



This Contractor Agreement (“Agreement”) made effective (Month, Day) \_\_\_\_\_, 20\_\_ (“Effective Date”) is entered into by and between **Essential Systems Solutions, LLC (ESSENTIAL)**, incorporated under the laws of the State of Maryland, having an office at 4841 International Boulevard, Suite 105, Frederick, MD 21703 and **(PROVIDER)**,

\_\_\_\_\_  
(Full Name of Company)

located at \_\_\_\_\_  
(Full Address)

WHEREAS, ESSENTIAL is in the business of selling and servicing point of sale systems and, as such, also offers and performs installation services of its point of sale systems and related equipment to its customers; and

WHEREAS, PROVIDER desires to perform Installation Services (as defined herein) for ESSENTIAL for the Equipment (as defined herein) and

WHEREAS, ESSENTIAL desires to contract such Installation Services (as defined herein) from PROVIDER, NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, promises and conditions set forth herein, the parties hereto agree as follows:

## 1.0 Definitions

- 1.1 The term **Consigned Equipment** shall mean any Equipment consigned to PROVIDER for PROVIDER’S use in performing the Installation Services hereunder.
- 1.2 The term **Customer** shall mean the owner/operator of the restaurant location who is the ultimate purchaser or end user of the Equipment.
- 1.3 The term **Equipment** shall mean the items and materials described in this Agreement and the dispatch scope of work.
- 1.4 The term **Installation Services** shall mean the project management and installation of the Equipment in a Customer site to be performed by PROVIDER pursuant to the terms of this Agreement and dispatch scope of work.
- 1.5 The term **Provided Materials** shall mean those items and materials, including but not limited to, manuals and documentation which are to be supplied to PROVIDER by ESSENTIAL. The Provided Materials may include items or materials proprietary to ESSENTIAL or proprietary to the Customer.



## **2.0 Obligations of PROVIDER**

- 2.1 PROVIDER shall perform the Installation Services described in the dispatch scope of work. PROVIDER shall not subcontract or delegate the Installation Services to be performed under this Agreement to another third party, unless PROVIDER obtains ESSENTIAL's prior consent. If PROVIDER subcontracts or delegates any of the Services to be performed under this Agreement to another party, with or without ESSENTIAL's consent, PROVIDER shall be solely responsible to ensure that the third Party is in compliance with all of the terms and conditions of this Agreement, including, but not limited to, the insurance requirements set forth herein.
- 2.2 During the performance of Installation Services PROVIDER shall refrain from performing any services beyond the scope of services outlined in the dispatch scope of work, unless PROVIDER has given ESSENTIAL a good faith estimate of the cost of such additional services and has received prior authorization from ESSENTIAL to perform such services.
- 2.3 In the event PROVIDER is solicited directly by Customer for Installation Services of ESSENTIAL POS equipment, PROVIDER shall immediately refer such opportunities to ESSENTIAL.
- 2.4 In the event PROVIDER is solicited directly by Customer for services other than Installation Services, including, but not limited to, on-site maintenance services, PROVIDER shall immediately refer such Customer to ESSENTIAL.
- 2.5 Unless otherwise directed by ESSENTIAL, PROVIDER should identify themselves to Customers as providing services on behalf of ESSENTIAL.
- 2.6 PROVIDER agrees to use its best efforts to perform each of the duties described in this Agreement in a manner that preserves and protects ESSENTIAL's business reputation and its proprietary rights in the marketplace. In carrying out its obligations under this Agreement, PROVIDER shall act in accordance with good faith and fair dealing.

## **3.0 NONSOLICITATION OF CUSTOMERS**

- 3.1 While I am a PROVIDER for, and for one (1) year after, the last date of service by PROVIDER for ESSENTIAL (regardless of the reason it ceases), PROVIDER will not, directly or indirectly, whether for their own benefit or on behalf of any other person or business, solicit, market, sell and or provide equipment, goods or services which are the same as or similar to the equipment, goods or services sold by ESSENTIAL, to (i) any customer which was contacted or serviced by PROVIDER, or requested to be contacted or serviced by PROVIDER, or assigned to be contacted or serviced by PROVIDER, within the one (1) year period prior to the last date of service by PROVIDER for ESSENTIAL, or (ii) any other person or entity who I know that ESSENTIAL solicited and or from whom ESSENTIAL had received an indication of interest in becoming a customer of ESSENTIAL, within the six (6) month period prior to the date of last service provided by PROVIDER. I also agree not to directly or indirectly encourage others to communicate with any actual or prospective customers of ESSENTIAL for any of the foregoing purposes.



#### **4.0 Consignment of Equipment to PROVIDER**

- 4.1 For PROVIDER'S use, in connection with the Installation Services, ESSENTIAL may provide PROVIDER with a limited quantity of Consigned Equipment to PROVIDER'S location or directly to the job site location.
- 4.2 This Consigned Equipment is paid for and owned by ESSENTIAL, and is made available to PROVIDER on a consignment basis, and/or for the completion of services.
  - 4.2.1 PROVIDER shall use the Consigned Equipment only as specifically provided in this Agreement or as otherwise instructed in writing by ESSENTIAL, and for no other purpose.
  - 4.2.2 PROVIDER is not liable for any sales/use tax reporting, insurance reporting, or personal property tax reporting.
  - 4.2.3 ESSENTIAL shall maintain comprehensive insurance covering the Consigned Equipment from risk of loss.
- 4.3 PROVIDER will maintain the Consigned Equipment and an accurate inventory and activity records for all of the Consigned Equipment. Full and complete access for audit/inspection of the inventory records under PROVIDER'S control will be made available to ESSENTIAL and its auditors during normal business hours upon three (3) business days prior notice to PROVIDER.
- 4.4 PROVIDER will perform a count of all Consigned Equipment at the end of the term of this Agreement or at any time during the term of the Agreement as requested by ESSENTIAL, and will reconcile inventory accuracy of 100% in dollar value. Any dollar value of Consigned Equipment below 100% will be reimbursed by PROVIDER.
- 4.5 If the Consigned Equipment must be left on-site at the Customer's location then PROVIDER will notify ESSENTIAL via email of each piece of Consigned Equipment used at the Customer's location and ESSENTIAL will invoice the Customer for the Equipment.
- 4.6 New defective or damaged Consigned Equipment under the control of PROVIDER is to be reported to ESSENTIAL upon detection. This Consigned Equipment will be returned to ESSENTIAL and ESSENTIAL agrees to accept all costs associated with its return. ESSENTIAL will have financial responsibility for all risk of loss, damage, or defect; unless it is found that the Consigned Equipment failure was due to the negligence, misuse or abuse of the Consigned Equipment by PROVIDER or PROVIDER'S employees or agents. ESSENTIAL will be responsible for replacing the new defective or damaged Consigned Equipment or in the case of Consigned Equipment damaged by PROVIDER as provided herein, PROVIDER shall be responsible for all costs associated with their return and the repair or replacement of the Consigned Equipment.



## **5.0 Insurance**

- 5.1 Provider is required to keep in full force and effect and maintain at its sole cost and expense including but not limited to personal, automobile and any applicable independent contractor business insurances.

## **6.0 Limitations and Restrictions of PROVIDER**

- 6.1 PROVIDER shall not compete with ESSENTIAL in the installation services or any support services of point of sale equipment manufactured or sold by ESSENTIAL within or outside the United States.
- 6.2 PROVIDER shall not provide installation services or any support services of any kind or nature for point of sale equipment manufactured or sold by ESSENTIAL during the term of this Agreement and for a period of three (3) years thereafter, unless such services are provided as part of performance under a contract with ESSENTIAL.

## **7.0 Obligations of ESSENTIAL**

- 7.1 ESSENTIAL shall ensure that all of the Equipment arrives at the Customers' sites prior to the date scheduled for Installation Services. ESSENTIAL shall use reasonable efforts to notify PROVIDER of any schedule changes at least three (3) business days prior to a scheduled installation date.
- 7.2 ESSENTIAL shall give PROVIDER the necessary Customer information to perform the Installation Services as set forth in the dispatch scope of work.
- 7.3 ESSENTIAL shall give PROVIDER the required Provided Materials to perform the Installation Services under this Agreement.

## **8.0 Representations and Warranties of PROVIDER**

- 8.1 PROVIDER represents and warrants that all services performed hereunder will be performed in a professional and workmanlike manner and in accordance with ESSENTIAL's processes, procedures and standards as set forth by ESSENTIAL from time to time and communicated to PROVIDER prior to the provision of services. Any services which fail to meet the above criteria shall be, at ESSENTIAL's option, re-performed by PROVIDER at the expense of PROVIDER or corrected by ESSENTIAL or a third Party selected by ESSENTIAL at the expense of PROVIDER. To the extent required in the course of such re-performance by PROVIDER or correction by ESSENTIAL or its designee, PROVIDER shall bear the cost of any additional parts used therein.
- 8.2 PROVIDER represents and warrants that it will perform the services in compliance with ESSENTIAL's processes and procedures.
- 8.3 PROVIDER declares and represents that the restrictions set forth in Section 6.0, above, do not unreasonably restrict PROVIDER'S ability to conduct business.



## **9.0 Charges and Fees**

- 9.1 ESSENTIAL shall pay PROVIDER the Installation Service fees as agreed to by ESSENTIAL and PROVIDER in the dispatch scope of work or purchase order, if applicable. Such fees shall include all related travel expenses, all costs and all other expenses of PROVIDER to perform the services set forth in the dispatch scope of work. All required documentation to include but not limited to cable certifications, photos, vendor required documentation, etc., are due 24 hours from completion. Daily written updates are required for projects and/or service calls which require multiple day visits. PROVIDER must contact the appointed ESSENTIAL point of contact upon arrival to site and prior to departure. PROVIDER must be prepared to give a detailed description of work completed and materials used, specifying if materials were provided by ESSENTIAL or otherwise. Prior approval to use non-ESSENTIAL issued materials must be given for reimbursement.
- 9.2 If a service request cannot be completed within the time frame listed on the dispatch scope of work, whichever is less, the PROVIDER must contact the coordinator at ESSENTIAL for approval of additional time onsite to allow ESSENTIAL the opportunity to contact the customer for approval of additional time. Communication to the ESSENTIAL point of contact should be made immediately regarding delays. Failure to communicate properly will forfeit reimbursement for any delays.
- 9.3 Return visits required to fix or repair issues deemed the responsibility of the PROVIDER will be completed at no additional charge to ESSENTIAL. Such return visits must be completed within (48) hours of the request.
- 9.4 Return visits required for customer requests outside of the scope of the original requested service; delays caused by the customer or ESSENTIAL; hardware failures; natural disaster; or Acts of God; are billable to ESSENTIAL.
- 9.5 Unless otherwise agreed upon by the parties in advance in writing in a specific dispatch scope of work, the Installation Service fees set forth in the Individual Contractor Agreement are fixed fees. ESSENTIAL shall not be responsible for any additional costs or expenses incurred by PROVIDER. Under no circumstances can PROVIDER modify the Installation Service fees set forth in any dispatch scope of work unless a project change request is issued and approved in advance by both ESSENTIAL and PROVIDER.
- 9.6 If PROVIDER arrives at the Customer site and the Equipment is not at the Customer site, PROVIDER shall be paid for a maximum of two (2) hours of labor based on the labor rate specified in the dispatch scope of work.

## **10.0 Time of Completion**

- 10.1 The PROVIDER shall employ persons of competence and skill to complete the Installation Services.
- 10.2 If the PROVIDER fails to complete the Work as agreed herein, ESSENTIAL may declare the PROVIDER in default by providing written notice to PROVIDER by registered mail. If PROVIDER fails to remedy such within 3 days of such notice, ESSENTIAL shall have the right to select a substitute PROVIDER.



10.3 In agreeing to complete the Work by the agreed Time of Completion, PROVIDER has taken into consideration and made allowance for ordinary delays, and hindrances incident to such Work, whether growing out of delays of common carriers, delays in securing materials or workers, changes, omissions, alterations, or otherwise.

#### **11.0 Cleaning Up**

11.1 The PROVIDER shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The PROVIDER will be responsible for cleaning up on a daily basis. At the completion of the Work, the PROVIDER shall remove waste materials, rubbish, the PROVIDER'S tools, construction equipment, machinery and surplus materials.

11.2 If the PROVIDER fails to clean up as provided in section 11.1, ESSENTIAL may do so and the cost thereof shall be charged to the PROVIDER.

#### **12.0 Dress Code**

12.1 Field personnel should be dressed professionally. The PROVIDER is representing ESSENTIAL. Clothing should be clean and in good condition. Proper attire only includes: Shirts with collars, modest necklines, Polo style shirts, banded collars, crew or v-neck sweaters, cardigan sweaters, vests worn with shirts, Dockers/Khaki style pants. Exceptions to this must be agreed to by ESSENTIAL prior to arrival at the site.

#### **13.0 Term and Termination**

13.1 The term of this Agreement shall commence on the Effective Date above and will continue on the same terms and conditions, until the services set forth in the dispatch scope of work are completed or the Agreement is otherwise terminated as provided herein, whichever is earlier.

13.2 Any terms and conditions of this Agreement which, by their nature extend beyond its termination or expiration remain in effect until fulfilled and apply to respective successors and permitted assignees. Without limiting the foregoing, the terms and conditions of the following Sections (inclusive of their subsections) shall survive the termination or expiration of this Agreement: 6, 7, 8, and 13 through 33.

13.3 PROVIDER or ESSENTIAL may terminate this Agreement for any reason, with or without cause, by providing at least fifteen (15) business days prior written notice to the other Party; provided however, if PROVIDER is providing Installation Services in connection with a time-sensitive roll-out, as determined by ESSENTIAL, and PROVIDER gives notice to terminate, termination shall not occur until the Installation Services set forth in the dispatch scope of work are completed.

13.4 Upon termination by either party, PROVIDER shall provide to ESSENTIAL any and all copies, in whole or in part, of the Materials (as they then exist) and any and all tangible materials ESSENTIAL provided to the PROVIDER in connection with this Agreement.



## 14.0 Invoicing, and Payment Terms

- 14.1 A dispatch scope of work or Purchase Order or Cost Sheet will be issued, by ESSENTIAL, in advance of any work performed. PROVIDER may bill up to, but not to exceed, the amount listed on the dispatch scope of work or Purchase Order or Cost Sheet.
- 14.2 Once service is completed for a specific assignment, PROVIDER must provide paperwork, pictures and certifications and other deliverables required to ESSENTIAL within 48 hours of completion. If the PROVIDER not does not provide the required documentation within the 48 hour required time frame, PROVIDER will be subject to the following late penalties, per occurrence:
- 14.2.1 Deliverables received between 3-5 days after completion of a job - 10% deduction off the Cost Sheet.
- 14.2.2 Deliverables received between 6-10 days after completion of a job - 20% deduction off the Cost Sheet.
- 14.2.3 Deliverables received after 10 days after the completion of a job – 100% deduction off the Cost Sheet.
- 14.3 Within forty-five (45) days of completion of services for each Customer site, PROVIDER will invoice ESSENTIAL for the Installation Services in accordance with the agreed upon aggregate hourly rate for such services. If ESSENTIAL does not receive an invoice within forty five (45) days of completion of services for each Customer site, such invoice will be considered invalid and not processed for payment.
- 14.4 All invoices issued by PROVIDER shall be payable thirty (30) calendar days after ESSENTIAL's receipt of such invoices. Invoices will not be paid if PROVIDER has outstanding paperwork, pictures and/or certifications; until all such required documentation is turned in to the specified individuals. PROVIDER's original invoice shall be e-mailed or mailed to the address below:
- Essential Systems Solutions, LLC  
Attn: Accounts Payable  
5713 Industry Lane, Suite 50  
Frederick, MD 21704
- E-mail: [payables@esspos.com](mailto:payables@esspos.com)
- 14.5 Payment of each invoice shall be made by ESSENTIAL to the PROVIDER when the dispatch scope of work has been fully performed by the PROVIDER; all required documentation has been received, reviewed and approved to include but not limited to the following:
- Work Order's completed and signed
  - Serial numbers captured
  - Pictures
  - Cable certifications



## **15.0 ESSENTIAL Provided Materials**

- 15.1 ESSENTIAL hereby grants and PROVIDER hereby accepts a limited, non-exclusive, non-transferable license to use the ESSENTIAL Provided Materials for the sole purpose of performing its obligations under this Agreement and for no other purpose or for the benefit of any other person or entity than as contemplated under this Agreement. Specifically, but without limiting the scope of the foregoing, PROVIDER agrees it shall not:
- 15.1.1 sublicense, distribute or otherwise disclose such ESSENTIAL Provided Materials, in whole or in part, or in any form or media, to any person or entity unless otherwise expressly permitted by ESSENTIAL in writing;
  - 15.1.2 modify, copy or reproduce, in whole or in part, such ESSENTIAL Provided Materials, unless otherwise expressly permitted by ESSENTIAL in writing;
  - 15.1.3 alter, cover or obfuscate any proprietary rights or copyright notice which appear in or on such ESSENTIAL Provided Materials; or
  - 15.1.4 decompile, disassemble or otherwise attempt to reverse engineer or assist or allow others to reverse engineer any software programs, if any, provided to it by ESSENTIAL under this Agreement.
- 15.2 ESSENTIAL retains all rights to the ESSENTIAL Provided Materials provided to PROVIDER under this Agreement and no rights are bestowed other than as specifically identified in this Section.
- 15.3 ESSENTIAL provided material is provided "as is" without warranty of any kind, either express or implied and ESSENTIAL specifically disclaims any warranties of merchantability or fitness for particular purpose.
- 15.4 Upon termination of this Agreement, PROVIDER shall return to ESSENTIAL within (5) calendar days the original and all copies or summaries made, in whole or in part, of all ESSENTIAL Provided Material in whatever form or media and make written certification of the completion of such return.

## **16.0 Confidential Information**

- 16.1 As used in this Agreement, the term "Confidential Information" shall mean all information disclosed by ESSENTIAL or Customer to PROVIDER during the training received by PROVIDER and during the Term of this Agreement, including but not limited to, information which is marked or not marked with a restrictive legend; or orally or visually disclosed; or ascertained or derived by PROVIDER during training or during the course of performing installations of the Equipment on behalf of ESSENTIAL relating to ESSENTIAL's or Customer's products, processes and services, including but not limited to, software, systems, procedures, business plans, product and component drawings, specifications, manuals, supplier listed, information relating to product pricing, design, functionality, failure rates, installation processes, repair processes, customer listed, customer data, and type of equipment.





- 16.2 Except as expressly permitted in writing from ESSENTIAL or Customer, PROVIDER agrees that it shall use Confidential Information only to perform its obligations under this Agreement and for no other purpose and shall hold in confidence, and shall not use for its own benefit or directly or indirectly disclose, or allow to be disclosed any Confidential Information to any person outside its organization.
- 16.3 PROVIDER shall use such Confidential Information only for the purpose of performing Installation Services to the Equipment as subcontractor to ESSENTIAL and for no other purpose. Without limiting the generality of the foregoing, PROVIDER shall not exploit such Confidential Information for its own benefit or the benefit of another, and shall not use such Confidential Information in any way detrimental to ESSENTIAL or Customer.
- 16.4 PROVIDER shall disclose Confidential Information received by it under this Agreement only to employees within its organization who have a need to know such Confidential Information for the purpose of performing the Installation Services of the Equipment as part of a subcontract to PROVIDER from ESSENTIAL and who are bound to protect the confidentiality of such Confidential Information by a signed written agreement, the terms of which are no less restrictive than contained in this Agreement.
- 16.5 The confidentiality obligations under this Agreement will not apply with respect to any information which is demonstrated by PROVIDER to:
  - 16.5.1 have been or to have become public knowledge through no wrongful act of PROVIDER;
  - 16.5.2 have been rightfully obtained by PROVIDER from any third Party without similar restriction and without breach of any obligation of confidentiality;
  - 16.5.3 have been independently developed by PROVIDER without use of Confidential Information;
  - 16.5.4 be subject to a lawful disclosure requirement of a government agency, provided PROVIDER provides ESSENTIAL prior written notice of such pending disclosure and honors any protective order obtained by ESSENTIAL related to such disclosure; or have been approved for release by written authorization of ESSENTIAL.
- 16.6 The parties acknowledge that no remedy of law will be adequate to compensate ESSENTIAL or Customer for a violation of this Agreement and the parties agree that in addition to any legal or other rights that may be available to ESSENTIAL or Customer in the event of a breach hereunder, ESSENTIAL or Customer may seek equitable relief to enforce this Agreement in any court of competent jurisdiction against PROVIDER. The parties further agree that PROVIDER shall fully indemnify ESSENTIAL or Customer for all costs, expenses and losses suffered as a result of a breach of this agreement by PROVIDER.
- 16.7 The parties hereby acknowledge that all such Confidential Information is owned solely by ESSENTIAL or Customer, shall remain the exclusive property of ESSENTIAL or Customer and constitutes valuable trade secrets of ESSENTIAL or Customer and that the unauthorized disclosure of such information by PROVIDER will cause irreparable harm to ESSENTIAL or Customer.



## **17.0 Public Disclosure and Communications**

PROVIDER agrees not to disclose the terms and conditions of this Agreement or any Statement of Work, including, but not limited to, fees for services performed hereunder, to third parties, including, but not limited to, the Customer, without the express written consent of ESSENTIAL, except as may be required by law or governmental rule or regulation. Additionally, PROVIDER agrees to refrain from making any statements (written or oral) to third parties, including ESSENTIAL's Customers, which would tend to place ESSENTIAL, in an uncomplimentary or unfavorable light. If PROVIDER makes any such statements, ESSENTIAL may immediately terminate this Agreement.

## **18.0 Relationship**

PROVIDER's relationship to ESSENTIAL under this Agreement shall be solely that of an independent contractor, and the parties shall conduct themselves accordingly. This Agreement is not intended to create an employment relationship, nor do the parties intend to create a partnership or joint venture. PROVIDER agrees and acknowledges, when signing this document, that the PROVIDER is not an employee of ESSENTIAL. ESSENTIAL shall not be liable for taxes, Worker's Compensation, unemployment insurance, employers' liability, employer's FICA, social security, withholding tax, or other taxes or withholding for or on behalf of the PROVIDER for performing Services under this Agreement. All such costs shall be the PROVIDER's responsibility. PROVIDER agrees and acknowledges that the PROVIDER is not entitled to any of the benefits made available to employees of ESSENTIAL. PROVIDER waives, discharges and releases any claim for any employee benefit offered by ESSENTIAL or any of its parent, subsidiary or affiliated companies. Additionally, PROVIDER is not authorized to act as ESSENTIAL's representative nor agent for any purpose, and has no authority to, and shall not make any warranties or representations or create any obligations on ESSENTIAL's behalf.

## **19.0 Amendment**

This Agreement may not be amended, modified, or altered except in writing and duly signed by the parties so bound.

## **20.0 Notification**

Except as otherwise specifically stated herein, all notices hereunder shall be in writing, sent by certified mail or nationally recognized overnight delivery services, fax transmission with receipt verified or scanned e-mail receipt verified, addressed to the parties at the addresses set forth above, and if to ESSENTIAL, Attention: Legal Department.

## **21.0 Advertising and Use of Trademark**

21.1 PROVIDER shall not use ESSENTIAL's logo, service marks, or trademarks without the express written consent of ESSENTIAL and nothing contained herein is intended to, or shall be construed to grant PROVIDER any license or right regarding ESSENTIAL's logo, service marks, trademarks, trade name or logo.

21.2 Under no circumstance shall PROVIDER use the name, logo, service marks, trademarks or



other protected property of Customer in its own marketing materials. Any violation of this provision shall be a material breach of this Agreement.

## **22.0 Indemnification**

22.1 Without limitation as to amount anything to the contrary in this Agreement notwithstanding, PROVIDER agrees to indemnify ESSENTIAL, assumes the defense of and saves and holds ESSENTIAL harmless from any and all liability, claims, demands, damages, reasonable expenses and court costs for personal injury to or death of PROVIDER and for damage to, or destruction or loss, consequential or otherwise, to or of any and all property, real and personal ("Property"), including, without limitation, Property of ESSENTIAL or any person or persons, to the extent such personal injury, death and/or Property damage, destruction and/or loss: (a) arises from any negligent, reckless or wrongful act or omission or willful misconduct of PROVIDER in performance under this Agreement; or (b) from any breach of representations and warranties specifically set forth herein; or (c) was caused by the Services provided by PROVIDER under this Agreement. Excluded from this indemnification provision are those injuries or deaths of persons and damage, destruction or loss to or of Property, to the extent caused by the negligence or willful misconduct of ESSENTIAL or any third Party. The preceding notwithstanding, in no event shall PROVIDER have any obligation under this Agreement to the extent a claim hereunder is caused by or results from the material modification of the Equipment by the Customer, use of the Equipment inconsistent with ESSENTIAL's specifications by the Customer or the unforeseeable use of the Equipment by the Customer in conjunction with equipment or software not provided or approved by ESSENTIAL.

## **23.0 Limitation of Liability**

Except as otherwise provided herein, or as to a breach of PROVIDER'S obligations set forth in or pursuant to this Agreement, in no event shall PROVIDER claim any liability from ESSENTIAL for any consequential, indirect incidental, special, punitive or exemplary damages, including, but not limited to loss of use, loss of data, loss of business and loss of profits arising from or related to this Agreement, even if PROVIDER has been advised of the possibility of such losses or damages.

## **24.0 Non-Solicitation**

The parties agree that for the duration of this Agreement, and for a period of one (1) year thereafter, they shall refrain from direct solicitation for employment of any employees of the other Party unless otherwise authorized by the other Party in writing.

## **25.0 Force Majeure**

Neither Party will be considered in default or liable for any delay or failure to perform any provision of this Agreement if such delay or failure arises directly or indirectly out of an act of God, war, acts of the public enemy, freight embargoes, strikes, quarantine restrictions, unusually severe weather conditions,



insurrection, riot, and other such causes beyond the control of the Party responsible for the delay or failure to perform. Each Party shall (a) promptly notify the other in writing of any such event of force majeure, the expected duration thereof, and its anticipated effect on the ability of such Party to perform its obligations hereunder and (b) make reasonable efforts to remedy any such event of force majeure.

#### **26.0 Order of Precedence**

To the extent that any terms of a dispatch scope of work conflict with the terms of this Agreement, this Agreement shall govern unless explicitly otherwise agreed to by the parties.

#### **27.0 Severability**

In the event that any term or condition contained herein is held to be invalid or unenforceable, the remaining terms and conditions shall be unaffected and shall continue to inure to the benefit of and to be binding upon the parties hereto.

#### **28.0 Successors**

The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, permitted assigns and legal representatives.

#### **29.0 Assignment**

PROVIDER shall not assign this Agreement, or delegate its duties hereunder, without the prior written consent of ESSENTIAL.

#### **30.0 Compliance with Legal Requirements**

PROVIDER agrees to comply with all federal, state, and local laws, regulations, and ordinances relative to this Agreement.

#### **31.0 Waiver**

Failure by either Party to insist in any instance upon strict conformance by the other to any term herein or failure by either Party to act in the event of a breach shall not be construed as consent to or waiver of any subsequent or continuing breach of the same or any other term contained herein.

#### **32.0 Governing Law and Forum**

The laws of the State of Maryland shall govern the interpretation and construction of this Agreement. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be brought exclusively in the State or Federal Courts located in the State of Maryland. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature. In the event of



any claim, dispute or controversy arising out of or relating to this Agreement, including any action for declaratory relief, the prevailing Party in such action or proceeding shall be entitled to recover its court costs, including but not limited to its reasonable attorney’s fees and other out-of-pocket expenses.

**33.0 Complete Agreement**

This Agreement and all Exhibits attached hereto constitute the entire and exclusive agreement and understanding of the parties with respect to the subject matter hereof, and no representations, terms, or agreements, other than those set forth herein have been relied upon or shall be binding upon any of the parties or imputed to any of them.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective duly authorized representatives.

**Essential Systems Solutions, LLC**

**Company or Individual Contractor**

By: \_\_\_\_\_  
Signature

By: \_\_\_\_\_  
Signature

Printed Name/Title \_\_\_\_\_

Printed Name/ Title \_\_\_\_\_

Company Name \_\_\_\_\_