

# IT SUPPORT AGREEMENT

These terms and conditions will govern all services provided by Realm of Tech, Inc., referred to in this Agreement as “**Consultant**”, to you, referred to in this Agreement as the “**Customer**”. Consultant reserves the right to modify these terms and conditions from time to time. The modified terms will apply to work orders and work performed after the effective date of the modified terms. Customer should review these terms on Consultant’s website from time to time to remain informed of the current terms and conditions. Consultant will notify Customer of any rate changes, but will not send notice of other changes to these terms and conditions.

## **1. CONSULTATION SERVICES**

The **Customer** hereby employs the **Consultant** to perform services in accordance with the terms and conditions set forth in this agreement and any scope of work agreed to between **Consultant** and **Customer**: The **Consultant** will consult with the officers and employees of the **Customer** concerning matters relating to the Information Technology (IT) management and organization of the **Customer**. The **Consultant** will provide support services relating to the IT operations of **Customer** as specified between the parties.

## **2. TERMS OF AGREEMENT**

This Agreement governs all services provided by Realm of Tech to Customer. Unless otherwise agreed in writing, all work will be performed at Consultant’s standard pricing. Consultant reserves the right to change its standard pricing from time to time and such adjusted pricing will become effective upon the next service provided to Customer. Provided however, that Consultant will not adjust its pricing more than once in any 12-month period. Customer has the right to terminate on ten (10) days notice, without penalty or charge, if Customer does not wish to accept the price increase. Continuation of business with Consultant constitutes Customer’s agreement to the change in price. Either party may cancel this agreement on [10] days’ notice to the other party in writing, by email or personal delivery after the initial 12-month period. If **Customer** terminates without cause prior to the expiration of the initial 12-month period, **Customer** will pay, as liquidated damages and not as a penalty, the monthly charges applicable to the remainder of the initial term. **Customer** acknowledges that this amount is a reasonable estimate of the damages **Consultant** would incur from such early termination. Customer acknowledges that Consultant will incur third party charges related to Customer’s account that are not cancellable at will by Consultant, for example, Microsoft Azure account charges. Customer agrees that it will take an assignment of such account obligations, confirmed by the third-party, for all such charges upon termination of this Agreement, for any reason; or, if such assignment is not practical, will pay Consultant, upon termination, for all such third-party charges that cannot be terminated by Consultant. Consultant will provide Customer with updated pricing information upon commencement of Services at any time that Consultant’s standard pricing changes.

## **3. TIME DEVOTED BY CONSULTANT**

The **Consultant** shall devote time as necessary to provide the agreed service levels.

## **4. PLACE WHERE SERVICES WILL BE RENDERED**

The **Consultant** will perform most services in accordance with this contract via phone and/or remote access of computer workstations at **Customer** location. In addition, the **Consultant** will perform services at **Customer** location and other places as necessary provide the service levels for agreed work. Services rendered at locations outside **Customer** will be billed at the Consultant’s standard hourly rate. Travel and other miscellaneous expenses may also be billed to the **Customer** for offsite services.

## **5. PAYMENT TO CONSULTANT**

The **Consultant** will be paid at Consultant’s standard rates and terms for work specified between the parties.

Unless otherwise agreed with respect to a specific engagement, charges will be based on the task performed for flat rate work or for the time expended by Consultant for all other work. The **Customer** will pay the **Consultant** the amounts due as indicated by invoices submitted by the **Consultant**. Expenses shall only be charged for items approved in advance by **Customer** authorized personnel. **Consultant** may request payment in advance for larger expense items. **Customer** recognizes that some work, such as troubleshooting, will be charged on an hourly basis, and that Consultant cannot guarantee the outcome will be to the complete satisfaction of **Customer** or that Consultant will be able to solve every problem caused by **Customer** or by a third party. Work that is billed on an hourly basis is complete and payment is due regardless of the outcome of the Services, so long as Consultant performs Services in a professional manner and in accordance with good usage and accepted practices as established in the community in which such Services are performed

## **6. INDEPENDENT CONTRACTOR**

Both the **Customer** and the **Consultant** agree that the **Consultant** will act as an independent contractor in the performance of its duties under this contract. Accordingly, the **Consultant** shall be responsible for any taxes and insurance costs for employees working for **Consultant** on machines/networks/software of the **Customer**. No employee of **Consultant** shall be deemed to be an employee of **Customer**. **Customer** is not responsible for wages due to **Consultant**'s employees, and no employee of **Consultant** shall be eligible to participate in any benefit program offered by **Customer** to its employees.

## **7. CONFIDENTIAL INFORMATION**

The **Consultant** agrees that any information received by the **Consultant**, which concerns the personal, financial or other affairs of the **Customer**, will be treated by the **Consultant** in full confidence and will not be revealed to any other persons, firms or organizations without the prior consent of **Customer**, except as required by law. If a situation arises in which the **Consultant** is required to give sensitive information in order to perform the work, it will only be done after receiving permission from the **Customer**.

## **8. EMPLOYMENT OF OTHERS**

The **Customer** may, from time to time, request that the **Consultant** arrange for the services of others. All costs to the **Consultant** for those services will be paid by the **Customer**. **Consultant** may require paying in advance of larger fees for such third-party services.

## **9. OBLIGATIONS OF CUSTOMER**

**Customer** shall provide access to its facilities and equipment in connection with **Consultant**'s performance of its obligations hereunder. No charge shall be made for such access and **Consultant** will provide prior notification when such access is required;

Prior to providing on-site or remote Technical Support, it is **Customer**'s responsibility to properly backup all data and applications contained on **Customer**'s network, or to arrange for **Consultant** to backup data.

**Customer** shall maintain a proper network connection near any hardware used with a Product being maintained by **Consultant** hereunder and provide access to a voice grade local telephone;

**Customer** shall be responsible for obtaining any required third party hardware and/or software, including updates thereto;

**Customer**'s System Administrator must be present when any on-site Service is provided. If applicable, **Customer** agrees that if a representative is not present when **Company**'s technician arrives on site that no Service will be performed, and **Customer** will be charged at the Special Service rate then in effect for such visit.

## **10. WARRANTY**

**Consultant** warrants to **Customer** that Services hereunder will be performed in a professional manner and in accordance with good usage and accepted practices as established in the community in which such Services

are performed. If such Services prove to be not so performed and if **Customer** notifies **Consultant** within a forty-five (45) day period commencing on the date of completion of the Service, **Consultant** will, at its sole discretion, either correct any defects and deficiencies for which it is responsible or render a full or prorated refund or credit based on the original charge for the Service, as Customer's sole and exclusive remedy for such nonconformance. If **Consultant** repeatedly fails to provide Services as agreed, **Customer** may terminate this Agreement.

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES AND REMEDIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. **CONSULTANT** DOES NOT WARRANT THAT SERVICES ARE ERROR-FREE, THAT SYSTEMS WILL OPERATE WITHOUT DELAY OR INTERRUPTION OR THAT CONSULTANT WILL BE ABLE TO RESOLVE ALL CLIENT ISSUES AND DOES NOT WARRANT AGAINST THE ACTIONS OF ANY THIRD PARTIES ACTING WITH MALICIOUS INTENT. **CUSTOMER'S** SOLE AND EXCLUSIVE REMEDY SHALL BE **CONSULTANT'S** OBLIGATION TO MAKE CORRECTIONS OR GIVE A FULL OR PRORATED CREDIT OR REFUND AS SET FORTH ABOVE.

#### **11. LIMITATION OF LIABILITY**

**CONSULTANT** SHALL IN NO EVENT BE LIABLE TO **CUSTOMER** OR ANY PERSON OR ENTITY USING ANY SERVICE SUPPLIED UNDER THIS AGREEMENT FOR ANY LOSS OF TIME, REVENUE, PROFITS, BUSINESS INTERRUPTION, INCONVENIENCE, LOSS OR DAMAGE OF DATA, LOSS OF USE OF ANY PRODUCT OR EQUIPMENT OR PROPERTY DAMAGE CAUSED BY ANY TECHNICIAN, PRODUCT OR EQUIPMENT OR THEIR FAILURE TO WORK; OR FOR ANY INDIRECT, SPECIAL, RELIANCE, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE ARISING OUT OF THIS AGREEMENT OR ANY OBLIGATION RESULTING THEREFROM, OR THE USE OR PERFORMANCE OF ANY PRODUCT OR PRODUCTS; WHETHER SUCH CLAIMS ARE MADE IN AN ACTION FOR OR ARISING OUT OF ALLEGED BREACH OF WARRANTY, ALLEGED BREACH OF CONTRACT, DELAY, NEGLIGENCE (ACTIVE OR PASSIVE), STRICT TORT LIABILITY OR OTHERWISE. **CONSULTANT'S** ENTIRE LIABILITY FOR ANY CLAIM OR LOSS, DAMAGE, OR EXPENSE FROM ANY CAUSE WHATSOEVER, SHALL IN NO EVENT EXCEED THE FEES ACTUALLY PAID BY **CUSTOMER** DURING THE PRECEDING TWELVE (12) MONTH PERIOD. NO ACTION OR PROCEEDING AGAINST **CONSULTANT** MAY BE COMMENCED MORE THAN ONE YEAR AFTER THE SERVICES ARE COMPLETED EXCEPT FOR **CONSULTANT** CLAIMS RELATING TO COLLECTION OF FEES DUE AND PAYABLE BY **CUSTOMER**. THIS PARAGRAPH SHALL SURVIVE A FINDING OF FAILURE OF AN EXCLUSIVE REMEDY.

#### **12. NONWAIVER**

No course of dealing, course of performance, or failure of either party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of any term, right, or condition. No waiver of breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

#### **13. FORCE MAJEURE**

Except with respect to **Customer's** obligation to make timely payments, neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, epidemics or pandemics, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, availability of the internet, acts or omissions of carriers or suppliers, or other causes beyond its control, whether or not similar to the foregoing.

#### **14. CHOICE OF LAW and ALTERNATIVE DISPUTE RESOLUTION**

This construction, interpretation and performance of and all transactions under this Agreement shall be governed by the law of the State of Illinois, excluding its conflicts of laws provisions. The state and Federal Courts located in Kane County Illinois have exclusive jurisdiction over any disputes arising out of this Agreement. Customer consents to the jurisdiction of such courts and waives any objection based on lack of personal jurisdiction or convenience of such courts. The Parties agree that any and all claims, controversies, breaches or disputes arising from or related to this Agreement, including those pertaining to the formation, construction, performance, applicability, interpretation, or enforceability of this Agreement will be resolved by binding arbitration before a single arbitrator. Either party may declare an impasse and require arbitration if a dispute cannot be resolved between the parties within 90 days. The arbitration proceedings will be conducted under the JAMS rules of commercial arbitration, or similar service, such as the American Arbitration Society rules, in the Chicago metropolitan area. The parties will agree on a single arbitrator. If the parties cannot agree within 60 days, each party will select an arbitrator, and those two arbitrators will select the arbitrator to conduct the proceeding. The Parties agree that the decision of the arbitrator shall be binding upon the parties, their heirs, executors, administrators, successors and assigns and may be enforced in any court of competent jurisdiction. The arbitrator may require specific performance of any provision of this Agreement. The arbitrator has no authority to void any provision of this Agreement. The parties shall share equally in the cost of the arbitrator and the arbitration venue. Each party shall pay its own expenses of preparing and presenting its case, including, without limitation, attorney fees and expert fees.

#### **15. ENTIRE AGREEMENT**

The terms and conditions contained in this Agreement supersede all prior oral or written understandings between the parties, shall constitute the entire Agreement between the parties with respect to the subject matter of this Agreement and shall not be contradicted, explained, or supplemented by any course of dealing between **Consultant** or any of its affiliates and **Customer** or any of **Customer's** affiliates. **Consultant** employees' statements and **Consultant** advertisements or descriptions other than its published specifications do not constitute warranties or other contractual obligations, and shall not be relied upon by **Customer** as such. This Agreement shall not be modified or amended except by a writing signed by an authorized representative of both parties.

#### **16. ASSIGNMENT**

This Agreement may not be assigned by either party without the prior written consent of the other party.