



# 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

This section defines special vocabulary used throughout this document. Some words/phrases appearing only in a specific section of this document are defined in that section.

### IT System Components

- a. **Equipment** refers to any type of computer server, computer workstation, laptop or handheld computing device, computer peripheral, network/communications device, telephone system, and related electronic devices and accessories, as well as software including all programs for user applications, data processing, system and data management, device operations, and communications as installed on any hardware and/or as stored on distribution media, as well as the distribution media itself, documentation, and licenses.
- b. **IT System** refers collectively to all Equipment and functions managed under this Contract, the composition and boundaries of which are defined in the Contract Appendix.
- c. **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 and data-sharing between the public and the IT System.
- d. **User** refers to both internal members/employees of Client’s organization, as well as any external users (such as customers or agents of partner organizations) that access data or services on the IT System.

### Operations

- a. **Service Levels** specify functional degradation from optimal performance allowed against time and other factors, where applicable.
- b. **Optimal Operation** is the state where the IT System is operating with no functional degradation as defined in the Service Levels Chart.
- c. **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.
- d. **Fault Countermeasures** are simple actions (taken automatically or manually) that allow the IT System to maintain Optimal Operation before a given Fault or class of Faults has been fixed.
- e. **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.
- f. **Workaround** means to remove or acceptably reduce the impact of a Fault for which a direct diagnosis and/or fix 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:

- a. **Client Requirements**, which cover all operational and technical requirements to be met by this Contract, including a chart of required **Service Levels**.
- b. **Administrative Parameters**, which specify managerial roles and responsibilities, a communications plan, Equipment Price Thresholds (see "Equipment" on page 7), and Enduring Equipment Standards (see page 10).
- 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. **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. 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 media (compact discs, etc.) and installation 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.

11. Notify J.D. Fox Micro before Client or any third party performs a modification to the IT System, to include adding, removing, reconfiguring, or relocating Equipment, and installing, upgrading, or modifying the configuration of software.
12. Notify J.D. Fox Micro if any individual filling a role specified in the Contract is no longer in that role, and/or if Client desires to assign an individual to a new role, or if any contact information has changed.

## 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 Management

#### System and Equipment

1. Maintenance\* of the physical components of the IT System, including hubs, switches, routers, firewalls, patch panels, servers, workstations, printers, scanners, communications devices, and other Equipment, as specified in the Appendix. Equipment will be maintained in a manner that balances functionality, manageability, flexibility, and a professional and tidy appearance.
2. Maintenance of the logical infrastructure of the IT System, including networking protocols, resource sharing services, directory services, wireless networking, virtual networks, remote access, multi-site connectivity, and equivalent systems.
3. Assessment and monitoring of environmental conditions (such as dirt, heat, moisture, electrical power), as it affects operation of the IT System.
4. Coordination, as technical liaison, with third-party providers of services that support the IT System, such as Internet access, outsourced application services, public telephone service, electricity, construction, air-conditioning, security systems, fire control systems, etc., to ensure congruence between their concept of operations and the IT System as managed by J.D. Fox Micro.
5. Coordination with Client's facilities manager(s) and/or Users for ergonomic/occupational safety measures and aesthetic cable management, to ensure implementation does not interfere with IT System operations.
6. Regular assessment of Client Requirements and Enduring Equipment Standards.
7. Documentation of IT System structure, parameters, and routine procedures.
8. Logging of changes, faults detected and the results of resolution efforts, security breaches and the results of the response, and significant administrative and operational decisions.

#### Security

1. Implementation and maintenance of technical security controls and auditing/monitoring procedures as specified in Client Requirements and/or the Security Plan.
2. Response to security incidents in accordance with the Security Plan.
3. Advice on technical aspects of current and planned Client business policies and operational plans related to information systems security.
4. Regular assessment of the Security Plan from a technical standpoint in light of changes to the IT System, changes in Client operations and policy, updates to Client's risk management analyses, and evolving industry best practices.

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\* For the purpose of this section, **maintenance** means any or all of the following where applicable:

- a. Monitoring and assessing technical performance, including measuring transfer speed, storage capacity, processing speed, resource allocation, hardware condition, user experience satisfaction, etc., and producing and archiving baseline, routine, and special performance log files to reduce troubleshooting time in case of service degradation, and to maximize continuity of service and potential for recovery in case of Fault.
- b. Performing manual adjustments or system data cleanup as necessary to maximize continuity of service.
- c. As appropriate, installing manufacturer-supplied updates to software to fix performance problems and/or minimize security risks.
- d. Regularly testing contingency and recovery plans.

### **Continuity**

1. Regular assessment of the Fault Management Plan.
2. Maintenance of redundancy configurations and automated data duplication systems.
3. Regular testing of automatic and manual Fault Countermeasures.
4. Monitoring of the IT System for existing and pending Faults.
5. Manual implementation of Fault Countermeasures as necessary.

### **Services and Applications**

1. System-level maintenance of services and applications, such as proper functioning in general, proper use of resources, interoperability with users and other functions of the IT System, and application of routine updates or configuration changes to improve performance and/or security.
2. Implementation of version upgrades to system software and user applications as reasonably necessary to support Client Requirements in light of changing technological standards, or as required by the software vendor for continued use or support.
3. 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.
4. Management of user accounts and account access.
5. Maintenance of user account quotas and user profile data.
6. Maintenance of mobile and remote-access systems for user access to data, messaging, and/or system applications.
7. Administration of Client-specified classification systems for organizational data
8. Maintenance of logical and physical data storage structures.
9. Monitoring, updating, and correcting the Public Internetwork Profile as necessary.
10. Regular assessment of the User Support Plan and its implementation.

## **B. Fault Detection and Response**

### **Detection**

Fault Detection comprises either:

1. Detection by J.D. Fox Micro through regular maintenance and support activities; or
2. Reporting by Client, in accordance with procedures specified in the Fault Management Plan.

### **Response**

J.D. Fox Micro will perform services to restore functions 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, performed in accordance with procedures specified in the Fault Management Plan.

If Equipment must be acquired for diagnostic purposes, its acquisition will be handled the same as for replacement Equipment (see "Equipment" below).

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

In cases where repeated Faults may best be resolved with an IT System Upgrade, J.D. Fox Micro may commence IT System Upgrade management services (see Subsection C, below).

## **New Equipment**

J.D. Fox Micro will only recommend new Equipment to address a Fault when there is no *acceptable* Repair or Workaround to address the issue without it. In this section, *acceptable* means that: 1) the best plan for Repair or Workaround is reasonably expected to fix the problem, and 2) the value of expected remaining work required to implement the best plan for Repair or Workaround (based on local market value of relevant professional services and level of expertise required) will not exceed the cost of new Equipment that would fix the problem, plus the value of work required for installation, integration, and testing of the new Equipment.

In such cases where new Equipment is required, J.D. Fox Micro will make its best effort to identify the most optimal new Equipment, and to obtain fulfillment of any relevant third-party or manufacturer warranty, in order to maximize value to Client.

If new Equipment is required and available to address a given Fault at a price less than the Equipment Price Thresholds specified in the Contract Appendix, J.D. Fox Micro will supply the Equipment to Client without delay.

If new Equipment is required at a price above the specified threshold, J.D. Fox Micro will provide a report to Client detailing:

1. What Fault requires new Equipment to resolve.
2. Why no Repair or Workaround can acceptably address the issue.
3. The price for the new Equipment recommended to address the issue optimally.
4. Other options besides purchase of new Equipment.

In cases where new Equipment is not available that provides the same functions as the Equipment that has failed or malfunctioned and an IT System Upgrade is required, or in any case when implementing an IT System Upgrade might be a better investment than replacing Equipment with its equivalent, J.D. Fox Micro will present a Work Plan to implement the recommended IT System Upgrade.

If Client neither acquires new Equipment recommended by J.D. Fox Micro nor approves a reasonable Work Plan to address a Fault, J.D. Fox Micro may, at 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 IT System Upgrades to alleviate, where feasible, the impact on Client's overall operations.

## **C. IT System Upgrades**

An IT System Upgrade involves any of the following:

1. Redesign of the logical and/or physical IT System infrastructure.
2. Installation/deployment of new Equipment, services, or software.
3. Reconfiguration of existing Equipment, services, or applications to provide new features or functions.
4. Migration and/or disconnection of superseded or disused Equipment, services, or applications.

J.D. Fox Micro will develop a Work Plan to implement an IT System Upgrade for any of the following situations:

1. In response to organizational events such as mergers, moves, branch office extension or closure, personnel increase or decrease, unanticipated growth in utilization of the IT System, or other events or circumstances that change Client Requirements.
2. To implement changes in Client's policies, standards, guidelines, or baselines relevant to the IT System.
3. After cursory cost-benefit analysis, which J.D. Fox Micro will conduct regularly, of potential IT System Upgrades that would better align client's practices and requirements to current technology.
4. Upon request by a Client to analyze an idea of Client or proposal from a third-party service provider.
5. To address repeated Faults due to aging Equipment or unknown reasons, which can be better managed or resolved by an IT System Upgrade than by repeated Fault resolution.

6. When new Equipment is required to address a Fault, but new Equipment is not available that provides the same functions as the Equipment that has failed or malfunctioned, or in any case when implementing an IT System Upgrade might be a better investment to resolve a Fault than replacing Equipment with its equivalent.

The Work Plan will include, where appropriate, a plan for data collection and analysis, lab testing, pilot rollouts or staged deployment (including a back-out plan), scheduled down-time, realignment of this Contract with the altered IT System, coordination with relevant third-party service providers, and the envisioned outcome. The Plan may include multiple Equipment and/or rollout options for Client to choose from.

J.D. Fox Micro will offer the IT System Upgrade for a flat or phased Service Fee, and will quote any new Monthly Service Fee for incorporating the altered IT System into this Contract.

Unexpected changes in Client Requirements requiring an urgent IT System Upgrade will be handled as expeditiously as possible; however, J.D. Fox Micro cannot guarantee timelines for Upgrades until the new Client Requirements are fully developed and a tentative Work Plan is complete. Client shall inform J.D. Fox Micro of any anticipated changes in Client Requirements that could potentially require urgent IT System Upgrade work as soon as known, so contingency plans can be put in place to maximize the chance that Client timelines are met.

Any Work Plan offered shall be considered a separate contract from this IT System Management Contract. Expiration of this IT System Management Contract will not alter or interrupt any Work Plans in progress.

## **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.

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 establishment of 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. General

The goal of J.D. Fox Micro in selecting and supplying Equipment to Client is to **guarantee** it will meet Client Requirements throughout the term of this Contract, and for the selection and acquisition process to be **as efficient as possible** to avoid unnecessary costs and delays. The terms in this Section enable Client to leverage the experience and resources of J.D. Fox Micro to meet this goal, even given the high volatility of the IT market where Equipment availability and specifications change rapidly.

Client may purchase Equipment as needed from J.D. Fox Micro and enjoy the benefits of the express fitness-for-purpose and merchantability warranty. Client may also acquire Equipment from any Third-Party Vendor during the term of this Contract, subject to additional terms (see Subsection C, below).

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 or some other type of illegal copy.

## **B. Equipment Warranty and Returns**

### **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 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.

This warranty expires upon the termination of this Contract. Any warranty may be extended into subsequent Contract only to the extent such Equipment is explicitly specified as covered under warranty in the Appendix of any such subsequent Contract(s).

### **Warranty Exclusions**

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.

THIS WARRANTY DOES NOT APPLY TO OPTIONAL ACCESSORIES (DEFINED BELOW).

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 unfit for its purpose as defined above, then J.D. Fox Micro shall, at its option, provide new Equipment in exchange for the unfit Equipment, and/or install additional Equipment, and/or reconfigure the IT System as necessary to address the issue, at no additional charge.

Obligation to complete implementation of remedies shall survive expiration or termination of this Contract, but only to the extent that 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.

If, before implementation of the remedy selected by J.D. Fox Micro is complete, Client requests an alternate resolution, then, if this Contract is still in effect, J.D. Fox Micro will suspend implementation of its selected remedy (if necessary) and promptly commence IT System Upgrade planning to analyze Client's proposal and present a Work Plan for Client approval, which may involve additional Service Fees. If Client does not approve the Work Plan, J.D. Fox Micro will complete the implementation of the original remedy.

### **Limitation of Liability**

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 it 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.

### **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**

### **General**

Client may elect to acquire Equipment from any manufacturer, distributor, reseller, retailer, broker, or other type of provider of Equipment other than J.D. Fox Micro (hereinafter referred to as a Third-Party Vendor), for any reason, including:

1. To replace failed Equipment during Fault Response being managed by J.D. Fox Micro.
2. During planning or implementation of an IT System Upgrade by J.D. Fox Micro.

If Client wishes to acquire Equipment from a Third-Party Vendor, the acquisition or purchase must be made by Client directly from the Third-Party Vendor. J.D. Fox Micro shall not be obligated to acquire Equipment from a given Third-Party Vendor on behalf of Client.

### **Third-Party Equipment Analysis**

If Client elects to introduce Third-Party Equipment into the IT System, then J.D. Fox Micro may require Third-Party Equipment Analysis. This involves researching and analyzing technical capabilities, features, and manufacturer/reseller warranty and technical support of the Third-Party Equipment, in relation to the IT System and this Contract, as well as analyzing plans by any third-party service providers that will perform work integrating the Third-Party Equipment into the IT System, to determine:

1. If there are any relevant Client Requirements that cannot be met by the Third-Party Equipment.
2. Any impact by the Third-Party Equipment on the ability of J.D. Fox Micro to efficiently manage the IT System to maintain Optimal Operation.
3. Impact on any Work Plans in progress or in development (for an IT System Upgrade, for example).
4. Whether integration of the Third-Party Equipment into the IT System will require significant work on the part of J.D. Fox Micro, necessitating development of a Work Plan (which may include Service Fees).

To the extent possible, J.D. Fox Micro will perform Third-Party Equipment Analysis **at no charge**. However, depending on the nature of the Equipment, or the complexity of the points of research and issues to consider, J.D. Fox Micro may require a separate **Service Fee**, to be specified in advance. In addition, J.D. Fox Micro may require that Client obtain and provide a prototype/sample of the Third-Party Equipment for use in the Analysis process, as reasonable and necessary.

Once Analysis is complete, J.D. Fox Micro will provide recommendations for addressing any potential problems, which may include modification of Client Requirements, introduction of a new Work Plan, and/or changes to Work Plans in progress or in development, any of which may involve new Service Fees and/or modification of the Monthly Service Fee. J.D. Fox Micro will also recommend assignment of roles and responsibilities for obtaining warranty support and managing returns/exchanges with the Third-Party Vendor, if necessary.

In cases where introduction of Third-Party Equipment will significantly reduce the complexity of managing the IT System, J.D. Fox Micro will offer an appropriate reduction in the Monthly Service Fee for this Contract.

If Third-Party Equipment Analysis is not completed for any reason, or if Client does not implement recommendations by J.D. Fox Micro to address identified problems related to the Third-Party Equipment, J.D. Fox Micro will make a reasonable effort to integrate Client's Third-Party Equipment into the IT System and to address issues as they arise. However, any Client Requirements that cannot be reasonably met will not be met, and any impact on Work Plans in progress or in development will be handled as a Client-initiated change or cancellation according to the terms of this Contract and/or the Work Plan. In addition, J.D. Fox Micro will not perform significant work to install and/or integrate the Third-Party Equipment into the IT System until Third-Party Equipment Analysis is completed.

## **D. Equipment Specifications and Options**

### **Enduring Equipment Standards**

Client may optionally specify Enduring Equipment Standards, which are pre-defined specifications for various items of Equipment (such as speed and storage capacities of computers, required options, etc.) that apply to all Equipment acquisitions. Having these allows efficient extension of the IT System with New Equipment when needed, and streamlines the process of developing Work Plans that meet Client's administrative and operational requirements. J.D. Fox Micro will routinely review these Standards and recommend appropriate modifications given any changes to Client Requirements and the state of the IT market.

### **Personalized Equipment Standards**

Personalized Equipment Standards are any specifications unrelated to the ability of given Equipment to meet Client Requirements. These include options such as brand/model, color, aesthetic style, size, shape, weight, and noise output.

Due to the range of such options available and the complexity of communicating about, measuring, and matching these options to personal tastes, if Client desires to specify Personalized Equipment Standards during planning or phased implementation of a Work Plan or during Fault Response, J.D. Fox Micro may require additional Service Fees, to be specified in advance, for researching these features, and providing prototypes for Client's approval. Client acknowledges that requiring Personalized Standards can cause significant delays in delivery.

If Client desires to specify Personalized Equipment Standards to apply to all new Equipment acquisitions, Service Fees for research of personalized features may still apply for each occurrence of Equipment acquisition, due to the rapid changes in the IT market.

### **Optional Accessories**

Optional Accessories are defined as common, relatively low-cost peripheral items related to a given piece of Equipment, which are generally available on the consumer retail market in a wide range of brands and styles, intended to enhance the user experience with the related Equipment, but which do not actually affect the ability of the related Equipment to meet designated Client Requirements. Examples include laptop computer cases, keyboards and mice, spare laptop batteries, speakers, microphones, headsets, connector cables, mounting stands, surge protectors, cleaning equipment, and consumable supplies (such as blank recording media, paper, toner cartridges, ink cartridges).

As part of a Work Plan or during Fault Response, J.D. Fox Micro may offer recommended Optional Accessories for convenient purchase to enhance and improve the end-user's experience with new Equipment offered. Any such items will be clearly designated as Optional Accessories in any order form presented to Client. Optional Accessories are provided with NO WARRANTY ON MERCHANTABILITY OR FITNESS-FOR-PURPOSE, but they do fall under the Client-Option Return policy set forth in this Contract.

## 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

### Definitions

**Early Termination of this Contract** (and similar terminology) in this section shall refer to ending the monthly regular service, incurring of future fees for such service, warranties offered by J.D. Fox Micro, and other performance and obligations that would ordinarily expire at the specified end-date of the Contract, but does not necessarily include termination of any performance or obligations which would otherwise survive the ordinary expiration of this Contract.

**Early Termination Fee** is twice the Monthly Service Fee where more than six months of the Contract term remains as of the effective date of termination, and equal to the Monthly Service Fee when less than six months remain.

**Early Termination Refund** is one-half of the Monthly Service Fee, not to exceed the total amount due for Monthly Service Fees through the effective date of termination.

**Warranty Settlement** is 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.

### Early Termination Procedure

This Contract may be terminated early in the following circumstances. In all cases, Client shall remain liable for any outstanding charges incurred for Equipment or fees, irrespective of how Monthly Service Fees are adjusted or how the Early Termination Fee or Refund is applied in the circumstances listed below. For required written notices referenced below, the effective date shall not be earlier than the effective date of written notifications as specified in the Contract Appendix.

**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 the Early Termination Fee.

**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 the Early Termination Refund and the Warranty Settlement.

**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 the Early Termination Fee.

**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 the Early Termination Fee.

**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 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 and providing the reasons Client is not satisfied with the remedy. Client will remain liable for all Monthly Service Fees through the effective date of termination, but shall not be charged the Early Termination Fee.

## **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 assist in executing 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 Plans 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. J.D. Fox Micro agrees only to use or store Client's proprietary information as absolutely necessary for performing its duties under this Contract, and will keep Client's information and material in a secure manner, under access restrictions designed to prevent disclosure or copying to unauthorized persons and in a manner no less strict than employed by J.D. Fox Micro to protect its own proprietary information. Upon expiration of this Contract, J.D. Fox Micro will destroy any copies of Client's proprietary information. 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.

**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, and/or providing tools with which to control software use in order to assure 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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