Layer 8 Computing

# General Terms and Conditions

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# GENERAL

## 1. DEFINITIONS AND INTERPRETATION

In these Conditions, the Rate Schedule and every Quote, Order, Plan contract, or other arrangement in connection with the supply of Goods or Services by Layer 8 Computing the following words have the following meanings:

"**After Hours**" means from 9:00 PM-8:00 AM Monday-Friday, All day Saturday and Sunday, and Public Holidays;

"**Business Hours**" means Monday-Friday 8:00AM-5:00PM excluding Public Holidays;

"**Client**", **"You"** or **"Your"** means a person who seeks or obtains a quote for, or who orders, Goods or Services from Us, and includes both a person whose name is on the Order or on an email attached to which is an order, a person who places an order, and a person on whose behalf an Order is placed or on whose behalf it appears and order is placed, and in any case each of their heirs, successors and assigns;

"**Conditions**" means these terms and conditions;

**"Goods"** means any goods and/or services sourced by Us or provided by Us in connection with any such goods and/or services including computer hardware and Software and any goods or services provided in connection with any of those things;

**"Tax"** means any applicable sales, use, excise, gross receipts, value-added, goods and services, or similar transaction tax, duty, levy, surcharge, or governmental charge imposed by any federal, state, or local taxing authority, including Vermont sales and use tax, but excluding taxes based on Our net income;

**"Order"** means any order requested by You to Us for Goods or Services in any form;

**"Quote"** means a quote provided to You by Us;

**"Period"** means a particular number of half-days, days, weeks, fortnights, months, or any other period, as may be agreed between Us and the You as the period during which some Services will be provided;

**"Plan"** means any arrangement between Us and You (whether alone or in conjunction with any other person) for Services (including unlimited support) and/or the provision of Goods provided by Us under an arrangement in connection with Work agreed to be done or progressed for or on behalf of You or any other person at Your request, including as set out in a Plan Schedule;

**"Plan Schedule"** means the key terms applicable to Plans as set, and as may be varied by Us, from time to time on prior written notice to You as provided in these Conditions;

**"Public Holidays"** means any day recognized as a federal holiday in the United States or as a legal holiday in the State of Vermont, excluding any holiday observed solely by banks unless otherwise agreed in writing;

**"Rates"** means the hourly rates and other charges for Services (including any call-out fees and any Return/Cancellation Fees) set out in the Rates Schedule, a Plan, Plan Schedule, Quote, contract or arrangement entered into by Us and You or in these Conditions, and includes any monies payable to Us on a quantum meruit basis for any work it has done;

**"Rate Schedule"** means the schedule of rates, charges and conditions for the services of Ours as set, and as may be varied, by Us from time to time on prior written notice to You as provided in these Conditions;

**"Reasonable Assistance Limits"** has the meaning set out in clause 17.1;

**"Return/Cancellation Fee"** means a fee charged pursuant to clause 12.5 as set by Us from time to time;

**"Service request"** means a request for service such as adds, moves, changes and technical assistance;

**"Services"** means the provision of any services by Us including Work, advice and recommendations;

**"Software"** includes software and any installation, update, associated software and any services provided in connection with any of these things;

" **Us", "Our**" or "**We**" means Layer 8 Computing, LLC and its heirs, successors and assigns; and

**"Work"** means anything We may do, provide, customize, produce or acquire, whether or not in connection with, or for the purposes of, You or Your use or benefit, and includes testing, troubleshooting, installation and configuration of new equipment or software, consulting, scoping, planning, documenting and quoting for complex items.

In these Conditions, the Rate Schedule and every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods or Services by Us, unless the contrary intention appears:

Words denoting the **singular** number only **shall include the plural** number and vice versa;

Reference to **any gender shall include every other gender**;

Reference to **any Act of Parliament, Statute or Regulation shall include any amendment** currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore;

**Headings** and words put in **bold** are for convenience of reference only and **do not affect the interpretation or construction** of these Conditions;

All references to dollars ($) are to **United States dollars**;

A reference to time is to **Eastern Time in the United States**;

A reference to an **individual or person includes a corporation**, partnership, joint venture, association, authority, trust, state or government and vice versa;

A reference to a recital, clause, schedule, annexure or exhibit is to a recital, clause, schedule, annexure or exhibit of or to these Conditions;

A recital, schedule, annexure or description of the parties forms part of these Conditions;

A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

Where an expression is defined, **another part of speech or grammatical form of that expression has a corresponding meaning**;

A reference to **"includes"** means **includes without limitation**;

A reference to **"will"** imports a condition not a warranty; and

A reference to **bankruptcy or winding up** includes bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, being subject to administration and the occurrence of anything analogous or having a substantially similar effect to any of those conditions or matters under the law of any applicable jurisdiction and to the procedures, circumstances and events which constitute any of those conditions or matters.

# 2. APPLICATIONS OF THESE CONDITIONS

Unless otherwise agreed by Us in writing, these Conditions are deemed incorporated in and are applicable to (and to the extent of any inconsistency will prevail over) the terms of every Quote, Order, Plan, contract, or other arrangement in connection with the supply of Goods and/or Services by Us to You.

The invalidity or enforceability of any one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.

# 3. COMMITMENT TERM

3.1 The minimum term that You acquire the service for is outlined in Our Quote to You, beginning from the first of the next month after the date of signing or approving the Quote.

3.2 **After the expiry of the Committed Term, the Term will automatically renew for a further period equal to the original Committed Term, and for successive equal periods thereafter, unless earlier terminated as**

**specified in Clause 4 or either party gives written notice of non-renewal at least thirty (30) days before the end of the then-current Term.**

3.3 **Automatic renewal applies only if You separately opt in to automatic renewal in Our Quote. Not less than thirty (30) and not more than sixty (60) days before each renewal date, We will send You a written reminder stating the date the Term will end, that the Agreement will renew automatically unless You cancel on or before that date, the length and terms of the renewal period, and an easy method to cancel.**

# 4. TERMINATION

4.1 This Agreement may be terminated by You upon ninety (90) days written notice if We:

4.1.1 Fail to fulfil in any material respect its obligations under this Agreement and do not cure such failure within thirty (30) days of receipt of such written notice.

4.1.2 Breach any material term or condition of this Agreement and fail to remedy such breach within thirty (30) days of receipt of such written notice.

4.1.3 Terminate or suspend our business operations, unless it is succeeded by a permitted assignee under this Agreement.

4.2 This Agreement may be terminated by Us upon ninety (90) days written notice to you.

4.3 If either party terminates this Agreement, we will assist you in the orderly termination of services, including timely transfer of the services to another designated provider. You agree to pay us for rendering such assistance at our normal rates as outlined in our current Rate Schedule.

4.4 Should You wish to terminate this Agreement before the end of the commitment term without cause, You agree to pay an early-termination charge equal to the unrecovered costs We reasonably incurred in setting up and onboarding Your account, plus the profit margin (and not the gross fees) We would have earned on the Services for the remaining months of the commitment term, reduced by any costs We reasonably avoid and any revenue We reasonably earn by redeploying the affected resources. The parties agree that this charge is a reasonable pre-estimate of Our likely loss and is not a penalty.

## 5. REPRESENTATIONS

5.1 You acknowledge that no employee or agent of Ours has any right to make any representation, warranty or promise in relation to the supply of Goods or Services other than subject to and as may be contained in the Conditions.

## 6. NOTICES

6.1 Any notices given under the Conditions shall be in writing and sent by e-mail to the last notified e-mail address of Yours.

## 7. GOVERNING LAW

7.1 The Conditions shall be governed by and construed in accordance with the laws of the State of Vermont, without regard to its conflict of laws principles, and the parties submit to the jurisdiction of the state and federal courts located in Vermont.

## 8. ASSIGNMENT

8.1 You may not assign Your rights and obligations under this Agreement without the prior written consent of Us.

## 9. VARIATION OF THESE TERMS AND CONDITIONS

9.1 We may vary these Terms and Conditions from time to time. We will give You at least thirty (30) days' prior written notice of any material variation before it takes effect. If You do not agree to a material variation, You may terminate this Agreement without penalty by written notice before the variation takes effect; otherwise, Your continued use of the Services after the variation takes effect constitutes acceptance. Posting revised Terms and Conditions on Our website alone is not sufficient notice of a material variation.

# GOODS AND SERVICES

## 10. QUOTES

10.1 Term and effect: Quotes will only be valid for 7 days unless otherwise specified in the Quote. A Quote is merely an invitation to You to place an Order with Us and the acceptance of a Quote by You will not create a binding contract between You and Us.

10.2 Quote is valid for 7 days only. Expiry dates on quotes are set to be able to inform Us when the quote is still active or to be discarded. Once discarded the quote will need to be requested again.

10.3 Once a quote has been confirmed by Us, then the prices in the quote will be confirmed as the final agreed price. A quote is confirmed as 'final' as soon as both parties agree with the final price after any last changes requested by You.

10.4 The price in the final quote may vary from the original request if there is any price or product changes requested by You. We reserve the right to alter product and prices in the quote, as long as the quote has not been confirmed with You.

10.5 Quotes and estimates shall be deemed to correctly interpret the original specifications and are based on the cost at the time the quote or estimate is given. If You later require any changes to the quotes, and We agree to the changes, these changes will be charged at Our prevailing rate.

10.6 Once the Quote has been confirmed and converted to an Order, the Order will be subjected to our normal Terms and Condition of Sale.

10.7 The general minimum turnaround time for Quote request to be actioned is usually 24 hours. In the event that a quote is required urgently please let us know so that we can respond to it accordingly.

10.8 When a special price or discount offer has been applied to this Quote, no other special promotion, discount or bonus offer will be applicable.

10.9 In the event that products in the Quote are subjected to any price and supply fluctuations that is outside of Our control We reserve the right to update the price and product in the Quote accordingly. If a product has undergone a price drop or a price increase, the Quote will then be adjusted accordingly. If there is a product that is no longer available, the product will then be replaced or substituted based on Your request and is subject to Your final approval.

10.10 Price on non-stocked products are subject to price and stock fluctuations and can only be confirmed once the Quote is turned into an Order. While We endeavor to honor every price quoted, if there is a price increase that is beyond our control, We reserve the right to increase the price as necessary.

10.11 Once a Quote has already passed the expired date, We may cancel the quote or estimate without having to notify or receive an approval from You.

10.12 ETA information is based on an estimate given by our vendors and cannot be held as the actual promised date.

10.13 Freight charges will be added to the Order unless otherwise stated. Any included delivery charges are estimates only.

10.14 We do not keep inventory and as such only order items once we receive a completed order from a client. If You would like to return an item or cancel an order, a restocking fee may apply. We will need to get approval from the distributor that the stock is returnable before being able to issue a refund as not all products can be returned.

10.15 Prices are based upon total Quote Purchase.

10.16 Unless specified, all items on quote are covered by manufacturer's warranty covering parts and labor for hardware only on a return-to-depot basis.

10.17 Varying or withdrawing Quotes: We may vary or withdraw a Quote at any time in Our absolute discretion and without prior notice to You. We may do so for any reason We consider fit, including, e.g. where the Goods or Services become unavailable or the cost price of Goods or Services increases after the date of the Quote.

## 11. ORDERS

11.1 Order forms: You may place an Order for Goods and/or Services with Us. Normally, We will require that You provide either a completed Order form or You approve the quote electronically via either an email or a web-based system with the date and Your details, including Your full legal name or business name and any applicable federal employer identification number, tax identification number, or state registration number (including the full name or description of any person on whose behalf the order is placed), Your address together with any relevant Quote number and date.

11.2 Approval of Orders: You will need to sign the Order or have it duly executed on Your behalf, unless the Order is sent by email or via the web based ordering system, in which case the Order will be treated or deemed as if

signed by or on behalf of You by the person whose name appears as the sender of the email or submitter of the form.

11.3 Reliance on appearance of validity: Absent actual knowledge to the contrary, We may rely upon the apparent validity of an Order. If any Order is signed or sent by email or approved through the web based ordering system by a named person, that person warrants that the Order is, and it is acknowledged the Order is deemed in favour of Us to be:

11.3.1 signed by, and duly authorized by, both the person who signed the Order and the person who sent the email; and

11.3.2 duly authorized by the person on whose behalf the Order is placed or apparently placed.

11.4 Acceptance and Orders: An Order has no effect unless or until it is accepted by You in writing and, until We have received from You payment in clear funds for the Order and any related freight, delivery and (where applicable) in-transit insurance costs in clear funds.

11.5 No obligation to deliver: We are not obliged to deliver any Order until we have received payment in clear funds from You for the Order, any related freight, delivery and (where applicable) in-transit insurance costs or where We are unwilling or unable to complete the Order for any reason provided it refunds any payment made by You in respect of the Order.

11.6 Credit checks: For the purposes of ascertaining the credit standing or history of a prospective customer to whom We are considering extending credit or payment terms, You hereby consents to Us undertaking a credit reference check in respect to You.

11.7 Cancellation of Orders: You will not cancel an Order unless We agree to do so in writing in Our absolute discretion. You acknowledge that, amongst other things, We cannot cancel an Order once the manufacturer or supplier has dispatched the relevant Goods and that such dispatch often occurs the same day as the Order is placed by Us.

11.8 Processes and Procedures: We have processes and procedures that We follow in the course of the provision of Our Services and the supply of Goods. You agree to co-operate with Us and to comply with such processes and procedures as advised to You from time to time.

## 12. PRICING AND RATES

12.1 Rates exclude Tax: All rates and amounts charged or quoted for Goods and/or Services by Us are exclusive of Tax and any other applicable taxes or government charges (unless otherwise stated in writing by Us).

12.2 Rates Schedule: You must pay for Goods and Services at the Rates set out in any applicable Plan and the Rate Schedule as applicable from time to time during the provision of the Goods and/or Services.

12.3 Vary Rates: We may vary any Rate and/or the Rate Schedule from time to time (subject to any fixed pricing for specific periods in any Plan) on at least thirty (30) days' prior written notice to You. Any increase to the recurring Rates during a Commitment Term will not exceed five percent (5%) in any twelve (12) month period, and if We give notice of a larger increase You may terminate this Agreement without penalty before it takes effect.

12.4 Call-out fees: You acknowledge that call-out fees may be charged in addition to the Rates at Our absolute discretion and that the amount of the call-out fee will depend upon where the Services are provided.

12.5 Return/Cancellation Fee: Where We arrange a return or refund on behalf of You, or where an Order is cancelled by You after acceptance by Us, We may charge You a Return/Cancellation fee to cover the administration costs to Us in processing the return or refund, or in processing the Order, the cancellation and any refund. We may deduct the Return/Cancellation fee from out of any moneys otherwise due to be refunded to You by Us.

12.6 Expenses: You must pay any out-of-pocket expenses incurred by Us in providing the Services to You in addition to the Rates, charges and call-out fees, upon written demand. Such expenses will include travel costs, flights, car rental, gasoline, insurance, taxi fares, lodging and related meal allowance, tolls and parking expenses. Where appropriate, We will obtain prior written authorization from You before such expenses are incurred.

12.7 Separate charges for Goods and Services: We may in Our absolute discretion charge for Goods separately from Services or may charge for Goods and Services together.

12.8 Calculation of increments: Where a charge is calculated based on increments of time, e.g. 1 hour or 30 minutes, We will charge the applicable

rate for the whole increment of time even if work is done during part of, but not for the whole of, that increment of time.

12.9 Change in underlying costs: Where there is any increase in the underlying costs incurred by Us in connection with the supply of Goods or Services to You, We may vary Our Rates on prior written notice to You in accordance with the 'Vary Rates' clause above.

12.10 Pre-Paid Blocks of Service: Where You agree to buy Pre Paid Blocks of Service during a Period, payment must be made in advance for the Pre-Paid Blocks of Service at the rate applicable pursuant to the Rates Schedule for all Services. Each such rate being less any discount agreed in writing between Us and You in respect of the Pre-Paid Blocks of Service. Services included in a Pre-Paid Block of Service rate during the Period:

12.10.1 are calculated in accordance with the applicable minimum time periods and **increments** set out in the Rates Schedule; and

12.10.2 **are only provided by Us during the applicable Period.** Where Services are provided for a specified Period:

12.10.2.1 the Services remaining unused for that Period cannot be rolled over into any subsequent Period; and

12.10.2.2 We are not liable to refund, reimburse, pay damages or otherwise compensate or indemnify You in respect of those unused Services.

## 13. SERVICES AND PLANS

13.1 Service and Plan Variations: Currently, We offer the Services and Plans referred to in the Rates Schedule and any Plan Schedule. We may change or withdraw a Service on reasonable prior written notice to You; We will not materially reduce the Services You have contracted for during a Commitment Term without Your consent, except as required by a third-party supplier or by applicable law. Any response or resolution times We publish are targets only, are not guaranteed, and We do not provide service credits or other compensation if a target is not met.

13.2 Copies on Request: We will provide You with a copy of the current Rates Schedule upon request. Plan Schedules are tailored for particular Plans and are available to Clients participating in the Plan.

## 14. CONTRACTING

14.1 We may subcontract any or all of the Services to be performed, but shall retain prime responsibility for the Services under these terms.

## 15. DELIVERY, TITLE AND RISK

15.1 Delivery liability: We will use all reasonable endeavors to dispatch Goods by the due date, but do not accept any liability for non-delivery or failure to deliver on time where this is caused by circumstances beyond the reasonable control of Ours, including, for example, due to failures in supply to Us or delays caused by third parties, such as delivery companies or manufacturers.

15.2 Availability to accept delivery: You must be available to accept the Goods at Your nominated delivery address during Business Hours unless otherwise arranged.

15.3 Passing of Risk: Delivery is deemed to take place when the Goods are delivered to Your nominated address, whereupon risks of loss, breakage and all damage and all other risks pass to You. Nothing in this clause 15.3 will affect title to the Goods.

15.4 Obligation to insure: You will ensure that Goods are adequately insured from the time of delivery under clause 15.3.

15.5 Retention of Title: Until We receive full payment in cleared funds for any moneys due to Us by You on any account or for any reason:

15.5.1 title to, and property in, Goods supplied to You remain vested in Us and does not pass to You;

15.5.2 You must hold those Goods as fiduciary bailee and agent for Us and must not sell them;

15.5.3 You must keep those Goods separate from other goods and maintain the Goods and their labelling and packaging intact;

15.5.4 Where You sell the goods in breach of these Conditions, You are required to hold the proceeds of any sale of those Goods on trust for Us in a separate account (however any failure to do so will not affect Your obligation to deal with the proceeds as trustee and remit them to Us);

15.5.5 We may, without prior notice, enter into any premises where We suspect those Goods may be, take possession of those Goods and sever and

remove those Goods (notwithstanding that they may have been attached to other goods not the property of Ours) and for this purpose, You hereby irrevocably authorise and direct Us (and Our employees and agents) to enter into such premises as its duly authorised agent and You hereby indemnify and hold harmless Us from and against any costs, claims, allegations, demands, damages or expenses or any other acts or omissions arising from or in connection with, such entry, repossession or removal.

15.5.6 You irrevocably appoint Us as Your attorney to do anything We consider necessary in order to enter such premises and repossess the Goods as contemplated by this clause 15.5.

# 16. RETURNS AND CLAIMS FOR GOODS AND SERVICES

16.1 General Returns Policy: Notwithstanding anything in these Conditions, You acknowledge that We supply Goods subject to all applicable conditions, including returns and claims policies, of any relevant manufacturer or supplier. You will accept Goods subject always to these Conditions and the terms of such conditions and will indemnify and hold Us harmless in respect of any further or other obligation or any failure or default on the part of that manufacturer or supplier.

16.2 Customized Goods not returnable: Where Goods have some element of customization for You, are supplied pursuant to an Order for Goods that is in the opinion of Ours special or unusual, the Goods are obtained from overseas, the Goods are obtained from a supplier who is no longer trading, or the Goods are otherwise not readily returnable by Us to the manufacturer or supplier or any related services may not be cancelled, You may not return the Goods to Us or cancel the related services.

16.3 Duty to inspect: You will inspect all Goods immediately upon their delivery. Within 7 days of such delivery You may give written notice to Us of any matter or thing, by reason of which You might wish to return the Goods, ask for a refund, or make a claim. If no such notice is given on time, You will accept the Goods without any such return, refund or claim.

16.4 Return Condition: Where You are entitled to return Goods under these Conditions, You must return the Goods in their original condition and unopened, provided always that where, upon opening the packaging it

becomes apparent that the Goods are different to what is described on the packaging or that the Goods are faulty, the Goods may be returned.

16.5 Return costs: You will pay all costs and expenses incurred by Us in arranging the return of the Goods to a manufacturer or supplier and/or the cancellation of any related services unless that manufacturer or supplier pays such costs.

16.6 Consequences of use, installation, customization or sale: You will indemnify and hold Us harmless in respect of all allegations and claims in respect of Goods once such Goods have been used, installed, customized or re-sold by You (without prejudice to the recourse of such a customer to the manufacturer of the Goods).

## 17. COMPUTER UTILITY, FUNCTIONALITY AND FITNESS FOR PURPOSE

17.1 Service limitations given the science of computing: You acknowledge that a reasonable incident of the Services may involve trial and error and that it is a science applied often in novel or unknown circumstances and involving experiment. In particular, You acknowledge that the Services may involve tests, troubleshooting, advice and recommendations that may prove incorrect or inappropriate, particularly in an attempt to cure a problem You are having. While We will make what We consider (in Our absolute discretion) to be all reasonable endeavors to provide appropriate tests, troubleshooting, sound advice and good recommendations in order to assist You, You will always indemnify and hold Us harmless in the provision of our Services to You.

17.2 Reasonable Assistance Limits: We are only obliged to provide what We consider, in Our absolute discretion, to be reasonable assistance in the circumstances (including with the installation and customization of new software or hardware for You or any other Work) under any Plan and You will pay for additional work at the Rates unless otherwise agreed. Without limiting the discretion of Us to determine what reasonable assistance is, normally, reasonable assistance is limited to work done during Business Hours over a period of time not exceeding any period that We have allowed or allows for the Work or has estimated or estimates the Work will take, whether or not notice of the time allowed or estimated is given by Us to You.

17.3 Recommendations, suitability, functionality and fitness for purpose: The parties acknowledge that:

17.3.1 We may recommend that You purchase Goods provided by third parties from time to time;

17.3.2 Recommendations may be made in situations where You have made known to Us the purpose for which the Goods will be used or some function sought to be fulfilled;

17.3.3 You acknowledge that We have no control over many factors involved with the suitability, function or fitness for purpose of Goods in an existing or new computer environment, e.g.

17.3.3.1 the compatibility or ability of the Goods to fit into or perform to expectations in the receiving computer/internet environment; or

17.3.3.2 the behavior of third-party supplier, e.g. in relation to support;

17.3.4 You acknowledge that for a whole number of reasons outside of Our control, the Goods may fail to meet Your expectations, may not turn out to be fit for all or any of the purposes sought, may not be suitable or may not function properly in all or any respects;

17.3.5 You acknowledge that the Services provided by Us may involve the very task of seeking to customize Goods so they may be fit for particular purposes and that customization may be a very substantial project in itself;

17.3.6 Accordingly, You will accept the sole responsibility for, and indemnify and hold Us harmless in respect of:

17.3.6.1 decisions as to whether or not to follow recommendations by Us;

17.3.6.2 decisions as to whether or not to purchase or customize Goods or obtain Services for that or any other purpose; and

17.3.6.3 any failure or defect in suitability, function or fitness for purpose of any Goods and/or Services, including a responsibility to obtain Your own independent advice or second opinion from a suitably qualified person;

17.3.7 Where We provide Services with a view to achieving Your purposes, suitability, function or fitness for purpose (whether expressed, agreed or otherwise), You must pay for those Services on time without any set-off or counter-claim, whether or not We are able to

achieve any of such purposes, suitability, function or fitness for purpose, provided always that We have acted in good faith and have made what We consider, in Our absolute discretion, to have made all reasonable endeavors to achieve those outcomes.

17.4 **Testing Procedures:** You will follow the instructions of Ours with regard to testing or troubleshooting any problems and that if those do not resolve the outstanding problems, We will, subject to these Conditions, allocate such resources as We consider reasonable in the circumstances towards their resolution.

## 18. FORCE MAJEURE

18.1 **Force Majeure:** If We are unable to supply any Goods or Services due to circumstances beyond Our reasonable control, We may cancel the Order (even if the Order has already been accepted) or cease to provide the Services by written notice to You, in which case You will hold Us harmless.

18.2 We will not be liable for any breach of contract due to any matter or thing beyond Our control, including failures by third parties to supply goods, services or transport, stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident.

## 19. PRODUCT SPECIFICATIONS

19.1 **Alterations to Specifications**: We make every effort to supply the Goods in accordance with the Order however We may supply alternate Goods subject to minor variations in actual dimensions and specifications where these are changed by the manufacturer of the Goods after the Order date and before delivery.

19.2 **Substitute Goods:** If We cannot supply the Goods ordered by You, We may supply alternate Goods of equal or superior quality provided however that You will not pay a higher price than the price Quoted or otherwise agreed for the Goods ordered.

## 20. WARRANTIES

20.1 **Reliance on Manufacturer's Warranty**: You will rely on the warranties provided by the manufacturer of Goods supplied by Us (where applicable) and will deal direct with such manufacturer rather than Us for all claims covered by such warranties.

20.2 **No claim for manufacturer's default:** You indemnify and hold Us harmless in respect of the performance or otherwise, by any manufacturer of Goods supplied to You by Us, of any of the obligations of such manufacturer in respect of such Goods. This includes any damages or moneys due to You arising under, or in connection with, any breach by the manufacturer of any the manufacturer's warranties in respect of the Goods.

20.3 **Services warranty:** We warrant that We will perform the Services in a professional and workmanlike manner consistent with generally recognized industry standards for similar services. Your sole and exclusive remedy, and Our sole obligation, for breach of this warranty is that We will re-perform the deficient Services within a reasonable time after You notify Us in writing of the deficiency.

## 21. LIABILITY

21.1 **Exclusion:** Except as specifically set out herein and so far as may be permitted by law, any term, condition or warranty in respect of the quality, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

21.2 **No liability for program or data loss:** You indemnify and hold Us harmless in respect of any allegation, claim, loss or expense of Yours or any third party for any program or data loss or damage suffered by You or that third party arising directly or indirectly from the supply of the Goods or Services by Us to You. You acknowledge You are solely responsible for backing up Your programs and data in order to mitigate Your own potential loss of programs and data.

21.3 **Limit on consequential damage:** You indemnify and hold Us harmless in respect of any allegation or claim as to any indirect or consequential losses or expenses suffered by You or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to You or any third party.

21.4 **Limit on damage from a failure in supply**: You indemnify and hold Us harmless for any allegation or claim for loss or damage by You or a third party where We have failed to meet any delivery date or cancels or suspends the supply of Goods or Services.

21.5 **General limit on liability and liability cap:** Except as otherwise expressly stated in these terms and conditions, and subject to the 'Laws still apply' clause below, Our total aggregate liability arising out of or in connection with the Goods, Services, or these Terms and Conditions, whether in contract, tort (including negligence), or otherwise, will not exceed the total fees paid by You to Us under the applicable Plan in the twelve (12) months preceding the event giving rise to the claim. This cap does not apply to liability that cannot be limited under applicable law, or to liability arising from Our gross negligence, Our willful misconduct, or Our breach of Our confidentiality or data-security obligations. Subject to the foregoing cap, We are not liable for loss or damage suffered or incurred by You in connection with:

21.5.1 Goods or Services provided to You or any Work;

21.5.2 these Terms and Conditions;

21.5.3 Your use of Our website (including the use of a credit card or other debit device) or any linked website;

21.5.4 the non-availability of Goods or Our Services for any reason;

21.5.5 the provision of inaccurate, incomplete or incorrect information by You.

21.6 **Limitation options:** To the extent that any legislation implies a condition or warranty that cannot be excluded but can be limited, clause **Error! Reference source not found.** does not apply to that liability and Our liability for any breach of that condition or warranty is limited to Our doing any one or more of the following (at its election):

21.6.1 replacing the Goods or supplying equivalent Goods, Services or Work;

21.6.2 repairing the Goods or the Work;

21.6.3 paying the cost of replacing the Goods or the Work or acquiring equivalent Goods, Services or Work; or

21.6.4 paying the cost of having the Goods or the Work repaired.

21.7 **Laws still apply:** Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of the Goods or Services which cannot be excluded, restricted or modified.

21.8 **Severance:** If any provision contained in the Conditions is unlawful, invalid or unenforceable, those provisions may be severed without prejudice to the validity and enforceability of the remaining provisions of the Conditions.

## 22. ERRORS AND OMISSIONS

22.1 We make every effort to ensure that all prices and descriptions quoted are correct and accurate. In the case of an error or omission, We may rescind the affected contract by written notice to You, notwithstanding that We have already accepted Your Order and/or received payment from You. Our liability in that event will be limited to the return of any money You have paid in respect of the Order.

# OUR RESPONSIBILITIES

## 23. PRIVACY STATEMENTS AND YOUR RIGHTS

23.1 We are collecting Your personal information for the fulfillment of Quotes, Orders and the provision of Goods or Services to you and it may retain and use it for any such purposes ("Authorized Purposes").

23.2 You are required to provide your personal information to Us for Authorized Purposes.

23.3 We may disclose Your personal information to other persons for the purposes of the fulfillment of Quotes, Orders and Work for you or in order to provide Goods or Services to You, to verify the information You provide, for inquiries about Goods or Services that may be suitable for your purposes, or to confirm Your requirements, to anyone proposing to supply Goods or Services to You, or to acquire Goods or Services on Your behalf, or in respect of inquiries relating to any of the foregoing.

23.4 Otherwise We will not disclose Your personal information without Your consent unless authorized by law.

23.5 Your personal information will be held by Us at Our Principal Place of Business and You can contact Us to request to access or correct it.

23.6 We rely on You to submit correct information and details where requested. You accept that You may incur additional expenses if you submit incorrect information.

## 24. OUR WEBSITE

24.1 We make no representations or warranties in relation to information available on Our website, including without limitation:

24.1.1 that the information on Our website is complete or correct;

24.1.2 that Our website will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software; and that We endorse any internet site linked to Our website or any third party products or services referred to on Our website.

## 25. INSURANCE COVERAGE

25.1 We will maintain at Our own expense, commercial general liability insurance for personal injury and property damage for a general aggregate of $250,000. At Your request We will provide You with certificates, including renewal certificates evidencing such coverage within thirty (30) days of commencing this Agreement, at every renewal and at other times as may be reasonably requested by You.

## 26. DATA SECURITY AND BREACH NOTIFICATION

26.1 We will use commercially reasonable administrative, technical, and physical safeguards designed to protect the data and systems We access, hold, or process on Your behalf, consistent with applicable law and generally recognized industry practices for managed IT service providers.

26.2 If We discover a security breach affecting Your personally identifiable information that We maintain or possess on Your behalf, We will notify You as soon as practicable and, in any event, without unreasonable delay following discovery, and We will reasonably cooperate with You in investigating and responding to the breach. Nothing in these Terms and Conditions limits or waives any security-breach-notification obligation imposed on either party by applicable Vermont law, and any such obligation may not be waived.

# YOUR RESPONSIBILITIES

## 27 LODGING OF SERVICE REQUESTS

27.1 In order for Us to provide You with the agreed Service, You agree to follow Our process for lodging Service Requests as outlined in Appendix A.

## 28 ACCESS TO SYSTEMS, SITES AND PEOPLE

28.1 In order to provide You with the agreed Service, You agree to give Us access to various items of Yours including but not limited to, equipment, people and sites as and when required.

28.2 You agree to allow Us to install software on Your Equipment that allows Our technicians to access Your systems at any time. This software allows Us to view system statuses, send monitoring information, see users' desktops and control Your PC's. This may require that devices are left on overnight or weekends.

## 28. THIRD PARTY AUTHORIZATIONS

28.3 At times We may need to contact Your third-party providers on Your behalf, such as Your internet provider. Some of these providers may require Your authorization for Us to deal on Your behalf. It is Your responsibility to ensure that We are able to deal freely with these providers.

## 29 PAYMENT, LATE PAYMENT AND DEFAULT

29.1 **Payment due date: All** invoices issued to You are due and payable to Us within the terms stated on the invoice (unless otherwise agreed in writing). by cash, cheque, credit card or direct deposit in accordance with these Terms and Conditions and in the way set out in the Invoice.

29.2 **7 days late:** Where You fail to pay an invoice within fifteen (15) days of the due date, We may, in Our absolute discretion and without prior notice, suspend or discontinue the supply of Goods and/or Services to You.

29.3 **Recoveries:** All legal and other costs and expenses incurred in connection with the recovery of late payments will be added to the amount due by You to Us and will be recoverable from You, in addition to the original invoice cost. If You default in payment of any invoice on time, moneys which would have become due by You at a later date shall be immediately due and

payable without any further notice to You. Collectively, all of these moneys are referred to in these Conditions as a "Sum Due".

29.4 **Interest:** If payment of any Sum Due is not made on time, We will charge interest daily on the Sum Due at the maximum rate allowed by law, calculated and charged daily on and from the due date until the Sum Due is paid in full.

29.5 **Application of funds:** All payments of the Sum Due made by You to Us will be applied as follows:

29.5.1 first in or towards payment of any costs (including legal costs), charges, expenses or outgoings paid by Us in relation to any dishonored check fees, collection costs or any other action taken by Us for the recovery of any amounts owing by You to Us;

29.5.2 secondly, in or towards payment of any interest due or payable hereunder, and

29.5.3 thirdly, in or towards payment of Your debts to Us in order from the longest standing due to the most recently incurred.

29.6 **Security:** We may require You to provide security over Your property (including the Goods or any other property of Yours) as collateral to be held as security for any Sum Due or as a condition precedent to the continuation of supply of Goods or Services by Us to You.

29.7 **Payment arrangements:** In the event that a repayment arrangement is made in relation to any Sum Due and the supply of Goods or Services is resumed, but then a repayment due under that arrangement is not made on time, We may, in Our absolute discretion and without prior notice, again suspend or discontinue the supply of Goods or Services to You.

29.8 **Power of Attorney:** You hereby irrevocably appoint Us as Your attorney to do anything We consider fit for the recovery of the Sum Due or the creation, perfection or enforcement of any collateral held or to be held as security for any Sum Due.

29.9 **Other remedies:** We may exercise any of Our rights and remedies including taking legal action against You for the recovery of any moneys due to Us, notwithstanding it may have exercised other rights under these Conditions.

# 30 NON-SOLICITATION OF CLIENTS AND EMPLOYEES

30.1 You agree that employees are one of Our most valuable assets, policy and professional ethics require that Our employees not seek employment with, or be offered employment by You during the course of engagement and for a period of two (2) years thereafter (or the maximum amount permissible by a Court).

30.2 You agree that Our damages resulting from breach of this clause 30.1 would be impracticable and that it would be extremely difficult for Us to ascertain the actual amount of damages. Therefore in the event You violate this provision, You agree to pay Us, as liquidated damages, an amount equal to thirty percent (30%) of the employee's total annual salary, or Our actual documented costs to identify, recruit, hire, and train a suitable replacement for such personnel, whichever is greater, and We shall have the option to terminate this Agreement on written notice to You. The amount of liquidated damages reflected herein is not intended as a penalty and is a reasonable pre-estimate of the costs We would incur to identify, recruit, hire and train a suitable replacement for such personnel.

# 31 SOFTWARE

31.1 All Software licenses are the responsibility of You and not that of Us. It is the duty of Yours to store all licenses for all Software used, so that that they can be reproduced if and when required. This includes all Software installed by Us.

31.2 You indemnify and hold Us harmless against any claim, allegation, loss, damage or expense arising directly or indirectly from:

31.2.1 any unauthorized Software use by You;

31.2.2 any breach of any Software license in respect of Software provided to Us by You to be installed on one of Your computers;

31.2.3 otherwise as a result of Us installing Software at Your request where You are not authorized to use the Software; and

31.2.4 any problem, defect or malfunction associated with any Software (or related services) supplied by third parties.

31.3 All copyright in custom software remains the sole property of Ours unless alternate arrangements are made as part of a separate software agreement.

# 32 COPYRIGHT AND CONFIDENTIALITY

32.1 **Warranty and breach**: You warrant that any confidential or copyright information or intellectual property (of any kind and in any form held) or provided by You to Us belongs to You. In the event of any breach of this warranty, You will pay all sums due to Us as If such warranty had not been breached (and regardless of any non-performance of any obligation by Us on account of or in connection with the breach of such warranty). You indemnify and hold Us harmless in respect of any allegations, claims, loss, costs or expenses in connection with such breach of warranty by You.

32.2 **Retention of title**: All copyright and other intellectual property rights in any Work created, commissioned or acquired by Us in the course of the supply of Services by Us to You will be the exclusive property of Ours unless otherwise agreed in writing by Us and You.

32.3 **Confidential Information:** We acknowledge that in the course of providing Services to You, We may learn from You certain non-public personal and otherwise confidential information relating to You, including Your customers, consumers or employees. We shall regard any and all information We receive which in any way relates or pertains to You, including Your customers, consumers or employees as confidential.

32.4 You also acknowledge that all information and services, consulting techniques, proposals, and documents disclosed by Us or which comes to Our attention during the course of business and provided under this agreement constitute valuable assets of, and confidential and/or proprietary information to Us.

As such, both parties shall take all commercially reasonable steps to not disclose, reveal, copy, sell, transfer, assign, or distribute any part or parts of such information in any form, to any person or entity, or permit any of its employees, agents, or representatives to do so for any purpose except unless permitted in writing by the disclosing party or as required by applicable law.

# APPENDIX A

## SERVICE REQUEST LODGEMENT PROCESS

When you contact us to lodge a service request only the methods below must be used:

**Phone:** 802-735-1217 option 1

**Email:** support@layer8computing.com

**Website:** https://layer8computing.rmmservices.net

Include a short description of the problem and any screenshots of errors to assist in the resolution of the issue.

If the issue is being lodged by either phone or external email you must include your name, company and return contact details.

Service requests must not be lodged directly with technicians, as this detracts them from resolving the current issue.

## SERVICE REQUESTS OUTSIDE OF OUR BUSINESS HOURS

Service Requests that must be addressed outside of business hours must be lodged by phone (charges apply for after-hours work). If not, the Service Request will be viewed on Our next Business Day.