

Black Hills IT Services Master Services Agreement

This Master Services Agreement (this “Agreement”) governs our business relationship with you, so please read this document carefully and keep a copy for your records. References in this Agreement to “we,” “us,” or “our” mean Black Hills IT Services, LLC, and references to “you” or “your” means the person or entity who accepts an order, statement of work, proposal, or similar document (“SOW”) from us.

Scope. Services provided to you or facilitated for you (as applicable) will be described in an SOW. The scope of our engagement is limited strictly to those services expressly listed in an SOW (the “Services”); all other services, projects, and other matters are out-of-scope (collectively, “Out of Scope Services”) and you agree that we have no responsibility, fiduciary or otherwise, to perform, provide, or facilitate Out of Scope Services. The provisions of an SOW govern over conflicting or different terms contained in this Agreement.

Third Party Providers/Services. Some services may be provided to you by third party providers who are often referred to in the industry as “upstream providers.” (In this Agreement, we refer to upstream providers as “Third Party Providers” and the services that are provided by Third Party Providers are referred to as “Third Party Services”). By way of example, Third Party Services may include help desk services, malware detection and remediation services, firewall and endpoint security-related services, backup and disaster recovery solutions, and the provision of software used to monitor the managed part of your network, among others. We are resellers and/or facilitators of the Third Party Services and do not provide those services to you directly. **For this reason, we are not and will not be responsible for any defect, omission, or failure of any Third Party Service or any failure of any Third Party Provider to provide its services to you or to us.** Third Party Services are provided on an “as is” basis only.

Advice; Instructions. We may offer you specific advice and directions related to the Services (“Advice”). For example, our Advice may include increasing server or hard drive capacity, increasing CPU power, replacing obsolete equipment, or requesting that you refrain from engaging in acts that disrupt the managed environment or that make the managed environment less secure. You are strongly advised to promptly follow our Advice which, depending on the situation, may require you to make additional purchases or investments at your sole cost. We are not responsible for any problems or issues, including but not limited to downtime or security-related issues, caused by or related to your failure to follow our Advice promptly.

Implementation. All Services will be implemented and/or facilitated (as applicable) on a schedule and in a prioritized manner determined by us. We will not be responsible for changes to the managed environment that are not authorized by us or any issues or errors that arise from those changes. In no event will we be responsible for delays in our response or our provision of Services during periods of delay caused by pre-scheduled downtime, or to the extent that such delays or deficiencies are caused by your actions or omissions or by a force majeure event.

Fees; Payment. You agree to pay the fees, costs, and expenses charged by us for the Services in accordance with the amounts, methods, restrictions, and schedules described in each SOW (“Fees”). You are responsible for sales tax and any other taxes or governmental fees associated with the Services. We reserve the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely paid. Monthly or recurring charges (if applicable) will continue to accrue during any period of suspension.

We reserve the right to increase our monthly recurring service fees by reflecting the increase on your monthly invoices; provided, however, if a single service fee increase in a calendar year or all such increases, in the aggregate, in a calendar year are more than five percent (5%) of the fees charged for the same Services in the prior calendar year, then you will be provided with a sixty (60) day opportunity to terminate the Services by providing us with written notice of termination (“Termination Option Period”). (Please note: This applies only to our monthly recurring service fee, and not to incremental increases that may be charged by Third Party Providers.) If you timely terminate the Services during the Termination Option Period, you will be responsible for the payment of all fees that accrue up to the termination date and all pre-approved, non-mitigatable expenses that we incurred in our provision of the Services through the date of termination. Your continued acceptance or use of the Services after the Termination Option Period will indicate your acceptance of the increased fees.

LIMITED WARRANTIES; LIMITATIONS OF LIABILITY

Hardware / Software Purchases. Returns for all equipment, machines, hardware, software licenses, peripherals, or accessories purchased through us (“Third Party Products”) are subject to our applicable third party provider’s or reseller’s return policies, and we do not guarantee that Third Party Products will be returnable, exchangeable, or that re-stocking fees can or will be avoided, and you agree to be responsible for paying all such fees charged by the third party provider or reseller. We have no liability whatsoever for the quality, functionality, or operability of any Third Party Products, and we will not be held liable for the performance, uptime, or usefulness of any Third Party Products.

Liability Limitations. This paragraph limits the liabilities arising from the Services and is a bargained-for and material part of our business relationship with you. You acknowledge and agree that we would not provide any Services or enter into any SOW or this Agreement unless we could rely on the limitations described in this paragraph. In no event will either party be liable for any indirect, special, exemplary, consequential, or punitive damages arising out of or in connection with the Services, this Agreement, any SOW, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages. Regardless of the form of any such actions that arise from or relate to this Agreement (collectively, “Claims”), whether in contract, tort, indemnification, or negligence, each party’s total liability shall be limited solely to the amount of the aggrieved party’s actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to us for the specific Service upon which the applicable claims are based during the three (3) month period immediately prior to the date on which the cause of action accrued, or \$10,000, or the amounts that are actually paid out under a responsible party’s insurance policy, whichever is greater. The foregoing limitations shall apply even if the remedies listed in this Agreement fail of their essential purpose. Under no circumstances shall we have any liability for any claims or causes of action arising from or related to Out of Scope Services.

TERM; TERMINATION

This Agreement. This Agreement applies to all Services and is effective as of the date on which we provide a Service to you or on the date on which you accept an SOW, whichever is earlier (“Effective Date”). The term of the Services will be as indicated in the SOW. The termination of Services under one SOW shall not, by itself, cause the termination of (or otherwise impact) this Agreement or the status or progress of any other Services between the parties.

Termination. Unless otherwise indicated in the SOW or otherwise permitted under this Agreement, no party will terminate an SOW without cause prior to the SOW’s natural (*i.e.*, specified) expiration or termination date. If you terminate the Services under an SOW without cause and without our consent, then you agree to pay to us all amounts that would have been paid to us had this Agreement or SOW (as applicable) remained in full effect, calculated using the fees and costs in effect as of the date of termination (“Termination Fee”). If one party (a “Defaulting Party”) commits a material breach under this Agreement or under any SOW, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately the Services under the relevant SOW (a “For Cause” termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party.

Unless otherwise expressly stated in an SOW or prohibited by applicable law, we will have no obligation to store or maintain any Client data in our possession or control following the termination of this Agreement or the applicable Services.

CONFIDENTIALITY

Any non-public information belonging to a party, such as (but not limited to) internal documents, customer lists, marketing/strategic information, vendor contracts, a party’s customers’ data, financial information, communications, and related items is Confidential Information. A party viewing or receiving Confidential Information (a “Recipient”) from the other party (a “Disclosing Party”) will use such information only on an “as needed” basis solely to fulfill its obligations to the Disclosing Party. A Recipient will use the same degree of care to keep and maintain the confidential nature of Confidential Information as it uses to secure and maintain its own highly sensitive and confidential information which, at a minimum, shall be a commercially reasonable degree of care. Upon a Discloser’s demand, a Recipient shall return to the Discloser all of the Discloser’s Confidential Information.

MISCELLANEOUS

End User Agreements. If the acceptance of third party end user license agreements (EULAs), third party customer agreements, and/or third party subscription agreements is required for you to receive any Services, then you hereby grant us permission to accept the applicable agreement(s) on your behalf. You may request a list of all End User Agreements into which we have entered on your behalf by sending your written request to us (email is sufficient for this purpose). If an End User Agreement deviates

materially from industry-standards (*i.e.*, contains terms that are different than those generally offered by similarly situated companies to end users on an industry-wide basis), then we will bring that situation to your attention.

Amendment. This Agreement and any SOW may be amended only by a written document (email or similar electronic documents are sufficient for this purpose) that is initiated by us, and that specifically refers to this Agreement or the SOW being amended and is affirmatively accepted in writing (email or electronic signature is acceptable) by you.

Merger. This Agreement coupled with each SOW sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Services.

Force Majeure. Neither party will be liable to the other party for delays or failures to perform its obligations because of circumstances beyond such party's reasonable control.

Governing Law. The laws of the state in which our office is located will govern the interpretation and enforcement of this Agreement. If a party is required to bring an action to enforce the terms of this Agreement, the prevailing party in the action will be entitled to an award of its reasonable attorneys' fees and costs.