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### **McNutt Consulting Services, Inc., Service Agreement**

**This Subscriber Agreement (the "Agreement") states the terms and conditions under which you ("you" or "customer") may use the McNutt Consulting Services, Inc. LeapStream Service (the "Service"). By signing the Agreement, you are indicating your agreement to be bound by all of the terms, conditions, notices, and acknowledgements contained in this Agreement. Read this Agreement carefully and completely as it sets forth your rights and obligations with respect to your use of the Service.**

**Acceptance of Agreement.** McNutt Consulting Services, Inc. d.b.a. MCS Office Technologies, ("MCS") provides its Service to Customer conditioned upon Customer's acceptance, in its entirety, of the terms and conditions contained in this Agreement. MCS may, in its sole discretion, change, modify, add, or remove portions of this Agreement, and the Service provided hereunder, at any time. MCS will notify Customer of any such changes by posting the modified Agreement on the MCS Web site: [www.mcsot.com/leapstream](http://www.mcsot.com/leapstream) (the "MCS Site"), or sending notice via email, postal mail, or other means to Customer. Customer's continued use of the Service following notice of such change shall be deemed to be Customer's acceptance of any such modification. If Customer does not agree to any such modification, Customer must immediately stop using the Service and notify MCS that Customer is terminating this Agreement in accordance with the notice provisions contained herein.

**Scope of this Agreement.** The Service may be upgraded from time to time and Customer acknowledges that MCS may install such upgrades at any time. Unless explicitly stated otherwise, any new features that augment or enhance the Service shall be subject to the terms, conditions, and notices contained in this Agreement.

**Service.** Subject to the terms and conditions of this Agreement, MCS agrees to provide the Service in accordance with the selected service plan and term as set forth in the Service Request application (as defined in Addendum A).

#### **I. Equipment, Service, and Installation**

(a) **Required Equipment.** Customer understands and agrees that the Service requires certain equipment required to be provided by the Customer (the "Customer Equipment") such as a personal computer with an Ethernet jack and an appropriate operating system and a Category-5 cable (to connect Customer's computer to wall jack) as well as certain equipment that will be provided by MCS or its designee such as an antenna, Category-5 cable (to connect antenna to wall jack), and wall jack (the "MCS Equipment"). Customer represents that it owns the Customer Equipment or otherwise has the right to use the same in connection with the Service. It is the responsibility of the Customer to provide and maintain all equipment that is not provided by MCS; including Customer Ethernet cabling, and any other networking equipment. It is Customer's responsibility to make sure that all Customer Equipment is working properly and to troubleshoot and resolve problems with such equipment if it is not functioning properly. The Customer is provided with MCS Equipment as part of their monthly subscription fees. It is the responsibility of MCS to make sure that MCS Equipment is working properly.

(b) **Non-Recommended Configuration.** Customer acknowledges and agrees that MCS has given Customer access to the minimum computer hardware requirements for efficiently operating the Service. If Customer does not comply with the minimum computer hardware requirements, Customer agrees that (i) Customer will not be entitled to Customer support relating to any issues other than the quality of the signal delivered to Customer's antenna and wall jack, and (ii) the following limitations of liability shall apply: MCS DOES NOT ASSUME ANY LIABILITY WHATSOEVER FOR ANY DAMAGE OR FAILURE TO CUSTOMER EQUIPMENT OR CUSTOMER'S INABILITY TO ACCESS OR USE THE SERVICE. The foregoing limitation of liability is in addition to and shall not limit any other limitation of liability set forth in the remainder of this Agreement.

(c) **Access to Customer's Premises.** Customer authorizes MCS and its employees, agents, contractors, and representatives to enter Customer's premises (the "Premises") in order to install, maintain, inspect, repair, and if necessary remove the MCS Equipment. All such services will be conducted at a time agreed to with Customer. If Customer is not the owner of the Premises, upon request, Customer will supply MCS with the owner's name and address, evidence that Customer is authorized to grant access to the Premises on the owner's behalf, and (if needed) written consent from the owner of the Premises to install the necessary MCS Equipment. MCS assumes no responsibility for any damage, personal or property, to the Premises or the Customer Equipment as a result of the installation or removal of the MCS Equipment. In the event Customer elects to remove or move any MCS Equipment, Customer assumes all responsibility for any damage, personal or property, caused by such action.

(d) **Relocating Equipment.** Customer shall not relocate the MCS Equipment as this may affect Customer's ability to receive Service. If Customer decides to move locations, Customer will contact MCS for additional information concerning the procedures for transferring the MCS Equipment and Service to Customer's new location. If the Service is not available to Customer at their new location, then the Agreement shall terminate and Customer shall comply with the termination provisions of this Agreement. If the Service is available at the new location, upon request by Customer and approval by MCS, MCS may relocate the MCS Equipment to Customer's new location at a time agreed to with Customer. Customer acknowledges that Customer will be billed for the removal and reinstallation of the MCS Equipment at MCS's then current hourly rates plus materials. In all cases, Customer shall notify MCS as provided herein.

(e) **Replacement or Repair of MCS Equipment.** Customer shall be solely responsible for the cost of replacement or repair of any lost, stolen, damaged, sold, transferred, leased, encumbered, or assigned MCS Equipment or part thereof, together with any incidental costs incurred by MCS relating to the replacement, repair, or installation of the MCS Equipment.

(f) **Back-up Requirements.** The installation, use, inspection, maintenance, repair, and removal of the MCS Equipment may result in service outage or potential damage to Customer's computer and other Customer Equipment. If Customer does not back up all existing computer files by copying them to another storage medium prior to such activities, Customer understands and accepts the associated risks of such a decision. IN ANY EVENT, EXCEPT AS OTHERWISE SET FORTH HEREIN, MCS SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OR DESTRUCTION OF THE CUSTOMER'S COMPUTER, PERIPHERALS, SOFTWARE, OR DATA.

(g) **Customer Equipment Liability.** MCS has no liability whatsoever for any damage, loss, or destruction of Customer Equipment, including loss or destruction of any software, files, or data. This includes harm resultant from any computer upgrades Customer must perform for service eligibility, including the installation of an Ethernet Network Interface Card.

(h) **Installation.** MCS or its agents will install the MCS Equipment. The Customer will be billed separately for installation according to the selected billing plan.

## II. Payment Terms

(a) **Service Fees.** Customer agrees to pay the monthly service fees (the "Service Fees"), plus applicable franchise fees and taxes, as set forth in the current price list (the "Price List") effective at the time of installation, as modified from time to time in accordance with the terms of this Agreement. The initial Service Fee, together with applicable franchise fees and taxes, will be charged to Customer at the time of installation. Thereafter, the Service Fee together with applicable franchise fees and taxes will be billed to Customer. The Service Fee together with applicable franchise fees and taxes will be billed at the beginning of the applicable service period, on the day of the month that the Customer installation was completed (the "Anniversary Date"). In the event that the Customer's Anniversary Date does not fall within any given month, the customer will be billed on the last day of that month. Current prices for MCS's Service may be obtained by emailing us at [sales@mcsot.com](mailto:sales@mcsot.com) or by calling us at (800) 627-6384.

**MCS reserves the right to change prices and institute new fees at any time upon notice to Customer by posting new prices on the MCS Web site or by sending notice via email or postal mail.**

(b) **Installation Charges.** The installation charge, any additional installation equipment required plus applicable franchise fees and taxes, is as set forth in the Price List. At MCS's option, the installation charge, together with any additional equipment required and applicable franchise fees and taxes, will be charged to Customer

(i) at the time of installation, or (ii) in accordance with MCS's then current billing policies.

(c) **Agreement to Pay.** For the term chosen by Customer in the Service Request application (see Addendum A), Customer agrees to pay all MCS Equipment fees, installation charges, maintenance fees and Service Fees, including applicable franchise fees and taxes. Customer hereby authorizes MCS to charge Customer's debit or credit card, invoice customer, or use other billing option in accordance with MCS's then current billing policies, for all such fees, charges and taxes. Customer agrees to pay for MCS Service through the end of the term or in accordance with MCS's then current billing policies. Further, Customer hereby authorizes MCS to charge Customer's debit or credit card for all fees related to termination, including pay out of the fees owed to MCS for the remainder of the selected term of the Agreement, equipment charges and any and all other fees related to termination to which the Customer is subject pursuant to the terms of this Agreement.

(d) **Late Payments; Failure to Pay.** If any payment due to MCS is not received in a timely manner, an administrative charge may be assessed and the Service may be disconnected. If the Service is disconnected, Customer may be required to pay a reconnect fee in addition to all past due charges before the Service is reconnected. The administrative charge is intended to be a reasonable advance estimate of MCS's costs resulting from Customer's late payments and non-payments. In the event of a disconnection of Customer's Service hereunder, Customer will remain liable for all Service Fees and other fees due through the end of the term selected in the Service Request application.

(e) **Additional Charges.** The Service will allow Customer to access the Internet, online services, and other information, and provides Customer access to email. Customer acknowledges that Customer may incur charges while using the Service in addition to those billed by MCS. For example, charges may be incurred as a result of accessing certain online services or purchasing or subscribing to certain other offerings. Customer agrees that all such charges, including all applicable taxes, are the sole responsibility of Customer.

(f) **Billing Errors.** Subject to applicable law, Customer must notify MCS of any billing errors or other requests for credit within 90 days of when Service is provided. MCS will not be responsible for disputes in billing not brought within this time.

## III. Unforeseen Interruption of Services

(a) **Notification.** To the extent possible, MCS shall notify Customer as soon as it is practicable in the event that MCS is required to interrupt, either partially or fully, the Services being provided by MCS to Customer. Such interruptions shall not be deemed a default hereunder.

(b) **Refunds.** Except as expressly set forth in or contemplated by this Agreement, in the case of refund for lost Services, credit will be issued only for periods of lost Service greater than twenty four (24) continuous hours. In the event of lost Services greater than 24 continuous hours, not including lost Service due to the failure of Customer Equipment, unauthorized Customer relocation of MCS Equipment, through any other fault of Customer, or due to the failure of any upstream network outage, MCS will prorate the refund for the lost Service time in respect to the Customer's monthly Service Fees. No refund will be given for any lost time under 24 continuous hours. Customer is not eligible for any refunds if Customer is in violation of any of the terms of this Agreement.

(c) **Repair.** MCS will use commercially reasonable efforts to (at MCS's option), repair and/or replace any MCS Equipment damaged due to normal wear. If determined by MCS, that (i) a repair was not related to the MCS Equipment, or (ii) MCS Equipment was not damaged by normal wear, then the Customer will be billed at MCS's then current hourly rates plus materials. MCS will not be responsible for the repair or replacement of any Customer Equipment or any interruption of Service due to failure of Customer Equipment.

(d) **Providers.** MCS will not be held responsible for the external Internet connections provided from third parties.

(e) **Relocation.** In the event the Customer moves or relocates to a location where MCS service is not available, Customer is responsible to fulfill the terms of this Agreement.

## IV. Information Use

(a) **Subscriber Privacy Notice.** Customer agrees that MCS may from time to time collect and disclose information as described in MCS's Privacy Policy (the "Privacy Policy"). The Privacy Policy contains information pertaining to Customer's privacy rights provided under federal law. Customer is urged to read the Privacy Policy carefully and in its entirety. MCS may, in its sole discretion, change, modify, add, or remove portions of the Privacy Policy, and the Service provided hereunder, at any time. MCS will notify Customer of any such changes by posting the modified Privacy Policy on the MCS Site, or sending notice to Customer via email, postal mail, or other means. Customer's continued use of the Service following notice of such change shall be deemed to be Customer's acceptance of any such modification. If Customer does not agree to any such modification, Customer must immediately stop using the Service and notify MCS that Customer is terminating the Privacy Policy and this Agreement. If Customer does not agree to the new policies, Customer's sole remedy is to terminate this Agreement and comply with the terminations provision herein.

(b) **Monitoring the Service.** MCS has no obligation to monitor the Service, but may do so and, subject to the Privacy Policy, disclose information regarding Customer's use of the Service if MCS, in its sole discretion, believes that it is reasonable to do so, including to: satisfy laws, regulations, or governmental or legal requests; operate the Service properly; or protect itself and its Customers. MCS may immediately remove Customer's material or information from MCS's servers, in whole or in part, which MCS, in its sole and absolute discretion, determines to infringe another's property rights or to violate this Agreement or the Privacy Policy.

## V. Prohibited Uses of the Service

Customer shall not use the MCS Equipment or the Service to, directly or indirectly:

- (a) participate in any unlawful purposes. Use of the MCS Equipment or Service for transmission or storage of any information, data, or material in violation of any U.S. federal, state, or local regulation or law is prohibited. This includes, but is not limited to, posting or disseminating content which is obscene, unlawful, threatening, defamatory, or which infringes the intellectual property of any person;
- (b) post, transmit, or disseminate objectionable information, including, without limitations, any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability, or otherwise violate any local, federal, or international law, order, or regulation;
- (c) access any other person's computer or software without the knowledge and consent of such person;
- (d) upload, post, publish, transmit, reproduce, create derivative works of, or distribute in any way, information, software, or other material obtained through the Service which is protected by copyright or other proprietary right, without obtaining permission of the owner;
- (e) alter, modify, or tamper with the MCS Service or permit any other person to do the same that is not authorized by MCS;
- (f) restrict, inhibit, or otherwise interfere with the ability of any other person to use or enjoy the MCS Equipment or the Service, including, without limitation, posting or transmitting any information or software which contains a virus or other harmful feature; or generating levels of traffic sufficient to impede others' ability to send or retrieve information;
- (g) inhibit or have the potential to inhibit the ability of any other person to use the Service by serving or attempting to serve faulty IP addresses to other MCS customers. MCS may deny service to Customer until the problem is resolved;
- (h) knowingly disrupt the Service;
- (i) resell the Service or otherwise charge others to use the Service. The Service is for personal use only and Customer agrees not to use the Service for operation as an Internet Service Provider or for any other business enterprise in competition with the Service;
- (j) connect the antenna to any computer outside of the Customer's Premises unless purchased and licensed by MCS as a portable computer;
- (k) host a server or application (including HTTP, Web site, FTP, domain, mail, peer-to-peer file sharing, VPN hub, ASP, or any other application or server deemed comparable by MCS) on or through the Service if on a Residential, SOHO, or Business Pro account. SOHO and Business accounts may host applications with prior notification to MCS;
- (l) attempt to login, access, or attack any of MCS's equipment or network, including radio and network equipment;
- (m) assist (release proprietary software and information) unauthorized users to gain access to MCS's network; or
- (n) open, tamper with or attempt to repair MCS Equipment

MCS reserves the right to restrict or block certain activities or immediately terminate this Agreement and the Service (i) if Customer engages in any of the activities listed above, (ii) if MCS receives an appropriate notice or request under the Digital Millennium Copyright Act, (iii) if necessary to comply with any law, regulation, rule or judicial or regulatory order, or (iv) if Customer uses the MCS Equipment or Services in a way which is contrary to any other MCS policy. Copies of such policies are available on the MCS Web site or by calling Customer Support at (800) 627-6384. This Section shall not in any way limit MCS's rights of termination pursuant to this Agreement. Customer assumes the risk and agrees to indemnify and hold harmless MCS against all claims and expenses (including reasonable attorney fees) resulting from Customer engaging in any of the activities listed above. This provision will survive termination of this Agreement.

## VI. Service Characteristics

(a) **Service Class.** Class defines MCS's services.

(1) **Residential.** Residential allows up to four (4) devices. No hosting is allowed. This service is behind a NAT router. Some services require a public IP address to allow inbound connections. These services will not work on this service class. LAN networking protocols such as Appletalk, Microsoft Windows Networking, and Novell Netware are prohibited from working on MCS's network beyond the Customer's point of demarcation. P2P file sharing applications are prohibited and ICMP services (ping and trace route) are not allowed. This service class allows 7GB of data transfer per month. Any overage may be assessed at a \$.03 per MB fee.

(2) **SOHO.** SOHO allows four (4) devices. Hosting is allowed with prior notification to MCS. One (1) public IP address is provided. This service is behind a NAT router. LAN networking protocols such as Appletalk, Microsoft Windows Networking, and Novell Netware are prohibited from working on MCS network beyond the Customer's point of demarcation. P2P file sharing applications are prohibited and ICMP services (ping and trace route) are not allowed. This service class allows 35GB of data transfer per month. Any overage may be assessed at a \$.01 per MB fee.

(3) **Business Pro.** Business Pro allows unlimited Customer-supplied devices. Hosting is allowed. Two (2) public IP addresses are provided. This service is not behind a NAT router. This plan allows 60GB (1.5MB speed service plan) or 80GB (2MB speed service plan) of data transfer per month. Any overage may be assessed at a \$.01 per MB fee.

(b) **Eavesdropping.** MCS's facilities are used by numerous Service subscribers. As a result, there is a risk that Customer could be subject to "eavesdropping." This means that other Service subscribers may be able to access and monitor Customer's use of the Service. This risk of eavesdropping exists not only with MCS's facilities, but also on the Internet and other services to which access is provided as part of the Service. Because of this risk, any sensitive or confidential information sent by Customer is sent at the Customer's sole risk, and MCS shall have no liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such actions by Customer.

(c) **FTP/HTTP Service Set Up.** Customer should be aware that when using the Service to access the Internet or any other online network or service, there are certain applications, such as FTP (File Transfer Protocol) server or HTTP (Hyper Text Transfer Protocol) server, which may be used to allow other Service users and Internet users to gain access to Customer's computer. If Customer chooses to run such applications, Customer should take the appropriate security measures. MCS shall not have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings resulting from, arising out of, or otherwise relating to the use of such applications by Customer, including without limitation, damages resulting from others accessing Customer's computer.

(d) **Security, and File and Print Sharing.** The Service functions as a Local Area Network (LAN) in that each Customer is a node on the network. As such, users outside the Customer's home may be able to access the Customer's computer. It is important that the Customer take appropriate steps to protect their information on the computer from being accessed by others. To this end, we encourage Customers to acquire a firewall, utilize virus protection, and implement other security measures the Customer deems necessary to protect the integrity of the data on Customer's computer. In addition, some software includes capabilities that permit other users across a network, such as the Service and the Internet, to gain access to the Customer's computer and to the software, files, and data stored on the computer. Operating systems can include file sharing and print sharing capabilities which, when enabled, will permit other users to gain access to the Customer's computer even if the Customer

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is not using the Service. Notwithstanding the foregoing recommendations, Customer hereby acknowledges and agrees that the Customer's use of the Service is at the Customer's own risk, and MCS shall not have any liability whatsoever for any claims, losses, actions, damages, suits, or proceedings arising out of or otherwise relating to such use by the Customer.

(e) **Permission Grant.** MCS grants to you permission to use the MCS Equipment (antenna, radio modem, Category-5 cable, wall jack), but does not grant permission to:

(1) attempt to login/reconfigure/attack the MCS Equipment;

(2) open MCS Equipment;

(3) remove any proprietary notices or labels on the MCS Equipment;

(4) modify, translate, reverse-engineer, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the MCS Equipment; or

(5) rent, sell or otherwise transfer the MCS Equipment (except to the extent assignable pursuant to the terms of this Agreement).

(f) **Customer Obligations.** In consideration of Customer's use of the Service, Customer agrees to:

(1) provide true, accurate, current, and complete information as prompted by the Service's registration or member sign-up form (such information being the "Registration Information");

(2) maintain and promptly update the Registration Information to keep it true, accurate, and complete;

(3) refrain from using the Service for any purpose that is unlawful or prohibited by this Agreement. If Customer provides any information that is untrue, inaccurate, not current, or incomplete, or if MCS has reasonable grounds to suspect that such information is untrue, inaccurate, not current, or incomplete, MCS has the right to suspend or terminate Customer's account and refuse any and all current or future use of the Service (or any portion thereof); and

(4) Customer agrees to provide a suitable environment for all indoor MCS Equipment to meet its operating environment requirements (example: temperature and humidity).

(g) **Eligibility for Use of the Service.** The Service is available only to individuals and entities who can form legally binding contracts under applicable law and their permitted agents and assigns (i.e., family members, friends, etc.). Customer is responsible for the use of the Service by anyone other than Customer at all times without exception.

MCS or any of its parents, subsidiaries, affiliates, agents, or assigns, may refuse the use of, and participation in, the Service to anyone at any time, in its sole discretion.

## VII. Conduct

(a) Customer understands that all information, data, text, software, music, sound, photographs, graphics, videos, messages, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from which such Content originated. Customer is entirely responsible for all Content that Customer uploads, posts, emails, or otherwise transmits via the Service. MCS does not control the Content posted via the Service and, as such, does not guarantee the accuracy, integrity, or quality of such Content. Customer understands that by using the Service, Customer may be exposed to Content that is offensive, indecent, or objectionable. Under no circumstances will MCS be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of any Content posted, emailed, or otherwise transmitted to Customer via the Service.

(b) Customer agrees not to use the Service to: (i) upload, post, email, or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; (ii) harm minors in any way; (iii) impersonate any person or entity, including, but not limited to, a MCS representative, forum leader, guide or host, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity;

(iv) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Service; (v) upload, post, email, or otherwise transmit any Content that Customer does not have a right to transmit under any law or under any contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (vi) upload, post, email or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (vii) upload, post, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; (viii) upload, post, email, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (ix) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the Service are able to type, or otherwise act in a manner that adversely affects other users' ability to engage in real time exchanges; (x) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies, or regulations of networks connected to the Service; (xi) intentionally or unintentionally violate any applicable local, state, federal, or international law, including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange, including, but not limited to, the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, and any regulations having the force of law; (xii) "stalk" or otherwise harass another; or (xiii) collect or store personal data about others.

(c) Customer acknowledges that MCS does not pre-screen Content, but that MCS and its designees shall have the right (but not the obligation) in their sole discretion to refuse, restrict or move any Content that is available via the Service. Without limiting the foregoing, MCS and its designees shall have the right to remove any Content that violates this Agreement or is otherwise objectionable, in MCS's sole discretion. Customer agrees that Customer must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content. In this regard, Customer acknowledges that Customer may not rely on any Content created by MCS or submitted to MCS.

(d) Customer acknowledges and agrees that MCS may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (i) comply with legal process; (ii) enforce this Agreement; (iii) respond to claims that any Content violates the rights of third parties; or (iv) protect the rights, property, or personal safety of MCS, its users, and the public.

(e) Customer understands that the technical processing and transmission of the Service, including Customer's Content, may involve

(i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

(f) **Content.** It is solely Customer's responsibility to evaluate the accuracy, completeness, and usefulness of all opinions, advice, services, and other information provided through the Service. MCS does not endorse or represent the reliability, accuracy, or quality of any information, goods, services, or products displayed or advertised on the Service. Any items purchased or obtained by any Customer through the Service is done at the Customer's sole risk. Any Content related to business, finance, and/or securities matters and the like contained on the Service is provided for

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informational purposes only, and no Content included in the Service is intended for trading or investing purposes. MCS shall not be responsible or liable for the accuracy, usefulness, or availability of any information transmitted via the Service, and shall not be responsible or liable for any trading or investment decisions made based on such information.

(g) **Proprietary Rights.** Customer agrees that the Service and the software may contain proprietary and confidential information that may be protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that Content contained in sponsor advertisements or information presented to Customer through the Service, advertisers, or suppliers may be protected by copyrights, trademarks, service marks, patents, or other proprietary rights and laws. Except as expressly authorized by MCS, advertisers, or suppliers, Customer agrees not to modify, rent, lease, loan, sell, distribute, or create derivative works based on the Service, in whole or in part. All Content of the Service is: Copyright © 2006 by McNutt Consulting Services, Inc., or third-party content providers and are protected by international copyright law. All rights reserved.

(h) **No Reproduction or Resale.** Customer agrees not to reproduce, duplicate, copy, sell, resell, or exploit for any commercial purposes, any portion of the Service, use of the Service, or access to Service.

(i) **Dealings with Advertisers and Suppliers.** Customer may enter into correspondence with or participate in promotions of advertisers and/or suppliers on the Service showing their products on the Service. Any such correspondence or promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties, or representations associated with such correspondence or promotions, are solely between the corresponding user and the advertiser, and/or supplier. MCS assumes no liability, obligation, or responsibility for any part of any such correspondence or promotion. Customer's correspondence or business dealings with, or participation in promotions of, advertisers and/or suppliers found on or through the Service, including payment and delivery of related goods or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between Customer and such advertiser and/or supplier. Customer agrees that MCS shall not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such advertisers and suppliers on the Service.

(j) **Links to Third-Party Sites.** MCS provides links to other external sites or resources. Because MCS has no control over such sites and resources, Customer acknowledges and agrees that MCS is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, advertising, products, services or other information or materials on or available from such sites or resources. Customer further acknowledges and agrees that MCS shall not be responsible or liable, directly, or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use or reliance on any such content, advertising, products, services or other information or materials on or available from such sites or resources. If Customer chooses to access third-party services, Customer does so entirely at his/her own risk.

## VIII. Privacy and Security.

(a) Unless produced by MCS, the information Customer accesses or receives by using the Service or information sent to Customer by other users is provided, entered, or posted by the users and is not reviewed, controlled, examined, verified, or endorsed by MCS. The data and information Customer sends and receives may be subject to privacy- and security-invading activities including, but not limited to, eavesdropping, electronic trespassing, "sniffing," "spamming," "nuking," "hacking," "spoofing," imposturing, breaking passwords, harassment, fraud, forgery, and system contamination including use of viruses, "worms," and "Trojan" applications causing unauthorized, damaging, harmful access and/or retrieval of information and data on Customer's computer and other forms of activities that may even be considered unlawful. Information and data may also not reach its destination or may reach an erroneous address or recipient.

CUSTOMER IS ADVISED NOT TO USE OR RELY ON THE SERVICE AND INFORMATION RELATED THERETO FOR "CONTENT SENSITIVE" OR "MISSION CRITICAL" APPLICATIONS AND USE. "CONTENT SENSITIVE" MEANS ANY INFORMATION OR DATA CUSTOMER DOES NOT WISH TO BE FREELY ACCESSIBLE AND GENERALLY AVAILABLE TO INTERNET USERS. "MISSION CRITICAL" APPLICATIONS AND USE ARE THOSE WHERE CONTINUOUS OPERATION IS CRITICAL TO AN INDIVIDUAL OR COMPANY AND WHERE HARM OR DAMAGE MAY BE CAUSED IF ANY DOWNTIME WOULD HAVE AN ADVERSE EFFECT ON THAT INDIVIDUAL OR COMPANY.

(b) Receiving files from third parties, via any application (i.e., email) may be harmful. Before receiving any files from any user, and even if the account from which the file transfer notice is sent looks familiar to Customer, it is strongly recommended that Customer verifies that the person sending Customer these files is indeed the person Customer thinks he or she is, for example by asking for some kind of information known only to the Customer and such other person. Please make sure not to receive files from users Customer does not trust, from users Customer is not sure they are whom they say they are, or whenever Customer is not sure Customer wants to receive the files.

(c) Please report any violations of this Agreement through email to [sales@mcsot.com](mailto:sales@mcsot.com).

(d) If MCS identifies that a certain IP address/block is the source of illegal network activity, such as hacking, DDOS-Distributed Denial of Service attacks, and SYN flood, MCS may block Internet access to/from that IP address/block without any advance notice.

(e) If MCS identifies that a certain email domain is "spamming" or using "email relay," MCS will block any email coming from that email domain without any advance notice.

## IX. Limited Warranty

EXCEPT AS OTHERWISE SET FORTH, THE MCS EQUIPMENT, SERVICE, AND SOFTWARE ARE PROVIDED BY MCS "AS IS" WITHOUT WARRANTY OF ANY KIND. MCS DOES NOT WARRANT UNINTERRUPTED USE OR OPERATION OF THE MCS EQUIPMENT OR SERVICE. CUSTOMER'S SOLE REMEDY FOR SERVICE INTERRUPTION SHALL BE LIMITED TO A PRO RATA REFUND FOR INTERRUPTIONS GREATER THAN 24 CONTINUOUS HOURS. MCS DOES NOT WARRANT THAT ANY DATA OR FILES SENT BY OR TO CUSTOMER WILL BE TRANSMITTED IN UNCORRUPTED FORM OR WITHIN A REASONABLE PERIOD OF TIME. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY ARE HEREBY EXCLUDED.

(a) **DISCLAIMER OF WARRANTIES.** CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT:

(1) MCS MAKES NO WARRANTY THAT (i) THE SERVICE OR THE MCS EQUIPMENT WILL MEET CUSTOMER'S REQUIREMENTS, (ii) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) DELETION, MISDELIVERY, OR FAILURE TO STORE OR EFFECTUATE ANY USER COMMUNICATIONS, ORDERS, LISTINGS, OR CUSTOMIZATION SETTINGS WILL NOT OCCUR AS A RESULT OF CUSTOMER'S USE OF THE SERVICE, (iv) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, AND (v) ANY ERRORS IN THE MCS EQUIPMENT, INCLUDING HARDWARE OR SOFTWARE, WILL BE CORRECTED.

(2) THE SERVICE MAY CONTAIN DEFECTS AND, ACCORDINGLY, CUSTOMER IS ADVISED TO SAFEGUARD IMPORTANT DATA, TO USE CAUTION, AND TO NOT RELY IN ANY WAY ON THE CORRECT FUNCTIONING OR PERFORMANCE OF THE SERVICE.

(3) ANY MATERIAL, PRODUCTS, OR SERVICES DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER

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SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

(4) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM MCS OR THROUGH OR FROM THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

(b) **LIMITATION OF LIABILITY.** MCS OR ANY OTHER PERSON INVOLVED IN CREATING, INSTALLING, DELIVERING, TESTING, OR USING THE SERVICE SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE, SERVICE OUTAGE, OR FOR COST PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES, OR RESULTING FROM ANY GOODS OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH THE SERVICE OR RESULTING FROM UNAUTHORIZED ACCESS TO, OR ALTERATION OF A USER'S TRANSMISSIONS OR DATA, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF REVENUE, PROFITS, BUSINESS USE, DATA, OR OTHER INTANGIBLE INFORMATION, EVEN IF MCS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY FOR MCS TO CUSTOMER FOR ALL CLAIMS ARISING FROM THE USE OF THE SERVICE IS LIMITED TO \$100.

(c) **EXCLUSIONS AND LIMITATIONS.** SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

(d) **General Acknowledgments.** Customer acknowledges that MCS may establish general practices and limits concerning use of the Service, including without limitation (i) the maximum number of days that email messages, message board postings, or other uploaded Content will be retained by the Service, (ii) the maximum number of email messages that may be sent from or received by an account on the Service, (iii) the maximum size of any email message that may be sent from or received by an account on the Service, (iv) the maximum disk space that will be allotted on MCS's servers on Customer's behalf, and (v) the maximum number of times (and the maximum duration for which) Customer may access the Service in a given period of time. Customer agrees that MCS has no responsibility or liability for the failure of the Service and the deletion of other Content maintained or transmitted by the Service. MCS reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. Customer agrees that MCS shall not be liable to Customer or to any third party for any modification, suspension, or discontinuance of the Service. Customer further acknowledges that MCS reserves the right to change these general practices and limits at any time, in our sole discretion, with or without notice.

(e) **Indemnification.** Customer agrees to indemnify and hold MCS, its directors, officers, employees, agents, attorneys, co-branders or other partners harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of the Content Customer submits, posts to or otherwise transmits through the Service, Customer's use of the Service and the MCS Equipment, Customer's connection to the Service, Customer's violation of this Agreement, or Customer's infringement of any intellectual property or other right of any other person or entity.

(f) **Enforcement.** Because user authentication on the Internet is difficult, MCS cannot and does not confirm that each user is who they claim to be. Because MCS does not and cannot be involved in user-to-user dealings or control the behavior of participants on MCS, in the event that Customer has a dispute with one or more users, MCS has no ability to prevent or restrict conduct, communications, or Content which might violate this Agreement prior to its transmission on or through the Service, nor can MCS ensure prompt removal of any such communications or Content after transmission or posting. Accordingly, MCS does not assume responsibility to Customer or others for any failure by MCS to enforce the provisions contained in this Agreement.

(g) **Assignment.** Customer shall have no right to assign or transfer this Agreement or the associated Customer Equipment without the express prior written consent of MCS.

(h) **Governing Law.** This Agreement and the relationship between Customer and MCS shall be governed by and construed in accordance with the laws of Iowa without regard to its conflicts of law provisions.

(i) **International Use.** Recognizing the global nature of the Internet, Customer agrees to comply with all local rules regarding online conduct and acceptable Content. Specifically, Customer agrees to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which Customer resides.

(j) **Time Limitation.** Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to this Agreement or use of the Service must be filed within one year after such claim or cause of action arose or be forever barred.

(k) **Headings.** The section headings and sub-headings contained in this Agreement are for convenience only and have no legal or contractual effect.

## X. **Miscellaneous**

(a) **Notices.** For any inquiries or notices required in connection with this Agreement, Customer should contact MCS in writing at 104 N. Jordan Dr, Gibson City, IL 60936. MCS will use Customer's email address or mailing address to contact Customer regarding the Service, billing, this Agreement, the Privacy Policy, and all other notices and information MCS deems necessary to provide Customer. **ACCORDINGLY, CUSTOMER IS REQUIRED TO MONITOR HIS/HER EMAIL ON A REGULAR BASIS AND PROVIDE MCS WITH PROMPT NOTICE OF ANY CHANGE TO CUSTOMER'S EMAIL ADDRESS. Customer's use of the Service following delivery of any notice to Customer from MCS will be deemed to be Customer's acknowledgment and acceptance of such notice. It is Customer's sole responsibility to notify MCS of his/her email address to use for all notices regarding this Agreement, the Privacy Policy, the Price List, the Service, and all other notifications.**

(b) **No Relationship.** Nothing in this Agreement will create any joint venture, joint employer, franchisee-franchiser, employer-employee, or principal-agent relationship with MCS, nor impose upon either company any obligations for any losses, debts, or other obligations incurred by the other except as expressly set forth herein.

(c) **Customer's Account, Password, and Security.** Customers receive a user name, password, and account designation upon registration. MCS Customers and members of MCS Customers' household or business (if a business account has been purchased) are the only authorized users of Customer's MCS account and must comply with this Agreement. Customer must keep his/her password confidential so that no one else may access the Service through the account. Customer must notify MCS within 24 hours of discovering any unauthorized use of Customer's account. Email accounts exceeding 10MB in size may block new incoming messages. User names, passwords, and email addresses are MCS's property and MCS may alter or replace them at any time.

(d) **General.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement and supersedes and replaces any and all prior written or verbal agreements. In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties and the remainder of the provisions shall remain in full force and effect. MCS's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between the parties nor trade practice shall act to modify any provisions of this Agreement.

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**XI. Termination and Expiration.**

(a) **Termination by Customer.** Customer may terminate this Agreement upon no less than 48 hours written notice to MCS. Upon such termination, Customer shall be responsible for fulfilling all payment obligations set forth herein for the remainder of the contract term selected in the Service Request application. All related charges and fees may be billed to Customer's credit card pursuant to Section 2(c). Customer agrees and acknowledges that the payment obligations set forth herein apply to Customer's termination of this Agreement for any reason whatsoever.

(b) **Customer Obligations Upon Termination.** The Customer is responsible for fulfilling his/her contractual obligations by paying for the remaining months of the contract period. The remaining payment(s) will be due on the effective date of termination. Customer agrees that upon termination of this Agreement:

(1) The Customer is responsible for fulfilling his/her contractual obligations by paying for the remaining months of the contract period. This payment will be due on the effective date of termination.

(2) Customer must return the MCS Equipment in good working condition or will be subject to a \$500 non-returned equipment fee. Customer will permit MCS, and its employees, agents, contractors, and representatives, to access Customer's premises to remove the MCS Equipment, at Customer's expense, or Customer may remove equipment and return it to MCS in good working condition within 5 days of the effective date of termination or Customer will be subject to a \$500 non-returned equipment fee. Such removal by MCS will be billed MCS's then current hourly rates for on-site service.

(c) **Termination by MCS.** MCS may terminate this Agreement immediately should Customer violate any of the terms of this Agreement. MCS may also terminate the Service for any other reason at any time by providing Customer with written notice of such termination no later than 30 days prior to the date of termination. In the event MCS terminates the Service for any reason other than Customer's violation of this Agreement, fees and charges will accrue through the date of termination but all prepaid fees and charges that have been paid in advance for any full month of canceled Services will be refunded.

(d) **Automatic Renewal.** After the initial service agreement period, such service shall continue under the terms of the Agreement, for additional consecutive 1-year renewal service periods for each service component unless either party provides the other written notice that it does not desire to renew such Service. If you do not wish to renew, you must notify MCS in writing within 30 days prior to the last day of the applicable initial or renewal service agreement period.

(e) **Retention of Rights.** Nothing contained in this Agreement shall be construed to limit MCS's rights and remedies available at law or in equity. Subject to applicable law, MCS reserves the right to delete all data, files, electronic messages, or other information that is stored on MCS's servers or systems when Customer's account with MCS is terminated for any reason.

(f) **Multiple Users.** Customer acknowledges that Customer is executing an Agreement on behalf of all persons who use the MCS Equipment and/or Service through Customer's computer. Customer shall have sole responsibility for ensuring that all such other users understand and comply with the terms and conditions of this Agreement. Customer further acknowledges and agrees that Customer is solely responsible and liable for any and all breaches of the terms and conditions of this Agreement, whether such breach is the result of use of the Service and/or MCS Equipment by Customer or by another user of Customer's computer. Customer agrees to indemnify and hold harmless MCS against all claims and expenses (including reasonable attorney fees arising out of the use of the Service and/or Equipment by any other user of Customer's computer).

Copyright Infringement. Notices and Procedure to Making Claims of Copyright Infringement. Pursuant to Title 17, United States Code, Section 512(c)(2), notifications of claimed copyright infringement should be sent to the Service Provider's Designated Agent. ALL INQUIRIES NOT RELEVANT TO THE FOLLOWING PROCEDURE WILL RECEIVE NO RESPONSE.

**I HAVE REVIEWED AND ACCEPT THIS AGREEMENT INCLUDING THE TERMINATION AND EXPIRATION SECTION ABOVE.**

[ \_\_\_\_\_ ] CUSTOMER INITIALS

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Account Number: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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