



These Managed Service Terms (the “Terms of Service”) govern the relations between Softline Group of Companies (“Softline”), and you (“Customer”) in respect to provision by Softline of Network Operations Center Services. In consideration of the recitals, premises and mutual covenants in this Terms of Service, the parties hereto agree as follows:

1. Incorporation. Order of Priority

The terms and conditions of this Terms of Service are incorporated into and constitute as a part of the Master Agreement concluded between Softline and Customer for the purchase of Network Operations Center Services. In the event of any conflict or inconsistency between any provisions of this Master Agreement, the conflict or inconsistency shall be resolved in the following order of priority:

- a) the terms of this Master Agreement;
- b) the applicable Annexes to the Master Agreement;
- c) this Terms of Service.

2. Services.

In accordance with the Master Agreement Customer has engaged Softline in the capacity of independent contractor to perform the services as described in the Master Agreement (the “Services”). The Services shall be performed in accordance with industry standards.

3. Fees and Expenses.

Fees are set forth under the Master Agreement that will be executed from time to time between the parties (the “Fees”), and Customer agrees to pay Softline the Fees within the term provided in the Master Agreement. Amounts due hereunder do not include sales taxes or other governmental fees, if any, the computation and payment of which is the responsibility of Customer.

4. Term.

This Terms of Service shall commence on the Effective Date and continue for a period of one (1) year (the “Initial Term”). After the Initial Term, this Terms of Service shall automatically renew for additional successive periods of twelve (12) months (each a “Renewal Term”), unless either Party notifies the other Party in writing of its intent to terminate earlier pursuant to the terms hereof or unless the Master Agreement is terminated. For the purpose of this Terms of Service, the Initial Term and any Renewal Term(s) hereinafter may be referred to collectively as the “Term.”

5. Termination.

- a.) *For Convenience.* Either party may terminate this Terms of Service at any time (with or without cause) by providing a 30-day written notice to the other, in accordance with the Notice provision of this Terms of Service. Provided, however, that in the event there is an active Master Agreement in place at the time of such termination notice, the terms of this Terms of Service shall continue to apply to such Master Agreement until it is completed. Should Customer desire to terminate an active Master Agreement, any cancellation fees indicated in such Master Agreement shall be triggered and become due and owing.
- b.) *For Cause.* If either party materially defaults in the performance of any of its material obligations hereunder and if any such default is not corrected within fifteen (15) days after receipt of written notice, then the non-defaulting party, at its option, may, in addition to any other remedies it may have, thereupon immediately terminate this Terms of Service by giving written notice to the defaulting party.
- c.) This Terms of Service may be terminated by either party, upon written notice: (i) upon the institution by the other party of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, (ii) upon the institution of such proceedings against the other party, which are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter, (iii) upon the other party’s making a general assignment for the benefit of creditors, or (iv) upon the other party’s dissolution or ceasing to conduct business in the ordinary course.

6. Access and Information.

Customer will (a) furnish to Softline all information which both parties agree is reasonably necessary for the completion of the Services, (b) obtain the right or permission to make any advertising claim or use any hashtag, copyright, patent, trademark, trade name, or other indicia in connection with the materials provided to Softline with Services, and (c) make Customer personnel reasonably available to Softline.

7. Confidentiality, Privacy and Publicity.

Information that is disclosed by one party to the other party, and that is marked “confidential”, or which under the circumstances ought reasonably to be treated as confidential information (including this Terms of Service), will be treated as confidential by the receiving party. The receiving party will not disclose to a third party such information, or use such information other than for the purposes for which it was provided, without the written consent of the other party; this limitation will apply for a period of two years after disclosure of such confidential information, except if such information is a trade secret in which case the obligation will continue indefinitely. The foregoing limitations do not apply to the extent such information: (a) is or subsequently becomes publicly available other than through a breach of these limitations; (b) is already known to the receiving party at the time of disclosure, not as the result of a breach; (c) is developed by the receiving party independent of such information; or (d) is rightfully received from a third party without restrictions on disclosure or use.

If either party obtains personal information related to an individual person relations of the parties regarding such information shall be governed by the Privacy Policy placed at the following URL _____.

Neither party may issue any press release or make any public announcement(s) relating to this Terms of Service or the relationship established by this Terms of Service without the express prior written consent of the other party, which consent shall not be unreasonably withheld; however, Customer agrees that Softline may make reasonable limited references to Customer’s participation with Softline on its corporate website or marketing materials (which may include Customer’s name, logo, and aggregated data from launched campaigns)).

8. Independent Contractor.

This Terms of Service does not establish any agency, joint venture or partnership relationship between the parties, and neither party can bind the other by any contract or representation. Nothing in this Terms of Service shall be construed as creating an employer-employee partnership or joint venture relationship between the parties.

9. Other Consulting; Scheduling.

Customer understands that Softline may engage in other business and consulting activities, which are not inconsistent with the terms of this Terms of Service. Customer is free to use other providers of similar services now or in the future.

10. Ownership; Grant of Rights.

As used in this Agreement, “Technology” means any and all know-how, processes, methodologies, specifications, designs, inventions, functionality, graphics, techniques, methods, applications, computer programs, libraries, user manuals, documentation, products or other technology and materials of any kind, or any enhancement thereto, used by Softline in connection with the performance of the Service, or made available by Softline to Customer in connection with the Service.

The Service and Technology constitute or otherwise involve valuable intellectual property rights of Softline and all right, title and interest in and to the foregoing shall, as between the parties, be owned by Softline. No title to or ownership of the Service or Technology, or any intellectual property rights associated therewith, is transferred to Customer under this Terms of Service.

11. Representation and Warranties.

Each party hereby represents and warrants that during the term of this Terms of Service:

- i. it has the right to enter into this Terms of Service; it is a corporation duly organized or a limited liability company duly formed, as applicable, validly existing, and in good standing under the laws of the state of its incorporation; it has the corporate power and authority for, and has by all necessary corporate action authorized, the execution and delivery of this Terms of Service, and the performance of its obligations hereunder;
- ii. the execution, performance and delivery of this Terms of Service by such party will not conflict with or violate or result in any breach of, or constitute a default under, any contract, agreement or other obligation of such party; and
- iii. it will comply with all applicable laws and regulations in its performance of its obligations hereunder.

12. Disclaimers.

EXCEPT AS AGREED IN SECTION 11, CUSTOMER EXPRESSLY AGREES THAT SOFTLINE'S SERVICES ARE AVAILABLE ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THAT CUSTOMER'S USE THEREOF IS AT ITS OWN RISK. SOFTLINE HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING ANY WARRANTIES OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

13. Limitation of Liability.

EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 14 AND EXCEPT FOR CLAIMS ARISING FROM GROSS NEGLIGENCE, BREACH OF CONFIDENTIALITY, AND INTENTIONAL MISCONDUCT, ANY LIABILITY OF Softline IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OR FORM OF ACTION OR THEORY, SHALL BE STRICTLY LIMITED TO THE AMOUNT PAID BY CUSTOMER TO SOFTLINE PURSUANT TO THIS AGREEMENT IN THE PRIOR TWELVE MONTHS. IN NO EVENT SHALL SOFTLINE OR ANY SOFTLINE ENTITY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT, INCLUDING CLAIMS OF LOST PROFITS OR LOSS OF BUSINESS OPPORTUNITY.

14. Indemnity.

Each party (the "Indemnifying Party") will pay all reasonable costs of the other party (the "Indemnified Party") in defense of any actions, claims, demands, costs, or liabilities (collectively, the "Claims"), expenses (including reasonable attorneys' fees), settlement (if agreed upon by the Indemnifying Party, such agreement not to be unreasonably withheld), and court awarded damages arising out of any Claim made by a third party that, if true, would be a breach by the Indemnifying Party of any representation or warranty or obligation of such party hereunder. Indemnified Party will promptly notify Indemnifying Party in writing of any such Claim, specifying the nature of the Claim, the total monetary amount and other relief sought. Indemnified Party will reasonably cooperate with Indemnifying Party in connection with the investigation, defense, and settlement of any Claim. Indemnifying Party may upon written notice to the Indemnified Party undertake to conduct all proceedings or negotiations in connection with the Claims, assume the defense of Claims, and if it so undertakes, it shall also undertake all other required steps or proceedings to settle or defend the Claims, including the employment of counsel that shall be reasonably satisfactory to the Indemnified Party, and payment of reasonable expenses. The Indemnified Party shall have the right to employ separate counsel and participate in the defense at its sole expense.

15. Governing Law.

This Terms of Service will be interpreted and construed in accordance with the laws of the State of _____, without regard to conflict of law principles. All disputes arising out of this Terms of Service will be subject to the exclusive jurisdiction of the state and federal courts located in _____, and each party hereby consents to the personal jurisdiction thereof.

16. Assignment.

Neither party may assign, sub-license, transfer, encumber or otherwise dispose of this Terms of Service without the other party's prior written approval, except that either party may assign this Terms of Service to its parent company or successor entity, including a successor resulting from an acquisition, merger or consolidation, provided written notice is given to the other party.

17. Notices.

All notices required or permitted under this Terms of Service shall be in writing addressed to the respective parties as set forth below, unless another address has been designated in writing. All notices shall be deemed to be given on the date when delivered by hand, by commercial courier, by registered or certified mail, or by email, electronic facsimile or other electronic device with written verification of receipt.

18. No Waiver.

A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.

19. Force majeure.

Neither party will be liable for failure to perform any obligation under this Terms of Service to the extent such failure is caused by a force majeure event (including acts of God, natural disasters, war, civil disturbance, action by governmental entity, strike and other causes beyond the party's reasonable control). The party affected by the force majeure event will provide notice to the other party within a commercially reasonable time and will use its best efforts to resume performance. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event concludes.

20. General Provisions.

a.) This Terms of Service, together with all exhibits, schedules, statements of work, appendices and other attachments, which are incorporated herein by reference, is the sole and entire agreement between the parties. This Terms of Service supersedes all prior understandings, agreements, discussions and documents relating to the subject matter of this Terms of Service. In the event of any conflict between the provisions of the main body of this Terms of Service and any attached exhibits, schedules, appendices or other attachments, this Terms of Service shall take precedence.

b.) Modifications and amendments to this Terms of Service, including any exhibits, schedules, statements of work, appendices and other attachments, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties hereto.

c.) If a court or arbitrator finds any provision of this Terms of Service to be invalid or unenforceable under applicable law, the remainder of the agreement shall remain in full force and effect and shall be interpreted so as best to carry out the parties' intent.

d.) This Terms of Service controls the relationship between the parties without evidence of either party's signature, by virtue of its incorporation via reference or electronic link in a statement of work, insertion order, work order, or the like.