

# Master Service Agreement

This Agreement is between Network Center, Inc., a North Dakota company (sometimes referred to as “we,” “us,” “our,” OR “Provider”), and CUSTOMER (sometimes referred to as “you,” “your,” OR “Client”), effective as of the date signed below by both parties (the “MSA Effective Date”).

**The parties agree as follows:**

## STATEMENT OF SERVICES

### Service Attachments

The services to be delivered by Provider (the “Services”) and the fees for those Services, and the specific terms applicable to those Services are described in one or more Service Attachments referencing this Agreement.

Except for Supplemental Services or Project Services (described below), and unless otherwise agreed in writing, the services we will deliver to you are limited to those Services specifically identified in the Service Order and described in the Service Attachments. In the event of any conflict between the terms of a Service Attachment and this Agreement, the terms in the Service Attachment control.

### Supplemental Services

“Supplemental Services” are limited, additional services and equipment you may need on a “one-off” or emergency basis that are not included within the scope of the Services described in the Service Attachments. You will incur additional Service Fees for Supplemental Services. We will notify you of any such additional Service Fees and will obtain your approval prior to providing them. However, we have no obligation to determine the need for or to provide any Supplemental Services. All Supplemental Services are provided on an “as-is” basis and include no warranties of any kind, whether express or implied. In addition, if we determine that any additional services you request would be inappropriate for treatment as Supplemental Services under this paragraph, we may deliver to you a proposed Service Attachment for Project Services.

### Project Services

In some cases, you may ask us to deliver services outside the scope of any Service Attachment and inappropriate for treatment as Supplemental Services. Examples of such services include major system upgrades or datacenter moves or setups. In those cases, we will prepare a separate Service Attachment for Project Services describing the proposed scope of those services and our fee to deliver them.

## FEES FOR SERVICES | PAYMENT TERMS

### Service Fees

Fees for Services are set forth in a Pricing Addendum or Statement of Work.

### Adjustments to Service Fees

Except as may be specified in a Service Attachment, we may adjust the Service Fees charged under this agreement as follows:

- End-User or Network Growth. During the term of a Service Attachment, if the number of users in your environment or the Service or Equipment types or quantities to be covered within the scope of the Service Attachment exceeds the numbers, types or quantities previously ordered by at least 10 devices as defined in the statement of work, we may apply a pro rata adjustment to the total Service Fees based on our then-current fee rates. You shall pay all Service Fees owed as they become due following any such adjustment.

Similarly, during the term of a Service Attachment, if the number of users in your environment or the Service or Equipment types or quantities to be covered within the scope of the Service Attachment is less than the numbers, types or quantities previously ordered, upon request, we will apply a pro rata adjustment to the total Service Fees based on our then-current fee rates. You shall pay all Service Fees owed as they become due following any such adjustment. However, except for a divestiture or office closing which decreases users or Service or Equipment Types by at least twenty 20 devices, such adjustments will not result in a number of users in your environment or in any Service or Equipment types or quantities to be covered within the scope of the Service Attachment that is less than the numbers, types or quantities ordered at the time you signed that Service Attachment.

- Surcharges. At any time after the parties sign a Service Attachment, we may adjust our rates and charges or impose additional rates and charges to recover amounts required or permitted by governmental or quasi-governmental authorities to collect from others or pay to others in support of statutory or regulatory funds or programs. You shall pay all Service Fees owed as they become due following any such adjustment.
- Service Fee Rate Increases. Our fees charged pursuant to a Service Attachment may be raised at our discretion on an annual basis once the parties sign said Service Attachment. Any fee increase will be capped at five percent (5%). We may elect to raise the fees that we charge under that Service Attachment. We shall give you no less than thirty (30) days' written notice of any such increase in fees to be charged. Following your receipt of such notice, you may terminate this Service Attachment without incurring any additional charges or penalties, if any, that you ordinarily would incur for such termination.

#### **Pass-Through Expenses**

Provided that the Provider obtains prior written approval, Client shall pay Provider's reasonable out-of-pocket expenses, including travel expenses, lodging, meals, or other similar expenses, which may be incurred by Provider in performing Services. Any such "Pass-Through Expenses" will be billed at cost and invoiced monthly.

#### **Payment Terms**

Provider shall bill Client on a monthly basis (30 days). Provider's invoice shall include flat monthly fee. If Provider provides services outside those included under the flat monthly fee, the invoice shall include details regarding date of service, number of hours worked and description of services provided. You shall pay the full amount reflected on any invoice as owed to us within fifteen (15) days following your receipt of that invoice. You shall pay a late charge of one and one half percent (1.5%) per month or the maximum lawful rate, whichever is less, for all invoiced amounts not paid within fifteen (15) days following your receipt of that invoice (the "Payment Deadline").

If you dispute in good faith all or any portion of the amount owed to us, or if you otherwise require any adjustment to an invoiced amount, you must notify us in writing, prior to the Payment Deadline, of the nature and basis of the dispute and/or adjustment. If we are unable to resolve the dispute prior to the Payment Deadline, you nevertheless shall pay the entire invoiced amount by the Payment Deadline. If we ultimately determine that such amount should not have been paid, we shall apply a credit equal to such amount on against any Service Fees owed for the following month. If no Service Fees are owed the following month, the credit amount will be refunded to Client.

### **Suspension of Service**

If you fail to pay all amounts owed under this agreement when due, then upon at least ten (10) business days prior written notice, and in addition to any other remedies available to us, we may suspend Services under this agreement until full payment is made. Following any suspension of service under this provision, and after you make full payment to us, we shall restore the Services after validating that all components to be monitored and/or managed under any applicable Service Attachment comply with our level of security, updates and best practices. You shall pay a "Reactivation Fee" for such restoration equal to \$250.00. Our right to suspend Services under this section is in addition to our right to terminate this agreement.

### **Taxes**

All charges and fees owed under this agreement are exclusive of any applicable sales, use, excise or services taxes that may be assessed on the provision of the Services. In the event that any taxes are assessed on the provision of any of the Services, you shall pay the taxes directly to the taxing authority or shall reimburse us for their payment.

## **TERM AND TERMINATION**

### **Term**

This agreement commences on the MSA Effective Date, and it will remain in effect until either party terminates it as permitted below.

### **Termination**

Either party may terminate this Agreement for any reason or no reason upon at least thirty (30) days advance, written notice given to the other party. However, termination of this Agreement will not, by itself, result in the termination of any Service Attachments, and this Agreement will remain in effect notwithstanding any notice of termination unless and until all Service Attachments are terminated or expire according to their terms.

## **INDEPENDENT CONTRACTOR**

Unless otherwise agreed, we will perform all Services solely as an independent contractor and not as an employee, agent or representative of Client.

## **INTELLECTUAL PROPERTY RIGHTS**

### **Provider Works**

Unless specifically identified in a separate Statement of Work or Service Attachment, any writing or work of authorship, regardless of medium, created or developed by Provider or Client in the course of performance under this Agreement and related to existing works owned by Provider is a "Provider Work," is not to be

deemed a “work made for hire,” and is and will remain the sole, exclusive property of Provider. To the extent any Provider Work for any reason is determined not to be owned by Provider, Client hereby irrevocably assigns and conveys to Provider all of its copyright in such Provider Work. Client further hereby irrevocably assigns to Provider all of its patent, copyright, trade secret, know-how and other proprietary and associated rights in any Provider Work. If developed by Client, Client retains its own work product and Provider may request use of such work product.

Any work developed under the Services provided which is new, novel and would otherwise not be considered a derivative work and which is done at the Client’s direction is a “Client Work” and shall be considered a work made for hire and shall be owned by Client. Both Parties agree that each will irrevocably assign and convey to the other all of its intellectual property rights in such created work.

#### **License to Provider Works**

Provider hereby grants Client a limited, non-exclusive, revocable, royalty-free license to use any Provider Works for Client’s internal business purposes only during the term of this MSA.

#### **License Restrictions**

You shall not:

- Modify, copy or create derivative works based on the Services or on the Provider Technology;
- Build a product or service using similar ideas, features, functions or graphics of the Service, or
- Copy any ideas, features, functions or graphics of the Service

Additional license restrictions may be set forth in the Service Attachments.

#### **Improvements to Services**

You hereby assign to us any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or your users relating to any proposed improvements of or modifications to the Services.

## **PROVIDER-SUPPLIED EQUIPMENT**

“Equipment” means any computer, networking or telephony equipment, racking, or associated hardware or other equipment (if any) that we install on your premises or that we ship to your location to facilitate the delivery of Services. Equipment does not include any hardware or devices that we may sell to you or that we may procure on your behalf.

Provider is and will remain the sole owner of any Equipment, which is provided on a rental basis only. Our agreement transfers to you no Equipment ownership rights of any kind.

We retain sole discretion to determine the appropriate Equipment and associated software and/or technology, if any, to be used at your location, provided that our determination does not materially impair the availability or delivery of services under this agreement. We also retain sole discretion to determine the necessity of maintenance, repairs and/or improvement of the Equipment.

Except as otherwise may be specified in an applicable Service Attachment, Provider makes no independent representations or warranties with respect to the Equipment. Any third-party warranties are your exclusive

remedies with respect to such Equipment. In the event of an Equipment malfunction, we will take commercially reasonable steps to ensure that you receive the benefit of any manufacturer warranties applicable to the Equipment in use at your location.

You shall take reasonable care of the Equipment and shall not damage it, tamper with it, move or remove it, attempt to repair it, or attempt to install any software on it. You are financially responsible, up to the full replacement value of all Equipment, for all damage to or loss of the Equipment used at your location, other than loss or damage caused by Provider. In addition, you shall obtain and maintain insurance with a reputable insurer for the full replacement value of the Equipment. Such policy or policies of insurance must cover the Equipment against loss or damage (including, without limitation, accidental loss or damage). Upon demand, you must produce evidence that such insurance is being maintained and is valid.

You are responsible for providing the necessary power, network connection and appropriate environment to support the Equipment.

You shall not remove any sign, label or other marking on the Equipment identifying Provider as the owner of the Equipment. You do not acquire and will not acquire any rights of ownership in the Equipment by virtue of this agreement, and you do not have and will not have, by operation of law or otherwise, any lien or other similar right over or in relation to the Equipment.

On termination of any agreement pursuant to which we deliver Equipment, you shall allow Provider and its employees and contractors reasonable access to your premises to remove the Equipment. Alternatively, upon our request, you shall return the Equipment to us via the carrier of our choice, for which we will pay all applicable shipping charges.

## **PROVIDER-SUPPLIED SOFTWARE**

“Software” means all and any software installed on the Equipment or provided by us to for installation on your computer equipment to facilitate the delivery of the Services.

This agreement does not transfer any right, title, or interest in the Software to you. Your use of the Software is subject to all applicable terms of any end-user license agreement pertaining to the Software, a copy of which will be made available to you upon request. Prior to the installation of any software in your system, Provider will provide a copy of the software license for you to review.

You shall not, and shall not permit any third party, to:

- distribute or allow others to distribute copies of the Software or any part thereof to any third party,
- tamper with, remove, reproduce, modify or copy the Software or any part thereof,
- provide, rent, sell, lease or otherwise transfer the Software or any copy or part thereof or use it for the benefit of a third party, or
- reverse assemble, reverse compile or reverse engineer the Software or any part thereof, or otherwise attempt to discover any Software source code or underlying proprietary information except as may be permitted by law

## **NON-DISCLOSURE AND CONFIDENTIALITY**

### **Confidential Information**

During the course of performance under this agreement, either party may be exposed to or may acquire the other's proprietary or confidential information. Each of us shall hold all such "Confidential Information" in strict confidence and shall not disclose any such information to any third party.

Confidential Information includes but is not limited to: (a) with respect to Provider, Provider's unpublished prices for Services, audit and security reports, server configuration designs and other proprietary technology, (b) with respect to Client, content transmitted to or from, or stored by Client on, Provider's servers, and (c) with respect to both parties, other information that is conspicuously marked as "confidential" or if disclosed in non-tangible form, is verbally designated as "confidential" at the time of disclosure and confirmed as confidential in a written notice given within one (1) day of disclosure.

### **Non-Confidential Information**

Notwithstanding the preceding provision, Confidential Information does not include:

- Information that at the time of disclosure is, without fault of the recipient, available to the public by publication or otherwise;
- Information that either party can show was in its possession at the time of disclosure and was not acquired, directly or indirectly, from the other;
- Information received from a third party with the right to transmit same without violation of any secrecy agreement with the other party; and
- Information that must be disclosed pursuant to court order or by law.

### **Confidential Agreement**

No copy of this MSA, discussions, negotiations, terms or conditions relating to the MSA, or any other information relating to this MSA may be disclosed to any third party, except by reason of legal, accounting or regulatory requirements, without the prior written consent of the parties hereto.

### **Information Releases**

Notwithstanding the preceding provisions, Provider may publicly refer to Client, orally and in writing, as a Client of Provider. Any other reference to Client by Provider may be made only pursuant to a written agreement between the parties.

## **CLIENT COVENANTS AND OBLIGATIONS**

### **Software Licensing**

Unless specifically otherwise agreed to in an applicable Service Attachment, Client represent and warrant that Client has title to or license or rights to use or modify and have license or rights to permit Provider to use, access or modify any software that you have requested Provider use, access or modify as part of the Services.



**Provider Access**

Client shall supply Provider necessary access to its personnel, appropriate documentation and records and facilities in order for Provider to timely perform the Services.

**Third-Party Obligations**

Client is responsible for any third-party vendor or service provider charges and to arrange for disconnection or termination and payment of charges related to the disconnection or termination of any related services with your current carrier(s) or service provider(s).

**Network Security**

Unless specifically otherwise agreed to in an applicable Service Attachment, it is Client's sole responsibility to determine whatever actions deemed necessary to make Client's data and voice networks and circuits secure from unauthorized access. Provider is not responsible for the security of your network and circuits from third parties, or for any damages that may result from any unauthorized access to your network unless the unauthorized access is caused by Provider's negligence or willful act or omissions.

**Theft of Service**

Client shall notify us immediately, in writing, by electronic mail or by calling the Provider customer support line, if Client becomes aware at any time that the Services are being stolen or used fraudulently. Failure to do so in a timely manner may result in the immediate termination of the Services and additional charges to be billed to you. Client will be liable for all use of the Service using Equipment stolen from you and any and all stolen Service or fraudulent use of the Services, unless the stolen Services or fraudulent use of the Services resulted from the Provider's negligent or willful acts or omissions. Credits will not be issued for charges resulting from fraud that arises out of third parties hacking into any Equipment. This includes, but is not limited to, modem hijacking, wireless hijacking or other fraud arising out of a failure of your internal/corporate procedures. Provider will not issue credit for invoiced charges for fraudulent use resulting from your negligent or willful acts or those of an authorized user of your service. Provider will issue credits for fraudulent use created or caused by Provider's negligent or willful acts.

**Hardware Equipment**

Client equipment must be maintained under manufacturer's warranty or maintenance contract. All fees, warranties, and liabilities against Provider assume equipment is under manufacturer's warranty or maintenance contracts.

**Local Backup**

Unless specifically otherwise agreed to in an applicable Service Attachment, Client must maintain local backup of all files that are sent to either the cloud or for data backup services. Client will be solely responsible for the loss of data due to Client's failure to not maintain and provide a local backup of all files to Provider.

## **PROVIDER REPRESENTATIONS AND WARRANTY**

**Internal Network Security Compromise Policy**

Provider monitors the availability and performance of its internal firewall and web caching system. This process involves monitoring for intrusion attempts and potential security breaches. In order to minimize a possible compromise of security, all services and applications exposed to the Internet on Provider's servers are updated with all commonly available security hotfixes and best practices. As appropriate, Provider proactively evaluates, investigates and reports security-related incidents to the appropriate authorities.

Provider also monitors and proactively manages the anti-virus protection of its servers and applications using industry-recognized anti-virus software systems.

### **Service Warranty**

We warrant that the Services will be performed in a professional and workmanlike manner and as described in an applicable Service Attachment. All Services will be deemed to be accepted unless Client notifies Provider in writing within thirty (30) working days after performance that the Services did not conform to this warranty. Provider promptly will correct any non-conformities and will notify Client in writing that the non-conformities have been corrected.

### **DISCLAIMER OF WARRANTY**

PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, THAT PROVIDER WILL CORRECT ALL SERVICES ERRORS, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICE WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE TEMPORARY LOSS OF SERVICE AVAILABILITY. PROVIDER IS NOT RESPONSIBLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM YOUR CONTENT OR THIRD PARTY CONTENT OR SERVICES PROVIDED BY THIRD PARTIES. PROVIDER SHALL HAVE NO OBLIGATION WITH RESPECT TO A WARRANTY CLAIM (i) IF NOTIFIED OF SUCH A CLAIM AFTER THE WARRANTY PERIOD OR (ii) IF THE CLAIM IS THE RESULT OF THIRD-PARTY HARDWARE OR SOFTWARE FAILURES, OR THE ACTIONS OF CLIENT OR A THIRD PARTY.

FOR ANY BREACH OF THE SERVICES WARRANTY, YOUR EXCLUSIVE REMEDY AND OUR ENTIRE LIABILITY SHALL BE THE CORRECTION OF THE DEFICIENT SERVICES THAT CAUSED THE BREACH OF WARRANTY, OR, IF PROVIDER CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE DEFICIENT SERVICES AND PROVIDER WILL REFUND TO YOU THE FEES FOR THE TERMINATED SERVICES THAT YOU PRE-PAID TO US FOR THE PERIOD FOLLOWING THE EFFECTIVE DATE OF TERMINATION.

TO THE EXTENT NOT PROHIBITED BY LAW, CLIENT ACKNOWLEDGES THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS BY THE PROVIDER OR ANY THIRD-PARTY VENDORS' INCLUDING FOR SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THAT THOSE THIRD-PARTY VENDORS DISCLAIM ANY AND ALL LIABILITY, WHETHER DIRECT, INDIRECT OR CONSEQUENTIAL, ARISING FROM THE SERVICES.

### **WARRANTY OF SERVICE**

Provider represents and warrants to Client that:

- a) Provider will perform all Services in a timely, professional, and workmanlike manner with a level of care, skill, practice, and judgment consistent with generally recognized information security industry standards and practices for similar services, using personnel with the requisite skill, experience, and qualifications, and will devote adequate resources to meet Provider's obligations under this Agreement;
- b) Provider has, and throughout the term of this Agreement and any Service Attachment will have the unconditional and irrevocable right, power and authority, including all licenses required, to provide the Services; and



c) the Services will conform to and be performed in accordance with the requirements of this Agreement and any Service Attachment.

Except for the express warranties in this Agreement, each party disclaims all warranties, whether express, implied, statutory or other, under or in connection with the Agreement or any Service Attachment.

## **MUTUAL REPRESENTATIONS AND WARRANTIES**

Each party represents and warrants to the other party that:

(a) it is a duly organized, validly existing and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization;

(b) it has, and throughout the Term and any additional periods during which it does or is required to perform the Services will retain, the full right, power, and authority to enter into this Agreement and perform its obligations hereunder;

(c) the execution of this Agreement by its representative whose signature is set forth at the end of this Agreement has been duly authorized by all necessary corporate or organizational action of such party; and

(d) when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

## **NO HIRING**

Neither party shall encourage or solicit any employee of the other party during the Term of this agreement and for twelve (12) months following termination of this agreement. The foregoing does not preclude a party from (a) hiring an employee of the other party who independently seeks a position, or (b) conducting general recruiting activities, such as participation in job fairs or publishing advertisements in publications or on Web sites for general circulation.

The parties agree that injury resulting from any breach of this provision would be significant and irreparable and that it would be extremely difficult to ascertain the actual amount of damages resulting from such breach. Therefore, in the event of a violation of this provision, in addition to any other right the injured party may have at law or in equity, the party determined to be in violation of this section shall make a one-time payment to the other party in the amount of one hundred and fifty percent (150%) of the affected employee's base salary for one year. The parties agree that such amount is not intended as a penalty and is reasonably calculated based upon the projected costs the injured party would incur to identify, recruit, hire and train suitable replacements for such personnel.

## **DISPUTE RESOLUTION**

### **Arbitration Procedures**

Each of us shall attempt to settle amicably by mutual discussions any disputes, differences, or claims related to this agreement within sixty (60) days of the date any such dispute arises. Failing such amicable settlement, any such dispute, including claim related to the existence, validity, interpretation, performance, termination or breach of this agreement, is to be settled by arbitration in accordance with the Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in English. The

Arbitration Tribunal will not have the authority to award punitive damages to either party. Each of us will bear our own expenses, but we shall share equally the expenses of the Arbitration Tribunal and the AAA. Any arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. The arbitration will be held in Fargo, ND, or at another location upon which we may agree. Notwithstanding the foregoing, claims for preliminary injunctive relief, other pre-judgment remedies, and claims for your failure to pay for Services may be brought in a state or federal court in the United States with jurisdiction over the subject matter and parties.

If Provider initiates a dispute against Client for payment of fees or collection costs, Provider will be entitled to attorney's fees if the prevailing party.

### **Continued Service**

Unless Provider is bringing an action for your failure to make payments for Services not otherwise in dispute, we will continue to provide Services under this agreement, and you shall continue to make payments to us, in accordance with this agreement, during the period in which the parties seek resolution of the dispute.

## **INDEMNIFICATION**

### **By Client**

Client shall indemnify and hold Provider harmless against all costs and expenses, including reasonable attorney's fees, associated with the defense or settlement of any claim that:

- Provider's use, access or modifications of any software that you have requested we use, access or modify as part of the Services infringes any patent, copyright, trademark, trade secret or other intellectual property right, or
- Client's use of any Services in violation of any requirements or representations in this agreement violates any law or infringes any patent, copyright, trademark, trade secret or other intellectual property right.

You further shall pay any judgments or settlements based on any such claims.

### **By Provider**

Subject to the limitation of liability set forth in the section titled LIMITATION OF LIABILITY, Provider agrees to indemnify and hold Client harmless from and against all loss, liability, and expense including reasonable attorney's fees caused by Provider's:

- a) negligent act, error, omission, advice, misstatement or misrepresentation; or
- b) breach of any contractual term implied by law concerning necessary quality, safety or fitness, or Provider's duty to use reasonable care and skill; or
- c) dishonesty of Provider's senior officers or employees provided; or
- d) other act, error or omission giving rise to civil liability arising out of business activities performed for Customer.

## LIMIT OF LIABILITY

EXCEPT AS MAY BE DESCRIBED IN AN APPLICABLE SERVICE OR IN A SERVICE AGREEMENT FOR PROJECT SERVICES, PROVIDER'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO ANY DIRECT or indirect DAMAGES INCURRED BY client AND WILL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO Provider UNDER THIS AGREEMENT AND ALL SERVICE DESCRIPTIONS DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF ANY SUCH CLAIM. IN THE EVENT OF AN INSURANCE COVERAGE DISPUTE, PROVIDER IS NOT REQUIRED TO DISPUTE THE COVERAGE DETERMINATION AND IS NOT REQUIRED TO FILE A DECLARATORY JUDGMENT ACTION.

IN NO EVENT IS EITHER PARTY TO BE HELD LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR CLAIMS, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOST SAVINGS, LOST PRODUCTIVITY, LOSS OF DATA, AND LOSS FROM INTERRUPTION OF BUSINESS, EVEN IF PREVIOUSLY ADVISED OF THEIR POSSIBILITY AND REGARDLESS OF WHETHER THE FORM OF ACTION IS IN CONTRACT, TORT OR OTHERWISE.

## INSURANCE

Client Obligations: Client shall maintain a minimum of One Million Dollars (US \$1,000,000 in insurance coverage through its respective carriers. Such insurance must include, at a minimum, commercial general liability, workers compensation coverage, and first party cyber liability.

Provider Obligations: We agree to maintain during the Term, professional liability insurance with aggregate limits of One Million Dollars (US \$1,000,000), including Communications and Media Liability Coverage, Network and Information Security Liability, Technology Errors and Omissions. Additionally, we agree to maintain Third-Party Liability coverage with a limit of One Million Dollars (US \$1,000,000) for each wrongful act. This coverage does not include insurance for expenses for First Party Coverage, including Security Breach Notification and Remediation, Crisis Management Services, Business Interruption, Extortion Expense, Computer Program and Electronic Data Restoration, Computer Fraud, Funds Transfer Fraud, or Telecommunications Theft. Client's insurance shall be primary over Provider's insurance. Client agrees to waive and to require its insurers to waive any rights of subrogation or recovery they may have against Provider, its agents, officers, directors and employees.

## GENERAL

### Notices

Except as otherwise provided under this agreement, all notices, demands or requests to be given by any party to the other party shall be in writing and shall be deemed to have been duly given on the date delivered in person, or sent via fax, courier service, electronic mail, or on the date of the third business day after deposit, postage prepaid, in the United States Mail via Certified Mail, return receipt requested, and addressed as set forth on the Service Order.

If to Provider, to:  
Network Center, Inc.  
3487 University South Drive  
Fargo, ND 58103

Attn: Ben Carlsrud  
E-mail: ben.carlsrud@netcenter.net

If to Client, to:  
CUSTOMER NAME  
CUSTOMER ADDR  
Attn: \_\_\_\_\_  
E-mail: \_\_\_\_\_

The address to which such notices, demands, requests, elections or other communications are to be given by either party may be changed by written notice given by such party to the other party pursuant to this Section.

#### **Force Majeure**

We will not be liable for any failure of performance of the Services due to causes beyond our reasonable control, including, but not limited to, fire, flood, electric power interruptions, national emergencies, civil disorder, acts of terrorism, riots, strikes, Acts of God, or any law, regulation, directive, or order of the United States government, or any other governmental agency, including state and local governments having jurisdiction over Provider or the Services provided hereunder (the "Affected Performance").

Any party whose performance is so affected shall give written notice to the other party describing the Affected Performance. The parties promptly shall confer, in good faith, to agree upon equitable, reasonable action to minimize the impact on both parties of such condition. If the delay caused by the force majeure event lasts for a period of more than thirty (30) days, the parties shall attempt to negotiate an equitable modification to this MSA or any affected Service Attachment pertaining to the Affected Performance. If the parties are unable to agree upon an equitable modification, then either party may serve thirty (30) days' written notice of termination on the other party with respect only to the portion of this MSA or any applicable Service Attachment relating to the Affected Performance. Client shall pay Provider for that portion of the Affected Performance that was completed or that was in the process of being completed through the effective termination date of the Affected Performance.

#### **Waiver**

No delay in exercising, no course of dealing with respect to, and no partial exercise of, any right or remedy hereunder will constitute a waiver of any right or remedy, or future exercise thereof.

#### **Assignment**

Neither party may assign this agreement, in whole or in part, or any of its rights or obligations hereunder without the prior written consent of the other party.

#### **Survival**

Our respective duties and obligations with respect to proprietary rights, intellectual property rights, and non-disclosure and confidentiality will survive and remain in effect, notwithstanding the termination or expiration of this agreement.

#### **Amendment**

Provider may, from time to time, in its sole discretion, and for any reason, amend the Master Services Agreement and any Service Attachments posted on our web page. However, the Master Services Agreement and Service Attachments in effect as of the date that you sign the Service Order are the agreements that will govern our relationship until this agreement expires or one of us terminates it. Our

agreement, as reflected in those documents, may be modified or amended only by a writing signed by both parties.

**Governing Law**

This agreement is to be governed by and construed in accordance with the laws of the State of North Dakota.

**Severability**

If any term or provision of this agreement is declared invalid by a court of competent jurisdiction, the remaining terms and provisions will remain unimpaired, and the invalid terms or provisions are to be replaced by such valid terms and provisions that most nearly fulfill the parties' intention underlying the invalid term or provision.

**Third-Party Beneficiaries**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein is to be construed to give any person or entity, other than the parties hereto and their respective successors and permitted assigns, any legal or equitable rights hereunder.

**Entire Agreement**

This agreement, the Service Attachments, and any other attachments thereto set forth our entire understanding with respect to the subject matter hereof and is binding upon both parties, their successors, and their permitted assigns, in accordance with the terms of this agreement. There are no understandings, representations or agreements other than those set forth herein. Each party, along with its respective legal counsel, has had the opportunity to review this agreement. Accordingly, in the event of any ambiguity, such ambiguity will not be construed in favor of, or against either party, such ambiguity shall be construed to carry out the parties' mutual intention.