

This Master Services Agreement (“MSA”) is made and entered into as of the date signed below, by and between DragonTek International, Inc. (referred to as “DragonTek”) and the client identified by a signed proposal (sometimes referred to as “you,” “your,” or “Client”) and sets forth the general terms and conditions pursuant to which Client may obtain services from any of the affiliated companies or subsidiaries of DragonTek. In addition to these general terms and conditions, the services are subject to additional terms and conditions specific to the particular type of service being provided as set forth in one or more of the following Service Attachments, as applicable.

<u>Service Attachment</u>	<u>Last Updated</u>	<u>URL</u>
Managed IT Support	Jan 1, 2021	<a href="https://www.DragonTek.com/services_agreements/sa-managed-it-support.pdf">https://www.DragonTek.com/services_agreements/sa-managed-it-support.pdf</a>
Data Backup	Jan 1, 2021	<a href="https://www.DragonTek.com/services_agreements/sa-data-backup.pdf">https://www.DragonTek.com/services_agreements/sa-data-backup.pdf</a>
Private Cloud Hosting	Jan 1, 2021	<a href="https://www.DragonTek.com/services_agreements/sa-private-cloud-hosting.pdf">https://www.DragonTek.com/services_agreements/sa-private-cloud-hosting.pdf</a>
Web Design	Jan 1, 2021	<a href="https://www.DragonTek.com/services_agreements/sa-web-design.pdf">https://www.DragonTek.com/services_agreements/sa-web-design.pdf</a>
Microsoft SPLA	Jan 1, 2021	<a href="https://www.DragonTek.com/services_agreements/sa-microsoft-spla.pdf">https://www.DragonTek.com/services_agreements/sa-microsoft-spla.pdf</a>

## 1. SCOPE OF SERVICES

### 1.1. Service Contracts

In addition to services of the types listed above (our “Primary Services”), we may provide you with products or services (e.g. computer hardware or cloud software) that are sold or provided by third-party vendors or service providers (“Third-Party Products and Services”). The term “Services” is used in this MSA to refer to the services ordered by you and encompasses both Primary Services and/or Third-Party Products and Services, as applicable.

Services may be ordered and shall be provided pursuant to an Estimate, Proposal, Sales Order, Scope of Work, Pricing Addendum, Order Form or similar document (an “Order”) that describes the Services to be provided and the fees for those Services. Each Order (together with this MSA and any applicable Service Attachments) creates an agreement for the provision of Services (a “Service Contract”) between the Client and the affiliate or subsidiary of DragonTek Inc. that signs the Order (referred to as “we,” “us,” “our” or “DragonTek”). A Service Contract shall not be binding on, nor impose any obligations upon, DragonTek Inc. or any affiliate or subsidiary that is not a signatory to the Order.

If an Order describes more than one type of Service, then it shall be deemed to create separate Service Contracts with respect to each of the individual types of Services. The termination or expiration of one Service Contract shall not affect other Service Contracts originating from the same Order.

In interpreting a Service Contract, the terms of the Order shall be controlling over the terms of this MSA and any applicable Service Attachments, but only with respect to technical specifications, pricing and other project details; and the terms of any applicable Service Attachments shall be controlling over the terms of this MSA.

Except for Supplemental Services or Project Services (described below), and unless otherwise agreed in writing, the services we will deliver to you are limited to those Services specifically identified in the Order and described in the Service Attachments.

### 1.2. Supplemental Services

“Supplemental Services” are limited, additional services that you may request on a “one-off” or emergency basis that are not included within the scope of a Service Contract. You agree to pay for any Supplemental Services that you request on a time-and-materials basis at DragonTek’s regular hourly rates, as reflected on the then-current rate sheet applicable to DragonTek’s customers generally.

### 1.3. Project Services

“Project Services” are services outside the scope of any Order that are greater in scope than Supplemental Services. Examples of such services include major system upgrades, new computer, machine or device setup, network changes, datacenter moves or setups, or installations. In those cases, we will prepare a separate Order for Project Services describing the proposed scope of those services and our fees to deliver them. If a Service Contract for the performance of Project Services is entered into and Client subsequently cancels the project prior to its completion, then DragonTek shall be entitled to be paid for all work performed through the date of cancellation. If the project was to be performed for a fixed fee, then DragonTek shall be entitled to be paid an amount proportional to the amount of work performed through the date of cancellation, rounded up to the next quarter (i.e. 25%, 50%, etc. of the fixed fee), the minimum payment amount being 25% of the fixed fee. If DragonTek is requested to prepare a scope of work, specifications or a similar document or information (a “Project Plan”) in connection with a proposed project and Client subsequently elects not to pursue the project or to pursue the project with a vendor other than DragonTek, then DragonTek shall be entitled to be compensated for its efforts in preparing the Project Plan as Supplemental Services.

### 1.4. Obtaining Support

All support requests must be instituted by contacting the HelpDesk, which will result in the creation of a support ticket. It is the sole responsibility of the Client to create a support ticket through the HelpDesk. Calls, emails, or other types of communication that are directed anywhere else may not be responded to in a timely fashion. Contact information and business hours for the HelpDesk can be found at [www.DragonTekhelpdesk.com](http://www.DragonTekhelpdesk.com).

## 2. FEES AND PAYMENT

### 2.1. Service Fees

In consideration of the Services, you agree to pay to DragonTek the fees set forth in the applicable Order. In the absence of a written agreement with respect to fees, Services will be performed on a time-and-materials basis at DragonTek’s then-current rates. Ongoing Services may be canceled or terminated (when permitted by the terms of a Service Contract) only as of the end of a monthly billing cycle and DragonTek shall not be obligated to pro-rate its fees if any Services are canceled or terminated mid-billing cycle.

### 2.2. Out-of-Pocket Expenses

Client shall pay the reasonable out-of-pocket expenses, including non-local travel expenses, lodging, meals, and other similar expenses, incurred by DragonTek in performing the Services. Any such expenses will be billed at cost and invoiced monthly.

### 2.3. Payment Terms

You agree to accept invoices sent to you by means of e-mail. You shall pay the full amount reflected on any invoice as owed to us within thirty (30) days following your receipt of that invoice. You shall pay interest of one and one-half percent (1.5%) per month or the maximum lawful rate, whichever is less, for all invoiced amounts not paid within thirty (30) days following your receipt of that invoice (the “Payment Deadline”).

If you dispute in good faith all or any portion of the amount shown on an invoice, or if you otherwise believe you are entitled to an adjustment of an invoiced amount, you must notify us in writing, prior to the Payment Deadline, of the nature and basis of the dispute and/or adjustment. If we are unable to resolve the issue prior to the Payment Deadline, you shall nevertheless pay the entire invoiced amount by the Payment Deadline. If we ultimately determine that such amount should not have been paid, we shall apply a credit equal to such amount against any fees owed for the following month.

#### **2.4. Taxes, Regulatory Fees, Etc.**

All charges and fees owed pursuant to any Service Contract are exclusive of any applicable sales, use, excise or services taxes that may be assessed on the provision of the Services. In the event that any such taxes are assessed on the provision of any of the Services, you shall pay the taxes directly to the taxing authority or shall reimburse us for their payment. DragonTek shall have the right to pass through to you the amounts of any regulatory fees, surcharges and/or similar charges imposed by law or otherwise required to be paid in connection with the provision of the Services.

#### **2.5. Means of Payment**

Except in instances in which payment by credit card is required, payment shall be made by (a) check; (b) wire transfer, ACH or similar electronic funds transfer in accordance with the procedures set forth at [www.DragonTektech.com/epay](http://www.DragonTektech.com/epay); or (c) at Client's option, by means of credit card, provided that DragonTek shall, to the extent permitted by law, have the right to collect from Client a convenience fee in an amount equal to the amount of any credit card processing fee(s) actually incurred by DragonTek. All payments shall be in U.S. Dollars.

#### **2.6. Adjustment of Fees Based on Level of Usage**

##### **2.6.1. Usage Parameters**

An Order for Services may set forth counts or other parameters (e.g. number of servers or other devices to be supported, number of users or software licenses, amount of storage space to be made available for backup, etc.) upon which the pricing for the Services is based. These are referred to as "Usage Parameters."

##### **2.6.2. Increases in Usage**

If there is an increase in the level of Client's usage of the Services, growth in the size of Client's business or network, and/or the Client otherwise exceeds the Usage Parameters set forth in a Service Contract, then the fee for the Services will be increased by an amount equal to the difference between the then-current fee for the agreed-upon level of usage and the then-current fee for the Client's actual, higher level of usage. In this regard:

- a) The Client shall pay the increased fee for the Services retroactive to the monthly billing cycle during which Client's usage first exceeded the Usage Parameters.
- b) There will be no proration of monthly fees (i.e. regardless of the day during a monthly billing cycle when the increased usage first occurred, billing for the entire month will be based on the higher level of usage).
- c) With respect to Third-Party Products and Services, any count or other measurement of the level of Client's usage by the third-party vendor or service provider will be binding on the Client.

Increases in software license counts or other Usage Parameters may occur automatically as the result of compliance with security policies or the implementation of other protocols. For example, security policies might require that anti-virus protection be extended to all computers on the network, so that if Client were to add a new computer to its network, then anti-virus software would automatically be installed on that computer. Client agrees to pay for increases of this nature that are in keeping with the purposes of a Service Contract and reasonably necessary to facilitate its performance.

##### **2.6.3. Decreases in Usage**

If Client has committed to a Service Contract for a fixed term, then there will be no reductions in the fees payable by Client based upon a reduction in usage below the agreed-upon Usage Parameters. If the Service in question is being provided pursuant to a Service Contract with a recurring term, then fees will be adjusted subject to the following:

- a) A request for a reduction in fees on the basis of decreased usage must be made in writing by means of an e-mail message to DragonTek' HelpDesk.
- b) A request must be received at least forty-five (45) days in advance.

**2.7.** Reductions will be made only as of the beginning of a monthly billing cycle (i.e. there will be no prorating or partial months). No retroactive reductions will be made.

#### **2.8. Adjustment of Fees Based on Complexity**

If there is an increase in the scale or complexity of Client's business or network (e.g. the addition of new office locations, the inter-operation of different products, services or technologies, the use of specialized or uncommon hardware or software, etc.) that results in a material increase in the efforts or costs required to be incurred by DragonTek in order to provide the Services, then DragonTek shall have the right to increase, in a commercially reasonable manner, the amounts of any relevant fixed, per-unit or other fees that don't adequately reflect the increased scale or complexity. DragonTek shall provide at least ninety (90) days' written notice of the beginning of the monthly billing cycle with respect to which any such fee increases will take effect and, if the Client is unwilling to accept such fee increases, then DragonTek shall have the right to terminate any affected Service Contracts as of the end of the prior monthly billing cycle.

#### **2.9. Price Increases**

##### **2.9.1. Annual Increases with Respect to Primary Services**

Except as set forth in the applicable Order or otherwise agreed by the parties in writing, the fees for Primary Services provided pursuant to a Service Contract with a fixed term shall be subject to an annual increase of not more than five (5%) percent with respect to each year of the initial term after the first and each renewal year. The foregoing shall not be construed to limit the right of a party not to renew or to propose a different pricing arrangement as a condition of renewal.

##### **2.9.2. Increases in the Prices of Third-Party Products and Services**

DragonTek shall have the right to pass through to the Client any increases in the prices of Third-Party Products and Services, provided that DragonTek shall provide at least thirty (30) days' written notice of the beginning of the monthly billing cycle with respect to which any such price increases will take effect (or the maximum amount of notice reasonably possible in light of the timing of the notice from the third-party vendor or service provider) and, if the Client is unwilling to accept such price increases, then the Client shall have the right to terminate any affected Service Contracts as of the end of the prior monthly billing cycle.

### **3. TERM**

#### **3.1. MSA**

This MSA is effective as of the date of execution and will remain in effect until terminated by one of the parties. Either party may terminate this MSA for any reason or no reason upon at least thirty (30) days' advance written notice, provided, however, that termination of this MSA will not, by itself, result in the termination of any Service Contract, and this MSA will remain in effect notwithstanding any notice of termination unless and until all Service Contracts are terminated or expire according to their terms.

### 3.2. Individual Service Contracts

Service Contracts are entered into for either a fixed term (for example, one year) or for a recurring term (as described in Section 3.4). The term of each Service Contract shall be as set forth in the applicable Order. If no term for the provision of Managed IT Support, Data Backup, Private Cloud Hosting or Cloud PBX Hosting Services is specified in an Order, then the initial term of the Service Contract shall be twelve (12) months. If Services are provided on an ongoing basis in the absence of a specified term, or if Services continue to be provided after a Service Contract has expired or been terminated, then the Services will be deemed to be provided on the basis of a recurring term (for purposes of clarity, this sentence shall not apply to a Service Contract that includes a renewal provision unless Services continue to be provided despite a party's having given notice of intention not to renew).

### 3.3. Commencement of Contract Term

A Service Contract shall commence on the date on which DragonTek begins providing Services, unless such date is a day other than the first day of a calendar month, in which case: (a) the contract shall commence on the first day of the first full calendar month following the date on which DragonTek began providing the Services and (b) the Client shall pay to DragonTek, in addition to the Monthly Service Fees (as set forth in the Order) for the first month of the contract term, a pro rata portion of the Monthly Service Fees on account of the preceding partial month during which DragonTek began to provide the Services. The commencement date of the contract term shall be set forth in DragonTek's first invoice for Monthly Service Fees.

### 3.4. Renewal of Contracts for a Recurring Term

A Service Contract with a recurring term shall remain in effect, and the Services shall continue to be provided and paid for each month, until the Service Contract is terminated by one of the parties.

### 3.5. Renewal of Contracts for a Fixed Term

A Service Contract with a fixed term shall be automatically renewed for successive renewal terms unless a party gives written notice of its intention not to renew at least sixty (60) days prior to the expiration of the initial term or the then-current renewal term. If the initial term of the Service Contract is shorter than twelve (12) months, then the length of each renewal term shall be equal to the length of the initial term. If the initial term is twelve (12) months or longer, then the length of each renewal term shall be twelve (12) months.

## 4. TERMINATION

### 4.1. Termination of Contracts for a Recurring Term

A Service Contract with a recurring term may be terminated by either party, for any reason or no reason, upon sixty (45) days' advance written notice. The effective date of any termination must be the last day of a monthly billing cycle.

### 4.2. Termination of Contracts for a Fixed Term

#### 4.2.1. Termination of Primary Services

A Service Contract for the provision of Primary Services over a fixed term may be terminated:

- a) by either party, if there is a material breach by the other party that is not cured within thirty (30) days after written notice;
- b) by the Client, in accordance with the terms of a Service Attachment, if the Service Attachment contains an agreement concerning response times, uptime or other performance objectives ("Service Levels") with respect to the Services; and if the Service Attachment also sets forth circumstances (e.g. a particular number of occasions on which the Service Levels are not satisfied within a given time period) that give rise to a right of termination on the part of the Client;
- c) by DragonTek, if during any period of twelve (12) months, there are at least three (3) occasions on which there is a failure to comply with a written request by DragonTek for reasonable cooperation in connection with the provision of the Services, which requests may be made by e-mail and may pertain to the same or different matters (by way of example and without limitation, such matters may include a failure to follow recommended procedures or protocols in connection with the use of any products or services, a failure to implement reasonable security measures, a failure to provide access to Client's site or a safe working environment, abuse of DragonTek personnel, or engaging in conduct that interferes with the performance by DragonTek of its obligations or makes such performance more costly or difficult);
- d) by either party, in such other circumstances, if any, as might be provided for in the applicable Service Attachment; or
- e) by either party, if it becomes apparent that the other party has become or threatens to become insolvent, has filed for bankruptcy protection, has had a receiver appointed, has called a meeting of creditors, or is otherwise affected by similar circumstances.

#### 4.2.2. Termination of Third-Party Products and Services

A Service Contract for the provision of Third-Party Products and Services over a fixed term may be terminated prior to the expiration of the initial term or any renewal term only to the extent that there is an entitlement to terminate (whether by virtue of a failure to meet performance standards, the payment of an early termination fee by Client, or otherwise) under the terms of the agreement ("Third-Party Agreement") pursuant to which the product or service in question is made available by the third-party vendor or service provider. An index of and links to such Third-Party Agreements may be found at [www.DragonTektech.com/tpa](http://www.DragonTektech.com/tpa).

### 4.3. Termination for Violation of Acceptable Use Policy

Client shall comply with DragonTek's Acceptable Use Policy ("AUP"), which may be found at [www.DragonTek.com/aup](http://www.DragonTek.com/aup), and with any AUP's applicable to Third-Party Products and Services that are contained in or referred to in the applicable Third-Party Agreements. DragonTek may terminate any Service Contract if there is a violation by Client of an applicable AUP and a failure by Client to cure such violation within ten (10) days after written notice. In addition to its right to terminate a Service Contract, DragonTek shall have the right to suspend the affected Services, immediately and without notice, if required to do so by law, court order or other legal requirement, if the Services are used for purposes that are illegal; involve the distribution of viruses or other damaging computer code; involve the sending of "spam" e-mail messages; violate the intellectual property or privacy rights of others; impair the use of the Services by others; threaten to impose liability on DragonTek or a third-party vendor or service provider; or otherwise involve conduct of a similarly serious nature.

### 4.4. Suspension of Services for Non-Payment

If you fail to pay all amounts owed under a Service Contract when due, then we may suspend the Services for which payment has not been made until full payment is made. Following any suspension of service under this provision, and after you make full payment to us, we shall restore the Services after confirming that all aspects of your network, systems and environment remain in compliance with the Service Contract and our requirements with respect to security, updates and best practices. As a condition of such restoration you agree to pay us a "Reactivation Fee" equal to \$450.00 or, if greater, the actual costs reasonably incurred by us in effecting such restoration. Our right to suspend Services under this section is in addition to any right to terminate the Service Contract or other remedy that might be available to us. DragonTek SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY FOR ANY INTERRUPTION OF BUSINESS OR OTHER CLAIMS, DAMAGES OR COSTS OF ANY KIND IN CONNECTION WITH A SUSPENSION OF SERVICES BASED ON CLIENT'S NON-PAYMENT OF FEES.

#### 4.5. Effect of Termination

##### 4.5.1. Cessation of Use; Return of Materials

Upon the termination of a Service Contract, the Client shall cease its use of the affected Services. The Client shall promptly return to DragonTek all Equipment (as defined in Section 7.2 below), software, documentation and other tangible items provided to Client in connection with the Services; and shall delete from its computer systems all electronic copies of the software and any documents, data or other information that was provided. Upon request, Client shall provide written certification of its compliance with the obligations set forth in the preceding sentence, which certification shall be by an officer (or other representative having similar authority).

##### 4.5.2. Transition Services

DragonTek shall cooperate with the Client in the orderly termination of the Services. If the Client wishes to obtain off-boarding services and/or assistance in transitioning to a new service provider, then Client shall compensate DragonTek for such services on a time-and-materials basis at DragonTek's then-current rates or in accordance with such fee arrangement as might be agreed upon in writing. DragonTek may require that any such fees, or a reasonable estimate thereof, be paid in advance.

##### 4.5.3. Portability and Retention of Client's Data

Upon request by the Client at the time of termination of a Service Contract, DragonTek will make available to Client a copy of all Client Data (i.e., content or information transmitted to or from, or stored by Client on, DragonTek's servers or that is otherwise created or used by Client in connection with the Services) that remains on servers, storage devices or otherwise in the possession or under the control of DragonTek, in consideration of which DragonTek shall be entitled to be compensated at DragonTek's then-current rates for the time reasonably required to assemble and copy such data, as well as for the cost of any media used to transfer the data.

FOLLOWING THE EFFECTIVE DATE OF THE TERMINATION OF A SERVICE CONTRACT BY EITHER PARTY FOR ANY REASON, DragonTek SHALL HAVE NO FURTHER OBLIGATION TO MAINTAIN OR PROVIDE ANY CLIENT DATA AND SHALL THEREAFTER, UNLESS LEGALLY PROHIBITED, DELETE ALL CLIENT DATA ON ITS SYSTEMS OR OTHERWISE IN ITS POSSESSION OR UNDER ITS CONTROL.

##### 4.5.4. Payment of Fees

Notwithstanding the termination of a Service Contract, the Client shall remain responsible for the payment of all fees for Services properly provided prior to the date of termination by DragonTek and/or any third-party vendor or service provider and any early termination or similar fees that might be payable under the Service Contract or any Third-Party Agreement in connection with the circumstances of the termination.

##### 4.5.5. Transfer of Custody

Upon termination of a Service Contract it shall be Client's responsibility to arrange for the transfer to Client or Client's new service provider of any domain name(s), telephone numbers and/or similar registrations that were used in connection with the Services and that Client wishes to maintain control of. DragonTek shall cooperate with Client in effecting such transfer, but unless otherwise required by law, Client shall bear all costs associated with any such transfer and DragonTek shall not, following the termination of a Service Contract, have any ongoing obligation to maintain or renew any domain name, telephone number or other registration on behalf of Client.

#### 5. SERVICE LEVEL MATTERS

##### 5.1. Service Levels and Service Level Credits

Except as otherwise agreed in writing, if a Service Attachment contains an agreement concerning Service Levels and a required Service Level is not met, then, as the Client's sole and exclusive remedy, and DragonTek's sole and exclusive liability, for the failure of the Services to meet the required Service Level, DragonTek shall provide the Client with a partial credit against the monthly fees payable for the Services in question (a "Service Level Credit"), calculated in the manner specified in the Service Attachment.

##### 5.2. Service Level Policies

DragonTek will process Service Level Credits for failures to meet the required Service Levels ("Events") as set forth in the applicable Service Attachment. If an Event has occurred that qualifies for a Service Level Credit, Client must open a ticket with DragonTek's HelpDesk providing the details pertaining to the Event within 30 days of the occurrence (unless it is specifically stated that a Service Level will be monitored proactively, i.e. that performance will be self-monitored by DragonTek, in which case no ticket need be submitted). If Client does not open such ticket within the required time period, Client forfeits any right to claim that a Service Level Credit is due. For the purpose of calculating whether a Service Level Credit may be due, and the duration of an Event, and unless otherwise set forth in a Service Attachment, DragonTek will calculate time periods as beginning from the earlier of (a) the time stamp of the alert in DragonTek's monitoring systems; or (b) the time stamp of the Client-submitted ticket, and continuing until the time DragonTek has resolved the Event.

The maximum total amount of Service Level Credits that may be earned for Events occurring during a single calendar month shall not exceed one hundred (100%) percent of one month's worth of the monthly fees for the affected Services. Any excess Service Level Credits are forfeited and shall not be carried over to future months.

##### 5.3. Service Level Exclusions

Service Levels and Service Level Credits apply only to Client and not to any customers of Client or to any other party. Client is not entitled to any Service Level Credit if (a) Client has not paid all fees when due, (b) Client is otherwise in breach of the Service Contract, (c) Client has failed to provide DragonTek with appropriate access or otherwise interfered with DragonTek's ability to provide the Services, or (d) a failure to meet Service Levels is attributable to one of the following

- a) Maintenance.
  - i. DragonTek Scheduled Maintenance. Repairs, upgrades or modifications to DragonTek's systems or infrastructure that are scheduled in advance.
  - ii. Client Maintenance. Repairs, upgrades, or modifications to the Services requested by Client.
  - iii. Emergency Maintenance. If necessary to avoid imminent harm, prevent further or repeated interruptions of the Services or in other emergency circumstances, DragonTek may interrupt the Services on such limited notice, including no notice, as is reasonably feasible under the circumstances.
- b) Extraordinary Events. Service interruptions resulting from denial of service attack, virus attacks, hacking attempts or any other similar attacks.
- c) False Failures. Erroneously reported failures, failures reported as the result of an error in a DragonTek measurement system, or failures resulting from testing of the Services to simulate a failure.
- d) Client-Provided Equipment. Matters caused by or related to the failure, malfunction or configuration changes in hardware or other equipment provided by the Client.
- e) Non-Standard Configuration. Matters caused by a Client-requested non-standard or unsupported configuration.
- f) External Network Conditions. Matters caused by general internet or network conditions outside the reasonable control of DragonTek, including but not limited to

DNS issues.

- g) Non-Impacting Failure. Nominal failures that do not actually affect Client's use of the Services (e.g. a failure during hours when Client's business is closed or that affects a non-production computer system).
- h) Unexpected Usage. Matters caused by usage patterns or traffic that exceeds the Usage Parameters.
- i) Client Acts. Matters caused by Client acts (or the acts of others engaged or authorized by Client), including without limitation, any negligence or willful misconduct.

## **6. THIRD-PARTY PRODUCTS AND SERVICES**

### **6.1. Terms and Conditions of Use**

Client acknowledges that the Third-Party Products and Services are made available on the terms and conditions set forth in the Third-Party Agreements (copies of which may, as set forth in Section 4.2.2, be found at [www.DragonTektech.com/tpa](http://www.DragonTektech.com/tpa)), including without limitation any applicable end user license agreement, retail customer terms and/or AUP, and Client agrees to use the Third-Party Products and Services in accordance with such terms and conditions.

### **6.2. Third-Party Warranty and Remedies**

DragonTek does not warrant the quality, performance or any other aspect of the Third-Party Products and Services. In the event of a defect or difficulty in the use of the Third-Party Products and Services, Client shall look solely to the warranty or remedies (if any) provided for in the applicable Third-Party Agreements and in this regard DragonTek agrees to provide the Client with commercially reasonable assistance in obtaining the benefit of any warranty or remedies offered by the third-party vendor or service provider. If DragonTek is party to a wholesale, reseller or other agreement with the third-party vendor or service provider, then DragonTek will similarly make commercially reasonable efforts to obtain for Client the benefit of any warranty or remedies provided for thereunder. The provisions of this section shall not be interpreted to require DragonTek to bring a lawsuit, commence arbitration proceedings or take any similar action against a third-party vendor or service provider; nor to require DragonTek to provide Client with any remedy greater in amount or extent than any remedy actually provided to DragonTek by the third-party vendor or service provider.

### **6.3. Rights of Third-Party Vendors and Service Providers**

Use of the Third-Party Products and Services shall at all times be in accordance with the rights of the third-party vendors and service providers and in this regard Client represents and warrants that it will not:

- a) engage in unauthorized use, copying or distribution of the Third-Party Products and Services in violation of licensing restrictions; disable or seek to disable any security, copy protection or similar features; or damage or fail to return hardware, equipment or other tangible items upon the completion of a Service Contract;
- b) translate, modify, adapt, decompile, disassemble, create derivative works from, merge with other products or services, or reverse engineer the Third-Party Products and Services; or
- c) use any confidential or proprietary information provided with or as a part of the Third-Party Products and Services for any purpose other than facilitating Client's use of the Third-Party Products and Services in accordance with the terms of a Service Contract; or fail to cooperate in the return, deletion and/or destruction of any such information upon the completion of a Service Contract.

## **7. CLIENT COVENANTS AND OBLIGATIONS**

### **7.1. Limitations on Scope of Support**

Except to the extent, if any, provided for in the applicable Order, support (including without limitation provisioning) for the products and services of third-party vendors and service providers is not included in the scope of the Services provided by DragonTek unless:

- a) Client has entered into a Service Contract for Managed IT Support Services, that covers the products and services in question; or
- b) Client has entered into a Service Contract for Data Backup, Private Cloud Hosting or Cloud PBX Hosting Services and the products and services in question are deemed to constitute part of those Services

in either of which cases support shall be provided to the extent set forth in the applicable Service Attachment.

If Client wishes to obtain support for products or services of a third-party vendor or service provider that do not satisfy these criteria, then such support may be included in a Service Contract for an additional fee or requested as either Supplemental Services or Project Services.

### **7.2. DragonTek Supplied Equipment**

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

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

DragonTek is and will remain the sole owner of any Equipment, which is provided on a rental or temporary basis only. You shall not remove any sign, label or other marking on the Equipment identifying DragonTek as the owner of the Equipment. You do not acquire any rights of ownership in the Equipment, and you will not have, by operation of law or otherwise, any lien or other similar right over or in relation to the Equipment.

On termination of any Service Contract pursuant to which we deliver Equipment, you shall provide DragonTek or its contractors with reasonable access to your premises to remove the Equipment. Alternatively, upon our request, you shall return the Equipment to us via the carrier of our choice, for which Client will pay all applicable shipping charges.

### **7.3. Assistance**

Client shall provide in a timely and professional manner, and at no cost to DragonTek, assistance, cooperation, complete and accurate information and data, such equipment as is agreed to be the responsibility of Client, access to applicable computer and telecommunications facilities and related resources (including, without limitation, networks, firewalls, servers, programs, files, documentation and any passwords required for the provision of the Services), a suitable work environment, and such other resources as are reasonably requested by DragonTek to enable it to perform the Services. In addition, Client may be required to conduct preliminary diagnostic steps or to provide additional information related to a support request, prior to a technician being dispatched to Client's facility. The foregoing is collectively referred to as "Assistance." DragonTek shall not be liable for any deficiency in performing the Services if such deficiency results from Client's failure to provide full Assistance as required hereunder. Assistance includes, but is not limited to, designating a project manager or contact person to interface with DragonTek during the

course of the performance of the Services.

#### **7.4. Software Licensing**

Client represents and warrants that Client has proper licenses for (or otherwise has the right to use) any software or other technology that is in use by Client, or that is to be furnished by Client, and that Client has requested DragonTek to use, access or modify as part of the Services.

It is the Client's responsibility to independently ensure that ALL such software and technology is properly licensed, and Client agrees to provide DragonTek with proof of such licensing upon request. DragonTek will not promote the use of, or knowingly support, software or other technology that is not properly licensed by Client. Assistance with software audits or licensing compliance matters may be obtained from DragonTek as Project Services.

#### **7.5. Remote Access; Client Facilities**

Broadband Internet access must be provided and DragonTek must be provided with remote access (via VPN or other reasonable means) to covered equipment. Client acknowledges that DragonTek may require unattended remote access to Client systems. Appropriate cabling to all covered computers and devices must be provided. Appropriate air conditioning and ventilation for all covered computers and devices must be provided in order to maintain temperature and air quality as specified by the applicable hardware manufacturers. Power surge protection must be provided for all covered computers and devices.

**7.6. Existing Service Providers; Disposal of Old Equipment and Packaging** Unless otherwise agreed in writing, Client is responsible for arranging for the disconnection or termination of any existing services, for arranging for any migration, porting or other transition services required, and for the payment of any charges related to the foregoing to Client's existing service provider(s). DragonTek is not responsible for the acts or omissions of any other service providers, utility companies or other third parties. Client is responsible for the disposition or disposal of any old or unused hardware, racking, cabling or other items and for the disposal of any shipping or packaging materials associated with new items.

#### **7.7. Network Security and Malicious Events**

In performing the Services, DragonTek shall utilize cyber-security practices and technology that are in accordance with industry standards as of the date of performance. Unless specifically agreed in a Service Contract for the provision of cyber-security consulting services, DragonTek is not undertaking a duty to update the Client's existing network, systems or environment or any previously-performed Services or to provide any advice, monitoring or other services related to cyber-security services, and DragonTek shall not be responsible for the security of your computer network, voice circuits or other systems, or any other aspect of your environment nor shall DragonTek be liable for any damages resulting from a Cyber-Attack, as defined below (except to the extent, if any, that the Cyber-Attack is attributable to a breach of the obligation set forth in the first sentence of this section, in which case DragonTek's liability shall be limited in accordance with the general limitation of liability set forth in Section 12.1). WITHOUT LIMITING THE FOREGOING, DragonTek SHALL HAVE NO LIABILITY FOR DAMAGES RELATED TO SECURITY DEFECTS IN COMMERCIALY-AVAILABLE SOFTWARE, HARDWARE OR OTHER PRODUCTS AND SERVICES THAT ARE SUBSEQUENTLY FOUND TO EXIST (REGARDLESS OF WHETHER THE PRODUCTS AND SERVICES IN QUESTION ARE RELATED TO CYBER-SECURITY OR ARE USED FOR INFORMATION TECHNOLOGY MANAGEMENT, BUSINESS PRODUCTIVITY OR OTHER PURPOSES).

Except to the extent provided in a Service Contract, it is Client's sole responsibility to determine what actions are necessary to make Client's network, systems and environment secure and to take those actions. Without limiting the foregoing, Client has the responsibility to protect its network, systems and environment from, and to train its employees with respect to, viruses, spam, malware, ransomware, the acts of third parties such as hackers and phishers, and other types of malicious code, unauthorized access or similar threats (collectively "Cyber-Attacks").

If a Service Contract for the provision of cyber-security consulting services is entered into, then DragonTek will use commercially reasonable efforts to protect those aspects of Client's network, systems and/or environment that are identified in the Service Contract from Cyber-Attacks, however Client understands that no cyber-security software, devices or procedures can guaranty complete protection against Cyber-Attacks as such attacks are constantly evolving and often involve the intentional action of third parties endeavoring to invade and damage computer systems. The fact that DragonTek may agree to provide, or to provide support for, anti-virus software, firewalls or other products and services related to cyber-security shall not, in itself, be construed as an agreement by DragonTek to provide cyber-security consulting services. IF DragonTek SHALL HAVE AGREED IN WRITING TO PROVIDE CYBER- SECURITY CONSULTING SERVICES, THEN DragonTek'S LIABILITY WITH RESPECT TO ANY CYBER-ATTACK SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND SHALL NOT EXCEED THE GREATER OF (1) \$5,000, OR (2) SIX (6) TIMES THE MONTHLY FEES PAID BY CLIENT FOR CYBER-SECURITY CONSULTING SERVICES.

#### **7.8. Theft of Services**

Client shall notify DragonTek immediately, by e-mail to DragonTek's HelpDesk, if Client becomes aware at any time that the Services are being stolen or used fraudulently. If Client fails to notify DragonTek within one (1) business day after becoming aware of any such theft or fraudulent use of the Services, or if such theft or fraudulent use is attributable to a failure by Client to maintain reasonable physical, electronic or other security measures, then Client shall reimburse DragonTek for any fees or costs incurred as the result of such theft or fraudulent use, including, without limitation, the usage or service fees that would normally be charged by DragonTek or an affected third-party vendor or service provider and/or the replacement cost of any Equipment, products or other items owned by DragonTek or a third-party vendor or service provider that have been lost.

#### **7.9. Data Backup**

Except in instances in which the Services are agreed in writing to include backup Services, Client shall be solely responsible for backing up Client's data and DragonTek shall have no liability with respect to the loss or unavailability of data. A backup solution must be in place, with backup copies stored off-site. It is the Client's responsibility to ensure that backups are made regularly and to verify the integrity of the backups. IF DragonTek SHALL HAVE AGREED IN WRITING TO PROVIDE BACKUP SERVICES, THEN DragonTek'S LIABILITY WITH RESPECT TO ANY LOSS OR UNAVAILABILITY OF DATA SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND SHALL NOT EXCEED THE GREATER OF (1) \$5,000, OR (2) SIX (6) TIMES THE MONTHLY FEES PAID BY CLIENT FOR SUCH BACKUP SERVICES.

#### **7.10. Recovery Services**

Any services to rebuild or recover Client's network, systems or environment following a natural disaster, Cyber-Attack or similar event shall be provided by DragonTek as Project Services.

#### **7.11. Ownership of Client Data**

As between DragonTek and Client, all Client Data is owned exclusively by Client. DragonTek may access the Client Data to the limited extent necessary to provide the Services or respond to support requests, but shall not otherwise access the Client Data except upon Client's instructions.

#### **7.12. Compliance Matters**

DragonTek shall not in any instance be deemed to be providing the Client with advice concerning the meaning, interpretation of, or compliance with any laws, regulations or other legal requirements, including, without limitation, Payment Card Industry (PCI) standards, the Sarbanes-Oxley Act (SOX), the Health Insurance Portability and Accountability Act (HIPAA), the European Union General Data Protection Regulation (GDPR) or the New York Department of Financial Security Cybersecurity Requirements for Financial Services Companies. Client agrees that it will not rely upon DragonTek for any such advice and that it will obtain any required advice from its attorneys or other appropriate advisors. Any involvement by DragonTek shall be deemed to be limited to the provision of technological advice with respect to the implementation of solutions or protocols developed by the Client, its attorneys and/or advisors.

## **8. INTELLECTUAL PROPERTY RIGHTS**

### **8.1. Ownership**

All patent, copyright, trademark, trade secret, know-how and other proprietary or intellectual property rights (“IP Rights”) with respect to the Services shall remain the property of DragonTek and/or the respective providers of the Third-Party Products and Services. Client shall not acquire any interest in any IP Rights associated with the Services, except that Client is hereby granted a limited license to the extent necessary to allow the Client to use the Services

for its own internal business purposes and in accordance with the terms of the applicable Service Contracts.

### **8.2. License Restrictions**

Client shall not:

- a) copy, translate, modify, adapt, decompile, disassemble, create derivative works from, merge the Services with any other products or services or reverse engineer the Services; or
- b) use any of the ideas, features, functions, graphics or other aspects of the Services for purposes of creating any similar products or services.

### **8.3. Works of Authorship**

Unless otherwise agreed in writing, any software program, application, computer code, writing or other work of authorship (“Work”), regardless of medium, which is created or developed by DragonTek in the course of performance under a Service Contract and which is related to the Services or to other products or services offered by DragonTek shall not be deemed a “work made for hire” and shall remain the sole and exclusive property of DragonTek. To the extent a Work is for any reason determined not to be owned by DragonTek, Client hereby irrevocably assigns and conveys to DragonTek all of its copyright in such Work.

Without limiting the foregoing, DragonTek shall own all network diagrams and other documents concerning Client’s network, systems or environment that might be created by DragonTek for DragonTek’s use in performing the Services. DragonTek will provide Client with copies of any such documents upon reimbursement, at DragonTek’s then-current rates, for the time that was required to create such documents.

### **8.4. Improvements**

Client hereby assigns to DragonTek any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client or its users relating to any proposed improvements of or modifications to the Services. DragonTek shall solely and exclusively own all IP Rights with respect to any invention, addition or other improvement (“Improvement”) to the Services, or to any other products or services offered by DragonTek, that might be created by DragonTek, regardless of whether based in whole or in part on any such suggestion, idea, etc. or whether created during or in connection with the provision of the Services to Client.

### **8.5. Confirmation**

Client hereby irrevocably assigns to DragonTek all of its IP Rights, if any, with respect to all Works and Improvements pertaining to the Services or any other products or services offered by DragonTek and hereby agrees to execute such assignments and/or take such other actions as might reasonably be required to confirm DragonTek’s ownership of such IP Rights, provided that Client is reimbursed by DragonTek for any time or expenses reasonably incurred in so doing.

## **9. CONFIDENTIALITY**

### **9.1. Confidential Information**

During the course of performance under a Service Contract, a party may become privy to the other’s proprietary or confidential information. Each of us shall hold all such “Confidential Information” of the other in strict confidence and shall not disclose such information to any third party.

Confidential Information includes but is not limited to: (a) with respect to DragonTek, DragonTek’s unpublished prices for Services, audit and security reports, server/network configuration designs, passwords, business plans, technical information or data, product ideas or other research and development, methodologies, calculation algorithms and analytical routines, and other proprietary technology; (b) with respect to Client, Client Data; and (c) with respect to both parties, other information that is either marked or designated as “Confidential” or could reasonably be understood to be confidential or proprietary under the circumstances.

### **9.2. Exceptions**

Notwithstanding the preceding Section 9.1, Confidential Information does not include:

- a) Information that at the time of disclosure is, without fault of the recipient, available to the public;
- b) Information that the recipient can show was independently in its possession at the time of disclosure;
- c) Information received from a third party who had the right to disclose the information without violation of any confidentiality agreement with the other party; or
- d) Information required to be disclosed pursuant to court order or by law, provided that the disclosing party is, to the extent possible, provided with advance notice of any such disclosure, and that any disclosure is limited to the minimum amount of information required.

### **9.3. Agreement Terms to be Kept Confidential**

No copies of this MSA, the Service Attachments, Orders or other agreements between the parties, or any information concerning the same, shall be disclosed to any third party, except by reason of legal, accounting or regulatory requirements, without the prior written consent of the other party.

## **10. WARRANTIES AND LIMITATIONS**

### **10.1. Warranties**

Primary Services are warranted to the extent set forth in the applicable Service Attachment.

With respect to Supplemental Services and Project Services, DragonTek warrants that the Services will be performed in a professional and workmanlike manner and in accordance with any written agreement between the parties. All such Services will be deemed to have been accepted by the Client and to be conforming unless Client notifies DragonTek in writing within ten (10) business days following completion that the Services do not conform to this warranty.

DragonTek does not independently warrant any Third-Party Products and Services, however DragonTek will, as set forth in Section 6.2, assist the Client in obtaining the

benefit of any warranties and remedies that might be available from the third-party vendor or service provider.

#### **10.2. Limitation of Remedies**

FOR ANY BREACH OF THE WARRANTIES MADE BY DragonTek OR CLAIM OF DEFECT IN THE SERVICES (OTHER THAN THE THIRD-PARTY PRODUCTS AND SERVICES), CLIENT'S EXCLUSIVE REMEDY AND DragonTek'S ENTIRE LIABILITY SHALL BE THE CORRECTION BY DragonTek OF THE DEFICIENT SERVICES, OR, IF DragonTek CANNOT SUBSTANTIALLY CORRECT THE DEFICIENCY WITHIN A REASONABLE TIME, THEN CLIENT MAY TERMINATE THE APPLICABLE SERVICE CONTRACT AND DragonTek WILL REFUND TO CLIENT THE FEES FOR THE AFFECTED SERVICES, OR PORTION THEREOF, THAT WERE NOT PROPERLY PERFORMED, TOGETHER WITH ANY FEES PRE-PAID ON ACCOUNT OF ANY PORTION OF THE AFFECTED SERVICES NOT YET PERFORMED.

DragonTek SHALL HAVE NO LIABILITY WITH RESPECT TO ANY BREACH OF WARRANTY OR CLAIM OF DEFECT IN ANY THIRD-PARTY PRODUCTS OR SERVICES AND CLIENT SHALL LOOK EXCLUSIVELY TO SUCH REMEDIES AS MIGHT BE MADE AVAILABLE BY THE THIRD-PARTY VENDOR OR SERVICE PROVIDER.

#### **10.3. Disclaimers**

EXCEPT AS SET FORTH IN SECTION 10.1 OR OTHERWISE EXPRESSLY AGREED IN WRITING, THE SERVICES, INCLUDING ANY THIRD-PARTY PRODUCTS AND SERVICES, ARE PROVIDED ON AN "AS IS" BASIS AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE SAME, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM AND USAGE, PRIOR PRACTICE, PRIOR ORAL OR WRITTEN STATEMENTS, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY OVERRIDDEN, EXCLUDED, AND DISCLAIMED. WITHOUT LIMITING THE FOREGOING, IT IS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE ERROR-FREE OR UNINTERRUPTED, THAT THE SERVICES WILL MEET ANY CLIENT'S PARTICULAR REQUIREMENTS OR EXPECTATIONS, OR THAT THE SERVICES WILL BE COMPLETELY SECURE. THERE ARE RISKS INHERENT IN INTERNET CONNECTIVITY THAT COULD RESULT IN LAPSES IN THE AVAILABILITY OR SECURITY OF THE SERVICES.

#### **10.4. Interpretation**

If any of the limitations or disclaimers set forth above, or elsewhere in this MSA or a Service Contract, are found to be void or unenforceable under applicable law, then the provision in question shall, if possible, be deemed to be modified to the minimum extent necessary to make it compliant, or, if such a modification is not possible, then the provision in question shall be stricken

without prejudice to any similar provisions, all of which shall remain in full force and effect.

### **11. DISPUTE RESOLUTION**

#### **11.1. Mediation Procedures**

Each of us shall attempt to settle amicably any disputes related to this MSA or a Service Contract by means of mediation in accordance with the Commercial Mediation Procedures of the American Arbitration Association. Mediation proceedings shall take place in Nassau County, New York and the costs of such proceedings shall be shared equally by the parties. No action or proceeding concerning a dispute shall be commenced prior to the expiration of sixty (60) days following the date of the first mediation session. Failing such amicable settlement, any such dispute, including without limitation claims related to the existence, validity, interpretation, performance, termination or breach of this MSA or a Service Contract, shall be resolved by means of an action brought in a state court in Nassau County, New York or in federal court in the Eastern District of New York.

#### **11.2. Period for Bringing Claim Concerning a Defect in the Services**

No action or other proceeding based on a breach of warranty or other claim concerning a defect in the Services may be commenced by Client more than one (1) year after the date of the breach or event giving rise to the claim; failure to make such a claim within such one (1) year period shall forever bar the claim.

#### **11.3. Attorneys' Fees**

If, in the event of a failure by Client to pay fees or other sums due to DragonTek under the terms of this MSA or a Service Contract, DragonTek commences litigation or other proceedings to collect such sums and is the prevailing party in such proceedings, then DragonTek shall be entitled to an award of reasonable attorneys' fees incurred in pursuing the collection of such sums.

#### **11.4. Liquidated Damages**

If there is a breach of the terms of, or attempt to cancel prior to its expiration, a Service Contract that includes a commitment for a specific term, then Client shall pay as liquidated damages on account of DragonTek' lost profits for the remaining portion of the contract term an early termination fee equal to seventy-five percent (75%) of the recurring monthly (or other periodic) fees remaining to be paid from the date of the breach or attempted cancellation through the end of the initial term or then-current renewal term, based on the monthly (or periodic) charges then in effect (in no event, however, shall the amount of the monthly (or periodic) charges used for purposes of calculating the amount that would have been payable by the Client over the remainder of the contract term be less than the amount of the monthly (or periodic) charges that were in effect at the beginning of the most recent contract term or renewal period). The right to collect such damages shall be without prejudice to DragonTek' right to recover in addition damages for any other type of loss, injury or harm that might be suffered by DragonTek as a result of Client's conduct.

### **12. LIMITATIONS OF LIABILITY**

#### **12.1. General Limitation**

EXCEPT AS OTHERWISE SPECIFICALLY AGREED IN WRITING, DragonTek'S LIABILITY IN CONNECTION WITH ANY CLAIM RELATED TO A SERVICE CONTRACT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO ANY ACTUAL, DIRECT DAMAGES INCURRED BY CLIENT AND WILL NOT EXCEED THE GREATER OF (1) \$5,000, OR (2) THE FEES ACTUALLY PAID BY CLIENT TO DragonTek IN CONNECTION WITH THE SERVICE CONTRACT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE CLAIM. THE SAME LIMITATION SHALL APPLY TO ANY CLAIM RELATED TO SUPPLEMENTAL SERVICES OR ANY OTHER PROVISION OF SERVICES BY DragonTek OUTSIDE THE CONTEXT OF A SERVICE CONTRACT (IN WHICH CASE THE LIMITATION IN CLAUSE (2) SHALL BE TO THE FEES ACTUALLY PAID BY THE CLIENT TO DragonTek IN CONNECTION WITH THE WORK OR PROJECT IN QUESTION DURING THE PRECEDING SIX (6) MONTHS).

#### **12.2. No Incidental or Consequential Damages**

IN NO EVENT SHALL EITHER PARTY BE HELD LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS,

LOSS OF GOODWILL, LOST PRODUCTIVITY, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR LOSS OF PROGRAMS OR INFORMATION, THAT RESULT FROM ANY BREACH OR CLAIM OF ANY KIND, REGARDLESS OF WHETHER IN CONTRACT, TORT OR OTHERWISE, AND REGARDLESS OF WHETHER THE DAMAGES WERE FORESEEABLE OR UNFORESEEABLE.

#### **12.3. Products and Services from Other Sources**

DragonTek SHALL NOT BE LIABLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE SERVICES THAT ARISE FROM CONTENT, Master Services Agreement – General Terms and Conditions | Last Updated Jan 1, 2021



MODIFICATIONS, OR PRODUCTS AND SERVICES OBTAINED BY THE CLIENT OTHER THAN THROUGH DragonTek. WITHOUT LIMITING THE FOREGOING, DragonTek SHALL NOT BE LIABLE FOR ANY KIND OF UNAUTHORIZED ACCESS OR OTHER HARM THAT MAY BE CAUSED BY CLIENT'S ACCESS TO WEBSITES OR USE OF APPLICATION PROGRAMMING INTERFACES OR OTHER COMPUTER CODE AVAILABLE FROM OUTSIDE SOURCES, INCLUDING WITHOUT LIMITATION HARM RESULTING FROM THE EXECUTION OR TRANSMISSION OF MALICIOUS CODE OR SIMILAR OCCURRENCES, SUCH AS DISABLING DEVICES, DROP DEAD DEVICES, TIME BOMBS, LOGIC BOMBS, TRAP DOORS, TROJAN HORSES, WORMS, VIRUSES, HACKERS, PHISHERS, CRYPTO-LOCKERS, RANSOMWARE, AND SIMILAR MECHANISMS.

### **13. INDEMNIFICATION**

Client shall indemnify and hold DragonTek harmless against and from any and all causes of action, damages and other liabilities and expenses of any kind whatsoever (including, without limitation, reasonable attorney's fees) that might be incurred by DragonTek in connection with a claim by a third party related to any of the following:

- a) Client's use of the Services in violation of an applicable AUP or illegal or improper use of the Services by Client as described in Section 4.3;
- b) Client's failure to ensure that any software or other technology that is in use by Client, or that is to be furnished by Client, and that Client has requested DragonTek to use, access or modify as part of the Services, is duly licensed as set forth in Section 7.4;
- c) Client's violation of the rights of a third-party vendor or service provider as described in Section 24.3;
- d) Client's transmission to DragonTek, or use of the Services to process, data that is subject to regulation under the GDPR or similar data protection requirements without first providing notice to DragonTek and obtaining DragonTek's written agreement to the processing of such data, in violation of the requirements of Section 15.2; or
- e) Client's use of the Services for any High-Risk Use (as defined in Section 16.5).

### **14. INSURANCE**

#### **14.1. Client Coverage**

Client shall maintain during the term of this MSA commercial general liability and first party cyber liability insurance with limits of at least One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the aggregate.

#### **14.2. DragonTek Coverage**

DragonTek agrees to maintain during the term of this MSA, professional liability insurance, including technology errors and omissions and cyber incident response coverages, with limits of at least Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate.

#### **14.3. Additional Provisions**

Client's insurance shall be primary over DragonTek's insurance. Client agrees to waive, and to require its insurers to waive, any rights of subrogation or recovery they might have against DragonTek, its agents, officers, directors and employees.

### **15. DATA PRIVACY**

#### **15.1. Client Data & Processing**

Insofar as the Client Data includes personally identifiable information ("PII"), DragonTek agrees that it will comply with applicable United States data privacy laws and will only use such data for the purpose of providing Services under this Agreement.

#### **15.2. Data Concerning Individuals in the EU and Other Jurisdictions**

If Client will require the processing of PII pertaining to individuals in the European Union that is subject to regulation under the GDPR, or PII pertaining to individuals located in another jurisdiction that is subject to similar data protection requirements, then Client must notify DragonTek in writing and obtain DragonTek's written agreement to the processing of such PII prior to transmitting any such data to any DragonTek system or otherwise using the Services to process such data in any way. Any such written agreement shall set forth the policies and procedures that will be followed in order to facilitate compliance with the GDPR or other applicable data protection requirements.

### **16. GENERAL**

#### **16.1. Notices**

Except as set forth in Section 16.15 (pertaining to electronic communications), all notices, demands or requests to be given by one party to the other shall be in writing and shall be deemed to have been duly given on the date delivered in person, on the next business day if sent via overnight delivery service, or on the third business day after deposit, postage prepaid, in the United States Mail for delivery via Certified Mail, return receipt requested, and addressed as specified on the signature page.

DragonTek may also deliver notice electronically to the email address noted on the signature page. Notices are effective the same day if delivered electronically.

A party may change its address by means of a written notice given in accordance with the requirements of this section.

#### **16.2. Independent Contractor**

DragonTek will perform all Services solely as an independent contractor and not as an employee, agent or representative of Client.

#### **16.3. No Hiring**

You shall not solicit any DragonTek employee with whom you have had contact in connection with the Services for employment by you or any other person either during the term of this MSA or during the twelve (12) month period following the last date on which Services were provided to you by DragonTek. Notwithstanding the foregoing, you shall not be precluded from conducting general recruiting activities, such as participating in job fairs or publishing help wanted advertisements for general circulation.

You acknowledge that the injury resulting from a breach of this provision would be significant and that it would be extremely difficult to ascertain the precise amount of damages resulting from such breach. Therefore, you agree that in the event of a breach you will pay to DragonTek liquidated damages in the amount of one hundred and fifty percent (150%) of the affected employee's base salary for one year. Such amount is not intended as a penalty but as a reasonable estimate of damages based upon the projected costs DragonTek would incur to identify, recruit, hire and train a suitable replacement for the affected employee.

#### **16.4. Force Majeure**

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

#### **16.5. No High-Risk Use**

You acknowledge that the Services are not fault-tolerant, are not guaranteed to be error-free or to operate uninterrupted, and are not intended to be used in any

application or situation where the failure of the Services could lead to the death or serious bodily injury of any person, or to significant property or environmental damage ("High-Risk Use"). Accordingly, you agree not to use the Services for any High-Risk Use.

#### **16.6. Export Control; Government Use**

You represent and warrant that your use of the Services will comply with all export laws, restrictions, national security controls, and regulations of the United States or other applicable authority. You will not export or re-export or allow the export or re-export of the Services in violation of any such export laws, restrictions, controls or regulations. If the Services are to be used in the performance of a government contract or subcontract, no government requirements or regulations will be binding upon us unless specifically agreed to by us in writing. If Client is a U.S. Government entity or person, then the Services are being provided as "Commercial Items" as that term is defined in the U.S. Code of Federal Regulations (see 48 C.F.R. §2.101), and the rights granted in the Services to such a government user are the same as the rights granted to all other users.

#### **16.7. Waiver**

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

#### **16.8. Assignment**

Neither party may assign this MSA or a Service Contract, in whole or in part, or any of its rights or obligations, without the prior written consent of the other party, and any purported assignment made without such consent shall be void and of no effect. However, DragonTek, Inc. may assign or otherwise transfer its rights, interests and obligations under this MSA and the Service Contracts, and a DragonTek company may assign or otherwise transfer its rights, interests and obligations under the Service Contracts to which it is a party, without your consent in the event of a change in control of 50% or more of its equity, the sale of all or substantially all of its assets, or to an affiliated company. In addition, unless otherwise agreed, we may contract with third parties to deliver some or all of the Services, and no such third-party contract shall be interpreted as an assignment. However, we will use commercially reasonable efforts to ensure that any and all such third parties abide by all of the terms of this MSA and any affected Service Contracts, and, except as otherwise agreed, we will remain solely responsible for the fulfillment of all of our obligations. This MSA and the Service Contracts shall be binding upon the parties, their successors and permitted assigns.

#### **16.9. Marketing**

Client hereby grants DragonTek the right to reference Client's name, industry, logo, and URLs in its marketing literature, website, and/or correspondence to potential new customers, so as to identify Client as a customer of DragonTek for marketing purposes.

#### **16.10. Terms of Service**

DragonTek may from time to time make changes in the terms of the Service Attachments that are posted on its website. Following the expiration of sixty (60) days from the date of their posting, updated versions of the Service Attachments shall become effective with respect to:

- a) new Service Contracts entered into after that date;
- b) Service Contracts for a recurring term that continue in effect after that date; and
- c) renewal terms of Service Contracts for a fixed term that commence after that date.

#### **16.11. Survival**

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

#### **16.12. Amendment**

This MSA may be modified or amended only by a writing signed by both parties.

#### **16.13. Governing Law**

This agreement is to be governed by and construed in accordance with the law of the State of New York without giving effect to principles of conflict of laws.

#### **16.14. Severability**

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

#### **16.15. Counterparts, Electronic Signatures**

This MSA or any Service Contract may be executed in separate counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. The parties agree that execution of any document may be by digital signature, PDF copy of a signature or other electronic means. Unless you provide DragonTek with written notice to the contrary, you agree that all notices and other communications concerning this Agreement or any Service Contract may take place by electronic means and that documents may be executed via the electronic signature system, as more particularly described at [www.DragonTektech.com/esign](http://www.DragonTektech.com/esign). An executed copy of this Agreement will be retained by DragonTek in electronic record form and can be reproduced for Client upon request.

#### **16.16. Recording of Conversations / Telephone Calls**

DragonTek and Client (i) consent to the recording of telephone conversations between personnel of the parties in connection with the Services, and (ii) agree, to the extent permitted by applicable law, that recordings may be submitted in evidence in any lawsuit, arbitration or similar proceedings.

#### **16.17. Notifications and Alerts**

Client hereby grants DragonTek the right to utilize Client information to send alerts, notifications, news, and general correspondence related to the Services to Client.

#### **16.18. Entire Agreement**

This MSA sets forth our entire understanding with respect to the subject matter hereof. Each party, along with its legal counsel, has had the opportunity to review this MSA, and no ambiguity will be construed in favor of, or against, either party.

*[Remainder of Page Intentionally Left Blank]*