

MICRO STRATEGIES TERMS & CONDITIONS

Micro Strategies Inc.

Master Terms and Conditions V39.0

Agreement Number: MSI/ Customer –

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This MASTER AGREEMENT ("Agreement") is made as of the DAY (the "Effective Date") by and between Customer and Micro Strategies Inc., a NJ corporation ("MSI"), with an address at 1140 Parsippany Blvd. Parsippany, NJ 07054 (each a "Party" and collectively, the "Parties") to this Agreement.

1. Agreement Structure

- (A) This Agreement governs the delivery of certain products (which may be hardware ("Hardware") and/or software ("Software"), which are collectively referred to as "Products") and the provision of certain services to the Customer by MSI (collectively referred to as "Services")
- (B) MSI provides additional terms for Products and Services in Quotes/Statements of Work (hereinafter referred to as SOW in this Agreement) which, if applicable, shall be incorporated and made a part of this Agreement. All transactions have one or more associated SOW's.
- (C) If there is a conflict among the terms in the various documents, those of an SOW prevail over those of this Agreement.
- (D) SOWs become a part of this Agreement upon signature by both Parties to this Agreement.
- (E) Each SOW shall, to the extent applicable, contain: (i) a description of the Products and any Services to be performed by MSI; (ii) the tasks to be completed by Customer and any third parties; (iii) a description of the Products and Services to be delivered by MSI ("**Deliverables**"); (iv) the schedule for delivery of each Product and Service and Deliverables; (v) the Charges to be paid to MSI for such Products and Services, and (vi) such additional information as the parties may agree to include.
- (F) SOWs shall be deemed accepted when executed by the Parties.
- (G) As specified by the Customer and agreed upon by MSI, Customer's Affiliate may receive Products and Services from MSI as described in an applicable SOW and MSI agrees to provide such Products and Services. Customer's Affiliate and MSI agree that for the purposes of the applicable SOW: (a) Customer's Affiliate and MSI are bound by the terms and conditions of this Agreement, (b) Customer's Affiliate shall be deemed "Customer" under this Agreement, (c) the SOW and the Agreement shall be deemed a complete and separate agreement, independent of any other SOWs entered into between MSI and Customer or any of Customer's Affiliates, and (d) Customer and any of Customer's Affiliates shall be severally liable for any SOWs entered into by each such party.

2. Definitions

- (A) See Exhibit One

2. Expenses, Invoicing and Payment

- (A) This Section shall not apply to taxes based on MSI's net income or payroll taxes, which MSI is responsible for paying.
- (B) As full compensation for the Products, Services and expenses, Customer shall pay MSI in accordance with the terms of this Agreement and the respective SOWs. The fees ("Fees") for the Products, Services and expenses shall be specified in the respective SOWs. Service Fees may be calculated (a) on a fixed price basis, or (b) on a time and materials basis ("T&M").
- (C) Unless otherwise noted, prices shown do not include shipping and insurance charges, delivery, site preparation, installation, electrical or environmental requirements, testing, maintenance or other Services.
- (D) MSI may be required to collect and remit taxes from Customer unless Customer provides MSI with a valid tax exemption certificate. Any taxes, duties or such other charges will be invoiced to the Customer. If it is required to pay any such amount, Customer will promptly reimburse MSI for any such amount.
- (E) Payment for all fees charges, sales, use, excise, value added, withholding and other taxes, and all customs duties and tariffs or other taxes, duties or other fees now or hereafter claimed or imposed by any governmental authority upon the sale of the Products and Services are the responsibility of the Customer, unless otherwise agreed in an SOW. If the Customer is required to pay (i) sales, use, property, value-added, withholding or other taxes, (ii) any customs or other duties, or (iii) any import, warehouse or other fees, associated with the importation or delivery based on Products and Services provided in this Agreement or on Customer's use of the Product and Services, then such taxes, duties or fees shall be billed to and paid by Customer. If Customer is permitted to declare and not pay any such fees, then Customer

shall notify MSI which taxes and fees it is paying or not required to pay, provide a copy of the tax exemption certificate or Tax Exemption ID number, and MSI shall not be required to invoice Customer for those taxes and fees.

- (F) If MSI is required to pay any federal, state, county, provincial, foreign or local value added, sales, use, and/or goods and services tax, or similar applicable taxes by law based on the Services or Products provided, MSI shall include a line item for the taxes on all invoices (identifying type and amount of the tax) and shall assume sole responsibility for tracking the taxes. MSI shall ensure that any fees or charges invoiced to Customer are done so in accordance with applicable rules and in a manner that will allow Customer to reclaim any such value added and/or similar tax from the appropriate government authority. MSI shall timely remit to the appropriate governmental tax agency all such taxes collected from Customer or its Affiliate Party to the applicable SOW and shall indemnify and hold Customer harmless if MSI does not meet such obligation(s).
- (G) When specified in an SOW or other approved contract document, Customer will reimburse MSI for its actual out-of-pocket travel-and living related expenses reasonably incurred in connection with its performance of the Services; provided, however, that (i) MSI obtains the written approval of Customer prior to incurring any such expenses, (ii) all such expenses are consistent with Customer's then-current travel and expense policies, as applicable, and (iii) all such expenses are supported by adequate documentation submitted by MSI together with the relevant invoice.
- (H) Each invoice submitted to Customer must reference a valid SOW and provide supporting detail for the Products, Services and expenses invoiced.
- (I) MSI will submit to Customer monthly invoices for Products, Services and/or fees delivered or provided to Customer by MSI. All payments are due NET 30 days from the date of the invoice unless other terms are set forth in the SOW. In the event payments are not made in accordance with the terms hereof, MSI reserves the right to charge interest on any unpaid balance at the rate of one and one-half percent (1.5%) per month, or the highest rate allowed by law, whichever is lower.
- (J) RETURNS WILL NOT BE ACCEPTED WITHOUT RETURN AUTHORIZATION FROM MSI.

2. Tariffs and Regulatory Fees Clause

- (A) In the event that, after the date of a proposal, the United States government imposes new or increased tariffs, duties, taxes, or other regulatory fees applicable to any products or services included herein, Micro Strategies Inc. reserves the right to adjust pricing to reflect such additional costs. Should these changes materially impact the cost of goods sold, Micro Strategies Inc. will provide written notice to the client detailing the adjustment. In such cases, Micro Strategies Inc. further reserves the right to cancel the affected portion of the order without liability to either party.

3. Title & Risk of Loss

- (A) MSI hereby retains title to and a security interest in the Products and/or Services delivered to Customer, until Customer makes payment in full of the purchase price hereunder.
- (B) Title and ownership rights to all Software, machine code and any copies thereof shall be controlled by the license(s) provided by the manufacturer, licensor, or distributor thereof.
- (C) All risk of loss, destruction, or damage to all Equipment and/or Software, by reason of theft, fire, water, or any other cause, shall pass to Customer upon delivery of the Equipment and/or Software to a common carrier (or directly to Customer, if MSI is delivering), and the occurrence of any such casualty shall not relieve Customer of its obligation to pay the balance of the purchase price, if any.

4. Intellectual Property Ownership

- (A) Each Party shall retain all rights in any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that the Party owns or develops outside the scope of this Agreement.
- (B) MSI's Intellectual Property and trade Secrets (MSI IP) and all improvements, developments, extensions or modifications to MSI's IP that are conceived, developed or reduced to practice in connection with this Agreement or any Statement of Work, for incorporation into a Product, Service or Work Product (including all parts thereof) and any intermediate Service or Work Product created in providing the Services and developing the final Service or Work Product (collectively, the "MSI Content") are and will remain at all times the sole and exclusive property of MSI. MSI Content that is contained in or required for the use of any Service or Work Product and to the extent MSI does not have an explicit license for the MSI Content, Service or Work Product provided under this Agreement, MSI hereby grants to Customer a worldwide, paid-up, royalty-free, irrevocable and perpetual license, which is sublicensable or assignable to Customer affiliates and assignees, to use, copy, modify and prepare derivative works of that MSI Content in connection with the use of such MSI Content, Service or Work Product solely in connection with the Products, Services and/or Deliverables MSI renders to Customer and solely as specified in an MSI SOW. The foregoing license includes the right to allow third party product or service providers of Customers and its affiliates to install MSI Content on their systems and at their locations and to use, copy, modify and prepare derivative works thereof solely in connection with the Service or Work Product MSI has rendered to Customer and/or products they provide for the exclusive use of Customer and its affiliates.
- (C) Third Party Supplier's Intellectual Property and trade Secrets (IP) – Third Party Content
 - a) Third party supplier's IP, products and services and any improvements or extensions thereto, which are conceived, developed or reduced to practice in connection with this Agreement or any Statement of Work, are owned exclusively by the third party supplier and is provided in accordance with the third party supplier's license and/or agreement, which is provided in accordance with a Statement of Work and is accepted by Firm.

- b) For third party products, services or work product that are provided under a “shrink-wrap”, “click-through”, “web-wrap”, “browse-wrap” or any other form of license agreement, Customer will assure the individual installing the software and services has proper Customer authorization to install the software or service, accept the software or service license terms for Firm, and must assure such software or service is properly licensed, installed and registered to Customer.
- (D) Customer Services and Work Product. Customer and MSI agree and acknowledge that Customer is and will be the sole and exclusive owner of all right, title, and interest throughout the world, including without limitation all of its Customer intellectual property and other proprietary rights (collectively, "Customer Ownership Rights") that is incorporated in and to the Services and Work Products, and all parts thereof, with the exception of the MSI Content and Third Party Content, without additional compensation to the Contractor.
- (E) MSI and its third-party partners are not restricted from using residual knowledge arising out of this Agreement in its business activities where “Residuals” means methods, ideas, concepts, know-how, techniques, program organization or database structuring techniques in intangible form, retained in the unaided memory by persons performing the Services and which does not contain Customer Confidential or Proprietary Information.
- (F) Notwithstanding the following, MSI and its third-party partners shall own all rights, title and interest in and to any and all suggestions, comments, improvements, or other feedback about the MSI Owned Products and Services (“Feedback”) that Customer or its affiliates offer directly or indirectly to MSI or its third-party partners. Upon providing the Feedback, Customer hereby irrevocably assigns MSI and its third-party partners all right, title, and interest in and to the intellectual property rights in the Feedback and agrees to provide MSI and its third party partners with any assistance they may require to document, perfect, and maintain MSI's and its third party partner's rights in the Feedback

5. Updates, Fixes, and Patches

- (A) When Customer receives an update, fix, or patch to a Program or Product, Customer accepts any additional or different terms that are applicable to such update, fix, or patch that are specified in its License. If no additional or different terms are provided, then the update, fix, or patch is subject solely to the existing product license.
- (B) If a Program or Product is patched upgraded, or replaced by an update, Customer agrees to promptly discontinue use of the replaced Program or Product.

6. Licensed Product Delivery

- (A) “Licensed Products” means all Licensed Products and Derivative Products, (“Products”), including software (“Software”), hardware (“Hardware”), data (“Data”), documentation and related materials.
- (B) MSI and third-party software is licensed and not sold.
- (C) The individual installing software and other licensed products must have proper Customer authorization and such software must be properly licensed, installed and registered to the Customer in accordance with the license. Downloaded software must be used only under the terms of its license.
- (D) MSI Licensed Products and derivatives thereto are delivered to Customer:
 1. As intellectual property in accordance with Paragraph 4 above,
 2. In accordance with the applicable MSI license agreement specified in the SOW, which will be provided to Customer for its review and acceptance as part of the SOW review and acceptance process,
 3. As, in the case of software, either as compiled software or source code format. Source code shall be controlled as Confidential Information in accordance with this Agreement.
- (E) Third party Licensed Products are provided by MSI in accordance with the applicable third-party product license agreement, which is to be reviewed and accepted by Customer as part of the SOW review and acceptance process.
- (F) MSI will inform the Customer of, and obtain advance approval of the Customer, for MSI and Third Party Owned Products and Services that are to be utilized and/or incorporated into the Deliverables. As part of the notification process, MSI will inform the Customer about any licensing requirements prior to the utilization and/or incorporation.
- (G) Proprietary Notices. Customer shall not remove any Product identification or notices of any proprietary or copyright restrictions from any Products, Services documents or any support material.

7. Services

- (A) Customer understands and agrees that Customer’s reasonable cooperation is required in order for MSI to properly, efficiently and effectively perform the Services for Customer hereunder. Customer agrees to comply with all MSI's reasonable requests made in connection with the provision of Services to Customer hereunder.
- (B) Customer shall provide to MSI all “Required Consents” necessary for MSI and its third-party suppliers to provide the Products and Services described in this Agreement and the applicable SOW’s. A Required Consent means any consents or approvals required to give MSI and its subcontractors third party suppliers the right or license to access and use the Customer's and its third party's software, hardware, firmware, or other products thereby enabling MSI and its third party suppliers to deliver the Products and Services set forth in the SOW without infringing the ownership or license rights of the providers or owners of such Products and Services. Customer shall be responsible for promptly obtaining and providing to Vendor all “Required Consents” and pay any associated costs, fees or charges for such Required Consents necessary for MSI to provide the Services under this Agreement.
- (C) If an SOW requires MSI to provide delivery, modification, maintenance and/or installation services for Hardware and/or Software, Customer agrees to provide a suitable installation environment as reasonably specified by MSI.

- (D) MSI shall have no liability whatsoever for any delays, deficiencies or failures that occur in the performance of Services as a result of Customer's unanticipated requests, Customer's adequate and timely support, complications with Customer's systems, programs, accounts and data, and other unforeseen circumstances beyond the reasonable control of MSI.

8. Deliverable Acceptance Procedure

The acceptance criteria for the Deliverables shall be established in the applicable SOW.

9. Confidentiality

- (A) **Confidential Information.** Confidential Information means any and all nonpublic information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") before, on, or after the date of the Agreement in connection with the Agreement, Products or Services that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation, all tangible, intangible, visual, electronic, present, or future information concerning the Disclosing Party's business such as, without limitation: (a) trade secrets; (b) technical information, including without limitation, research, developments, procedures, inventions, ideas, processes, software programs and subroutines, computer source and object code, algorithms, data, designs, techniques, know-how, formulae, programs, other works of authorship; (c) financial information, including, without limitation, pricing; (d) business information, including, without limitation, operations, planning, marketing interests, promotional and marketing activities and products; (e) information with respect to MSI, vendors, and customers individuals including, but not limited to, personally identifiable information, email addresses and any other contact information; and (f) the terms of any agreement between Customer and MSI and the discussions, negotiations and proposals related to that agreement.
- (B) **Confidential Information Exceptions.** The Receiving Party does not have an obligation to protect Confidential Information that is: (a) in the public domain through no fault of the Receiving Party; (b) within the legitimate possession of the Receiving Party, with no confidentiality obligations to a third party; (c) lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; (d) independently developed by the Receiving Party without reference to any Confidential Information or breaching this Agreement or by Parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; or (e) disclosed with the prior written consent of the Disclosing Party.
- (C) **Disclosure Of Confidential Information.** Confidential Information may be disclosed in writing, or other fixed media or disclosed in any other manner, including, without limitation, oral, visual, or electronic means. Each Party agrees to limit disclosure of any Confidential and Proprietary Information received from the other Party to its employees, agents, contractors, Affiliates, and advisors on a need-to-know basis. The Receiving Party and its personnel may use Confidential Information of the Disclosing Party only for the direct benefit of the Disclosing Party and only while performing services under this Agreement. Except as stated in the previous sentence, Receiving Party and its personnel agree not to disclose to any third-party, nor use for their own benefit or for the benefit of any other person or entity, such Confidential Information. The Parties agree to ensure that such employees, agents, contractors, Affiliates, and advisors acknowledge in advance that they are bound by the obligations as set forth in this Agreement with respect to any Confidential Information they may receive, and to use their best efforts to ensure that such persons comply with those obligations. Receiving Party is fully liable for any acts of its Representatives in violation of this Agreement.
- (D) **Use of and Duty of Care to Protect Confidential Information.** The Receiving Party will use Confidential Information only to further the relationship between the Parties and will not reproduce Confidential Information except to accomplish this purpose. Confidential Information may not be disclosed to any third party without the prior written consent of the Disclosing Party (other than to such parties' Representatives and as may be required by applicable law and regulation). The Receiving Party will take all reasonable measures to avoid unauthorized disclosure, dissemination or use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature.
- (E) **Ownership.** Confidential Information remains the property of the Disclosing Party. No rights, licenses, trademarks, inventions, copyrights, patents, or other intellectual property rights are implied or granted to Confidential Information, except to use Confidential Information as provided in the Agreement. On termination of the Agreement or at the Disclosing Party's written request at any time, all written, recorded, graphical, or other tangible Confidential Information, including copies, must be returned to the Disclosing Party or destroyed by the Receiving Party. At the request of the Disclosing Party, the Receiving Party will promptly confirm in writing that any Confidential Information has been destroyed. Notwithstanding the foregoing, copies of Confidential Information that are required to be retained by law or regulation or audit requirements or that are created pursuant to any automated archiving or back-up procedures which cannot reasonably be deleted may be retained, however, such Confidential Information shall continue to be subject to the terms of this Agreement.
- (F) **No Reverse Engineering.** Either Party will not, and will not permit any other Party to, reverse engineer, decompile or disassemble any hardware or software received from the other Party for any purpose inconsistent with this Agreement.
- (G) **No Warranty.** Except as otherwise agreed in writing with respect to a specific Transaction, no warranties of any kind are given by either Party with respect to the accuracy, appropriateness or completeness of information provided to the other.
- (H) **Indemnity.** Each Party represents and warrants that it has the right to disclose all Confidential Information that it discloses to the other Party. Each Party will indemnify and defend the other from all third-Party claims resulting from the negligent or wrongful disclosure by the indemnifying Party of a third-Party's confidential information.
- (I) **Right to Enjoin Disclosure.** The Parties acknowledge that a Receiving Party's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of this Agreement the Disclosing Party may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not alter

any other remedies available to either Party. The Party who has breached or threatened to breach this Agreement will not raise the defense of an adequate remedy at law.

- (J) **Legal Disclosure** If the Recipient is required, by law, rule, regulation, oral questions, interrogatories, requests for information or documents, subpoena, civil or criminal investigative demand, or other legal or judicial process, or regulatory agency or stock exchange rule (collectively, "Law") or in connection with any legal action to enforce this Agreement, to disclose any Confidential Information or related discussions, the Recipient will give the Discloser prompt written notice (to the extent practicable and permitted by applicable law, rule, regulation, regulatory body or court) so that the Discloser may seek a protective order or other appropriate remedy, and the Recipient will cooperate with the Discloser in that effort to the extent commercially reasonable and at the Discloser's sole expense. If such protective order or other remedy is not obtained, the Recipient will furnish only that portion of the Confidential Information or related discussions that it is advised by its counsel is required to be furnished, and the Recipient will request that the party to whom the Confidential Information is furnished agree in writing that the Confidential Information or related discussions will be kept confidential. Notwithstanding the above, notice shall not be required where disclosure is in the connection with a routine audit or examination by, or a blanket document request from, a regulatory or governmental entity that does not specifically reference the Discloser or this Agreement.

10. Data Protection.

- (A) The Parties shall comply with the provisions of applicable data protection legislation as specified by the Customer.
- (B) The Parties shall agree that, if MSI creates, processes, stores, and/or deletes any personal data on its infrastructure on the Customer's behalf pursuant to the Customer's instructions under this Agreement, MSI shall be the data controller, and the Customer shall be the data processor.
- (C) The Customer shall ensure that it is entitled to transfer the relevant personal data to MSI, and that.
- (D) Subject to the Customer's obligations under applicable law, each Party shall ensure that.
 - a. MSI may receive, create, process, store, and/or delete the personal data on the Customer's behalf under applicable law.
 - b. MSI shall process the personal data only in accordance with the terms of this Agreement.
 - c. Each Party shall take appropriate technical and organizational measures against unauthorized or unlawful creation, processing, and/or deletion of personal data, and
 - d. Each Party takes the appropriate technical and organizational measures to prevent its accidental loss, destruction, or damage.

11. Indemnification

- (A) MSI will indemnify, defend, and hold the Customer and its officers, directors, employees, contractors, Affiliates, and agents (collectively, "**Indemnified Parties**") harmless from claims, suits, demands, costs, liabilities, expenses, and damages (including reasonable attorneys' cost and fees) (collectively, "Claims") alleging MSI's:
 - 1) Gross negligence, willful misconduct, fraud, or strict liability in relation to or in connection with its performance under this Agreement.
 - 2) Gross negligence or willful acts or omissions that result in any bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property; or
 - 3) A Claim that information, design, specification, instruction, software, data or material ("Material") furnished by MSI or any of its Indemnified Parties hereunder, or any Product, Software, Services or Deliverable infringes a third party's copyright, trade secret, patent, trademark, publication or other proprietary right, and will indemnify and hold harmless the Customer and its Indemnified Parties from and against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with such a claim; except to the extent of subparagraph 11. (B) 2) of this Agreement
- (B) Customer shall indemnify, defend, and hold MSI and its affiliates and their respective shareholders, directors, officers, employees, and agents (each an "Indemnified Party") harmless from and against any:
 - 1) Customer's gross negligence, willful misconduct, fraud, or strict liability in relation to or in connection with its performance under this Agreement.
 - 2) Gross negligence or willful acts or omissions that result in any bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property; or
 - 3) A claim of infringement or misappropriation to the extent that (a) the claim is based on specifications provided by Customer and such reliance is the cause of the infringement, (b) such claim is based upon Customer's use of a superseded or altered version of some or all of the Material, if infringement or misappropriation would have been avoided by the use of a subsequent or unaltered release of the Material which was provided to the Customer, (c) such Claim is based upon Customer's alteration and/or use of some or all of the Material in a manner that violates a Material contract or license which was provided to Customer, and/or (d) the combination of a Deliverable or Material with any products or services which are not provided or otherwise authorized by MSI, if such claim would not have arisen but for such combination.
- (C) In the case of a third-party Claim against MSI of intellectual property infringement or upon any facts which in MSI's sole opinion are likely to give rise to such Claim, MSI shall in its sole discretion and at its sole option elect to:

1. Modify the software, hardware and/or services to avoid the alleged infringement but in a manner so that it remains functionally equivalent, or
 2. Replace the software, hardware and/or service so that it becomes non-infringing but functionally equivalent,
 3. Procure for the Customer the right to continue to use the software, hardware and/or service, at no additional cost to the indemnified Party,
 4. Terminate this Agreement or the affected SOW and provide a refund to the Customer of all amounts paid by the Customer to the MSI for the affected software, hardware and/or services.
- (D) In the case of a third party Claim against the Customer, or its officers, directors, employees, Affiliates, Partners and agents that materially affects MSI's ability to meet its obligations under the relevant SOW, then MSI may, at its sole discretion and upon thirty (30) days prior written notice to Customer, terminate such SOW, in which case Customer shall pay MSI for Products delivered and the Services rendered in accordance with this Agreement through the date of termination, and for all reasonable non-cancelable commitments incurred directly in the performance of the Services and delivery of Products that are outstanding as of the effective termination date, provided that MSI uses its best efforts to mitigate same.
- (E) When seeking indemnification, the indemnified Party will use reasonable efforts to promptly:
1. Notify the indemnifying Party in writing of any such Claim; and
 2. Give the indemnifying Party full control and sole authority over the defense and settlement of such Claim, provided settlement fully releases the indemnified Party, and is solely for monetary damages and does not admit any liability on behalf of the indemnified Party. Notwithstanding the foregoing, (i) the indemnified Party may join in defense and settlement discussions directly or through counsel of indemnifying Party's choice at indemnified Party's own cost and expense and (ii) indemnifying party may not settle a claim without the indemnified party's prior written consent if such settlement places liability, obligations or otherwise adversely affects the indemnified party.

12. Representations And Warranties

- (A) Each Party represents and warrants that:
1. It has the right, power and authority to enter into this Agreement and perform according to its terms.
 2. The performance of its obligations will not breach any agreements with a third party.
 3. The Materials do not contain any libelous, materially false, or misleading statements; and
 4. The Party's activities comply with all applicable laws, rules and regulations.
- (B) MSI represents and warrants that it will perform its obligations in a timely manner and with professional diligence and skill in a manner consistent with the timely, competent, professional and good workmanlike standards and conform to the written specifications under the relevant SOW.
- (C) Customer shall report any deficiencies in the Products and/or Services to MSI in writing within thirty (30) days of performance of such Products and/or Services and within the warranty period in order to receive warranty remedies. If within thirty (30) days of notice, to perform such Services to Customer's reasonable satisfaction, or if MSI is unable to do so, MSI shall within thirty (30) days of notice, repair or replace the Product so that it conforms with the specifications therefor or, if MSI is unable to do so, to refund to Customer the fees paid for such nonconforming Product.
- (D) Customer acknowledges that the Products and Services are of such complexity that they may have certain non-material defects when delivered and the Customer agrees that the Customer's sole liability and MSI's sole remedy in respect of any breach of said warranty shall be for MSI to correct any Product errors or defects or, if necessary in MSI's sole discretion, to replace any defective Products and/or Services. If MSI fails (other than through the act or default of the Customer) within a reasonable time to implement a repair or provide a replacement of a defective Product or Service, MSI's liability therefor shall be limited to the Purchase Price paid by the Customer for the defective Product without any further liability to MSI.
- (E) While efforts are made to verify the completeness and accuracy of the information provided by MSI, MSI shall not be responsible for any damages arising out of the use of any information related to any Products or Services or any documentation provided by MSI. No information or anything contained in documentation provided by MSI is intended to, nor shall it have the effect of creating any warranties or representations by MSI (or its suppliers or licensors) or altering the terms and conditions of any applicable agreements.
- (F) MSI does not provide legal advice. Customer is responsible for ensuring its own compliance with legal, regulatory and court requirements. It is the Customer's sole responsibility to obtain advice of competent legal counsel as to the identification, interpretation and implementation of any relevant laws, regulatory requirements, court rules and court rulings that may affect the Customer's business and any actions the Customer may need to take to comply with such requirements.
- (G) MSI does not warrant that Customer's use of the Products and Services will be uninterrupted, error-free or free of harmful components, that the content will be secure or not otherwise lost or damaged or that the documentation will meet Customer's requirements.

- (H) MSI is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.
- (I) Third party provider warranties are issued by the respective third-party manufacturers/suppliers.
- (J) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS AND ALL SERVICES OF MSI ARE PROVIDED "AS IS" AND WITHOUT WARRANTY, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INTERFERENCE, INFORMATIONAL CONTENT AND SYSTEM INTEGRATION. MSI DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THIS INCLUDES THE WARRANTIES OF TITLE, AND NON-INFRINGEMENT. THIS ALSO INCLUDES ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. ALL MSI REPRESENTATIONS AND WARRANTIES ARE SOLELY TO AND FOR THE BENEFIT OF THE CUSTOMER AND TO NO OTHER PERSON OR PARTY. MSI DOES NOT WARRANT THAT USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE AND CUSTOMER ASSUMES ALL RISK OF USE OF THE PRODUCTS AND SERVICES, INCLUDING RISK OF THE LOSS OF USE AND LOSS OF DATA RESULTING THEREFROM. THE EXPRESS TERMS OF THIS AGREEMENT ARE IN LIEU OF ALL WARRANTIES, CONDITIONS, TERMS, UNDERTAKINGS AND OBLIGATIONS IMPLIED BY STATUTE, COMMON LAW, CUSTOM, TRADE USAGE, COURSE OF DEALING OR OTHERWISE, ALL OF WHICH ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.
- (K) THE PRODUCT WARRANTY AND MAINTENANCE & SUPPORT SERVICES EXCLUDE, AND MSI SHALL HAVE NO OBLIGATION TO REMEDY, ANY DEFECTS OR ERRORS CAUSED OR MATERIALLY CONTRIBUTED TO BY: (I) ALTERATION, REPAIR OR MODIFICATION OF THE PRODUCTS BY ANY PERSON OTHER THAN MSI WITHOUT MSI'S WRITTEN CONSENT; (II) THE IMPROPER STORAGE, HANDLING, ABUSE OR MISUSE OF THE PRODUCTS; (III) USE OF THIRD PARTY HARDWARE OR SOFTWARE THAT IS INCOMPATIBLE WITH THE PRODUCTS; AND/OR (IV) DAMAGE CAUSED BY FIRE, EXPLOSION, POWER FAILURE, LOSS OF INTERCONNECTIVITY OR ANY ACT OF NATURE.

13. DISCLAIMER AND LIMITATIONS OF LIABILITY

- (A) MSI SHALL BE ENTITLED TO RELY ON ANY AND ALL INFORMATION AND MATERIALS PROVIDED TO IT BY CUSTOMER, AND MSI SHALL NOT BE LIABLE FOR ANY INACCURACY OR INCOMPLETENESS OF SUCH INFORMATION OR MATERIALS.
- (B) UNLESS SPECIFICALLY STATED OTHERWISE IN THE APPROVED STATEMENT OF WORK, CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SHALL BE SOLELY RESPONSIBLE FOR PROPER BACK-UP OF ALL DATA AND THAT CUSTOMER WILL TAKE APPROPRIATE MEASURES TO PROTECT SUCH DATA. MSI, ITS VENDORS, PARTNERS, AND THIRD-PARTY LICENSORS ASSUME NO LIABILITY OR RESPONSIBILITY WHATSOEVER IF DATA IS LOST OR CORRUPTED
- (C) NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, MULTIPLIED OR EXEMPLARY DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BENEFITS AND LOSS OF OR DAMAGE TO DATA, HARDWARE OR SOFTWARE, EVEN IF THE PARTY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- (D) EACH PARTY'S LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND RESULTING FROM ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ACTION, WHETHER IN TORT OR IN CONTRACT, SHALL BE LIMITED TO THE AMOUNT PAID TO MSI DURING THE PRECEDING 12 MONTHS FOR THE LATEST AFFECTED SOW HEREUNDER, WITHOUT INTEREST.
- (E) NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION ARISES.
- (F) THE FOREGOING DISCLAIMERS OF LIABILITY AND LIMITATIONS OF DAMAGES SHALL NOT APPLY TO CLAIMS BASED ON VIOLATION OF CONFIDENTIALITY, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT.

14. Assignment

- (A) Neither Party may assign the Agreement or its rights and/or delegate its obligations under the Agreement without the other Party's prior written consent, which will not be unreasonably withheld. Any assignment or transfer of the Agreement by a Party in violation of this section will be void.
- (B) Either Party may assign the Agreement to (i) its Affiliates and (ii) any entity as a result of a merger or sale of all or substantially all of the assets of such Party to such entity and such entity agrees in writing to be bound by the terms of the Agreement.
- (C) This Agreement will be binding on and inure to the benefit of Customer's and MSI's respective permitted successors and permitted assigns.

15. Inability to Perform

Neither Party shall be required to perform its obligations under this Agreement, or be liable for its failure to perform, during any period in which such non-performance is caused by an event beyond the Party's reasonable control; such as an act of God, a significant failure of a part of the power grid, sabotage, denial of service attack, significant failure of the Internet, natural disaster, war, civil disturbance, riot, strike, work stoppage, transportation delay, unavailability of Equipment or Software, product shipping delay or cancellation by manufacturers, power failures, any act or order of any governmental agency or official thereof. In such event, the party that is unable to perform shall give prompt notice to the other party, which shall have the right to terminate this Agreement.

16. Export

The Parties acknowledge that Equipment, Software and/or Services provided hereunder, including documentation, other technical data, and/or training and/or education materials, may be subject to export controls imposed by law, rule or regulations. Neither Party will export or re-export (directly or indirectly) any such Equipment, Software and/or the results of Services, or any such documentation, other technical data, and/or training and/or education materials, without complying with all applicable laws, rules and regulations. Each Party shall comply with the U.S. Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control ("OFAC"), or other United States or foreign agency or authority, and not export, or allow the export or re-export of any Materials, Software or results of Services (Product) (or any product incorporating such Product) in violation of any such restrictions, laws or regulations (including, without limitation, export or re-export to destinations prohibited either in Country Groups Q, S, W, Y or Z country specified in the then current Supplement No. 1 to Section 770 of the U.S. Export Administration Regulations (or any successor supplement or regulations), or the OFAC regulations found at 31 C.F.R. 500 et seq.); Each Party shall bear its own expenses relating to any necessary licenses and/or exemptions with respect to the export from the U.S. of all Products to any location desired by such Party.

17. Non-Solicitation

(A) Similar Services

- 1) This Agreement is nonexclusive. It does not restrict either Party from offering to, or procuring from, any third party the same or similar Products or Services.
- 2) A Party may use the same personnel to provide those services to others in the same industry as the other Party, and to develop new Products and Services. These personnel, however, must abide by the terms of this Agreement including the protection of the other Party's Confidential Information.

(B) Non-Hire Covenant

1. Both parties agree that during the period that this agreement is in force, including extensions or modifications thereto, and for an additional 12 months following this period, neither Party will actively recruit, or solicit permanent employees of the other Party, or the employees of any of the other Party's subcontractors; who are on active payroll status and are actively engaged under this Agreement, without the prior written approval of the Party whose employee is being considered for employment. This does not prohibit any employee from responding to or pursuing employment opportunities through normal media channels, i.e. newspapers, professional journals, etc. or general solicitations so long as it is not an attempt to avoid the intent of the above restriction.
2. Breach of this provision may result in the non-breaching Party pursuing all of its remedies under this Agreement, including injunctive relief. In such event, the non-breaching Party may terminate this Agreement without further liability.

18. Relationship Of the Parties and Their Employees

- (A) Independent Contractors. Nothing contained herein shall be construed as creating a partnership, joint venture or agency or employment relationship between MSI (and its employees and Subcontractors) and Customer. In performing all Services required hereunder, each Party shall act as an independent Contractors to the other.
- (B) Nonexclusive Agreement. This Agreement is nonexclusive. Except as otherwise provided in this Agreement each Party may independently engage in any business endeavor, whether it is competitive with the object of this Agreement, without consulting the other Party and without in any way being accountable to the other Party.
- (C) No Agency. Except as expressly provided herein, neither Party shall have any authority or power to contract or in any manner incur liability, retrospectively or prospectively, of any kind or nature for or in the name of the other Party or for which the other Party could or might be held liable to others.
- (D) Employees. MSI's employees who perform MSI's obligations under this Agreement shall at all times be and remain employees of MSI, not employees of Customer. MSI shall pay MSI's employees and shall ensure that each of its Subcontractors pays its employees all wages, salaries, overtime, and other amounts due to such employees. MSI shall be responsible for and shall ensure that each of its Subcontractors shall be responsible for, all reports, payments, and other obligations respecting their respective employees, including without limitation, those related to social security, income tax withholding, unemployment compensation, workers' compensation, and employee benefit plans.

19. Term and Termination

- (A) The initial term of this Agreement shall commence on the Approval Date and shall continue for one (1) year. Upon expiration of the Initial Term, and upon each subsequent anniversary date, this Agreement shall automatically renew for a period of twelve (12) calendar months (each a "Renewal Term") unless MSI or Customer provides the other with sixty (60) days written notice prior to the Termination Date. The Initial Term and any Renewal Term may be referred to collectively in this Agreement as the "Term".
- (B) This Agreement shall continue in effect until terminated in accordance with this Agreement or replaced by a new or updated Agreement.
- (C) This Agreement may be terminated on sixty (60) days' written notice by either Party. In the event of termination hereunder, MSI shall receive payment for the following:

1. all Services performed and all Products delivered consistently with the terms of this Agreement and applicable SOW's as of effective termination date, and
 2. for all reasonable non-cancelable commitments incurred directly in the performance of the Services and delivery of Products that are outstanding as of the effective termination date, provided that MSI uses its best efforts to mitigate same.
- (D) If an SOW is outstanding and performance thereof has begun, the Parties agree that such SOW(s) shall be honored and completed and that the terms and conditions of this Agreement shall continue in full force and effect with regard to such SOW (except that, if an SOW is for Services only, the Parties may agree to cancel such Services at any time). Performance shall be deemed to have begun if MSI has ordered, or irrevocably committed to order, any Equipment or Software from manufacturers, distributors, etc. If performance under an SOW has not begun, then either Party may cancel such SOW by giving the other Party notice thereof.
- (E) Notwithstanding paragraph (C) above, in the event of a breach of this Agreement, this Agreement may be terminated by the non-breaching Party fifteen (15) days after a written notice of the breach has been delivered to the breaching Party, and the breaching Party has failed to remedy the breach within fifteen (15) days from the date of written notification.
- (F) Upon expiration or termination of this Agreement, neither Party shall be relieved from any obligation accrued up to and including the date of such expiration or termination nor deprived of any right or remedy otherwise available to it pursuant to this Agreement. Any terms of this Agreement, which by their nature extend beyond Agreement termination, remain in effect until fulfilled and apply to respective successors and assignees.

20. Waiver Of a Right

No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. The waiver by either Party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof.

21. Survival

Any provision of or obligation under this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any such termination or expiration and shall continue in full force and effect. In addition, all provisions of this Agreement shall survive the termination or expiration of this Agreement to the fullest extent necessary to give the parties the full benefit of the agreement expressed herein and of the intent contemplated hereunder.

22. Section Headings

The headings of the sections in this Agreement are for the purposes of convenient reference only and are not intended to be part of this Agreement, or to limit or affect the meaning or interpretation of any of the terms hereof.

23. Agreement Execution

This Agreement may be executed in any number of counterparts with the same effect as if the signatures were upon a single engrossment of this Agreement but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

24. Dispute Resolution & Choice of Law

- (A) The Parties shall attempt in good faith to resolve all claims, disputes and controversies arising out of or relating to this Agreement or the relationship of the Parties (collectively "Dispute") in the ordinary course of business.
- (B) In the event it becomes necessary for either Party to enforce the terms and conditions of this Agreement through litigation,
1. Each party irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or related to these terms and conditions or any purchase order incorporating these terms and conditions.
 2. The prevailing Party pursuant to a final, non-appealable order shall be entitled to recover all reasonable out-of-pocket costs incurred, including reasonable attorneys' fees. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Customer and MSI, or their respective agents, officers, employees or Subcontractors of any tier, they shall be borne by each Party in proportion to the negligence.
- (C) **Attorney's Fees.** In the event that any party institutes any legal suit, action or proceeding, including arbitration, against the other party to enforce the conditions and covenants contained in this Agreement or obtain any other remedy in respect of any breach arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such party in conducting the suit, action or proceeding, including reasonable attorneys' fees and expenses and court costs.

25. Governing Law, Jurisdiction and Venue.

This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule (whether of the State of New Jersey or any other jurisdiction). The Parties agree to the exclusive venue and jurisdiction of the federal and state courts in and for Morris County, New Jersey.

Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. This Agreement shall not be governed by the UN Convention on the International Sale of Goods, or any enactment of the Uniform Computer Information Transactions Act. To the extent that UCITA is applicable, we each agree to opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained in UCITA.

26. Entire Agreement

- (A) This Agreement, including any Attachments and Statements of Work constitutes the entire agreement between the parties regarding the subject matter hereof and is the exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. No provision or pre-printed terms on any hard copy or electronic purchase orders, proposals, or quotations or in any other hard copy or electronic business document or form employed by either Party will supersede, augment or modify the terms and conditions of this Agreement, and no promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by either Party. Each Party hereby rejects all such different or additional terms offered by the other Party.
- (B) If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such term or provision shall be deemed modified to the extent necessary, in the court's opinion, to render such term or provision enforceable. Upon such modification, the rights and obligations of the parties shall be construed and enforced in accordance with such modification, preserving to the fullest permissible extent the intent and agreements of the parties set forth in this Agreement.
- (C) No modification or amendment to this Agreement shall be of any force or effect unless in writing and executed by Customer and MSI.
- (D) Each Party has relied upon its own examination of this Agreement and the provisions hereof and upon the counsel of its own advisors.

Exhibit One

Definitions

- (A) "Externals" means any pictorial, graphic, audiovisual works, reports or data generated by execution of code and any programming interfaces, languages or protocols implemented in the code to enable interaction with other computer programs or end users. Externals do not include the code that implements them.
- (B) "Flow-Through Provisions" mean the terms of agreements for Products and Services provided by Third Parties which are included in the Agreement/SOW as required by providers of those services. The Flow-Through Provisions apply only to the relevant services provided by Third Parties. Such Products and Services provided by Third Parties are part of the Products and Services and are subject to the terms of the Agreement as well as the Flow-Through Provisions.
- (C) "Initial Term" means the period commencing on the Agreement Effective Date until the next Anniversary Billing Date, unless terminated before the next Anniversary Billing Date.
- (D) "Infrastructure" means the facilities and systems necessary for the Customer's information system to function and provide the required services. This may include the Customer's:
 - 1.D.1. Owned infrastructure.
 - 1.D.2. Non-Vendor's leased or subscription-based infrastructure; and/or
 - 1.D.3. Vendors leased or subscription-based infrastructure.
- (E) "Intellectual Property" means all intellectual, moral, industrial and/or proprietary rights recognized under applicable law anywhere in the world, whether issued or pending, registered or unregistered means a broad categorical description for the set of intangibles owned and legally protected by a company from outside use or implementation without consent including all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any acquired goodwill), service marks, trade names, business names, internet domain names, e-mail address names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, and any application for the foregoing),
- (F) "License" means the right to use a specific quantity of Products, Software and/or Intellectual Property pursuant to the terms of a License Agreement.
 - 1.F.1. "License Agreement/End User Agreement (EULA)" means the terms and conditions that govern the use, sale or distribution of Licensed Products.
 - 1.F.2. "Licensed Materials" means all Licensed and Derivative Products, ("Products"); including the hardware, software, programs, tools, systems, data, Intellectual Property, subscription services, documentation, feedback and other materials and services made available by MSI and its third-party partners to the Customer in the course of the performance under this Agreement.

- (G) "Modification" means (i) a change to the delivered source or compiled code or metadata; or (ii) any development, other than a change to the delivered source or compiled code or metadata, that customizes, enhances, or changes existing functionality of the Software.
- (H) "Open Source Software" means any free software that is distributed under separate license terms that are approved by the Open Source Initiative or similar licenses (as defined by the Free Software Foundation) or software distributed under any license approved by the Open Source Initiative as set forth at www.opensource.org) or under a similar licensing or distribution model, and as to any of the foregoing, that requires any one or more of the following (i) redistribution of the software on a royalty-free basis, and/or (ii) redistribution of the software under the same license/distribution terms as those contained in the software license under which such software was originally released, and/or (iii) release to the public, disclosure, or a requirement to otherwise make available the source code of the software or any other software that links with such software. Open Source Software will include any software that (in whole or in part) is a modification of, is an improvement of, is a derivative work of, or is otherwise derived in any manner from, any software that is Open Source Software (together, "Derivative"), and to the extent, under the license to the original Open Source Software, that such Derivative is subject to the same or a comparable licensing requirement as the original Open Source Software.
- (I) "Party" means an entity such as MSI, the Customer, a Third-Party Vendor, or a Regulatory Party that is referenced in this Agreement:
 - 1.I.1. "Disclosing Party" means the Party that discloses information to the Receiving Party
 - 1.I.2. "Receiving Party" means the Party that receives information from the Disclosing Party
- (J) "Preexisting Materials" means items including their Externals, contained within a Deliverable in which the copyrights are owned by a third party or that MSI prepared or had prepared outside the scope of this Agreement.
- (K) "Personally Identifiable Information" or "PII" means any data or information, including PHI, that, either individually or when combined with other information, could be used to distinguish or trace an individual's identity, including, by example, (A) personally identifying information that is explicitly defined as a regulated category of data under any data privacy or data protection laws; (B) non-public information, such as a national identification number, passport number, Social Security number; driver's license number, or any other government issued identification number, (C) PHI, and any other health or medical information, such as insurance information, medical prognosis, diagnosis information, genetic information, or biometric records; (D) insurance policy or financial information, such as a policy number, employee compensation, credit card number, or bank account number; (E) sensitive personal data, such as name, address, telephone number, date and place of birth, mother's maiden name, race, marital status, gender, information regarding an individual's education, criminal history, employment history or sexuality); and/or (F) any other information given protected status under any Privacy Law.
- (L) "Process" or "Processing" means any operation or set of operations which is performed on Data, whether or not by automated means, such as the collection, recording, organization, structuring, storage, web hosting, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Data.
- (M) "Products" mean any item or service that is sold to serve a customer's need or want, such as hardware, software, Support, Services, documentation, accessories, supplies, parts and upgrades that Customer purchases or licenses under this Agreement that are sourced from MSI.
- (N) "Program" a series of coded software instructions to control the operation of a computer or other machine.
- (O) "Residual Knowledge" means methods, ideas, concepts, know-how, techniques, program organization or database structuring techniques in intangible form, retained in the unaided memory by persons performing the Services and which does not contain Customer Confidential or Proprietary Information.
- (P) "Services" assistance or advice given to customers during and after the sale of goods. It does not include Third Party Services as defined herein.
 - 1.P.1. "Maintenance Services" means services provided by MSI or its Third-Party Supplier to repair and/or maintain Hardware Components, Related Software and Software Components.
 - 1.P.2. "Hourly Services" means the Services that MSI or its Third-Party providers offers on an hourly basis.
 - 1.P.3. "Professional Services". The technical consulting services to be provided by or on behalf of MSI that are not included within the scope of Support Services and are set forth in relevant MSI SOW.
 - 1.P.4. "Support Services". MSI's generally available technical support and maintenance services program to be provided by or on behalf of MSI.
- (Q) "Software" means the computer programs (as more specifically described in the SOW) licensed by MSI or an MSI Third Party to Customer under an SOW, including any customizations, enhancements, Updates, upgrades, releases, replacement or successor products, Defect corrections, and other modifications provided, directly or indirectly, to Customer by MSI, and any third party software or other software that is embedded into the Software (including any Open Source Code), or otherwise provided, directly or indirectly, by MSI under this Agreement, together with the related Documentation. Modifications or enhancements made to the Software by or on behalf of Customer under any agreement with the Supplier are not Software under this Agreement.
 - 1.Q.1. "Source Code" means human-readable computer programming code, associated procedural code, listings, flow charts, logic diagrams, software tools, executables, libraries, scripts and related and supporting documentation

corresponding to the Software and all subsequent versions (including assembly, linkage and other utilities), suitable and sufficient to enable a person possessing reasonable skill and reasonable expertise in computer software and information technology to (A) build, load, and operate a machine-executable object code version of the Software that is equivalent to the latest version of the Software provided by Supplier, and (B) maintain, support, modify, improve, and enhance the Software.

- 1.Q.2. "Open Source Software" means any free software that is distributed under separate license terms that are approved by the Open Source Initiative or similar licenses (as defined by the Free Software Foundation) or software distributed under any license approved by the Open Source Initiative as set forth at www.opensource.org or under a similar licensing or distribution model, and as to any of the foregoing, that requires any one or more of the following (i) redistribution of the software on a royalty-free basis, and/or (ii) redistribution of the software under the same license/distribution terms as those contained in the software license under which such software was originally released, and/or (iii) release to the public, disclosure, or a requirement to otherwise make available the source code of the software or any other software that links with such software. Open Source Software will include any software that (in whole or in part) is a modification of, is an improvement of, is a derivative work of, or is otherwise derived in any manner from, any software that is Open Source Software (together, "Derivative"), and to the extent, under the license to the original Open Source Software, that such Derivative is subject to the same or a comparable licensing requirement as the original Open Source Software.
- 1.Q.3. "Operating Software" means software in machine-readable form that is essential for the operation of the Product, and the licensing fee is included in the fee of the Product. Operating Software may be embedded in or integrated with the Product or may reside on a separate dedicated memory or separate processor.
- 1.Q.4. "Process" or "Processing" means any operation or set of operations which is performed on Data, whether or not by automated means, such as the collection, recording, organization, structuring, storage, web hosting, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Data.
- 1.Q.5. "Related Software" means software and/or documentation that resides on, is built into or essential for the operation and maintenance of, or otherwise included or associated with, any Hardware Component (including without limitation all operating and supervisory software, application software and any applicable license or rights of use), as well as any changes, revisions, modifications, updates, correction releases or enhancements thereto. In the event of any ambiguity as to whether any software or documentation is Related Software or a Software Component, such software or documentation will be treated under this Agreement as Related Software.
- (R) "Statement of Work" or "SOW" means one or more agreements between MSI and Customer that may describe a specific set of Services; the Deliverable(s); any terms and conditions which vary from or are in addition to, modify, amend or replace, the terms and conditions set forth herein; each Party's personnel which shall be involved in the engagement covered by that SOW and their roles and responsibilities; each Party's project manager and the project manager's role and responsibilities; a schedule for performance of the Services and delivery of the Deliverables; and/or any other information pertinent to the performance of the Parties under such SOW and this Agreement. In the event of a conflict between any specific term of any SOW and this Services Agreement, the terms of the SOW shall prevail.
- (S) "Work Product" - without limitation, Work Product includes any programmed software, procedures, work-flow methods, reports, manuals, visual aids, documentation, ideas, concepts, techniques, inventions, processes, or works of authorship developed, provided or created by MSI during the course of performing work under this Agreement.