

KISM, LLC. SOFTWARE SUPPORT TERMS & CONDITIONS

1. Conflicting Terms. These Terms & Conditions and any corresponding quotation (“Quote”) constitute the entire agreement (“Agreement”) relating to the software support services (“Services”), which includes, but is not limited to, all related components, controls, equipment, parts, products, materials, programming and related services provided by KISM to Customer. Any terms and conditions contained in Customer’s purchase order, request for quotation or any other document generated by Customer which are different from, in addition to, or vary in any way from this Agreement shall not be binding upon KISM unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of KISM. KISM’s Repair Warranty and any other Terms and Conditions that are different from, in addition to, or vary in any way from this Agreement are expressly excluded.

2. Services. KISM’s Services are limited to incident-specific troubleshooting and problem resolution, and specifically exclude: (A) computer programming; (B) software development, and (C) warranty repairs or product replacement. KISM reserves the right to refuse to troubleshoot or service certain software.

3. Customer Acknowledgment. In some cases, KISM may not be able to diagnose or resolve a problem and Customer acknowledges that KISM’s Services are offered as a “best efforts” service and without guaranty or warranty. Customer also acknowledges that KISM is not responsible or liable for any adverse impact or damages which KISM’s Services may cause, including, but not limited to: (A) software crashes, (B) systems failures; (C) hardware issues; (D) network or network configuration issues; or (E) any third-party warranty violations or breach of other service agreements with software vendors and other third-parties resulting from KISM’s Services. Customer further acknowledges that KISM is not obligated to cure, or be responsible for any problems arising from, any (i) defective software; (ii) malware or viruses (iii) conflicting software; (iv) incompatible software; (v) non-conforming software; (vi) previous modifications to software; (vii) impermissible or unauthorized use of software; (viii) existing illegal conditions; (ix) prior work by others; or (x) any unusual or abnormal conditions.

4. Customer Responsibility. Customer is solely responsible for: (A) ensuring that its employees, contractors, vendors and agents comply with all instructions and directions issued by KISM; (B) providing KISM with unrestricted access to view and modify all related software and peripheral equipment (including all data, hardware and software components); (C) all restoration and reconstruction of lost or altered files, data, or programs that may occur in the course of KISM performing the Services; (D) ensuring that any information or data disclosed to KISM is not confidential or proprietary to Customer or any third party; and (E) backing up all Customer’s software at all times.

5. Recovery and Backup. KISM is not responsible for preserving any programs or data stored on Customer’s computer systems. Customer must pay KISM at its rates set forth in the Quote for all recovery and restore services, even if due to KISM’s actions. Customer acknowledges that data recovery can be slow, tedious, costly and in some cases, unsuccessful.

6. Notice. Customer shall notify KISM within 24 hours of the discovery of any problem with the Services provided by KISM or of any other complaint whatsoever Customer may have concerning KISM. The failure of Customer to provide such timely notice shall be deemed a waiver of any claims by Customer of any complaints against KISM concerning its Services.

7. Delays. KISM shall not be responsible for delays caused by acts or omissions of Customer, its employees, agents, suppliers or vendors, acts of God, inclement weather, strikes, lockouts, boycotts, or other labor union activities, extra work ordered by Customer, acts of public enemy, war, terrorism, riots or civil commotion, inability to secure materials through regular recognized channels, imposition of government priority or allocation of materials, internet connection difficulties, failure of Customer to make payment when due, or other causes beyond KISM’s reasonable control.

8. Payment. Customer must timely comply with the payment terms set forth in the corresponding Quote and/or invoice. A service charge will be assessed on any past due balances over 30 days at the lower of 7% annual interest rate or the maximum rate allowed by applicable law. Customer shall be liable for KISM’s actual costs, expenses and attorneys’ fees incurred in collecting any due and unpaid balances. Customer understands that KISM’s Services may not be successful, but that Customer nevertheless remains responsible for full payment of KISM’s invoices.

9. Warranty. KISM'S STANDARD REPAIR WARRANTY DOES NOT APPLY TO THE WORK OR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT AND IS EXPRESSLY EXCLUDED. KISM DOES NOT WARRANT ITS WORK OR SERVICES UNDER THIS AGREEMENT IN ANY MANNER WHATSOEVER. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WARRANTY. ALL WARRANTIES, BOTH IMPLIED AND EXPRESS, ARE EXPRESSLY WAIVED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OTHER EXPRESS OR IMPLIED, WRITTEN OR ORAL REPRESENTATIONS MADE BY KISM'S EMPLOYEES, AGENTS OR REPRESENTATIVES CAN EXPAND THE SCOPE OF THIS WARRANTY OR BE RELIED UPON BY BUYER TO EXPAND THE SCOPE OF THIS WARRANTY UNLESS MADE IN WRITING AND SIGNED BY AN OFFICER OF KISM. KISM DOES NOT INDEPENDENTLY WARRANT ANY MANUFACTURER'S PRODUCTS OR SOFTWARE IN ANY FASHION. KISM SHALL NOT BE LIABLE TO BUYER FOR ANY BREACH OF ANY MANUFACTURER OR SOFTWARE COMPANY WARRANTIES. KISM ALSO DOES NOT WARRANT ANY SOFTWARE PRODUCTS OR APPLICATIONS, WHETHER CREATED BY KISM OR A THIRD PARTY.

10. Limitation of Liability. KISM'S RESPONSIBILITY AND/OR LIABILITY FOR DEFECTIVE SERVICE, BREACH OF CONTRACT OR ANY OTHER CLAIMS BY CUSTOMER WHATSOEVER IS STRICTLY LIMITED TO THE ACTUAL AMOUNT PAID BY CUSTOMER TO KISM FOR ITS SERVICES UNDER THIS AGREEMENT. NO OTHER CLAIMS OR DEMANDS WHATSOEVER SHALL BE IMPOSED ON KISM, IRRESPECTIVE OF FAULT. ALL CLAIMS FOR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY AND SPECIAL DAMAGES, AS WELL AS BUSINESS INTERRUPTION AND COVER COSTS, ARE EXPRESSLY WAIVED.

11. Indemnification. To the maximum extent allowed by law, Customer must defend and indemnify KISM and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses, including attorney fees, that KISM may incur or be obligated to pay arising from: (A) KISM's Services not performed in a grossly negligent manner or the result of intentional acts of misconduct; (B) Customer's negligence; (C) any infringement or alleged infringement of the intellectual property rights of others; (D) Customer's violation or alleged violation of any federal, state, county or local laws or regulation; (E) Customer's breach of this Agreement; and (F) Customer's breach of any of the terms, conditions and requirements of the manufacturer of any components, controls, parts, products, materials or software.

12. Intellectual Property. All creations of KISM related to its work and services which are or may become legally protectable or recognized as forms of intellectual property rights, including all works, whether registerable or not, in which copyright, design right or any form of intellectual property rights may exist, including, but not limited to all artistic expressions, innovations, inventions, improvements, literary works, marks, grants, designs, processes, methods, formulas, techniques, videotapes, audiotapes and computer programs, (all collectively referred to as "Intellectual Property"), which KISM either solely or jointly with Customer conceives, makes or reduces to practice, are the absolute and sole property of KISM. No right, title or interest in such Intellectual Property is conveyed to Customer unless agreed to in a separate, issue-specific, written agreement signed by a corporate officer of KISM.

13. Termination. KISM may at its sole option and without penalty terminate this Agreement and cease all work for any reason whatsoever upon 24 hours written/email notice to Customer. In such event, Customer shall still be obligated to pay for all Services provided by KISM as of the date of such termination of work and must still comply with all of the terms and conditions of this Agreement.

14. Disputes. This Agreement shall be governed by Michigan law and each provision herein must be interpreted in a manner which is valid thereunder. The Oakland County Circuit Court of the State of Michigan shall be the court of exclusive jurisdiction and venue over any disputes arising out of this Agreement, any such disputes must be commenced and maintained in said Circuit Court, and Customer expressly waives any right of removal to federal court pursuant to 28 U.S.C. §1441. Customer further waives and agrees not to assert as a defense in any action, suit or proceeding relating to this Agreement any claim that (A) Customer is not personally subject to the jurisdiction of the state and federal courts of Michigan; (B) the venue of the action, suit or proceeding is improper, (C) the action, suit or proceeding is brought in an inconvenient forum, or (D) that the subject matter of this Agreement may not be enforced in or by the state or federal courts of the state of Michigan.

CUSTOMER EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY.

KISM may at its sole discretion elect to submit all disputes related to this Agreement to binding arbitration, administered by the Novi, Michigan office of the American Arbitration Association under its Commercial Arbitration Rules, and heard by a single arbitrator. An award rendered by such arbitrator shall be binding upon the parties and judgment on such award may be entered by any appropriate Court in the State of Michigan as the exclusive courts of competent jurisdiction. Nothing prohibits either party from seeking appropriate injunctive relief in an appropriate Michigan Circuit Court.

15. Non-Solicitation. Customer shall not recruit, hire, employ, contract or deal directly with any of KISM's employees, subcontractors or suppliers while KISM is performing its work or for a period of 12 months after the termination of the Agreement or conclusion of KISM's work without the prior written approval of KISM.

16. Successors and Assigns. This Agreement binds and inures to the benefit of Customer and KISM and their respective successors and permitted assigns. Customer may not assign any interest in, nor delegate any obligations or rights under this Agreement, without KISM's prior written consent.

17. Notices. Any notice or other communication regarding this Agreement must be in writing and delivered both by email and in one of the following manners: (A) personally delivered, (B) transmitted by facsimile (with a receipt acknowledgment), (C) transmitted by a recognized courier service, or (D) mailed in registered or certified form, to the last known business address of the party to which notice or communication is being given.

18. Waiver. The waiver by KISM of any breach by Customer of any provision of this Agreement may not be construed to be either a waiver of the provision itself as to the subsequent application or any other provision of this Agreement.

19. Severability. If any provision of this Agreement is held by a court to be invalid, the remaining provisions shall continue in full force and effect without being invalidated. If any provision is modified by a court, it shall be modified so as to carry out the intent of this Agreement, and any provisions so modified shall be fully enforced as modified.

20. Survival. The provisions of this Agreement which by their nature survive the termination of this Agreement or final completion thereof, including, without limitation, all warranty, indemnification and payment obligations, shall remain in full force and effect after final completion, cancellation or termination of this Agreement.

21. Headings. The headings used herein are for convenience of reference only and in no way define, limit or describe any provision of this Agreement.

22. Entire Agreement. Customer has not signed this Agreement in reliance upon any promise, condition, or representation not contained within this Agreement, and this Agreement supersedes all prior and contemporaneous agreements, understandings and negotiations. No waivers, modifications, amendments or changes to this Agreement, including, but not limited to the scope of work, parts, products, specifications, pricing or schedules set forth in the Quote, shall be deemed effective unless in writing and signed by Customer and a corporate officer of KISM.

Rev. (4/2019)