



# STANDARD TERMS & CONDITIONS

## *Information Technology Systems & Services*



**MANAGEMENT SCIENCE ASSOCIATES, INC.**  
RockPointe Business Park  
400 MSA Drive  
Tarentum, Pennsylvania 15084-2808  
TEL 724.265.6500 • FAX 724.265.5738

## **SERVICES AGREEMENT**

This Services Agreement ("Agreement"), effective as of <Date>, ("Effective Date"), is made between <CLIENT>, with an address of <address>, and Management Science Associates, Inc. ("MSA"), a Pennsylvania corporation, with its principal place of business located at 6565 Penn Avenue, Pittsburgh, PA 15206.

### **RECITALS**

1. <CLIENT> wishes to retain MSA to perform certain services regarding <CLIENT>'s information systems, and MSA desires to provide such services upon the terms and conditions set forth herein.
2. <CLIENT> and MSA (also referred to in this Agreement as "party" or "parties") desire to enter an agreement that sets forth the terms and conditions for certain services to be performed.

NOW THEREFORE, <CLIENT> and MSA, intending to be legally bound, agree as follows:

### **1. DEFINITIONS**

1.1. "Schedules" means those writings negotiated and agreed to by the parties that are attached to this Agreement as an exhibit and that identify and define the Services ordered by <CLIENT> from MSA from time to time, including computer system(s) and equipment, space, schedule for performance, compensation, and any other terms and conditions agreed to by the parties relating to the Services.

1.2. "Service" means the service as described in this Agreement and Schedules, and including, without limitation the provision of people, infrastructure resources, support and access to and the use of MSA's licensed Remote Data Protection software powered by ASIGRA, applications, hardware (including without limitation the Equipment), data center resources and interconnection to other third party networks and any other services provided by MSA in connection with the Remote Data Protection service.

1.3. "Remote Data Protection Software" means the DS-Client software and the DS-User software distributed by MSA and powered by ASIGRA to Customer by means of the End-User License Agreement.

1.4. "Remote Data Protection Technology" means any concepts, inventions, systems, processes, techniques, trade secrets, trade-marks, patents, copyrights, methodologies, know-how, data, tools, templates, technology (including but not limited to the Remote Data Protection Software in executable code and source code forms), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by, or licensed to, MSA and

made available to Customer under the End-User License Agreement and this Agreement.

1.5. "End-User License Agreement" means the Clickwrap license agreement between Customer and MSA that Customer must execute in order to license the Remote Data Protection Software.

1.6. "MSA Technology" means any concepts, inventions, systems, processes, techniques, trade secrets, trade-marks, patents, copyrights, methodologies, know-how, data, tools, templates, technology (including software in executable code and source code), documentation or any other information, data or materials, and any expressions of the foregoing, developed by, owned by MSA prior to the provision of the Services under the Agreement or create at the request of Customer as customizations under the Agreement or any other agreement.

1.7. "Software" means all and any software, including the Remote Data Protections Software, installed on the Equipment.

1.8. "Equipment" means the computer equipment (if any), racking (if any) and associated equipment (if any) used in connection with the provision of the Service and located on Customer's premises for the time being.

1.9. "Customer" means the Customer as defined in the Agreement.

1.10. DS-Client Appliance means any client piece of hardware considered acceptable by MSA.

## **2. PROVISION OF EQUIPMENT AND SERVICES**

2.1. Support. MSA shall provide 24-hour/7 day-a-week Customer telephone support necessary to respond to mutually agreed upon services.

2.2. Project Managers. Each party shall designate a qualified person to act as Project Manager ("Project Manager", sometimes referred to in the Proposals as the "DRAM") to act as such party's representative with respect to all matters relating to this Agreement. The identity of a Project Manager may be changed upon five (5) days written notice to the other party. As an accommodation to <CLIENT>, MSA may assist <CLIENT> in <CLIENT>'s project management with respect to the Services. However, <CLIENT> remains fully responsible for all its obligations, for requirements definitions and all responsibilities under this Agreement.

## **3. PREPARATION FOR SERVICES**

Prior to the commencement or rendition of Services under this Agreement, MSA may notify <CLIENT> of (a) information required by MSA, (b) <CLIENT>'s personnel whose presence or assistance may be required by MSA, and (c) any other resource required by MSA to carry out the Services. At any time during the term of this Agreement, MSA may notify <CLIENT> of additional or different information, personnel, facilities or resources reasonably required by MSA.

#### **4. OTHER <CLIENT> RIGHTS AND RESPONSIBILITIES**

4.1. Content; Accuracy of Information. <CLIENT> shall be responsible for the content, accuracy, and completeness of information provided by <CLIENT> to MSA and for any effect on the Services performed hereunder or the time or expense required to render the Services caused by the content, inaccuracy, or incompleteness of the information provided by <CLIENT> to MSA.

4.2. Required Consents. <CLIENT> agrees to obtain from its vendors any consents relating to applicable third party software, hardware and associated equipment, or other facilities and services that are necessary.

4.3. Business needs. <CLIENT> is responsible for assuring that its recovery requirements are sufficiently met by the contractual Services.

4.4. Cooperation. <CLIENT> shall ensure that its personnel and contractors, as applicable, cooperate with MSA and comply with all reasonable requests made by MSA.

#### **5. MSA RESPONSIBILITIES**

5.1. MSA shall provide the Services set forth in this Agreement and in any attached Schedule.

5.2. MSA may vary the technical specifications of the Equipment, Software and/or Service provided that this does not materially impair the Service.

5.3. MSA may not make any independent representations or warranties with respect to the Equipment. Any third party warranties are the exclusive remedies of Customer with respect to such Equipment.

5.4. If, in MSA's sole discretion, MSA judges that it is reasonable to do so for the purposes of repair, maintenance or improvement of the Equipment, Software and/or Service or any part thereof, MSA reserves the right to suspend provision of the Service or any part thereof for the purpose of carrying out or implementing such repair, maintenance or improvement, provided that in the event of such suspension MSA will use its reasonable endeavours to ensure that reasonable notice is given to Customer and minimum disruption to the Service is caused.

5.5. MSA may also suspend the Service or any part thereof or terminate the Agreement without liability on its part if the provision of the Service or the relevant part of the Service is prohibited by law, statute, legislation, order, regulation or guidance issued by a court of law, governmental body or regulatory body.

#### **6. CUSTOMER OBLIGATIONS**

6.1. Customer must take reasonable care of the Equipment and must not damage it, tamper with it, move or remove it or attempt to repair it. Customer shall be responsible for all damage to or loss of the Equipment and/or the Software whilst on Customer's premises, other than loss or damage caused by

MSA's employees or contractors. Customer must put in place and maintain insurance in respect of the Equipment against loss or damage (including, without limitation, accidental loss or damage) with a reputable insurer for the full replacement value of the Equipment and Customer shall on demand by MSA produce evidence to MSA that such insurance is being maintained and is valid.

6.2. On termination of the Agreement, Customer must allow MSA and its employees and contractors reasonable access to its premises to remove the Equipment.

6.3. Customer shall not remove any sign, label, or other marking on the Equipment identifying that MSA is the owner thereof. Customer shall not acquire any rights of ownership in the Equipment or the Software by virtue of the Agreement and shall not have, by operation of law or otherwise, any lien or other similar right over or in relation to the Equipment or any equipment at MSA's data centers.

6.4. Customer undertakes not to use the Service for any illegal or unlawful purpose or in a manner which constitutes a violation or infringement of the rights of any other party.

6.5. Customer shall not use the Service and/or the Equipment to store, reproduce, transmit, communicate or knowingly receive any material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy, trademarks or any other rights of any third party, or other than in conformance with any acceptable usage policies that MSA have agreed with connected network providers.

6.6. **Customer shall be responsible** for securely storing, managing and deploying when required any **encryption keys or passwords** which are generated to protect Customer data and which may be required from time to time to ensure continuity, upgrading and reconfiguration of the Equipment and/or Service and in particular, but without limitation, restoration of data.

6.7. Customer must allow persons authorized by MSA to enter Customer's premises at all reasonable times for the purpose of maintaining, repairing, improving, upgrading, substituting or replacing the Equipment and/or the Software.

6.8. MSA shall normally carry out installation work during Customer's usual working hours but may, on reasonable notice, require Customer to provide access at other times. At Customer's request, MSA may agree, exceptionally, to work outside MSA's usual working hours.

6.9. Customer shall not, and shall not permit any third party, to (a) distribute or allow others to distribute copies of the Remote Data Protection software powered by ASIGRA or any part thereof to any third party, (b) tamper with, remove, reproduce, modify or copy the Remote Data Protection software powered by ASIGRA or any part thereof, (c) provide, rent, sell, lease or otherwise transfer the Remote Data Protection software powered by ASIGRA or any copy or part thereof or use it for the benefit of a third party, or (d) reverse assemble, reverse

compile or reverse engineer the Remote Data Protection software powered by ASIGRA or any part thereof, or otherwise attempt to discover any Remote Data Protection software powered by ASIGRA source code or underlying proprietary information except as may be permitted by law and which rights cannot be excluded.

6.10. Customer shall not allow any third party to use the Equipment or the Service. If Customer breaches this Section MSA may, without prejudice to its other rights including the right to terminate the Agreement, require Customer to pay to MSA on demand such set-up costs and 75% of the Monthly Charges which MSA would have charged the third party had it entered into an agreement directly with the third party for the provision of equipment and services substantially the same as the Equipment and the Service for a minimum period of three years.

6.11. Customer shall pay the Monthly Charges, Installation Charges, and other charges in accordance with Section 6 herein.

6.12. The Customer shall at all times maintain all registrations and comply with all applicable Laws as may be necessary for its use of the Equipment and Service.

## **7. PAYMENTS.**

7.1. Payment for Services. In consideration of the Services performed under this Agreement, <CLIENT> agrees to pay MSA the fees set forth in Schedule A-2, attached hereto and incorporated herein.

7.2. Taxes. <CLIENT> agrees to pay all present or future sales, excise, use, value-added or other taxes or duties levied on payments made pursuant to this Agreement.

7.3. Payment Due Dates. All amounts owing to MSA under this Agreement shall be payable within forty-five (45) days of the date of invoice from MSA. Invoices remaining unpaid thereafter shall bear interest at the rate of one and one half percent (1.5%) per month, or the maximum rate allowed by law, whichever is less.

## **8. TERM AND TERMINATION OF AGREEMENT**

8.1. Term. This Agreement shall commence on the Effective Date and shall terminate as specified in Schedule A-1.

8.2. Termination for Default. Subject to Section 8.3, either party may terminate this Agreement upon the occurrence of one or more of the following events, each of which shall constitute an Event of Default under this Agreement:

8.2.1. If the other party makes any representation that is materially misleading or inaccurate; and

8.2.2. If failure by the other party to comply with any material covenant, agreement, obligation, term or condition contained herein; and

8.2.3. If the other party ceases to do business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay debts as they become due, files a petition in bankruptcy (except in connection with a reorganization under which the business of such party is continued, and performance of all its obligations under this Agreement is required) or appoints a receiver, acquiesces in the appointment of a receiver or trustee or liquidator, for it or any substantial part of its assets or properties.

8.3. Right to Cure. An Event of Default by either party shall not be cause for termination if the defaulting party cures such default (if the default is susceptible to cure) within thirty (30) days of receipt of written notice of default from the other party.

8.4. Rights Upon Termination. Upon the occurrence of an uncured Event of Default, the non-breaching party may, except as limited by this Agreement, seek all legal and equitable remedies to which it is entitled. The remedies set forth herein shall be deemed cumulative and not exclusive, and may be exercised by the non-breaching party, successively or concurrently, in addition to any other remedies available to it. Subject to the terms in Schedule A-1 hereto, upon termination of this Agreement for any reason, including, without limitation, expiration of its terms, all amounts owing to MSA hereunder shall become immediately due and payable.

8.5. Duties Upon Termination. Upon termination of this Agreement, each party shall either (a) return to the other party all property in its possession belonging to the other party, or (b) otherwise dispose of property in a manner authorized in writing by the other party and acknowledge same in writing.

## **9. CHANGE ORDERS**

9.1. No change to this Agreement or any Schedules shall be made unless agreed to by the parties, in writing.

9.2. <CLIENT> may propose change orders to MSA provided the proposed change is in writing and submitted to the MSA project manager. Any proposed changes shall be promptly reviewed.

9.3. MSA shall promptly prepare an impact statement which shall address the following:

- a. Potential additional costs or savings;
- b. Description of work, already performed by MSA, that shall no longer be necessary;
- c. Estimate of time involved in implementing the change;
- d. Effect of change.

9.4. <CLIENT> shall pay MSA the reasonable charges for reviewing any proposed change and preparing the impact statement, regardless of whether or not the change is implemented.

9.5. Should <CLIENT> authorize MSA to proceed with a requested change in accordance with subsection 8.3, this authorization shall constitute an amendment to the Schedule.

## **10. DISPUTES AND RESOLUTIONS**

The parties shall attempt to settle all disputes, claims, or controversies arising under or in connection with this Agreement by meeting and discussion by authorized representatives prior to implementation of suit.

## **11. WARRANTIES AND DISCLAIMERS OF WARRANTY**

EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, MSA MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, WHETHER BY OPERATION OF LAW, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **12. RELATIONSHIP BETWEEN THE PARTIES**

12.1. Neither party shall hold itself out to be an employee, representative, franchisee, distributor, servant, or agent of the other party, except as expressly set out in the Agreement, and nothing in the Agreement or the Schedules shall be deemed to create a relationship of employment, partnership, distributorship, representation, franchise, master/servant, or agency between them. Except as expressly set out in this Agreement, neither party shall have any authority, expressed or implied, to act for, commit, or assume any obligation or responsibility on behalf of the other party.

12.2. MSA is an independent contractor for the performance of Services under this Agreement. MSA shall continue to be the sole employer or principal of any person providing Services under this Agreement and shall perform all the duties and obligations of an employer under federal, state, and local laws and regulations. Under no circumstances shall one party or any employee, representative, or agent of a party be construed to be an employee, representative, or agent of the other party for any purpose whatsoever, including, without limitation, employment-related taxes or insurance and related record-keeping obligations and other record-keeping obligations under federal or state health, safety, and environment and worker's compensation laws and regulations.

## **13. INDEMNIFICATION AND LIMITATION OF LIABILITY**

13.1. Each party (herein a "breaching party") will be liable to the other party for any direct damages caused by any breach of this Agreement, negligence or willful misconduct of the breaching party with respect to the use of the recovery facilities, property of the other party, or any other matter arising from this

Agreement. The breaching party will indemnify and hold harmless the other party against any claims, actions, damages, fees, expense, or liabilities that might arise based on allegations of such direct damages.

13.2. EXCEPT FOR BREACHES OF CONFIDENTIALITY AND INDEMNITY, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OR INACCURACY OF DATA, OR LOSS OF USE DAMAGES, EVEN IF THE ALLEGED BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF UNDER APPLICABLE LAW SUCH DAMAGES WOULD NOT BE CONSIDERED SPECIAL OR CONSEQUENTIAL DAMAGES.

#### **14. CONFIDENTIALITY**

The parties understand that from time to time confidential information of one party may be transferred to the other party. Each party shall hold the other party's confidential information in strict confidence utilizing the same standard of care utilized to protect one's own confidential information, which in no event, shall be less than that which is commercially reasonable. Without limiting the foregoing, confidential information includes a party's data systems and software, recovery plans, the configuration and operations within the recovery facility, and the terms of this Agreement. The foregoing obligations of confidentiality and non-use shall not apply to information disclosed by one party: (a) that is known to the other party prior to such disclosure and not obtained or derived, directly or indirectly, from the disclosing party; (b) that is or becomes public or available to the general public or generally known in the disclosing party's industry otherwise than through the other party's act or default; or (c) that is obtained from a third party who is lawfully in possession of same and which information is not subject to any confidential or non-use obligations owed to the disclosing party or any third party.

#### **15. COOPERATION**

MSA and <CLIENT> acknowledge that good faith cooperation between the parties, including, without limitation, the timely provision of and access to each other's personnel, facilities, or equipment and complete information from each other are essential to satisfactory and timely performance of the Services, and the parties accordingly agree to use their best efforts to cooperate with each other during performance of this Agreement and any Schedule. <CLIENT> shall timely provide MSA with the information, personnel, and other facilities required by MSA to carry out the Services. <CLIENT> shall promptly inform MSA of any change in information previously requested by, or provided by, <CLIENT> to MSA, or of any change in circumstances that might change or affect the rendition of Services by MSA.

**16. COMPLIANCE WITH LAWS**

Each party shall comply with all applicable foreign, federal, state, and local laws and regulations, including, without limitation, import and export laws and regulations, relating to performance of this Agreement or the Schedule entered into during the term of this Agreement.

**17. ORDER OF PRECEDENCE AND INCORPORATION.**

THE AGREEMENT BETWEEN THE PARTIES IS COMPRISED OF THE FOLLOWING DOCUMENTS;

- A. THESE TERMS AND CONDITIONS;
- B. SERVICE LEVEL AGREEMENT;
- C. SERVICE DESCRIPTION;
- D. ALL SCHEDULES AND ATTACHMENTS TO THE ABOVE LISTED DOCUMENTS;

In the event of a conflict between any of the above documents and schedules and attachments, the following is the order of precedence:

- A. Any schedule or attachment;
- B. Terms and conditions;
- C. Service Level Agreement;
- D. Service Description;

## 18. NOTICES

All notices required by this Agreement or the Schedules shall be sufficient if in writing and effective when personally delivered, delivered by email where there is either proof of sending or notification of receipt, or delivered via overnight courier or upon receipt when mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

**If to <CLIENT> (“<CLIENT>”):**

<name>  
<address1>  
<address2>  
<city, state + zip code>

With a copy to <COMPANY>:

<name>  
<address1>  
<address2>  
<city, state + zip code>

**If to MSA:**

MSA, Inc.  
6565 Penn Avenue  
Pittsburgh, PA 15206-4490  
Attention: .Cathy A. Opsitnick

**With a copy to:**

Jon Hogue, Esq.  
Murray, Hogue & Lannis  
3400 Gulf Tower  
Pittsburgh, PA 15219

Either party may change the above information by giving notice to the other party pursuant to this Section.

## 19. SURVIVAL

**The parties' obligations related to payment of fees, ownership of property, confidentiality, limitation of liability, warranty and indemnification shall survive termination of this Agreement. This Agreement shall inure to the benefit of each party's successors and permitted assigns.**

## **20. ASSIGNMENT**

20.1. This Agreement is not assignable except in the case of a merger or similar corporate event, and then the Agreement may be assigned upon the written consent of the other party, which consent shall not be unreasonably withheld.

20.2. Any permitted assignment shall be effective only if the assignee or successor-in-interest expressly consents in writing to be bound by and to assume the performance of all terms and conditions of this Agreement, and takes assignment subject to all rights, remedies, and privileges under this Agreement.

20.3. Except as provided in this Section, any attempted assignment by either party shall be null and void.

## **21. GOVERNING LAW**

This Agreement shall be interpreted and construed under the laws of the Commonwealth of Pennsylvania. The parties agree that this Agreement shall not be governed by the United Nations Convention on International Sale of Goods or the Uniform Computer and Information Technology Act, the application of which is expressly excluded.

## **22. ENTIRE AGREEMENT**

This Agreement, including its constituent parts, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written or oral negotiations, commitments, agreements, and understandings between the parties.

## **23. MODIFICATIONS TO AGREEMENT**

This Agreement shall not be modified, amended, canceled, or in any way altered, nor may it be modified by custom and usage of trade or course of dealing, except by a written document signed by a duly authorized representative of each party, which written document is not a Schedule. The section headings are for convenience only and shall not in any way limit the scope or affect the interpretation of any provision of this Agreement. A waiver is effective only if in writing and signed by the waiving party. A written waiver of default shall not operate as a waiver of any other default or of the same default in the future. Nothing in this Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representations to the contrary.

## **24. FORCE MAJEURE**

Neither party shall be liable to the other for any delay or failure to perform any of the Services set forth in the Schedules or obligations set forth in this Agreement due to causes beyond its reasonable control. The delaying party shall immediately notify the other party, both verbally and in writing, of the delay and the cause thereof, and shall take all reasonable steps to mitigate, avoid and eliminate the cause of the delay and to resume

performance as soon as possible. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

**25. DUPLICATE ORIGINALS**

This Agreement shall be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

**IN WITNESS WHEREOF**, each of the parties has caused this Agreement to be executed by a duly authorized representative.

**<CLIENT>**  
**(“<CLIENT>”)**

**MANAGEMENT SCIENCE**  
**ASSOCIATES, INC. (“MSA”)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Title

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