**MASTER SERVICE AGREEMENT**

 THIS Master Services Agreement is entered into by and between Avail Recovery Solutions, LLC with a principal office at 120 E Corporate Pl, Suite 2, Chandler, AZ 85225 (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”) as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”) and together with the Statement of Work (“SOW”), sets forth the terms and conditions under which Company will provide the Services (as defined below) to Customer. This Master Services Agreement, together with the SOW, collectively form the “Agreement.” In the event of any conflict between this Master Services Agreement and the SOW, the SOW shall prevail to the extent of such conflict. Company and Customer may be referred to herein individually as “a Party” and together as “the Parties” herein.

 WHEREAS, Company is engaged in the business of providing a full range of information technology services, including clearing, purging and destroying electronic storage media, and refurbishing, reselling and disposing of such media and other hardware components; and

 WHEREAS, Customer desires to retain Company to perform information technology services and functions.

 NOW THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, the Parties have agreed and do agree as follows:

1. **Contracted Services.** This Agreement shall apply to the delivery of information technology services, support, and functions (“Services”) as further described in the applicable SOW. In the event that the scope of the Services is expanded, revised, or modified, for any SOW, the Parties shall prepare and sign an amended or new SOW. Company will work together with the Customer to set a reasonable timeline for the Services. Any delays in approvals or payment, or changes to plans or materials will alter this timeline. Under no circumstances will Company be responsible or liable in any matter for delays and changes to the timeline arising out of or due to any actions or inactions of Customer.
2. **Fees and Payment Terms.**
	1. Fees. In exchange for the Services performed by Company during the Term Customer agrees to pay Company such compensation as set forth in the applicable SOW (“Fees”). Customer will pay all undisputed invoices within thirty (30) days of receipt thereof.
	2. Expenses. Customer shall reimburse Company for all pre-approved in writing (email acceptable), actual out-of-pocket materials, services, training and hardware expenses as reasonably incurred by Company in connection with the performance of Services. .
	3. Late Payments. If Customer fails to pay Company within five (5) business days from the date payment is due, then Company may, without limiting and in addition to its other available remedies, assess a late payment charge at the rate of two percent (2.0%) per month or the maximum rate allowed by applicable law, whichever is the lesser. In the event Customer fails to make a payment, Customer will be responsible for all reasonable expenses (including attorneys’ fees) incurred by Company in collecting such amounts.
	4. No Refunds. Customer acknowledges and agrees that there shall be no refunds under this Agreement for any reason, any Service delivered or scheduled to be delivered, whatsoever, including termination of this Agreement regardless of the cause of such termination.
	5. Taxes. All Fees are exclusive of any federal, state, or local sales or use taxes, or any other taxes or fees assessed on, or in connection with any of the Services rendered herein (“Taxes”). Customer shall be solely responsible for any applicable Taxes arising out of, or in connection with, this Agreement.
3. **Ownership of Materials Related to Services.**

* 1. Conditioned on Customer’s full payment of all Fees due hereunder, the Parties agree that any materials prepared and delivered by Company to Customer (“Deliverables”) shall be considered works made for hire. All rights, title, and interests of such materials shall be and are assigned to Customer as its sole and exclusive property.
	2. Notwithstanding anything to the contrary herein, as between the Parties, Company solely and exclusively owns all right, title and interest in and to all of the following: (i) methods and processes used, developed or acquired by or for Company in or for the provision of Services (“Company Methods”); (ii) data, modules, components, designs, utilities, subsets, objects, program listings, algorithms, tools, models, diagrams, analysis frameworks, leading practices, and specifications embedded or included within the Deliverables (“Direct Technical Elements”); (iii) data, information or materials developed, used or acquired by or for Company other than in response to Customer’s requirements (“Background Technology”); and (iv) all documentation, records, data, materials, concepts, information, inventions, improvements, enhancements, extensions, derivative works, designs, programs, formulas, know-how, and writings relating to the foregoing (i) through (iii). Company reserves all rights to all of the foregoing, and nothing in this Agreement or either Party’s performance thereof grants to Customer any right, title or interest in or to the foregoing, except that, to the extent any Background Technology or Direct Technical Elements are embedded or included within Deliverables, Company grants Customer a nonexclusive, perpetual, royalty-free, license to use, copy, modify, distribute and display such Background Technology or Direct Technical Elements, as applicable, to the extent necessary to use the Deliverables in accordance with the terms of this Agreement.
	3. Company may use any reports, comments, ratings, reviews and suggestions in any form regarding the Services that Customer provides to Company (collectively, the “Feedback”). Customer grants Company a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate and use the Feedback.
1. **Independent Contractor.** The Parties are independent contractors and nothing within this Agreement shall be construed to create a joint venture, partnership, agency, or other employment relationship between the Parties.
2. **Confidential Information.**
	1. Either Party (the "Disclosing Party") may from time to time disclose Confidential Information to the other Party (the "Recipient"). "Confidential Information" is all nonpublic information concerning the business, technology, and strategies of the Disclosing Party which is conveyed to the Recipient orally or in tangible form and is either marked as "confidential" or which, due to the circumstances surrounding its disclosure or its nature or sensitivity, should have been understood by the Recipient as intended to be treated as "confidential" and subject to the undertakings of this Agreement. The terms set forth in this Agreement shall be considered to be Confidential Information. Recipient will keep in confidence and trust and will not disclose or disseminate, or permit any employee, agent or other party working under Recipient's direction to disclose or disseminate the existence, source, content or substance of any Confidential Information to any other party. Recipient shall use Confidential Information of the Disclosing Party only as necessary for the performance of this Agreement. The Parties will take all reasonable measures to protect the Confidential Information of the other Party, and in any event no less than the measures it takes to protect its own Confidential Information. The foregoing duty shall survive any termination or expiration of this Agreement.
	2. The commitments in this Agreement will not impose any obligations on Recipient with respect to any portion of the received information which: (i) is now generally known or available or which hereafter, through no act or failure to act on the part of Recipient, becomes generally known or available; (ii) is rightfully known to Recipient at the time of receiving such information; (iii) is furnished to Recipient by a third party without restriction on disclosure and without a breach by such third party of any confidentiality undertaking with respect thereto; (iv) is independently developed by Recipient or its representatives without the use of Confidential Information; or (v) is required to be disclosed by operation of law or by an instrumentality of the government, including but not limited to any court, tribunal or administrative agency; provided that, in the case of any disclosure required by court order, the Recipient shall give the Disclosing Party as much advance notice as is reasonably practicable under the circumstances so as to permit the Disclosing Party to take commercially reasonable actions at its own expense to prevent disclosure. Each Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Confidential Information and that each Party may seek, without waiving any other rights or remedies, such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. At Disclosing Party's option, Recipient shall promptly either destroy all Confidential Information in tangible form in its possession, or return all such copies to Disclosing Party, and in either event provide a written certification confirming the same, promptly upon Disclosing Party's written request.
3. **Security**. Company cares about and takes very seriously the integrity and security of Customer’s data. Company takes commercially reasonable administrative, physical and electronic measures designed to safeguard and protect the Services, materials and data therein from unauthorized access, use, modification, deletion and/or disclosure. All Customer data shall be sanitized in compliance with the Company Information Security Policy (Exhibit A).
4. **Nonsolicitation of Employees.**  During the Term, and for a period of one (1) year thereafter, neither Party will solicit the employment of, contract for the services of, nor hire, any person employed by the other Party during the Term; provided, that hired employees of the other Party made through general solicitations shall not constitute a breach of this section.
5. **Customer Responsibilities.** In addition to any obligations and responsibilities described in the SOW, Customer agrees that it will:
6. Ensure that the necessary business and application knowledge is available and conveyed from the Customer’s existing support team to Company’s support team.
7. Provide ready access to all appropriate computing platforms, documentation (e.g., program source, copybooks, tables, subroutines) and personnel (i.e., end users and technical representatives) necessary for Company to fully understand the current business systems and environments.
8. Provide at its facility, office space and equipment for Company’s on-site employees. Access will also be provided to the Customer’s source libraries, test systems, and test data.
9. Provide external communications capability and/or access to its work facility to enable Company’s on-site project team to access the Customer’s information technology system for after hours or weekend Services as required.
10. Assign a representative to be present at the work facility for any after hours or weekend Services provided by Company.
11. Provide passwords and job numbers to Company employees as needed.
12. **Representations and Warranties.**
13. Each Party represents and warrants that: (a) it has full power and authority to enter into and perform this Agreement; (b) execution of this Agreement by such Party, and the performance by such Party of its obligations and duties hereunder, do not and will not violate any agreement to which such Party is a Party or by which it is otherwise bound; and (c) that it will perform its obligations or exercise its rights hereunder in conformance with all applicable laws, rules, regulations and guidelines.
14. Company holds certifications for its Occupational Health and Safety Management System, its Responsible Recycling System, and it’s Environmental Management System. Company further represents and warrants to Customer that Company will provide the Services in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services and that each of its employees assigned to perform Services under this agreement shall have the proper skill, training and background to perform in a competent and professional manner.
15. EXCEPT AS OTHERWISE SET FORTH HEREIN, COMPANY’S SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND CUSTOMER’S USE OF COMPANY’S SERVICES IS AT ITS OWN RISK. EXCEPT AS OTHERWISE SET FORTH HEREIN, COMPANY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES.
16. **Limitation of Liability.**
17. It is expressly agreed that in no event shall Company, or any officers, directors, stockholders, agents, and employees, be liable for any special, indirect, consequential, punitive or exemplary damages, regardless of theory of liability, even if Company has been apprised of the possibility or likelihood of such damages occurring. Customer acknowledges and agrees that the fees and other charges which Company is charging under this agreement do not include any consideration for assumption by Company of the risk of Customer’s indirect, consequential or incidental damages or of unlimited direct damages. Company’s aggregate liability under this agreement, regardless of theory of liability, shall be limited to the aggregate fees actually paid to Company by Customer under this Agreement for the twelve (12) month period preceding the event first giving rise to the claim.
18. Notwithstanding anything to the contrary herein, Company’s sole and exclusive liability and Customer’s sole and exclusive remedy for all claims of defects in the Services will be, in Company’s sole discretion, to either: (A) re-perform such Services; or (B) fully or partially credit or refund the Fees paid by Customer for such Services.
19. Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, Company’s liability shall be limited to the maximum extent permitted by law.
20. **Indemnification.**
	1. Each Party shall indemnify, defend and hold harmless the other Party, its employees, principals (partners, shareholders or holders of an ownership interest, as the case may be) and agents, from and against any third party claims, demands, loss, damage or expense (including without limitation reasonable attorney’s fees and costs) (“Losses”) relating to (i) a breach of this Agreement, or (ii) any violation of applicable federal, state or local laws or regulations.
	2. The indemnifying Party may not enter into any settlement that would admit any wrongdoing by or impose any liability on the part of the indemnified Party, or impose any obligation on the indemnified Party, without the indemnified Party’s prior written consent. In all cases, the indemnifying Party’s obligation to indemnify, defend, release and hold harmless shall not apply to the extent the Losses are due to the breach of this Agreement by, or the negligence or willful misconduct of, the indemnified Party.
21. **Insurance.**
22. Company shall secure and keep in effect insurance policies against such risks and claims, and in such amounts, as is customarily carried by providers of services substantially similar to the Services and Deliverables, but not less than the following:
	1. Commercial General Liability Insurance in an amount not less than $2,000,000 per occurrence with a $4,000,000 aggregate covering claims for bodily injury, death, personal injury or property damage;
	2. Workers’ Compensation Insurance as required by any applicable law or regulation having jurisdiction over Company’s employees;
	3. Automobile Liability Insurance covering liability arising out of all owned, hired and non-owned autos with limits in the amount of $1,000,000 combined single limit each occurrence;
	4. Umbrella or Excess Liability Insurance in an amount not less than $9,000,000 per occurrence and in the aggregate, which will provide additional limits for commercial general and automobile liability insurance;
	5. Cyberliability insurance (Technology E&O) in an amount not less than $5,000,000
23. **Term and Termination.**
24. Term. The term of this Agreement will commence on the Effective Date and will continue until and unless it is terminated as provided below (“Term”). In the event that an SOW provides for a different Term, such SOW Term will control for that specific SOW only.
25. Termination for Convenience. Either Party may terminate this Agreement or any applicable SOW for any reason by providing ninety (90) days' written notice to the other Party. In the event that an SOW provides for a different termination notice period, the SOW termination clause will control for that specific SOW only.
26. Termination for Breach. Either Party may terminate this Agreement upon thirty (30) days written notice if the other Party materially breaches any provisions of this Agreement, and such breach has not been cured after written notice of the same within such thirty (30) day period.
27. Termination for Bankruptcy. Either Party shall have the immediate right to terminate this Agreement, by providing written notice to the other Party, in the event that (i) the other Party becomes insolvent, enters into receivership, is the subject of a voluntary or involuntary bankruptcy proceeding, or makes an assignment for the benefit of creditors; or (ii) a substantial part of the other Party’s property becomes subject to any levy, seizure, assignment or sale for or by any creditor or government agency.
28. Payments Due. The termination of this Agreement shall not release either Party from the obligation to make payment of all amounts due and payable through the effective date of termination.
29. Effects of Termination. This Agreement and the rights granted are effective until terminated. Sections which by their terms contemplate survival will survive any termination of this Agreement. Upon the effective date of termination of this Agreement, for any reason, Company shall cease providing Services, and Customer shall immediately render all sums and payments for all fees due and owing to Company through the effective date of termination.
30. Continuation of Services. In the event that Customer requests that Company continue to provide Services for any period of time post-termination of this Agreement (“Wind-down period”), the Parties will enter into a new SOW related to such Wind-Down Period and the terms of this Agreement will continue in full force and effect in relation to such SOW. Company may require that Customer pay in advance for any Wind-Down Period Services to be provided.
31. **Miscellaneous Clauses:**
	1. Non-Exclusive Relationship. This is a non-exclusive arrangement. Company may provide the same or similar services to other customers and Customer may utilize other information technology service providers that are competitive with Company.
	2. Waiver. The failure of either Party hereto to insist in any one or more instances upon strict compliance with the performance of this Agreement or to take advantage of any respective rights hereunder shall not be construed to be a waiver of such provisions or the relinquishments of such rights in other instances, but the same shall continue and remain in full force and effect.
	3. Force Majeure. Neither Party shall be liable to the other Party for any delay or failure of said Party to perform its obligations hereunder (except for payment obligations) if such delay or failure arises from any cause or causes beyond the reasonable control of such Party. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by either Party in providing required resources or support or performing any other requirements hereunder.
	4. Notices. Any notices or communication under this Agreement shall be in writing. All notices shall be given by electronic mail to the email address specified in the SOW. For contractual purposes, the Parties agree that all terms and conditions, agreements, notices, disclosures, and other communications that are provided electronically satisfy any legal requirement that such communications would satisfy if they were otherwise mailed. All notices shall be effective upon the day following sending by electronic mail. Each Party may change its email address for receipt of notice by giving notice of such change to the other Party.
	5. Severability. If any term or provision of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.
	6. Captions. The section headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
	7. Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the Parties hereto with respect to the rendering of services in any manner. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the Parties hereto.
	8. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona. For any dispute, the parties agree to first attempt to resolve the dispute informally. In the event that the Parties are unable to resolve a dispute after sixty (60) days, the parties agree to resolve any claim, dispute, or controversy (excluding any claims for injunctive or other equitable relief which may be brought in federal or state courts situated in Maricopa County, Arizona) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof (collectively, “Claims”), by binding arbitration under the Optional Expedited Arbitration Procedures then in effect for JAMS. JAMS may be contacted at www.jamsadr.com. The arbitration will be conducted in Maricopa County, Arizona, unless the Parties agree otherwise. Each Party will be responsible for paying its applicable JAMS filing, administrative and arbitrator fees in accordance with JAMS rules. Nothing in this Section shall be deemed as preventing a Party from seeking injunctive or other equitable relief from the courts as necessary to prevent the actual or threatened infringement, misappropriation, or violation of its confidential information, intellectual property rights or other proprietary rights.
	9. Expenses and Attorneys’ Fees: In the event any action is brought to enforce any provision of the Agreement or to declare a breach of the Agreement, the prevailing Party shall be entitled to recover, in addition to any other amounts awarded, reasonable legal and other related costs and expenses, including attorney’s fees, incurred thereby.
	10. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement to any successor in interest as a result of a merger or a stock or asset purchase. Any attempted assignment in violation of this provision shall be deemed void. This Agreement shall inure to the benefit of Company and Customer and any permitted successors or assigns. No third party shall have any rights hereunder.

 IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

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| **AVAIL RECOVERY SERVICES, LLC** |  | **CUSTOMER:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
|  |  |  |
| **Signature** |  | **Signature** |
|  |  |  |
| **Printed Name** |  | **Printed Name** |
|  |  |  |
| **Title** |  | **Title** |
|  |  |  |
| **Date** |  | **Date** |

**Exhibit A**

**INFORMATION SECURITY POLICY**

Data security is the single most important part of the IT asset disposition process. In order to ensure that our clients’ data is rendered fully unrecoverable, employees and subcontractors are required to comply with the following information security policies.

**Data Destruction Policy**

1. All electronic storage media is processed in accordance with NIST 800-88 *Guidelines for Media Sanitization.*
2. Possible forms of electronic storage media include hard drives, solid state drives, tape media, flash media, and compact discs.
3. Electronic storage media is either cleared, purged, or destroyed using software-based erasure programs, degaussing, or physical shredding.
4. The destruction method is decided based on the type of media, client requirements, and achieving the best economic outcome.
5. A certificate of destruction will be issued to the client at the conclusion of the destruction process listing either the quantity of media processed or unique identifiers for each piece of media (depending on requirements).
6. The NIST 800-88 process meets requirements for PCI DSS, HIPAA, HiTech, FACTA, and the Gramm-Leach-Bliley Act.

**Chain-of-Custody/Ownership**

1. A Bill-of-Lading listing the shipment description is established for signature by the client and Company transportation partner at origin site.
2. All Company transportation partners are trackable via a PRO number or other unique shipment identifier.
3. Upon request, Company can provide enhanced asset-level chain-of-custody including on-site serial number scanning prior to departure from the client site.
4. Sealable lockboxes are available for the secure shipment of electronic storage media.
5. Title to assets to be destroyed, resold or re-used shall pass to the Company upon delivery to the Company at a location identified for delivery, or if the common carrier shipping the assets is selected by the Company, then upon delivery to the common carrier.

**Human Resources Security**

1. All employees engaged in the transport, processing and destruction of client-owned electronic storage media have gone through background checks including identity verification and criminal record check.
2. Non-disclosure agreements are in place with employees and subcontractors involved in the processing of data-bearing assets.
3. Employees access rights to processing facilities are revoked within 24 hours of termination.
4. Employees must undergo biannual security awareness and operational training.

**Physical Security**

1. Facilities use 24x7 monitoring services with connection to local law enforcement
2. Identity verification is required for employee access and all non-badged visitors must be escorted while on premise.
3. Physical intrusion and fire alarms are in place at all facilities.
4. All secure processing areas are under video monitoring with a 60 day footage retention requirement.

**Incident Response Plan**

1. In the event of a loss of electronic storage media, all employees and subcontractors are required to follow the formal *Company Incident Response Plan.*
2. When such an incident occurs, Company will designate a single point of contact for communication with the affected client/s.
3. In the event of a security breach, Company will engage an appropriate third party to manage the response and remediation.