

Terms & Conditions

Managed Services Agreement and Project Services Agreement

Term of Services:

- The Managed Services Agreement (MSA) shall be for a term of one year from the Effective Date. Customer will be invoiced in advance of service delivery. Prior to the expiration of the service term, Customer may upgrade its Service Level Option, add or remove Supported Devices or extend the term of Services on an annual or monthly basis subject to available options. By renewing, extending or continuing to utilize the services in any manner beyond the initial term of the MSA, Customer agrees that any services provided after the initial term are subject to the then-current Service Description. The term shall automatically renew for successive one (1) year terms unless either party provides the other with timely written notice of termination as outlined in this agreement.
- The Project Services Agreement (PSA) shall be for the term of the duration of the project. Term begins upon HOS signing of the PSA. Customer will be invoiced in advanced of service delivery. Any additional services requested by the Customer during the delivery of services by HOS according to the PSA must be executed in an additional PSA. Term will be considered completed upon finalization of the project work described in the PSA. Completion will be acknowledged by customer by final payment of the amount within the PSA.

Severability: If HOS fails to provide a Service, that is material in nature, under the MSA and/or PSA which is within HOS's reasonable control and provided that the deficiency is caused by HOS, then Customer may provide to HOS a written notice documenting the specifics of the deficiency within 24 hours of the failure to provide such Service. If said deficiency is not cured within thirty (30) days (or if the cure cannot be effected within thirty (30) days due to the nature of the deficiency, HOS shall have a reasonable period of time to cure, provided that it commences within said thirty (30) day period of time and diligently carries such cure to completion), then Customer may deliver written notification of termination of this MSA and/or PSA.

Confidentiality: Customer acknowledges and agrees that (1) HOS may access any information (including personal information) contained in Customer's IT environment in connection with the performance of the Services, and Customer also may provide information (including personal information) to HOS by telephone or otherwise; (2) Customer is authorized by law or otherwise to disclose the information to HOS, and (3) HOS will access Customer's IT environment from the United States, Mexico and elsewhere. Customer acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by HOS or which comes to its attention during the course of business and provided under this Agreement constitute valuable assets of, and confidential and/or proprietary to HOS. This provision shall survive termination of this Agreement and any other agreements between the Customer and HOS for a period of twenty-four (24) months after termination.

Loss of Data & System Downtime: Customer understands and agrees that the Services, including installation or repair of components to any system, may cause data or software programs in your environment to be damaged, destroyed or lost, whether it is a direct result or indirect result of any work performed on any systems within the environment during or after the Services are completed. Customer also understands and agrees that Customer is responsible for backing up all data and software programs in any system before any work is set to commence and that HOS IS NOT RESPONSIBLE FOR LOSS OF OR RECOVERY OF DATA, PROGRAMS, OR LOSS OF USE OF SYSTEM(S) OR NETWORK arising out of the services or support or any act or omission, including negligence, by HOS or a third-party service provider.

Ownership of Intellectual Property Rights: All programming, copyrightable works, writings, drawings, designs, or other works created or developed by HOS or its personnel during the performance of this Agreement and delivered to the CUSTOMER shall become the property of the CUSTOMER. The CUSTOMER does not grant to HOS or its personnel any rights or licenses to the works delivered by it to the CUSTOMER under this Agreement. All copyright, patent, trade secrets, and other intellectual property rights arising out of

the works created or developed by HOS or its personnel in performance of this Agreement shall be the exclusive property of the CUSTOMER unless HOS can market the intellectual property without disclosing confidential information of the customer.

Authorization to Maintain & Access Customer Devices: By purchasing the services under the MSA/PSA, Customer acknowledges that HOS will access when necessary, connect to and manage Supported Devices via remote technologies (except where prohibited by law).

In connection with these Services, HOS may perform remote management activities without first contacting Customer. These activities include, but are not limited to: Updating or changing software drivers; Installing and applying software patches; Rebooting devices within maintenance windows; Deleting temporary files & clearing caches; Starting or restarting application services; Staging and executing scripts for automated maintenance routines; Network performance tuning; Transfer data associated with routine system tuning and upkeep between systems within a Customer's network; and Identify, collect, and report on detailed data for devices on a network.

Notwithstanding the above, Customer is responsible for notifying HOS of a restriction of remote access, connections or management activities related to any Supported Device. Restrictions may be limited to pre-defined permission profiles.

On-Site Support & Parts Availability: Customer must provide free, safe, and sufficient access to Customer's facilities, including parking, ample working space, electricity, high-speed internet access, and a local telephone line. On-Site Support may not be available in all geographies and may be limited to commercial locations within supported geographies. Service at a residential address may be limited or not available at all. Additional labor or parts costs may apply to supported non-HOS devices subject to OEM support practices and level of customer warranty/service contract entitlement. Service parts may not be available for non-HOS devices or may be available at additional costs.

Missed Service Visit: If Customer or Customer's authorized representative is not at the location or available when the on-site service technician arrives to perform Service a subsequent visit by the on-site service technician will be scheduled at additional cost to Customer. HOS's obligation to supply these Services is subject to local availability.

Travel: In the event that a Customer's issue cannot be adequately remediated via remote means and an on-site visit is required, the following travel policies and charges will apply: A Trip Charge will be incurred for all service calls to any Customer location that exceeds 60 miles round-trip from the nearest HOS office. Each mile in excess of the 60-mile round-trip radius will be charged at the IRS-approved rate at the time of service. All travel expenses will be reimbursed and included in an invoice to the Customer.

Third-Party Warranties: Services may require HOS to access devices or software that is not manufactured by HOS. Some manufacturers' warranties may become void if HOS or anyone else other than the manufacturer services these devices or software. It is Customer's responsibility to ensure that HOS's performance of Services will not affect such warranties or, if it does, that the effect will be acceptable to Customer. HOS IS NOT RESPONSIBLE FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT THE HOS SERVICES MAY HAVE ON THOSE WARRANTIES.

Independent Contractor: The parties to this agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

No Hire: Customer agrees not to solicit directly or indirectly for hire the employees, contractors or subcontractors of the other Party and further agrees not to hire employees or contractors of the Party. This restriction shall survive during the term of the Agreement and for a period of twenty-four (24) months after the expiration or termination of the Agreement. In the event the Customer violates this provision, the

Customer shall immediately pay HOS an amount equal to an employment placement fee of three hundred (300) times the last hourly rate billed to the CUSTOMER for said employee immediately due to HOS as liquidated damages and HOS shall have the option to terminate the Agreement without further notice or liability to the CUSTOMER. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs HOS would incur to identify, recruit, hire and train suitable replacements for such personnel.

Non-Competition: Customer shall not (1) reverse engineer any software provided under this Agreement in an effort to produce a competitive product and/or (2) directly or indirectly contact vendors, service providers, contractors, software companies, or similar third parties to obtain products and services which HOS provides pursuant to this Agreement.

Invoicing Increases and Disputes: If at any time questions should arise regarding billing or services performed, or should the CUSTOMER wish to discuss or dispute an invoice for services, HOS must be notified within 15 days of the invoice date; otherwise, said invoice will be considered due, final, and properly payable. HOS reserves the right to impose an increase to the monthly MSA price at the end of each Term and Renewal Term. The MSA may be assessed a yearly increase up to 10%.

CREDIT CHECK: Customer authorized HOS or its authorized representative to conduct a confidential credit inquiry on Customer's financial responsibility and credit worthiness at any time during the term of this Agreement.

Assignment & Transferability: HOS may assign these Services and/or Service Description in whole or in part to qualified third party service providers, also known as subcontractors. This Service is not transferable by Customer.

Cancellation Period & Early Termination Fee: Customer may terminate this Agreement by giving written notice to HOS at least three (3) months prior to the Anniversary/Renewal Date. If Customer received a promotional benefit, such as a refunded, reduced, or no-cost IT Assessment, on-boarding, discounted rate in connection with entering or renewing the MSA, cancellation by Customer prior to the full term of the Agreement ("Early Termination") will result in a fee equal to the value of the benefit provided times three (3). In addition to the fees above, if Customer terminates the Agreement during the first six (6) months after the Start/Anniversary Date, Customer will pay HOS a fee equal to the greater of either: (A) six (6) times the Customer's monthly Base Charge or (B) the total of the invoices presented to Customer over the previous six (6) months. If Customer terminates the Agreement at any time thereafter, Customer will pay HOS a fee equal to four (4) times Customer's average monthly billing of the previous six (6) months.

Customer accepts responsibility to remove monitoring software within 14 days of HOS receiving written notice, in the event the Customer chooses not to engage in the MSA with HOS. HOS may cancel this Service at any time during the Service term for any reason.

If Customer chooses to stop work at any point during a service defined within the PSA, Customer will be charged for the work completed before the written stop work notification was received and all fees associated with winding up, including returning the HOS personnel and equipment to its regular work location.

If HOS cancels this Service, HOS may provide Customer notice of cancellation at the notice address provided by Customer below or by email at the primary email contact address provided by Customer, and Customer shall not be entitled to a refund of fees paid or due to HOS.

Commercially Reasonable Limits to Scope of Service: HOS may determine that a support issue is beyond the scope of this Service, in which case HOS may refer Customer to an alternative resource or, at Customer's discretion, to a third-party for resolution. In such case, additional costs may apply.

Disclaimer of Warranties: HOS makes no warranties of any kind, whether express or implied, including but not limited to, any implied warranties of merchantability and fitness for a particular purpose. HOS makes no representation, warranty or covenant concerning the capabilities or performance of any personnel or service that HOS might provide to the CUSTOMER in connection with delivery or implementation of the HOS Managed Services and/or Project Services Agreement. Hardware and software may be subject to a manufacturer's warranty.

Limitation of Liability: NEITHER CUSTOMER, HOS NOR HOS'S SUBCONTRACTORS WILL BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SERVICES PROVIDED BY HOS EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. HOS SHALL NOT HAVE LIABILITY FOR (I) LOSS OF INCOME, PROFIT, OR SAVINGS, WHETHER DIRECT OR INDIRECT, (II) LOST OR CORRUPTED DATA OR SOFTWARE, OR (III) PRODUCTS NOT BEING AVAILABLE FOR USE. EXCEPT FOR CLAIMS THAT THE SERVICES (EXCLUDING THIRD PARTY PRODUCTS) CAUSED BODILY INJURY (INCLUDING DEATH) DUE TO HOS'S NEGLIGENCE OR WILFUL MISCONDUCT, HOS'S AND HOS'S SUBCONTRACTOR'S TOTAL LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, ANY SERVICES PURCHASED PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNTS PAID BY CUSTOMER FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD.

Disputes; Governing Law; Arbitration: Texas law, without regard to conflict of laws principles, shall govern and enforce any and all contracts and agreements between the Parties. Venue for any legal action between the Parties shall take place in Midland County, Texas, and Customer waives any objection to personal jurisdiction of that court or to that venue based on forum non convenience. The foregoing choice of law and venue are to the exclusion of any other law or forum.

Amendment: Any waiver, modification or amendment of any provision of this MSA and/or PSA will be effective only if in writing and signed by both Parties.

Waiver and Severability: Waiver or failure by either Party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further right thereunder. If any provision herein is found by a court of competent jurisdiction to be unenforceable for any reason, the remainder of the provisions shall continue in full force and effect.

Force Majeure: Neither Party shall be liable to the other for any delay or failure to perform any obligation hereunder (except for a failure to pay fees) if the delay or failure is due to unforeseen events which are beyond the reasonable control of such Party, such as strikes, blockade, war, terrorism, riots, natural disasters, and/or refusal of license by the government, insofar as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

Notices and Reports: Any notice or report hereunder shall be in writing to the notice address set forth below and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. mail (return receipt requested); or (iii) one day after it is sent if by next day delivery by a major commercial delivery service. HOS Office Solutions c/o Casey Alcantar, P.O. Box 52510, Midland, TX 79710.

Right to Substitute for Any Invalid or Unenforceable Provision: The invalidity or unenforceability of any provision of the HOS Managed Services and/or Project Service Agreement shall not affect the validity or enforceability of the other provisions, and this Agreement shall be construed in all respects as if such invalid and unenforceable provisions were omitted. HOS and the CUSTOMER agree to substitute for any invalid or unenforceable provision a valid and enforceable provision that most closely approximates the economic effect and intent of the invalid and unenforceable provision.

Suspension: HOS may in its sole discretion, suspend performance until payment is received. HOS may also suspend performance if the CUSTOMER is in default of payment under any other agreement with HOS until such payment default is resolved.

Termination: HOS shall have the right to terminate this Agreement without notice under any of the following conditions: (1) CUSTOMER has not met its responsibilities identified in Section 8 of the Agreement, (2) CUSTOMER has been declared insolvent or bankrupt or a trustee in bankruptcy or a receiver or similar entity is appointed on CUSTOMER'S behalf, and (3) the CUSTOMER does not pay HOS within thirty (30) days from receipt of HOS's invoice and/or otherwise materially breaches this Agreement.

Upon termination, each and every invoice that is due or will be due within the Term or Renewal Term as the case may be shall become accelerated and automatically due and payable, together with a late fee equal to \$50 per invoice per month and interest of 1.5% per month or the maximum rate allowable, whichever is greater). Customer agrees to pay HOS's cost and expenses of collecting any amounts due and owing under this Agreement, including the maximum attorney's fees permitted by law. All hardware and/or software installed by HOS or its subcontractors shall be delivered to HOS in its sole discretion.

Integrated Agreements: This agreement, together with HOS's Terms and Conditions of Sale, and any applicable supplements is intended by the Parties as final expression of their agreement with respect to the purchase of Goods and Services, and a complete and exclusive statement of such agreement, and as such, supersedes all prior and contemporaneous agreements, representations, warranties and understanding of the Parties, whether oral, written or implied.