



# Hardware/Software Agreement

## 1. Summary

1.1 Calculated Research & Technology, Inc. will be referenced as CR-T.  
1.2 This Agreement is effective upon the date signed. Return is dependent upon the Manufacturer and the product listed. CR-T is not responsible for any fees associated with returns, restocking, shipping, etc.

## 2. Statements of Service; Fees and Payments; Taxes

2.1 Statements of Service shall describe in detail the services to be performed by CR-T, and this Agreement hereby incorporates all attached and subsequent Statements of Service that refer specifically to this Agreement by name and date of execution, or the MSA Number.  
2.2 Specific or additional payment terms may be specified in each Statement of Service attached to this Agreement. If a service is billed, Client will receive an invoice on a monthly basis, and it will become due and payable on the first day of each month. All services described in the attached Statements of Service will be suspended if payment is not received within sixty (60) days following the date Client receives the invoice. Client will be billed a one-hour charge of \$150 to re-establish service if payment or payment arrangements had not been arranged and agreed upon in writing prior to the service interruption.  
2.3 The interest rate on all late payments of the Purchase Price made by Client to CR-T under this agreement shall be 12% per annum to be compounded annually.  
2.4 If, after the Service Commencement Date, Client fails to pay any amount required under this Service Agreement and such failure continues for thirty (30) days after written notice to Client, or if Client fails to comply with any material provision of this Service Agreement, CR-T may elect to terminate in whole or in part Customer Services and declare all charges for the remaining Term immediately due and payable.  
2.5 It is understood that any applicable federal, state or local taxes shall be added to each invoice for services or materials rendered under this Agreement. Client shall pay all such taxes unless a valid exemption state certificate is furnished to CR-T.

## 4. Nondisclosure

4.1 Confidential Information. Except as provided in Section 4.2, as used in this Agreement, "Confidential Information" means any information furnished or disclosed, in whatever form or medium, by either party (the "Disclosing Party") to the other party (the "Receiving Party") relating to the business of the Disclosing Party, and includes, without limitation, contract terms, financial information, business procedures, processes, techniques, methods, ideas, discoveries, inventions, developments, records, product designs, source codes, product planning, trade secrets, customer lists, material samples, and the fact that Disclosing Party and Receiving Party are negotiating or are parties to this Agreement, all of which is deemed confidential and proprietary.  
4.2 Use of Confidential Information. CR-T and Client shall only use Confidential Information for the purpose of performing services under this Agreement, and shall make no use of the Confidential Information, in whole or in part, for any other purpose. Both parties agree to refrain from disclosing the Confidential Information to third parties, unless one of the parties has given its prior written authorization to the other. The parties further agree to take all reasonable steps to preserve the confidential and proprietary nature of the Confidential Information. However, if the parties are required by subpoena or other court order to disclose any of the Confidential Information, the party shall provide immediate notice of such request to the other party and shall use reasonable efforts to resist disclosure. If, in the absence of a protective order or the receipt of a waiver under this Agreement, the parties are legally required to disclose any Confidential Information, then the parties may disclose such information without liability under this Agreement.  
4.3 Remedies for Breach of Nondisclosure. The Confidential Information protected by this Agreement is of a special character, such that money damages, although available, would not be sufficient to award or compensate for any unauthorized use or disclosure of the Confidential Information. The parties agree that injunctive and other equitable relief may appropriate to prevent any such actual or threatened unauthorized use or disclosure.

## 5. Representation and Warranties

5.1 CR-T represents and warrants that it (a) has the right, power and authority to enter into the Agreement and to fully perform all of the obligations hereunder, (b) will use commercially reasonable efforts to provide all services required of it under the Agreement in accordance with prevailing industry standards, and (c) owns or has acquired the requisite rights from third parties to the CR-T property.  
5.2 CR-T does not manufacture hardware or commercial-off-the-shelf (COTS) software covered under this Agreement. Any warranty provisions are passed through from the manufacturer and are subject to the manufacturer's limitations. Any labor supplied by CR-T is not covered under the terms of the manufacturer's warranty.  
5.3 CR-T may provide equipment owned by CR-T and housed at Client's premises. Such equipment may include, but is not limited to routers, desktops, servers, software, and remote backup devices. Such equipment shall be treated with the same care and security as similar equipment owned by Client. Client shall be held liable for any damage or loss not covered by the manufacturer's warranty. If such loss or damage occurs, Client will be invoiced the current replacement cost of the equipment plus shipping and handling and related installation charges.  
5.4 CR-T represents and warrants that it has all rights and licenses necessary to act as reseller for all goods, services, equipment, software, and intellectual property, including

subscriptions to SaaS and other software licenses, for which CR-T acts as reseller to Client.

## 6. Disclaimer of Warranties; Limitation of Damages

6.1 THE EXPRESS, BUT LIMITED, WARRANTY IN SECTION 7 ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, REGARDING CR-T SERVICES. CR-T AND ITS AFFILIATES SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR TRADE USAGE.  
6.2 NEITHER PARTY NOR THEIR RESPECTIVE AFFILIATES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOST DATA, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION ARISING FROM OR RELATING TO THIS AGREEMENT OR ARISING FROM OR RELATING TO THE USE OF THE SOFTWARE WHICH HAS BEEN MODIFIED BY ANYONE OTHER THAN CR-T, LOSS OF PROGRAMS, AND THE LIKE, THAT RESULT FROM THE USE OR INABILITY TO USE THE SERVICES OR FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR DIRECTORIES, LOSS OF DATA, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE OR OTHER TORTS), TO THE EXTENT ALLOWED BY LAW, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.  
6.3 CLIENT ACKNOWLEDGES AND AGREES THAT CLIENT HAS RELIED ON NO WARRANTIES EXCEPT THE LIMITED EXPRESS WARRANTY IN SECTION 7.  
6.4 Client agrees that the total liability of CR-T and its affiliates and the remedies of Client and any End User for any claims regarding CR-T services include Client's right to terminate this Agreement and to receive a refund of all funds paid for anything purchased by Client but not received by Client. Further, should a court nonetheless find that such remedies are not exclusive or that CR-T is for any reason nonetheless liable for money damages, the cumulative liability in connection with this Agreement, whether in contract, tort or otherwise, shall not exceed the amount paid to CR-T under this Agreement.  
6.5 CR-T has not represented that the services provided by CR-T are uninterrupted, error-free, or without delay; and CR-T does not and cannot control the flow of data through the Internet, and such flow depends in large part on the performance of third parties whose actions or inaction can, at times, produce situations in which connections to the Internet (or portions thereof) may be impaired or disrupted. Further, Client acknowledges that, in providing the services, CR-T shall necessarily rely upon information, instructions, and services from Client, its administrator, employees and agents. Except as expressly provided in the Agreement, Client fully assumes the risk associated with errors in such information.

## 7. General Provisions

7.1 Equipment & Facilities. Client retains title and ownership in all of Client's equipment owned by Client and utilized by CR-T. Facility access may be denied for any reason at any time, however if access to facilities is denied, Client understands that CR-T may be unable to perform their duties adequately and if such a situation should exist, CR-T will be held harmless.  
7.2 Waiver. The failure or forbearance of CR-T or Client to enforce any right or claim against the other party shall not be deemed to be a waiver by CR-T or Client of such right or claim or any other right or claim hereunder. The waiver by CR-T or Client of a breach hereof shall not operate or be construed as a waiver of any subsequent breaches of the same or any other provision.  
7.3 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject hereof and supersedes all prior proposals, agreements, negotiations, correspondence, demonstrations, and other communications, whether written or oral, between CR-T and Client. No modification or waiver of any provision hereof shall be effective unless made in writing signed by both CR-T and Client.  
7.4 Severability. If any provision hereof is determined in any proceeding binding upon the parties hereto to be invalid or unenforceable, that provision shall be deemed severed from the remainder of the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect.  
7.5 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the obligation for the payment of money) on account of any cause that is beyond the reasonable control of such party.  
7.6 Applicable Law and Venue. This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Utah. Client agrees it is subject to personal jurisdiction of the courts in Utah County, Utah, and any dispute arising out of this Agreement requiring adjudication by a court of law shall be filed and heard in the venue of Utah County, Utah.  
7.7 Notices. Except where provided otherwise, notices hereunder shall be in writing and shall be deemed to have been fully given and received when mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed to the offices of the respective parties as specified in the first paragraph of this Agreement, or at such address as the parties may later specify in writing for such purposes. The foregoing shall apply regardless of whether such mail is accepted or unclaimed.  
7.8 Assignment. Client may assign this Agreement. Except for this limited right of assignment, neither party shall assign this Agreement or any right or interest under this



Agreement, nor delegate any work or obligation to be performed under this Agreement, without the other party's prior written consent. Any attempted assignment or delegation in contravention of this provision shall be void and ineffective.