

KATANA NETWORKS SERVICES AGREEMENT
GENERAL TERMS

This **MASTER SERVICES AGREEMENT** (the "**Agreement**") establishes the terms and conditions that govern the provision of services by Katana Networks, LLC ("MSP") to its clients ("Customer"). This Agreement, together with any associated Statements of Work ("SOW"), Service Level Agreements ("SLA"), and proposals, forms the contractual framework under which all services are provided. By signing a Statement of Work, the Customer agrees to be bound by the terms of this Agreement, including any referenced SLAs and proposals.

1. SCOPE OF AGREEMENT. This Master Services Agreement ("Agreement" or "MSA") governs all equipment, hardware, software, material ("Products") or professional services, including maintenance or subscription services, data security consulting ("Services") provided to Customer by MSP, as set forth in an addendum or statement of work (individually and collectively referred to as "SOW") referencing this MSA. This MSA shall be supplemented by SOWs, each of which must be executed by both parties and thereupon shall be deemed incorporated in this MSA. SOWs will be substantially in the form of the attached Exhibit A. The parties may execute multiple SOWs under this MSA. In the event of any conflict between the terms of an SOW and those of this MSA, the terms of the applicable SOW shall prevail except as it relates to Section 5(e).

2. TERM AND TERMINATION. This MSA will begin on the Effective Date and shall continue thereafter until each SOW expires unless sooner terminated. Either party may terminate, upon written notice of a non-breaching party ("Non-Defaulting Party") to the breaching party ("Defaulting Party") if Defaulting party:

a) Is in breach, which such breach is incapable of being cured, or if such breach can be cured (including nonpayment by Customer) and such breach remains uncured for 30 days following written notice;

b) Is insolvent, subject to a bankruptcy or state law equivalent, makes an assignment for the benefit of creditors, has a receiver appointed by a court or admits to being unable to pay its obligations when due; and/or,

c) any other material breach of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice from the Non-Defaulting Party.

Upon any termination of the right to use a Product, Customer will immediately uninstall (if the Product is software) and cease to use the terminated Product and, upon MSP's written request, immediately return such Product to MSP, together with all related documentation, and copies thereof. Upon written request of MSP, Customer will promptly certify in writing to MSP that all copies of the Product have been returned, and that any copies not returned have been destroyed. Notwithstanding any provision to the contrary, if an SOW is terminated, Customer shall promptly pay MSP for Products delivered and Services rendered, and expenses incurred through the termination date. MSP may terminate any license granted for a Deliverable (as defined below) if (i) Customer does not pay MSP for that Deliverable in accordance with this MSA, or (ii) if Customer materially breaches any part of Section 4 of this MSA.

3. PAYMENT AND DELIVERY.

a) Customer shall pay MSP all fees and expenses due upon receipt of an invoice specifying the amounts due pursuant to this MSA ("**Fees**"). All Fees payable under this MSA are exclusive of sales, use, value added tax, customs duties, excise, and any other applicable transaction taxes, which Customer will pay (excluding taxes based upon the net income of MSP). If payment is not received on or before

any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) per month from the date due until paid in full. Customer shall pay all expenses, including actual attorneys' fees, incurred by MSP or its representatives in enforcing its rights under this MSA, provided MSP prevails on the merits. Customer's obligation to pay undisputed amounts due for Services and MSP's right to all such amounts are absolute and unconditional. Customer is not entitled to any setoff of such amounts, including an equitable right of setoff. All Product is FOB (free on board) shipping point. Unless otherwise stated in a SOW, Customer agrees to pay or reimburse MSP for all actual, necessary, and reasonable expenses incurred by MSP in performance of all SOWs, which are capable of verification by receipt. MSP will submit invoices to Customer for Fees in accordance with the applicable SOW.

b) In each SOW, Customer shall designate and appoint a primary point of contact within Customer's control to facilitate communications and provide direction to MSP for the work detailed in the SOW. For the terms and conditions of this MSA and for any SOW that is silent as to a primary point of contact, the signatory below shall serve as the primary point of contact.

4. INTELLECTUAL PROPERTY, PROPRIETARY RIGHTS AND CONFIDENTIALITY.

a) **Intellectual Property Rights.** MSP retains all right, title and interest in any and all intellectual property including copyrights, patents or patent disclosures and inventions (whether or not patentable), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "Intellectual Property Rights") in and to all documents, work product and other materials delivered to Customer or prepared by or on behalf of the MSP in the course of performing an SOW (collectively, the "Deliverables") and moral rights in the above. MSP neither grants nor otherwise transfers any rights of ownership to Intellectual Property Rights to Customer.

b) **License.** MSP grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Customer to make reasonable use of the Deliverables. If, as part of MSP's performance of Services, MSP is required to use, copy or modify any third party system (hardware, software or other technology) provided or licensed to Customer, then prior to MSP's performance of such Services, Customer shall acquire all rights necessary for MSP to perform such Services. Upon MSP's written request, Customer will provide MSP with a certification signed by an officer of Customer verifying that Product is being used pursuant to the terms of this MSA. MSP may, at its expense, audit

Customer's use of Product to confirm Customer's compliance with this MSA. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. If an audit reveals that Customer has underpaid Fees to MSP, Customer will pay such underpaid Fees. If the underpaid Fees exceed five percent (5%) of the Fees paid, then Customer will also pay MSP's reasonable costs of conducting the audit.

c) **Software License Agreements.** Any Product provided to Customer by MSP as a third party reseller, which is licensed to Customer under a separate software license agreement with such third party ("SLA"), shall be governed by the SLA. Neither party's performance hereunder shall affect their obligations or responsibilities to third party pursuant to an SLA.

d) **Mutual Confidentiality.** The parties may consider certain information confidential and proprietary that it discloses ("Discloser") to the other party ("Recipient"), and seeks to restrict use and disclosure of such Confidential Information after disclosure to Recipient. The term "Confidential Information" means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and is marked confidential or proprietary, or is orally identified as confidential and proprietary when disclosed and is summarized in writing within 30 days of such disclosure with an indication of the information as being confidential or proprietary. Confidential Information does not include information that Recipient can show: (A) was rightfully in Recipient's possession without any obligation of confidentiality; (B) is or becomes a matter of public knowledge through no fault of Recipient; (C) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; (D) is disclosed by Discloser without similar restriction; or (E) is or was independently developed by or for Recipient. Recipient may not disclose or use Confidential Information of Discloser to any third party without the prior written consent of Discloser.

e) **Injunctive Relief.** A violation of Section 4 may cause the Discloser irreparable harm. In the event of a breach of this Section 4, a party may seek, in addition to any and all other remedies available at law, an injunction, specific performance or other appropriate relief

5. **Liability, Damages and Limitation of Liability**

a) **Damages.** MSP SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b) **Limitation of Liability.** IN NO EVENT SHALL THE TOTAL LIABILITY OF MSP ARISING OUT OF OR RELATED TO THIS MSA, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING

NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID PURSUANT TO THE APPLICABLE SOW TO MSP DURING THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO LIABILITY.

c) **Limited Warranty.** MSP warrants that it shall perform the Services: (1) in accordance with the applicable SOW; (2) using personnel of sufficient qualification, experience and skill to perform the applicable SOW; and (3) in a manner in accordance with generally recognized industry standards for similar services. MSP's sole and exclusive liability, and Customer's sole and exclusive remedy for a breach of this warranty, shall be to terminate the SOW pursuant to a written notice, provided Customer has first notified MSP of the breach in writing and permitted MSP a reasonable period of time of at least 30 days to cure such breach. The foregoing remedy shall not be available if Customer fails to provide a written notice of such breach within 30 days after delivery of the services to Customer. The above limited warranty will not apply to the extent Customer, its contractors or agents have modified any MSP Deliverable, unless otherwise authorized by MSP in writing. MSP MAKES NO WARRANTY FOR ANY PRODUCT AND CUSTOMER SHALL RELY UPON THE WARRANTY OF THE MANUFACTURER OF PRODUCTS. MSP MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED.

d) **Declined Products or Services.** NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, MSP SHALL HAVE NO LIABILITY FOR ANY PRODUCT OR SERVICE OFFERED TO CUSTOMER DURING THE TERM WHICH SUCH PRODUCT OR SERVICE WAS DECLINED BY CUSTOMER.

e) **CYBER SECURITY.** Neither this MSA nor any SOW shall constitute an absolute guaranty regarding the security of data of Customer. Absent an SOW dealing with cybersecurity, MSP does not obligate itself to design, advise or implement administrative, physical or technical safeguards to protect against unauthorized access, disclosure or use of personally identifiable information maintained by Customer.

6. **Relationship of Parties.**

a) **Independent Contractor.** MSP is an independent contractor. The method and manner for performance of the Services by MSP shall be under MSP's sole control. The MSP is solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this MSA allows the Customer to instruct, supervise, control, or direct the details and manner of the completion of the Services. The Services must meet the Customer's final approval and shall be subject to the Customer's general right of inspection to secure satisfactory final completion of an SOW. Nothing in this MSA shall be construed as creating any agency, partnership, joint venture, joint enterprise, or fiduciary relationship between the parties, and neither party shall have authority to bind the other party in any manner whatsoever. MSP will be responsible for and will pay all unemployment, social security and other payroll taxes, and all worker's

compensation claims, worker's compensation insurance premiums and other insurance premiums, with respect to MSP and MSP's employees.

b) Mutual Non-Solicitation. During the term of this MSA, and for a period of six (6) months thereafter, neither party will solicit for employment any employees of the other party who, within six (6) months prior to such solicitation: (a) directly performed under this MSA, (b) had substantial contact with the hiring party in relation to this MSA, or (c) the hiring party became aware of due to, or derived from information learned through the performance of, this MSA. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative. The parties acknowledge and agree that a breach of this "Non-Solicitation" clause will give rise to damages to the other party and that, as liquidated damages to compensate the non-breaching party for the search, recruitment, replacement recruitment, training and other expenses, the breaching party shall pay ___ months of the employee's compensation to the non-breaching party as damages for breaching this non-solicitation covenant.

c) Insurance. During the term of this MSA, each party shall, at their own expense, maintain and carry insurance with financially sound and reputable insurers, in full force and effect that includes, but is not limited to, commercial general liability in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon request from one Party, the other Party shall provide a certificate of insurance from its insurer evidencing the insurance coverage specified in this MSA.

d) Mutual Indemnity. Each party will indemnify, defend and hold harmless the other party from all claims, liabilities or expenses for physical damage to real property or tangible personal property and bodily injury, including death, but only to the extent caused by their negligence or willful misconduct of the indemnifying party's employees or contractors arising out of this Agreement and while at the Customers premises. The foregoing indemnities are contingent upon the party seeking indemnity giving prompt written notice to the indemnifying party of any claim, demand or action, and cooperating with the indemnifying party in the defense or settlement of any such claim, demand or action.

e) Intellectual Property Indemnity. If a third party asserts a claim against Customer asserting that the MSP's performance pursuant to any SOW violates a patent, trade secret or copyright (an "Intellectual Property Right") owned by that third party ("Infringement Claim"), then MSP will, at its own expense: (a) defend or settle the Infringement Claim; and (b) indemnify Customer for any damages finally awarded against Customer, but only if Customer promptly notifies MSP of any Infringement Claim, MSP retains sole control of the defense of any Infringement Claim and all negotiations for its settlement or compromise, and Customer provides all reasonable assistance requested by MSP. MSP will not be liable for any expenses or settlements incurred by Customer without MSP's prior written consent. If an injunction or order is obtained against MSP performing the Services for Customer and/or Customer using the Deliverables by reason of the allegations of infringement, or if in MSP's opinion the Services and/or Deliverables may violate a third party's proprietary rights, then MSP will, at its expense: (a) procure for Customer the right to continue to receive the Services

and/or use the Deliverables; (b) modify or replace the Services and/or Deliverables with a compatible, functionally equivalent substitute; or (c) if neither (a) nor (b) are commercially practical, terminate this MSA and release Customer from its obligation to make future payments for the Services and/or Deliverables.

f) Export Controls. Customer shall cooperate with MSP to permit MSP to comply with the laws and regulations relating to the control of exports ("Export Laws"). Customer may not import, nor export or re-export directly or indirectly, including via remote access, any part of the Product into or to any country for which a validated license is required under applicable Export Laws, without first obtaining such a validated license.

g) Referencing. Customer agrees that MSP may refer to Customer as a customer of MSP, both internally and in externally published media. Customer also agrees to instruct appropriate personnel within its organization that Customer has agreed to receive and participate in calls, from time to time, with potential customers of MSP who wish to evaluate the technical specifications of Product.

7. MISCELLANEOUS/OTHER PROVISIONS.

a) Severability. Should any provision of this Agreement be found invalid, illegal or unenforceable, by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

b) Attorney Fees. In the event of a dispute, the prevailing party in any litigation shall be entitled to recover its attorneys' fees and cost incurred from the other party.

c) Notices. Unless otherwise provided, notices to either party will be in writing to the address indicated above, or as later amended by notice hereunder, and deemed effective when received or after 3 business days following delivery of notice by United States mail postage prepaid.

d) Assignment. Customer may not assign this MSA or any rights granted in this MSA to any third party, except with the prior written consent of MSP.

e) No Waivers. Failure of a party to require performance by the other party under this MSA will not affect the right of such party to require performance in the future. A waiver by a party of any breach of any term of this MSA will not be construed as a waiver of any continuing or succeeding breach.

f) Force Majeure. Any delay or failure of any party to perform any obligation under this MSA caused by or results from acts of God, flood, fire, earthquake, explosion, war (whether war is declared or not), governmental restrictions, labor disputes, storms or natural disasters, terrorist threats or acts, riots, civil unrest, national emergency, revolution, epidemic, lock-outs, strikes or other labor disputes, power outage, telecommunication failure, interruption in supply chain, emergency, or other causes beyond the reasonable control of the party, will not be deemed a breach of this MSA. If such event continues for 120 days, Customer shall be entitled to give notice to MSP to terminate any SOW. This provision does not apply to the payment of monies or any breach of Section 4

g) Entire Agreement. This MSA, together with each SOW and SOW, constitutes the entire agreement between Customer and MSP, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning this subject matter. This MSA, and each SOW, may be modified only in a mutually signed writing between Customer and MSP. In the event of a conflict between this MSA and any applicable SOW, the

terms of the applicable SOW will control, and then this MSA. This MSA and any SOW pursuant to this MSA may be executed in counterparts, each of which shall be deemed an original. A signed version of this MSA or any SOW may be delivered by facsimile, email or other electronic transmission and shall have the same legal effect as delivery of an original signed copy of this MSA.

h) **Governing Law.** Any controversy or claim arising out of or relating to this MSA shall be governed by the laws of the State of ____.

i) **Survival.** Sections 2, 3, 4, 5, 6 and 7 will survive the termination or expiration of this Agreement.

j) **Headings.** The headings in this MSA are for reference only and shall not affect interpretation of the terms and conditions.