



IT System and Cloud Management Contract

Client: _____

Initial Term: _____

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Section 1. Applicability

This IT System and Cloud Management Contract (hereinafter referred to as the “**Contract**”) sets forth the terms by which J.D. Fox Micro shall provide professional 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.

Section 2. Definitions

- a. **Equipment** – Any type of computer server, server cluster, datacenter infrastructure, data storage device, workstation, mobile computing device, printer, scanner, network/communications device, telephone system, and related electronic devices, peripherals, and accessories, including installed software.
- b. **User** – A natural person who accesses Applications and Data on the IT System or Cloud Services, including members of Client’s organization, consumers, and business partners.
- c. **Applications** – Computer programs which Users interact with to perform functions, access services, access and manipulate Client Data, and/or communicate, in order to conduct the business of Client.
- d. **Data** – Information stored electronically, comprised of documents, photographs, audio/video files, drawings, spreadsheets, structured databases, messages, and other files or records, which is owned by Client or under control of Client on behalf of customers or partners.
- e. **Infrastructure Services** – Services provided by servers, network devices, and storage devices that enable management functions, wired and wireless communications, data storage, access control, monitoring, and other support for Applications and Data.
- f. **IT System** – Equipment owned or controlled by Client, and the Applications, Data, and Infrastructure Services that are stored or operating on the Equipment.
- g. **Cloud Services** – Applications, Infrastructure Services, and Data hosted on third-party Equipment. This includes services which members of Client’s organization consume, and systems that serve as a platform on which Client provides services to customers or partners.
- h. **Service Levels** specify functional degradation from optimal performance allowed against time and other factors, where applicable.
- i. **Fault** is any hardware or software malfunction or failure, technician error, user error, malicious act, or external event that disrupts or threatens proper function of the IT System or Cloud Services.
- j. **Fault Countermeasures** are simple actions (taken automatically or manually) that allow the IT System or Cloud Services to maintain Service Levels before a given Fault or class of Faults has been fixed.
- k. **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, and restoring or rebuilding configuration or user data.
- l. **Workaround** means to remove or acceptably reduce the impact of a Fault for which a Repair cannot be implemented because the Fault is within Equipment or software outside the control of Client, the cause cannot be determined, or there is 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 may include the following sections, as necessary and appropriate:

- a. **Scope of Coverage**, which describes the composition of the IT System and Cloud Services to be covered under this Contract.
- b. **Client Requirements**, specifying operational and/or technical requirements to be covered by this Contract. It may also include 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 routine requests performing User management and configuration tasks and answering User questions, 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 specifies, 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 of 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 and Cloud Services, as well as developing Client's Information Security Program, Disaster Recovery Plan, and Business Continuity Plan.
- 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, to be used by J.D. Fox Micro to assist in planning storage locations; strategies for backup, mirroring, and/or replication; and security procedures.

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 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 temperature control, ventilation, dust control, moisture control, electrical wiring, and electrical input voltages and amperages.
4. Provide administrative user names, passwords, and 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 employees and agents of Client, and anyone who has access to or otherwise uses the IT System and Cloud Services, complies with reasonable recommendations and requests made by J.D. Fox Micro regarding efficient and secure management and utilization.
7. Prevent 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 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 a third party performs modifications to the IT System, to include adding, removing, reconfiguring, or relocating Equipment; installing, upgrading, or modifying the configuration of Applications or Infrastructure Services; or changing the location or management configuration of Data.

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 for the IT System and Cloud Services.
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 managers or property owners on issues that may affect the IT System.
4. Coordination with custom applications developers, database designers, and web site designers and content authors to ensure congruence between their concept of operations and the IT System and Cloud Services as managed by J.D. Fox Micro.

Equipment Owned or Controlled by Client

1. Periodic assessment of technical performance to maintain user experience satisfaction.
2. Configuration adjustments of Equipment as necessary to maximize continuity of service and minimize or prevent Faults.
3. Periodic cleaning of hardware.
4. Assessment of environmental conditions (such as dust, heat, moisture, electrical power) as it affects operation of the IT System.
5. Installation, configuration, and integration of replacement Equipment and operating system software as reasonably necessary to (a) continue to support Client Requirements, as specified in this Contract, in light of changing technological standards and conventions, or (b) meet minimum requirements to access vendor support resources required by Client to meet Client Requirements. The purchase price of Equipment or software licenses is not covered by the Monthly Service Fee.

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 security for the IT System and Cloud Services.

Continuity

1. Monitoring and maintenance of high availability configurations and data backup, mirroring, and replication systems.
2. Periodic examination of the IT System and Cloud Services for existing unreported and/or pending Faults.
3. Periodic evaluation of the ability of the IT System and Cloud Services 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 for Client's use in performing risk management, and developing a business continuity plan and/or disaster recovery plan.

Applications and Data

1. Implementation of version upgrades to software installed on the IT System that is reasonably necessary to (a) continue to support Client Requirements, as specified in this Contract, in light of changing technological standards and conventions, or (b) meet minimum requirements to access vendor support resources required by Client to meet Client Requirements. The purchase price of software licenses is not covered by the Monthly Service Fee.
2. Reconfiguration of Applications and Infrastructure Services as necessary to maximize continuity of service and prevent Faults.
3. Monitoring and configuration of Applications and Infrastructure Services to maximize performance and user satisfaction.
4. Management and configuration of User login and messaging accounts for the IT System and Cloud Services.
5. Administration of Client-specified classification systems for organizational data.

6. Maintenance of logical and physical Data storage systems and structures, to include reconfiguration as necessary to maintain proper operation.
7. 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 or Cloud Services of Client that are consumed by Client's customers or partners.

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

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.

New Equipment

The purchase price of Equipment or components 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, 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 changes to alleviate, where feasible, the impact on Client's overall operations.

C. Modifications

Modifications involve any of the following:

1. Addition of new Equipment, Applications, or Infrastructure Services to extend the IT System or support additional Users.
2. Reconfiguration of existing Equipment, Applications, or Infrastructure Services to provide new features or functions.
3. Moving or converting Data or Applications between logical or physical storage or computing systems.
4. A change to the logical and/or physical design of the IT System or Cloud Services infrastructure, including relocation of Equipment.
5. Migration and/or disconnection of superseded or disused Equipment.

J.D. Fox Micro will develop a plan for 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 or Cloud Services utilization.
3. To address repeating Faults which can be better managed by a Modification than by Repair or Workaround.
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 or Cloud Services.

Expert, professional, and thorough initial planning by J.D. Fox Micro for all 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 necessary and appropriate, recommended Equipment and software licenses for purchase (with pricing if offered for purchase from 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 down-time, 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 or Cloud Services 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.

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

D. User Support

User Support involves providing initial response to Users with questions or reporting problems about Equipment, Applications, or Data, and for help conducting management tasks related to 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 license inventory tracking and management.
3. Disposal/recycling of disused Equipment.
4. Data destruction services.

G. Excluded Services

The following services, which are generally related to information technology 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. 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, and handling data, sufficiently for each User to achieve expected results and protect Client investments.
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 data 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 and Software

A. Purchases from J.D. Fox Micro

Client may purchase Equipment, software licenses, and subscriptions 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 and software 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 and software 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 or software will:

1. Be what Client expected to get,
2. Be hardware- and software-compatible with the IT System and Cloud Services,
3. Have the features necessary to meet Client Requirements and perform the functions of any Equipment or software the new Equipment or software 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 or software 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 OR SOFTWARE 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 or software 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, exchange the Equipment or software, install additional Equipment or software, and/or reconfigure the IT System or Cloud Services 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 or for which notice was not provided within the Contract term.

Client-Option Returns

Client may request to return Equipment or software purchased from J.D. Fox Micro, irrespective of warranty. For Equipment, 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. For software licenses or subscriptions, returns will be accepted subject to the publisher's or licensor's terms, which may not allow returns. 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 any refund amount before a return is accepted.

C. Third-Party Products

Definitions and Applicability

Third-Party Products are Equipment or software 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 Products in lieu of purchasing from J.D. Fox Micro. J.D. Fox Micro may, as well, recommend purchase from a Third-Party Vendor for products needed by Client but not available for purchase from J.D. Fox Micro.

Acquisition

J.D. Fox Micro will advise on apparent fitness-for-purpose prior to Client's acquisition of Third-Party Products, based on information provided by the selected 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 Products delivered by a Third-Party Vendor to meet its stated specifications.

J.D. Fox Micro's support for Third Party Products, prior to acquisition by Client, is limited to advice on particular products offered by Third-Party Vendors selected by Client. J.D. Fox Micro shall not be obligated to seek out retailers on behalf of Client, assess the integrity of vendors or resellers, conduct comparison shopping, or find bargains or rebates. Client is ultimately responsible for finding and selecting a vendor or reseller, 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 Product is received by Client, J.D. Fox Micro will install and integrate the Third-Party Product into the IT System or Cloud Services. However, if this will:

1. Require more complex work than that regularly performed for Routine Maintenance,
2. Extend the IT System or Cloud Services beyond the size or scope specified in the Contract Appendix, or
3. Involve 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 Product, 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 the change in scope.

In addition, if any aspect or function of the Third-Party Product proves not compatible with the IT System or Cloud Services, or the Product is faulty or missing necessary features or functionality, and J.D. Fox Micro is unable to resolve these problems without additional Equipment or software, 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 or software for purchase (with pricing if offered for purchase from 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 down-time, coordination with relevant third-party service providers, deployment procedures, and the envisioned end state.

Returns

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

Section 7. Billing

Monthly Service Fees under this Contract will be invoiced and due as specified in the Contract Appendix. Other invoices, such as for Equipment purchases and other Service Fees, will be issued and due as specified prior to ordering the Equipment or performing the services that incur fees, or, if not so specified, as specified generally in the Contract Appendix.

Client will pay invoices using only the currencies and payment methods specified in the Contract Appendix. For payments made or attempted by any other currencies or methods, Client shall reimburse J.D. Fox Micro for any fees charged to J.D. Fox Micro (including but not limited to wire transfer or currency conversion fees), and for deductions or discounts made by any direct or intermediary payment processor.

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 Section 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 shall 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 or in the Contract Appendix, 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.

Employee Solicitation and Hiring

Client acknowledges the significant investment required by J.D. Fox Micro to secure and train qualified employees to execute the obligations of J.D. Fox Micro under this Contract. Client also acknowledges the financial and operational impact J.D. Fox Micro would suffer if Client were to hire or contract separately with an 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 known to Client as a result of its relationship with J.D. Fox Micro, where such solicitation or hiring is intended to supplant business with J.D. Fox Micro. Breach of this covenant shall be construed as a material breach subject to payment of monetary damages by Client to J.D. Fox Micro of an amount to be determined as reasonable with respect to the nature of the work involved; the cost Client would expect to incur to have found, evaluated, and recruited an otherwise unknown employee or contractor with equivalent skills, capabilities, and knowledge in general and with respect to Client's IT System and operational requirements; and the cost to J.D. Fox Micro to locate, recruit, and/or train replacement employees or contractors. The provisions of this paragraph shall survive the termination of this Contract.

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, privacy, mandatory reporting, financial reporting, data retention, or data confidentiality, even if IT System and Cloud Services 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 in good faith 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 Cloud Services, or for any lost or corrupted data stored or processed by the IT System or Cloud Services, or from Client or its agents following or attempting to follow advice given by J.D. Fox Micro.

J.D. Fox Micro 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 or software purchased from J.D. Fox Micro in exchange for said Equipment or software, 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 or software, 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, or accessed on third-party systems by Client Users, 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 the IT System that may be covered under this Contract, and that it has ownership of any Cloud Service accounts to be managed by J.D. Fox Micro, or that it has the owner's authorization for J.D. Fox Micro to access the IT System components and Cloud Services accounts the Client does not own in order 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, or in violating the terms of service of a third-party Cloud Services provider or other technology provider.

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:

Sign

Print Name

Date

for J.D. Fox Micro:

Sign

Print Name

Date