



## Master Services Agreement

This "Master Services Agreement ("MSA", or this "Agreement") shall govern and control the relationship between Diamond Technologies, Inc., doing business as DIAMONDIT ("DIAMONDIT") and you, (the "CUSTOMER") with regard to the non-exclusive supply of technology services, consulting services, third party software and services, equipment and supplies provided by DIAMONDIT to CUSTOMER ("CUSTOMER Services"). DIAMONDIT and CUSTOMER are sometimes hereinafter referred to in the singular as "Party" and collectively as the "Parties". Please read this MSA carefully. Return of a completed and signed copy of this MSA to DIAMONDIT. The submission by a CUSTOMER of a completed and signed MSA shall constitute acceptance of the terms and conditions of this MSA.

I have read, understand and accepted the following: DiamondIT Master Service Agreement Terms and Conditions (MSA): <https://diamondit.pro/MasterServiceAgreement>

**SIGNATURES UPON ACCEPTANCE OF MSA TERMS AND CONDITIONS**

In Witness Whereof, the undersigned have executed this Agreement on the date(s) set forth below, effective upon the last signature hereto as of the date signed by DIAMONDIT (the "effective date").

CUSTOMER:	Diamond Technologies, Inc. d/b/a DiamondIT
Signature: _____	Signature: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

**CUSTOMER COMPANY INFORMATION**

COMPANY NAME: (legal entity) \_\_\_\_\_ COMPANY EIN: \_\_\_\_\_

COMPANY ADDRESS: \_\_\_\_\_

AFFILIATED ENTITIES: \_\_\_\_\_

**CUSTOMER BILLING CONTACT**

NAME: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_

**CUSTOMER TECHNICAL CONTACT**

NAME: \_\_\_\_\_ EMAIL ADDRESS: \_\_\_\_\_  
TELEPHONE: \_\_\_\_\_

**DIAMOND IT ACCOUNT REPRESENTATIVE**

NAME: \_\_\_\_\_



## Master Services Agreement

EMAIL ADDRESS:

[sales@diamondit.pro](mailto:sales@diamondit.pro)

TELEPHONE:

661-833-5600

### TERMS AND CONDITIONS

TERMS AND CONDITIONS OF CONTRACT BETWEEN DIAMONDIT AND CUSTOMER, along with the accompanying SUMMARY and ADDENDUM(S) (hereinafter collectively the "Contract"), are entered and agreed to as of the Effective Date stated in paragraph 1 of the Summary by and between DIAMONDIT as referred to in paragraph 2 of the Summary and the CUSTOMER referred to in paragraph 3 of the Summary.

NOW THEREFORE, in consideration of the covenants and contracts herein contained and in the Summary and in consideration of such other good and valuable consideration, it is agreed between DIAMONDIT and CUSTOMER, as follows:

#### ARTICLE 1: GENERAL TERMS:

The enclosed materials are proprietary to DIAMONDIT, and are therefore copyrighted material. The materials are presented for the purpose of agreement to services and may not be disclosed in any manner to anyone other than the addressee and employees or an authorized representative of CUSTOMER.

DIAMONDIT reserves the right to modify any of the enclosed or related details thereafter. This Quote and pricing outlined herein is only valid when purchased as a complete hardware, software, and service solution unless otherwise agreed to by DIAMONDIT.

1.0. Hardware/Software Purchases: Due to the fast paced nature of technology and the unique needs of each project, DIAMONDIT does not typically stock hardware or software. Thus, all hardware and software orders require payment in advance and will be ordered after payment is received. Returns may only occur with a Return Material Authorization ("RMA"). RMA's may not be issued for all items. Assuming the product can be returned to the distributor or manufacturer, a restocking fee will typically apply to allowed returns and will be borne by CUSTOMER.

Upon execution of the contract, the order shall not be cancelable by CUSTOMER for delays in delivery until fifteen days after written notice of such intention shall actually been received by DIAMONDIT. CUSTOMER shall be obligated to accept any portion of the goods shipped or delivered by DIAMONDIT during such period. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to DIAMONDIT within ten (10) days after receipt of goods by Buyer.

DIAMONDIT will perform the services outlined in this document according to our understanding of your desired results as agreed upon by both CUSTOMER and DIAMONDIT. If DIAMONDIT encounters any configuration or migration issues outside of the scope, as defined above, we will immediately notify the CUSTOMER and take the appropriate action to redefine the scope of work and adjust the time and materials required accordingly.

While we do our best to quote based on the conditions we know, the final pricing and configuration may need to be adjusted to include items such as: additional products, licenses, professional services, shipping or taxes. If this is a project, please plan a fifteen percent contingency fee for any potential change orders. This is to ensure the project can proceed with minimal interruption. Additional information may be required from you in order to more accurately quote this solution. These may include: floorplans, network diagrams, local, long distance and Internet access bills, site surveys, etc. We reserve the right to cancel orders containing pricing or other material errors.

1.1 Invoice Terms: Services will be invoiced on a monthly basis for actual Services performed unless noted otherwise. Payment is due upon receipt. You may pay invoices by check or any other method we approve in writing.

Please remit payment to:  
Diamond IT, Inc.  
8701 Swigert Ct  
Bakersfield CA 93311

1.1.1 Ability to Dispute Invoices: CUSTOMER waives the right to dispute the validity or amount due for any invoice unless specified in writing to DIAMONDIT, setting forth the specific amount(s) to which CUSTOMER objects, within forty-five (45) days from the submission of such invoice.

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- 1.2 **Travel and Expenses:** Reimbursement for fees from CUSTOMER will include expenses incurred as outlined in an Addendum or Scope of Work, plus a 12% processing and handling fee. Travel time to and from CUSTOMER sites are billed at 100% of standard rates ONE WAY. All travel by train or air will be via coach class. Mileage to and from CUSTOMER site will be reimbursed at the prevailing IRS rate for mileage. Ground transportation by rental car, taxicab or car service usage is permitted provided it is the most economical form of transportation. When an overnight stay is required to efficiently provide CUSTOMER Services at CUSTOMER locations, CUSTOMER will reimburse DIAMONDIT based on standard hotel rates. Expenses which shall be eligible for reimbursement to DIAMONDIT are any employee overhead expenses, cell phone expenses, or photocopies. If overnight shipping is required to facilitate the CUSTOMER Services, overnight shipping costs will be paid by CUSTOMER. Any and all Federal, State and Local taxes applicable to the CUSTOMER Services shall be added to each invoice to be submitted and shall be the responsibility of CUSTOMER.
- 1.3. **Taxes:** DIAMONDIT's pricing may not include applicable taxes. You are solely responsible for paying any taxes, governmental fees and assessments arising under this Agreement or from the Services, including any national, state or local sales, use, value-added, excise, withholding or other taxes, duties, tariffs or fees assessed in connection with this Agreement by any authority ("Taxes"), except for taxes on our income. If we pay any Taxes that are your responsibility, you will reimburse us immediately upon demand.
- 1.4. **Services Scheduling:** Services may not be scheduled or commenced until the Purchase Order (if any) and signed Quote are received by DIAMONDIT. Upon receipt of a signed Quote and Purchase Order, a DiamondIT Project Manager will typically contact you within 3 business days to begin Services scheduling. Services Scheduling will be based upon CUSTOMER's schedule preferences/requirements and the availability of required resources.
- 1.5. **Use of Third Parties:** DiamondIT shall have the right in its sole discretion to hire or retain any independent third party to assist DiamondIT with any product or services under this agreement.
- 1.6. **Pricing:** The terms offered by DIAMONDIT under this Quote (including but not limited to the pricing) shall be valid for twenty (20) days following initial delivery of this Quote to CUSTOMER unless noted otherwise. After which, Quote shall be deemed an Expired Quote. In the event this Quote is executed by CUSTOMER after becoming an Expired Quote, DIAMONDIT may in its sole discretion, (i) accept the Quote on the stated terms or (ii) reject such Quote and may provide CUSTOMER with a revised Quote setting forth any necessary updates to the terms of the previous Quote.
- 1.7. **Term of Agreement:** This MSA shall commence on the commencement date set forth above and will remain in force for a minimum period of three (3) years (the "Initial Term"), unless terminated in accordance with the terms hereinafter set forth or on any Addendum or Scope of Work attached hereto or subsequently agreed to in writing by the Parties. This MSA may be supplemented by successive Addendum(s) or Scope of Work(s), and such Addendum(s) or Scope of Work(s), once initialed or executed, or, in the event that CUSTOMER accepts and utilizes the CUSTOMER Services (set forth in an Addendum, Scope of Work, Service Order or otherwise), shall be incorporated herein by reference in their entirety. The Initial Term shall automatically renew for subsequent one (1) year periods unless CUSTOMER gives written notice to DIAMONDIT of its intent not to renew this Agreement at least ninety (90) days prior to the end of the Initial Term or subsequent extensions thereof. Notwithstanding the foregoing, termination of this MSA shall not cause the termination of any Addendum(s) or Scope of Work(s) or Service Order(s) then in progress unless also terminated in accordance with the terms of any such Addendum(s) or Scope of Work(s) or Service Order(s), in which case this MSA shall continue in existence with respect to such Addendum(s) or Scope of Work(s) or Service Order(s) until the termination of such Addendum(s) or Scope of Work(s) or Service Order(s).
- 1.8. **Early Termination:** CUSTOMER recognizes that in order to provide the CUSTOMER Services, DIAMONDIT incurs substantial set-up costs. In the event that CUSTOMER terminates this Agreement, for any reason, before the conclusion of the Initial Term or subsequent extensions, CUSTOMER agrees to pay an early termination fee as equal to 100% of the remaining fees that would have been due to DIAMONDIT had the CUSTOMER not terminated the Agreement (including any Addendum(s) or Scope of Work(s) or Service Orders). Upon termination of this MSA for any reason, all sums due for services provided, as well as any early termination fees, shall be immediately due and payable and any equipment loaned or provided to CUSTOMER by DIAMONDIT shall be immediately returned to DIAMONDIT.
- 1.9. **Order of Precedence:** This Quote, together with the Purchase Order (if any) and the MSA (Terms and Conditions) herein, along with any addendums thereto, states all of the rights and responsibilities of, and supersedes all prior and contemporaneous oral and written communications between DIAMONDIT and CUSTOMER regarding this Service. The use of pre-printed forms, such as Purchase Orders, will be for convenience only, and all pre-printed terms and conditions stated on such forms will not apply to this Agreement. Should a conflict arise between the terms of the Purchase Order, Quote and Terms and Conditions and any addendums, the following order of precedence shall be followed: first, the Terms and Conditions including any applicable addendums, second the

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Quote, and third the Purchase Order (if any); provided, however, that any terms and conditions printed on the Purchase Order shall not apply.

### ARTICLE 2: CUSTOMER OBLIGATIONS.

- 2.1. **Equipment and Office Facilities:** DIAMONDIT may utilize certain items of CUSTOMER's equipment and may need to gain access to certain CUSTOMER facilities. CUSTOMER retains title and ownership to all of the equipment owned by CUSTOMER, and shall grant access for DIAMONDIT to access CUSTOMER's facility and equipment. Facility access may be denied for any reason at any time, however if access to facilities or equipment is denied, CUSTOMER acknowledges that DIAMONDIT may be unable to perform CUSTOMER Services adequately and, if such a situation should exist, DIAMONDIT is hereby indemnified and held harmless from any loss, cost or expense that CUSTOMER may incur as a result of inadequate access to CUSTOMER's facilities.
- 2.2. **Customer Materials:** CUSTOMER will ensure any material, data, software or products you provide in connection with the WORK ("Customer Materials") shall be in a condition and form, as determined solely by DIAMONDIT, which requires no additional manipulation or verification on the part of DIAMONDIT, except as noted in scope of work. Any accidental damage to CUSTOMER's data or server infrastructure is the sole responsibility of the CUSTOMER. DIAMONDIT's assistance in repairing any loss or damage will be handled at standard time and materials rates.
- 2.3. **Ownership of Data:** Any of CUSTOMER's data (including data of CUSTOMER's and customers of CUSTOMER) being stored on DIAMONDIT equipment, and at any offsite remote storage facility, remains the sole property of CUSTOMER, or its CUSTOMERs or customers as appropriate. If CUSTOMER chooses to terminate this Agreement, DIAMONDIT will assist CUSTOMER in the orderly termination of CUSTOMER Services as set forth in the Transition Section of these Terms and Conditions. CUSTOMER agrees to pay DIAMONDIT the costs of rendering such assistance in accordance with the then current hourly rate schedule on the DIAMONDIT website.
- 2.4. **Data Integrity:** CUSTOMER shall be responsible for the integrity, and security, of CUSTOMER's data (including data of CUSTOMERs and customers of CUSTOMER). Daily backups, frequent verification of the validity of the backups and the restoration process are also the responsibility of CUSTOMER. DIAMONDIT shall undertake to preserve and protect CUSTOMER's data (including data of CUSTOMERs and customers of CUSTOMER) while performing CUSTOMER Services; however DIAMONDIT shall not be liable for the loss of data, or a breach of its integrity as the result of any CUSTOMER Services.
- 2.5. **Ownership of Equipment:** CUSTOMER agrees that any equipment that is: (i) loaned to CUSTOMER by DIAMONDIT; or (ii) rented to CUSTOMER by DIAMONDIT, whether or not pursuant to a rental agreement that contains an option to purchase, shall remain the property of DIAMONDIT, and must be returned to DIAMONDIT upon the earlier of the termination of this AGREEMENT or the demand of DIAMONDIT. CUSTOMER shall not grant any security interest in this equipment to any third party or otherwise exercise any indication of legal ownership of the equipment. CUSTOMER further agrees to cease the use of and return immediately any equipment that remains the property of DIAMONDIT upon termination of this AGREEMENT by expiration or default. If termination or cancellation of any rental or lease falls outside of the existing term, CUSTOMER shall be responsible for the remainder, in full, of said term. If the equipment is stolen, lost, damaged, destroyed, decommissioned or otherwise not returned to DIAMONDIT for any reason, CUSTOMER shall be responsible to pay DIAMONDIT for replacing the equipment with equipment with the same capabilities or better.
- 2.7. **Marketing:** DIAMONDIT may use CUSTOMER's name in describing or promoting DIAMONDIT's Services on DIAMONDIT's Website and in its marketing materials or other documents listing DIAMONDIT's qualifications, experience and companies for which DIAMONDIT has provided professional services. CUSTOMER also acknowledges its willingness to discuss its participation in case studies with DIAMONDIT on DIAMONDIT's request. CUSTOMER will receive and approve the final version of any and all such materials prior to public release
- 2.8. **Other Obligations:**
- A. CUSTOMER will: (i) respond to requests from DIAMONDIT on a timely basis; (ii) have at least one CUSTOMER Contract Contact available during regular business hours and authorized to approve any change or amendment to CUSTOMER Services and to approve any disputes related to the CUSTOMER Services and provide other information and assistance to DIAMONDIT; (iii) provide DIAMONDIT with timely and accurate information and documentation; (iv) make available to DIAMONDIT other CUSTOMER personnel familiar with the CUSTOMER's requirements and with the expertise to permit DIAMONDIT to undertake and complete its obligations; (v) maintain a proper operating environment for the CUSTOMER Services; (vi) provide a safe area for DIAMONDIT to perform any CUSTOMER Services required to be performed on the CUSTOMER's site; (vii) provide for all power, environmental requirements, supplies, cabling, communications facilities, and all other equipment and facilities required. B. Each Party will comply with all laws applicable to the performance of its obligations hereunder and to the CUSTOMER Services, including laws relating to the import or export of software or technical data related thereto, including U.S. Export Administration Regulations and U.S.



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International Traffic in Arms Regulations, and anticorruption laws and equivalent statutory obligations under the law of other jurisdictions where goods and services are to be supplied or used under this MSA.

C. CUSTOMER represents that it has and will maintain or will acquire sufficient quantities of fully valid licenses (e.g., software licenses, CUSTOMER access licenses, subscription agreements for cloud-based software and/or service plans) for all third party software to fully support its requisite number of users thereof under this MSA and/or the third party software licensor. CUSTOMER further represents and warrants that CUSTOMER will not (i) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights; or (ii) violate any applicable USA law, statute, ordinance or regulation.

2.9. CUSTOMER Services in Foreign Jurisdictions: In the event that CUSTOMER shall request that DIAMONDIT provide CUSTOMER Services in any jurisdiction besides the United States & Canada, DIAMONDIT may supply CUSTOMER Services in the foreign jurisdiction in accordance with this MSA, but only to the extent that the terms and conditions of this MSA do not conflict with any statute, rule, regulation, code or ordinance of such foreign jurisdiction. DIAMONDIT may, for any reason, refuse to supply the CUSTOMER Services in any location outside of the territorial boundaries of the United States & Canada.

**ARTICLE 3: CONTRACT PERFORMANCE.**

3.1. DIAMONDIT shall endeavor to commence the Work on the Commencement date as set forth in paragraph 6 of the Summary and complete the WORK by the Completion Date as set forth in paragraph 7 of the Summary ("Contract Term").

3.2. The parties acknowledge that the Contract Term is an estimate. DIAMONDIT agrees to start and diligently pursue work through to completion, but shall not be responsible for delays for any of the following reasons: failure of the issuance of all necessary permits within a reasonable length of time, acts of neglect or omission of CUSTOMER or the CUSTOMER'S employees or agent, acts of God, extra work ordered by CUSTOMER, failure of CUSTOMER to make payments when due, or other causes beyond DIAMONDIT's reasonable control.

3.3. Delays in performance of CUSTOMER's obligations under this Contract will extend the time for performance of any of DIAMONDIT's obligations that depend on CUSTOMER's performance.

3.4. Hours of Service: Except as may be specifically set forth in an Addendum, compensation for CUSTOMER Services shall be billed at "Regular Consulting Rates", which are deemed to be CUSTOMER Services performed during any time between the hours of 8:00 AM to 5:00 PM PST/PDST Monday through Friday, excluding the following United States holidays "Regular Consulting Hours"):

- |                        |               |
|------------------------|---------------|
| New Year's Day         | Labor Day     |
| Memorial Day           | Thanksgiving  |
| July Fourth (observed) | Christmas Day |

Regular Consulting Rates (payable in U.S. Dollars) shall be provided by employees of DIAMONDIT as follows:

Work Roles	vCTO / vCISO	Sr. Systems Engineer	Systems Engineer	Sr. Support Engineer	Support Engineer	Project Manager
<b>Regular Consulting Rates</b>	<b>\$225.00</b>	<b>\$210.00</b>	<b>\$190.00</b>	<b>\$170.00</b>	<b>\$145.00</b>	<b>\$145.00</b>

3.5. Extended Consulting Hours: Extended Consulting Hours consist of any hours outside of the period defined as Regular Consulting Hours. This includes weekends, the period 5:00 PM to 8:00 AM PST/PDST during weekdays, and all holidays. In the event that CUSTOMER Services are performed by DIAMONDIT at CUSTOMER's request, CUSTOMER shall be liable for an increased hourly rate for CUSTOMER Services performed during that period. Hourly rates for services performed weekdays from 5:00 PM to 8:00 AM shall be billed at a rate of 150% of the standard hourly rate, and hourly rates for CUSTOMER Services performed at any time on any weekend or holiday shall be billed at a rate of 200% of the standard hourly rate.

3.6. Support: All requests for technical assistance related to the CUSTOMER Services ("Support Requests") shall be made through the online support form located at <http://www.diamondit.pro>, the technical support phone line (661) 833.5600 option 1 or via email to [support@diamondit.pro](mailto:support@diamondit.pro) in order to assure that Support Requests are handled promptly. All Support Requests shall be billed as specified on any Addendum; if no rates are specified, the rates will be at the rates described in Section 3.4. DIAMONDIT

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shall use reasonable efforts to respond to Support Requests. CALLS MADE DIRECTLY TO DIAMONDIT EMPLOYEES ARE CONSIDERED OUTSIDE OF THE SUPPORT PROCEDURE. ATTEMPTING TO CONTACT EMPLOYEES DIRECTLY MAY RESULT IN SERVICE DELAYS. IF CUSTOMER FAILS TO DESIGNATE A CUSTOMER CONTACT, THEN CUSTOMER SHALL BE RESPONSIBLE FOR ANY CUSTOMER SERVICES REQUESTS GENERATED BY CUSTOMER'S EMPLOYEES.

3.7. Escalation and Resolution: CUSTOMER shall designate a contact for the resolution of all technical support issues (the "CUSTOMER Technical Contact"). The CUSTOMER Technical Contact shall be DIAMONDIT's sole point of communication with CUSTOMER for the resolution of technical support issues. The CUSTOMER Technical Contact must have electronic mail addresses accessible from the Internet to facilitate communications between CUSTOMER and DIAMONDIT technical and administrative personnel. CUSTOMER represents that the CUSTOMER Technical Contact shall have the authority to contractually bind CUSTOMER with respect to resolving technical support issues with regard to this AGREEMENT and any Addendum(s) or Scope of Work(s). DIAMONDIT and CUSTOMER shall each designate an account manager for the purpose of administration of this AGREEMENT (the "DIAMONDIT Contract Contact" and the "CUSTOMER Contract Contact", respectively). In the event that either Party determines that resolution of the dispute regarding any matter regarding the CUSTOMER Services that may have a material impact upon the delivery or completion of the CUSTOMER Services, the following procedure shall be utilized by the parties to address the resolution of the issue(s): When a conflict arises, the Parties will, first, strive to resolve the problem internally on an informal basis. If the person immediately involved cannot resolve the conflict within 24 hours, the CUSTOMER Contract Contact and the DIAMONDIT Contract Contact will meet (in person or via electronic visual media), to resolve the issue.

A. If, after one (1) business day, the issue remains unresolved, either Party may insist the issue be raised to the DIAMONDIT Consultant's next level manager, and his/her CUSTOMER counterpart.

B. If the issue remains unresolved for thirty (30) days, either Party may elect to terminate this AGREEMENT in accordance with the terms hereof. Upon termination, CUSTOMER shall immediately pay all unpaid outstanding invoices and fees, including, but not limited to, the payment of any early termination fees.

3.8. Transition: Within thirty (30) days before the effective date of any termination of this MSA, Addendum, Scope of Work, or Service Order, DIAMONDIT may, at its discretion cooperate to transition and migrate the technology environment created, serviced and monitored by DIAMONDIT to a new service provider to be designated by CUSTOMER. DIAMONDIT and CUSTOMER shall, as part of the migration to a new service provider perform the following, if applicable and as the case may be (the "Transition Services"):

A. CUSTOMER shall advise DIAMONDIT of the name and complete contact information for the new vendor designated by CUSTOMER to provide technology services to CUSTOMER (the "New Vendor").

B. DIAMONDIT shall transfer to CUSTOMER, all licenses purchased and paid for in full by CUSTOMER for software installed in CUSTOMER's technology environment purchased through DIAMONDIT; and

C. If applicable, DIAMONDIT may assist CUSTOMER with the termination of the automatic transmission of CUSTOMER's computer data to the off-site storage facility selected by CUSTOMER and may request confirmation from the offsite storage provider that any CUSTOMER data stored by the provider is to be erased and no longer available for retrieval; and

D. DIAMONDIT shall remove all agents installed by DIAMONDIT in CUSTOMER's technology environment at CUSTOMER's expense; and

E. Upon the full payment of open invoices, DIAMONDIT shall provide any and all passwords in the possession of DIAMONDIT to the CUSTOMER's technology; and

F. CUSTOMER shall surrender any rental or loaned equipment provided to CUSTOMER by DIAMONDIT; DIAMONDIT shall retain a security interest in and to any equipment that has not been paid for by CUSTOMER. DIAMONDIT shall be able to retrieve said equipment from the CUSTOMER by any legal means possible.

G. CUSTOMER shall pay to DIAMONDIT, at the hourly rates currently in effect, for all Transition Services required to be performed by DIAMONDIT to effectuate the smooth and cooperative transition to the New Vendor. The Transition Services shall be billed on a weekly basis and, payment shall be made to DIAMONDIT within fifteen (15) days after receipt for Transition Services.

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H. DIAMONDIT shall be deemed a user of the technology environment of CUSTOMER created by new vendor and shall be accorded any access or other privileges to enable the DIAMONDIT and DIAMONDIT's consultants and employees to perform the Transition Services.

3.9. Minimum Standards: CUSTOMER shall implement any additional requirements that are specific to CUSTOMER's network environment, which may be prescribed by DIAMONDIT. CUSTOMER Services required to bring CUSTOMER's environment up to these Minimum Standards are not included in this MSA.

## ARTICLE 4: PAYMENT TERMS.

4.1. Payment: CUSTOMER shall pay all invoices upon receipt in immediately available United States dollars. All amounts payable under this Contract shall be made without setoff, counterclaim, deduction or withholding.

4.2. Deposits: Any deposits required for individual CUSTOMER Services will be set forth on an Addendum or Scope of Work. Upon termination of this Agreement and any Addendum or Scope of Work, deposits may be returned to CUSTOMER after deducting any outstanding unpaid fees, including but not limited to any applicable early termination fees. Any deposit shall not be used as payment.

4.3. Returned/Dishonored Checks: CUSTOMER acknowledges that any check tendered by CUSTOMER to DIAMONDIT in payment, which is returned or dishonored for any reason whatsoever, will cause DIAMONDIT to incur costs not contemplated by this Contract, the exact amount of such cost being extremely difficult and impractical to fix. Therefore, if any payment by CUSTOMER is returned and/or dishonored for any reason whatsoever, CUSTOMER shall pay to DIAMONDIT, forthwith, an additional sum of \$50.00. The parties hereto agree that this charge represents a fair and reasonable estimate of the costs that DIAMONDIT will incur if any of CUSTOMER's payments are returned or dishonored.

4.3.1. If two checks are tendered by CUSTOMER to DIAMONDIT in payment, and are returned or dishonored for any reason whatsoever, in a six (6) month period of time, DIAMONDIT may require that all future payments be bank check or money order or credit card at our election.

4.4. Non-Payment: If payment of an invoice is not received within five (5) days following the due date, CUSTOMER shall pay a fee equal to: (i) a late charge of U.S. \$150.00 for each overdue invoice; and (ii) 1.5%, applied monthly, for any overdue invoice, calculated from the due date. In addition, if payment of an invoice is not received within ten (10) days following the due date, DIAMONDIT reserves the right to terminate or suspend providing CUSTOMER Services until such time as DIAMONDIT receives all payments due DiamondIT in full. However, DIAMONDIT may choose, in its sole discretion, to continue providing CUSTOMER Services for such period of time as it shall determine and may cease providing such services prior to receipt of all amounts due DIAMONDIT. In the event that DIAMONDIT is obliged to retain the services of legal counsel or a collection agency to effectuate the collection of any sums that may be due hereunder from CUSTOMER, CUSTOMER, in addition to any other sums that are due hereunder, shall pay such costs of collection and reasonable attorneys' fees. Acceptance of CUSTOMER Services after notice that CUSTOMER has failed to timely pay invoice shall constitute CUSTOMERs consent to the foregoing terms.

4.5. Additional Remedies. The rights and remedies contained in this Contract are cumulative and are in addition to and not in lieu of any rights and remedies the parties may have at law or in equity; provided, however, that if any right or procedure arising from general principals of law or equity is less stringent than the procedures prescribed in the Contract Documents, the provisions of the Contract Documents shall prevail.

ARTICLE 5: INSURANCE: DIAMONDIT and CUSTOMER will mutually maintain, at its own expense, reasonable insurance necessary to cover the Party, its assets/property, and employees and contractors. This insurance shall include, at a minimum, the following: (1) general commercial liability insurance with a limit of no less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate; (2) cyber insurance with a limit of at least \$1,000,000.00 per occurrence; and workers' compensation and unemployment insurance coverages as required by any state and federal laws to which the Party is subject. All of the insurance coverages described herein will not be cancelled, materially changed or renewal refused at least thirty (30) calendar days written notice has been given to the other party.

## ARTICLE 6: DISCLAIMER; WAIVER OF WARRANTIES; LIMITATION OF LIABILITY.

6.1. DISCLAIMER: DIAMONDIT MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, REGARDING THE WORK AS PROVIDED FOR IN THE CONTRACT DOCUMENTS. THE WORK IS MADE AVAILABLE "AS IS" AND "AS AVAILABLE". DIAMONDIT DOES NOT REPRESENT OR WARRANT THAT (i) THE WORK WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (ii) THE WORK WILL

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MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; (iii) STORED DATA WILL BE ACCURATE, RELIABLE OR FREE FROM LOSS; OR (iv) THE WORK OR THE RELATED INFRASTRUCTURE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

6.1.1. The products and services included in the WORK may include all or components of DIAMONDIT's SecureCentric offering which is a collection of tools to mitigate the growing cybersecurity risk all businesses face. While our layered approach to security will greatly reduce the risk of a breach or infection, DIAMONDIT cannot guarantee a breach will not occur. We strongly recommend CUSTOMER have an Incident Response Plan and Cyber-Insurance in addition to implementing commercially reasonable security measures.

6.2. **WAIVER OF WARRANTIES:** EXCEPT AS MAY BE EXPRESSLY CONTAINED IN THIS CONTRACT, DIAMONDIT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE WORK, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, NONINFRINGEMENT, COURSE OF DEALING OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. DIAMONDIT PROVIDES NO FURTHER OR ADDITIONAL WARRANTY TO ANY THIRD-PARTY LICENSED SOFTWARE OR EQUIPMENT SUPPLIED TO CUSTOMER AS PART OF CUSTOMER SERVICES. DIAMONDIT'S WARRANTIES WILL BE VOID IF CUSTOMER OR ANY THIRD PARTY AUTHORIZED BY CUSTOMER USES AND/OR MODIFIES THE CUSTOMER SERVICES THAT ARE NOT INTENDED TO BE MODIFIED DUE TO THEIR NATURE, FUNCTIONALITY, OR FEATURES, INCLUDING SOFTWARE, HARDWARE, MODIFICATIONS OR DELIVERABLES, AND WHERE SUCH MODIFICATION CAUSED A BREACH OF WARRANTY CLAIM THAT WAS CAUSED BY SUCH MODIFICATION IN ANY MANNER OTHER THAN AS AUTHORIZED BY DIAMONDIT

6.3. **LIMITATION OF LIABILITY:** NOTWITHSTANDING THE ARBITRATION PROVISIONS OF SECTION 12 OR ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY SHALL BE RESPONSIBLE OR LIABLE TO THE OTHER PARTY FOR ANY OF THE FOLLOWING, WHETHER ARISING UNDER BREACH OF CONTRACT (INCLUDING BREACH OF ANY REPRESENTATION OR WARRANTY), TORT (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE) OR STRICT LIABILITY OR OTHERWISE, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES: (i) LOSS OF USE OF DATA OR PROGRAMMING, INTERRUPTION OF BUSINESS OR DAMAGES OR COSTS (REGARDLESS OF THEIR NATURE), AND DAMAGE TO EQUIPMENT; (ii) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY EITHER PARTY TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND THE PARTY'S REASONABLE CONTROL; (iii) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS OR REVENUE (IRRESPECTIVE OF WHETHER A STATUTE, COURT OR ARBITRATOR CONSIDERS DAMAGES FOR LOSS OF PROFITS OR REVENUE TO BE GENERAL, DIRECT, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES); OR (iv) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST EITHER PARTY BY THE OTHER PARTY MORE THAN ONE YEAR AFTER ANY SUCH CAUSE OF ACTION FIRST AROSE.

6.3.1 DIAMONDIT WILL NOT BE LIABLE FOR ANY ERRORS OR DEFECTS IN ANY THIRD PARTY SOFTWARE OR HARDWARE OR THIRD PARTY PRODUCT OR FOR ANY NON-PERFORMANCE THEREOF. ANY CLAIM BASED ON, RELATED TO OR ARISING OUT OF THE USE OF ANY THIRD PARTY SOFTWARE OR THIRD PARTY EQUIPMENT OR PRODUCT WILL BE GOVERNED EXCLUSIVELY BY THE TERMS OF CUSTOMER'S AGREEMENT WITH THAT THIRD PARTY.

6.3.2 EACH PARTY'S LIABILITIES UNDER THIS AGREEMENT, WHETHER UNDER CONTRACT LAW, TORT LAW (INCLUDING NEGLIGENCE AND GROSS NEGLIGENCE), BREACH OF WARRANTIES OR REPRESENTATIONS OR OTHERWISE, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE FEES ACTUALLY RECEIVED BY DIAMONDIT PURSUANT TO THIS AGREEMENT FOR THE THREE MONTH PERIOD PRIOR TO THE FILING OF ANY CLAIM, WHICH CLAIM MUST BE FILED NO LATER THAN TWELVE (12) MONTHS AFTER EXPIRATION OF TERMINATION OF THIS AGREEMENT. NOTWITHSTANDING THE LIMITATION IN THE PREVIOUS SENTENCE, SECTION 3 (B) (3) SHALL NOT APPLY TO ANY AMOUNT PAYABLE BY CUSTOMER TO DIAMONDIT PURSUANT TO SECTION 2, WHICH SHALL BE IN ADDITION TO ANY AMOUNT OTHERWISE PAYABLE BY CUSTOMER TO DIAMONDIT.

## ARTICLE 7: INDEMNIFICATION.

7.1. CUSTOMER will indemnify, defend, and hold us and our parent, subsidiaries, affiliates, officers, employees, agents, partners, vendors and licensors ("Indemnitees") harmless from any demands, claims, costs, expenses (including reasonable attorneys' fees), losses, damages, and liabilities that may arise from (i) CUSTOMER's breach of this Contract, (ii) CUSTOMER's negligence or willful misconduct, (iii) the WORK, (iv) CUSTOMER's equipment, products or services, or (v) Indemnitees' involvement in any legal process relating to CUSTOMER and/or the WORK (e.g., response to any subpoena) ("Claims").

7.2. Should it become necessary for Indemnitees, to incur any costs or expenses, whether direct or indirect, including, but not limited to, attorney's fees, investigators' fees, collection fees, or court costs, in connection with any claim or demand for which indemnification is provided by this Contract, or in connection with any attempt to recover losses incurred on those claims or demands, or in connection with the enforcement of this Contract or any portion of this Contract, CUSTOMER agrees to pay indemnitee the reasonable costs or expenses for which expenditure is made or liability incurred by indemnitee.





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7.3. The Indemnitees shall promptly notify CUSTOMER of any Claim for which indemnification is sought and provide CUSTOMER with reasonable assistance on a time (based on our then-published rates) and materials basis. CUSTOMER will not settle any Claim in any manner that may adversely affect any Indemnitee's right or interests without the Indemnitee's prior written consent.

ARTICLE 8: WORK CHANGES.

8.1. Change Order/Extra Work Notice: DIAMONDIT shall not be required to provide CUSTOMER with any additional or extra WORK without CUSTOMER providing written authorization to DIAMONDIT, prior to the commencement of said additional or extra WORK. This includes Adds/Moves and Changes requested by CUSTOMER. Any change in the WORK is to be confirmed by execution of a DIAMONDIT change order (the "Change Order"), which Change order will:

- 8.1.1. Define scope of work encompassed by the Change Order;
- 8.1.2. The amount to be added to the Contract Sum; and
- 8.1.3. The effect the Change Order will make on the Completion Date.

ARTICLE 9: COMPLIANCE WITH LAW AND REPRESENTATIONS AND WARRANTIES.

9.1. COMPLIANCE WITH LAW: It shall be CUSTOMER's responsibility to comply with and conform to all local, state and federal laws, ordinances and regulations pertaining to the WORK, at no extra charge to DIAMONDIT, even if such compliance is not covered in the Contract Documents.

9.2. REPRESENTATIONS AND WARRANTIES: CUSTOMER REPRESENTS AND WARRANTS THAT (I) YOU HOLD TITLE TO OR ARE OTHERWISE AUTHORIZED TO USE YOUR DOMAIN NAME; (II) YOU WILL NOT TRANSMIT THROUGH, OR PLACE ON, OUR SERVERS ANY MATERIAL, DATA, SOFTWARE OR PRODUCTS THAT CONTAIN MALICIOUS CODE (INCLUDING WITHOUT LIMITATION, DISABLING DEVICES, DROP DEAD DEVICES, TIME BOMBS, TRAP DOORS, TROJAN HORSES, WORMS, COMPUTER VIRUSES AND MECHANISMS THAT MAY DISABLE OR HARM THE SERVICES); (III) YOU WILL COMPLY WITH ALL APPLICABLE LAWS; (IV) YOU WILL NOT TRANSMIT BULK E-MAIL OR SPAM, CONTENT THAT INFRINGES ANY THIRD PARTY RIGHTS (INCLUDING WITHOUT LIMITATION INTELLECTUAL PROPERTY RIGHTS), THREATENING OR OBSCENE MATERIALS, OR DEFAMATORY, LIBELOUS, OR OTHER ACTIONABLE CONTENT OR STATEMENTS; AND (V) YOU HAVE ALL NECESSARY RIGHT TO ANY PATENTED, COPYRIGHTED, TRADEMARKED OR PROPRIETARY MATERIAL WITH WHICH YOU USE THE SERVICES. CUSTOMER FURTHER REPRESENTS AND WARRANTS THAT YOU ARE NOT ON THE UNITED STATES DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSET CONTROLS LIST OF SPECIALLY DESIGNATED NATIONAL AND BLOCKED PERSONS AND ARE NOT OTHERWISE A PERSON TO WHOM DIAMONDIT IS LEGALLY PROHIBITED TO PROVIDE THE WORK. CUSTOMER MAY NOT USE THE WORK FOR "HIGH RISK USE", OR THE DEVELOPMENT, DESIGN, MANUFACTURE, PRODUCTION, STOCKPILING, OR USE OF NUCLEAR, CHEMICAL OR BIOLOGICAL WEAPONS, WEAPONS OF MASS DESTRUCTION, OR MISSILES, IN A COUNTRY LISTED IN COUNTRY GROUPS D:4 AND D: 3, AS SET FORTH IN SUPPLEMENT NO. 1 TO THE PART 740 OF THE UNITED STATES EXPORT ADMINISTRATION REGULATIONS, NOR MAY CUSTOMER PROVIDE ADMINISTRATIVE ACCESS TO THE WORK TO ANY PERSON (INCLUDING ANY NATURAL PERSON OR GOVERNMENT OR PRIVATE ENTITY) THAT IS LOCATED IN OR IS A NATIONAL OF CUBA, IRAN, LIBYA, SUDAN, NORTH KOREA OR SYRIA OR ANY COUNTRY THAT IS EMBARGOED OR HIGHLY RESTRICTED UNDER UNITED STATES EXPORT REGULATIONS.

ARTICLE 10: NOTICES: All notices given under the Contract Documents shall be effective when received and will be sufficient if given in writing, hand-delivered, sent email with confirmation of receipt, sent by first class mail, return receipt requested and postage prepaid, or sent by nationally recognized overnight courier service and addressed to the signatories below at the addresses set forth above.

Notices to DiamondIT should be sent to:

DiamondIT  
8701 Swigert Ct.  
Bakersfield, CA 93311  
Email: [accounting@diamondit.pro](mailto:accounting@diamondit.pro)

Notices to Customer should be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

ARTICLE 11: CONFIDENTIALITY AND OWNERSHIP OF WORK PRODUCT.

11.1. Confidentiality: Each party acknowledges that it may receive confidential information and trade secrets ("Confidential Information") from the other party while carrying out the actions contemplated by this Contract. Confidential Information includes all information one party receives from the other party, except anything designated as not confidential. During the period this

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Contract is in effect, and at all times afterwards, each party, and its employees, contractors, consultants, and agents, will (i) safeguard the other party's Confidential Information with the same degree of care that it uses to protect its own confidential information; (ii) maintain the confidentiality of this information; (iii) not use such information except as permitted under this Contract; and (iv) not disseminate, disclose, sell, publish, or otherwise make available this information to any third party without the prior written consent of the disclosing party.

11.1.1. DIAMONDIT's confidential information is subject to export controls under U.S. Export Administration Regulations. CUSTOMER represents and warrants that it will: (i) remain in compliance with all legal requirements associated with those controls; (ii) cooperate fully with any audit related to these controls; and (iii) not utilize DIAMONDIT's confidential information in any country that is embargoed by the U.S. government. CUSTOMER is solely responsible for the importation of our confidential information, including obtaining any approval or permit necessary for importation.

11.2. Limitations on Confidentiality: Section 11.1, above, does not apply to any information that: (i) is already lawfully in the receiving party's possession (unless received pursuant to a nondisclosure agreement); (ii) is or becomes generally available to the public through no fault of the receiving party; (iii) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (iv) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure and to obtain a protective order); (v) is disclosed by the receiving party with the disclosing party's approval; and (vi) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party ten (10) days' prior written notice of any disclosure of information under this Contract.

11.3. Covenant to Maintain Confidentiality: CUSTOMER hereby covenants and agrees as follows:

11.3.1. Nondisclosure: CUSTOMER will not disclose Confidential Information to any person or entity without first obtaining DIAMONDIT's written consent. CUSTOMER shall also take all reasonable precautions to prevent inadvertent disclosure of any Confidential Information.

11.3.2. No Use, Copying, or Transfer: CUSTOMER will not use, copy, or transfer Confidential Information other than as necessary to carry out the WORK, without first obtaining DIAMONDIT's written consent. CUSTOMER will also take all reasonable precautions to prevent inadvertent use, copying, or transfer of Confidential Information. Use, transfer, or copying of Confidential Information includes, but is not limited to, selling or licensing any products or services that contain or are derived from Confidential Information.

11.3.3. No Use of Name or Mark: CUSTOMER agrees not to use DIAMONDIT's name, trademark, service mark, or any other name under which DIAMONDIT is known or does business, for any purpose or activity unrelated to the WORK or to the business purposes of DIAMONDIT without DIAMONDIT's prior written consent. Consent may be withheld in DIAMONDIT's absolute discretion.

11.3.4. Non-Circumvention: CUSTOMER agrees that it will not attempt to independently develop or design products or a system similar to that disclosed in the Confidential Information nor to engage in the business which is the subject of the Confidential Information, directly or indirectly. CUSTOMER acknowledges that except for this Agreement, DIAMONDIT would not have disclosed the Confidential Information to CUSTOMER. CUSTOMER agrees to return to DIAMONDIT all materials, information and other data related to the Confidential Information when the WORK is completed or the Contract is terminated.

11.3.5. Non-Solicitation: During the Term of this AGREEMENT and for a period of eighteen months thereafter, CUSTOMER agrees not to solicit, recruit, or employ any employee of DiamondIT (either as an employee or independent contractor) directly or through a subordinate or affiliated entity, without the prior written consent of DiamondIT. If CUSTOMER violates this restriction, CUSTOMER shall be liable to DiamondIT for a fee equal to: (i) 50% of the employee's first year's compensation as CUSTOMER's employee or independent contractor; and (ii) Six months of the employee's billings prior to separation from DiamondIT. CUSTOMER agrees that such fees are fair and appropriate compensation to DiamondIT for the cost to recruit and train a new employee.

11.4. IP Rights in the Services. DIAMONDIT retains all right, title, and interest in and to the Services, including without limitation all software used to provide the Services and all graphics, user interfaces, logos, and trademarks reproduced through the Services. This Agreement does not grant CUSTOMER any intellectual property license or rights in or to the Service or any of its components, except to the limited extent that this Contract specifically sets forth CUSTOMER license rights to Licensed Software or Documentation. CUSTOMER recognizes that the Service and its components are protected by copyright and other laws. CUSTOMER understands and agrees that DIAMONDIT's processes, methodologies, notes and designs are the exclusive property and trade secret information of DIAMONDIT and will not be shared with, or provided to CUSTOMER.

11.5. Copyrights, Trademark, Patents, Trade Secrets. DIAMONDIT and CUSTOMER agree that the WORK and any related copyrights, trademarks, patents, trade secrets, Confidential Information, and any other proprietary rights are the property of DIAMONDIT and its vendors. Except to the extent otherwise provided in this Contract, CUSTOMER does not have any right,

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ownership, or title in the WORK or any related copyrights, trademarks, patents, trade secrets, Confidential Information, or any other proprietary rights.

11.5.1. CUSTOMER specifically agrees that all copyrights and other proprietary rights in computer programs, files, documentation, reports, notes, and related materials that are part of the WORK are owned by DIAMONDIT, and CUSTOMER assigns to DIAMONDIT any alleged or purported right, title, and/or interest in the copyrights and other proprietary rights.

11.6. Non-Exclusivity: CUSTOMER acknowledges that DIAMONDIT may be performing similar work for businesses other than CUSTOMER. This Contract does not prohibit DIAMONDIT from performing that work.

11.7. Nondisclosure Agreements: Each party agrees to execute a reasonable nondisclosure agreement if requested to do so by the other party.

11.8. Exception & Immunity: Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), CUSTOMER is on notice and acknowledges that, notwithstanding the foregoing or any other provision of the Contract Documents:

11.8.1. Immunity: An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

11.8.2. Use of trade secret information in Anti-Retaliation lawsuit: An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual-(A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

## ARTICLE 12: ARBITRATION AND STATUTE OF LIMITATIONS.

12.1. AGREEMENT TO ARBITRATE: the parties agree to submit any such Dispute in excess of \$7,500.00, to arbitration in Bakersfield, California with ADR Services in accord with the ADR Provider's Commercial Dispute Resolution Procedures. ADR Services may be sourced from Los Angeles County if not available in Kern County. The arbitration shall be decided by a single arbitrator whose decision will be final and binding and may be enforced in any court of competent jurisdiction. The arbitration will be kept confidential except as required by law.

12.1.1. Binding Nature of Arbitration: Except for the confirmation and review of the award by the arbitrator, neither party shall, before or during such arbitration, commence or prosecute any suit or action against the other touching any of the matters in controversy. The award to be made by the arbitrator shall be valid and binding upon each of the parties.

12.1.2. Powers of Arbitrator: The arbitrator shall have full power to make such orders, rules and regulations as he or she shall deem just and expedient in respect to any procedure or matter involved in this arbitration and that all findings of fact rendered by the arbitrator are to be supported by substantial evidence and consistent with existing California law.

12.1.2.1. The parties shall have the right to conduct any pre-hearing procedures and proceedings allowed by California law and the arbitrator shall have the authority and power to adjudicate said procedure and proceedings consistent with California law.

12.1.3. Discovery: The arbitrator shall have the authority and power to request the production of any books or records in the possession or control of either of the parties, and to order that either party shall have access to and be permitted to inspect and make copies thereof consistent with the provisions of California Code of Civil Procedure, § 1283.05.

12.1.3.1. Each party shall have the right to take up to two (2) depositions. The arbitrator will have the sole discretion to order any additional depositions and/or discovery pursuant to the provisions of California Code of Civil Procedure, § 1283.05, upon written application by a party for such additional discovery.

12.1.4. Rules of Evidence: The arbitrator shall follow the rules of evidence of the State of California relating to the trial of civil actions. The parties are free to waive or modify any evidentiary rule or procedure with the consent of the arbitrator.

12.2. ANY CLAIM OR CAUSE OF ACTION, REGARDLESS OF FORM, MUST BE BROUGHT NO MORE THAN ONE YEAR AFTER IT AROSE, OTHERWISE THE CLAIM OR CAUSE OF ACTION SHALL BE BARRED. EXCEPT THAT THE FOREGOING LIMITATION AND THE ARBITRATION PROVISION SHALL NOT APPLY TO THE ENFORCEMENT BY US OF ANY OF OUR INTELLECTUAL PROPERTY RIGHTS, WHICH MAY BE DECIDED IN A COURT OF COMPETENT JURISDICTION.

ARTICLE 13: WAIVER: A waiver by DIAMONDIT or CUSTOMER of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained.



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ARTICLE 14: NO AGENCY: No agency relationship is created by this Contract, and the parties, by this contract are not creating a partnership, joint venture or any form of agency relationship. CUSTOMER has hired DIAMONDIT as an independent contractor. Neither party is the agent of the other, and neither may make commitments on the other's behalf. The parties agree that no DIAMONDIT employee or vendor is or will be considered an employee of CUSTOMER. DiamondIT reserves the right to determine the method, manner, and means by which CUSTOMER Services will be performed. DiamondIT is not required to perform CUSTOMER Services during a fixed hourly or daily time, unless specified in an Addendum. DiamondIT shall not be required to devote full time to the performance of CUSTOMER Services, and it is acknowledged that DiamondIT has other CUSTOMERS and offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of DiamondIT.

ARTICLE 15: SUCCESSORS AND ASSIGNS: This Contract shall be binding upon the heirs, administrators, executors, successors and assigns of the parties hereto. This Contract may not be assigned in whole or in part by CUSTOMER without prior written consent thereto by DIAMONDIT. However, DIAMONDIT shall have the right to assign this Contract to successor or assign without prior written consent of CUSTOMER.

ARTICLE 16: TIME: Time is of the essence of this Agreement.

ARTICLE 17: SEVERABILITY: If any provision of this Contract shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby, and the remainder of this Contract shall remain in full force and effect.

ARTICLE 18: HEADINGS: Captions of the several Articles contained in this Contract are for convenience only and do not constitute a part of this Contract and do not limit, affect or construe the contents of such Articles.

ARTICLE 19: JURISDICTION AND VENUE: This Contract is executed and delivered within the State of California, County of Kern. This Agreement and the rights and liabilities of the parties shall in all respects be interpreted, construed, enforced and governed by and under and in accordance with the laws of the State of California.

ARTICLE 20: ELECTRONIC SIGNATURES: DIAMONDIT and CUSTOMER agree that the Contract Documents may be executed and circulated electronically by execution and transmittal in PDF format with the signatures signed as hereinafter noted, and/or by electronic signature as noted at the bottom so that this Contract:

- 20.1. may not be denied legal effect or enforceability solely because it is in electronic form;
- 20.2. may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
- 20.3. as an electronic record, satisfies the law; and
- 20.4. the electronic signatures below, if applicable, satisfy all legal requirements.

ARTICLE 21: CONTRACT CONSTRUCTION: In the event of a conflict in the provisions of any attachments hereto, or any Addendum(s) or Scope of Work(s) or Service Orders, with the provisions set forth in this MSA, the provisions of such attachments, or any Addendum(s) or Scope of Work(s) or Service Orders, shall govern. If any provision of this Agreement is deemed illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the provisions hereunder. The parties agree that the headings of each paragraph of this MSA are for convenience alone and will not affect the construction of the paragraph.

ARTICLE 22: MODIFICATIONS, ATTACHMENTS AND AFFILIATES: It is intended that Addendum(s) or Scopes of Work(s) will be added to this MSA from time to time. Such Addendum(s) and Scope of Work(s) shall be incorporated into this MSA as if expressly stated herein. DiamondIT reserves the right to modify this MSA at any time by updating this MSA on the DiamondIT website. By accepting or requesting services from DiamondIT thirty (30) days after the change in MSA terms are posted, Client is deemed to consent to this MSA as modified on the DiamondIT website. Client may view the most up to date MSA at: <http://www.diamondit.pro/terms>. Client may only modify this MSA in a writing signed by both parties and such modification shall only be effective for the dates outlined therein. This MSA shall apply to, and bind, Client and any of its "Affiliate(s)", which term means, with respect to an entity, any entity that controls, is controlled by, or is under common control with, that entity, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through the ownership of voting securities, contract or otherwise. For the avoidance of doubt, Client may extend the use and benefit of any Client Services to any of its Affiliates (e.g., authorize its Affiliates to access and benefit from the Client Services without entering into a separate Addendum MSA Terms & Conditions



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or Scope of Work or Service Order, provided that DiamondIT will have no obligation to invoice or provide any Client Services directly to that Affiliate and further provided that Client and its Affiliates are solely responsible for securing any applicable licenses necessary to use any third party software necessary to enable DiamondIT to perform the Client Services.

ARTICLE 23: ENTIRE AGREEMENT: THIS CONTRACT (ALONG WITH ALL OTHER PORTIONS OF THE ACCOMPANYING SSUMMARY, QUOTES AND ADDENDUMS) SHALL CONSTITUTE THE ENTIRE UNDERSTANDING OF THE PARTIES, AND REVOKES AND SUPERSEDES ALL PRIOR AGREEMENTS BETWEEN THE PARTIES AND IS INTENDED AS A FINAL EXPRESSION OF THEIR AGREEMENT. IT SHALL NOT BE MODIFIED OR AMENDED EXCEPT IN WRITING SIGNED BY THE PARTIES HERETO AND SPECIFICALLY REFERRING TO THIS CONTRACT. THIS CONTRACT SHALL TAKE PRECEDENCE OVER ANY OTHER DOCUMENTS THAT IT MAY BE IN CONFLICT THEREWITH. THIS CONTRACT MAY BE EXECUTED IN COUNTERPARTS AND THE COUNTERPARTS SIGNED BY ALL THE PARTIES HERETO SHALL TOGETHER CONSTITUTE A SINGLE ORIGINAL INSTRUMENT. ALL HEADINGS, SUBHEADINGS AND TITLES ARE FOR REFERENCE AND CONVENIENCE OF THE PARTIES ONLY, AS USED HEREIN, THE MASCULINE, FEMININE, AND NEUTER GENDER, AND THE SINGULAR AND PLURAL NUMBER, SHALL BE DEEMED TO INCLUDE THE OTHER WHENEVER THE CONTEXT SO INDICATES

The persons signing this Agreement are duly authorized to execute and deliver this Agreement on their behalf, and each individual signing this Agreement on behalf of a body corporate or other legal entity represents and warrants that he or she is authorized to sign this Agreement on its behalf.

END OF DOCUMENT