



4210 50th Street Suite C
Lubbock, Texas 79413

Phone 806-701-5353
Fax 806-221-2526

Managed Services Agreement Terms and Conditions

The CLIENT indicated on the "New Client MSA Order Form" (hereafter "Order Form") and Consumer Technology Solutions, LLC., (the "Company", "CTS LLC", "Service Provider") wish to enter into and execute this Managed Services Agreement Terms and Conditions (hereafter "Agreement"). This Agreement will be effective as of the date that the Order Form was signed.

THE CLIENT (CUSTOMER) AND SERVICE PROVIDER WISH TO EXECUTE A MANAGED SERVICES AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS. THE PARTIES AGREE AS FOLLOWS:

1. **Services.** Service provider agrees to provide Customer the services described in Schedule B ("Service Plan Overview", and "Managed Services") for the Customer's computers and computer network. Service provider may from time to time change the Services provided to Customer under this Agreement. In the event that such change materially alters or decreases the Services, Customer may terminate this Agreement by giving Service Provider seven days' (7) written notice of termination within the thirty (30) day period following the receipt of notice of such change. Customer may order, and Service Provider may agree to provide, additional services not covered by this agreement ("Out of Plan Services") at rates set by the Service Provider. The Managed Services and the Out of Plan Services are referred to as "Services" unless otherwise stated.
Services are paid for in advance.
2. **Term and Termination**
 - a. **Term.** The Initial Term of this Agreement is **indicated on your MSA Order Form** commencing on the Effective Date. Thereafter, unless terminated in accordance with the terms of this Agreement, this Agreement will automatically renew, on a **month to month** basis ("Additional Term") at the monthly rate indicated on the Order Form and outlined in Schedule A (Pricing Schedule for Services) and the Fee Schedule and Payment Summary. Should a typo exist in this document, the rate indicated in Schedule A shall prevail.
 - b. **Termination.** This Agreement may be terminated by either party at any time by providing a written notice to the other party of such termination. Termination made by the Customer is effective at the end of the Current Term ("Current Term" refers to the time period between the Initial Term and renewal of an Additional Term or the time period between the renewal of any Additional Terms but before the automatic renewal of another Additional Term) and prior to the renewal of an Additional Term as long as the notice was received thirty (30) days prior to the expiration of the Current Term or any Term. If termination is provided too late then the Agreement will renew for an Additional Term. Upon early termination of this Agreement, the Client will be responsible for any monies owed and due for any outstanding invoices issued and for any monies owed for the remainder of the Current Term, or any Additional Term. Should the Service Provider be notified of a possible default by the Customer and fail to remedy such default within thirty (30) days, the Customer shall be entitled to a refund for the time period that passed from the date of notice and the expiration of the thirty (30) day period and the Customer shall be released from its material obligations under this



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Agreement. If the Client terminates this Agreement due to default by the Service Provider but does not offer the Service Provider the opportunity to remedy the default then no refunds will be provided. No refunds will be provided if the Service Provider remedies any defaults. The Company may terminate this Agreement if the Customer fails to pay any outstanding charges within ten (10) days of receipt of written notice from Service Provider of the delinquency.

3. **Eligibility.** Customer Equipment (including but not limited to computers, workstations, and servers) must meet minimum eligibility requirements to be eligible for a maintenance program. If a computer does not meet the minimum requirements set by the Service Provider, the Service Provider may, without any further consent, provide services necessary at service rates to achieve eligibility on the equipment.

4. **Payment and Billing Procedure**

- a. **Fees.** Service Provider will charge Customer in advance for services unless alternate payment arrangements have been made and agreed to in writing. Invoices issued for Out of Plan Services will be due within ten (10) of the date the invoice is received. Under typical procedures, these invoices are mailed with your regular monthly invoice and may be paid at one time; however, this is not required.
- b. **Failure to Pay/Late Payments.** Customer acknowledges that its failure to pay timely any invoices issued and payable hereunder, or any portion thereof, will be a material breach of this Agreement for which Service Provider may, in addition to pursuing all other remedies, withhold Services and/or terminate this Agreement. Customer acknowledges that late penalties not to exceed 19.5% may be imposed on your Customer account if you make a payment more than three (3) days late, excluding Sundays.

Standard Billing Practice. It is standard, but not required, practice of the Company to: (1) notify you of a delinquency and potential late fee if you are greater than three (3) days late; (2) impose the late fee after five (5) days; (3) suspend services after ten (10) days late; and (4) declare default and terminate this Agreement if you are more than thirty (30) days past due.

- c. **Agreement Default.** If you default on this Agreement, consistent with your payments terms referenced in section 4(a), you will be liable for all present and future charges under this Agreement. You are also liable for any costs of collection or attorney and legal fees. This is intended to include administrative fees to Consumer Technology Solutions of no more than ten (10%) percent of the amount to be collected. Service Provider will attempt to debit any accounts on file to collect any default amounts or associated fees, and all other fees and charges due. If Service Provider is unable to collect these fees, it will begin the collections process and may attempt several more debits prior to sending the account to a collection's agency for collection.

5. **Customer Responsibilities**

- (a) **Customer Authorized Contact.** Customer will identify one individual to be Service Provider's primary contact and another individual to be the secondary contact as noted on Schedule A.



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Customer represents that these people have authorization to make decisions on behalf of the Customer and may be relied upon by Service Provider when providing the Services.

- (b) **Provision of Materials and Services to Service Provider.** Customer agrees to timely furnish, at its own expense, all personnel, all necessary computer hardware, software, and related materials and appropriate and safe work spaces for purposes of Service Provider performing the Services. Customer will also provide Service Provider with access to all information, passwords and facilities requested by Service Provider that is necessary for Service Provider to perform the Services. Access may be denied for any reason at any time, however if access to information, passwords or facilities is denied, Customer understands that the Service Provider may be unable to perform their duties adequately and if such a situation should exist, the Service Provider will be held harmless.
 - (c) **Federal and State Law Compliance.** Customer agrees to furnish to CTS all documents necessary to be executed to maintain compliance with state and federal law, including but not limited to HIPAA privacy provisions. Customer acknowledges that it is in the best position to know what is necessary for compliance within its own industry and that it will indemnify CTS and CTS may seek contribution for any damages it may suffer due to Customer's failure to ensure CTS's compliance with Customer's industry regulations and laws.
 - (d) **Acknowledgement.** Customer acknowledges that from time to time (a) Service Provider may identify additional items that need to be purchased by Customer through the Service Provider, and (b) changes in the Customer's systems may be required in order for Service Provider to meet Customer's requirements. In connection therewith, Customer agrees to work in good faith with Service Provider to effectuate such purchases or changes. In the event that Service Provider is required to purchase any assets, including computer hardware and/or software, in connection with Service Provider providing the Services, all such assets will remain the sole property of Service Provider unless specifically stated otherwise in writing. Customer will be responsible for the quality, completeness and workmanship of any item or service furnished by it and for ensuring that the materials provided to Service Provider do not infringe or violate the rights of any third party.
 - (e) **Timeliness.** Any timetable for the Services is dependent on timely receipt from Customer of all necessary items and authorizations to be supplied by it. In the event of a delay in delivery of such items by Customer, any estimated completion date will be deferred for a period equal to the time lost because of the delay. Requests for technical support or assistance will be responded to within sixty (60) minutes of the time the request was made. Remote support requests may be responded to quicker. This does not guarantee the issue will be resolved in the sixty (60) minute timeframe; however, it guarantees that a customer service and support representative will contact the Customer within sixty (60) minutes.
6. **Relationship of Parties; No Solicitation of Employees.** Service Provider is an independent contractor. Neither party has the right or authority to assume or to create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed to create a joint venture or partnership between the parties. During the term of this Agreement and for a period of one (1) year thereafter, each party to this Agreement will not, without prior written approval of



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the other party, solicit for employment any employee(s) of the other party or directly or indirectly induce any such employee to terminate his or her employment with the other party.

7. **Services Warranty.** Service Provider warrants that it will perform the Services substantially in accordance with the specifications set. For any breach of the foregoing warranty, Service Provider will exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the thirty-day period immediately preceding the date of Customer's written notice to Service Provider specifying in reasonable detail such non-conformance. If Service Provider concludes that conformance is impracticable, then Service Provider will refund all fees paid by Customer to Service Provider hereunder, if any, allocable to such non-conforming Services.

8. **Third Party Products.** Product warranties for third-party products, if any, are provided by the manufacturers thereof and not by Service Provider. Service Provider's sole obligation is to act on behalf of Customer to assist in the satisfaction of any such warranty.

9. **DISCLAIMERS**

- (a) The express remedies set forth in Section 7 will constitute Customer's exclusive remedies, and Service Provider's sole obligation and liability, for any claim that a Service hereunder does not conform to specifications or is otherwise defective, or that the Services were performed improperly.
- (b) Service Provider shall not be responsible for impairments to the Services caused by acts within the control of Customer or its employees, agents, contractors, suppliers or licensees, the interoperability of Customer applications, or other cause reasonably within Customer's control and not reasonably related to services provided under this Agreement.
- (c) EXCEPT FOR THE WARRANTIES IN SECTION 7 MADE BY THE SERVICE PROVIDER, WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SERVICES ARE PROVIDED STRICTLY "AS IS." SERVICE PROVIDER DOES NOT MAKE ANY ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE SERVICES PROVIDED HEREUNDER, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL WARRANTIES OF MERCHANT ABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.
- (d) SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SET FORTH HEREIN, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF PRE-PRODUCTION RELEASES OF SOFTWARE ARE PROVIDED TO CUSTOMER, SUCH COPIES ARE PROVIDED "AS-IS" WITHOUT WARRANTY.
- (e) Except as may be done in accordance with Section 15(b), no statement by any Service Provider employee or agent, orally or in writing, will serve to create any warranty or obligation not set forth herein or to otherwise modify this Agreement in any way whatsoever.



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10. **LIMITATION OF LIABILITY.** SERVICE PROVIDER AND CTS LLC ARE NOT LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY KIND. SERVICE PROVIDER'S LIABILITY TO CUSTOMER ON ACCOUNT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT SHALL BE LIMITED TO PROVEN DIRECT DAMAGES IN AN AGGREGATE AMOUNT NOT TO EXCEED THE LESSER OF \$1,000 OR THE AMOUNTS PAID BY CUSTOMER FOR ANY SERVICES DURING THE THREE MONTH PERIOD PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM FOR DAMAGES. CTS LLC IS NOT LIABLE TO CUSTOMER ON ACCOUNT OF ANY ACTS OR OMISSIONS RELATING TO THIS AGREEMENT WHATSOEVER. THESE LIMITATIONS APPLY REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY OR TORT.
11. **Essential Basis of Bargain.** Customer acknowledges and agrees that fees charged by Service Provider in this Agreement reflect the overall allocation of risk between the parties, including by means of the provisions for limitation of liability and exclusive remedies described in this Agreement. Such provisions form an essential basis of the bargain between the parties and a modification of such provisions would affect substantially the fees charged by Service Provider hereunder. In consideration of such fees, Customer agrees to such allocation of risk and hereby waives any and all rights, through equitable relief or otherwise, to subsequently seek modification of such provisions or allocation of risk.
12. **Force Majeure.** With the exception of Customer payment for services rendered, neither party shall be responsible for any failure to perform or delay caused where such failure or delay is due to circumstances reasonably beyond the party's control.
13. **Confidentiality.** "Confidential Information" means all nonpublic technical or business information, including the terms of this Agreement, disclosed by one party to the other party and marked proprietary or which is of a nature or presented under circumstances that would cause one to reasonably conclude it should be treated as confidential. The receiving party shall hold such information in confidence for three years after termination of this Agreement, restrict disclosure of such information solely to its employees with a business need to know such information, and use a degree of care no less than the degree of care as it uses for its own proprietary information to prevent the unauthorized disclosure, use or publication of such proprietary information.
14. **Insurance.** CTS LLC agrees to maintain reasonable insurance coverage to enable it to meet its obligations created by this Agreement and by law.
15. **General.**
 - (a) **Entire Agreement.** This Agreement together with any attachments, appendixes, schedules, which are hereby incorporated herein by this reference, contain all the agreements, representations, and understandings of the parties and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to the subject matter of this Agreement. To the extent there is any inconsistency between a term of this Agreement and a term of any Schedule, the term of this Agreement will govern the performance of Services thereunder.



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- (b) **Modification.** This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section 15(b).
- (c) **No Waiver.** No failure on the part of either party to exercise, and no delay in exercising, any right, power, or privilege will operate as a waiver thereof; nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The waiver by either party of any default or breach of this Agreement will not constitute a waiver of any other or subsequent default or breach.
- (d) **Jurisdiction.** This Agreement shall be governed by the laws of the State of Texas without regard to its choice of law provisions and by the laws of the United States.
- (e) **Interpretation.** Any provision of this Agreement held to be void, illegal, or unenforceable shall be restated to lawfully reflect the parties' original intent to the fullest extent possible. All other provisions shall remain in full force and effect.
- (f) **Indemnification.** The Customer agrees that it shall defend, indemnify, save, and hold harmless CTS LLC from any and all demands, liabilities, losses, costs and claims, including reasonable attorney's fees associated with CTS's services of the Client's computers and computer network.
- (g) **No Third-Party Beneficiaries.** This Agreement is an agreement between the parties, and confers no rights upon any of the Parties' employees, agents, contractors or customers, or upon any other person or entity other than CTS LLC.
- (h) **Notices.** Any notice required under this Agreement shall be sent via certified mail, return receipt requested; facsimile; overnight express mail; email or personal delivery to the address of the party set forth at the beginning of this Agreement. Notices sent by registered mail shall be deemed effective on the third business day following mailing. Notices sent otherwise shall be deemed effective on receipt. A party may change its address for notices upon thirty-days' (30) prior written notice.
- (i) **Assignment.** Customer may not assign its rights or obligations under this Agreement without Service Provider's prior written consent which shall not be unreasonably withheld.
- (j) **Purchase Orders.** Customer may, for purposes of administrative convenience use Customer's standard form of purchase order to order Services. The parties understand and agree that any terms or conditions on any such purchase order in any way different form or in addition to the terms and conditions of this Agreement will have no effect whatsoever and Service Provider hereby rejects all such terms and conditions.