

MASTER SERVICE AGREEMENT (2024)



This Master Services Agreement (this "Agreement") is made between MB Systems of South Florida, Inc. ("us", "our", "we" or "MBSSF") and you, the entity utilizing our services ("you", "your" or "Client"). This Agreement is effective as of the date you access or utilize our services ("Effective Date").

By accessing or utilizing our services, you acknowledge that you have read, understood, and agree to abide by the terms outlined in this Master Services Agreement. No signature is required for this agreement to be effective; your use of our services constitutes acceptance of these terms.

- 1) **SCOPE OF SERVICES; SOW.** This Agreement governs all services that we perform or provide to you (collectively, the "Managed Services"). The Managed Services will be described in one or more statements of work that we provide to you (each, a "SOW"). Once you and we mutually agree to a SOW (either by signing it or by electronic acceptance), the SOW will become a part of and governed under the terms of this Agreement. If there is a material difference between the language in a SOW and the language in this Agreement, then the language of the SOW will control, except in situations involving warranties, limitations of liability or termination of this Agreement. Under those limited circumstances, the terms of this Agreement will control unless the SOW expressly states that it is overriding the conflicting provisions of this Agreement.
- 2) **GENERAL REQUIREMENTS.**
 - a) **System.** For the purposes of this Agreement, "System" means, collectively, any computer network, computer system, peripheral or device installed, maintained, monitored, or operated by us pursuant to a SOW. To avoid a delay or negative impact on our provision of the Services, during the term of each SOW you agree to refrain from modifying or moving the System, or installing software on the System, unless we expressly authorize such activity.
 - b) **Requirements.** At all times, all software on the System must be genuine and licensed, and you agree to provide us with proof of such licensing upon our request. If we require you to implement certain minimum hardware or software requirements in a SOW ("Minimum Requirements"), you agree to do so as an ongoing requirement of MBSSF providing its Managed Services to you.
 - c) **Maintenance; Updates.** If patches and other software-related maintenance updates ("Updates") are provided under a SOW, we will install the Updates only if we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the System and materially beneficial to the features or functionality of the affected software or hardware. MBSSF will not be responsible for any downtime or losses arising from or related to the installation or use of any Update, provided that the Update was installed in accordance with the manufacturer's or applicable vendor's instructions.
 - d) **Third Party Support.** If, in MBSSF's discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and pass through to you, without markup, all fees and costs incurred in that process. If such fees or costs are anticipated in advance or exceed \$100, we will obtain your permission before incurring such expenses on your behalf unless exigent circumstances require otherwise.
 - e) **Insurance.** You agree to acquire and maintain, at your sole cost, comprehensive insurance coverage for all equipment related to the Managed Services, including MBSSF Equipment (defined below) and your own equipment. MBSSF must be listed as an additional insured on any policy acquired and maintained by you under this Agreement, and the policy will not be canceled or modified during the term of the applicable SOW without prior notification to MBSSF. Upon

MBSSF's request, you agree to provide proof of insurance to MBSSF, including proof of payment of any applicable premiums or other amounts due under the insurance policy.

- f) **Advice; Instructions.** From time to time, we may provide you with specific advice and directions related to our provision of the Managed Services or the maintenance or administration of the System. (For example, our advice or directions may include increasing the System's server or hard drive capacity or replacing obsolete equipment.) You agree to promptly follow and implement any directions we provide to you related to the Managed Services which, depending on the situation, may require you to make additional purchases or investments in the System or the environment in which the System is maintained, at your sole cost. MBSSF will not be responsible for any System downtime caused by your failure to promptly follow MBSSF's advice or directions. If your failure to follow or implement our advice renders part or all of the Managed Services economically or technically unreasonable to provide in MBSSF's discretion, then MBSSF may terminate the applicable SOW for cause by providing notice of termination to you. Unless specifically and expressly stated in a SOW, any services required to remediate issues caused by your failure to follow MBSSF's advice or directions, or your unauthorized modification of the System, as well as any services required to bring the System up to or maintain the Minimum Requirements, are not covered under any SOW and will be out-of-scope.
 - g) **Prioritization.** Unless otherwise stated in a SOW, all Managed Services will be performed on a schedule, and in a prioritized manner, as determined by MBSSF.
 - h) **Authorized Contact(s).** MBSSF will be entitled to rely on any directions or consent provided by your personnel or representatives who are authorized in a SOW to provide such directions or consent ("Authorized Contacts"). If no Authorized Contact is identified in an applicable SOW, then your Authorized Contact will be the person(s) (i) who signed this Agreement, and/or (ii) who signed the applicable SOW. If you desire to change your Authorized Contact(s), please notify MBSSF of such changes in writing which, unless exigent circumstances are stated in the notice, will take effect three (3) business days thereafter.
 - i) **Cybersecurity Measures.** MBSSF will implement and maintain industry-standard cybersecurity measures to protect the Client's systems and data. These measures will include, but are not limited to, regular security assessments, vulnerability scanning, and employee training on cybersecurity best practices.
 - j) **Remote Work Considerations.** MBSSF acknowledges that Client may have employees working remotely. The Managed Services will include support for secure remote access solutions and best practices for maintaining security in a distributed work environment.
 - k) **Technology Roadmap.** MBSSF will provide an annual technology roadmap to Client, outlining recommended upgrades, replacements, and new technologies that could benefit Client's operations. This roadmap will be reviewed and updated quarterly.
- 3) **FEES; PAYMENT.** You agree to pay the fees described in each SOW. If the SOW does not include a fee schedule, then you agree to pay MBSSF on an hourly basis pursuant to MBSSF's standard hourly rate schedule.
- a) **Schedule.** Unless otherwise stated in a SOW, all undisputed fees will be due and payable in advance of the provision of the Managed Services. If applicable, payments made by ACH will be deducted from your designated bank account on the first business day of the month in which the Managed Services are to be provided.
 - b) **Nonpayment.** Fees that remain unpaid for more than fifteen (15) days after the date on the invoice will be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 1.5% per month or the maximum allowable rate of interest permitted by applicable law. MBSSF reserves the right, but not the obligation, to suspend part or all of the Managed Services without prior notice to you in the event that any portion of undisputed fees are not timely received by MBSSF. Notice of disputes related to fees must be received by

us within sixty (60) days after the applicable Service is rendered or the date on which you pay an invoice, whichever is later; otherwise, you waive your right to dispute the fee thereafter. A re-connect fee may be charged to you if MBSSF suspends the Managed Services due to your nonpayment. Time is of the essence in the performance of all payment obligations by you.

- 4) **ACCESS.** You hereby grant MBSSF the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access the System, on a 24x7x365 basis, for the purpose of enabling MBSSF to provide the Managed Services. It is your responsibility to secure, at your own cost and prior to the commencement of any Managed Services, any necessary rights of entry, licenses, permits or other permissions necessary for MBSSF to provide Managed Services to the System and, if applicable, at your designated premises. Proper and safe environmental conditions must be provided and assured by you at all times. MBSSF shall not be required to engage in any activity or provide any Managed Services under conditions that pose or may pose a safety or health concern to any personnel, or that would require extraordinary or non-industry standard efforts to achieve.
- 5) **LIMITED WARRANTIES; LIMITATIONS OF LIABILITY.**
 - a) **Hardware / Software Purchased Through MBSSF.** Unless otherwise stated in a SOW, all hardware, software, peripherals or accessories purchased through MBSSF ("Third Party Products") are nonrefundable once the applicable purchase order is placed in MBSSF's queue for delivery. We will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products to you, but will have no liability whatsoever for the quality, functionality or operability of any Third Party Products, and we will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Unless otherwise expressly stated in a SOW, all Third Party Products are provided "as is" and without any warranty whatsoever as between MBSSF and you (including but not limited to implied warranties).
 - b) **Warranty Application.** Notwithstanding any provision to the contrary in this Agreement, any warranty provided by MBSSF shall be deemed null and void if the applicable hardware or product is (i) altered, modified or repaired by persons other than MBSSF, including, without limitation, the installation of any attachments, features, or devices not supplied or approved by MBSSF; (ii) misused, abused, or not operated in accordance with the specifications of MBSSF or the applicable manufacturer or creator of the hardware or product, or, (iii) subjected to improper site preparation or maintenance by persons other than MBSSF or persons approved or designated by MBSSF.
 - c) **Liability Limitations.** You acknowledge and agree that MBSSF would not enter into this Agreement unless it could rely on the limitations described in this paragraph. In no event shall either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to MBSSF), savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, any SOW, or the Managed Services, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing Managed Services under this Agreement or any SOW, even if a party has been advised of the possibility of such damages. Except for your payment obligations and your indemnification obligations described in this Agreement, each party's aggregate liability to the other party for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of actual and direct damages, not to exceed the amount of fees paid by you to MBSSF for the Managed Services during the twelve (12) month period immediately prior to the date on which the cause of action accrued. The foregoing limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct, or gross negligence. Similarly,

a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, or gross negligence.

- 6) **INDEMNIFICATION.** You agree to indemnify, defend and hold MBSSF harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, your breach of this Agreement, or which relate to any act or omission undertaken or caused by you. The foregoing indemnification obligation includes Damages arising out of any alleged infringement of copyrights, patent rights and/or the unauthorized or unlicensed use of any material, property or other work in connection with the performance of the Managed Services.

MBSSF will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. No claim for which indemnity is sought by MBSSF will be settled without MBSSF's prior written consent, which shall not be unreasonably delayed or withheld.

MBSSF shall indemnify and hold Client harmless from any third-party claims alleging that the Services infringe upon any intellectual property rights, provided that Client promptly notifies MBSSF of such claims and cooperates in the defense thereof.

- 7) **TERM; TERMINATION.** This Agreement begins on the Effective Date and continues until terminated as described in this Agreement. Each SOW will have its own term and will be terminated only as provided herein, unless otherwise expressly stated in the applicable SOW. The termination of one SOW shall not, by itself, cause the termination of (or otherwise impact) the status or progress of any other SOW between the parties.

- a) **Termination without Cause.** Unless otherwise agreed by the parties in writing or otherwise permitted under this Agreement, no party will terminate this Agreement without cause if, on the date of termination, a SOW is in progress. In addition, no party will terminate a SOW without cause prior to the SOW's natural expiration date. Notwithstanding the foregoing, if MBSSF decides to cease providing a service to all of its customers generally, then MBSSF may terminate an applicable SOW without cause by providing no less than one hundred and twenty (120) days prior written notice to you. If you terminate a SOW without cause and without MBSSF's consent, then you will be responsible for paying the early termination fee described in the applicable SOW. If no early termination fee is listed, then prior to the effective date of termination of the SOW or this Agreement (as applicable) without cause, you agree to pay MBSSF an amount equal to (i) all expenses incurred by MBSSF in its preparation and provision of the Managed Services to you, e.g., licensing fees incurred by MBSSF, non-mitigatable hard costs, etc. ("Hard Costs"), as well as (ii) fifty percent (50%) of all fees that would have been paid to MBSSF had the term not been terminated prematurely. If no SOW is in progress, then either party may terminate this Agreement without cause by providing the other party with five (5) days prior written notice.
- b) **Termination for Cause.** In the event that one party (a "Defaulting Party") commits a material breach under a SOW or under this Agreement, the non-Defaulting Party will have the right, but not the obligation, to terminate immediately this Agreement or the relevant SOW (a "For Cause" termination) provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within twenty (20) days (ten (10) days for non-payment by Client) following receipt of written notice of breach from the non-Defaulting Party. If MBSSF terminates this Agreement or any SOW For Cause, then MBSSF shall be entitled to receive, and you hereby agree to pay to MBSSF, (i) all amounts that would have been paid to MBSSF had this Agreement or SOW (as applicable) remained in effect, and (ii) all Hard Costs. If you terminate this Agreement or a SOW for cause, then you will be responsible for paying only for those services that were properly delivered and accepted by you up to the effective date of termination.
- c) **Client Activity as a Basis for Termination.** In the event that (i) any Client-supplied equipment, hardware or software, or any action undertaken by you, causes the System or any part of the

System to malfunction consequently requiring remediation by MBSSF on three (3) occasions or more ("System Malfunction"), and if under those circumstances, you fail to remedy, repair or replace the System Malfunction as directed by MBSSF (or you fail to cease the activity causing the System Malfunction, as applicable), or (ii) you or any of your staff, personnel, contractors, or representatives engage in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable to provide the Managed Services to you, then MBSSF will have the right, upon ten (10) days prior written notice to you, to terminate this Agreement or the applicable SOW For Cause or, at MBSSF's discretion and if applicable, amend the applicable SOW to eliminate from coverage any System Malfunction or any equipment or software causing the System Malfunction.

- d) **Consent.** You and we may mutually consent, in writing, to terminate a SOW or this Agreement at any time.
- e) **Equipment / Software Removal.** Upon termination of this Agreement or applicable SOW for any reason, you will provide MBSSF with access, during normal business hours, to your premises or any other locations at which MBSSF-owned equipment or software (collectively, "MBSSF Equipment") is located to enable MBSSF to remove all MBSSF Equipment from the premises. If you fail or refuse to grant MBSSF access as described herein, or if any of the MBSSF Equipment is missing, broken or damaged (normal wear and tear excepted) or any of MBSSF-supplied software is missing, MBSSF will have the right to invoice you for, and you hereby agree to pay immediately, the full replacement value of any and all missing or damaged items.
- f) **Transition; Deletion of Data.** In the event that you request MBSSF's assistance to transition away from MBSSF's services, MBSSF will provide such assistance if (i) all fees due and owing to MBSSF are paid to MBSSF in full prior to MBSSF providing its assistance to you, and (ii) you agree to pay MBSSF its then-current hourly rate for such assistance, with up-front amounts to be paid to MBSSF as may be required by MBSSF. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. **Unless otherwise expressly stated in a SOW, MBSSF will have no obligation to store or maintain any Client data in MBSSF's possession or control beyond fifteen (15) calendar days following the termination of this Agreement.** MBSSF will be held harmless for, and indemnified by you against, any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, MBSSF's deletion of your data beyond the time frames described in this Section 7(f).

8) RESPONSE; REPORTING.

- a) **Response.** MBSSF warrants and represents that MBSSF will provide the Managed Services, and respond to any notification received by MBSSF of any error, outage, alarm or alert pertaining to the System, in the manner and within the time period(s) designated in an applicable SOW ("Response Time"), except for (i) those periods of time covered under the Onboarding Exception (defined below), or (ii) periods of delay caused by Client-Side Downtime (defined below), Vendor-Side Downtime (defined below) or (iii) periods in which MBSSF is required to suspend the Managed Services to protect the security or integrity of your System or MBSSF's equipment or network, or (iv) delays caused by a force majeure event.
 - i) **Scheduled Downtime.** For the purposes of this Agreement, Scheduled Downtime will mean those hours, as determined by MBSSF but which will not occur between the hours of 9 AM and 5:00 PM EST (or EDT, as applicable), Monday through Friday without your authorization or unless exigent circumstances exist, during which time MBSSF will perform scheduled maintenance or adjustments to its network. MBSSF will use its best efforts to provide you with at least twenty-four (24) hours of notice prior to scheduling Scheduled Downtime.
 - ii) **Client-Side Downtime.** MBSSF will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Managed Services to the extent

- that such delays or deficiencies are caused by your actions or omissions (“Client-Side Downtime”).
- iii) Vendor-Side Downtime. MBSSF will not be responsible under any circumstances for any delays or deficiencies in the provision of, or access to, the Managed Services to the extent that such delays or deficiencies are caused by third party service providers, third party licensors, or “upstream” service or product vendors.
 - iv) Remedies; Limitations. Except for the Onboarding Exception, if MBSSF fails to meet its service level commitment in a given calendar month and if, under such circumstances, MBSSF’s failure is not due to your activities, omissions, or inactivity, then upon receiving your written request for credit, MBSSF will issue you a pro-rated credit in an amount equal to the period of time of the outage and/or service failure. All requests for credit must be made by you no later than forty-five (45) days after you either (i) report the outage or service failure to MBSSF, or (ii) if applicable, receive a monthly report showing the outage and/or failure. The remedies contained in this paragraph and in Section 7(b) are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to you for MBSSF’s failure to meet any service level commitment during the term of this Agreement.
 - v) Response: Reporting. Detailed Service Level Agreements, including specific response times, uptime guarantees, and associated penalties for non-compliance, shall be outlined in each Statement of Work (SOW)
- b) *Onboarding Exception*. You acknowledge and agree that for the first thirty (30) days following the commencement date of a SOW, the Response Time commitments described in this Agreement will not apply to MBSSF, it being understood that there may be unanticipated downtime or delays due to MBSSF’s initial startup activities with you (the “Onboarding Exception”).
 - c) MBSSF will provide Managed Services in accordance with the Service Level Agreement (SLA) attached as Exhibit A to this Agreement. The SLA will define specific performance metrics, response times, and remedies for failure to meet agreed-upon service levels.

9) **CONFIDENTIALITY.**

- a) *Defined*. For the purposes of this Agreement, Confidential Information means any and all non-public information provided to MBSSF by you, including but not limited to your customer data, customer lists, internal documents, and related information. Confidential Information will not include information that: (i) has become part of the public domain through no act or omission of MBSSF, (ii) was developed independently by MBSSF, or (iii) is or was lawfully and independently provided to MBSSF prior to disclosure by you, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.
- b) *Use*. MBSSF will keep your Confidential Information confidential and will not use or disclose such information to any third party for any purpose except (i) as expressly authorized by you in writing, or (ii) as needed to fulfill MBSSF’s obligations under this Agreement. If MBSSF is required to disclose the Confidential Information to any third party as described in part (ii) of the preceding sentence, then MBSSF will ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section 9.
- c) *Due Care*. MBSSF will exercise the same degree of care with respect to the Confidential Information it receives from you as MBSSF normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases will be at least a commercially reasonable level of care.
- d) *Compelled Disclosure*. If MBSSF is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, MBSSF will immediately notify you in writing of such requirement

so that you may seek a protective order or other appropriate remedy and/or waive MBSSF's compliance with the provisions of this Section 9. MBSSF will use its best efforts, at your expense, to obtain or assist you in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, MBSSF may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that MBSSF has been advised by written opinion of counsel reasonably acceptable to MBSSF that it is legally compelled to disclose.

- e) **Data Protection and Privacy Clause.** MBSSF will comply with all applicable data protection and privacy laws in the provision of Managed Services. MBSSF will implement and maintain appropriate technical and organizational measures to protect Client data from unauthorized access, use, disclosure, alteration, or destruction

10) **ADDITIONAL TERMS; THIRD PARTY SERVICES.**

- a) **EULAs.** Portions of the Managed Services may require you to accept the terms of one or more third party end user license agreements ("EULAs"). EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. You agree to be bound by the terms of such EULAs and will look only to the applicable third party provider for the enforcement of the terms of such EULAs. If, while providing the Managed Services, MBSSF is required to comply with a third-party EULA and the third party EULA is modified or amended, MBSSF reserves the right to modify or amend any applicable SOW with you to ensure MBSSF's continued compliance with the terms of the third party EULA.
 - b) **Third Party Services.** Portions of the Managed Services may be acquired from, or rely upon the services of, third party manufacturers or providers, such as data hosting services, domain registration services, and data backup/recovery services ("Third Party Service"). Not all Third Party Services may be expressly identified as such in a SOW and at all times MBSSF reserves the right to utilize the services of any third party provider, or change third party providers in its sole discretion as long as the change does not materially diminish the Managed Services to be provided to you under a SOW. MBSSF will not be responsible, and will be held harmless by you, for the failure of any third-party provider or manufacturer to provide Third Party Services to MBSSF or to you.
 - c) **Data Loss.** Under no circumstances will MBSSF be responsible for any data lost, corrupted or rendered unreadable due to (i) communication and/or transmissions errors or related failures, (ii) equipment failures (including but not limited to silent hardware corruption-related issues), or (iii) MBSSF's failure to backup or secure data from portions of the System that were not expressly designated in the applicable SOW as requiring backup or recovery services. Unless expressly stated in a SOW, MBSSF does not warrant or guarantee that any maintained storage device or functionality, data backup device or functionality, or load balancing functionality will operate in an error-free manner.
 - d) **BYOD.** You hereby represent and warrant that MBSSF is authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the System, regardless of whether such device(s) are owned, leased or otherwise controlled by you. MBSSF will not be obligated to provide the Managed Services to any mobile device or temporarily connected device unless that obligation is specifically stated in an applicable SOW. Further, unless otherwise stated in a SOW, devices will not receive or benefit from the Managed Services while the devices are detached from, or unconnected to, the System.
- 11) **OWNERSHIP.** Each party is, and will remain, the owner and/or licensor of all works of authorship, patents, trademarks, copyrights and other intellectual property owned or licensed by such party ("Intellectual Property"), and nothing in this Agreement or any SOW shall be deemed to convey or grant any ownership rights or goodwill in one party's Intellectual Property to the other party.

- 12) **ARBITRATION.** Any dispute, claim or controversy arising from or related to this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration before one arbitrator to be mutually agreed upon by the parties. The arbitration shall be administered and conducted by JAMS (Judicial Arbitration and Mediation Services) pursuant to its Streamlined Arbitration Rules and Procedures (the “Rules”).

Prior to initiating arbitration, the parties agree to engage in good faith negotiations to resolve any disputes. If negotiations fail, the parties shall proceed to mediation, which must occur before any arbitration is initiated.

In the event of any inconsistency between the Rules and the procedures set forth below, the procedures set forth below will control. *The arbitrator will be* experienced in contract, intellectual property and information technology transactions. If the parties cannot agree on an arbitrator within fifteen (15) days after a demand for arbitration is filed, JAMS shall select the arbitrator. The arbitration shall take place in Fort Lauderdale, Florida, or another mutually agreed location. The arbitrator shall determine the scope of discovery in accordance with Florida arbitration law; however, it is the intent of the parties that any discovery proceedings be limited to the specific issues in the applicable matter, and that discovery be tailored to fulfill that intent.

The costs of arbitration shall be borne as determined by the arbitrator; however, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs as awarded by the arbitrator.

13) **MISCELLANEOUS.**

- a) **Disclosure.** You warrant and represent that you know of no law or regulation governing your business that would impede or restrict our provision of the Managed Services, or that would require us to register with, or report our provision of the Managed Services (or the results thereof), to any government or regulatory authority. Similarly, you represent that your business is not subject to the provisions of the Federal Acquisition Regulation (FAR), or any similar regulatory acquisition process or procedure. You agree to promptly notify us if you become subject to any of the foregoing which, in our discretion, may require a modification to the scope or pricing of the Managed Services.
- b) **Assignment.** Neither this Agreement nor any SOW may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, MBSSF may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of the business of MBSSF, or any other transaction in which ownership of more than fifty percent (50%) of MBSSF's voting securities are transferred; provided, however, that such assignee expressly assumes MBSSF's obligations hereunder.
- c) **Amendment.** Unless otherwise expressly permitted under this Agreement, no amendment or modification of this Agreement or any SOW will be valid or binding upon the parties unless such amendment or modification is originated in writing by MBSSF, specifically refers to this Agreement, and is accepted in writing by one of your Authorized Contacts.
- d) **Time Limitations.** The parties mutually agree that, unless otherwise prohibited by law, any action for any matter arising out of this Agreement or any SOW (except for issues of nonpayment by Client) must be commenced within six (6) months after the cause of action accrues or the action is forever barred.
- e) **Severability.** If any provision hereof or any SOW is declared invalid by a court of competent jurisdiction, such provision will be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any SOW will be valid and enforceable to the fullest extent permitted by applicable law.

- f) **Other Terms.** MBSSF will not be bound by any terms or conditions printed on any purchase order, invoice, memorandum, or other written communication supplied by you unless such terms or conditions are incorporated into a duly executed SOW, or unless MBSSF has expressly acknowledged the other terms and thereafter, expressly and specifically accepted such other terms in writing.
- g) **No Waiver.** The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, will not constitute an Agreement to waive such terms with respect to any other occurrences.
- h) **Merger.** This Agreement, together with any and all SOWs, sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the Managed Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement or SOW will act only to provide illustrations or descriptions of Managed Services to be provided and will not modify this Agreement or provide binding contractual language between the parties. MBSSF will not be bound by any agents' or employees' representations, promises or inducements not explicitly set forth herein.
- i) **Force Majeure.** MBSSF will not be liable to you for delays or failures to perform MBSSF's obligations under this Agreement or any SOW because of circumstances beyond MBSSF's reasonable control. Such circumstances include, but will not be limited to, any intentional or negligent act committed by you, or any acts or omissions of any governmental authority, natural disaster, act of a public enemy, acts of terrorism, riot, sabotage, disputes or differences with workmen, power failure, communications delays/outages, delays in transportation or deliveries of supplies or materials, cyberwarfare, cyberterrorism, or hacking, malware or virus-related incidents that circumvent then-current anti-virus or anti-malware software, and acts of God.
- j) **Non-Solicitation.** You agree that during the term of this Agreement and for one (1) year following its termination, you will not, directly or indirectly, solicit or induce any employees or subcontractors of MBSSF to terminate or reduce their business relationship with MBSSF. If you breach this provision, you acknowledge that damages would be difficult to ascertain, and you agree to pay MBSSF liquidated damages equal to fifty percent (50%) of the affected employee or subcontractor's first-year base salary (including any signing bonus). Furthermore, any solicitation of MBSSF's employees will be considered a material breach, giving MBSSF the right to terminate this Agreement or any current SOW immediately for cause.
- k) **Survival.** The provisions contained in this Agreement that by their context are intended to survive termination or expiration of this Agreement will survive. If any provision in this Agreement is deemed unenforceable by operation of law, then that provision shall be excised from this Agreement and the balance of this Agreement shall be enforced in full.
- l) **Insurance.** MBSSF and you will each maintain, at each party's own expense, all insurance reasonably required in connection with this Agreement or any SOW, including but not limited to, workers compensation and general liability. MBSSF agrees to maintain a general liability policy with a limit of not less than \$1,000,000 per occurrence. All of the insurance policies described herein will not be canceled, materially changed or renewal refused until at least thirty (30) calendar days written notice has been given to the other party by certified mail.
- m) **Governing Law; Venue.** This Agreement and any SOW will be governed by, and construed according to, the laws of the state of Florida. You hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts in Broward County, Florida, for any and all claims and causes of action arising from or related to this Agreement.

- n) **No Third Party Beneficiaries.** The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.
- o) **Usage in Trade.** It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.
- p) **Notices; Writing Requirement.** *Notices required under this Agreement may be sent via U.S. mail, overnight courier, or email. Notices are considered delivered:*
- i) **U.S. Mail:** *3 business days after being sent via certified first-class mail.*
 - ii) **Overnight Courier:** *1 day after dispatch.*
 - iii) **Email/Fax:** *1 day after delivery.*

For email notices to be valid, the sender must email the recipient's last known address and include themselves in the "cc" field, retaining the email until acknowledged by the recipient.

Notices from you to MBSSF regarding breaches, indemnification requests, or terminations must be sent by U.S. mail or email unless waived by MBSSF. All electronic communications satisfy any writing requirements under this Agreement.

- q) **Independent Contractor.** MBSSF is an independent contractor, and is not your employer, employee, partner, or affiliate.
- r) **Subcontractors.** Generally, MBSSF does not utilize subcontractors; however, should MBSSF elect to subcontract a portion of the Managed Services, MBSSF shall guarantee all work performed by any MBSSF-designated subcontractor as if MBSSF performed the subcontracted work itself.
- s) **Data Access/Storage.** Depending on the Service provided, a portion of your data may occasionally be accessed or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify our standard access or storage procedures.
- t) **Counterparts.** The parties intend to sign and deliver this Agreement and any SOW in any number of counterparts, and each of which will be deemed an original and all of which, when taken together, will be deemed to be one agreement. Each party may sign and deliver this Agreement (or any SOW) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party will be entitled to rely upon the apparent integrity and authenticity of the other party's signature for all purposes.