# Master Managed Services Agreement

***Version 3.0_02052025 - Confidential & Proprietary Information***

## Cover Page – Summary of Terms

This *Master Managed Services Agreement* (hereinafter the "Agreement" or "MSA") is made as of the following date: _________________ ("Effective Date"). Provider and Client are sometimes referred to in this MSA individually as a "Party" and collectively as the "Parties", the Parties to this Agreement are as follows:

| **"Provider"** | **"Client"** |
|---|---|
| Entity Name: Delta Edge, C.I., LLC | Entity Name: |
| Address: | Address: |
| City: State: Zip: | City: State: Zip: |
| Attn: | Attn: |
| Phone: Fax: | Phone: Fax: |
| Email: | Email: |
| | Federal Tax ID: |
| Authorized Representative: | Authorized Representative: |
| Title: Phone: | Title: Phone: |
| Billing Contact: | Billing Contact: |
| Title: Phone: | Title: Phone: |
| Client Services Contact: | Operations Contact: |
| Title: Phone: | Title: Phone: |

| | |
|---|---|
| Purpose of the MSA (use of the "Plan Technology"): | Client is entering into this MSA, in which the Provider will develop, design, engineer, specify, install, own, and maintain and allow for Client to utilize all infrastructure technologies and equipment listed in Exhibit A Plan Technology at the Service Locations and for the purposes specified herein. The Plan Technology and its various benefits are being provided to Client in exchange for the Monthly Service Payments defined below, and in accordance with the terms defined in this MSA. |
| Indicate Type of MSA: | _______ Managed Infrastructure Services Agreement _______ Managed Utility Services Agreement |
| Number of Service Locations: | Monthly Service Payment Due Date: ❑ 5th Calendar Day ❑ 15th Calendar Day ❑ 25th Calendar Day |
| Service Period/Term: | ❑ Four (4) Year ❑ Five (5) Year ❑ Seven (7) Year ❑ Ten (10) Year ❑ # of _____Months |
| Usage Variance Provision: | ❑ 5% Bandwidth ❑ 7% Bandwidth ❑ 10% Bandwidth ❑ Bandwidth Not Applicable |

| Calendar Month: | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEPT | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Baseline Power: | | | | | | | | | | | | |
| Usage Forecast: | | | | | | | | | | | | |
| Baseline Nat-Gas: | | | | | | | | | | | | |
| Usage Forecast: | | | | | | | | | | | | |
| Baseline Water: | | | | | | | | | | | | |
| Usage Forecast: | | | | | | | | | | | | |

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| Monthly Service Payments: | | | | | | | | | | |
| Savings Forecast: | | | | | | | | | | |

**IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date above.**

**Provider**

By: ______________________________

Name: ______________________________

Title: ______________________________

**Client**

By: ______________________________

Name: ______________________________

Title: ______________________________

## Section I Definitions

Capitalized terms and phrases shall have the meaning specified in the Cover Page, body of this MSA, and/or in one or more of the exhibits to this MSA, which are incorporated by reference.

A. **ACH Agreement (Exhibit D)**: Refers to the formal consent granted by the Client to the Provider for billing and collecting the Monthly Service Payments; also referred to as Exhibit D.

B. **Actual Usage**: Refers to the consumption of Commodities that a Client uses during the term of the MSA, as reported by the respective Utility.

C. **Baseline or Baseline Usage**: Refers to the expected electricity, natural gas, and/or water usage of a Client in the absence of Plan Technology. This usage amount is used to compare the Provider's Usage Forecast and the Actual Usage to determine the performance of the Plan Technology and the Provider.

D. **Baseline Exceptions**: Refers to any data points or events that occur during the Service Period, which materially impact the Client's Actual Usage, rendering the original Baseline obsolete. These may include: (i) changes in business or operating hours, (ii) changes in workload, production output, number of customers, or occupancy rates, (iii) material changes in business nature, (iv) changes in information provided during the Initial and Site Survey, (v) additions or reductions of energy-consuming appliances/devices/equipment, (vi) changes in commodity prices or transmission/distribution costs, (vii) changes in regulatory fees, and (viii) material weather changes compared to the previous year (Benchmark Data).

E. **Benchmark Data**: Represents all data provided by the Client and the Client's Utility during the engagement process up to the Effective Date of this MSA. This includes information gathered via the Business Survey, Remote Site Survey, On-Site Survey, letter of authorization, limited agency agreement, analysis and auditing processes, email and teleconference correspondence, invoices, bills, weather data, and other relevant information. Benchmark Data is essential for creating accurate Baseline Usage and Usage Forecasts. Any misrepresentation or errors in the Benchmark Data provided by the Client may lead to changes in both the Baseline Usage and the Usage Forecast at the Provider's sole but reasonable discretion.

F. **Billing Process**: Refers to the collection of the Monthly Service Payment through automatic debiting of the Client's bank account, as specified in the Automatic Clearing House (ACH) Payment Authorization form (Exhibit D).

G. **Business Survey**: An initial information-gathering document that collects general data about the Client's business or entity, including details about buildings and facilities, as well as electricity, natural gas, and water consumption.

H. **Commodity**: Refers to electricity, natural gas, and/or water services used by Clients and received from the Utility.

I. **Cover Page**: Refers to page one (1) of this MSA, considered a binding aspect of the entire MSA with corresponding defined terminology.

J. **Historical Usage Data ("HUD")**: Refers to the historical usage of a Commodity as received from the respective Utility for each of the Client's Service Locations, usually sent by the Utility to the Provider after a request via the letter of authorization, or from Utility invoices in the Client's possession.

K. **Installation Plan (Exhibit B)**: The Installation Plan, which is attached hereto and incorporated herein by reference, sets forth the project management schedule for the installation, delivery and maintenance of the Plan Technology to the Client.

L. **Managed Infrastructure Services Agreement ("MISA"):** As indicated and selected on the Cover Page, indicates an MSA wherein the Plan Technology and Implementation Plan is focused exclusively on infrastructure and sustainability goals. Under this selection, the Provider's obligations to meet the Usage Forecast are deemed nullified and not applicable.

M. **Managed Utility Services Agreement ("MUSA"):** As indicated and selected on the Cover Page, indicates an MSA wherein the Plan Technology and Implementation Plan is focused exclusively on the Provider's obligation to meet the Utility Forecast.

N. **Monthly Service Payments and/or Service Payments**: Refers to the compensation remitted by the Client to the Provider for the use and benefits of the Plan Technology, paid monthly via ACH debit on or around the specified date on the Cover Sheet and for the amounts specified by year on the Cover Page.

O. **On-Site Survey**: A thorough inspection conducted by a specialist to verify information from the Remote Site Survey, and furthermore, documenting details on equipment, fixtures, building infrastructure, and other factors affecting the consumption of any Commodity.

P. **Payment Authorization**: Refers to the formal consent given by the Client to the Provider for billing and collecting the Monthly Service Payments described on the Cover Page by executing the ACH Agreement (Exhibit D).

Q. **Plan Technology (Exhibit A)**: This is a list of all of various technology, hardware/software components, equipment, systems, controls and any other products or services being delivered by Provider in accordance with this MSA, as set forth on Exhibit A attached hereto and incorporated herein by reference.

R. **Pro-Rated Credit/Refund:** Refers to the amount of money or funds or credit that is due to the Client by the Provider, because of a failure in the Plan Technology, wherein the Actual Usage exceeded the Usage Forecast and the agreed upon Usage Variance Provision or because of a failure in the Plan Technology that results in an unplanned outage violating the minimum uptime guarantee outlined in Exhibit E by greater than five percent (5%) during any one calendar month. The calculation for the Pro-Rated Credit/Refund will be based on the proportion of the Service Payment corresponding to the downtime or excess usage.

S. **Remote Site Survey**: A detailed follow-up to the Business Survey, covering in-depth aspects such as building type, size, location, age, and operating hours; utility usage; building systems and maintenance history; equipment replacement; occupancy patterns; management practices; and accessibility.

T. **Savings Forecast**: Refers to the estimated dollar savings realized by the Client due to reduced consumption through the use of Plan Technology and the new Usage Forecast. The MSA guarantees the Usage Forecast, not the Savings Forecast, due to changing utility rates.

U. **Service Level Agreement (Exhibit E):** Refers to the detailed agreement between the Provider and the Client, outlined in Exhibit E of this MSA, which specifies the performance metrics, service level objectives, responsibilities, measurement and reporting methods, issue management procedures, penalties, and remedies related to the Plan Technology. The SLA ensures that the Provider meets defined service standards and outlines the consequences of failing to achieve those standards.

V. **Service Locations**: Refers to each Client location included in the Plan Technology and Installation Plan.

W. **Service Period**: Represents the duration and/or Term of the MSA as defined within the Cover Page, starting on the Start Date. "Term" and "Service Period" are interchangeable.

X. **Site Access License**: Refers to the Client's agreement to accommodate the Provider's service and installation efforts by granting necessary access as defined in the Installation Plan and Section III(F) of this MSA.

Y. **Technology Settling Period**: Refers to the sixty (60) calendar days following the Start Date, during which the Provider may modify and test the Plan Technology for optimization.

Z. **Usage Forecast**: Represents the reduction in commodity consumption due to Plan Technology. This guaranteed performance from the Provider to the Client is based on Benchmark Data provided by the Client, including historical usage data, weather data, Business Survey, on-site audit results, business use levels, and equipment records during the Benchmark Data period. The Client acknowledges that the Benchmark Data is accurate and foundational for creating the Baseline.

AA. **Usage Variance**: Refers to the acceptable bandwidth of usage threshold concerning the Provider's performance obligations. The threshold formula, specified on the Cover Page, accounts for aggregated loads, weather changes, and operational changes at the Client's premises. If Actual Usage exceeds the Usage Forecast for more than three (3) months, the Client receives a Pro-Rated Credit/Refund based on the amount exceeding the acceptable bandwidth for that three (3) month period, or any affected period where the Actual Usage exceeds the Usage Forecast. This can also be referred to as the *Usage Variance Provision*.

BB. **Utility**: Refers to third-party entities responsible for the transmission and distribution service networks, meter reading, and emergency response.

## Section II Plan Technology, Installation, & Maintenance

**A.** **Term**: The Effective Date of the MSA is displayed on the Cover Page. The Term shall commence on the Start Date and extend throughout the Service Period as selected and described by the Client on the Cover Page, unless earlier terminated hereunder.

**B.** **Plan Technology**. Provider hereby agrees to lease the Plan Technology to Client as set forth on **Exhibit A** attached hereto and incorporated herein by reference, and Client hereby agrees to lease the Plan Technology from Provider, subject to the terms and conditions of this MSA. The Parties intend that this MSA shall constitute a true lease under applicable law. Provider has title to the Plan Technology at all times. Client acquires no ownership, title, property, right, equity, or interest in the Plan Technology other than its leasehold interest solely as lessee subject to all the terms and conditions of this MSA.

**C.** **Installation**: Provider shall install the Plan Technology at each of the Client's specified Service Location(s) as set forth in the Installation Plan. Client shall be solely responsible for: (i) preparing a suitable site for installation of the Plan Technology at the Service Location(s), and (ii) ensuring that that the Service Location(s) are free of Hazardous Materials and any structural or system-related defects or deficiencies in the building structure or systems, such as unstable beams, deteriorated walls, floors, ceilings, or other components that may require upgrading or replacement ("**Unforeseen Premises Conditions**"). Client shall grant access to the Service Location as needed for installation of the Plan Technology. Notwithstanding Client's obligation to ensure that the Service Location(s) are free of Unforeseen Premises Conditions, Provider may, in its sole and absolute discretion, remedy any Unforeseen Premises Conditions at the Service Location(s) as it deems necessary during installation, maintenance, or repair of the Plan Technology hereunder and Client shall pay Provider for its costs to complete such remediation within thirty (30) days of receipt of an invoice containing setting forth the remediation costs, which may include Provider's time and materials and third party costs.

**D.** **Monthly Service Payments**: Provider shall give written notice to Client of Provider's completion of the installation of the Plan Technology (the "**Completion Notice**"), on which date Client's obligation to pay the Monthly Service Payments shall commence (the "**Start Date**") and continue for the duration of the Service Period, as may be extended pursuant to Section II.G. Each of the Monthly Service Payments shall be due in advance on the [____] day of each month (the "**Monthly Service Payment Due Date**"). If the Start Date is different from the Monthly Service Payment Due Date, the first Monthly Service Payment shall be prorated for any partial month as set forth in the Completion Notice. All Monthly Service Payments due and owing under this MSA shall be made through automated clearing house ("**ACH**") transfers directly from Client to Provider, pursuant to the ACH Agreement (Exhibit D). Provider shall make commercially reasonable efforts to initiate ACH transfers on the Monthly Service Payment Due Date.

Client's obligation to pay all amounts due under this Agreement is absolute and unconditional and is not subject to any abatement, counterclaim, defense, deferment, interruption, recoupment, reduction, or setoff for any reason whatsoever.

In the event that any Monthly Service Payment or other amounts due are not paid because of a failure of the Billing Process due to the Client's fault, then the Client shall have five (5) business days from the Monthly Service Payment Due Date to correct the payment status; however, the Client shall be charged a late fee equal to the lesser of 3% of the amount past due or the maximum amount permitted by applicable law. Any amounts owed to the Provider under this MSA that are not paid within twenty (20) calendar days of the Monthly Service Payment Due Date shall accrue interest at 1% per month (or the maximum legal rate if less than 1%) until paid; this shall be referred to as a "Payment Default".

**E.** **Payment Defaults**: If the Client is late in any one payment obligation defined in the Monthly Service Payments by more than twenty (20) calendar days from the Monthly Service Payment Due Date as defined above in the Cover Page and in Section II(D), then the Client shall be in a Payment Default status. During such status, the Client agrees and acknowledges that the services provided by the Provider hereunder may, at the Provider's sole discretion, be suspended, halted, and/or completely ceased during the time that the Client is in a Payment Default status. Furthermore, the Client acknowledges and agrees that such service interruptions or suspensions of service as described herein may have an adverse effect on the Client's business operation, including but not limited to negatively affecting the Client's revenues or profits. The Client agrees that any direct or indirect adverse effects on the Client's business operations (including, but not limited to, hours of operation, inventory, serviceability, loss of sales, and/or reputation) as a result of a Payment Default status shall be the sole responsibility of the Client. The Provider shall not be responsible for any adverse effects or damages to the Client's business operations incurred as a result of a Payment Default and the suspension of service or use of the Plan Technology.

**F.** **Maintenance & Repair**: Provider shall maintain, service, and repair the Plan Technology in accordance with the Service Level Agreement (Exhibit E) and the express warranties set forth in Section V.B. Provider shall have the exclusive right to maintain, service, and repair the Plan Technology, and to make any adjustments or alterations to any Plan Technology within Provider's sole discretion, including but not limited to replacement of any hardware or software, or the addition of controls or efficiency measures, so long as any such replacement or addition does not materially impair the performance of the Plan Technology or negatively affect the Usage Forecast in a material way.

**G.** **Renewal Option**: Provided that no Event of Default shall have occurred and be continuing, Client shall have the option at the conclusion of the initial Term to renew this MSA with respect to all, and no less than all, of the Plan Technology (the "Renewal Option") for a period of [_______] years (the "Renewal Term"). No less than ninety (90) days prior to the expiration of the initial Term, Client shall notify Provider in writing of Client's intention to exercise the Renewal Option ("Renewal Option Notice"). In the event that Client fails to notify Provider at least ninety (90) days prior to the expiration of the initial Term, the Renewal Option shall expire and Client shall have no further right to renew this MSA. During the Renewal Term, Client shall pay to Provider Monthly Service Payments at a [___%] discount from the most recent Monthly Service Payment amount. Except as otherwise set forth herein, Client shall comply during the Renewal Term with all the terms and conditions of this MSA. Notwithstanding anything to the contrary in this Section II.G, Client's exercise of the Renewal Option is contingent upon Provider's express written consent to be given within thirty (30) days after Provider's receipt of the Renewal Option Notice, which consent may be withheld or denied in Provider's sole discretion.

**H.** **Return of Equipment**. Upon the expiration of the initial Term or any Renewal Term, Provider shall enter the Service Location(s) and uninstall and recover all Plan Technology at Client's sole cost and expense.

## Section III Covenants and Use of Plan Technology

**A.** **Notice of Material Changes**: The Client shall immediately notify the Provider in writing of any changes in the Client's name, contact information, state of incorporation or certification, executive officers, banking information set forth in the ACH Agreement (Exhibit D), hours of operation, anticipated changes or swings in consumption (Forecasted Usage or Actual Usage), changes in any of the Benchmark Data, and/or changes in the place of business within thirty (30) calendar days of such change. If the Client wishes to request a change of Service Location, the Client must submit a formal written request and understands that the Provider is not obligated to approve the change with the submission of the request. If the Provider approves a change in Service Location, the Provider may charge the Client for costs incurred in evaluating and executing any such change. Any change in Service Location shall not release the Client from its obligation to pay the Monthly Service Payments and may require an amendment to the Plan Technology, which may also result in a modification to the Monthly Service Payments.

**B.** **Authorized Use:** Client is authorized to operate the Plan Technology is limited to operation as needed to perform Client's normal business functions and in accordance with the Benchmark Data. Client's operation of the Plan Technology shall be in a safe and proper manner, and in accordance with all manufacturer's instructions, installer directions, applicable laws, ordinances, warranty requirements, and regulations, including any registration and/or licensing requirements. The Client shall not move any of the Plan Technology from its place of installation at the respective Service Location. Client shall not make any repairs, alterations, additions, modifications, markings, or improvements to the Plan Technology. Any repairs, alterations, additions, modifications, markings or improvements to the Plan Technology made by Client, its agents or representatives, shall, at the exclusive option of Provider, (1) be removed by Client, at Client's sole expense and to Provider's reasonable satisfaction, or (2) become the sole and exclusive property of Provider.

**C.** **Casualty**: Client shall bear all risk of loss, damage, destruction, theft, government or other taking of or to the Plan Technology, or any part thereof for any reason, other than Provider's negligence or more culpable conduct (a "**Casualty**"). Client shall notify Provider of a Casualty in writing within ten (10) days of the occurrence thereof (the "**Casualty Notice**"). If Provider determines in its sole discretion that a Casualty has materially impaired the Plan Technology, or any part thereof, the Provider may terminate this MSA, or any portion thereof as relates to the affected Plan Technology, upon written notice to Client. Client shall, within ten (10) days of such written notice of termination due to Casualty, pay to Provider: (1) all unpaid amounts due under this MSA, or any portion thereof as relates to the affected Plan Technology, then accrued; (2) all costs and expenses (including reasonable attorneys' fees) incurred by Provider by reason of the Casualty; and (3) as damages for loss of bargain and not as a penalty, a sum equal to the Stipulated Loss Value (Exhibit C) for the Plan Technology, or any affected portion thereof (collectively, the "**Casualty Payment**").

If Provider determines in its sole discretion that a Casualty has not materially impaired the Plan Technology, the Parties shall negotiate in good faith regarding an amendment to this MSA to provide for the repair of the affected Plan Technology, which may be at an additional cost to Client ("**Remediation Plan**"). If the Parties are unable to agree to a Remediation Plan within sixty (60) days of Provider's receipt of the Casualty Notice, then Provider may terminate this MSA upon written notice to Client, and Client shall, within ten (10) days of receipt of such notice of termination, pay to Provider the Casualty Payment set forth above.

Upon Provider's receipt of the Casualty Payment, Provider shall deliver a duly executed quitclaim bill of sale conveying title to the Plan Technology, or affected portion thereof, to Client.

**D.** **Insurance**: The Client shall procure, at its own expense, and maintain in full force and effect, insurance coverage (1) against loss, theft, and damage (the "Property Insurance") in an amount at least equal any potential Casualty Payment under this MSA, and (2) for commercial general liability insurance in an amount no less than [$______], and with respect to (1) and (2) in a form, and with companies, reasonably acceptable to Provider, including without limitation the waiver of any subrogation rights against Provider and the insurer's agreement to give Provider thirty (30) days' prior written notice before cancellation or material change of the applicable insurance coverage. On or prior to the Effective Date, Client shall deliver to the Provider certificates of insurance evidencing the requisite insurance coverage, which shall name Provider as an additional insured.

Provider shall procure, at its own expense, and maintain in full force and effect, insurance coverage (1) for commercial general liability insurance in an amount no less than [$______], and (2) for workers' compensation, in an amount no less than required by applicable law, and with respect to (1) and (2) in a form, and with companies, reasonably acceptable to Client. On or prior to the Effective Date, Provider shall deliver to the Client certificates of insurance evidencing the requisite insurance coverage, which shall name Client as an additional insured.

**E.** **Incentives**: The Provider shall retain all rights, titles, and interests in any rights, credits (including tax credits), rebates, benefits, reductions, offsets, allowances, and entitlements of any kind, whether arising under federal, state, or local law, utility or energy retailer program, international treaty, trade association membership, or otherwise, attributable to the installation or ownership of the Plan Technology and/or the reduction of consumption of any respective Commodity ("**Incentives**"). If the Client receives any Incentive, the Client shall receive such Incentive in trust for the benefit of the Provider and pay the amount of such Incentive to the Provider as soon as commercially reasonable. The Provider may assign any Incentive or pass the value of an Incentive to the Client. The Client agrees to cooperate with the Provider to enable the Provider to obtain or assign any Incentive. This Section grants the Provider the right to apply for such Incentive from the respective agencies or entities using the Client's Service Location where applicable.

**F.** **Consents**: The Client represents and warrants that as of the Effective Date, it has disclosed to the Provider in writing the owner or entity in control with respect to the real property of the Service Location. If such owner or entity in control is not the Client, Client represents and warrants that (i) as of the Effective Date, it has received authorization from the owner or entity in control with respect to the real property of any Service Location to perform Client's rights and obligations under this MSA; and (ii) the Client shall provide evidence of such authorization to the Provider before the commencement of the Installation Plan of the Plan Technology at such Service Location. The Client shall notify the Provider if, at any time following the Effective Date or during the Service Period, there is a change in the owner or entity in control with respect to the real property of the Service Location, and Client shall obtain all consents and approvals necessary to consummate the transactions contemplated by this MSA and Client's ongoing obligations hereunder. The Client covenants to maintain such consents and approvals during the term of this MSA and for ninety (90) days thereafter to remove the Plan Technology, if necessary.

**G.** **Liens**: The Parties intend that each component of the Plan Technology remains at all times personal property and not a fixture under applicable law, even if such component, or any part hereof, may be or become affixed or attached to real property or any improvements. The Client represents and warrants that (i) as of the Effective Date, it has disclosed in writing to the Provider the existence of any lien attaching to the property at the Service Location that could attach to any of the Plan Technology if the Plan Technology were deemed to be a fixture; and (ii) Client shall immediately notify the Provider if any such lien arises following the Effective Date of this MSA. Within twenty (20) days after Provider's written request, Client shall obtain and provide to Provider, from any lienholder at any Service Location, a waiver of any interest that it may have in the Plan Technology arising from its interest in the real property. The Client consents to and hereby authorizes the filing of precautionary UCC financing statements and other similar filings and recordings with respect thereto by the Provider. The Client agrees not to file any corrective or termination statements or partial releases with respect to any UCCs or other similar filings or recordings filed by the Provider in connection with this MSA except if authorized in writing by Provider.

**H.** **Site Access License**: Client hereby grants a license of access to the Provider and each of its agents, employees, contractors, subcontractors, technicians, financiers, and insurers, or any other applicable third party, to each Service Location during the term of this MSA (and for ninety (90) days thereafter to remove the Plan Technology, if necessary) for access to, on, over, under, and across each Service Location and the buildings and structures located at each Service Location as is reasonably necessary for the installation, operation, maintenance, care, repair, monitoring, and removal of the Plan Technology. The Provider and its agents shall exercise their access rights in a manner that does not materially interfere with the day-to-day operations of the Service Location unless otherwise negotiated. The Client shall ensure that other persons allowed access to the Service Location by the Client do not interfere with the installation of the Plan Technology or the Provider's performance of services. The Provider's agents shall have the right to enter any area of the Service Location where the Plan Technology is installed or where their presence is required for installing, maintaining, servicing, and repairing the Plan Technology at all reasonable times provided that: (a) the Client is given notice of such entry, and (b) the Client or any designated agent or employee of the Client is permitted to be present during such entry.

I. **Condition of Service Location**: The Client is fully responsible, except as directly resulting from the performance of the Provider, or its agents, representatives, or subcontractors, for the maintenance and repair of the Service Location. The Client shall, at its sole cost and expense, maintain in good condition and repair the physical security of the Service Location and comply with all applicable laws governing the Service Location. Furthermore, the Client is fully responsible for all of the Client's systems and equipment, including but not limited to electrical, gas, communications, and computer systems, and shall promptly notify the Provider of any matters that could reasonably be expected to adversely affect the Plan Technology, Benchmark Data, or the Usage Forecast, including, without limitation, any power outages (scheduled or otherwise), computer outages, and weather conditions. The Client shall not conduct or allow activities in close proximity to the Plan Technology that have a reasonable likelihood of causing damage, impairment, or otherwise adversely affecting the Plan Technology or the Usage Forecast.

J. **Subcontractors**: The Provider is permitted to use one or more subcontractors to perform any of its obligations under this MSA, including but not limited to installation of the Plan Technology pursuant to II.C and to comply with its maintenance and repair obligations under Section II.F. Each subcontractor shall be a reputable, qualified firm with an established record of successful performance in its trade. The Provider shall, throughout the Service Period, remain responsible for all of its obligations under this MSA and shall be responsible for its subcontractors' performance under the same and may, without the Client's consent, have subcontractors perform any of the Provider's responsibilities under this MSA.

K. **Hazardous Materials**: The Client represents and warrants that none of the following hazardous materials are located in, or shall, through the action or inaction of the Client, be introduced into the Service Locations: (i) pollutants, contaminants, hazardous wastes, toxic substances, and hazardous materials as defined by the U.S. Environmental Protection Agency and applicable federal, state, and local laws, rules, and regulations, (ii) oil and petroleum products, including constituents thereof or additions thereto, except in cases such as fueling stations, convenience stores, mechanic shops, and/or workshops where these materials are part of daily normal business and all parties are aware of the existence of these potentially hazardous materials prior to the project start date, (iii) asbestos and asbestos-containing materials, (iv) lead paint, (v) polychlorinated biphenyls or PCB-containing materials, (vi) toxic mold, and (vii) each and every hazardous chemical, extremely hazardous chemical, toxic chemical, regulated toxic substance, hazardous substance, extremely hazardous substance, hazardous material, priority pollutant, hazardous air pollutant, pollutant, and contaminant identified or listed in any applicable law or regulation (collectively, "**Hazardous Materials**"). If the Provider, or any of its agents, representatives, or subcontractors, encounters Hazardous Materials in the Service Location(s) during the Term, Provider shall immediately cease performing services in the affected area and report the condition to Client. Client, at its sole cost and expense, shall properly remove or render harmless the Hazardous Materials in accordance with all applicable laws, any applicable final determination by the appropriate governmental authority, and to the reasonable satisfaction of the Provider. Installation of the Plan Technology or provision of services in the affected area shall not resume except by written agreement of the Client and Provider. Neither Party shall use or allow another person or entity within its control to use any part of the Service Location for the storage, use, treatment, or sale of any Hazardous Materials, except as permitted by all applicable laws.

## Section IV Defaults, Remedies & Taxes

A. **Events of Default and Remedies:** Each of the following events is an "Event of Default" under this MSA: (a) Client's failure to pay any Monthly Service Payments or any other amount under this MSA when due, and Client fails to remedy any such default within twenty (20) days of Provider's written notice of default; (b) Client (i) becomes insolvent, (ii) is generally unable to pay, or fails to pay, its debts as they become due, (iii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy, (iv) makes or seeks to make a general assignment for the benefit of its creditors, or (v) applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property or business; (c) Client sells, transfers, or disposes of all or substantially all of its assets or the property of its business, or merges or consolidates with any other entity; (d) Client defaults in the observance or performance of any material term, covenant, or condition of this Agreement, and Client fails to remedy any such default within twenty (20) days of Provider's written notice of default; or (e) Client's material failure of a representation or warranty under this MSA.

If an Event of Default occurs, Provider may, in its sole discretion, exercise one or more of the following remedies: (a) declare this MSA in default; (b) terminate this MSA in whole or in part; (c) enter the Service Location(s) and take possession of, or render unusable (including by remote access), any of the Plan Technology, wherever it may be located, without demand or notice, without any court order or other process of law, without liability to Client for any damages occasioned by such action, and at Client's sole cost and expense; (d) proceed by court action to enforce performance by Client of this Agreement; (e) recover all costs and expenses (including reasonable attorneys' fees) incurred by Provider by reason of any Client Default; (f) recover all unpaid amounts due under this MSA then accrued; (g) recover as damages for loss of bargain and not as a penalty a sum equal to all future Service Payments to become due under this MSA, reduced to present value at a rate of [___%]; and (h) exercise any other right or remedy available to Provider at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Upon repossession or surrender of the Plan Technology, Provider shall lease, sell, or otherwise dispose of the Plan Technology in a commercially reasonable manner, which may include a public or private sale, with or without notice to Client or advertisement, and apply the net proceeds thereof (after deducting all expenses, including reasonable attorneys' fees and costs, incurred in connection with such lease, sale, or disposition) to the amounts owed to Provider under this MSA, and Provider has then received payment in full of all amounts owed under this MSA, then Provider shall remit such net proceeds to Client; provided, however, that Client shall remain liable to Provider for any deficiency that remains after any sale, lease, or other disposition of the Plan Technology.

**B.** **Taxes and Fees**: The Provider and the Client shall provide commercially reasonable cooperation to minimize the tax liability of both Parties to the extent legally permissible. All amounts payable under this MSA shall be exclusive of any applicable sales and use taxes or any similar taxes in relation to this MSA, including, with respect to, the Service Payment and the installation, monitoring, and maintenance of the Plan Technology.

1. **Collection of Tax**: The Provider may directly pay any sales and use tax or personal property taxes and (i) the Client shall reimburse the Provider for such amounts, and (ii) the Provider may collect such amounts from the Client via ACH in advance of making any such payment to taxing authorities. The Client authorizes such collection via ACH debit from the Client's bank account when due. The Provider shall collect from the Client any fees associated with each ACH transaction if due. If the Client receives any refunds of fees or taxes paid by the Provider, the Client shall promptly notify the Provider of such refund, and the Provider shall include the amount of such refund on a subsequent invoice.

2. **Sales and Use Tax**: With respect to the Service Payment and the installation, monitoring, and maintenance of the Plan Technology, the Client shall be fully responsible for any sales and use or similar taxes at the applicable then-current rate and shall pay the Provider for the then-current taxable amounts and any additional amounts as mandated by relevant governmental authorities.

3. **Property Tax**: The Provider shall pay any applicable personal property taxes on the Plan Technology or other taxes related to the Plan Technology levied by the relevant state or local jurisdiction with respect to ownership of the Plan Technology.

4. **Income Tax**: The Client shall not be responsible for any income tax imposed on, or with respect to, the Provider, employee benefit taxes, or taxes imposed upon the work or wages of the Provider's employees, subcontractors, agents, and representatives. The Client is responsible for all income receipts, ad valorem, personal property, or real property, or other similar taxes, fees, fines, or penalties assessed against or related to the Service Location and the business conducted there.

## Section V Representations & Warranties; Indemnification; Limitation on Liability

**A.** **Client's Representations & Warranties**: The Client represents and warrants to the Provider that the statements contained in this Section V.A are true and correct as of the date hereof, and shall be true and correct for the duration of the Service Period: (a) this MSA is for the benefit of a business entity and not for the benefit of any individual or residential household; (b) Client is a [ENTITY TYPE] duly organized, validly existing, and in good standing under the laws of the state of [STATE]; (c) Client is duly licensed and qualified to do business and is in good standing in each jurisdiction of the Service Locations; (d) no action with any government authority is required for the Client to enter into this MSA and subsequent Plan Technology; (c) Client has full corporate power and authority to enter into this MSA and to perform its obligations hereunder; (d) the execution, delivery, and performance of this MSA, and the consummation of the transactions contemplated hereby, shall not (i) violate, conflict with, require any consent, approval, permit, order, or declaration under, or result in any breach or default under any of (A) Client's organizational documents, (B) any instrument to which the Client is a party or by which Client or its assets may be is bound, or (C) any provision of law, or (ii) result in the creation or imposition of any lien or encumbrance on the Plan Technology; (e) this MSA, and any modifications thereto that conform to the requirements of Section VI.A, has been, or will be, duly executed and delivered by Client and constitute the legal, valid, and binding obligations of Client, enforceable against Client in accordance with their terms; (f) there are no actions or other legal proceedings pending or, to Client's knowledge, threatened that could (i) have a material adverse effect on Client's business, (ii) limit Client's ability to pay Provider hereunder, or (iii) otherwise interfere with Client's performance of its obligations under this MSA; (g) all permits required for Client to conduct its business as currently conducted and to lease, install, and use the Plan Technology have been obtained by Client and are valid and in full force and effect, and no event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any such Permit; and (h) the intended Service Location is of adequate constitution for installation of the Plan Technology and the performance of the Services, and does not, to the Client's knowledge, pose any harm to the Provider or any of their agents.

B. **Provider's Warranties:** Provider warrants to Client that, for the duration of the Service Period, the Plan Technology shall materially conform to the specifications set forth in Exhibit A and be free from defects in material and workmanship, ordinary wear and tear excepted. Provider shall not be liable for a breach of the warranties set forth in the forgoing sentence unless Client gives Provider written notice of non-conformance or defect within thirty (30) days of Client's discovery thereof. Provider shall not be liable for a breach of the warranties set forth in this Section V.B if the defect or non-conformance arises from (1) a Casualty, or (2) Client's negligence, fraud, willful misconduct, or breach of this MSA. Subject to the applicable limitations on the warranties set forth in this Section V.B, Provider shall, in its sole discretion, repair or replace the affected Plan Technology, or parts thereof. The remedies set forth in the foregoing sentence shall be Client's sole and exclusive remedy, and Provider's entire liability, for any breach of the warranties set forth in this Section V.B.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION V.B, PROVIDER MAKES NO OTHER WARRANTIES WHATSOEVER, INCLUDING WITHOUT LIMITATION ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY AGAINST INTERFERENCE; OR (d) WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

C. **Indemnification**: Each Party (the "Indemnifying Party") shall indemnify, defend, and hold the other Party, their successors, assigns, and affiliates, and each of their directors, officers, employees, agents, representatives, or contractors harmless from and against all losses, injury, death, damages, liabilities, penalties, claims, deficiencies, actions, judgments, interest, awards, fines, suits, costs or expenses (including reasonable attorneys' fees and expenses), and including the costs and expenses of enforcing any right to indemnification hereunder, arising out of, relating to, or in connection with (1) a material breach of this MSA by the Indemnifying Party or any of its employees, agents, representatives, or contractors, or (2) the gross negligence, fraud, or willful misconduct of the Indemnifying Party or its employees, agents, representatives, or contractors. The Indemnifying Party shall pay amounts awarded in judgment for any claim defended by such Indemnifying Party or agreed to in a settlement entered into by the Indemnifying Party.

D. **Limitation of Liability**: NEITHER PARTY, ITS AFFILIATES, LICENSEES, SUBCONTRACTORS, AGENTS, AND EMPLOYEES, SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, OR DAMAGES RELATING TO LOSS OF USE, PROFITS, BUSINESS, REPUTATION, FINANCING, REVENUE, POWER, INFORMATION, OR DATA, OR THE COST OF CAPITAL, OR DAMAGES BASED ON A PARTY'S THIRD-PARTY CONTRACTS ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER EVEN IF ADVISED OF SUCH DAMAGES. FOR CLARITY, AMOUNTS PAYABLE AS DAMAGES TO OR IN SETTLEMENT TO THIRD PARTIES UNDER SECTION IV WILL BE DEEMED "DIRECT" DAMAGES FOR WHICH RECOVERY WILL NOT BE BARRED BY THIS SECTION. EXCEPT FOR CUSTOMER'S OBLIGATION TO MAKE THE SERVICE PAYMENT, BREACH OF CONFIDENTIALITY OBLIGATION, AND/OR AMOUNTS PAYABLE AS DAMAGES TO OR IN SETTLEMENT TO THIRD PARTIES, NEITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY UNDER THIS MSA SHALL EXCEED THE GREATER OF (A) THE TOTAL OF THE PRIOR TWELVE (12) MONTHLY SERVICE PAYMENTS PRECEDING THE DATE THAT THE EVENTS THAT FIRST GAVE RISE TO SUCH LIABILITY OCCURRED; AND (B) [$____________].

## Section VI Miscellaneous

A. **Entire Agreement; Amendment; Order of Precedence**: This MSA, including all exhibits and schedules attached hereto and the Benchmark Data, collectively supersede all prior and contemporaneous agreements, understandings, representations, and warranties between the Parties, both written and oral, with respect to the subject matter hereof, and such documents encompass and constitute the entire agreement between the Parties with respect to the subject matter contained herein and therein. No amendment or modification to the MSA, including to any of the exhibits and schedules attached hereto, is effective unless such amendment or modification is in writing and signed by authorized representatives of each Party. In the event of a conflict between this MSA and any exhibit or schedule attached hereto, the terms and conditions in the applicable exhibit or schedule shall control.

**B.** **Counterparts**: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**C.** **Severability**: If any term or provision of this MSA is held to be invalid, illegal, or unenforceable for any reason, the remaining terms and provisions shall continue to be valid and enforceable. If any term or provision of this MSA is found to be invalid, illegal, or unenforceable, but by limiting such term or provision it would become valid and enforceable, then such term or provision shall be deemed written, construed, and enforced as so limited. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties to this MSA shall negotiate in good faith to modify this MSA so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**D.** **Notices**: Any notice, request, demand, or other communication required or permitted under this MSA shall be in writing, shall reference this MSA, and shall be deemed to be properly given: (1) by personal delivery; (2) twenty-four (24) hours after delivery by electronic transmission (including by email); (2) seven (7) business days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (3) two (2) business days after deposit with a national recognized overnight courier (with all fees pre-paid), with written confirmation of receipt. All notices shall be sent to the address or email address set forth below:

To Provider:

Attn: Legal Department

Address

City, State, Zip

Email:

To Client:

Company Name: ___________________________

Care of: _________________________________

Address: _________________________________

Address: _________________________________

City, State, Zip: ____________________________

Email: _____________________________________

**E.** **No Waiver**: The failure of any Party, at any time, to require performance by the other Party or Parties of any obligation hereunder shall in no way affect the full right to require such performance at any time thereafter. No waiver under this MSA, or any exhibits or schedules attached hereto, is effective unless it is in writing, identified as a waiver under such document, and signed by an authorized representative of the Party waiving its right.

**F.** **Choice of Law**: This MSA shall be governed by and construed in accordance with the laws of the State of New York, in Monroe County, without giving effect to any conflict or choice of law provision that would result in the imposition of the laws of another jurisdiction.

**G.** **Choice of Forum**: Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation, or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this MSA, and any exhibit or schedule attached hereto or thereto, whether sounding in contract, equity, tort, fraud, or statutory claims, in any forum other than a state court or United States District Court located in Rochester, New York, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation, or proceeding only in such courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**H.** **Waiver of Jury Trial:** Each Party acknowledges and agrees that any controversy that may arise under or relating to this MSA is likely to involve complicated and difficult issues and, therefore, each such Party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this MSA or the transactions contemplated hereby.

**I.** **Equitable Remedies**: Client acknowledges that a breach or threatened breach by Client of any of its obligations under this MSA, including any exhibits and schedules attached hereto, would give rise to irreparable harm to Provider for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by Client of any such obligations, Provider will, in addition to any and all other rights and remedies that may be available to Provider in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).

**J.** **Assignment:** Client may not assign any of its rights or delegate any of its obligations under this MSA, including any exhibits and schedules attached hereto, without the prior written consent of Provider. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Client of any of its obligations under this Agreement. The Provider may freely assign, transfer, and/or finance all or any part of its interest in this MSA or any Plan Technology, in whole or in part, without notice to or consent of the Client; provided, however, that such assignment shall not diminish the Client's right to use and benefit from the Plan Technology and services provided under this MSA. The Client shall cooperate with the Provider in signing any document, consent, estoppel, or acknowledgment required for its assignment, transfer, or financing related to this MSA or the Plan Technology, provided that such changes do not alter the fundamental economic terms of this MSA. This MSA, including any exhibits and schedules attached hereto, is binding on and inures to the benefit of the Parties hereto and their respective successors and permitted assigns.

**K.** **Survivability**: Subject to the limitations and other provisions contained in this MSA, the representations, covenants, and agreements of Client set forth in the MSA, including any exhibits and schedules attached hereto, shall survive indefinitely.

**L.** **Force Majeure**: Except with respect to Client's payment obligations hereunder, neither the Provider nor the Client shall be liable for failure to perform any of its obligations hereunder due to causes beyond such Party's reasonable control and occurring without its fault or negligence, including, but not limited to, (a) acts of God; (b) flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns, or other industrial disturbances; (i) shortage of adequate power or transportation facilities; or (j) other similar events beyond the reasonable control of the Party affected (collectively, "Force Majeure Event").

**M.** **No Third-Party Beneficiaries, Partnership**: Except as otherwise expressly provided herein, this MSA and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply, create, or represent any rights on the part of, or obligations to, any other person. No provision of this MSA shall be construed as creating a partnership, trust, joint venture, fiduciary, or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other unless otherwise stated, noted, or scribed herein or in any subsequent addendum.

**N.** **Further Assurances**: Client agrees to execute, acknowledge, deliver, file, and record, or cause to be executed, acknowledged, delivered, filed, and recorded, such further documents or other papers and to do all such things and acts as Provider may reasonably request in furtherance of the provisions and purposes of this MSA and the transactions contemplated hereby.

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# Exhibits to Follow

Exhibit A: Plan Technology

Exhibit B: Installation Plan

Exhibit C: Stipulated Loss Value

Exhibit D: ACH Agreement

Exhibit E: Service Level Agreement