

## TERMS & CONDITIONS

### A. Definitions. The following terms are defined as follows.

- "Additional Maintenance & Support" is defined as IT services that are excluded from flat rate services.
- "After Hours" is defined as outside of UIS Business Hours.
- "Already Performed Service(s)" is defined as Service(s) that have been provided to Customer by UIS.
- "Annual" is defined as term of the Agreement between UIS and Customer, where Customer agrees to contract with UIS to provide IT services for auto-renewing twelve (12) month periods from the Effective Date for reduced flat rate and/or hourly fees, as more fully defined on the Cover Page, above, and in paragraph B, below.
- "Backup Services" is defined as a pre-set list of IT maintenance and support services performed by UIS for Customer arising out of the maintenance, repair, replacement and/or support of Customers' Backup Hardware, including support for IT issues arising from software loaded on Customer's Backup Hardware. Backup Services specifically excludes storage, changing or recovery of lost data from Customer's Backup Hardware. For a full list of services provided under Backup Services, please request the list from your UIS account manager.
- "Business Hours" are defined as the hours of 6:00 AM (Pacific Time) to 6:00 PM (Pacific Time), Monday through Friday, excluding weekends and holidays.
- "Cover Page" is defined as the first page of this Agreement.
- "Customer's Desktop Hardware" is defined as Customer's desktops, laptops, personal digital assistants (PDA)s, and "smart" phones.
- "Customer's Network Equipment" is defined as Customer's server(s), router(s), switch(es), firewall(s), server rack(s), access point(s), network repeater(s), and backup power device(s).
- "Customer's primary office" shall be defined as the office address placed in section 1 of the Cover Page, except in the case where UIS has been hired to provide Service(s) to another branch office. In said event, the Customer's branch office will be Customer's primary office for the purpose of interpreting section C.7 below.
- "Desktop Support Consultant" is an engineer who specializes in Help Desk Support.
- "Effective Date" is defined as the date that Customer and UIS agree for UIS to begin providing IT services, which is defined in the first paragraph of the Agreement.
- "Emergency" is defined as an IT service request where Customer requests UIS to respond within four (4) hours during Business Hours on the same day as the request.
- "Fees" is defined as only the cost for providing IT support labor. Fees shall expressly not include the costs and/or purchase of materials and/or any form of hardware, software or other service that is for the benefit of Customer.
- "Flat Rate Fee" is defined as fees for Service(s) provided by UIS for a fixed monthly sum, contained in Platinum and Gold Level Support.
- "Help Desk Support" is available at all Support Levels. It is defined as a pre-set list of IT maintenance and support services performed by UIS for Customer arising from the maintenance, repair, replacement and/or support of Customer's Desktop Hardware, including support for IT issues arising from firmware and/or software loaded on Customer's Desktop Hardware. This support may be provided through remote, telephone, onsite, and emergency support as provided for in Customer's selection of Support Level. For a full list of services provided under Help Desk Support, please request the list from your UIS account manager.
- "Holiday" is defined as New Years Day, Memorial Day, Labor Day, Thanksgiving, Day After Thanksgiving, Christmas Eve, Christmas Day, New Years Eve and such other Federal Holiday that UIS may choose to observe, at its sole discretion.
- "Initial Term" is defined as the first twelve (12) month term for an Annual Agreement or the first month for a Month-to-Month Agreement from the Effective Date.
- "Invoice Date" is the date printed on UIS' Invoices following the words "Invoice Date" at the top of the invoice page.
- "IT Manager" is an engineer that provides account management and IT consulting services for UIS Customers at the rate set forth the Service Level selected by Customer.
- "Month-to-Month" is defined as the Agreement between UIS and Customer, where Customer agrees to auto-renewing one-month terms, until terminated, if selected under Silver Level Support. Month-to-Month may also be referred to as "M2M".
- "Network Support" is available at all Support Levels. It is defined as a pre-set list of IT maintenance and support services performed by UIS for Customer arising from the maintenance, repair, replacement and/or support of Customer's Network Equipment, including support for IT issues arising from firmware and/or software loaded on Customer's Network Equipment. This support may be provided through remote, telephone, onsite, and emergency support as provided for in Customer's selection of Support Level. For a full list of services provided under Network Support, please request the list from your UIS account manager.
- "Not Business Hours" is defined as a time outside of Business Hours.
- "Onsite Visits" are defined as travel by UIS staff to Customer's place(s) of business or to such other site Customer may direct for the purpose of providing IT services.
- "Principal Consultant" is senior top-tier IT consultant at UIS with many years of experience in providing regular and complex IT solutions to IT issues.
- "Project Manager" is an engineer who has experience managing IT projects.
- "Renewal Period" is the period during which an Annual Agreement or a Month-to-Month Agreement has auto-renewed.
- "Renewal Term" is any Term that is created under section B below following the Initial Term.
- "Services" is the IT support included in the Support Level selected by Customer on the Cover Page.
- "Service Level Commitment" is defined as the projected resolution times as defined on the Cover Page, except when delays are caused by: natural disaster(s), man-made disaster(s), terrorist attack(s), third party(ies) that UIS has no direct authority to compel or control, Customer's actions, or other local, state or national emergency(ies).
- "Software" is defined as any application loaded onto Customer's Desktop Hardware or Customer's Network Equipment that is authorized to have been placed on said hardware and/or equipment by Customer.
- "Startup Period" is defined as the time interval set forth on the Cover Page for an Annual Agreement in which Customer is permitted to cancel an annual agreement within sixty (60) days after the initial Effective Date.
- "Support Level" is defined as the IT services provided on the Cover Page under Platinum, Gold, Silver or Bronze Level Support.
- "Systems Engineer Consultant" is an engineer, who is experienced in providing support for Customer's Network Equipment, Desktop Hardware, and software contained on said network and desktop hardware.

- "Telecommunications Support" is defined as IT services to support existing Voiceover IP (VoIP), digital or traditional telecommunications systems, specifically excluding installation, configuration and set-up of a new telecommunications system.
- "Term" is defined as the length of the Agreement executed by Customer and UIS for the selected Service Level, which shall auto-renew for successive terms, unless Customer provides notice pursuant to section B below.
- "Unlimited Flat Rate Maintenance" is defined as a pre-set list of IT maintenance services performed by UIS for Customers, who select a Support Level with it, for a pre-set flat rate fee as defined in the Service Level, that includes, application of Microsoft updates, performance of full defragmentation, disk cleanup, anti-spyware detection & repair, software deployment, access restriction to files, auto-fix of common Windows errors, monitoring disk-space, and checking backup logs (full list of maintenance services provided by UIS under Unlimited Flat Rate Maintenance is available upon request).

**B. Auto-Renewal.** Except for Bronze Level Support, upon expiration of the Initial Term of this Agreement, this Agreement shall automatically renew for either a successive twelve (12) month period or an additional month, depending on Customer's selection for Support Level on the Cover Page. To prevent an Annual Term from auto-renewing, Customer must provide written notice of non-renewal by U.S. Mail and Facsimile on Customer's official letterhead at least sixty (60) days prior to the anniversary of the Effective Date. To prevent auto-renewal of a Month-to-Month Term, Customer must provide a notice of non-renewal by U.S. Mail and Facsimile on Customer's official letterhead at least thirty (30) days from the monthly anniversary of the Effective Date. In the event of any termination of this Agreement due to non-renewal by Customer, UIS has sole and absolute discretion to reinstate the terms and conditions of this Agreement upon payment of a reinstatement fee and all past due fees. While in a Renewal Period, Customer may not terminate unless specifically provided for in section G, below.

**C. Fees & Expenses.** Fees for IT services shall be charged pursuant to Customer's selection of a Support Level on the Cover Page. Regardless of the Term or Support Level selected on the Cover Page, Customer shall be responsible for paying any and all Flat Fees and/or Hourly Fees agreed in the Support Level selected. In the Silver Support Level, Customer is not allowed to "carry over" or accumulate unused Preset Monthly Service Hours from one calendar month to another. For all Support Levels, the amount of time billed for labor services provided by UIS will be tracked and rounded up to the nearest 15-minute increment.

**1. Payment.** Customer understands that UIS provides Services at significant upfront cost in good faith prior to invoicing Customer for said Services. In order for Customer to receive uninterrupted Services, UIS must require Customers to pay promptly for Services as a return of good faith. Customer must pay UIS Invoices within fifteen (15) calendar days from the "Invoice Date." Customer's payment may be made to UIS by business check, if Customer has an approved UIS Credit Account, which requires Customer to have a Dunn & Bradstreet number, or by Credit Card (Visa, MasterCard or American Express only). *UIS may, at its sole discretion, suspend and/or cancel any and all Services to Customer, if Customer fails to pay a UIS Invoice and/or said overages for all undisputed and/or not complained of portions of UIS Invoices.*

#### 2. UIS Invoice or Service Issues.

**a. Overages.** If a UIS credit account has been set up for Customer, and Customer has exceeded its UIS credit limit than Customer shall be responsible for immediately paying any and all overages to Customer's credit limit through a business credit card (Visa, MasterCard or American Express) within twenty-four (24) hours of UIS notice of overages by telephone or voicemail and confirming e-mail.

**b. Past Due UIS Invoices & Late Fee.** All UIS Invoices to Customer not paid within fifteen (15) calendar days, UIS may charge a late fee of one and a half percent (1.50%) on the unpaid balance of each UIS Invoice that is past due by thirty (30) calendar days, or the maximum allowed by law, whichever is greater. If Customer is late paying any invoice longer than sixty (60) calendar days, UIS may, at its sole discretion, cancel Customer's UIS credit account and convert Customer into a Customer credit card pay account, where Customer agrees to provide a valid pre-authorized credit card (Visa, MasterCard, or American Express) on file with UIS, and Customer shall authorize UIS to automatically charge the total amount of any and all late and current invoices within fifteen (15) calendar days from the "Invoice Date" on UIS Invoices. *If Customer fails to pay for any undisputed portion of a UIS Invoice and UIS has contacted Customer to request payment of overdue UIS Invoice(s) with no payment within 24-hours after UIS written notice by facsimile marked "Final Notice" on unpaid UIS Invoices, UIS may, at its sole discretion, suspend and/or cancel any and all Services to Customer until overdue UIS Invoice(s) are paid without additional or further notice.* UIS may also terminate this Agreement, at its sole discretion for Customer's material breach of contract for failure to pay for Service(s). Furthermore, UIS participates in Dunn & Bradstreet's company credit worthy statistics and any and all late payments are automatically reported to Dunn & Bradstreet.

#### 3. Resolution of Disputes for UIS Services Already Performed.

**a. Process and Contractual Limitations for Disputing Already Performed Service(s).** For the purpose of resolving Service(s) dispute(s) fairly, while information and memories are still relatively fresh, any and all disputes, regarding Already Performed Services must be sent in writing to UIS by U.S. Mail and Facsimile transmission on Customer's official letterhead, specifying the details, date, and time of the complained of Already Performed Service(s) within fourteen (14) calendar days of the disputed Already Performed Service(s). If Customer is not able to determine the exact date of the disputed Already Performed Service(s), then written notice must be sent no later than within fourteen (14) calendar days from the Invoice Date on the UIS Invoice charging for said disputed Already Performed Service(s). Failure to provide written notice, according to the time limits provided herein, for any or all disputes regarding Already Performed Service(s) shall constitute a legal waiver of said disputed Already Performed Service(s) by Customer.

**b. No Right to Withhold Payment of Entire UIS Invoice with Disputed Service(s).** A dispute with regard to Already Performed Service(s) shall not create a right of Customer to not pay the entire UIS Invoice charging fees for the disputed Already Performed Service(s), except where said dispute reasonably encompasses all Services provided by UIS to Customer on said UIS Invoice. If UIS provided any Service(s) to Customer that is/are not in dispute, Customer shall be deemed to have no reasonable dispute that encompasses all Services on said UIS Invoice, and shall not have the right to withhold payment of the entire UIS Invoice. Customer must pay all undisputed portions of UIS Invoice(s) within fifteen (15) calendar days from the Invoice Date. A Customer, who has received Service(s) under a Flat Rate Fee shall have no special right to withhold payment of the entire Flat Rate Fee portion of the UIS Invoice and must notify UIS to resolve the disputed Already Performed Service(s), within the time frame set forth in C.3.a above, and dispute shall be resolved, if possible, according to the rules set forth below in section C.3.c.

**c. Settlement of Disputed UIS Service(s).** All disputes as to Already Performed Services shall be settled in good faith, after investigation of the facts, where the parties mutually agree, if possible, to a setoff from the UIS Invoice charging the disputed Service(s). Any setoff to a UIS Invoice, agreed to by UIS, shall not be considered an admission or failure by UIS to provide appropriate Service(s) and shall be considered a compromise. If Customer receives Service(s) under a Flat Rate Fee, a setoff for disputed Already Performed Service(s) shall be calculated by taking the reasonable number of hours involved in the disputed Services, multiplied by One Hundred Thirty-Five dollars per hour (\$135.00/hr) (hereinafter "Flat Fee Setoff"). The Flat Fee Setoff shall be taken off of the UIS Invoice charging the Flat Fee Rate for the disputed Already Performed Service(s). Setoffs, agreed to by both parties, on any UIS Invoice for any Support Level shall be a binding written agreement resolving any and all claim(s), causes of action or other dispute by Customer of all disputed

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Already Performed Service(s) by UIS, when recorded in writing through a confirming UIS e-mail or facsimile transmission (which is not repudiated by Customer within 24 hours from the transmission date and time), or Customer's payment of the UIS Invoice at issue where the agreed upon setoff is included. Agreement to a setoff, as provided for herein, shall be stipulated by both parties to be a full and final settlement of any and all damages, injuries or other cost(s), known or unknown, arising from, pertaining to or regarding the disputed Already Performed UIS Service(s) that are the subject of the setoff. As such, said settled disputed Already Performed Service(s) cannot be used by Customer as grounds for termination of the Agreement under section G, below.

**4. Purchase of Equipment for Customer & Return Policy.** All unexpected purchases of materials required to provide Services for Customer, which are greater than five hundred dollars (\$500) must be approved by Customer prior to purchase by UIS. UIS may, at its sole discretion, advance the cost of equipment necessary to perform Service(s) for Customer or request Customer to advance part or all of the costs. If UIS advances any of said costs, UIS shall invoice Customer for the cost of said equipment, and Customer shall repay UIS for such advance(s). Due to restrictions from UIS vendors, any materials and/or equipment purchased by UIS on behalf of Customer that Customer desires said materials and/or equipment be returned, Customer must make such request in writing by e-mail and facsimile transmission to UIS within ten (10) calendar days of UIS' purchase of said material and/or equipment desired for return, or Customer understands and agrees that it may not receive a refund for materials and/or equipment desired for return, and may be forced to keep said materials and/or equipment. UIS shall make a good faith effort to return said material and/or equipment and credit Customer the refunded amounts, minus UIS' administrative fee of ten percent (10%) of the refunded amount, unless the return was due to a clerical error by UIS.

**5. Administrative Fee & Reimbursement of Expenses.** If Customer accepts UIS recommendations with regard to purchase of materials and said materials are purchased through UIS' vendors, Customer shall pay UIS an administrative fee of ten percent (10%) over and above the cost of purchase, taxes and shipping charges of said materials. Customer shall pay for all UIS expenses reasonably incurred in furtherance of its performance hereunder. UIS may request an initial deposit prior to purchase of equipment and material that shall be applied to said purchase equipment and materials.

**6. Rate Changes.** Under Annual Term agreements, increases in Flat Rate Fees or hourly fees for Services must be noticed to Customer by written e-mail and facsimile transmission by UIS at least seventy-five (75) days prior to the yearly anniversary of the Effective Date. Under Month-to-Month Term agreements, UIS must provide notice to Customer of any increases to hourly fees at least thirty (30) days prior to the start of charging said increased to hourly fees. UIS may raise hourly fees for As Needed Term agreements with a minimum of five (5) business days notice prior to the start of charging said increased fees.

### 7. Travel Charges.

**a. Travel Time Charges.** Unless otherwise specified in this section 7, Travel time will not be charged for time spent by UIS personnel commuting to or from the Customer's San Francisco Bay Area primary office, to or from UIS' premises in San Jose, California or San Francisco, California, whichever UIS office is closer to Customer's primary office. UIS shall charge Customer for travel time from the Customer's premises to another location for the benefit of Customer. The travel rate is equal to one hundred percent (100%) of the applicable Hourly Fee. Under Platinum Level Support, travel time shall not be charged to Customer. Under Gold Level Support, travel time shall only be charged for travel for the benefit of Customer that occurs outside of Business Hours.

**b. Travel Expenses.** Customer shall be responsible for any expenses incurred by UIS personnel traveling to another location for the benefit of Customer, including, but not limited to, air fare, parking fees, and bridge tolls.

**c. Multi-Purpose Travel.** UIS reserves the right to charge Customer for time spent traveling for the benefit of Customer, even if Service(s) were performed for another customer during the same trip. (For example, if a part is desperately needed by Customer, and UIS purchases another part needed for another Customer at the same time, UIS reserves the right to bill both customers who benefit from the travel).

**d. Travel Time Charges for Long Distances.** Notwithstanding the foregoing, for travel to Customer locations or designated destinations for the benefit of Customer that are between thirty (30) and fifty (50) miles away, inclusive, from UIS' San Jose, California or San Francisco, California office, whichever UIS office is closest to Customer's primary office, UIS shall charge a minimum of two (2) hours for services rendered under the appropriate Hourly Fee. For travel to Customer locations or designated destinations for the benefit of Customer that is greater than fifty (50) miles from Customer's primary office UIS shall charge a minimum of four (4) hours at the appropriate Hourly Fee. If Customer is being provided Service under a Flat Rate Fee for Platinum Level Support, no travel time shall be charged under this section 7.d: travel expenses, however, will be still be charged and owed by Platinum Level Support Customers. For Customers receiving Flat Rate Fees for Gold Level Support during Business Hours, travel time shall not be charged under this section 7.d. However, for Customers receiving Gold Level Support, where travel is required outside of Business Hours, the above mentioned Long Distance travel time shall be charged at the hourly rate of one hundred thirty-five dollars (\$135) per hour.

**D. Projects.** For services that are outside the scope of Services defined under the Support Level selected by Customer on the Cover Page (hereinafter "Project Services"), UIS must agree with Customer in writing to perform said Project Services on UIS' Project Agreement form, which shall be subject to these Terms & Conditions of this Agreement. The fully-executed Project Agreement form shall supercede any conflicting terms between this Agreement and the Project Agreement form. Projects may be subject to different hourly rates than those set forth in this Agreement. If different rates are required, the rates will be discussed and agreed to by both parties prior to execution of the Project Agreement form.

### E. UIS Responsibilities.

**1. Services.** UIS shall be responsible for providing IT Services as set forth in the Support Level selection by Customer on the Cover Page.

**2. Issue Tickets.** UIS shall be responsible for reviewing its ticketing system for Issues Tickets submitted by Customer. Unless an Initial Ticket is created in UIS' issue ticketing system by Customer (including submission of an emergency ticket through UIS' phone system by calling 408.414.5000), UIS shall not be responsible for responding and resolving requested Service(s).

**3. Professionalism; Timeliness; Supervision.** UIS agrees to exercise the highest degree of professionalism, and to utilize its expertise and creative talents in providing Service(s). In providing Service(s), UIS agrees to utilize its own equipment, tools and other materials at its own expense, except for materials, components or other new purchases, which shall be owned by Customer. As appropriate, Customer will make its facilities, equipment, software and staff available to UIS in a timely manner when necessary. UIS shall have the right to determine the method, details, and means of performing Service(s) for Customer. Customer shall be entitled to exercise general power of supervision and control over the results of work performed by UIS to ensure that satisfactory performance, including the right to inspect, the right to make suggestions, recommendations and propose modifications to the work. None of said Customer's suggestions, recommendations and/or proposed modifications shall be performed by UIS unless agreed to by UIS and Customer in writing.

**4. Scheduling, Reporting & Place of Work.** Service(s) provided by UIS are expected to require a substantial part of UIS' available business time and availability. UIS will use its best efforts to accommodate

work schedule requests as possible. UIS has developed administrative procedures for coordinating with the Customer and reporting status of Services performed. UIS will perform its work for Customer primarily at Customer's premises except when such projects or tasks require UIS to travel off-site.

**5. UIS Assignment.** UIS may assign part or all of Service(s) and/or Projects for Customer to an outside contractor at its discretion. UIS will be responsible for the conduct of its contractor(s), and Customer should make any concerns or comments regarding the work product of said contractor(s) to UIS, so that UIS may address said concerns or comments with its contractor(s).

**F. Customer Responsibilities.** Customer shall be responsible for:

**1. UIS Issue Ticket System.** Customer must utilize, authorize, review, prioritize and transmit support tickets on UIS' ticketing system for tasks to be performed by UIS.

**2. Non-Hostile Work Environment.** Customer shall provide UIS personnel a non-hostile work environment, which includes, but is not limited to an environment free from harassment, discrimination (by race, gender, national origin, religion, creed or sexual orientation), and abusive/unprofessional language or behavior (including yelling, screaming or use of curse words).

**3. Indemnification for Change/Alteration & Change of Backup Drives/Tapes.** This Agreement is expressly contingent upon an understanding by Customer that UIS can only guarantee stability of Customer's network and system, if UIS is able to control the changes and/or alterations to Customer's technology and prevent all potential hardware or software conflicts, hostile third party software and/or any other change or alteration that could lead to a failure. If Customer fails to implement UIS' recommendations for security and enforce said security recommendations with its staff and/or contractors, or changes and/or alters (or permits change or alteration by a third party) to any of its technology serviced or maintained by UIS without first notifying UIS and allowing UIS to test if the change and/or alteration may affect the stability of Customer's technology, Customer hereby assumes the risk and expense of any such alteration and for any and all UIS fees necessary to repair said change(s) or alteration(s). Further, even if Backup Support Services are included in the Support Level selected on the Cover Page, if Customer's network requires that hard drives and/or tapes must be changed and the removed drive or tape be stored offsite and replaced by another drive and/or tape, Customer hereby assumes the risk and expense for any and all damages resulting from failing to trade out backup devices or store removed backup drive(s) and/or tape(s) offsite, unless otherwise contracted for by the parties in a separate agreement signed by both parties.

**4. Indemnification for Customer's Technology.** This Agreement is expressly contingent upon a good faith understanding by UIS that Customer is not utilizing its technology to engage in any unlawful, tortious or harmful activity (hereinafter "wrongful activity"). If UIS discovers through any means that Customer may be involved in wrongful activity, UIS may, at its sole discretion, terminate this Agreement immediately upon one (1) hour notice by Facsimile Transmission or other means available to UIS to provide the fastest constructive or actual notice to Customer. Further, Customer agrees to defend, indemnify, and hold harmless UIS from and against all claims, liability, losses, damages, and expenses (including attorney's fees and court costs) arising from or in connection with Customer's wrongful activity.

**G. Termination.** Each party may terminate this Agreement upon thirty (30) days prior written notice under the following conditions.

**1. Annual Term Agreement Early Termination & Escalation.** If an Annual Term agreement is entered into by Customer with UIS, and Customer terminates for any reason other than under section G.2.a, Customer hereby stipulates and agrees that damage to UIS is not reasonably ascertainable, and is sufficiently difficult to calculate that Customer agrees to pay a termination fee (otherwise referred to in law and equity as *liquidated damages*). For an annual agreement for Platinum or Gold Level service, Customer shall pay UIS a termination fee equal to all Flat Rate Fees owing each month to the next anniversary date of the Effective Date. For an annual agreement for Silver Level service, Customer shall pay UIS a termination fee equal to all Pre-Set Monthly Service hours at the System Engineer Consultant Additional Hours Annual rate owing each month to the next anniversary date of the Effective Date. If Pre-Set Monthly Hours is not set for Silver Level service, then the Pre-Set Monthly Hours shall be calculated by taking the average of Customer's four (4) largest monthly hour usages throughout the entire course of the UIS-Customer relationship. Customer further stipulates and agrees that the sum total of early termination fees owing for each month to the next anniversary is a reasonable liquidated damages amount, since it is likely that that UIS would have been paid additional hourly fees for additional maintenance and support and/or Projects Agreements with Customer during the normal course of this Agreement. Therefore, Customer agrees that setting the liquidated damages amount as described herein is reasonable, compared to attempting to estimate fees UIS could likely earn, if Customer had not terminated the Annual Term Agreement. (The "next anniversary date of the Effective Date" shall be defined as the anniversary of the Effective Date immediately following the notice of Termination.) Any and all termination fees discussed in this section G.1 are due and payable within seven (7) calendar days of Customer's notice of termination, or UIS' acceptance of Customer's termination.

**2. Termination for Breach, Insolvency or Transfer.** Either party may terminate this Agreement immediately upon thirty (30) days prior written notice if:

(a) the other party has breached any of its obligations, which is material to the essential purpose of this Agreement, provided that notice of the breach is provided in writing on the letterhead of the party noticing the breach to the breaching by Facsimile Transmission and U.S. Mail, and the other breaching party failed to remedy the breach within five business (5) days of receipt of said written notice (this includes Customer's failure to pay UIS Invoices, pursuant to section C, above); and/or

(b) a party commits any of the following act(s): (i) insolvency, whereby the other ceases or threatens to cease to carry on business; (ii) executes any assignment for the benefit of creditors; (iii) suffers the appointment of a receiver, administrative receiver or administrator of the whole or a substantial part of the party's assets or undertakings; (iv) whereby an order is made or notice issued calling a meeting of the party's stockholders to consider the passing of a resolution for, or a resolution is passed for, the winding up of the other's business, other than for the purpose of amalgamation or reconstruction; or (v) if any distress or execution is levied on the effects of the other's business or any judgment remains unsatisfied for a period of 21 days.

**3. UIS' Rights Upon Termination.** Immediately upon an event of non-renewal in section B, above, and/or any Termination under this section G: (1) UIS may immediately repossess any property, which it owns or for which Customer has not fully paid for (hereinafter "UIS property"), forthwith, without notice, and for that purpose Customer and Customers' successors and assigns, hereby, grant UIS permission to freely enter upon the Customer's premises, and shall waive, indemnify and forever hold harmless UIS from any and all action for collection of damages and other injuries (including legal fees and court costs associated with criminal charges) resulting from or arising out of UIS' entry onto Customer's premises to exercise UIS' rights stated herein; (2) the Customer shall ensure that any successor(s), assignee(s), receiver(s), administrator(s) or liquidator(s) appointed is made aware of UIS' ownership in any and all UIS property in the possession of Customer; and (3) the Customer shall pay the balance of charges due under this Agreement to the earliest date on which the Agreement could lawfully be terminated.

**H. Business Relationship Defined.** UIS shall be an independent contractor to Customer, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, joint venture or employer-employee relationship between the parties. As an independent contractor, UIS shall pay and report all federal and state income tax withholding, Social Security taxes, and unemployment insurance applicable to UIS. UIS shall bear sole responsibility for any health or disability insurance, retirement benefits, or other pension

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benefits, if any, to which UIS may be entitled. UIS shall not be entitled to participate in health or disability insurance, retirement benefits, or other welfare or pension benefits to which employees of Customer may be entitled.

**I. Insurance.** Each party shall maintain adequate insurance protection covering its respective activities hereunder, including coverage for statutory workers' compensation, comprehensive general liability for bodily injury and property damage and adequate coverage for vehicles.

**J. Proprietary Information.** Each party agrees during the term of this Agreement and thereafter for a period of three (3) years that each party will take all steps reasonably necessary to hold the other's Proprietary Information in trust and confidence, will not use the other's Proprietary Information in any manner or for any purpose not expressly set forth in this Agreement, and will not disclose any such Proprietary Information to any third party without first obtaining the owning party's express written consent, which shall be granted on a case-by-case basis, unless legally required to provide Proprietary Information as part of a legal or quasi-legal proceeding or ordered by a court of competent jurisdiction. Prior to disclosure, the party who is being compelled to divulge the other party's Proprietary Information, must contact the party who owns the Proprietary Information that is being required to be disclosed, and inform that party of the situation, with adequate time, for the party owner of the Proprietary Information to be disclosed to oppose any such disclosure. By way of illustration, but without limitation, **"Proprietary Information"** includes (a) trade secrets, inventions, mask works, ideas, processes, formulas, source and object codes, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques (hereinafter collectively referred to as **"Inventions"**); and (b) information regarding plans for research, development, new products, marketing and selling, business plans, budgets and unpublished financial statements, licenses, prices and costs, suppliers and customer identities; and (c) information regarding the skills and compensation of each party's employees. Notwithstanding the other provisions of this Agreement, nothing received by UIS will be considered to be Customer Proprietary Information if (1) it has been published or is otherwise readily available to the public other than by a breach of this Agreement; (2) it has been rightfully received by UIS from a third party without confidential limitations; (3) it has been independently developed for UIS by personnel or agents having no access to the Customer Proprietary Information; or (4) it was known to UIS prior to its first receipt from Customer.

**K. Third Party Information.** UIS understands that Customer has received and will in the future receive from third parties confidential, proprietary, attorney-client privileged, doctor-patient privileged, therapist-patient privileged, and/or other privileged information (**"Third Party Information"**) subject to a duty on Customer's part to maintain the confidentiality of such information and use it only for certain limited purposes. UIS agrees to hold Third Party Information in confidence and not to disclose to anyone (other than Customer personnel who need to know such information in connection with their work for Customer) or to use, except in connection with UIS' work for Customer, Third Party Information unless expressly authorized in writing by an officer of Customer, or if legally required to provide such information as part of a legal or quasi-legal proceeding or ordered by a court (prior to disclosure, UIS shall contact Customer to inform them of the situation, so Customer may oppose any such disclosure).

**L. LIMITATION ON DAMAGES.** UIS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY AMOUNT EXCEEDING THE TOTAL PORTION OF THE CONTRACT PRICE FOR SERVICES ACTUALLY PAID BY THE CLIENT WITHIN THE TERM, (AS DEFINED IN SECTION A ABOVE) THAT THE DAMAGES AROSE. IN NO EVENT SHALL UIS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), LAW, EQUITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFIT OR BUSINESS INTERRUPTION EVEN IF UIS IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY) ARISING OUT OF OR PERTAINING TO THE SUBJECT MATTER OF THIS AGREEMENT.

**M. ALTERNATIVE DISPUTE RESOLUTION AND ARBITRATION.** ALL DISPUTES IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT TO THE OTHER PARTY'S ATTENTION NO MORE THAN 90 DAYS FOLLOWING THE DETECTION OF AN ALLEGED CAUSE FOR DISPUTE. FAILING AN AMICABLE SETTLEMENT, ANY CONTROVERSY, CLAIM, OR DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT (OTHER THAN THOSE SET FORTH HEREIN), INCLUDING THE EXISTENCE, VALIDITY, INTERPRETATION, PERFORMANCE, TERMINATION OR BREACH THEREOF, SHALL FINALLY BE SETTLED BY BINDING ARBITRATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION ("AAA"), EXCEPT WITH REGARD TO THE ADMISSIBILITY OF EVIDENCE, WHICH SHALL BE SUPERCEDED BY THE CALIFORNIA EVIDENCE CODE AND RELEVANT CALIFORNIA CASE LAW INTERPRETING THE CURRENT STATUS OF THE ADMISSIBILITY OF EVIDENCE. PRE-ARBITRATION DISCOVERY SHALL BE LIMITED AS FOLLOWS: EACH PARTY SHALL BE ENTITLED TO ONE SET OF FORM AND SEVENTY INDIVIDUAL NON-COMPOUND WRITTEN INTERROGATORIES AND SWORN RESPONSES BY THE OTHER PARTY, TWO SETS OF REQUESTS FOR ADMISSIONS, TWO DOCUMENT PRODUCTION REQUESTS OF NO MORE THAN 10 CATEGORIES EACH WITH SWORN RESPONSES, AND DEPOSITIONS OF TWO EMPLOYEES OF THE OTHER PARTY, AND TWO OTHER MATERIAL WITNESSES, NOT INCLUDING EXPERT WITNESSES. THE PARTIES MAY NOTICE A DEPOSITION FOR EACH EXPERT WITNESS TO BE PRESENTED AT ARBITRATION BY A PARTY. ALL WRITTEN DISCOVERY MUST BE RESPONDED TO BY THE RECEIVING PARTY AT LEAST FOURTEEN (14) CALENDAR DAYS AFTER PROOF OF MAILING OR DELIVERY OF WRITTEN DISCOVERY. PARTY AND WITNESS DEPOSITIONS REQUESTS MUST BE SCHEDULED WITHIN FOURTEEN (14) CALENDAR DAYS FROM THE DATE OF PROOF OF MAILING OF DEPOSITION NOTICES. THE ARBITRATOR SHALL HAVE THE POWER TO FINALLY DECIDE ALL OBJECTIONS TO WRITTEN DISCOVERY OR IN DEPOSITIONS IN ACCORDANCE WITH CURRENT CALIFORNIA LAW, AND COMPEL RESPONSES WITHIN FORTY- EIGHT (48) HOURS. FINAL WITNESS LISTS MUST BE PROVIDED TO THE OTHER PARTY AT LEAST SEVENTY-FIVE (75) CALENDAR DAYS PRIOR TO THE ARBITRATION DATE. REBUTTAL WITNESS LISTS, IF ANY, MUST BE PRESENTED TO THE OTHER PARTY AT LEAST TWENTY-ONE (21) CALENDAR DAYS PRIOR TO THE ARBITRATION DATE. ANY DECLARATIONS TO BE SUBMITTED IN LIEU OF IN-PERSON TESTIMONY AT ARBITRATION MUST BE PROVIDED TO THE OTHER PARTY AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE ARBITRATION DATE. ALL DISCOVERY MUST BE COMPLETED BY EACH PARTY AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO THE ARBITRATION. THE ARBITRATOR SHALL HAVE THE POWER TO COMPEL RESPONSE TO ANY DISCOVERY FROM EITHER PARTY TO ENSURE FULL & FAIR DISCOVERY AND TO ENSURE THAT THE ARBITRATION PROCEEDS ON SCHEDULE, INCLUDING FINING THE PARTY NOT IN COMPLIANCE WITH DISCOVERY REQUESTS ONE HUNDRED (\$100.00) PER DAY FOR LATE RESPONSES OR FAILURE TO SCHEDULE A PARTY DEPOSITION, IF THE ARBITRATOR BELIEVES SAID DELAYS WERE DONE WITH THE INTENTION TO UNFAIRLY HIDE MATERIAL EVIDENCE. THE ARBITRATOR SHALL NOT ALLOW ANY SURPRISE EVIDENCE, WITHOUT ALLOWING THE PARTY NEGATIVELY EFFECTED, A RECESS OF TWENTY-FOUR (24) HOURS TO RESPOND TO SURPRISE EVIDENCE. THE ARBITRATOR MAY SUPPRESS SURPRISE EVIDENCE IF ITS LACKS SUBSTANTIAL AND MATERIAL PROBATIVE VALUE. THE LANGUAGE OF THE ARBITRATION SHALL BE ENGLISH. THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO AWARD PUNITIVE DAMAGES TO EITHER PARTY. THE ARBITRATOR MAY ONLY BASE HIS OR HER DECISION ON PROPERLY ADMISSIBLE EVIDENCE AND CURRENT CALIFORNIA LAW. IN THE EVENT OF

ARBITRATION OR OTHER DISPUTE RESOLUTION, INCLUDING ANY ATTEMPT TO SEEK RELIEF IN A COURT OR TRIBUNAL, THE PREVAILING PARTY IN SUCH PROCEEDING SHALL BE ENTITLED TO RECEIVE ITS REASONABLE ATTORNEYS FEES, EXPERT WITNESS FEES AND OUT-OF-POCKET COSTS INCURRED IN CONNECTION WITH SUCH PROCEEDING, IN ADDITION TO ANY OTHER RELIEF IT MAY BE AWARDED. THIS AGREEMENT WILL BE ENFORCEABLE, AND ANY ARBITRATION AWARD WILL BE BINDING AND FINAL, AND JUDGMENT THEREON MAY BE ENTERED IN ANY COURT OF COMPETENT JURISDICTION. THE ARBITRATION WILL BE HELD IN SAN JOSE, CALIFORNIA, USA. IF THE AMOUNT IN CONTROVERSY IS OR IS LIMITED BY A PARTY TO AN AMOUNT WITHIN THE JURISDICTIONAL LIMIT OF THE SMALL CLAIMS COURT OF SANTA CLARA COUNTY, EACH PARTY MAY SEEK RESOLUTION IN SMALL CLAIMS COURT IN THE COUNTY OF SANTA CLARA, CALIFORNIA.

**N. No Conflict.** UIS represents and warrants that it has no obligations to any third party that will in any way limit or restrict its ability to perform consulting services to Customer hereunder, except where an emergency arises that affects another UIS customer that is a more severe, as solely determined by UIS, than the consulting services that are being provided to Customer. If an event occurs where UIS must support another customer suffering a severe emergency, than the UIS consultant will return to finish Customer's work at a later time or UIS will send another consultant to complete the task. Customer shall be entitled to the same response in the event it suffers a severe emergency where UIS will redeploy its consultants from another UIS customer site to Customer's worksite.

**O. Customer Access Cards & Keys.** UIS understands that holding Customer's access cards and/or keys is important to provide after-hours services. However, due to restrictions from our insurance, if Customer provides access card(s) or key(s), Customer hereby agrees to indemnify and hold harmless UIS from any and all damages, losses, and/or theft regarding or related to said loss of access card(s) or key(s).

**P. Recruiting Limits.** Except as provided herein, during the term of this Agreement and for a period of one (1) year thereafter, Customer shall not knowingly solicit, entice, or persuade any employee(s) or contractor(s) of UIS, who have provided substantial Service(s) to Customer's account to terminate their employment with UIS. Notwithstanding the foregoing, if Customer hires, employs or otherwise enters a contract with to provide Service(s) to a current or former UIS employee or contractor that has provided substantial Service(s) to Customer under this Agreement, during the Term of this Agreement and for a period of one (1) year after termination of this Agreement, due to the significant difficulties in ascertaining and calculating the costs of recruiting and training a replacement UIS employee or contractor, which Customer hereby stipulates as to the difficulty to ascertain and calculate said costs, Customer agrees to pay UIS a recruiting and training fee in the liquidated damages amount Fifty Thousand Dollars (\$50,000.00 US), which is due and payable upon the first day said former UIS employee or contractor provides Service(s) to Customer. Customer hereby further stipulates that said liquidated damages amount is a reasonable fee to pay UIS for finding, recruiting, testing, managing and training said UIS employee or contractor that has provided substantial Service(s) to Customer under this Agreement.

### Q. Miscellaneous.

**1. Entire Agreement.** This Agreement and all amendments, attachments and exhibits thereto, constitutes the entire agreement of the parties hereto and supersedes all prior representations, proposals, discussions, and communications, whether oral or in writing, as of the Effective Date above. This Agreement may be modified only in writing and shall be enforceable in accordance with its terms when signed by both parties.

**2. Force Majeure.** UIS shall not be liable to Customer for any failure or delay caused by events beyond UIS' control, including, but not limited to, Customer's failure to furnish necessary information or materials; sabotage, failure, or delays in transportation or communication (including traffic accidents); failures or substitutions of equipment; labor disputes; accidents; shortages of labor, fuel, raw materials or equipment; technical failures by third party(ies); war; natural disasters; unnatural disasters (e.g. man-made disasters); or acts of God.

**3. Choice of Law.** This Agreement shall be governed and construed in all respects in accordance with the laws of the State of California as they apply to a contract entered into and performed in California, and specifically in the County of Santa Clara.

**4. Notices.** All notices required or permitted hereunder shall be in writing addressed to the respective parties as set forth below the signature lines, unless another address shall have been designated by a party. All notices, not otherwise specifically provided for above, must be transmitted through at least one of the following methods: (1) personally delivered with signed receipt, (2) delivered by registered or certified mail with postage prepaid, (3) facsimile transmission with confirming e-mail sent, or (4) by commercial overnight courier with tracking number and signature required upon receipt.

**5. Negotiated Agreement.** This Agreement was a product of negotiation between the parties, who had access to legal representation if they so desired, so no party will have been deemed to have solely drafted this Agreement for the purposes of interpretation.

**6. Section Headings.** The Section headings used in this Agreement are for convenience of reference only and will not limit or extend the meaning of any provision of this Agreement.

**7. Enforceability.** If any provision of this Agreement is held to be invalid or unenforceable by any court or administrative body of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**8. Waiver.** No failure by either party to exercise, nor any delay by any party in exercising any right, power, privilege, or remedy hereunder, shall impair that right or constitute a waiver of it, subject to applicable limitations periods under applicable law.

**9. Attorneys Fees.** If any dispute arises between the parties with respect to the matters covered by this Agreement, which leads to a proceeding to resolve such dispute, the prevailing party in such proceeding shall be entitled to receive its reasonable attorneys fees, expert witness fees and out-of-pocket costs incurred in connection with such proceeding, in addition to any other relief it may be awarded.

**10. Assignment.** This Agreement may not be assigned by Customer without UIS' prior written consent, which it consent may be denied at UIS' sole discretion, and any such attempted assignment shall be void and of no effect.

**11. Modifications.** Modifications to this Agreement must be proposed within sixty (60) days prior to the end of the Initial Term or Renewed Term and agreed to in a writing signed by both parties prior to the start of the ensuing term.

**12. Survival of Terms.** The following sections shall survive termination of this Agreement: sections A, C, F, G, J, K, L, M, P and Q.

**13. Counterparts.** This Agreement may be signed in counterparts, where all parts combined shall be considered one fully executed agreement.

[END OF TERMS & CONDITIONS]