



# THE MILLER GROUP

## TECHNOLOGY SOLUTIONS

### MASTER SERVICE AGREEMENT

Throughout this Master Service Agreement (“Agreement”), we, The Miller Group, LLC, will be referred to in the “first person” (e.g. “we”, “our” or “us”). You, our customer, may be identified or described in the “second person” (e.g., “you” or “your”). If this Agreement says “either of us” or “neither of us” it means either/neither you or us. If this Agreement says “both of us” it means both you and us.

**1. TERMS.** These terms (“Terms”) apply to your purchases from us for services (“**Services**”), as well as licenses for software, hardware, support and maintenance services, and/or subscription services (collectively, “**Product**”). You engage and retain us to render Services and/or provide Product, as specifically set forth and limited in the “**Statement of Work**” or “**SOW**”, or subsequent Statements of Work, or any work order as agreed among the Parties (each a “Work Order”) under such SOW. Except as otherwise stated, subsequent SOWs or Work Orders will be made a part of and subject to the terms contained in this Agreement. No Product or Services will be provided under these Terms alone but will require the execution of a written or electronic SOW, or other mutually acceptable Work Order documentation, each of which must be executed by both Parties and, upon such execution, is deemed incorporated in these Terms for all purposes. In the event of any conflict between the Statement of Work and these Terms, the terms of the Statement of Work will prevail over these Terms.

We may change these Terms at any time. Using the Services after the changes to these Terms become effective means you agree to the new terms. If you don’t agree to the new terms, you must stop using the Services, contact us and terminate any current SOW.

### 2. GENERAL REQUIREMENTS & CONDITIONS.

**2.1 System.** For the purposes of these Terms, “System” means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by us pursuant to and further identified in the sow. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the System, or installing software on the System, unless we expressly authorize such activity. We will not be held responsible or liable for changes made by client without authorization.

**2.2 Maintenance Updates.** If patches and other software-related maintenance updates (“Update(s)”) are provided under a SOW, we will install the Updates only if we have determined, in its reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. We will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer’s or applicable vendor’s instructions.

**2.3 Third-Party Service Providers.** “Third-Party Service Providers” means Services provided by an entity or a Party other than the us in fulfillment of the SOW requirements whose terms and conditions are agreed by both of us.

Your right to use the Third-Party Services is subject to your Agreement with us, and to your understanding of, compliance with and consent to these Terms and conditions of any Third-Party agreements, which we do not have authority to vary, alter or amend.

Therefore, we may utilize a Third-Party Service Provider in its discretion to provide the Services in accordance with these Terms. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Service Provider to you. The Third-Party Provider may require us to sign a contract with the Third-Party Provider for its services (“Third-Party Contract”) and the terms of the Third-Party Contract may require certain conditions and requirements to you. Access to the terms and conditions of any such Third-Party Contract(s) may be provided to you upon request. You agree to review all Third-Party Terms and Conditions, and consent to those Third-Party Terms and Conditions which you have consented us to contract upon its behalf.

**2.4 Third-Party Product Vendors-** “Third-Party Product Vendors” means machinery, equipment and/or products inclusive of component parts purchased from vendors in fulfillment of the SOW requirements.

We do not own certain Third-Party Products and the use is subject to certain rights and limitations of which we need to inform you. Your right to use the Third-Party Products is subject to your Agreement with us, and to your understanding of, compliance with and consent to these Terms and conditions of the Third-Party agreements, which we do not have authority to vary, alter or amend.

We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) for the Third-Party Product Vendor to You, but will have no liability whatsoever for the quality, functionality or operability of any Third-Party Products, and we will not be held liable as an insurer or guarantor of the performance, downtime or usefulness of any Third-Party Product. The Third-Party Product Vendor may require us to sign a contract with the Third-Party Product Vendor for its products (“Third-Party Contract”) and the terms of the Third-Party Contract may require certain conditions and requirements to you. Access to the terms and conditions of any such Third-Party Contract(s) may be provided to you upon request. You agree to review all Third-Party Terms and Conditions, and consent to those Third-Party Terms and Conditions which you have consented us to contract upon your behalf.

**2.5 Third-Party Support.** If, in our discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed \$100, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.

**2.6 Subcontractors.** “Subcontractors” means third-party to whom we contract to provide specified services to complete the services indicated in the applicable SOW.

**2.7 Conditions of Service.** Your System is eligible for provision of our Services as outlined in the SOW or other contractual documents, provided the System is in good condition and our serviceability requirements and site environmental conditions are met:

- 2.7.1 You will provide adequate workspace, heat, light, ventilation, electric current and outlets, internet, remote access, and long-distance telephone access for use by our representatives.
- 2.7.2 You will provide full access to the Network to affect the necessary monitoring and/or supplemental services. You recognize that denying us access to any office or equipment may prevent us from performing our services and that we are not responsible for any loss of use if that access is denied. You will indemnify and hold us harmless for any claim against us arising out of our failure to provide services because you do not provide us such access. We may load any management software on your system/equipment which we decide is necessary to access your system/servers and other equipment, and you will furnish us Administrator-level password access as necessary to service that system/equipment.
- 2.7.3 We reserve the right to suspend or terminate these Terms or any SOW if, in its sole discretion, conditions at the service site pose a health or safety threat to any of our representatives.
- 2.7.4 All equipment, software, and licensing to be supported by us pursuant to these Terms, must be supportable by us and subject to patching, security updates, and manufacturer provided support.
- 2.7.5 You agree to maintain a full-time dedicated internet connection and to allow us to access your network via that internet connection.

It is your responsibility to promptly notify us of any events/incidents that could impact the services defined within these Terms and/or any supplemental service needs.

We will provide services as defined in these Terms during our regular business hours, unless otherwise specified in any subsequent SOW, or other contract documents, and in accordance with our IT Service policies then in effect.

You will inform us, prior to, us making any modification, installation, or service performed on the Network by individuals not employed by us to assist us in providing an efficient and effective Network support response.

Only representatives authorized by us will be eligible to access and service your network. Any unauthorized access or service conducted on the network without the explicit consent of us which results in negative network performance will not be covered by the monthly service fee as documented in the SOW or other contract documents and will be billed according to your labor rates as outlined in the SOW.

You will be obligated to provide service only at the Service Site(s) as outlined in the SOW. If you desire to relocate, add or remove locations, you will give appropriate notice to us of your intention to relocate sixty (60) days in advance. We reserve the right to renegotiate service terms with respect to any relocation and/or addition of locations. Such right includes the right to refuse service at the relocation and/or new site.

It is mutually agreed that we will have no responsibility for any deficiencies in the System until we have had a reasonable opportunity to conduct a review of the current System and to provide you with our recommendations and you have accepted and implemented the recommendations.

**2.8 Service Limitations.** In addition to other limitations and conditions set forth in these Terms, the following service and support limitations are expressed:

- 2.8.1 Cost of consumables, replacement parts, hardware, software, network upgrades and associated services are outside the scope of this Agreement. We will provide consultative specification, sourcing guidance and/or Time and Material/Project offerings.
- 2.8.2 Any unauthorized changes made to the network without our written consent which causes issues or failures to the network, are beyond the responsibility of us and you will be billed the full cost to restore the network to its original state.
- 2.8.3 You understand that various technologies, as applied, are not universally compatible and therefore, we may be unable to monitor some devices and we may be unable to monitor, manage or patch certain programs or software as you are using them. We will inform you if incompatible or conflicting programs or software technologies prevent us from providing our Services. We will work with you to identify the causes of the conflict, but we have no duty to correct or “fix” any of your programs or software to make them compatible with the technologies we use in providing our services.

**2.9 Onboarding Process.** You acknowledge and agree that we will have no responsibility for any deficiencies in the current operating systems and infrastructure until we have had a reasonable opportunity to conduct a review of the current system and to provide you with recommendations and you have accepted and implemented the recommendations.

**2.10 Offboarding Process.** In the event of termination of Services by either party, we will make timely and reasonable accommodations to transfer your information including all relevant documentation to your new managed service provider or other authorized agent (the “**Onboarding Provider**”). You will indemnify and hold harmless us, its Contracted Subcontractors and their respective directors, officers, employees, consultants and agents for any claims or losses resulting from the activities of you or the Onboarding Provider during the transition period from us to the Onboarding Provider, inclusive of when you obtain access to all super administrator accounts of their infrastructure.

**2.11 Use & Care of Our Property.** Our authorization for you to use any software or hardware that we provide to you (“Our Systems”), is only a limited temporary license which is personal, non-exclusive, and non-transferable. That authorization terminates when this Agreement ends. You may not re-publish, transmit, distribute, transfer, re-license or otherwise authorize anyone else to use Our Systems for any reason. You may not modify or otherwise change any of Our Systems without our prior written consent. You agree to take all reasonable actions and precautions to protect Our Systems from damage, reasonable wear and tear excepted.

**2.12 Miscellaneous.** Terms and conditions, including services, are subject to change by us. We will notify you of any such changes as provided in this Agreement. You may reject such changes by delivering written notice, via email, to us of cancellation of the agreement within

30 days from the date of such notice. Cancellation pursuant to this paragraph will be without penalty to you. Your continued use of our services after the 30-day notice period has expired constitutes your acceptance of revised terms, condition and/or services.

### 3. RESPONSE REPORTING.

**3.1. Response.** We warrant and represent that we will provide the Services, and respond to any notification received by us of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in the applicable SOW (“Response Time”), except for (i) periods of delay caused by your Downtime (defined below), Vendor-Side Downtime (defined below) or (ii) periods in which we are required to suspend the Services to protect the security or integrity of your System or Our equipment or network, or (iii) delays caused by a force majeure event.

**3.2. Scheduled Downtime.** For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by us which will not occur between our normal business hours of 7:00 AM and 5:30 PM Monday through Friday without your authorization or unless exigent circumstances exist, during which time we will perform scheduled maintenance or adjustments to your network. We will use Our best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.

**3.3. Your Downtime.** We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by your actions or omissions (“Your Downtime”).

**3.4. Vendor-Side Downtime.** We will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Services to the extent that such delays or deficiencies are caused by third-party service providers, third-party licensors, or “upstream” service or product vendors.

### 4. CONFIDENTIALITY AND NON-DISCLOSURE.

4.1 Definition of Confidential Information. As used in this Agreement, “**Confidential Information**” means all confidential information disclosed by a Party (“**Disclosing Party**”) to the other Party (“**Receiving Party**”), in any format whether oral, written, electronic, or other, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure.

4.2 Your Confidential Information will include any personally identifiable information or protected health information of your employees, your customers, and your Data. You acknowledge and agree that these Terms do not constitute a Business Associates Agreement (“BAA”) as that term is defined in the Health Insurance Portability and Accountability Act (HIPAA; Pub.L. 104–191, 110 Stat. 1936, enacted August 21, 1996 and as amended), and that the requirement for any such agreement in addition to these Terms may be necessary to provide the Services. You will be solely responsible for the consequences, if any, of moving forward with the Services without such a BAA and will be the sole judge of the necessity for a

BAA in addition to these Terms. You agree to defend, indemnify and hold us harmless and any affiliated company, and our respective present and former shareholders, officers, directors and employees and our attorneys and agents, and our predecessors, successors, insurers, assigns, heirs, executors and administrators (collectively referred to as the "Indemnitee"), from and against any and all claims, demands, causes of action, actions, judgments, liabilities, losses, costs and expenses, including attorneys' fees and costs, as they occur, brought against, imposed upon, or incurred or suffered by, the Indemnitee which in any way relate to the failure of you to comply with these Terms in proper handling of protected health information not caused by our gross negligence and/or due to the absence of any necessary BAA, or failing to notify us of the necessity.

- 4.3 Confidential Information of each Party will include the terms and conditions of these Terms and all SOW's, and/or other contract documents as well as business and marketing plans, technology and technical information, products, services, product plans and designs, trade secrets, and business processes disclosed by such Party.
- 4.4 Confidential Information (other than Client Data) will not include any information that:
- (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party,
  - (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party,
  - (iii) is received from a third-party without breach of any obligation owed to the Disclosing Party, or
  - (iv) was independently developed by the Receiving Party.
- 4.5 Protection of Confidential Information. The Receiving Party will:
- (i) protect and safeguard the confidentiality of all Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care,
  - (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement or otherwise in any manner to the Disclosing Party's detriment, and
  - (iii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees, subcontractors and agents who need such access for purposes consistent with this Agreement.
- 4.6 Non-disclosure. Neither Party will disclose these Terms or any SOW and/or other contract documents to any third-party other than its affiliates, legal counsel, and accountants without the other Party's prior written consent.
- 4.7 Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

4.8 If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a Party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.

4.9 Return or Destruction of Confidential Information. Upon request, each Party agrees to promptly return the other Party's Confidential Information in its possession, custody or control, or to certify the deletion or destruction of Confidential Information; provided, however, that the Receiving Party may retain a copy of any Confidential Information to the extent (a) required by applicable law or (b) it would be unreasonably burdensome to destroy. In the event that return or destruction of Confidential Information is unduly burdensome, or not feasible, the Parties will extend the protections of these Terms to the retained Confidential Information.

**5. PROVISION OF MATERIALS AND SERVICES TO US.** You agree to timely furnish, at your own expense, all personnel, all necessary computer hardware, software and related materials and appropriate and safe workspaces for purposes of us or our contracted subcontractors, performing the Services. You will also provide us or our contracted subcontractors, with access to all information, passwords and facilities requested by us that is necessary for us or our contracted subcontractors, to perform the Services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, you understand that we or our contracted subcontractors, may be unable to perform their duties adequately.

**6. RESPONSIBILITY FOR EQUIPMENT.** You acknowledge that from time to time (a) we may identify additional items that need to be purchased by you, and (b) changes in your system may be required for us to meet your requirements. In connection, you agree to work in good faith with us to effectuate such purchases or changes, and such changes will be set forth in a Change Order under the current SOW. In the event that we are required to purchase any assets, including computer hardware and/or software, in connection with us providing the Services, all such assets will remain the sole property of us, except assets sold by us to you or procured by us on your behalf will be the sole property of you. You will take such reasonable precautions to ensure the quality, completeness and workmanship of any item or service furnished by you, and for ensuring that the materials provided to us or our contracted subcontractors, do not infringe or violate the rights of any third-party Unless otherwise specified in the Scope of Work and/or other contract documents that it is not the intent, nor does we provide any type of backup of your data. You will maintain adequate backup for all data and other items furnished to us.

**7. CLIENT DATA OWNERSHIP AND RESPONSIBILITY.** You have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of any data, information or material proprietary submitted by you to us.

**8. INTELLECTUAL PROPERTY.** We retain all intellectual property rights in any property invented or composed in the course of or incident to the performance of this Agreement, as well as any software, materials, or methods created prior to or after conclusion of any work "Intellectual Property". You acquire no right or interest in any such intellectual property, by virtue of this Agreement or the work performed under this Agreement.

**8.1.** You may only use and disclose Intellectual Property in accordance with the terms of this Agreement and applicable SOW and/or other contract documents. We reserve all rights in and to the Intellectual Property not expressly granted in this Agreement. You may not disassemble or reverse engineer any Intellectual Property or decompile or otherwise attempt to derive any software source code within the Intellectual Property from executable code, except to the extent expressly permitted by applicable law despite this limitation or provide a third-party with the results of any functional evaluation, or benchmarking or performance tests on the Intellectual Property, without our prior written approval. Except as expressly authorized in these Terms or an SOW and/or other contract documents, you may not (a) distribute the Intellectual Property to any third-party (whether by rental, lease, sublicense or other transfer), or (b) operate the Intellectual Property in an outsourcing or business to process the data of third parties. Additional usage restrictions may apply to certain third-party files or programs embedded in the Intellectual Property - applicable installation instructions or release notes will contain the relevant details.

## **8.2. License Agreements.**

**(a) License.** Subject to these Terms, we grant you a perpetual, non-exclusive, non-transferable license to use all programming, documentation, reports, and any other product provided as part of the Services solely for your own internal use. At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements (“Minimum Requirements”), you agree to do so as an ongoing requirement of us providing our Services to you.

**(b) Software Installation or Replication.** If we are required to install or replicate your software as part of the Services, you will independently verify that all such software is properly licensed. Your act of providing any software to us will be deemed your affirmative acknowledgement to us that you have a valid license that permits us to perform Services. In addition, you will retain the duty and obligation to monitor your equipment for the installation of unlicensed software unless we in a written statement of work (“SOW”) expressly agrees to conduct such monitoring.

**(c) Pre-Existing License Agreements.** Any software product provided to you by us as a reseller for a third-party, which is licensed to you under a separate software license agreement with such third-party, will continue to be governed by the third-party license agreement.

**(d) EULA.** Portions of the Services may require You to accept the terms of one or more third-party end user license agreements (“EULAs”). If the acceptance of a EULA is required to provide the Services to you, then you grant us permission to accept the EULA on your behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in these Terms. You agree to be bound by the terms of such EULAs and will look only to the applicable third-party provider for the enforcement of the terms of such EULAs. If, while providing the Services, we are required to comply with a third-party EULA and the third-party EULA is modified or amended, we reserve the right to modify or amend any applicable SOW with you to ensure our continued compliance with the terms of the third-party EULA.

You agree to hold harmless and indemnify us against your violation of any of the terms and conditions included in the subject EULA.

**8.3. Third-Party Products.** Unless otherwise stated in a SOW, all hardware, software, peripherals, or accessories purchased through us (“Third-Party Products”) are nonrefundable once the applicable SOW is placed in our queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third-Party Products to you, but will have no liability whatsoever for the quality, functionality, or operability of any Third-Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime, or usefulness of any Third-Party Products. Unless otherwise expressly stated in a SOW, all Third-Party Products are provided “as is” and without any warranty whatsoever between us (including but not limited to implied warranties).

**9. WORKING ENVIRONMENT.** You will provide a suitable working environment for any Equipment located at your facility. Such environment includes, but is not limited to the appropriate temperature, static electricity and humidity controls and properly conditioned electrical supply for each piece of Equipment. You will bear the risk of loss of any Equipment located at Client’s facility.

**10. OUR EMPLOYEE’S, AGENTS OR SUBCONTRACTORS.** You acknowledge that we have incurred substantial recruitment, screening, training, and administrative expenses with respect to its agents, including its employees, vendors, and independent subcontractors. From the Effective Date of the last SOW and up to one (1) calendar year after the date of termination of any SOW, you will not hire or contract directly or indirectly with any of our employees, agents or subcontractors who have communicated with and/or worked on any Service for you. We mutually acknowledge and agree that it would be impractical and extremely difficult to ascertain the amount of monetary damages that would be caused by a breach by you of this provision. Therefore, we mutually agree that in the event of a breach by you in any way of this provision, you will pay us as liquidated damages, an amount equal to One Hundred Fifty Thousand Dollars (\$150,000.00). This amount is an effort by both parties to properly and reasonably assess the damages that we would suffer as a direct result of a breach by you, taking into account the following facts and circumstances: (a) an average employee working for us will generate significant net revenue and remain employed by us for an extended period of time; (b) we will lose significant revenue and incur significant costs in connection with attempting to replace such employee; (c) there is no guarantee that such employee can be replaced; and (d) accurately assessing the value of such employee to us upon such breach is virtually impossible. Considering these circumstances, we mutually agree that this is liquidated damages provision represents reasonable compensation to us for the losses that it would incur due to any such breach. We further acknowledge and agree that nothing in this paragraph will limit our rights to obtain injunctive relief or any other damages including, but not limited to punitive, consequential, special, or any other damages, as may be appropriate in connection with your breach of this section.

**11. WARRANTY.** We warrant that we or our contracted subcontractors, will perform the services substantially in accordance with the specifications set forth whether under these Terms, SOW, and/or other contract documents or otherwise in connection with any of them. For any breach of the foregoing warranty, we or our contracted subcontractors, will exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the thirty (30) calendar day period immediately preceding the date of your written notice to us specifying in reasonable detail such non-conformance. If we conclude that conformance is impracticable, then we will refund all fees paid by you to us, if any, allocable to such nonconforming Services.

Notwithstanding any provision to the contrary in these Terms, any warranty offered and provided directly by our product will be deemed null and void if the applicable product is (i) altered, modified or repaired by persons other than us, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by us (ii) misused, abused, or not operated in accordance with the specifications of us or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than us or persons approved or designated by us.

Notwithstanding the above, we do not warrant its products or services beyond a reasonable standard or skill consistent with industry standards. We do not guarantee or promise any cost savings, profits, or returns on investment.

**12. SOFTWARE, HARDWARE & SECURITY.** You understand and agree that data loss or network failures may occur, whether or not foreseeable. To reduce the likelihood of a network failure you must maintain proper security for your computer and information systems including software and hardware updates. You will adhere to software and hardware updates and maintain a specific level of security standards provided by us.

**13. CLIENT CYBER SECURITY.** It is understood that within the Services provided it is not the intent, nor do we provide any type of internet security monitoring, cyber security monitoring, cyber terrorism monitoring, or other cyber threats for you unless otherwise specified in the SOW or other contract documents. In no event, including the negligent act or omission on its part, will we, whether under these Terms, a SOW, other contract documents or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any act of terrorism, security breach, strike or similar labor action, war, invasion, act of foreign enemy, hostilities or warlike operations, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, or any action taken in controlling, preventing or suppressing any of these things, including any such 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 political, religious 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.

**14. TELEMARKETING & UNSOLICITED EMAILS.** In no event, including the negligent act or omission on its part, will we or our contracted subcontractors, whether under these Terms, an SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if your data is breached because of the distribution of unsolicited email, direct mail, facsimiles, telemarketing or because of the collection of information by means of any form of electronic malware, wiretapping, bugging, video cameras or identification tags.

**15. EXTRAORDINARY EVENTS.** In no event will we or our contracted subcontractors, whether under these Terms, an SOW, other work order or otherwise in connection with any of them, be liable in contract, tort, third-party liability, breach of statutory duty or otherwise, in respect of any direct, indirect or consequential losses or expenses, including without limitation loss of anticipated profits, company shut-down, third-party loss or injury, any loss because of data breach, any loss of personally identifiable or protected information, goodwill, use, market reputation, business receipts or contracts or commercial opportunities, whether or not foreseeable, if such loss was the result of or arose from any failure or malfunction of electrical, mechanical or telecommunications infrastructure and equipment or services, any satellite failure, or from any fire, flood, earthquake, volcanic eruption, explosion, lighting, wind, hail, tidal wave, landslide, act of God, national or global pandemic or other physical event.

**16. LIMITATION OF LIABILITY.** This paragraph limits the liabilities arising under these Terms or any applicable Statement of Work (“SOW”). We will perform the Services in a good and workmanlike manner and will exercise reasonable diligence and skill consistent with the ordinary qualifications of service providers in our industry. Except to the extent caused by our negligence, gross negligence, willful misconduct, or intentional wrongdoing, we will not be liable for any damages arising out of or related to our performance of the Services or your use of any of Our Systems. In no event shall we be liable for any incidental, consequential (including lost customers, lost profits, work stoppage, data loss, computer failure or malfunction, or lost revenues), indirect, special, or exemplary damages. If we serve as your agent in purchasing or leasing software or hardware, your sole remedy for defects or damage is to enforce any warranty offered by the manufacturer of the product, and our responsibility is limited to delivery of the product in undamaged condition. You acknowledge that the above limitations of liability and remedies will survive and apply even if any limited remedy is found to have failed its essential purpose.

**17. MUTUAL INDEMNIFICATION AND HOLD HARMLESS.** Each party agrees to the fullest extent permitted by law will at all times defend, indemnify, save and hold the other parties and any of their affiliates harmless from each and any and all liabilities, damages (including, without limitation, direct, special and consequential damages), costs, expenses, suits, civil or alternative dispute resolution proceeding, losses, claims, actions, violations, fines and penalties (including without limitation, court costs, reasonable attorney’s fees and any other reasonable costs of litigation) that any of the mutually indemnified parties may suffer, sustain or incur to the extent caused by the negligence or willful misconduct of the mutually indemnified parties arising out of these terms.

The preceding indemnification obligations are conditioned on any of the indemnified parties: (i) notifying the indemnifying party promptly in writing of such action; (ii) reasonably cooperating and assisting in such defense; and (iii) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

**18. OUR INSURANCE.** We agree to maintain sufficient insurance coverage to enable it to meet our obligations created by these Terms and by law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, we will maintain at our own sole cost and expense at least the following insurance covering its obligations under this Agreement: (a) Commercial General Liability including Completed Operations, Broad Form Property Damage, Personal Injury, and Contractual Liability for the Indemnification Agreement in this Agreement where additional insured coverage should be provided by ISO Additional Insured Endorsement s CG 20 10 07 04 & CG 20 37 07 04 or an endorsement providing equivalent coverage to the additional insured’s; (b)

Business Automobile Liability for company owned vehicles; (c) Workers Compensation at statutory limits; and (d) Professional Liability Insurance for claims arising from the negligent performance of professional services outlined in this MSA. The Professional Liability Insurance shall include coverage for prior acts coverage sufficient to cover all services rendered by The Miller Group and by its consultants and this coverage shall be continued in effect for five (5) years after the date of substantial completion.

## **19. YOUR INSURANCE.**

**19.1. Commercial Property Insurance.** You will secure at your own cost and expense Property Insurance for your equipment that is part of the provisions of the service agreement.

**19.2. Cyber Insurance.** You will secure and maintain for the duration of the contract Cyber Liability Insurance to insure your cyber exposures. Specific limits and coverages should be evaluated by a qualified insurance broker or risk manager to determine your specific coverage and policy limit requirements.

**20. MUTUAL WAIVER OF SUBROGATION.** To the extent permitted by law and insurance carrier, each party waives all rights against the other for recovery of damages to the extent these damages are covered by the workers compensation (to the extent permitted by law) and employers' liability, professional liability, general liability, property insurance, commercial umbrella/excess, cyber or other commercial liability insurance obtained by either party. Client will not hold us, our subcontractors and/or third-party service providers responsible for such losses and will confirm that your insurance policies referenced above provide for the waiver of subrogation included in the terms of service.

**21. CLIENT COOPERATION.** You will cooperate as reasonably necessary for delivery of Products and performance of Services in a timely manner. This cooperation may include things such as: (i) providing us with access to all facilities, hardware, software, work space, and office support (telephone, internet access, etc), (ii) ensuring that the premises are safe, free of any hazardous materials that affect our performance and have installed necessary power and climate control facilities; (iii) ensuring that you have obtained connection to and all necessary permissions or consents from any public or private telephone network to which the Products are connected and any necessary permissions from government authorities and holders of real property rights; (iv) providing us with designated points of contact, (v) providing necessary telephone numbers and passwords to enable remote access to the Products and notifying us promptly of any changes made to such numbers or passwords; and (vi) Items that may be identified in an Attachment or statement of work. You are responsible for ensuring that your networks and systems are adequately secured against unauthorized intrusion or attack and regularly backing up its data and files in accordance with good computing practices. If you are presented with a proactive recommended IT best practice and deny the service, all data disaster recovery services and restoration labor will be billed outside the scope of this agreement.

**22. DISCLAIMERS.** The express remedies set forth in these Terms will constitute your exclusive remedies, and our sole obligation and liability, for any claim (a) that a Service or deliverable provided does not conform to specifications or is otherwise defective, or (b) that the Services were performed improperly.

Except for the warranties made by us in section 11, which are limited warranties and the only warranties provided to client, the services and deliverables are provided strictly "as-is." We do not make any additional warranties, expressed, implied, arising from course of dealing or usage of trade, or statutory,

as to the deliverables or services provided, or any matter whatsoever. The parties disclaim all warranties of merchantability, fitness for a particular purpose, satisfactory quality, title and non-infringement.

We do not warrant that the services or any deliverables will meet any of your requirements not set forth, that any deliverables will operate in the combinations that you may select for use, that the operation of any deliverables will be uninterrupted, secure or error-free, or that all errors will be corrected. If pre-production (e.g., "alpha" or "beta") releases of software are provided to you, such copies are provided "as-is" without warranty of any kind.

No statement by any our employees or agent, orally or in writing, will serve to create any warranty or obligation not set forth or to otherwise modify these Terms in any way whatsoever.

**23. SEVERABILITY.** If any provision of these Terms is determined by a court of competent jurisdiction to be illegal or unenforceable, such provision will be automatically reformed and construed 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 these Terms **will** not render invalid the remainder of the Terms.

**24. AMENDMENT.** These Terms may not be amended except by a writing executed by an authorized individual of The Miller Group.

**25. RELATIONSHIP.** The Parties are independent parties; and these Terms do not make the Parties principal and agent, partners, employer, and employee; nor does it create a joint venture. It is further understood that there is no relationship, including but not limited to a partnership, joint venture, subcontractor, or other commission-based relationship, between any party that referred us or Client to the other party to these Terms.

**26. GOVERNING LAW.** Regardless of where executed, or where you may have your principal place of business, this Agreement is deemed to have been executed under and pursuant to the laws of the State of Missouri. Therefore, the laws of the State of Missouri govern this Agreement and all the transactions contemplated by it, including claims as to its validity, interpretation and enforcement and all claims sounding in tort; and only the Circuit Court of St. Charles County, Missouri has jurisdiction and venue over any litigation arising out of this Agreement.

**27. ARBITRATION.** Any disputes arising out of this Agreement which are not resolved within ten (10) days after one of us gives written notice of a dispute, must be resolved by binding arbitration under the Consolidated Arbitration Rules (the "Rules") of United States Arbitration & Mediation ("USA&M") as they may be amended or modified from time to time. The Federal Arbitration Act (Title 9 U.S. Code) applies to all arbitration and post award proceedings. All arbitration hearings must be held in the St. Louis metropolitan area. All arbitration must be heard by a single arbitrator who must be selected according to the Rules; provided that the arbitrator must have experience in the IT service industry. Judgment upon the arbitration award may be entered in any court having jurisdiction. The arbitrator has no power to change the terms or conditions of this Agreement. If this Agreement has not been terminated, then each party must continue performing its obligations pending conclusion of the arbitration proceedings. The arbitrator must award the prevailing party reasonable arbitration expenses and costs including reasonable attorneys' fees.

**28. NON-WAIVER.** No term or condition of this Agreement may be waived, except in writing signed by the party providing the waiver. No delay or failure to act is a waiver of any right to later enforce all the

terms and conditions of this Agreement. Partial performance of an obligation is not a waiver of any right the performer may otherwise hold.

**29. FORCE MAJEURE.** Neither party will be liable to the other party for delays or failures to perform its obligations under this Agreement or any SOW because of circumstances beyond such party's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by the other party, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, pandemic, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.

**30. DATA ACCESS/STORAGE.** Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify Our standard access or storage procedures.

**31. ASSIGNMENT.** You may not transfer or assign any right or entitlement in this Agreement, nor may you delegate any of your duties or obligations without our consent.

**32. NOTICES.** All notices under this Agreement must be in writing and are effective upon receipt. Notices may be sent by any reasonable means including U.S. Mail, courier, overnight delivery service (e.g. Federal Express), facsimile transmission (FAX) or electronic mail (e-mail). Notices are deemed received the next business day after the postmark date if sent certified mail, return receipt requested, postage prepaid. Notice by facsimile transmission or e-mail is effective the next business day after receipt. For this purpose, "receipt" means documentation by sender's receipt for "good transmission" (or similar description) and for e-mail return of delivery receipt (or similar tracking function). However, if the receipt shows transmission or delivery after 5:00 p.m. in the recipient's time zone, then receipt means the next business day. If, for example, a notice is received at 5:10 p.m. on Tuesday in the recipient's time zone it will be deemed received on Wednesday and the notice is effective one business day thereafter, i.e. Thursday. The burden is on the sender to show that delivery by FAX was sent to a number registered to or regularly used by the recipient, regardless of the FAX number listed in this Agreement. The burden is on the sender to show that delivery by e-mail was provided to a correct address registered to or regularly used by the recipient. "Business day" means every day that the United States Postal Service delivers first class mail to residential addresses (currently every day except Sundays and Federal Holidays).

**33. COUNTERPART AND ELECTRONIC SIGNATURES.** These Terms must be executed as part of your SOW and by agreeing to the SOW and initializing the SOW that you have read and understood these Terms, these Terms are now part of, and integrated into, the SOW, and each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument. Your electronic signature on the SOW will have the same validity and effect as a signature affixed by your hand.

**34. ENTIRE AGREEMENT.** These Terms, the SOW, and any subsequent SOW's constitute the entire agreement by and between the Parties regarding the subject matter contained and supersedes all prior and contemporaneous undertakings and agreements of the Parties, whether written or oral, with respect to such subject matter. This agreement may not be changed or modified orally, but only in writing signed by both of us.