

TEXAS COMPUTER SCOUT – Terms and Conditions for All Contracts (2019)

1. SCOPE. These terms and conditions apply to the provision of all services ("Services") by TEXAS COMPUTER SCOUT ("TCS") to Customer under any service agreement ("Agreement") to which this schedule is attached or made a part by reference.

2. TERM. The Services Agreement shall be effective on the latter of Customer or TCS's signature dates on the Service Agreement or the earliest date that services or goods are provided to Customer ("Effective Date"). The term of the Agreement and the Minimum Monthly Fee shall commence upon Acceptance of the Service (as hereinafter defined) or the Effective Date, whichever is later, and shall continue in full force and effect for the time period indicated on the first page of the Agreement ("Term"), unless earlier terminated in accordance with its terms. After expiration of the Term, the Agreement shall renew automatically for successive renewal terms, each for a period of time equal to twelve (12), unless either Party serves the other Party with written notice of such Party's intent not to renew the Agreement at least thirty (30) days prior to expiration of the then current Term. If a party provides written notice of its intent not to renew yearly, the Services shall continue under the terms and conditions of the Agreement, including application of the Minimum Monthly Fee, after expiration of the Term on a month to month basis with the Services priced at TCS's then current monthly rates exclusive of any discounts until canceled by either Party upon thirty (30) days written notice to the other Party.

Service Period

3. RATES AND CHARGES.

a) The rates and charges for the Services and Goods shall be those set forth in the schedule in the Agreement (the "Price Schedule") or other appropriate schedule thereto. All rates and charges set forth in any preliminary quote are subject to final approval and acceptance by TCS. **b)** Notwithstanding the foregoing, Customer guarantees to TCS payment of a Minimum Monthly Fee in the amount set forth on the first page of the Agreement ("Minimum Monthly Fee"). For each month Customer agrees to pay the greater of (i) the total amount otherwise due for the month for all Services and any Equipment provided under the Agreement, or (ii) the Minimum Monthly Fee. Compliance with the Minimum Monthly Fee shall be based on Customer's Service charges prior to application of any taxes or surcharges.

4. TAXES AND SURCHARGES. In addition to the rates and charges for the Service(s), Customer shall be responsible for payment of all local, state and federal taxes, principally sales taxes.

5. BILLING AND PAYMENT. Billing for a Service shall commence upon Acceptance (as previously defined). All bills are due and payable upon receipt. If Customer's bill is not paid by the date which is thirty (30) days after the invoice date listed on the bill (the "Due Date"), Customer also shall pay TCS a monthly late charge amount equal to 1.5% of the unpaid balance due. TCS and Customer shall attempt in good faith to promptly resolve any objection to the invoiced amount. If the dispute is subsequently resolved in favor of TCS, Customer shall pay the disputed amount previously withheld within ten (10) days of such resolution, including interest at the rate specified above from the original due date. If the dispute is subsequently resolved in favor of Customer, TCS shall issue a credit on Customer's subsequent invoice for the disputed amount. If TCS initiates legal proceedings to collect any amount due hereunder and TCS substantially prevails in such proceedings then Customer shall pay the reasonable costs and expenses, including but not limited to reasonable attorney fees, expenses, court costs and service charges, incurred by TCS in collecting payment and/or in prosecuting such proceedings and any appeals therefrom.

6. TERMINATION.

a) A party may terminate the Agreement on thirty (30) days' written notice if the other party materially breaches the Agreement and such breaching party fails to cure the breach within such notice period, *provided that* the cure period for breach of any of Customer's payment obligations shall only be ten (10) days. If Customer fails to cure any breach of its payment obligations with respect to amounts not disputed in accordance with the provisions of Section 5 above within such ten (10) business day period, in addition to TCS' remedies under Section 5 above, TCS shall have the right to immediately and without further notice suspend Services to Customer.

b) A party may terminate the Agreement upon written notice to the other party if (i) the other party dissolves or becomes insolvent; (ii) the other party makes an assignment for the benefit of creditors; (iii) the other party suspends the transaction of its usual business or consents to the appointment of a trustee or receiver; or (iv) a receiver of the other party is appointed.

7. LIMITED WARRANTY. THE QUALITY OF SERVICE PROVIDED HEREUNDER SHALL BE CONSISTENT WITH INDUSTRY STANDARDS AND SOUND BUSINESS PRACTICES. TCS MAKES NO OTHER WARRANTIES ABOUT THE SERVICE PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TCS DOES NOT AUTHORIZE ANYONE TO MAKE A WARRANTY ON TCS' BEHALF ORALLY OR IN ANY OTHER WRITING UNLESS SIGNED BY MANAGEMENT OF TCS AND BY THE CUSTOMER. AND THE CUSTOMER MAY NOT RELY OTHERWISE ON ANY STATEMENT OF WARRANTY AS A WARRANTY OF TCS. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

8. LIMITATIONS OF LIABILITY.

a) IN NO EVENT SHALL EITHER PARTY (OR ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS OR AGENTS) BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS OR GOODWILL ARISING IN ANY MANNER FROM THE AGREEMENT AND/OR THE PERFORMANCE OR NONPERFORMANCE HEREUNDER. THIS DOES NOT LIMIT CUSTOMER'S RESPONSIBILITY FOR THE PAYMENT OF ANY AND ALL PROPERLY DUE CHARGES. THIS SECTION SHALL SURVIVE FAILURE OF AN EXCLUSIVE OR LIMITED REMEDY AND TERMINATION OF THE AGREEMENT.

b) TCS' ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES WITH RESPECT TO ANY SERVICE PROVIDED TO CUSTOMER (INCLUDING WITHOUT LIMITATION WITH RESPECT TO THE INSTALLATION, DELAY, PROVISION, TERMINATION, MAINTENANCE, REPAIR, INTERRUPTION, OR RESTORATION OF

ANY SUCH SERVICE) OR BREACH OF THE AGREEMENT, WHETHER IN AN ACTION FOR OR ARISING OUT OF BREACH OF CONTRACT, TORT, INCLUDING NEGLIGENCE, INDEMNITY OR STRICT LIABILITY, SHALL BE AS FOLLOWS: (I) FOR A SERVICE QUALITY CLAIM (INCLUDING INTERRUPTION IN SERVICE), RETURN OR ABATEMENT OF ALL CHARGES FOR SUCH SERVICE; (II) FOR TANGIBLE PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY TCS' NEGLIGENT ACTS OR OMISSIONS, OR FOR ANY DAMAGES ARISING FROM THE WILLFUL MISCONDUCT OF TCS, THE AMOUNT OF PROVEN DIRECT DAMAGES; AND (III) FOR ALL OTHER CLAIMS NOT COVERED BY THE FOREGOING SUBSECTIONS, THE AMOUNT OF PROVEN DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE CHARGE APPLICABLE UNDER THE AGREEMENT FOR THE PERIOD DURING WHICH SERVICES WERE AFFECTED. IN NO EVENT SHALL TCS' CUMULATIVE LIABILITY FOR ALL CLAIMS (EXCLUDING (II) ABOVE) ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID BY CUSTOMER TO TCS HEREUNDER. THIS SECTION SURVIVES TERMINATION OF THE AGREEMENT.

e) TCS shall also not be liable for any damages arising out of or relating to: interoperability, interaction, access or interconnection problems with applications, equipment, services, content or networks not provided by TCS; or unauthorized access to or theft, alteration, loss or destruction of Customer's, Users' or third parties' applications, content, data, programs, information, network or systems.

9. FORCE MAJEURE. Except with respect to Customer's payment obligations for Services rendered prior to the commencement of a Force Majeure event, notwithstanding any other provision of the Agreement, neither Party shall be liable to the other Party for any delay or failure in performance to the extent such delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, governmental requirement, civil or military authority, Act of God, inability to secure materials or labor or any other causes beyond its reasonable control. Any such delay or failure shall suspend the Agreement until the Force Majeure ceases.

10. RELATIONSHIP OF PARTIES. Neither the Agreement nor the provision of Service hereunder shall be deemed to create any joint venture, partnership or agency between TCS and Customer. The Parties are independent contractors and shall not be deemed to have any other relationship. Neither Party shall have, or hold itself out as having, the power or authority to bind or create liability for the other by its intentional or negligent act.

11. NOTICES. All notices and communications under the Agreement shall be in writing and shall be given by personal delivery, by registered or certified mail, return receipt requested, by regular U.S. mail, or by facsimile transmission, addressed to the respective Party as set forth in the first page of the Agreement or to such other address as may be designated in writing by such Party. Notice shall be deemed given upon mailing or sending.

12. ENTIRE AGREEMENT. The Agreement, including these Standard Terms and Conditions and all other schedules referenced in the Agreement and which are applicable to the Services purchased by the Customer, all of which are expressly incorporated by reference, and any attached schedules signed by both parties, represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other agreements, written or oral, between the Parties relating to the Service or goods. Any other modification to this Agreement shall be in writing and signed by authorized representatives of both Parties. In case of any conflict between the provisions of these Standard Terms and any schedule, the provisions of the schedule shall take precedence unless otherwise indicated in writing by Customer and TCS. A digitized (electronic) copy of the executed Agreement shall be deemed the same as an original copy. The Agreement may be executed in any number of counterparts, including facsimile counterparts or electronic PDFs, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any hand written notation on this form or on any portion of the Agreement by Customer is rejected in its entirety unless expressly agreed to in writing by an TCS principal owner. Provisions in the Agreement that by their sense and context are intended to survive completion of performance, termination or cancellation of the Agreement, shall survive.

13. GOVERNING LAW. The Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Each party consents to personal jurisdiction in the state and federal courts of Fort Bend County, Texas.

14. WAIVER. No term or provision herein shall be waived, and no breach or default excused, unless such waiver or consent is in writing and signed by the Party to which it is attributed. No consent by a Party to, or waiver of, a breach or default by the other, whether expressed or implied, shall constitute a consent to or waiver of any subsequent breach or default.

15. PARTIAL INVALIDITY. If any provision of the Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render the Agreement unenforceable, but rather the Agreement shall be construed as if not containing the invalid or unenforceable provision. However, if such provision is an essential element of the Agreement, the Parties shall promptly attempt to negotiate a substitute therefor.

16. ASSIGNMENT. Customer may not assign the Agreement without the written consent of TCS, which consent shall not unreasonably be withheld or delayed; *provided that* no such consent shall be required for any assignment by a party to an entity that either controls or is controlled by or is under common control with that party; or to an entity which succeeds to all or substantially all of such party's assets whether by merger, sale or otherwise.