



THIS AGREEMENT GOVERNS YOUR USE OF CYBER CITY PRODUCTS AND SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A SCHEDULE THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE CYBER CITY PRODUCTS AND SERVICES. THE PARTIES AGREE THAT THIS AGREEMENT MAY BE ELECTRONICALLY SIGNED. THE PARTIES AGREE THAT THE ELECTRONIC SIGNATURES APPEARING ON THIS AGREEMENT ARE THE SAME AS HANDWRITTEN SIGNATURES FOR THE PURPOSES OF VALIDITY, ENFORCEABILITY AND ADMISSIBILITY.

1. INTRODUCTION

- 1.1 This Master Agreement ("Master Agreement") is between Cyber City, Inc. a New York corporation, having an address at 224 West 30th Street, Suite 1100, New York, NY 10001 ("Cyber City"); and your organization ("Customer"), is effective on the date set forth in the referencing Schedule and specifies the terms and conditions agreed between the Parties as a foundation for their relationship as further defined in the applicable Addendums.
- 1.2 The Master Agreement may incorporate any applicable Addendum referenced in the applicable Schedule that is signed separately by the Parties.

2. DEFINITION

- 2.1 "Addendum" means the additional terms and conditions applicable to the Cyber City Offering attached hereto.
- 2.2 "Agreement" means this Master Agreement, the applicable Addendum(s) and applicable Schedule(s), and any document incorporated expressly therein by reference.
- 2.3 "Business Hours" are 9:00 AM to 6:00 PM Eastern Time Monday through Friday, with scheduled on site visits starting at 10:00 AM.
- 2.4 "Confidential Information" means any information, maintained in confidence by the disclosing Party, communicated in written or oral form, marked as proprietary, confidential or otherwise so identified, and/or any information that by its form, nature, content or mode of transmission would to a reasonable recipient be deemed confidential or proprietary, including, without limitation, Cyber City Services, documentation, and any data and results produced.
- 2.5 "Configuration" is the term used to describe individual components of the Customer System. Configurations can include devices, services, software, etc... and are itemized and inventoried in the Customer Portal.
- 2.6 "Customer Data" is defined as the electronic files that includes but is not limited to word processing documents, spreadsheets, multi-media files, databases, email, etc.
- 2.7 "Customer Liaison" means Customer representative who is designated as primary Cyber City contact.
- 2.8 "Customer Portal" is a secured web based application where Customer can view and access Service Tickets, Configurations and Customer System, Reports, Agreements and other account information.
- 2.9 "Customer System" is defined as the components of the Customer network that are itemized in the Customer Portal as active Configurations.
- 2.10 "Cyber City Licensed Software" shall mean any software owned by Cyber City that is installed on Customer System as part of Cyber City's Service.
- 2.11 "Cyber City System" is defined as the components that constitute Cyber City's IT infrastructure.
- 2.12 "Schedule" means a signed mutually agreed ordering document such as a Cyber City order quote or statement of work for the specific Cyber City Service.
- 2.13 "Services" shall mean Services to be provided by Cyber City to Customer as defined by this Agreement and may include but are not limited to Managed Services and Virtual Services.

2.14 "User" or "Users" shall mean any employees, agents, contractors, representatives or licensees of Customer who are permitted to access or use the Customer Systems and/or Customer Data located on the Customer System.

3. PERFORMANCE OF SERVICES

3.1 Cyber City will provide Customer with Services as described in the Schedule and applicable Addendum(s).

3.2 Cyber City will provide Customer with a dedicated Account Manager.

3.3 Cyber City will provide Customer with a Customer Portal that allows Customer to create and track tickets, view projects, view inventory of Customer System and services, view reports, view Agreements, track remaining Monthly Service Hours, view staff list and view and pay invoices.

3.4 Customer will provide Cyber City with a single Customer Liaison who will act as the primary point of contact for Customer and who is authorized to act on behalf of the Customer. The Customer Liaison will also act as the point of contact in emergency situations. An alternate Emergency Contact shall also be designated by Customer.

4. SERVICE LEVELS

4.1 The "Service Level" commitments applicable to the Services ordered by Customer and provided by Cyber City are set forth in the Addendum under the Service Level defined for each Service. Service Levels do not apply during periods of force majeure or scheduled maintenance ("Excused Outages"). If Cyber City does not meet the Service Level set forth in any Addendum, a credit will be issued to Customer upon Customer's written request. Cyber City's maintenance log and trouble ticketing systems will be used for calculating any Service Level events in accordance with the Service Level set forth in the applicable Addendum. To request a credit, Customer must submit to the Customer Account Manager a written request containing sufficient detail to identify the affected Service within thirty (30) days after the incident the Customer alleges the Service Level in question is not met. In no event will the total credits issued to Customer in any given month exceed the monthly recurring charges for the affected Service during that month. Customer's sole remedies for any outages, interruptions, failures to deliver or defects in Services are contained in the Service Levels (if any) applicable to the affected Service(s).

5. CHARGES

5.1 Customer shall pay to Cyber City the applicable license, subscription, hosting, support, and other fees (if any) for those Services contracted by Customer ("Fees"), as set forth in this Agreement and applicable Addendum(s).

5.2 Any additions in either quantity or type to the Services described in the Schedule may incur an additional monthly fee. All costs related to changes in service or increases in quantity are the responsibility of the Customer.

5.3 With regard to any assistance by Cyber City to Customer which is outside the scope of Services, as determined by Cyber City in its sole discretion, Customer shall pay Cyber City for such services at the hourly rate described in the Managed Services Addendum (Hourly Rate). Cyber City is required to notify Customer that particular assistance services may be outside the scope of the Agreement.

5.4 Customer shall pay all fees and charges for all supplies ordered and/or purchased and/or shipped on its behalf by Cyber City.

5.5 Time is billed in fifteen (15) minute increments. There is a one (1) hour minimum for all on-site work.

5.6 There is no charge for travel time within the five boroughs of New York City. Travel outside the five boroughs is billed based on travel time from Cyber City's New York City office to the Customer's location plus the cost of transportation

5.7 Labor performed outside of Business Hours is subject to a rate of time and a half.

5.8 Customer shall be responsible for all taxes arising in any jurisdiction. Customer may present Cyber City a valid exemption certificate and Cyber City will give effect thereto prospectively.

5.9 Payments are due within thirty (30) days of the invoice date. Notifications of late payments are given by Cyber City to Customer at fifteen (15) days and thirty (30) days past due. Any balance thirty (30) days past due will result in notification and suspension of remote and onsite support services. Fees will continue to accrue during any such suspension. At Cyber City's discretion, any balance sixty (60) days past due may result in notification and immediate termination of Services and Agreement.

6. OWNERSHIP AND RESTRICTIONS

6.1 Cyber City acknowledges and agrees that as between Cyber City and Customer title to and ownership of the Customer Data, including all corrections, enhancements, or other modifications, whether made by Cyber City or any third party, and all Intellectual Property Rights therein, are and will at all times be deemed the sole and exclusive property of Customer. With respect to Customer Data, all rights not expressly granted to Cyber City in this Agreement are reserved by Customer.

6.2 Customer acknowledges and agrees that as between Cyber City and Customer title to and ownership of the Services and Cyber City Systems, including all corrections, enhancements, or other modifications to licensed software, whether made by Cyber City or any third party, and all Intellectual Property Rights therein, are and will at all times be deemed the sole and exclusive property of Cyber City and its suppliers. With respect to Cyber City Systems and Services, all rights not expressly granted to Customer in this Agreement are reserved by Cyber City and its suppliers.

6.3 Restrictions on Use. Customer acknowledges that the Services and its structure, organization and implementation constitute valuable trade secrets of Cyber City or its suppliers. Accordingly, Customer will not, directly or indirectly, do any of the following:

6.3.1 modify, adapt, alter, translate, or create derivative works from the Services;

6.3.2 sublicense, lease, rent, loan, distribute, sell or otherwise transfer or make available the Services to any third party except as specifically permitted by this Agreement;

6.3.3 reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Services or evaluate the Services in order to develop a competitive product;

6.3.4 use the Services to process data or provide any service bureau activity for any third party;

6.3.5 violate any local, state, federal or foreign law, treaty, regulation or convention applicable to Customer in connection with its Users' use of the Services;

6.3.6 willfully tamper with the security of any of the Cyber City System or tamper with other customer accounts of Cyber City;

6.3.7 attempt to access data on the Cyber City System not belonging to or intended for Customer;

6.3.8 attempt to probe, scan or test the Cyber City System or to breach the security or authentication measures without proper authorization;

6.3.9 willfully render any part of the Cyber City System unusable; or

6.3.10 otherwise use the Services except as expressly allowed under this Agreement.

6.4 Customer Data. Customer agrees that it is solely responsible for the content of all Customer Data. Customer is solely responsible for the collection, accuracy, currency, quality, legality, completeness and use of Customer Data that is processed using Cyber City Services, stored on the Cyber City System, or disclosed to or used by Customer or Users in connection with Cyber City Services.

6.5 Authorization to Release Data. Notwithstanding anything to the contrary contained in this Agreement, if Customer requests Cyber City or its suppliers to provide assurances to any governmental agency, regulatory organization or similar institution, including without limitation, the U.S. Securities and Exchange Commission and the Financial Institution Regulatory Authority (collectively, "Regulatory Agencies") regarding the Services provided by Cyber City, Customer authorizes Cyber City and its suppliers to furnish to such Regulatory Agencies all data, e-mail and other records stored by Customer on Cyber City System. Customer agrees to indemnify and hold harmless Cyber City and its suppliers from and against any and all claims relating to or arising from Cyber City's compliance with this provision or release of such data.

6.6 Software Licensing. Customer must maintain and provide Cyber City with legally licensed software for Customer System and all applications used by Customer that are not Cyber City Licensed Software.

7. SECURITY AND DISASTER RECOVERY

7.1 Cyber City maintains effective information and data security measures, practices, and procedures of the highest industry standards that protect all Customer Data from any unauthorized disclosure, reproduction, availability, or use.

7.2 Cyber City implements, maintains, and abides by a disaster recovery plan ("Disaster Recovery Plan") for the Cyber City System, including without limitation a process of declaring a disaster and activating the Disaster Recovery Plan.

8. CONFIDENTIALITY

8.1 Each party acknowledges that, in the course of the performance of this Agreement, it may obtain certain confidential information of the other party ("Confidential Information"). Confidential Information disclosed pursuant to this Agreement will be subject to the terms of this Agreement during the Term (as defined below) and for two (2) years following termination or expiration of this Agreement, except for Customer Data, which will be subject to the terms of this Agreement indefinitely. The recipient of any Confidential Information ("Recipient") shall take all reasonable steps to prevent the unauthorized disclosure of and maintain the confidentiality of the Confidential Information of the disclosing party ("Discloser"). Recipient shall not disclose the Confidential Information of Discloser to any employees or third parties except to employees (including independent contractors), subsidiaries and consultants of Recipient who have at least an equivalent confidentiality obligation to Recipient and who have a need to know such Confidential Information on condition that Recipient shall be liable for any breach by such individual(s) or entity(ies). However, the parties acknowledge and agree that, notwithstanding such measures taken to prevent unauthorized disclosure, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to Confidential Information. Accordingly, Recipient cannot and does not guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet. The Confidential Information disclosed by Discloser may only be used by Recipient as necessary to perform its obligations or exercise its rights under this Agreement.

9. NON-SOLICITATION

9.1 During the term of this Agreement and for a period of six (6) months thereafter, neither party will solicit for employment any employees of the other party or its affiliates.

10. LIMITED WARRANTY

10.1 Cyber City does not warrant the services performed pursuant to this Agreement or the accuracy or correctness of the results of the Services, and there are no warranties, express or implied except the following: the Services will meet the specifications set forth in the Addendum and the work-product shall be operational under normal working conditions. If Customer notifies Cyber City within thirty (30) days of Cyber City's completion of its Services of a defect, Cyber City shall promptly correct such defect. If Cyber City shall not correct such defect in a timely fashion, Cyber City shall refund the fees and charges for such portion of the Services as shall be deemed defective by Cyber City.

11. TERM & TERMINATION

11.1 This Master Agreement shall continue in effect unless otherwise terminated in accordance with this section.

11.2 This Master Agreement and/or applicable Addendum(s) and/or the applicable Schedule may be terminated by either Party (a) upon a material breach by the other Party, provided that, in each instance of a claimed breach: (i) the non-breaching Party notifies the breaching Party in writing of such breach; and (ii) the breaching Party fails to either cure such breach within thirty (30) days (or such other period as mutually agreed by the Parties) from receipt of such notice; or (b) upon insolvency of the other Party, if permitted by law.

11.3 Termination does not release either Party from any liability which, at the time of such termination, had already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from pursuing any rights or remedies it may have under law or in equity with respect to any breach of this Agreement. Excepting for termination based on Cyber City's uncured material breach, all fees are non-cancellable and non-refundable unless a pro-rated refund applies as provided in the applicable Addendum. In the event of a termination by Cyber City for an uncured material breach by Customer, all fees shall immediately become due and payable.

11.4 Termination for Convenience. Customer may terminate this Agreement for convenience upon sixty (60) days written notice to Cyber City provided all amounts due to Cyber City have been paid and by immediately paying the monthly subscription fee(s) in effect at the time that Cyber City receives the termination notice for the remainder of the terminated Agreement (60 day minimum).

11.5 Obligations upon Termination. In the event of any termination or cancellation of this Agreement,

- 11.5.1 Cyber City may declare all amounts owed to it, up to date of termination, to be immediately due and payable.
- 11.5.2 Cyber City will cease performance of all Services to Customer without incurring liability to Customer.
- 11.5.3 Cyber City will remove Cyber City Licensed Software from Customer computer systems.
- 11.5.3.1 When Cyber City is unable, Customer shall remove all copies of the Cyber City Licensed Software from its computer systems and shall return or destroy, at Cyber City's option, all such copies.
- 11.5.4 Immediately upon Termination, Cyber City will effectively and permanently delete all Customer Data from the Cyber City System.
- 11.6 If Customer wishes to assume or assign administrative control of the Customer System to another party prior to the Termination Date, Cyber City will execute its obligations described in sections 11.5 immediately upon transferring administrative control.

12. LIMITATION OF LIABILITY

12.1 In no event shall Cyber City be liable to Customer for any damages whatsoever for lost profits, lost revenues, loss of goodwill, loss of anticipated savings, loss of data, the cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or related to this Agreement or the performance of or failure to perform Services under this Agreement or any Addendum(s), or any breach thereof, even if Cyber City has been advised of the possibility thereof. Cyber City's liability to Customer, if any, shall in no event exceed the total amount paid to Cyber City during the last ninety (90) days of Service.

13. FORCE MAJEURE

13.1 Cyber City shall not be liable for any failure to perform, or delays in the performance of, Services hereunder if such delays or failures are due to strikes, inclement weather, acts of God or other causes beyond the reasonable control of Cyber City. Customer will not be obligated to pay Cyber City for the delayed Services until such time as the delayed Services have been provided.

14. INDEMNIFICATION

14.1 Each party hereto shall indemnify, defend and hold the other, its affiliates and each of its respective owners, directors, officers, employees and agents, harmless from and against any and all claims, suits, expenses, losses, demands, actions, causes of actions, judgments, fees and costs, of any kind or nature whatsoever (collectively, "Claims"), arising from or related to any use, attempt to use or resale of Services or otherwise arising in connection with any Services under this Agreement.

15. ASSIGNMENT

15.1 Neither party may assign its rights or obligations under this Agreement without the prior written consent of other party. This Agreement will apply to any permitted transferees or assignees. Customer may not resell any Services under this Agreement without the express, written consent of Cyber City. Nothing in this Agreement, express or implied, is intended to or will confer upon any third party any right, benefit or remedy under or by reason of this Agreement.

16. WAIVER

16.1 The waiver by Cyber City of any performance or breach by Customer of any term, covenant or condition contained herein or in any Addendum must be in writing and signed by Cyber City to be effective. Any such waiver shall not be deemed to be a waiver of any subsequent or continuing breach of the same, or of any other term, covenant or condition contained herein or in any Addendum. Nor will any custom or practice that may arise between the parties in the administration of the provisions of this Agreement or any Addendum be deemed a waiver of, or in any way affect, the right of Cyber City to insist upon the performance by Customer in strict accordance with such provisions. The subsequent acceptance by Cyber City of any Fees due from Customer hereunder shall not be deemed to be a waiver of any preceding breach by Customer in failing to pay any Fees due hereunder, regardless of Cyber City's knowledge of such preceding breach at the time of the acceptance of such Fees.

17. DISPUTE RESOLUTION

17.1 Any dispute, controversy or claim arising out of the Agreement or the interpretation thereof (a "Dispute") shall be resolved as provided in this section. Prior to the initiation of formal dispute resolution procedures, the Parties shall first meet as often, and for such duration and as promptly as the Parties reasonably deem necessary to discuss the Dispute and negotiate in good faith in an effort to resolve the Dispute. If Customer and Cyber City are unable to resolve the Dispute within thirty (30) days after the referral of the Dispute to them, then each of Cyber City and Customer will appoint one (1) senior executive who is not involved on a day-to-day basis with the subject matter of the Agreement and will negotiate the matter in good faith in an effort to resolve the Dispute without the necessity of any formal proceedings.

17.2 Formal proceedings for the resolution of a Dispute may not be commenced until the earlier of: (i) the good faith determination by the appointed senior executives that amicable resolution through continued negotiation of the matter does not appear likely; or (ii) thirty (30) days following the date that the Dispute was first referred to the appointed senior executives. The provisions of paragraphs (i) and (ii) will not be construed to prevent a Party from instituting formal proceedings to the extent necessary to avoid the expiration of any applicable limitations period or to pursue equitable rights or injunctive remedies deemed reasonable necessary to protect its interests.

18. GENERAL

18.1 Order of Precedence. Any conflict or inconsistency among or between the terms and conditions of the documents comprising the Agreement shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the Schedule; (2) the relevant Addendum; (3) this Master Agreement.

18.2 Independent Contractor Relationship. The Parties expressly agree that the relationship between them is that of customer-independent contractor.

18.3 Claims. Any claim arising out of or related to this Agreement must be brought no later than THIRTY (30) days after the event giving rise to the claim was discovered by the Customer.

18.4 Governing Law and Jurisdiction. This Agreement shall be interpreted in accordance with the substantive laws of the State of New York without giving effect to the conflict of law principles.

18.5 Notice. All notices hereunder shall be delivered to the other Party identified in the Agreement either personally, via certified mail, facsimile or overnight courier. If delivered personally, notice shall be deemed effective when delivered; if delivered via facsimile, notice shall be deemed effective upon electronic confirmation; and if delivered via certified mail or overnight courier, notice shall be deemed effective upon confirmation of delivery.

18.6 Amendments. The terms of the Agreement may only be amended by mutual written agreement of the Parties, with the exception of any alteration or amendment to this Agreement sent by Cyber City to Customer in writing, in a manner in which proof of delivery can be established and which shall be deemed to have amended this Agreement and have been accepted by Customer if not objected to in writing by Customer. Notice of such objection must be received by Cyber City within thirty (30) days of Customer's receipt of Cyber City's notification of change.

18.7 Survival. Sections pertaining to Confidentiality, Title, Limitation of Liability and Termination shall survive termination of this Master Agreement.

18.8 Entire Agreement. The Agreement and all documents incorporated by reference therein shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the Parties concerning the subject matter is superseded in their entirety by the Agreement.