

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") made between CAP5 Technology Solutions, LLC a Texas LIMITED LIABILITY COMPANY (d.b.a., CMIT Solutions of Houston – Katy or CMIT Solutions of Houston – Willowbrook), located in Katy, Texas ("Managed Service Provider" or "MSP"), and COMPANY, AS NOTED IN THE SIGNED PRODUCT OR SERVICES AGREEMENT ("Customer") is effective THE DATE OF THE FIRST SIGNED PRODUCT OR SERVICE AGREEMENT by the customer with the MSP ("Effective Date").

The parties agree as follows:

1. Definitions.

- 1.1. "**Customer**" means the individual or entity with whom MSP has contracted to provide Services, and in return is obligated to pay for those Services according to the terms of this Agreement, as identified in the recitals above.
- 1.2. "**Customer Representatives**" means the individuals identified by Customer on Schedule A as being authorized to represent Customer to MSP, request Services from MSP and obligate Customer to pay MSP.
- 1.3. "**Customer Data**" means any data, information or material owned by Customer and provided or submitted by Customer in the course of receiving Services under this Agreement.
- 1.4. "**Equipment**" means Customer's workstations, servers, mobile computing, networking devices and other devices listed on the Managed Device Report, which MSP creates on a periodic basis and describes the devices for which MSP is providing Services pursuant to this Agreement.
- 1.5. "**Fees**" means the fees to be paid by Customer to MSP for Services, as set forth in Schedule B as well as any Out of Plan Services.
- 1.6. "**Managed Services**" means the duties which MSP is obligated to perform for Customer under this Agreement, as fully described in Schedule B, and charged for at the Price listed in Schedule B.
- 1.7. "**MSP**" or "**Managed Service Provider**" means CMIT Solutions of Houston – Katy/Willowbrook, who will be providing Services to Customer.
- 1.8. "**Out of Plan Services**" means any services provided by MSP under this Agreement that are not Managed Services. Examples of Out of Plan Services include (without limitation) emergency support needed for unforeseen business circumstances or because of Customer's intentional or accidental damage to Equipment, moves to new locations, project work, assisting with Equipment recovery following natural disasters or emergencies created by third parties, and hardware failure requiring replacement hardware.
- 1.9. "**Product(s)**" means third-party hardware, software, and services that are purchased by or on behalf of Customer in connection with this Agreement.
- 1.10. "**Security**" means the policies, practices, products, and services adopted by Customer to detect and monitor unauthorized access or modification, misuse, theft, vandalism, or denial of Customer's computer network and network-accessible resources.
- 1.11. "**Schedules**" means the Schedules appended to this Agreement, as may be amended or added from time to time upon agreement by the parties.
- 1.12. "**Services**" means, collectively, the Managed Services and Out of Plan Services provided in connection with this Agreement.

2. **Scope of Agreement.** This Agreement serves as a master agreement and applies to Customer's purchases of Services and

Products from the MSP. Customer hereby engages and retains MSP to render the Services and Deliver Products noted in subsequent SOW(s). The Schedules appended to this Agreement form an integral part of this Agreement and are hereby incorporated by reference. MSP may also provide Out of Plan Services at the rates described in Schedule B upon Customer's request and MSP's agreement to fulfill such request.

3. Term and Termination.

- 3.1. **Term.** The initial term of this Agreement is 36 months, commencing on the Effective Date. After the initial term, this Agreement will automatically renew for sequential 12-month renewal terms unless either party provides a written notice of termination to the other party at least 90 prior to the expiration of the then-current term. Subject to MSP providing notice under Section 4(d), the pricing applicable to any renewal terms shall be established at MSP's then-current rates.
- 3.2. **Termination for Cause.** This Agreement may be terminated for cause (i) upon either party's material breach of this Agreement and failure to correct such breach within 30 days after receipt of written notice of such breach; or (ii) upon Customer's failure to pay any outstanding charges within 10 days of receipt of written notice from MSP of delinquency.
- 3.3. **Effect of Termination.** Upon termination of this Agreement, Customer will be liable for all charges incurred as of the date of termination, all future charges due during the term of the Agreement and, if applicable, and any costs incurred by MSP as a result of Customer's early termination of the Agreement. The terms, rights, and obligations under this Agreement which by their nature should survive, will remain in effect after termination or expiration of this Agreement

4. Payment.

- 4.1. **Fees.** Customer will be obligated to pay MSP all Fees and expenses due upon receipt of an invoice specifying the amounts from time to time in accordance with the terms of this Agreement. MSP will make reasonable efforts to categorize amounts due in each such invoice as Managed Services, Out of Plan Services or Product costs on each invoice and will invoice Customer monthly in advance for Services unless an alternate payment schedule is set forth in Schedule B or unless MSP provides unanticipated Out of Plan Services (in which case such Out of Plan Services shall be invoiced during the subsequent month). Customer's obligation to pay all amounts due for Services and MSP's right to collect all such amounts are absolute and unconditional. Customer is not entitled to setoff of such amounts from any amounts that Customer may believe are due to Customer from MSP.
- 4.2. **Taxes.** Payment of all taxes related to this Agreement, except income taxes imposed on MSP by the United States of America or any state or local government therein, shall be sole responsibility of Customer. Customer will be invoiced for,

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and Customer will pay, any such taxes or tariffs if MSP is required to pay such taxes or tariffs on Customer's behalf.

- 4.3. **Failure to Pay.** All payments are due within 15 days of the date of invoice. If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of 1.5% per month from the date due until paid in full. Customer shall pay all expenses, including actual attorneys' fees, incurred by MSP or its representatives in enforcing its rights under this Section, provided that MSP is successful on the merits. Customer acknowledges that its failure to pay timely any of the Fees payable hereunder, or any portion thereof, will be a material breach of this Agreement for which MSP may, in addition to pursuing all other remedies, withhold Services and/or terminate this Agreement.
- 4.4. **Changes in Services and Price.** MSP may from time to time need to change or modify the Services or pricing for Services based on changes in Products, changes to Customer's Equipment, the number of Customer employees, or in view of other considerations related to MSP's cost of doing business. If such a change includes a price increase of more than 10% (per year) or otherwise materially alters the Services, MSP will provide Customer with 30 days written notice prior to implementing the change. Within the 30-day notice period, Customer may notify MSP if it objects to the proposed change. In the event of such an objection, the parties may confer to agree upon a reasonable price increase or other modification to the proposed change, or Customer may terminate the particular Service for which the change is applicable by giving MSP 7 days' written notice of termination within the 30-day period. If Customer either expressly agrees to the change or does not object within the 30-day period, then the proposed change shall be deemed accepted by Customer. Any increase in prices that is less than 10% shall be deemed accepted and shall be effective upon notice to Customer.

5. **Customer Responsibilities.**

- 5.1. **Dependence on Fulfillment of Customer Responsibilities.** MSP's obligations to provide the Services are conditioned upon Customer fulfilling its obligations under this Agreement, including the responsibilities of Customer set forth in this Section 5 (collectively, the "Customer Responsibilities"), including timely access to systems and facilities, power, and telecommunications services. Customer represents and warrants to MSP that Customer will fulfill its obligations under this Agreement in a timely manner and hereby releases MSP from any liability resulting directly or indirectly from Customer's failure or delay in fulfilling its obligations under this Agreement (including without limitation the Customer Responsibilities). For any Customer Responsibility that operates as a constraint or condition precedent for providing the Services, any deadlines for providing the Services shall be automatically extended to the extent of any delay by Customer in fulfilling the applicable Customer Responsibility.
- 5.2. **Customer Authorized Contact.** Customer will identify Customer Representatives on Schedule A and hereby represents that the Customer Representatives have authority to act on behalf of Customer in connection with this Agreement.
- 5.3. **Provision of Materials, Services, and Workspace to MSP.** Customer agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software and related materials, and appropriate and safe work spaces for the purposes of MSP performing the Services. Customer is also responsible for ensuring that all materials provided to MSP do not infringe or violate the rights of any third party. Customer

is responsible for training its own personnel on how to properly and safely use and maintain Customer Equipment. If Customer requests MSP to train Customer personnel on how to use Equipment and MSP agrees to provide such training, MSP will bill Customer for the training-related Services as Out of Plan Services, subject to Schedule B.

- 5.3.1. **Passwords for Licenses.** Customer will provide MSP with access to all information, systems and facilities necessary for MSP to perform the Services. It is solely the obligation of Customer to maintain all passwords and access information to Customer's Equipment and any Products, including maintaining keys and passwords for purchased licenses necessary to provide such access. MSP shall have no liability to Customer in connection with the maintenance, access, or use of Customer's passwords, keys or other security related devices. Customer, not MSP, is responsible for maintaining keys or passwords to all Products.
- 5.3.2. **Obligation to Pay for Technician's Time.** If Customer requests that MSP come to Customer's facility to provide on-site Services, and then denies MSP access to any system, information, or other tools necessary to complete those Services, Customer will pay MSP for technician's time under the appropriate service rate identified in Schedule B.
- 5.4. **Customer Responsibility for Equipment.**
- 5.4.1. **Suitable Working Environment.** Customer shall provide a suitable working environment for all Equipment and Products, consistent with the manufacturers' operating guidelines. This may include, without limitation, providing a working environment that is regulated with respect to temperature, static electricity and humidity, and uninterrupted electrical power supply.
- 5.4.2. **Risk of Loss/Damage.** Customer shall bear the risk of loss and damage by for any Equipment located at Customer's facility and any loss or damage to Equipment otherwise caused by Customer's staff or any third parties.
- 5.4.3. **Related Services and Products.** Customer acknowledges and agrees that (A) the operability of its systems and Equipment is dependent on the availability of services, systems, hardware, and software provided by third-party providers (collectively, "**Third Party Products**"), including electrical power and access to telecommunications systems; (B) MSP has no control over the quality or performance of the Third Party Products; (C) Customer is solely responsible for the operation, quality, workmanship, and completeness of any products or services provided by Customer; and (D) MSP shall have no liability under this Agreement in connection with any Third Party Products or any damage to Products of failure of the Services resulting from the operation or malfunction of such Third Party Products.
- 5.4.4. **Equipment Readiness.** Customer is responsible for ensuring that all Equipment and Third Party Products meet the minimum readiness requirements identified on Schedule B. If Equipment does not satisfy the minimum readiness requirements, MSP may provide the Services necessary to achieve the minimum readiness requirements at the "Other Professional Services" rate listed on Schedule B.
- 5.4.5. **Customer Responsibility for Changes to/for Equipment.** Customer acknowledges that from time to time MSP may identify (a) additional Products that need

to be purchased by Customer, and/or (b) changes to Customer's systems that may be required in order for MSP to provide the Services. Customer agrees to work in good faith with MSP to acquire the identified Products and make the required changes. MSP shall have no obligation to purchase such Products but may do so at its discretion in the course of providing the Services. If MSP purchases any such Products and does not receive reimbursement for the costs of such purchases, the relevant Products will remain the sole property of MSP and Customer will have no rights with respect to such Products; provided that the foregoing does not absolve Customer of any responsibility to reimburse MSP for such Products.

5.4.6. **Customer Obligations for Data Backup and Security.** Customer acknowledges and agrees that data loss or network failures may occur, and agrees to maintain proper Security and data backup procedures for its Equipment and other computer and information systems that interact with the Equipment, including making all recommended software and hardware updates. To minimize the risk of data loss or a network failure, Customer will undertake all tasks for which responsibility is allocated to Customer in accordance with the "Software, Hardware Backup and Security Assessment. Customer further acknowledges and agrees that it is not possible for MSP to provide 100% protection against all cyberthreats (including threats of hacking, viruses, and similar security threats). To mitigate the risk of such threats, however, MSP may inform Customer of security-related services provided by MSP which, if purchased, will be managed within the Equipment Management System. MSP will provide security-related Services only to the extent expressly specified in a customer SOW; provided that in the event of any hack, virus or other breach, MSP shall have no liability to Customer if MSP has fulfilled its relevant obligations under this Agreement. In consideration of the foregoing, Customer hereby selects the data backup and Security-related Services as indicated below by their initials:

Data Backup: Customer provides and will continue to provide its own backup services, and will be solely responsible for backing up Customer's data, or

5.4.7. Customer will be using MSP's Services to backup data for Equipment listed in Managed Device Report but will be wholly responsible for providing backup services for all unlisted systems and equipment. NOTE: Default is (a) if not selected

5.4.8. **Security:** NOTE: Default is (a) if not selected
 ___ (a) Customer provides and will continue to provide adequate Security for all of Customer's equipment and systems and will not use MSP for Security-related services, or

___ (b) Customer will be using MSP's Services to provide Security to all Equipment listed in Managed Device Report but will be wholly responsible for providing Security for unlisted systems and equipment.

5.4.9. **Ransomware Protection:** NOTE: Default is (a) if not selected

___ (a) Customer provides and will continue to provide adequate Ransomware protection for all of Customer's equipment and systems and will not use MSP for Ransomware protection services, or

___ (b) Customer will be using MSP's Ransomware

protection Services to provide Ransomware protection to all Equipment listed in Managed Device Report but will be wholly responsible for providing Ransomware protection for unlisted systems and equipment.

5.5. **Customer Data Ownership and Responsibility.**

5.5.1. **Customer is Sole Owner of Customer Data.** Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data, and for ensuring that the parties have all intellectual property rights necessary to fulfill their obligations under this Agreement. MSP shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. Customer has and retains ownership of all Customer Data. Upon termination of this Agreement, within 30 days of receiving a written request from Customer requesting a copy of the Customer Data, MSP will provide Customer an electronic file of the Customer Data in its possession to the extent practicable under the circumstances.

5.5.2. **Privacy Rules and Regulations.** Customer is solely responsible for compliance with all laws and regulations applicable to Customer's business and all data collected by Customer, which may include, without limitation, the General Data Protection Regulation or the European Union and European Economic Area and the California Consumer Privacy Act (to the extent applicable). Customer further agrees that it will not provide to MSP any Customer Data that is subject to such regulations.

5.5.3. **Software Installation or Replication.** If MSP is required to install or replicate software provided by Customer or a third party as part of the Services, Customer will independently verify that all such software is properly licensed. Customer's act of providing any software to MSP will be deemed Customer's affirmative representation to MSP that Customer has a valid license that permits MSP to perform the Services related thereto. In addition, Customer will retain the duty and obligation to monitor Customer's equipment for the installation of unlicensed software unless MSP expressly agrees in writing to conduct such monitoring. Customer will indemnify and hold harmless MSP against all damages and expenses it may incur (including reasonable attorney's fees and disbursements) that may result from Customer providing infringing materials to MSP.

5.5.4. **Third-Party Licenses.** If Customer is using cloud servers, email, or any other software or technology powered by a third party, such technology shall be considered a Third Party Product under this Agreement, and Customer shall be solely responsible for reading, agreeing, and complying with the applicable third party's license terms (as such terms may be updated from time to time).

5.5.5. **High Risk Use.** If Customer is using a hosting or colocation services provided by MSP, Customer agrees that it will not use the hosting or colocation services in any situation where failure or fault of the hosting services could lead to death or serious bodily injury of any person, or to physical or environmental damage—including without limitation that Customer may not use, or permit any other person to use, the hosting services or colocation service in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices.

5.5.6. If Customer is using a hosting or colocation services

provided by MSP, Customer agrees that it will not use the hosting or colocation services in any situation that is against the law, to facilitate pornographic material or facilitate sex industry services.

5.5.7. **MSP Usage of Customer Data.** MSP or its suppliers may, without liability hereunder, (i) use uploaded Customer Data from installed Products to improve the Services; (ii) share data that has been identified as malicious or unwanted content with affiliates and security partners; and (iii) disclose uploaded data for analysis or reporting purposes only if such use, sharing or disclosure does not identify Customer, disclose Confidential Information, or include any information that can be used to identify any individual person.

5.6. **Communication.** As a client of MSP, Customer agrees that MSP and/or CMIT Solutions, Inc. ("CMIT") may communicate with Customer via e-mail and other electronic means. These communications will come directly from MSP and/or CMIT.

6. Intellectual Property.

6.1. **MSP Intellectual Property.** The parties acknowledge and agree that MSP/CMIT may use proprietary information and technology, which may include computer software, methodologies, techniques, software libraries, tools, algorithms, materials, products, ideas, skills, designs, know-how, and patents, trademarks, copyrights, and other intellectual property rights covering such materials owned by MSP/CMIT or its licensors (together with any modifications or derivative works thereof, the "MSP/CMIT Intellectual Property"). Customer agrees that all rights under the MSP/CMIT Intellectual Property are reserved to MSP, CMIT, or their licensor(s) (as applicable) and that, except to the extent expressly stated herein, no license under the MSP/CMIT Intellectual Property is granted to Customer by virtue of this Agreement. Customer agrees to assign, and hereby does assign, to MSP or its designee, any rights it may have in any MSP/CMIT Intellectual Property.

6.2. **Customer Rights and Restrictions on Use of MSP Intellectual Property and/or Product.** Customer may only use and disclose MSP/CMIT Intellectual Property and/or Product in accordance with the terms of this Agreement. Customer represents and warrants that it will not (1) disassemble or reverse engineer any software or Product provided by MSP in connection with this Agreement, (2) decompile or otherwise attempt to derive any software Product's source code from executable code provided by MSP in connection with this Agreement, or (3) provide a third party with the results of any functional evaluation, or benchmarking or performance tests on any software or other Products provided by MSP in connection with this Agreement, without MSP's prior written approval. Except as expressly authorized in this Agreement, Customer may not (I) distribute the MSP/CMIT Intellectual Property and/or Product to any third party (whether by rental, lease, sublicense or other transfer), or (II) operate the MSP/CMIT Intellectual Property or any Product or Service as a service bureau or otherwise in an outsourcing operation for the benefit of any third party. Additional usage restrictions may apply to certain third party files or programs embedded in the Products, and Customer is advised to review all applicable installation instructions or release notes included therewith.

6.3. **License Agreements.** Subject to the terms of this Agreement, MSP grants Customer a non-exclusive, non-transferable license under MSP's rights to use all programming, documentation, reports, and any other product provided by

MSP as part of the Services solely for the purpose of receiving the Services. Any software product provided to Customer by MSP as a reseller for a third party shall be considered a Third Party Product, which is licensed to Customer under a separate software license agreement with such third party, will continue to be governed by the third-party license agreement.

7. Restrictive Covenants.

7.1. **No Solicitation of or Interference with Employees/Suppliers.** During the term of this Agreement and for a period of one year thereafter, each party to this Agreement will not, without the prior written approval of the other party, directly or indirectly solicit, recruit, influence, or induce for employment any employee(s), supplier(s), or supplier(s) employee(s) of the other party or directly or indirectly induce any such employee, supplier, or supplier's employee to change their relationship with the other party in any way. The exception is if both parties agree in writing and payment of one year of the employee's MSP salary and associated benefits is paid to the MSP by the customer.

7.2. **Confidentiality & Non-Disclosure.** Both parties to this Agreement recognize that they may come into contact with the Confidential Information of the other Party. "Confidential Information" means all nonpublic technical or business information, including the terms of this Agreement, disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") which is either marked as confidential or should reasonably be considered confidential under the circumstances of disclosure. The Receiving Party shall hold such Confidential Information in confidence during this Agreement and for three years after termination of this Agreement, restrict disclosure of such information solely to its employees with a business need to know such information, use a reasonable standard of care in protecting such information, and return or destroy such information at the Disclosing Party's request. As between the parties, all Confidential Information disclosed under this Agreement shall remain the property of the Disclosing Party.

8. Warranty.

8.1. **Limited Warranty.** MSP warrants that it will perform the Services substantially in accordance with the specifications set forth in all SOWs. In the event any Services do not comply with the foregoing warranty, Customer will, within 10 business days of receiving the non-compliant Services, notify MSP of the alleged non-compliance in a writing specifying in the alleged non-conformance in reasonable detail. MSP will exercise commercially reasonable efforts to re-perform any such non-conforming Services that were performed within the 10 business day period immediately preceding the date of Customer's written notice to MSP. If MSP concludes that conformance is impracticable, then MSP will refund all fees paid by Customer to MSP hereunder, if any, allocable to such nonconforming Services. Any Services which are not alleged to be non-conforming within 10 business days of receipt shall be deemed to be accepted by Customer.

8.2. **No Other Warranty.** Aside from the Limited Warranty referenced above, no other warranty is provided by MSP in connection with this Agreement. MSP does not warrant against any promises of cost savings, profits, returns on investment, or delay in delivery of performance. No statement by any MSP employee or agent, orally or in writing, will serve to create any warranty or obligation in addition to the Limited Warranty set forth above, or to otherwise modify this Agreement in any way whatsoever.

8.3. **Exclusive Remedies.** Except to the extent expressly stated otherwise herein, the Limited Warranty provided above shall constitute Customer's sole and exclusive remedy with respect to the Services, including without limitation with respect to any claim that a Service or deliverable provided hereunder does not conform to specifications, was performed improperly, or is otherwise defective.

9. **Disclaimers & Limitations of Liability.**

9.1. **Separate Entities.** Although MSP uses the DBA CMIT Solutions of Houston – Katy/Willowbrook, MSP is a separate legal entity from CMIT Solutions, Inc. Customer acknowledges that CMIT is not contracting with Customer by virtue of this Agreement and has no obligations to Customer hereunder unless CMIT expressly assumes the rights and obligations of MSP in accordance with Section 14(l) of this Agreement. Customer hereby releases CMIT from any liability in connection with this Agreement, or in any respect in connection with MSP's provision of Services under this Agreement.

9.2. **Third Party Products and Services.** MSP is not responsible for the performance or quality of Third Party Products. Any warranties provided to Customer in connection with such products and services (the "Third Party Warranties"), if any, are provided solely by the manufacturers or providers thereof and not by MSP. Notwithstanding the foregoing, at Customer's request and expense, MSP will make commercially reasonable efforts to assist Customer to obtain the benefits of any Third Party Warranties to which Customer is entitled. Any Services provided by MSP under this subsection shall be considered an Out of Plan Service.

9.3. **Damages Due to Customer's Control & Acts.** Customer is solely responsible for, and hereby releases MSP from any liability in connection with, any and all impairments to the Services caused by acts within the control of Customer or its employees, agents, contractors, suppliers or licensees, the interoperability of Customer applications or Third Party Product, or other cause reasonably within Customer's direct or indirect control.

9.4. **General Disclaimers.** WITH THE EXCEPTION OF THE LIMITED WARRANTY MADE BY MSP IN SECTION 8, THE SERVICES AND DELIVERABLES PROVIDED BY MSP UNDER THIS AGREEMENT ARE PROVIDED STRICTLY "AS IS." NEITHER MSP NOR CMIT SOLUTIONS, INC. MAKE ANY ADDITIONAL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY WHICH MAY OTHERWISE ARISE FROM COURSE OF DEALING OR USAGE OF TRADE, OR ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, TITLE OR NON-INFRINGEMENT. UNLESS THE PARTIES EXPRESSLY AGREE OTHERWISE IN WRITING, ALL SOFTWARE PROVIDED TO CUSTOMER BY MSP IN CONNECTION WITH THIS AGREEMENT WILL BE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

9.5. **Customer Acknowledgements.** Customer acknowledges that (1) except to the extent expressly stated in Schedule B of this Agreement, MSP makes no representation or warranty that the Services or any deliverables provided under this Agreements will meet Customer requirements; (2) the Services or any deliverables will operate in the combinations that Customer may select or implement; (3) the Services or any deliverables will be provided without interruption or free of errors; (4) all errors will be corrected by MSP; and (5) MSP is not authorized to make any representation, warranty, or

covenant on behalf of any third party, including without limitation CMIT and MSP's other licensors.

9.6. **Disclaimers of Actions Caused by or Under the Control of Third Parties.** MSP DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM DATA CENTERS AND OTHER PORTIONS OF THE INTERNET, SUCH FLOW IN LARGE PART DEPENDS ON THIRD PARTY SERVICES PROVIDED OR CONTROLLED BY THIRD PARTY INTERNET AND/OR COMMUNICATION PROVIDERS AND OTHER SERVICE PROVIDERS. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET OR OTHER COMMUNICATIONS DEVICES. MSP WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ACTIONS IT DEEMS APPROPRIATE TO REMEDY OR AVOID SUCH EVENTS. MSP CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR OR BE REMEDIATED. ACCORDINGLY, MSP DISCLAIMS (AND CUSTOMER RELEASES MSP FROM) ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

9.7. **General Limitations.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, UNDER NO CIRCUMSTANCES SHALL MSP AND/OR CMIT BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS. MSP'S LIABILITY TO CUSTOMER DUE TO ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AGGREGATE AMOUNT NOT TO EXCEED:

10. FOR REOCCURRING, MANAGED SERVICES, THE LESSER OF (A) THE TOTAL FEES PAID TO MSP BY CUSTOMER IN THE THREE MONTHS PRECEEDING THE DATE UPON WHICH ANY SUCH CLAIM FIRST ACCRUED, OR (B) \$5,000.00, AND
11. FOR OUT OF PLAN SERVICES WHICH ARE A SINGLE OCCURRENCE THE LESSER OF (A) THE TOTAL FEES PAID BY CUSTOMER FOR THE SERVICE OR (B) \$1,000.00.

12. MSP IS NOT LIABLE TO CUSTOMER ON ACCOUNT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT WHATSOEVER. THESE LIMITATIONS APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT. FURTHER, NO CAUSE OF ACTION WHICH ACCRUED MORE THAN ONE YEAR PRIOR TO THE FILING OF A SUIT ALLEGING THAT SUCH CAUSE OF ACTION MAY BY ASSERTED AGAINST MSP.

12.1. **Cyber Terrorism.** In no event, including any negligent act or omission on its part, shall MSP be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential damages, losses or expenses, whether or not foreseeable, resulting from any act of Cyber Terrorism. "Cyber Terrorism" shall mean an act or series of acts of any person or group(s) or persons, whether acting alone or on behalf of or in connection with any organization(s), committed for financial, political, religious, malicious intent or ideological purposes including but not limited to the intention to influence any government and/or to put the public in fear for such purposes by using activities perpetrated electronically that are directed towards the destruction, disruption or subversion of communication and

information systems, infrastructure, computers, telecommunications or electronic networks and/or its content thereof or sabotage and or threat therefrom.

refrain from taking any action, other than permitting the Indemnifying Party to pay money damages on the Indemnified Party's behalf; and (C) the Indemnified Party fully cooperates with the Indemnifying Party.

12.2. **Telemarketing & Unsolicited Emails.** In no event, including the negligent act or omission on its part, shall MSP be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential damages, losses or expenses, whether or not foreseeable, resulting from Customer's data systems or Equipment being breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of electronic "spiders", "spybots", "spyware", "phishing," social engineering, wiretapping, bugging, video cameras or identification tags.

13. **Communication.** Should one party have a disagreement with the other pertaining to any provision of this Agreement, including invoicing and payment thereof subsequent to the execution of this Agreement, both parties agree that they will engage in good-faith negotiations via personal communication with the other party prior to filing suit in a court of law.

14. **Essential Basis of Bargain.** Customer acknowledges that MSP has established the Fees and entered into this Agreement in reliance upon the limitations of liability contained in this Agreement. Such provisions form an essential basis of the bargain between the parties and a modification of such provisions would substantially affect MSP's Fees in this Agreement. In consideration for the benefit of MSP's Fees as set forth in this Agreement, Customer agrees to the allocation of risk provided by the limitations of liability and hereby waives any and all rights, through equitable relief or otherwise, to subsequently seek a modification of such provisions or allocation of risk.

15. Indemnification.

15.1. **Indemnification.** Customer will indemnify, defend, and hold harmless MSP from and against any and all costs, liabilities, losses, and expenses (including without limitation reasonable attorney's fees) (collectively "Losses") resulting from any claim, suit, action, or proceeding brought by any third party (each, an "Action") against MSP or Customer or their affiliates alleging (i) breach of any Customer obligation identified in this Agreement, (ii) personal injury caused by an action or inaction of Customer or its personnel, (iii) improper or unauthorized use of a Product or Service, or (iv) that Customer's materials, actions, products, or services infringe the intellectual property rights of a third party. MSP will indemnify, defend, and hold harmless Customer from and against any Losses resulting from any Action brought against MSP or Customer or their affiliates alleging (i) personal injury caused by an action or inaction of MSP or its personnel, or (ii) improper or unauthorized use of a Product or Service by MSP or its personnel.

15.2. **Indemnification Procedures.** Each party's obligations under this section shall arise only if: (a) the party seeking to be indemnified ("Indemnified Party") promptly notifies the other party (the "Indemnifying Party") in writing of any such Action, provided that any delay shall not relieve the Indemnifying party of its obligations hereunder except to the extent that it was prejudiced by the delay; (b) the Indemnifying Party has sole control of the defense and settlement of such Action, provided that the Indemnifying Party shall not enter into any settlement, without the Indemnified party's prior written consent, that would require the Indemnified Party to admit fault or take any action, or

16. **Insurance.** MSP agrees to maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, MSP will maintain at its sole cost and expense at least the following insurance covering its obligations under this Agreement:

(a) Commercial General Liability including:

- (i) each occurrence – \$1,000,000
- (ii) damage to rented premises (ea. occurrence) – \$100,000
- (iii) medical expenses (any one person) – \$5,000
- (iv) personal and adv injury – \$1,000,000
- (v) general aggregate – \$2,000,000
- (vi) products – comp/op aggregate – included in aggregate

(b) Business Automobile Liability for owned, hired and non-owned vehicles

(c) combined single limit (ea. accident) – \$1,000,000

(c) Umbrella Excess Liability

(i) each occurrence – \$2,000,000

(ii) aggregate – \$2,000,000

(d) Workers Compensation at statutory limits

(e) Technology Errors and Omissions – \$1,000,000 (limit)

(f) Business Personal Property – \$60,000 (limit)

17. General.

17.1. **Relationship of the Parties.** MSP is an independent contractor. Neither party has the right or authority to assume or to create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed to create a joint venture or partnership between the parties.

17.2. **Force Majeure.** With the exception of Customer's obligation to make payment for services rendered, neither party shall be responsible for any failure to perform or delay in fulfilling its obligations under this Agreement where such failure or delay is due to circumstances reasonably beyond the party's control and without its fault or negligence. This includes without limitation fire, flood, earthquake, volcanic eruption, explosion, lightning, wind, hail, tidal wave, landslide, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, acts of God, telecommunications systems outages, power blackouts affecting facilities other than facilities of a kind commonly protected by redundant power systems (unless such facilities are also affected by a Force Majeure), acts or omissions of common transportation carriers, or any other physical event.

17.3. **Entire Agreement.** This Agreement together with the Schedules, which are hereby incorporated herein by this reference, contain all the agreements, representations, and understandings of the parties and supersede any previous understandings, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. To the extent there is any inconsistency between a term of this Agreement and a term of any Schedule, the term of this Agreement will govern the performance of Services thereunder, unless expressly provided within this Agreement.

17.4. **Severability.** If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision shall be automatically reformed and construed so as to be valid, operative and enforceable, to the maximum extent permitted by law or

equity while preserving its original intent. The invalidity of any part of this Agreement shall not render invalid the remainder of this Agreement.

- 17.5. **Cumulative Rights & Remedies.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any signatory will not preclude or waive that signatory's right to use any and all other available rights and remedies. Unless expressly stated to the contrary herein, the rights and remedies contained herein are given in addition to any other rights and remedies which any signatory may have by law, statute, ordinance, or otherwise.
- 17.6. **Attorneys' Fees.** In the event that MSP prevails in any dispute arising out of or related to this Agreement, MSP shall be entitled to recover its reasonable attorneys' fees and costs.
- 17.7. **Modification.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement.
- 17.8. **No Waiver.** No failure on the part of either party to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- 17.9. **Prior Agreements.** This Agreement constitutes the sole and only agreement among the signatories to this Agreement and supersedes any other, prior understandings or written or oral agreements among the signatories respecting the subject matter of this Agreement.
- 17.10. **Jurisdiction and Venue.** Texas law will govern and the courts of Harris County, Texas, will have venue over any dispute arising under the terms of this Agreement. This provision supplements, if necessary, but does not negate, the alternative dispute resolution procedures established in this Agreement. CUSTOMER HEREBY KNOWINGLY WAIVES ANY AND ALL OBJECTIONS AND THE DEFENSES, IF ANY, OF LACK OF PERSONAL JURISDICTION AND INCONVENIENT FORUM TO THESE GOVERNING LAW, JURISDICTION, AND VENUE PROVISIONS.
- 17.11. **Third-Party Beneficiaries.** CMIT is a third party beneficiary of this Agreement and, in limited circumstances, may assume MSP's rights and obligations under this Agreement upon written notice to Customer. Subject to the foregoing, this Agreement is an agreement between the parties and confers no rights upon any of the parties' employees, agents, contractors or customers, or upon any other person.

17.12. **Notices.**

(a) Business – Any notice required under this Agreement shall be sent by (i) registered mail, return receipt requested, (ii) facsimile, (iii) overnight express mail, (iv) personal delivery to the address of the party set forth at the beginning of this Agreement, or (v) electronic mail, when the party sending such communication receives confirmation of such delivery by electronic mail. Notices sent by registered mail shall be deemed effective on the third business day following mailing. Notices sent otherwise shall be deemed effective on receipt. A party may change its address for notices upon thirty days prior written notice.

b

17.13. **Assignment.** Upon written notice to the other party, each party may assign its rights and obligations under this Agreement in whole (but not in part) in the course of a corporate reorganization, consolidation, or merger, or the sale of substantially all of the assigning party's assets to which this Agreement relates. MSP may assign its rights and obligations under this Agreement to CMIT in accordance with Section 14(k). Subject to the foregoing, neither party may assign its rights or obligations under this Agreement either in whole or in part without the prior written consent of the other party. This Agreement will bind and inure to the benefit of each party's successor and permitted assigns.

18. **Purchase Orders.** Customer may, for purposes of administrative convenience, use Customer's standard form of purchase order to order Services. The parties understand and agree that any terms or conditions on any such purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect whatsoever and MSP hereby rejects all such terms and conditions.
19. **Use of Agreement.** Upon the full and final execution of this Agreement, either signatory may produce this Agreement as a complete defense to any claims made by one signatory against the other signatory in violation of this Agreement. Further, any signatory hereto may produce this Agreement as a basis for the full scope of available injunctive relief to prevent the other signatory from committing any act prohibited by this Agreement or to force any signatory hereto to perform any affirmative act undertaken by that signatory in this Agreement. The signatory seeking enforcement of this Agreement will not be required (i) to post bond or other security or (ii) to prove the inadequacy of available remedies at law, such requirements hereby being waived. Both parties agree that any breach of the restrictive covenants contained herein will cause irreparable injury to the other and that money damages alone will not provide an adequate remedy at law to the injured party.

CAP5 Technology Solutions, LLC
d.b.a. CMIT Solutions of Houston – Katy
d.b.a. CMIT Solutions of Houston - Willowbrook