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# 1. APPLICATION OF THESE CONDITIONS

- 1.1 TechGuides, Inc. will be referred to as "TechGuides" throughout this document.
- 1.2 **Blanket Coverage:** Unless otherwise agreed by TechGuides in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, Plan, Proposal, Contract, or other arrangement in connection with the supply of Goods and/or Services by TechGuides to Client.  

The invalidity or enforceability of any one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.
- 1.3 **Other Terms:** TechGuides will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by Client unless TechGuides has expressly and specifically accepted such other terms in writing.
- 1.4 **No Waiver:** The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.

# 2. COMMITMENT TERM

- 2.1 If applicable, the minimum term that Client acquires the Service for is outlined in the TechGuides Quote, Proposal, Agreement, Statement of Work or Contract beginning from the first of the next month after the date of signing or approving the Quote.
- 2.2 After the expiry of the Committed Term, an extension of the Term will automatically commence for the same period as the original Committed Term and will continue indefinitely, unless earlier terminated by Client as specified in Section 2.3.
- 2.3 Client must give sixty (60) days' notice of intent not to renew prior to Client's renewal date. Failure to give notice will result in the renewal of the contract as stipulated in Section 2.2.

# 3. TERMINATION

- 3.1 This Agreement may be terminated by Client upon sixty (60) days written notice if TechGuides:
  - 3.1.1 Fails to fulfil in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice.
  - 3.1.2 Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days' receipt of such written notice.
  - 3.1.3 Terminates or suspends business operations, unless it is succeeded by a permitted assignee under this Agreement.
- 3.2 This Agreement may be terminated by TechGuides upon sixty (60) days written notice to Client.
- 3.3 TechGuides reserves the right to refuse, suspend, or terminate services or goods under this Agreement in the event Client has failed to pay any undisputed invoice within thirty (30) days of said invoice date.
- 3.4 If either party terminates this Agreement, if requested, TechGuides will assist Client in the orderly termination of services. Client agrees to pay TechGuides for rendering such assistance at TechGuides' normal rates as outlined in the current TechGuides Rate Schedule.

- 3.5 Should Client wish to terminate this Agreement before the end of the commitment term, Client agrees to pay all of the remaining payments up until the end of the commitment term as defined in any applicable Quote, Order, Proposal, Statement of Work or other Agreement, within fourteen (14) days of giving notice to terminate.
- 3.6 Notice of Termination by either party can be sent via certified mail or by email to the Primary Contact of Client (when sent by TechGuides) and to the president of TechGuides (when sent by Client).
- 3.7 Upon termination, all hardware and software installed by TechGuides and not purchased by Client that was required to conduct network support services are the property of TechGuides and will be surrendered and returned to TechGuides.

## **4. REMEDIES**

- 4.1 In the event Client terminates this Agreement in accordance with the provisions contained herein and at the time the termination takes effect Client is not in breach of any of the provisions to this Agreement, Client shall be entitled to a refund of any monies that had been paid in advance for future services to be rendered by TechGuides, but which remain unused as of the termination date. Up to the effective date of termination, TechGuides has the right to apply fees for services rendered against any such monies that have been paid in advance by Client before refunding the remaining balance.

## **5. REPRESENTATIONS**

- 5.1 Client acknowledges that no employee or agent of TechGuides has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

## **6. NOTICES**

- 6.1 Any notices given under the Conditions shall be in writing and sent by e-mail to Primary Contact of Client.

## **7. GOVERNING LAW**

- 7.1 Notwithstanding the place where this Agreement may be executed by any party, this Agreement, the rights and obligations of the parties, and any claims and disputes relating hereto shall be subject to and governed by the laws of the Commonwealth of Pennsylvania as applied to Agreements among Pennsylvania residents to be entered into and performed entirely within the Commonwealth of Pennsylvania, and such laws shall govern all aspects of this Agreement. The parties agree to submit to the personal jurisdiction and venue of Delaware County, Pennsylvania, where TechGuides has its principal office, for resolution of all disputes and causes of action arising out of this Agreement, and the parties hereby waive all questions of personal jurisdiction and venue of such courts, including, without limitation, the claim or defense therein that such courts constitute an inconvenient forum.

## **8. ASSIGNMENT**

- 8.1 Client may not assign Client's rights and obligations under this Agreement without the prior written consent of TechGuides.
- 8.2 This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, TechGuides may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of its

business, or any other transaction in which ownership of more than fifty percent (50%) of its voting securities are transferred; provided, however, that such assignee expressly assumes TechGuides' obligations hereunder in writing.

## 9. VARIATION OF THESE TERMS AND CONDITIONS

- 9.1 TechGuides may at any time vary these Terms and Conditions by publishing the varied Terms and Conditions on the TechGuides website. Client accepts that by doing this, TechGuides has provided Client with sufficient notice of the variation. TechGuides is under no other obligation to notify Client of any variation to these terms and conditions.

## 10. QUOTES

- 10.1 **Definition:** "Quote" can mean a Quote, a Proposal, or any Agreement between Client and TechGuides in which Goods or Services will be provided by TechGuides to Client at a specified cost.
- 10.2 **Term and effect:** Quotes will only be valid for thirty (30) days unless otherwise specified in the Quote. The acceptance of a quote will create a binding contract between Client and TechGuides.
- 10.3 A quote is confirmed as 'final' with a final agreed price as soon as it is accepted by Client.
- 10.4 The price in the final quote may vary from the original request if there is any price or product changes requested by Client. TechGuides reserves the right to alter product and prices in the quote, as long as the quote has not been confirmed with Client.
- 10.5 The final purchase price of the items in the accepted quote may differ from the actual purchase price, as item costs fluctuate. Client agrees to pay for any additional increase in price without further acceptance or review, provided the final purchase price does not exceed a 5% increase from the accepted Quote. In the case of an increase in excess of 5%, the accepted Quote will be void and a new Quote presented.
- 10.6 Once the Quote has been confirmed, it is converted to an Order and the Order will be subjected to these General Terms and Conditions.
- 10.7 If there is a product in an accepted Quote that is no longer available, the product will then be replaced or substituted with an adequate or superior alternative. TechGuides reserves the right to make the replacement or substitution without Client approval as long as the replacement or substitution cost does not exceed 105% of the original item.
- 10.8 ETA information is based on an estimate given by our vendors and cannot be held as the actual promised date.
- 10.9 Freight charges will be added to the Order unless otherwise stated. Any included delivery charges are estimates only and are not subject to the stipulations of Section 10.5.
- 10.10 If Client requests to return an item or cancel an order, a restocking fee may apply. Not all items can be returned. Items held by Client for more than thirty (30) days cannot be returned. Client is responsible for any freight charges to return an item.
- 10.11 TechGuides may vary or withdraw a Quote at any time in TechGuides' absolute discretion and without prior notice to Client.
- 10.12 **Acceptance of Quote:** A Quote has no effect unless or until it is accepted by Client in writing and until payment has been received for the accepted Quote.
- 10.13 **No obligation to deliver:** TechGuides is not obliged to deliver any items of an accepted Quote until TechGuides has received payment from Client.

- 10.14 **Order placement:** an Order will not be placed with a vendor until TechGuides has received payment from Client.
- 10.15 **Credit checks:** For the purposes of ascertaining the credit standing or history of a prospective customer to whom TechGuides is considering extending credit or payment terms, Client hereby consents to TechGuides undertaking a credit reference check in respect to Client.
- 10.16 **Cancellation of accepted Quotes:** Client will not cancel an accepted Quote unless TechGuides agrees to do so in writing in TechGuides' absolute discretion. Client acknowledges that, among other things, TechGuides cannot cancel an Order once the manufacturer or supplier has shipped the relevant Goods and that such shipment often occurs the same day as the Order is placed by TechGuides.

## 11. PRICING AND RATES

- 11.1 **Rates Exclude Tax:** All rates and amounts charged or quoted for Goods and/or Services by TechGuides are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by TechGuides).
- 11.2 **Rates Schedule:** Client must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.
- 11.3 **Vary Rates:** TechGuides reserves the right vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan), in the absolute discretion of TechGuides and without notice to Client.
- 11.4 **Return/Cancellation Fee:** Where TechGuides arranges a return or refund on behalf of Client, or where an Order is cancelled by Client after acceptance, TechGuides may charge Client a Return/Cancellation fee to cover the administration costs to TechGuides in processing the return or refund. TechGuides may deduct the Return/Cancellation fee from any moneys otherwise due to be refunded to Client by TechGuides.
- 11.5 **Expenses:** For the delivery of certain services (for example, service to a service location not specified in the Agreement), Client must pay any out-of-pocket expenses incurred by TechGuides in providing the Services to Client. Such expenses may include travel costs, flights, rental cars, gas, insurance, taxi fares, accommodation and related meal allowance, tolls and car parking expenses. Where appropriate, TechGuides will obtain prior written authorization from Client before such expenses are incurred.
- 11.6 **Separate charges for Goods and Services:** TechGuides may in its absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.
- 11.7 **Calculation of increments:** Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, TechGuides will charge the applicable rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.
- 11.8 **Change in underlying costs:** Without prejudice to any other rights of TechGuides under these Conditions, where there is any increase in the underlying costs incurred by TechGuides in connection with the supply of Goods or Services to Client, TechGuides may, in its absolute discretion, vary any of its Rates.

## 12. SERVICES AND PLANS

- 12.1 **Service and Plan Variations:** Currently, TechGuides offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule. TechGuides may withdraw the provision of, or vary

the scope or terms of, or add to or change, the Services without notice to Client, from time to time in its absolute discretion.

- 12.2 **Copies on Request:** TechGuides will provide Client with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

## 13. CONTRACTING

- 13.1 TechGuides may subcontract any or all of the Services to be performed and shall retain prime responsibility for the Services under these terms.

## 14. DELIVERY, TITLE AND RISK

- 14.1 **Delivery liability:** TechGuides will use all reasonable endeavors to deliver Goods by the due date but does not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of TechGuides, including, for example, failures caused by third parties, such as delivery companies or manufacturers.
- 14.2 **Availability to accept delivery:** Client must be available to accept the Goods at Client nominated delivery address during Business Hours unless otherwise arranged.
- 14.3 **Passing of Risk:** Delivery is deemed to take place when the Goods are delivered to Client nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to Client. Nothing in this clause 14.3 will affect title to the Goods.
- 14.4 **Obligation to insure:** Client will ensure that Goods are adequately insured from the time of delivery under clause 14.3.
- 14.5 **Retention of Title:** Until TechGuides receives full payment in cleared funds for any moneys due to TechGuides by Client on any account or for any reason:
- 14.5.1 title to, and property in, Goods supplied to Client remain vested in TechGuides and does not pass to Client;
- 14.5.2 Client must hold those Goods as fiduciary bailee and agent for TechGuides and must not sell them;
- 14.5.3 Client must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;
- 14.5.4 Where Client sells the goods in breach of these Conditions, Client is required to hold the proceeds of any sale of those Goods on trust for TechGuides in a separate account (however any failure to do so will not affect Client obligation to deal with the proceeds as trustee and remit them to TechGuides);
- 14.5.5 TechGuides may, without prior notice, enter into any premises where TechGuides suspects those Goods may be, take possession of those Goods and sever and remove those Goods (notwithstanding that they may have been attached to other goods not the property of TechGuides) and for this purpose, Client hereby irrevocably authorizes and directs TechGuides (and its employees and agents) to enter into such premises as its duly authorized agent and Client hereby indemnifies and holds harmless TechGuides from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.
- 14.5.6

## 15. RETURNS AND CLAIMS FOR GOODS AND SERVICES

- 15.1 **General Returns Policy:** Notwithstanding anything in these Conditions, Client acknowledges that TechGuides supplies Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. Client will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold TechGuides harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.
- 15.2 **Customized Goods not returnable:** Where Goods have some element of customization for Client, are supplied pursuant to an Order for Goods that is in the opinion of TechGuides special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by TechGuides to the manufacturer or supplier or any related services may not be cancelled, Client may not return the Goods to TechGuides or cancel the related services.
- 15.3 **Duty to inspect:** Client will inspect all Goods immediately upon their delivery. Within 7 days of such delivery Client may give written notice to TechGuides of any matter or thing, by reason of which Client might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, Client will accept the Goods without any such return, refund or claim.
- 15.4 **Return Condition:** Where Client is entitled to return Goods under these Conditions, Client must return the Goods in their original condition and unopened.
- 15.5 **Return costs:** Client will pay all costs and expenses incurred by TechGuides in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.
- 15.6 **Consequences of use, installation, customization or sale:** Client will indemnify and hold TechGuides harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customized or re-sold by Client (without prejudice to the recourse of such a customer to the manufacturer of the Goods).

## 16. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

- 16.1 **Service limitations given the science of computing:** Client acknowledges that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, Client acknowledges that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem Client is having. While TechGuides will make what TechGuides considers (in its absolute discretion) to be all reasonable endeavors to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist Client, Client will always indemnify and hold TechGuides harmless in the provision of TechGuides' Services to Client.
- 16.2 **Reasonable Assistance Limits:** TechGuides is only obliged to provide what TechGuides considers, in its absolute discretion, to be reasonable assistance in the circumstances (including with the installation and/or customization of new software or hardware for Client or any other Work) under any Plan and Client will pay for additional work at the Rates unless otherwise agreed. Without limiting the discretion of TechGuides to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period of time not exceeding any period that TechGuides has allocated or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allocated or estimated is given by TechGuides to Client.



- 16.3 **Recommendations, suitability, functionality and fitness for purpose:** The parties acknowledge that:
- 16.3.1 TechGuides may recommend that Client purchase Goods provided by third parties from time to time;
  - 16.3.2 Recommendations may be made in situations where Client has made known to TechGuides the purpose for which the Goods will be used, or some function sought to be fulfilled;
  - 16.3.3 Client acknowledges that TechGuides has no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.
    - 16.3.3.1 the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or
    - 16.3.3.2 the behavior of third-party suppliers, e.g. in relation to support;
  - 16.3.4 Client acknowledges that for a whole number of reasons outside of TechGuides' control, the Goods may fail to meet Client expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;
  - 16.3.5 Client acknowledges that the Services provided by TechGuides may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;
  - 16.3.6 Accordingly, Client will accept the sole responsibility for, and indemnify and hold TechGuides harmless in respect of:
    - 16.3.6.1 decisions as to whether or not to follow recommendations by TechGuides;
    - 16.3.6.2 decisions as to whether or not to purchase or customize Goods or obtain Services for that or any other purpose; and
    - 16.3.6.3 any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Client's own independent advice or second opinion from a suitably qualified person;
  - 16.3.7 Where TechGuides provides Services with a view to achieving Client purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), Client must pay for those Services on time without any set-off or counter-claim, whether or not TechGuides is able to achieve any of such purposes, suitability, function or fitness for purpose, provided always that TechGuides has acted in good faith and has made what TechGuides considers, in its absolute discretion, all reasonable endeavors to achieve those outcomes.
  - 16.3.8 **Testing Procedures:** Client will follow the instructions of TechGuides with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, TechGuides will, subject to these Conditions, allocate such resources as TechGuides considers reasonable in the circumstances towards their resolution.

## 17. FORCE MAJEURE

- 17.1 **Force Majeure:** If TechGuides is unable to supply any Goods or Services due to circumstances beyond its reasonable control, TechGuides may cancel the accepted Quote or cease to provide

the Services or Goods by written notice to Client, in which case Client will hold TechGuides harmless.

- 17.2 TechGuides will not be liable for any breach of contract due to any matter or thing beyond its control, including but not limited to failures by third parties to supply goods, services or transport, stoppages, transport breakdown, natural catastrophe, fire, flood, earthquake, acts of God, terrorist acts, power outages, virus propagation, improper shutdown of the Network and related Network Systems/Services, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

## 18. WARRANTIES

- 18.1 **Reliance on Manufacturer's Warranty:** Client will rely on the warranties provided by the manufacturer of Goods supplied by TechGuides (where applicable). TechGuides will communicate directly with the manufacturer on Client's behalf, unless directed otherwise by Client.
- 18.2 **No claim for manufacturer's default:** Client indemnifies and holds TechGuides harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to Client by TechGuides, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to Client arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

## 19. LIMITATIONS OF LIABILITY

- 19.1 **Understanding of Liability Limitations:** This Section limits the liabilities arising from the Services and Goods provided under any Agreement, Proposal, Quote, Order or other Contract in any form between Client and TechGuides and is a bargained-for and material part of the business relationship between TechGuides and Client. Client acknowledges and agrees that TechGuides would not provide any Services or Goods, or enter into any Agreement, unless TechGuides could rely on the limitations described in this Section.
- 19.2 **Exclusion:** Except as specifically set out herein and so far, as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.
- 19.3 **No liability for damages:** Client indemnifies and holds harmless TechGuides for any damages, claim, loss or expense of Clients or any third party, whether arising in contract or tort and including, but not limited to, any special, incidental, indirect, or consequential damages whatsoever (including, without limitation, damages for loss of business profits, business interruption, failure in supply, loss of business information or other data, cost of cover, or any other pecuniary loss) arising out of TechGuides' performance or failure to perform pursuant to this Agreement, even if TechGuides has been advised of the possibility of such damages.
- 19.4 **General limit on liability:** Except for assurances that Services will be performed and Goods delivered in a workmanlike manner and in accordance with any Agreement between Client and TechGuides, and except as otherwise expressly stated in these terms and conditions, TechGuides is not liable for any loss or damage of any kind however caused (including, but not limited to, by the negligence of TechGuides) which is suffered or incurred by Client in connection with:
- 19.4.1 Goods or Services provided to Client or any Work;
- 19.4.2 these Terms and Conditions;

- 19.4.3 Client use of TechGuides' website (including the use of a credit card or other debit device) or any linked website or related payment service used by TechGuides;
  - 19.4.4 the non-availability of Goods or TechGuides Services for any reason;
  - 19.4.5 any act or omission of TechGuides or the provision of inaccurate, incomplete or incorrect information by Client, or
  - 19.4.6 for any other reason whatsoever.
- 19.5 **Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause 18.3 does not apply to that liability and TechGuides' liability for any breach of that condition or warranty is limited to TechGuides doing any one or more of the following (at its election):
- 19.5.1 replacing the Goods or supplying equivalent Goods, Services or Work;
  - 19.5.2 repairing the Goods or the Work;
  - 19.5.3 paying the cost of replacing the Goods or the Work;
  - 19.5.4 paying the cost of having the Goods or the Work repaired.
  - 19.5.5 paying Client an amount equal to any amount paid by Client to TechGuides for services rendered hereunder in the thirty-day period preceding the event that gave rise to any claimed loss.
- 19.6 **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.
- 19.7 **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.
- 19.8 **Responsibility:** The Client shall assume full responsibility for the overall effectiveness and efficiency of the operating environment in which the Network is to function.
- 19.9 **Insurance Questionnaires:** Client may request assistance from TechGuides in completing insurance carrier questionnaires for cybersecurity or other types of policies. TechGuides cannot assume any liability for the correct completion and/or submission of document to the insurance carrier. TechGuides also cannot assume any liability for any required solutions and infrastructure that may or may not actually be employed on Client's network.
- 19.10 **Vendor Delays:** TechGuides will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, Goods or Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or any other service or product vendors.

## 20. INDEMNIFICATION

- 20.1 **Client hereby agrees to indemnify and defend at its sole expense:** TechGuides, its employees, agents, representatives, directors and shareholders, from and against any and all claims arising out of or based upon Client's use of all services, software or hardware provided or serviced hereunder, including, but not limited to, claims based on software licensing violations, copyright infringement, trademark infringement and patent infringement. In addition, Client agrees to pay any judgment and costs associated with such claim.

## 21. ERRORS AND OMISSIONS

- 21.1 TechGuides makes every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, TechGuides may rescind the affected contract by written notice to Client, notwithstanding that TechGuides may have already accepted Client Order and/or received payment from Client. TechGuides' liability in that event will be limited to the return of any money Client has paid in respect of the Order, Quote, Agreement, or Contract.

## 22. TAXES

- 22.1 Client shall, in addition to the other amounts payable under this Agreement, pay all sales and other taxes (federal, state, or otherwise), however designated, which are levied or imposed by reason of the Services and Goods provided pursuant to this Agreement. Without limiting the foregoing, Client shall promptly pay to TechGuides an amount equal to any such taxes actually paid or required to be collected or paid by TechGuides. TechGuides will charge and collect from Client any appropriate taxes that to TechGuides' knowledge are required to be charged and collected and TechGuides and will remit these taxes to the appropriate agency or agencies. Client agrees that should any governing body determine that insufficient or incorrect taxes have been collected, any additional taxes and/or fees will be the responsibility of Client. For the avoidance of doubt, Client shall not be responsible for paying those taxes on behalf of TechGuides which are imposed on TechGuides in the normal course of its business, including but not limited to, income taxes and employment taxes.

## 23. INSURANCE COVERAGE

- 23.1 TechGuides will maintain at its own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of \$2,000,000; worker's compensation as required by law; and hired and non-owned automobile liability insurance for the combined single limit of \$1,000,000. At Client request TechGuides will provide Client with certificates evidencing such coverage within thirty (30) days of the request.

## 24. LODGING OF SERVICE REQUESTS

- 24.1 In order for TechGuides to provide Client with the agreed Service, Client agrees to follow the TechGuides process for lodging of Service Requests.

## 25. THIRD PARTY AUTHORIZATIONS

- 25.1 At times TechGuides may need to contact Client third-party providers on Client's behalf. Some of these providers may require Client authorization for TechGuides to deal on Client behalf. It is Client's responsibility to ensure that TechGuides is able to deal freely with these providers.

## 26. PAYMENT, LATE PAYMENT AND DEFAULT

- 26.1 **Payment due date:** All invoices issued to Client are due and payable to TechGuides within the terms stated on the invoice (unless otherwise agreed in writing). by cash, check, ACH, or wire transfer in accordance with these Terms and Conditions and in the way set out in the Invoice.
- 26.2 **30 days late:** Where Client fail to pay an invoice within thirty (30) days of the due date, TechGuides may, in its absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to Client.
- 26.3 **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by Client to TechGuides and will be

recoverable from Client, in addition to the original invoice cost. If Client defaults in payment of any invoice on time, moneys which would have become due by Client at a later date shall be immediately due and payable without any further notice to Client. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".

- 26.4 **Interest:** If payment of any Sum Due is not made on time, TechGuides will charge interest daily on the Sum Due at the maximum rate allowed by law, calculated and charged daily on and from the due date until the Sum Due is paid in full. If TechGuides does not calculate and charge interest on any overdue invoice, TechGuides does not forfeit its right to calculate and charge interest on that particular invoice or any other future invoice.
- 26.5 **Application of funds:** All payments of the Sum Due made by Client to TechGuides will be applied as follows:
- 26.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by TechGuides in relation to any dishonored check fees, collection costs or any other action taken by TechGuides for the recovery of any amounts owing by Client to TechGuides;
- 26.5.2 secondly, in or towards payment of any interest due or payable hereunder, and
- 26.5.3 thirdly, in or towards payment of Client debts to TechGuides in order from the longest standing due to the most recently incurred.
- 26.6 **Security:** TechGuides may require Client to provide security over Client property (including the Goods or any other property of Clients) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by TechGuides to Client.
- 26.7 **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, TechGuides may, in its absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to Client.
- 26.8 **Power of Attorney:** Client hereby irrevocably appoints TechGuides as Client attorney to do anything TechGuides considers fit for the recovery of the Sum Due or the creation, perfection or enforcement of any collateral held or to be held as security for any Sum Due.
- 26.9 **Other remedies:** TechGuides may exercise any of its rights and remedies including taking legal action against Client for the recovery of any moneys due to TechGuides, notwithstanding it may have exercised other rights under these Conditions.

## 27. INDEPENDENT ENGAGEMENT/NON-HIRE

- 27.1 Because employees are one of TechGuides' most valuable assets, policy and professional ethics require that our employees not seek employment with, or be offered employment by, any Client during the course of engagement and for period of one (1) year thereafter. Client signature on this document confirms Client's Agreement to adhere to this professional standard of conduct.
- 27.2 Client acknowledges that TechGuides is involved in a highly strategic and competitive business. Client further acknowledges that Client would gain substantial benefit and that TechGuides would be deprived of such benefit, if Client were to directly hire any personnel employed by TechGuides. Except as otherwise provided by law, Client shall not, without the prior written consent of TechGuides solicit the employment of TechGuides personnel during the term of this Agreement and for a period of one (1) year following expiration of this Agreement.

- 27.3 Client agrees that TechGuides' damages resulting from breach by Client of this provision would be impracticable and that it would be extremely difficult to ascertain the actual amount of damages. Therefore, in the event Client violates this provision, Client shall immediately pay TechGuides an amount equal to 30% of employee's total annual compensation (computed as employee's first year's compensation at Client), as liquidated damages and TechGuides shall have the option to terminate any and all Agreements without further notice or liability to Client. The amount of the liquidated damages reflected herein is not intended as a penalty and is reasonably calculated based upon the projected costs TechGuides would incur to identify, recruit, hire and train suitable replacements for such personnel.

## 28. SOFTWARE

- 28.1 All Software licenses are the responsibility of Client and not that of TechGuides. It is the duty of Client to store all licenses for all Software used, so that they can be reproduced if and when required. This includes all Software installed by TechGuides.
- 28.2 Client indemnifies and holds TechGuides harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:
- 28.2.1 any unauthorized Software use by Client;
  - 28.2.2 any breach of any Software license in respect of Software provided to TechGuides by Client to be installed on one of Client computers;
  - 28.2.3 otherwise as a result of TechGuides installing Software at Client request where Client is not authorized to use the Software; and
  - 28.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.
- 28.3 All copyright in custom software remains the sole property of TechGuides unless alternate arrangements are made as part of a separate software agreement.

## 29. COPYRIGHT AND CONFIDENTIALITY

- 29.1 **Survivability.** This Confidentiality and Privacy portion of this Agreement is in addition to other terms and conditions set forth in any and all Contracts, Quotes, Orders, Proposals, Statements of Work currently existing or hereafter created between Client and TechGuides. This Agreement shall under no circumstances be deemed to alter any such contract except as specifically provided in this Section. This provision shall survive the termination of this Agreement or any other Agreement between Client and TechGuides.
- 29.2 **Warranty and breach:** Client warrants that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by Client to TechGuides belongs to Client. In the event of any breach of this warranty, Client will pay all sums due to TechGuides as if such warranty had not been breached (and regardless of any non-performance of any obligation by TechGuides on account of or in connection with the breach of such warranty). Client indemnifies and holds TechGuides harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by Client.
- 29.3 **Retention of title:** All copyright and other intellectual property rights in any Work created, commissioned or acquired by TechGuides in the course of the supply of Services by TechGuides to Client will be the exclusive property of TechGuides unless otherwise agreed in writing by TechGuides and Client.

- 29.4 **Confidential Information:** TechGuides acknowledges that in the course of providing Services to Client, TechGuides may learn from Client certain non-public personal and otherwise confidential information relating to Client, including Client customers, consumers or employees.
- 29.5 Client also acknowledges that all information and services, consulting techniques, proposals, and documents disclosed by TechGuides, or which comes to TechGuides' attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary information to TechGuides.
- 29.6 As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

## 30. SOLE AGREEMENT

- 30.1 This Agreement constitutes the entire and only understanding and Agreement between the parties hereto with respect to the subject matter hereof and, except as expressly set forth herein, may be amended only by a writing signed by each of the parties hereto.

## 31. SEVERABILITY

- 31.1 If a court of competent jurisdiction determines that any terms of provision of this Agreement is invalid or unenforceable, such determination shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement, which shall continue to be given full force and effect.

## 32. CAPTIONS

- 32.1 The captions of the paragraphs of this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement or any of the provisions hereof.

## 33. BINDING EFFECT

- 33.1 This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their heirs, legal representatives, personal representatives, administrators, successors, and permitted assigns, as the case may be.

## 34. WAIVER

- 34.1 Any failure of either party to comply with any obligation, covenant, Agreement, or condition herein may be expressly waived, but only if such waiver is in writing and signed by the other parties. Any such waiver or failure to insist upon strict compliance with such obligation, covenant, Agreement, or conditions shall not operate as a waiver of and/or set precedence with respect to any subsequent and/or other failure.

## 35. GOVERNING LAW

- 35.1 Notwithstanding the place where this Agreement may be executed by any party, this Agreement, the rights and obligations of the parties, and any claims and disputes relating hereto shall be subject to and governed by the laws of the Commonwealth of Pennsylvania as applied to Agreements among Pennsylvania residents to be entered into and performed entirely within the Commonwealth of Pennsylvania, and such laws shall govern all aspects of this Agreement. The parties agree to submit to the personal jurisdiction and venue of

Delaware County, Pennsylvania, where TechGuides has its principal office, for resolution of all disputes and causes of action arising out of this Agreement, and the parties hereby waive all questions of personal jurisdiction and venue of such courts, including, without limitation, the claim or defense therein that such courts constitute an inconvenient forum.

## 36. ATTORNEY'S FEES

- 36.1 In any action between the parties to enforce any of the terms of this Agreement, the prevailing party shall be entitled to recover all expenses, including reasonable attorneys' fees.

## 37. THIRD PARTY GOODS AND SERVICES

- 37.1 **Third Party EULAs:** Portions of the Services may require Client to accept the terms of one or more third party end user license agreements ("EULAs"). If the acceptance of a EULA is required in order to provide the Services to Client, then Client hereby grants TechGuides permission to accept the EULA on Client behalf. EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. Client agrees 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, TechGuides is required to comply with a third-party EULA and the third-party EULA is modified or amended, TechGuides reserves the right to modify or amend any applicable SOW with Client to ensure its continued compliance with the terms of the third-party EULA.
- 37.2 **Third Party Services:** Portions of the Services may be acquired from, resold from, and/or rely upon the services of, third party vendors, manufacturers, or providers ("Third Party Provider"). Third Party Providers may provide services such as data hosting services, help desk services, malware detection services, domain registration services, and data backup/recovery services (each, a "Third Party Service"). Not all Third-Party Services will be expressly identified as being provided by a Third-Party Vendor, and at all times TechGuides reserve the right to utilize the services of any Third-Party Provider or to change Third Party Providers in our sole discretion as long as the change does not materially diminish the Services that TechGuides are obligated to provide to Client. *Please note:* Client understands and agrees that Third Party Providers are not our contractors, subcontractors, or otherwise under our managerial or operational control. While TechGuides will Endeavor to facilitate a workaround for the failure of a Third-Party Service, TechGuides will not be responsible, and will be held harmless by Client, for any error or failure of any Third-Party Service as well as the failure of any Third-Party Provider to provide such services to TechGuides or to Client.

## 38. COMPLIANCE

- 38.1 Client understands that some of the services provided by TechGuides assist in meeting regulatory, industry, or other compliance requirements. Client further understands that TechGuides will not be responsible for the meeting of these requirements, even if the Goods and Services provided by TechGuides are provided for the purpose of meeting those requirements. The Goods and Services may aid Client's efforts to fulfill compliance requirements, but the Services and Goods are not and should not be used as a compliance solution. Compliance responsibility rests solely with the Client.

## 39. SECURITY

- 39.1 Client understands and agrees that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by various methods. TechGuides cannot and does not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined, or removed, or that any data deleted,



corrupted, or encrypted by such malware ("Impacted Data") will be recoverable. Unless otherwise expressly stated in writing by TechGuides, the recovery of Impacted Data is out-of-scope. TechGuides is to be held harmless from any costs, expenses, or damages arising from or related to such incidents.

## 40. ELECTRONIC SIGNATURES AND COUNTERPARTS

- 40.1 **Electronic Signatures and Counterparts:** Each Party hereto agrees that any electronic signature of a Party to this Agreement or any electronic signature to a document contemplated hereby (including any representation letter) is intended to authenticate such writing and shall be as valid, and have the same force and effect, as a manual signature. Any such electronically signed document shall be deemed (a) to be "written" or "in writing," (b) to have been signed and (c) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Each Party hereto also agrees that electronic delivery of a signature to any such document (via email or otherwise) shall be as effective as manual delivery of a manual signature. For purposes hereof, "electronic signature" includes, but is not limited to, (i) a scanned copy (as a "pdf" (portable document format) or other replicating image) of a manual ink signature, (ii) an electronic copy of a traditional signature affixed to a document, (iii) a signature incorporated into a document utilizing touchscreen capabilities or (iv) a digital signature. This Agreement may be executed in one or more counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement. Paper copies or "printouts," of such documents if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither Party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.
- 40.2 **Writing and Signatures:** For the purposes of this Agreement a communication will be deemed to be "in writing" if it is in paper format or in an electronic format capable of being read and being reduced to paper format. For the purposes of this Agreement a document may be "signed" by Client or by TechGuides either manually or electronically meeting any requirements established pursuant to the applicable laws regulating electronic commerce.