



# IT System Management Contract

**Client:** \_\_\_\_\_

**Initial Term:** \_\_\_\_\_

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## Section 1. Applicability

This IT System Management Contract (hereinafter referred to as the “**Contract**”) sets forth the terms by which J.D. Fox Micro shall provide IT System management services on a term basis for the above-named Client (hereinafter referred to as “**Client**”). Except as specified in the Contract Appendix, this Contract supersedes any prior contract between J.D. Fox Micro and the same Client and/or IT System.

## Section 2. Definitions

### IT System Components

- a. **IT System** – All Equipment, Applications, Services, and Data collectively managed under this Contract, the composition and boundaries of which are defined in the Contract Appendix.
- b. **User** – Members/employees of Client’s organization, as well as any external users (such as customers or agents of partner organizations), who access data or services on the IT System.
- c. **Equipment** – Any type of computer server, workstation, mobile computing device, computer peripheral, network/communications device, telephone system, and related electronic devices and accessories, including installed software.
- d. **Applications** – Computer programs installed locally on Client’s Equipment, or hosted by a third party and accessed via the Internet, which Users operate to conduct the business of Client and access Client Data.
- e. **Services** – Functions performed by servers, network devices, or third-party systems that enable management and intercommunication of devices on the IT System.
- f. **Data** – Client’s information comprised of documents, photographs, audio/video files, drawings, spreadsheets, structured databases, messages, and other files or records as stored on the IT System.

### Operations

- a. **Service Levels** specify functional degradation from optimal performance allowed against time and other factors, where applicable.
- b. **Fault** is any hardware or software malfunction or failure, technician error, user error, security breach, or external event that disrupts or threatens proper function of the IT System.
- c. **Fault Countermeasures** are simple actions (taken automatically or manually) that allow the IT System to maintain Service Levels before a given Fault or class of Faults has been fixed.
- d. **Repair** means fixing Faults; this involves actions such as replacing failed or malfunctioning Equipment, correcting broken physical connections, reconfiguring software operating parameters, correcting bad resource allocation, restoring program operation, restoring missing configuration information, restoring or rebuilding configuration or user data, etc.
- e. **Workaround** means to remove or acceptably reduce the impact of a Fault for which a Repair cannot be implemented either because the cause cannot be determined or there is simply no feasible solution. This involves reconfiguration of Equipment or connected systems, or alteration of procedures or policies.

### Section 3. Contract Appendix

The Contract Appendix shall be agreed upon by both Client and J.D. Fox Micro as an integral part of this Contract. It will include the following sections, as necessary and appropriate:

- a. **Definition of the IT System**, which describes the composition and scope of the IT System.
- b. **Client Requirements**, specifying the operational and technical requirements to be covered by this Contract, and the maximum amount of devices, data, and Users covered for the specified Monthly Service Fee. It also includes a chart of required **Service Levels**, describing minimum performance and capacity metrics, and maximum allowed time for recovery from Faults.
- c. **User Support Plan**, which designates which individuals will handle User support and routine management requests, including, if applicable, days and hours of responsibility, required procedures, constraints, timelines, and notification requirements.
- d. **Fault Management Plan**, which designates which individuals are responsible to detect and/or respond to which types of Faults. It also designates, if applicable, days and hours of responsibility, required procedures, constraints, timelines, and notification requirements.
- e. **Security Plan**, which designates roles and responsibilities, procedures, and configuration parameters to prevent unauthorized access to data and resources by either internal users or outside attackers; unauthorized changes to system functionality, data, or installed software; and disruptions to operations. It also designates, if applicable, days and hours or responsibility, required procedures, constraints, timelines, and notification requirements.
- f. **Administrative Parameters**, which specify managerial roles and responsibilities, change control procedures, and a communications plan.
- g. **Fees and Billing**.

### Section 4. Client's Responsibilities

- a. Client shall ensure that all requirements, parameters, plans, and procedures in the Contract Appendix will meet Client's needs and comply with Client's operational policies and relevant laws and regulations. Client shall promptly inform J.D. Fox Micro of any planned changes in its policies, procedures, or operations, or any changes in relevant law, that may necessitate an update to any portion of the Contract Appendix.
- b. While J.D. Fox Micro will provide valuable related data and recommendations as part of this Contract, Client is ultimately responsible for performing risk management and making risk decisions related to the IT System, as well as developing Client's business continuity plans and disaster recovery plans.
- c. While J.D. Fox Micro will perform thorough analysis of existing data and provide recommendations, Client is responsible for developing, validating, and enforcing its data classification system, which will be used by J.D. Fox Micro to assist in planning storage locations, security policies/procedures, and backup strategy.

d. Client shall also:

1. Provide reasonable access to the premises and work space to J.D. Fox Micro for the purpose of performing its obligations under this Contract, to include adequate lighting, ventilation, and temperature control.
2. Keep all work spaces free from hazardous materials and dangerous conditions.
3. Ensure that environmental conditions are adequate for proper operation of the IT System according to reasonable recommendations of J.D. Fox Micro, including proper cooling, lighting, ventilation, electrical wiring, and electrical input voltages and amperages.
4. Provide any and all administrative user names, passwords, and all other access parameters required by J.D. Fox Micro to perform its duties.
5. Ensure designated agents reply promptly and substantively to communications from J.D. Fox Micro.
6. Ensure that all employees and agents of Client, and anyone who has access to or otherwise uses the IT System, complies with all reasonable recommendations and requests made by J.D. Fox Micro regarding efficient management and utilization of the IT System.
7. Prevent all employees, contractors, agents, clients, visitors, and others from mishandling, abusing, or misusing the Equipment covered under this Contract.
8. Retain the installation files, licenses, and key codes for all software, and make these available to J.D. Fox Micro upon request.
9. Upon request, provide purchase and warranty information for Equipment not purchased from J.D. Fox Micro.
10. Notify J.D. Fox Micro before Client or any third party performs modifications to the IT System, to include adding, removing, reconfiguring, or relocating Equipment, and installing, upgrading, or modifying the configuration of software.

## **Section 5. Services Provided by J.D. Fox Micro**

In exchange for the Monthly Service Fee specified in the Contract Appendix, J.D. Fox Micro will administer services as described in this Section, in coordination with appropriate designated Client agents, and any third-party IT service providers employed by Client, in order to meet Client Requirements.

### **A. Routine Maintenance**

#### **Operations**

1. Maintenance of accurate and complete documentation and logs.
2. Coordination as technical liaison with third-party providers of services that are part of, support, or affect the IT System, such as Internet access, electricity, construction, and air conditioning.
3. Coordination as technical liaison with Client's facilities manager(s) or property owners on issues that may affect the IT System.
4. Coordination with developers of custom applications, databases, and web sites to ensure congruence between their concept of operations and the IT System as managed by J.D. Fox Micro.

## **Equipment**

1. Periodic assessment of technical performance to ensure user experience satisfaction.
2. Configuration adjustments of Equipment as necessary to maximize continuity of service and prevent Faults.
3. Periodic cleaning of hardware.
4. Assessment of environmental conditions (such as dirt, heat, moisture, electrical power) as it affects operation of the IT System.
5. Installation, configuration, and integration of new Equipment to replace disused Equipment.

## **Security**

1. Implementation and maintenance of technical security controls and auditing/monitoring procedures as specified in Client Requirements and/or the Security Plan.
2. Periodic assessment of the Security Plan to meet stated requirements.
3. Advice on technical aspects of current and planned Client business policies and operational plans related to IT System security.

## **Continuity**

1. Monitoring and maintenance of redundancy configurations and automated data duplication systems (backups).
2. Periodic examination of the IT System for existing unreported and/or pending Faults.
3. Periodic testing and evaluation of the IT System's ability to withstand common types of failures.
4. Advice on available options to improve fault tolerance of the IT System, at various cost/utility ratios.
5. Upon request, production of quantitative data and information on the IT System configuration to Client for Client's use in conducting risk management, and developing a business continuity plan and/or disaster recovery plan.

## **Applications and Data**

1. Implementation of version upgrades to locally installed software reasonably necessary to support Client Requirements in light of changing technological standards, or as required by a given Software vendor for continued use or support.
2. Reconfiguration of local and hosted Applications and Services as necessary to maximize continuity of service and prevent Faults.
3. Management and configuration of User login and messaging accounts for local and hosted Applications and Services covered by this Contract.
4. Administration of Client-specified classification systems for organizational data.
5. Maintenance of logical and physical Data storage systems and structures, to include reconfiguration as necessary to maintain proper operation.
6. Monitoring, updating, and correcting Client's Public Internetwork Profile as necessary. The Public Internetwork Profile is a set of parameters relating to names for publicly-accessible resources, public internetwork addressing, any external routing considerations, third-party service provider parameters, public communications authentication, public communications reputation, and other related parameters, which are used to facilitate and control communications between the public and the IT System.

## **B. Fault Response**

### **Services Provided by J.D. Fox Micro**

Upon detection or reporting of a Fault, J.D. Fox Micro will perform services to restore function within any time frames or other constraints specified by the Service Levels chart, and any other relevant Client Requirements. These services will include Repair, Workarounds, and/or implementation of Fault Countermeasures.

As appropriate, J.D. Fox Micro will provide policy and/or training guidance for any agent of Client that may have caused Faults due to negligence and/or lack of training.

### **Equipment Warranties and Service Contracts**

When Equipment fails that may be covered under a warranty or service contract, J.D. Fox Micro will make its best effort to obtain fulfillment of such warranty, in order to maximize value to Client.

For certain Equipment, replacement components and technical documentation are only available to service providers authorized by the manufacturer. Also, service on some Equipment by service providers that are not authorized by the manufacturer will void the warranty. As a result, in the event of failure or malfunction of such Equipment, J.D. Fox Micro may need to utilize the services of an authorized service provider to perform the Repair. If the service provider charges a per-incident or hourly fee for repair services or for required components, J.D. Fox Micro will acquire approval from Client prior to authorizing any work. Upon approval, Client will be responsible for payment directly to the selected service provider.

### **New Equipment**

The purchase price of Equipment required to fix Faults is not covered by the Monthly Service Fee; Client must purchase or otherwise procure any Equipment deployed to diagnose or fix any given Fault. Given this, J.D. Fox Micro will recommend new Equipment to address a Fault only when the new Equipment will provide greater value and utility than the best possible plan for Repair or Workaround without it. If Client does not acquire new Equipment recommended by J.D. Fox Micro to address a Fault, J.D. Fox Micro may, in its option, remove or downgrade Client Requirements that depend on the failed or malfunctioning Equipment. J.D. Fox Micro will work with Client to modify other Client Requirements or implement other changes to alleviate, where feasible, the impact on Client's overall operations.

## C. IT System Modifications

An IT System Modification involves any of the following:

1. Installation of new Equipment, Applications, or Services to extend the IT System or support additional Users.
2. Reconfiguration of existing Equipment, Applications, or Services to provide new features or functions.
3. A change to the logical and/or physical design of the IT System infrastructure, including relocation of Equipment.
4. Migration and/or disconnection of superseded or disused Equipment.

J.D. Fox Micro will develop a plan for IT System Modifications:

1. Upon request by Client,
2. In response to events that change Client Requirements, such as moving to or opening a new facility, or unanticipated increase in Users or IT System utilization,
3. To address repeating Faults which can be better managed by an IT System Modification than by Repair or Workaround, or
4. After cursory cost-benefit analysis, which J.D. Fox Micro will conduct periodically, of potential Modifications that will improve Client's productivity or the continuity or security of the IT System.

Expert, professional, and thorough planning by J.D. Fox Micro for all IT System Modifications is covered by this Contract and will be performed for no additional service fee beyond the Monthly Service Fee. Each completed plan will include, where appropriate, recommended Equipment for purchase (with pricing if offered for sale by J.D. Fox Micro), a plan for functional data collection and analysis, lab testing, pilot rollouts or staged deployment (including a back-out plan), scheduled downtime, coordination with relevant third-party service providers, deployment procedures, and the envisioned end state.

For Modifications that:

1. Are more complex than work regularly performed for Routine Maintenance,
2. Extend the IT System beyond the size or scope specified in the Contract Appendix, or
3. Implement Applications, Services, or technical capabilities beyond Client Requirements as specified in the Contract Appendix

the plan may also specify a flat or phased **service fee** for implementation, and/or a change to the Monthly Service Fee for the remainder of the Contract term due to a change in composition of the IT System.

Implementation of any plan will commence only upon approval by Client.

## D. User Support

User Support involves providing initial response to Users with questions about using any Equipment or application software, and for help conducting management tasks related to their user accounts, passwords, applications, and data. It is often referred to as "Help Desk" support. J.D. Fox Micro will provide User Support in accordance with the User Support Plan in the Contract Appendix.

## **E. Emergency / After-Hours Service**

Emergency and/or after-hours service is only available as explicitly specified in the Contract Appendix. If such service is provided for, the relevant sections of the Contract Appendix will specify what is considered emergency service, the days/hours during which J.D. Fox Micro provides after-hours service, the types of issues eligible to be addressed after hours, and the time frames within which such service shall be provided.

It is Client's responsibility, as the ultimate expert in the nature of its operations, to ensure any potential need for emergency or after-hours service is fully covered in all relevant sections of the Contract Appendix. J.D. FOX MICRO SHALL BE UNDER NO OBLIGATION TO HONOR REQUESTS BY CLIENT TO SHORTEN TIMELINES DEFINED IN THE SERVICE LEVELS CHART, OR PROVIDE SERVICE OUTSIDE THE HOURS AGREED UPON IN ADVANCE AND SPECIFIED IN THE CONTRACT APPENDIX.

## **F. Optional Services**

J.D. Fox Micro will perform the following services only upon request by Client. These services may incur additional Service Fees, to be agreed upon in advance.

1. IT System asset management.
2. Software licensing tracking and management.
3. Disposal/recycling of disused Equipment.
4. Data destruction services.

## **G. Excluded Services**

The following services, which are generally related to IT systems management and sometimes expected by clients without discussion, will not be provided by J.D. Fox Micro under this Contract, or under any Work Plan developed under this Contract.

1. User training or tutoring on any aspect of the IT System. While assistance establishing procedures and system configurations to help manage these areas are included in this Contract, Client is responsible for its Users maintaining a level of proficiency in understanding and operating their Equipment and software sufficient for each User to achieve expected results.
2. Configuration, troubleshooting, or operational assistance on aspects of computer use not related to Client's organizational requirements, such as:
  - a. Desktop backgrounds, screensavers, themes, colors, icons, fonts, or other cosmetic options.
  - b. Personalization options available through operating system add-ons or within workstation application programs, such as pane layout, menu and toolbar customization, and shortcuts.
  - c. Interface quirks that a user can easily work around.
  - d. Any issue relating to audio, music, or movies.
  - e. Anything related to general public content accessed via the Internet or similar public networks.
3. Development of custom databases or user applications; or development, management, editing, or hosting of web sites or other such content.
4. Rental or loans of software.



5. Negotiation or management of contracts or billing with third-party service providers on behalf of Client.
6. Carpentry, such as drilling holes in furniture for cables, installing a keyboard drawer, or mounting hardware on walls or ceilings.
7. Installation or maintenance of ergonomic/occupational safety measures and aesthetic cable management.
8. Installation, configuration, or repair of electrical wiring, structured network or telephone cabling, heating and air conditioning systems, fire suppression systems, alarm systems, building construction work, or installation and repair of doors, gates, or fixed locks, or any other task requiring licensing by the CSLB.
9. Replacement of consumables such as batteries for accessories, paper, ink/toner cartridges, etc.

## **Section 6. Equipment**

### **A. Purchases from J.D. Fox Micro**

Client may purchase Equipment offered by J.D. Fox Micro and enjoy a streamlined and integrated experience of ordering, delivery, installation, configuration, and invoicing, as well as an express fitness-for-purpose and merchantability warranty from J.D. Fox Micro.

All Equipment provided by J.D. Fox Micro is new unless otherwise indicated. Where possible, J.D. Fox Micro obtains Equipment direct from manufacturers or their authorized top-tier distributors to assure it is not counterfeit, refurbished, or outdated.

### **B. Warranty and Returns on Purchases from J.D. Fox Micro**

#### **Warranty Terms**

With regard to Equipment purchased from J.D. Fox Micro, subject to the limitations and remedies set forth herein, J.D. Fox Micro warrants merchantability and fitness for purpose in fulfilling Client Requirements. This warranty is in addition to any manufacturer's warranty. This means the Equipment will:

1. Be what Client expected to get,
2. Be hardware- and software-compatible with the IT System,
3. Have the features necessary to meet Client Requirements and perform the functions of any Equipment the new Equipment was designated to replace, and
4. Not require burdensome changes to Client operations to implement.

This warranty expires upon the termination of the current Contract term. Any warranty may be extended into subsequent Contracts only to the extent such Equipment is explicitly specified as covered under warranty in any new Contract or Contract Extension.

### **Warranty Exclusions**

This warranty does not cover damage or malfunction caused by accident, misuse, mishandling, alteration, failure of Client to store Equipment in suitable physical or operating environments, nor acts of God (such as but not limited to floods, fires, and earthquakes); nor does the warranty cover ordinary depletion of consumables such as batteries, ink ribbons, paper, ink/toner cartridges, or magnetic storage media.

**J.D. FOX MICRO MAKES NO WARRANTY ON EQUIPMENT FOR THE QUALITY OR AVAILABILITY OF MANUFACTURER SUPPORT, FOR LONG-TERM RELIABILITY AND SCALABILITY, OR FOR FITNESS FOR PURPOSE BEYOND THE SCOPE AND TERM OF THIS CONTRACT.**

IN ADDITION TO THE ABOVE EXCLUSIONS, J.D. FOX MICRO DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED.

### **Remedies**

If Equipment covered under warranty from J.D. Fox Micro is found to be not merchantable, or not fit for purpose as defined above, then J.D. Fox Micro shall, at its option, provide new Equipment in exchange for the unfit Equipment, install additional Equipment, and/or reconfigure the IT System as necessary to address the issue to Client's satisfaction, at no additional charge.

Obligation to complete implementation of remedies shall survive expiration or termination of this Contract, but only to the extent the deficiency in question was apparent and notice was provided to J.D. Fox Micro during the Contract term. J.D. Fox Micro will have no obligation to remedy deficiencies not apparent and for which notice was not provided within the Contract term.

### **Client-Option Returns**

Client may request to return Equipment purchased from J.D. Fox Micro, irrespective of warranty. In general, returns will be accepted only for Equipment in condition for resale or return to the vendor, which may vary depending on the type of Equipment to be returned. Restocking fees charged by the distributor from which J.D. Fox Micro acquired the product, or other reasonable charges, may apply, and will be deducted from the refund credited. J.D. Fox Micro shall advise Client of the refund amount before the return is accepted.

## **C. Third-Party Equipment**

### **Definitions and Applicability**

Third-Party Equipment is Equipment acquired by Client from any provider other than J.D. Fox Micro (hereinafter referred to as a Third-Party Vendor). Client may elect to acquire Third-Party Equipment in lieu of purchasing from J.D. Fox Micro for any case where Equipment is required. J.D. Fox Micro may, as well, recommend purchase from a Third-Party Vendor for Equipment needed but not offered for sale by J.D. Fox Micro.

## Acquisition

J.D. Fox Micro will advise on apparent fitness-for-purpose prior to purchase of Third-Party Equipment based on information available from the Third-Party Vendor. However, J.D. Fox Micro assumes no responsibility for errors or omissions in specifications provided by any Third-Party Vendor, or for failure of Equipment delivered by a Third-Party Vendor to meet its stated specifications.

J.D. Fox Micro's support for Third Party Equipment prior to purchase is limited to advice on particular Equipment offered by one or more Third-Party Vendors. J.D. Fox Micro shall not be obligated to seek out retailers on behalf of Client, assess the integrity of any given Vendors, conduct comparison shopping, or find bargains or rebates. Client is ultimately responsible for finding and selecting a Vendor and assessing the value of any given offer.

Client shall make purchases from Third-Party Vendors directly. J.D. Fox Micro shall not act as an agent of Client for price/delivery negotiations, purchases, or returns. J.D. Fox Micro shall not make purchases on behalf of Client for reimbursement nor using Client's payment instrument (such as a credit card).

## Installation

Once the Third-Party Equipment is received by Client, J.D. Fox Micro will install the Third-Party Equipment into the IT System. However, if installation of Third-Party Equipment:

1. Requires more complex work than that regularly performed for Routine Maintenance,
2. Extends the IT System beyond the size or scope specified in the Contract Appendix, or
3. Involves implementation of Applications, Services, or technical capabilities beyond Client Requirements as covered by this Contract

then J.D. Fox Micro will develop a plan for approval by Client prior to installing the Third-Party Equipment, which may specify a flat or phased **service fee** for implementation, and/or a change to the Monthly Service Fee for the remainder of the Contract term due to a change in composition of the IT System.

In addition, if any aspect or function of the Third-Party Equipment proves not compatible with the IT System, or the Equipment is faulty or missing necessary features or functionality, and J.D. Fox Micro is unable to resolve these problems without additional Equipment or more complex work than that regularly implemented for Routine Maintenance, J.D. Fox Micro will develop recommendations and/or a plan for approval by Client to address these problems, which may also specify a **service fee** for implementation.

The plans described above will include, where appropriate, recommended additional Equipment for purchase (with pricing if offered for sale by J.D. Fox Micro), a plan for functional data collection and analysis, lab testing, pilot rollouts or staged deployment (including a back-out plan), scheduled downtime, coordination with relevant third-party service providers, deployment procedures, and the envisioned end state.

## Returns

Should Client wish to return Equipment purchased from a Third-Party Vendor, Client is responsible for initiating and managing the return, to include packaging and shipping the Equipment, and obtaining any refund due.

## Section 7. Billing

Monthly Service Fees under this Contract shall be invoiced and due as specified in the Contract Appendix. Other invoices, such as for Equipment purchases and Service Fees, shall be issued and payable as specified in negotiations prior to ordering the Equipment or implementing the services that incur fees, or upon delivery or completion of work if not specified.

J.D. Fox Micro shall have the right to pursue lawful and reasonable collection actions on past-due invoices, and Client shall reimburse J.D. Fox Micro, to the extent allowed by law, for direct collection costs reasonably incurred. The terms specified in this paragraph and the related portions of the Contract Appendix shall survive expiration or termination of this Contract.

## Section 8. Contract Renewal

This Contract shall **not** automatically renew. Any extension or renewal of this Contract shall be in writing signed by both Client and J.D. Fox Micro.

## Section 9. Early Termination

This Contract may be terminated early in the following circumstances. In all cases, Client shall remain liable for any outstanding charges incurred, irrespective of how Monthly Service Fees are adjusted.

**Client Option.** Client may terminate this Contract early for any reason by providing written notice to J.D. Fox Micro specifying the effective date, which shall not be earlier than the date notice is received. Client will remain liable for all Monthly Service Fees through the effective date of termination, plus an early termination fee of 20% of the remaining Monthly Service Fees that would have been billed.

**J.D. Fox Micro Option.** J.D. Fox Micro may terminate this Contract early for any reason by providing written notice to Client specifying the effective date, which shall not be earlier than the date notice is received. J.D. Fox Micro will credit to Client:

- a. An amount equal to the Monthly Service Fee, and
- b. A Warranty Settlement, consisting of 5% of the price of Equipment purchased from J.D. Fox Micro and still under warranty under this Contract, divided by the total number of months the relevant Equipment would have been under warranty if the Contract had not terminated early, and multiplied by the number of months remaining.

**Client Non-Compliance.** If Client does not comply with its obligations under this Contract, J.D. Fox Micro shall make reasonable efforts to help resolve the situation. If the problems are not resolved within a reasonable amount of time, J.D. Fox Micro may terminate the Contract upon written notice to Client. Such termination will be considered to have been effectuated by Client. Client will remain liable for all Monthly Service Fees through the effective date of termination, plus an early termination fee of 20% of the remaining Monthly Service Fees that would have been billed.

**Non-Payment by Client.** If invoices become past-due by ten or more calendar days, J.D. Fox Micro may terminate this Contract upon written notice to Client. Such termination will be considered to have been effectuated by Client. Client will remain liable for all Monthly Service Fees through the effective

date of termination, plus an early termination fee of 20% of the remaining Monthly Service Fees that would have been billed.

**Non-Performance by J.D. Fox Micro.** If Client believes J.D. Fox Micro is not fulfilling its obligations under this Contract, Client will notify J.D. Fox Micro in writing of the specific reasons for such belief. J.D. Fox Micro shall coordinate with Client and promptly issue a written plan to address the Client's concerns, and a timeline for implementation. If Client is not reasonably satisfied with the remedy, Client may terminate this Contract early by providing written notice to J.D. Fox Micro specifying the effective date, which shall not be earlier than the date notice is received, and providing the reasons Client is not satisfied with the remedy. Client will remain liable only for the Monthly Service Fees through the effective date of termination.

## **Section 10. Additional Terms**

### **Third-Party Service Providers**

As part of the services provided under this Contract, J.D. Fox Micro may make referrals to or recommendations regarding third-party service providers. Unless otherwise specified in a separate contract between Client and J.D. Fox Micro, any and all third-party service providers with which Client engages are independent from J.D. Fox Micro. J.D. Fox Micro's obligation with regard to performance of these third-party service providers is strictly limited to the scope of work defined in this or any separate applicable written contract between Client and J.D. Fox Micro. J.D. Fox Micro makes no warranty or guarantee, and disclaims all responsibility, with regard to any aspect of any contract between Client and any third-party service provider.

### **Employment Solicitation**

Client acknowledges the significant investment required by J.D. Fox Micro to secure and train qualified engineers to execute its obligations under this Contract. Client also acknowledges the overall long-term investments required by J.D. Fox Micro in technical training and experience to earn and keep service contracts with its clients, for which it needs its employees to faithfully execute. Client further acknowledges the severe financial impact J.D. Fox Micro would suffer if Client were to hire or contract separately with any employee or agent of J.D. Fox Micro to supplant this Contract or work derived under it. Client therefore agrees not to solicit for employment, hire, or contract with any employee or agent of J.D. Fox Micro, where such solicitation is intended to supplant business with J.D. Fox Micro, for a period of 180 days following the last day work is performed by that employee or agent under this Contract, without the prior written permission of J.D. Fox Micro. The provisions of this paragraph shall survive the termination of this Contract. Breach of this covenant shall be construed as a material breach subject to payment of monetary damages by Client to J.D. Fox Micro.

### **Legal Compliance**

Client acknowledges its responsibility to seek legal advice to assure compliance with all legal requirements directly or indirectly related to its operation. J.D. Fox Micro shall not be liable for Client's nonconformance with any applicable codes, regulations, or laws, including but not limited to commercial, electrical, building, safety, health, employment discrimination, intellectual property, or data security, even if the IT System configuration or operation is a factor in the violation. Client shall indemnify, hold harmless, and defend J.D. Fox Micro against any and all claims by any person, or public or private entity, alleging liability of J.D. Fox Micro with respect to or related to the services provided pursuant to this Contract.

## **Confidentiality**

In connection with this Contract, J.D. Fox Micro may have access to or possession of proprietary information of Client, such as trade secrets, contact lists, and accounting information. J.D. Fox Micro understands that all such information is and shall remain the property of Client, and, except for information already conspicuously available to the public, is of a confidential nature. J.D. Fox Micro shall not disclose such information to any other party, nor utilize such information for the benefit of itself or any other party, except specifically for the purpose of performing services under this Contract. The covenant in this paragraph shall survive the expiration of this Contract in perpetuity.

## **Limitation of Liability**

**Service Levels.** The maximum liability of J.D. Fox Micro under this Contract shall be provision of services, Equipment, and credits as explicitly called for in this Contract. Under no circumstances will J.D. Fox Micro be liable to provide services beyond the scope of this Contract, nor be liable in any manner for any direct, special, incidental, or consequential damages resulting from any legal theory, including but not limited to strict liability, regulatory or statutory liability, loss of use, lost profits/revenue, loss of anticipated savings, loss of goodwill, cost of repair or recovery for damage to other equipment and property, or third-party claims for damages, arising from the use of, inability to use, or malfunction of the IT System, or for any lost or corrupted data stored or processed with the IT System, or from Client or its agents following or attempting to follow advice given by J.D. Fox Micro.

**J.D. Fox Micro Equipment Warranty.** The maximum liability of J.D. Fox Micro for all warranties, express or implied, shall be the refund of Client's purchase price of the warranted Equipment purchased from J.D. Fox Micro in exchange for said Equipment, plus provision of professional services or other credits in the manner described in this Section. Under no circumstances will J.D. Fox Micro be liable to provide services beyond the scope of this Contract, nor shall J.D. Fox Micro be liable in any manner for any direct, special, incidental, consequential, or other damages pursuant to any legal theory, including but not limited to strict liability, regulatory or statutory liability, loss of use, lost profits/revenue, loss of anticipated savings, loss of goodwill, damage to other equipment and property, third-party claims for damages, or costs of recovering, reprogramming, or reproducing any program or data stored in or used with warranted Equipment, even if J.D. Fox Micro has been advised of the possibility of such damages.

**Force Majeure.** Neither Client nor J.D. Fox Micro shall be liable for any failure to perform under this Contract where such failure results from forces beyond reasonable control, such as but not limited to acts of God (such as fire, flood, earthquake, storm, or other natural disaster), acts of war, civil unrest, terrorist activities, nationalization, government sanction or embargo, labor disputes, accidents, or other unavailability of equipment and services from third-party providers (including but not limited to vendors, distributors, resellers, shipping contractors, electricity providers, public voice or data network service providers, application service providers, etc.). Upon the occurrence of any such event and to the extent such occurrences interfere with the performance by Client or J.D. Fox Micro of its obligations under this Contract, upon notice to the other party, this Contract shall be suspended without extension, provided each party uses reasonable efforts to work around or remove such causes of nonperformance.

**Software Licensing.** Consulting services regarding software licensing are limited to providing guidance and technical assistance with compliance. Client is ultimately responsible for assuring that all software used on Client's equipment is properly licensed. Under no circumstances will J.D. Fox Micro be held responsible for damages which may be levied against Client or any other party if the copyright-holder and/or licensor of any software product or other intellectual property determines that Client has violated copyright law by unlicensed or under-licensed use of said software, even if 1) the software was installed or configured by J.D. Fox Micro and/or provided as part of this Contract, and/or 2) Client believes J.D. Fox Micro failed to inform Client that the software or Client's intended use of it is or was unlicensed or under-licensed.

### **Miscellaneous Provisions**

- a. This Contract, as may be amended, constitutes the entire understanding between the parties, and supersedes any and all prior oral and written representations, communications, and understandings between the parties with respect to this Contract. The parties agree that neither Client nor J.D. Fox Micro is entering into this Contract on the basis of any representations or promises not expressly contained herein or in the Contract Appendix.
- b. No failure to strictly enforce any provision of this Contract shall be construed as a waiver of that provision or a change in terms, and any such provisions so waived shall remain enforceable and in effect.
- c. If any portion of this Contract is found void or unenforceable, the remainder will remain valid and enforceable according to its terms.
- d. Client represents that it is the owner of all equipment covered under this Contract, or that it has the owner's authorization for J.D. Fox Micro to perform services under this Contract.
- e. Client represents and warrants that it has full power to enter into this Contract and that it has not assigned, encumbered, or in any manner transferred all or any portion of this Contract.
- f. Neither party may assign to another entity any interest, right, or obligation it has in this Contract without the prior written consent of the other party, which consent shall not unreasonably be withheld.
- g. If Client is a corporation, this Contract shall remain in force despite merger or consolidation of the corporation into or with any other entity.
- h. J.D. Fox Micro and Client are independent contractors, and each will not be considered an agent, partner, or employee of the other.
- i. This Contract shall be construed and governed under the laws of the State of California. Venue for any action arising out of this Contract shall be the Superior Court of California, County of Los Angeles.
- j. J.D. Fox Micro makes no representation as to exclusivity of this Contract, and reserves the right to effect similar contracts with other clients so long as obligations incurred by J.D. Fox Micro from these other contracts do not interfere with the ability of J.D. Fox Micro to faithfully execute its responsibilities under this Contract.
- k. Both Client and J.D. Fox Micro will comply with all requirements, negotiate on offers, and make assessments as called for in this Contract, in good faith.
- l. Written notices required under this Contract shall be transmitted as specified in the Contract Appendix. If valid written notice is refused by either party, that communication will be deemed to have been received for purposes of meeting requirements for written notification.
- m. Under no circumstances will J.D. Fox Micro provide or assist Client in obtaining unlicensed, counterfeit, pirated, or illegal software.

**Copyright**

This document, all electronic and physical copies, and the intellectual property contained herein are the property of J.D. Fox Micro and are protected by copyright. Client may make, use, and keep copies of this Contract only for legitimate administration of business related to this Contract. J.D. Fox Micro reserves all other rights under the laws of the United States and applicable international law. Any other use of this Contract or the intellectual property contained herein, such as sharing with third parties, without express written permission of J.D. Fox Micro, is a violation of copyright law, which would subject the violator(s) to damages recoverable by J.D. Fox Micro.

**for Client:**

**for J.D. Fox Micro:**

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Sign

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Sign

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Print Name

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