:

- (a) Replace a Cyber and Privacy Liability policy;
- (b) Mitigate Client's need for Cyber and Privacy Liability insurance coverage, or
- (c) Relieve Client's responsibility for obtaining its own Cyber and Privacy Insurance coverage.

19. **MUTUAL WAIVER OF SUBROGATION.** TO THE EXTENT PERMITTED BY LAW, EACH PARTY WAIVES ALL RIGHTS AGAINST THE OTHER FOR RECOVERY OF DAMAGES TO THE EXTENT THESE DAMAGES ARE COVERED BY THE WORKERS COMPENSATION (TO THE EXTENT PERMITTED BY LAW) AND/OR EMPLOYMENT PRACTICES LIABILITY, PROFESSIONAL LIABILITY, GENERAL LIABILITY, PROPERTY, COMMERCIAL UMBRELLA/EXCESS, CYBER AND PRIVACY OR OTHER COMMERCIAL LIABILITY INSURANCE OBTAINED BY EITHER PARTY. CLIENT WILL NOT HOLD CNS ITS SUBCONTRACTORS AND/OR THIRD-PARTY SERVICE PROVIDERS RESPONSIBLE FOR SUCH LOSSES AND WILL CONFIRM THAT ITS INSURANCE POLICIES REFERENCED ABOVE IN SECTION 18 PROVIDE FOR THE WAIVER OF SUBROGATION INCLUDED IN THE TERMS OF SERVICE.

20. **DISCLAIMERS.** The express remedies set forth in these Terms will constitute Client's exclusive remedies, and CNS's sole obligation and liability, for any claim that a Service or deliverable provided hereunder does not conform to specifications or is otherwise defective, or that the Services were performed improperly. No statement by any CNS employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify these Terms in any way whatsoever.

EXCEPT FOR THE WARRANTIES MADE BY CNS IN SECTION 9, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CLIENT, THE SERVICES AND DELIVERABLES ARE PROVIDED STRICTLY "AS-IS." CNS 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.

CNS DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY OF CLIENT'S REQUIREMENTS NOT SET FORTH HEREIN OR IN THE REQUESTED SERVICES, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CLIENT MAY SELECT FOR USE, THAT THE OPERATION OF ANY

DELIVERABLES WILL BE UNINTERRUPTED, SECURE OR ERROR-FREE, OR THAT ALL ERRORS WILL 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.

21. **SEVERABILITY.** If any provision of these Terms 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 these Terms shall not render invalid the remainder of the Terms.
22. **AMENDMENT.** These Terms may not be amended except by a writing executed by an authorized individual of the CNS.
23. **RELATIONSHIP.** The Parties are independent parties; and these Terms do not make the Parties principal and agent, partners, employer and employee; nor does it create a joint venture. It is further understood that there is no relationship, including but not limited to a partnership, joint venture, subcontractor, or other commission-based relationship, between any party that referred CNS or Client to the other party to these Terms.
24. **LAW.** These Terms shall be governed by and construed in accordance with the laws of the State of California without reference to principles of conflicts of laws. The Parties irrevocably submit to the exclusive jurisdiction of the courts of the State of California.
25. **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.
26. **FORCE MAJEURE.** Neither party will be liable to the other party for delays or failures to perform its obligations under these Terms or any REQUESTED SERVICES or because of circumstances beyond such party’s reasonable control. Such circumstances include, but will not be limited to, any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, pandemic, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware solutions, or if such loss, delay or failure to perform was the result of or arose from any act of terrorism, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God, national or global pandemic, or other physical event and civil commotion assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for political, religious or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption or subversion of communication and information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom.
27. **DATA ACCESS/STORAGE.** Depending on the Service provided, a portion of Client data may occasionally be accessed or stored on secure servers located outside of the United States. Client agrees to notify CNS if Client company requires CNS to modify CNS’s standard access or storage procedures.
28. **ASSIGNMENT.** Neither these Terms, any REQUESTED SERVICES, any SOW, nor any Service may be assigned or transferred by a party without the prior written consent of the CNS. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, CNS may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of CNS’s business, or any other transaction in which ownership of more than fifty percent (50%) of CNS’s voting securities are transferred; provided, however, that such assignee expressly assumes CNS’s obligations hereunder in writing.