



INFORMATION TECHNOLOGY MASTER SERVICES AGREEMENT

STATEMENT OF WORK

This Agreement (this "Agreement") is by and between _____,
whose principal place of business is _____ ("Vendor")
and _____, whose principal place of
business is: _____ ("Customer").

The parties hereby agree that Vendor will provide such professional services as the parties may agree, now and pursuant to future statements of work.

Therefore, in consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows:

Professional Services & Deliverables.

Vendor shall provide the following for the defined period of time of _____ year(s) commencing the date hereof and renewing for additional identical period(s) until terminated.

- | | |
|--|--|
| <input type="checkbox"/> Backup | <input type="checkbox"/> Managed Print Services |
| <input type="checkbox"/> Data Recovery | <input type="checkbox"/> Website Hosting/Management |
| <input type="checkbox"/> Data Storage | <input type="checkbox"/> Software - Production Support & Maintenance |
| <input type="checkbox"/> Data Security | <input type="checkbox"/> Email Management |
| <input type="checkbox"/> 24/7/365 Device Monitoring | <input type="checkbox"/> Voice-over-Internet-Protocol (VOIP) |
| <input type="checkbox"/> 24/7/365 Device Maintenance | <input type="checkbox"/> On-Call / On-Site Availability within ___ Hour(s) |
| <input type="checkbox"/> 24/7/365 Device Anti-Virus Protection | <u>Other:</u> |
| <input type="checkbox"/> Help Desk/Service Desk | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Network Management | <input type="checkbox"/> _____ |
| <input type="checkbox"/> User Management | <input type="checkbox"/> _____ |
| <input type="checkbox"/> Data Management | <u>In Accordance with:</u> |
| <input type="checkbox"/> Managed Information Services | <input type="checkbox"/> Proposal No. _____ <input type="checkbox"/> Invoice No. _____ |
| <input type="checkbox"/> Systems Management | All Checked Herein defined as "Managed Services". |

Customer hereby appoints Vendor as agent for the registration of any Third Party Product where possible. Customer also agrees that it shall reasonably cooperate with Vendor in the provision of any service; and, shall register in its own name any Third-Party Products purchased by Vendor, as agent for Customer, as required where registration cannot reasonably performed by Vendor.

Customer shall pay Vendor any out-of-pocket costs or expenses billed separately at the time of

occurrence, including hardware purchases made on behalf of Customer, travel expenses and monthly fees associated with Managed Services.

Termination.

Customer shall give Vendor notice of non-renewal no later than Sixty days (60) prior to the termination of this agreement.

Terms.

Fees associated with managed services will be billed and paid Monthly Quarterly Yearly.

Client must approve all expenditures over and beyond the monthly recurring expenses having to do with these services.

Vendor may purchase equipment which is subject to a restrictive sales license. Said equipment is purchased in the capacity of "agent for the Customer."

Customer agrees that this Statement of Work is governed by the Terms and Conditions of Vendor as posted at _____ (Vendor's URL).

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.

CUSTOMER

VENDOR

By: _____
(signature)

By: _____
(signature)

Name: _____
(print)

Name: _____
(print)

Title: _____

Title: _____

Date: _____

Date: _____

EQUIPMENT PURCHASE AGREEMENT

Customer hereby appoints, and, Vendor hereby accepts appointment as agent for Customer for the purchase of the hardware, software, and, any other physical item hereinafter described as: Third Party Products: As described in the attached Proposal / Invoice.

It is hereby agreed and acknowledged by between the Customer and the Vendor, that:

- 1) The Third Party Products are being purchased by Vendor only as agent for Customer;
- 2) At no time will Vendor be considered as owner of said Third Party Products, INCLUDING SUCH TIMES AS VENDOR RELYS ON ITS CREDIT TO TAKE DELIVERY OF THE THIRD PARTY ITEM ON CUSTOMER'S BEHALF. The provisions Ohio Revised Code section 1302.42(B) are expressly waived by Customer and title to any Third Party Product vests in/on Customer upon possession of said product by Vendor as agent for Customer;
- 3) Any required registration of any of the Third Party Products will be made by Vendor in Customer's name as agent for the purchase of the Third Party Products; and,
- 4) Third Party Products may carry a limited warranty from the third-party publisher, provider or original manufacturer of such Third Party Products. Vendor is not of any Third Party Product warranty or for problems attributable to the use of Third Party Products. Vendor does not warrant that any Product will function in any specific configuration Party Products, or that any Product will function to produce a particular result, even if the specific configuration or the result has been discussed with Vendor. ALL THIRD PARTY PRODUCTS ARE ON AN "AS IS" BASIS.

Warranty Disclaimer. EXCEPT AS PROVIDED FOR IN PARA. 6 OF THE INFORMATION TECHNOLOGY MASTER SERVICES AGREEMENT AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, VENDOR (INCLUDING AFFILIATES, CONTRACTORS, AND OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS, SUCCESSORS AND ASSIGNS), ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS (COLLECTIVELY PARTIES), DISCLAIMS ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES AND CONDITIONS WITH RESPECT TO THE PRODUCTS AND SERVICES, INCLUDING IMPLIED WARRANTIES OR CONDITIONS NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

MASTER SERVICES AGREEMENT

Vendor provides information technology professional services related to the SoW:

1. PROFESSIONAL SERVICES.

- 1.1. Provision of Professional Services. Vendor shall provide the services set forth in each SoW ("Professional Services"), and Customer shall provide any assistance and cooperation necessary or convenient to facilitate the Professional Services, or called for in an SoW. Vendor may employ subcontractors in the provision of Professional Services, but Vendor will be responsible and liable for such subcontractor's acts and omissions related to this Agreement. The parties have agreed that Vendor will provide such professional services as the parties may agree, now and pursuant to future statements of work.

1.2. Deliverables.

- (a) *Acceptance & Rejection.* Software or other deliverables created pursuant to Professional Services ("Deliverables") will be considered accepted ("Acceptance") (a) when Customer provides Vendor written notice of acceptance or (b) one (1) day after delivery, if Customer has not first provided Vendor with written notice of rejection. Customer may reject a Deliverable only in the event that it materially deviates from its specifications and requirements listed in the applicable SoW and only via written notice setting forth the nature of such deviation. In the event of such rejection, Vendor shall correct the deviation and redeliver the Deliverable within ten (10) days. After redelivery pursuant to the previous sentence, the parties shall again follow the acceptance procedures set forth in this Subsection 1.2(a). This Subsection 1.2(a), in conjunction with Customer's right to terminate for a material breach where applicable, sets forth Customer's only remedy and Vendor's only liability for failure of Deliverables.
- (b) *License to Deliverables.* Effective upon Acceptance of each Deliverable, Vendor grants Customer a non-exclusive, fully paid, royalty-free license to reproduce, modify, and use such Deliverable as necessary for Customer's internal business purposes, provided Customer complies with the restrictions set forth below in Subsection 1.2(c).
- (c) *Restrictions on Deliverables Rights.* Customer shall not distribute, publicly display, publicly perform, or sublicense any Deliverables (including without limitation any derivative work thereof). Vendor retains ownership of all Deliverables, and Customer receives no right, title, or interest in or to Deliverables except as specifically set forth in Subsection 1.2(b) above.

2. FEES & REIMBURSEMENT. Customer shall: (a) pay Vendor the fees as set forth in each SoW; and (b) reimburse such expenses as Vendor reasonably incurs in provision of Professional Services. Amounts listed in SoW's are estimates of Professional Services fees and will not be binding, except to the extent that the SoW specifically provides to the contrary. Vendor will not be required to refund fees under any circumstances.

3. CONFIDENTIAL INFORMATION. "Confidential Information" refers to the following items one party to this Agreement ("Discloser") discloses to the other ("Recipient"): (a) any document Discloser marks "Confidential"; (b) any information Discloser orally designates as "Confidential" at the time of disclosure, provided Discloser confirms such designation in writing within two (2) business days; and, (c) other nonpublic, sensitive information Recipient should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Recipient's possession at the time of disclosure; (ii) is independently developed by Recipient without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction; or (iv) is approved for release in writing by Discloser.

3.1. Nondisclosure. Recipient shall not use Confidential Information for any purpose other than to facilitate the Professional Services (the "Purpose"). Recipient: (a) shall not disclose Confidential Information to any employee or contractor of Recipient unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Recipient with terms no less restrictive than those of this Article 3; and (b) shall not disclose Confidential Information to any other third party without Discloser's prior written consent. Without limiting the generality of

the foregoing, Recipient shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Recipient shall promptly notify Discloser of any misuse or misappropriation of Confidential Information that comes to Recipient's attention. Notwithstanding the foregoing, Recipient may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Recipient shall give Discloser prompt notice of any such legal or governmental demand and reasonably cooperate with Discloser in any effort to seek a protective order or otherwise to contest such required disclosure, at Discloser's expense.

- 3.2. Injunction. Recipient agrees that breach of this Article 3 would cause Discloser irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Discloser will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
- 3.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 3.1 above (*Nondisclosure*) will terminate three (3) years after the date of disclosure. Upon termination of this Agreement, Recipient shall return all copies of Confidential Information to Discloser or certify, in writing, the destruction thereof, within five (5) days.
- 3.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.
- 3.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that notwithstanding the foregoing or any other provision of this Agreement:
 - (a) *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
 - (b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

4. REPRESENTATIONS & WARRANTIES.

- 4.1. From Vendor. Vendor represents and warrants: (a) that all Professional Services will be performed in a professional and workmanlike manner. In the event of a breach of either warranty in this Section 4.1, Vendor, at its own expense, shall promptly re-perform the Professional Services or repair and redeliver the Deliverable in question. The preceding sentence, in conjunction with Customer's right to terminate this Agreement for breach where applicable, states Customer's sole remedy and Vendor's entire liability for breach of the warranty in this Section 4.1.
- 4.2. From Each Party. Each party represents and warrants that it has the full right and authority to

enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement.

- 4.3. Warranty Disclaimers. Except as set forth above in this Article 4, VENDOR PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) VENDOR DOES NOT REPRESENT OR WARRANT THAT THE DELIVERABLES WILL BE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

5. INDEMNIFICATION.

- 5.1. From Vendor. Vendor shall defend and indemnify Customer and Customer's Associates (as defined below in Section **Error! Reference source not found.**) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) direct infringement of any patent, copyright, trade secret, or other intellectual property right by any Deliverable not otherwise licensed in connection with the use of Third Party Products, hardware and/or software, as specified in the SoW. Vendor's obligations set forth in Subsection 5.1(a) above do not apply to the extent that an Indemnified Claim arises out of: (i) Customer's breach of this Agreement; (ii) revisions to the Deliverable made without Vendor's written consent; (iii) Customer's failure to incorporate updates or upgrades that would have avoided the alleged infringement, provided Vendor offered such updates or upgrades without charges not otherwise required pursuant to this Agreement; (iv) Vendor's design or modification of the Deliverable in compliance with specifications provided by Customer; or (v) use of the Deliverable in combination with hardware or software not provided by Vendor, unless (A) the SoW, or other documentation provided by Vendor or agreed between the parties, (collectively, "Documentation") refers to a combination with such hardware or software, without directing the user not to perform such a combination, or (B) such combination achieves functionality described in the Documentation (and the Documentation does not direct the user not to perform such combination). In the event of an Indemnified Claim pursuant to Subsection 5.1(a) above, Vendor may request that Customer cease all use of the Deliverable at issue, and if Customer does not comply, Vendor will have no obligations related to the Indemnified Claim corresponding to Customer's use of the Deliverable starting forty-eight (48) hours after Vendor's request. Vendor's obligations set forth in Subsection 5.1(b) above do not apply to the extent that an Indemnified Claim arises out of Customer's breach of this Agreement.
- 5.2. From Customer. Customer shall indemnify and defend Vendor and Vendor's Associates (as defined below in Section **Error! Reference source not found.**) against any "Indemnified Claim," meaning any third party claim, suit, or proceeding arising out of or related to: (a) Customer's alleged or actual use of, misuse of, or failure to use a Deliverable; or (b) injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the act or omission of Customer or of any of its agents, subcontractors, or employees. Indemnified Claims listed in Subsection 5.2(a) above include, without limitation: (i) claims by or Customer's employees, contractors, or other users (collectively, "Users"); and (ii) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information. Indemnified Claims

listed above in Section 5.2(a) do not include any claim that would constitute an Indemnified Claim pursuant to Section 5.1(a) above.

6. LIMITATION OF LIABILITY.

- 6.1. Dollar Cap. VENDOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL OF ONE (1) MONTH'S MAINTENANCE FEES, OR TWO HUNDRED (200) DOLLARS, (\$200.00), WHICHEVER IS LESS.
- 6.2. Exclusion of Consequential Damages. IN NO EVENT WILL VENDOR BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 6.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 6 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF VENDOR IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 6, Vendor's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Vendor's liability limits and other rights set forth in this Article 6 apply likewise to Vendor's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.
- 6.4. Exclusions. This Article 6 does not apply to claims pursuant to Article 3 (*Confidential Information*).

7. TERM & TERMINATION.

- 7.1 The term of this Agreement will commence on the Effective Date and continue for the period set forth in any outstanding SoW. This Agreement shall renew automatically at the end of the prior Term unless notice on non-renewal is given by Customer as provided for in the SoW.
- 7.2 Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.
- 7.3 Survival. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 1.2(c) (*Restrictions on Deliverables Rights*), 3 (*Confidential Information*), 4.3 (*Warranty Disclaimers*), 5 (*Indemnification*), 6 (*Limitation of Liability*), and 8.2 (*Feedback*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

8. MISCELLANEOUS.

- 8.1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no Vendor employee or contractor is or will be considered an employee of Customer.
- 8.2. Feedback. Vendor has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that Customer or any User provides to Vendor, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Vendor's right to use,

profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. Notwithstanding the provisions of Article 3 above, Feedback will not be considered Confidential Information, provided information Customer transmits with Feedback or related to Feedback may be considered Confidential Information. (“Feedback” refers to any suggestion or idea for improving or otherwise modifying any of Vendor’s products or services.)

- 8.3. Notices. Notices pursuant to this Agreement shall be sent to the addresses below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person or by certified mail return receipt requested, or email with written confirmation thereof.
- 8.4. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.
- 8.5. Assignment & Successors. Vendor may not assign this Agreement or any of its rights or obligations hereunder without Customer’s express written consent. Except to the extent forbidden in this Section 8.5, this Agreement will be binding upon and inure to the benefit of the parties’ respective successors and assigns.
- 8.6. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 8.7. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 8.8. Choice of Law: With respect to The Click IT Group, and, all franchise issues, this agreement shall be governed by Wyoming Law and all suits shall be brought in the Courts of Wyoming WY. in Sheridan, With respect to suits against any franchisee, said suits shall be governed by the Law of the State of Incorporation of the franchisee and brought in the Courts of that State. All suits against a franchisee shall be brought in the court of most limited jurisdiction for the geographic location of said Click IT Store. Arbitration: Click IT reserves the absolute right to remove any litigation to arbitration conducted by the American Arbitration Association.
- 8.9. Arbitration & Mediation: The parties consent that in the event that disputes arise under this agreement, they shall:
 - (a) Engage in meaningful mediation;
 - (b) If mediation is unsuccessful within thirty (30) days of the date notice of the dispute is served, then non-binding arbitration pursuant to the Rules and Regulations of the American Arbitration Association shall be conducted.

- 8.10. Jurisdiction: The parties consent to the personal and exclusive jurisdiction of the federal and state courts of _____ County, State of _____, United States of America.
- 8.11. Conflicts. In the event of any conflict among the attachments to this Agreement and this main body, the following order of precedence will govern, with lower numbers governing over higher ones: (1) this main body of this Agreement; and (2) any SoW, with more recent SoW's taking precedence over later ones.
- 8.12. Construction. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
- 8.13. Transfer of Title of Hardware and Software: At no time will Vendor be considered as owner of said hardware and software (as described in the SoW as "Third Party Products"), INCLUDING SUCH TIMES AS VENDOR RELIES ON ITS CREDIT TO TAKE DELIVERY OF THE hardware and software ON CUSTOMER'S BEHALF. Ohio Revised Code section 1302.42(B) is expressly waived by Customer and title to any Third Party Product vests upon possession of said product by Vendor as agent for Customer;
- 8.14. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 8.15. Terms and Conditions. This agreement is subject to the published terms and conditions of Vendor.
- 8.16. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.
- 8.17. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.