



## SERVICES AGREEMENT – TERMS AND CONDITIONS

### Small Business IT Service

BY ACCEPTING THE SERVICES AND SUPPORT DESCRIBED ON THIS AGREEMENT, YOU AGREE TO BE BOUND BY AND ACCEPT THE TERMS AND CONDITIONS HEREIN. PLEASE READ THIS AGREEMENT IN ITS ENTIRETY. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, PROMPTLY CONTACT MY-IT.

#### 1. Services that MY-IT will supply:

For your periodic payment to us, MY-IT will provide you with Small Business IT Service (SBITS) pursuant to the following terms and conditions:

**1.1 Scope.** MY-IT agrees to deliver to you the services described on the Service Application Form for SBITS including any Supplemental Terms and Conditions. The Service Application and Supplemental Terms and Conditions are hereby incorporated into this Agreement by reference. MY-IT reserves the right to change or modify any of the terms and conditions contained in the Supplemental Terms and Conditions at any time and from time to time in its sole discretion and to determine whether and when any such changes apply to both existing or future customers. A third party service provider, under subcontract with MY-IT, may provide some or all of SBITS.

**1.2 Your Site.** SBITS will be delivered to the site(s). You agree to give MY-IT at least thirty (30) days written notice prior to relocating any system(s) to be serviced. SBITS will not be guaranteed in areas outside of MY-IT's primary service area. MY-IT's obligation to service systems outside of the primary service area may be subject to additional fees.

**1.3 Third Party Products Not Covered.** SBITS do not include warranty or repair service or any other services for third party products. MY-IT will act as a facilitator between you and the other vendor to obtain whatever third party service or support you may be entitled to receive under your agreements with those other vendors. It is your responsibility to buy and pay for warranty or service contracts for those third party systems. MY-IT is not responsible for the performance of other vendors' products and services. You hereby indemnify and hold MY-IT harmless for any claims related to those third party products.

**1.4 Exclusions.** Unless otherwise expressly provided in the Service Application, SBITS does not cover a) accessories, supply items, peripherals and certain parts, such as batteries, frames, and covers; b) service of equipment damaged by misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, removal or alteration of equipment or parts or identification labels, or failure caused by a product for which MY-IT is not responsible.

**1.5 Customer Owned Onsite Spares.** You agree to provide a safe and secure location for all parts, spares, equipment or materials which MY-IT places at your site. The purchase price for all spare parts is not included in the price for SBITS. You are responsible for buying any necessary spare parts and for warehousing, planning, ordering, and inventory for any necessary spare parts.

#### 2. Payment.

**2.1 Fees.** There will be two fees that you agree to pay MY-IT: 1) SBITS Membership Dues and 2) Monthly Services Rendered under SBITS. You agree to pay MY-IT within twenty-one (21) days of the respective dates indicated on both invoices. You agree to pay an additional fee of 15% per month for invoices not paid within such twenty-one (21) day period. If you have not timely paid MY-IT for both fees then, in addition to the other remedies that MY-IT may have, MY-IT may, in its sole discretion, discontinue providing SBITS.

If you sign up for SBITS at any period of a month other than the first (1), you will be pro-rated for the remainder of that month and this fee will be applied to your first SBITS Membership Dues Invoice. The pro-rated amount will follow the equation of:  $[(\$100)/(\text{Total number of days in the month of signed Service Application})] \times (\text{Number of days left in the month})$ .

At the beginning of the following month the SBITS service plan for which you registered will begin.

**2.2 Payment Provisions – Expense Reimbursement.** Unless otherwise specified in the Service Application, you agree to reimburse MY-IT for all actual, reasonable, documented out of pocket expenses that MY-IT incurs in connection with rendering any on-site service or on-site training, including travel time accrued by MY-IT. If you travel to receive training or other services from MY-IT, your travel expenses are your responsibility.

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**3. DISCLAIMER OF ALL WARRANTIES.** MY-IT MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE USED IN CONDUCTING SERVICES, OR ANY EXPRESS OR IMPLIED WARRANTIES CONCERNING THE RESULTS TO BE OBTAINED FROM THE SERVICES OR THE RESULTS OF ANY RECOMMENDATION MY-IT MAY MAKE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE DELIVERABLES OR OF ANY SYSTEM THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION MY-IT MAY PROVIDE. NOTHING IN THIS AGREEMENT OR ANY OTHER WRITTEN DOCUMENTATION OR ANY ORAL COMMUNICATIONS WITH CUSTOMER MAY ALTER THE TERMS AND CONDITIONS OF THIS PARAGRAPH.

**4. Your Responsibilities.**

**4.1** You agree to follow the instructions MY-IT provides and where applicable, before you ask MY-IT to provide SBITS you agree: a) to follow the problem determination, problem analysis, and service request procedures that MY-IT provides; and b) to secure all software/programs, data and funds contained in the systems to be serviced.

**4.2** In order to receive SBITS, you must fulfill all the Customer Responsibilities described here and in the Service Application. Please be sure you have read and understand all of your obligations. If you do not fulfill each of the Customer Responsibilities, then MY-IT will not be obligated to deliver SBITS, or there may be an additional charge for those services.

**4.3** We agree generally to cooperate with each other to see to it that work is successfully completed.

**4.4** It is your responsibility to back up the data on your system, and to provide adequate security for your system. MY-IT WILL NOT BE RESPONSIBLE FOR LOSS OF OR DAMAGE TO DATA OR LOSS OF USE OF ANY OF YOUR COMPUTER OR NETWORK SYSTEMS.

**4.5** You represent and warrant to MY-IT that you have obtained permission for both you and MY-IT to access and use your system, the data on it, and all hardware and software components included in it, for the purpose of providing SBITS. If you do not already have that permission, it is your responsibility to obtain it, at your expense, before you ask MY-IT to perform SBITS.

**4.6** Some of SBITS may require MY-IT to access hardware or software with warranties. Some manufacturers' warranties may become void if MY-IT or anyone else, other than the manufacturer or its authorized representative, works on the hardware or software. It is your responsibility to look at your warranty, and to ensure that MY-IT's performance of SBITS will not affect the warranty, or, if it does, that the effect will be acceptable to you. MY-IT DOES NOT TAKE RESPONSIBILITY FOR THIRD PARTY WARRANTIES OR FOR ANY EFFECT THAT MY-IT SERVICES MAY HAVE ON THOSE WARRANTIES.

**4.7** If SBITS includes on-site service, you agree to provide MY-IT with sufficient, free, and safe access to your facilities for MY-IT to fulfill its obligations.

**4.8** If you Miss the Service Visit. If you or your authorized representative is not at the location when the service technician arrives, we regret that the service technician cannot service your system(s). The service technician will leave a notice to let you know that he/she was there. If this occurs, applicable traveling fees will be assessed onto your monthly Services Rendered invoice.

**4.9** Payment Reminder. You are responsible for making sure that you receive invoices for both Membership Dues and Monthly Services Rendered. MY-IT will send to you: 1) an invoice for Membership Dues no less than twenty-one (21) days before the renewal date of your next service period and 2) an invoice for Monthly Services Rendered no later than seven (7) days after the end of the month for which such services were provided. If you do not receive either invoice, it will be your responsibility to contact MY-IT.

**5. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES WILL MY-IT OR ITS SUBCONTRACTORS BE LIABLE FOR ANY OF THE FOLLOWING; 1) THIRD PARTY CLAIMS AGAINST YOU FOR DAMAGES; 2) SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY TYPE, INCLUDING BUT NOT LIMITED TO PRODUCTS OR SYSTEMS BEING UNAVAILABLE FOR USE, LOST PROFITS OR SAVINGS OR LOST OR CORRUPTED DATA OR SOFTWARE, OR FOR ANY DAMAGES FOR PERSONAL INJURY, OR DEATH, WHETHER DIRECT, INDIRECT OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, OR ARISING OUT OF THE RESULTS OR OPERATION OF ANY SYSTEM RESULTING FROM ANY IMPLEMENTATION OF ANY RECOMMENDED PLAN OR DESIGN,

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EVEN IF MY-IT OR ITS SUBCONTRACTORS HAVE BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGE, AND EVEN IF YOU ASSERT OR ESTABLISH A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL MY-IT BE LIABLE TO YOU FOR ANY AMOUNT IN EXCESS OF SBITS FEES ACTUALLY RECEIVED BY MY-IT UNDER THE SERVICE APPLICATION FOR THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THAT MY-IT IS NOTIFIED BY YOU OF ANY CLAIM OF LIABILITY. THIS LIMITATION OF LIABILITY APPLIES TO ALL TYPES OF LEGAL THEORIES, INCLUDING CONTRACT, TORT (INCLUDING NEGLIGENCE), PROFESSIONAL LIABILITY, PRODUCT LIABILITY, WARRANTY, OR ANYTHING ELSE. THIS LIMIT ALSO APPLIES TO ANY MY-IT SUBCONTRACTOR. IT IS THE MAXIMUM AMOUNT FOR WHICH MY-IT AND ITS SUBCONTRACTORS ARE RESPONSIBLE.

**6. General Terms.**

**6.1 Term and Renewal.** This agreement begins on the date accompanying your signature on the Service Application and expires twenty-one(21) days after the final date of SBITS membership indicated on your invoice. Membership and the terms of this agreement will be automatically renewed for the term indicated on your Service Application and an invoice will automatically be sent to you.

**6.2 Claims of Confidentiality or Proprietary Rights.** You agree that any information or data disclosed or sent to MY-IT, over the telephone, electronically or otherwise, is not confidential or proprietary to you.

**6.3 Cancellation.** You may cancel this Agreement within twenty-one (21) days of your receipt of the latest SBITS membership dues invoice by sending a written notice to MY-IT. If you cancel this Agreement there will be no refund for your current SBITS membership dues and SBITS will be provided to you until your current membership term expires (on the date indicated on your invoice).

We may cancel this Agreement if you fail to pay us the Total Price for SBITS in accordance with our invoice terms, make a misrepresentation to us or our agents, or otherwise breach your obligations under this Agreement, or as provided in any Supplemental Terms and Conditions and Service Application. If we cancel this Agreement, we will send you written notice of cancellation to the address indicated in our records. The notice will include the reason for cancellation and the effective date of cancellation, which will not be less than ten (10) days from the date we send notice of cancellation to you, unless state law requires other cancellation provisions that may not be varied by agreement.

We may, at our discretion, terminate this Agreement on thirty (30) days notice to you, in which case you will be entitled to receive a pro-rated refund of any unearned support fees that you have paid. Any refund will be determined by MY-IT based on the passage of time and/or the number of support incidents, at MY-IT's discretion.

**6.4 Entire Agreement.** This Agreement, along with the Service Application (including but not limited to any separate service contracts that are incorporated by reference in the Service Application), and any Supplemental Terms and Conditions are the complete Agreement between you and MY-IT regarding SBITS, and replace any prior oral or written communications between you or MY-IT regarding such services. None of MY-IT's employees or agents may orally vary the terms and conditions of this Agreement.

**6.5 Additional Remedies.** This Agreement affords you specific legal rights. You may have additional legal rights that vary from state to state. This Agreement is not a warranty.

**6.6 Independent Contractor.** MY-IT is an independent contractor. Neither you nor MY-IT will consider the other its agent or representative. You will not be responsible for paying benefits or employment taxes for the persons retained by MY-IT to perform SBITS under this Agreement, and those individuals will be considered employees of MY-IT or its subcontractors, rather than your employees.

**6.7 Governing Law and Forum.** THE CONSTRUCTION AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING ANY EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION (WHETHER OF THE STATE OF CALIFORNIA OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF CALIFORNIA SUBJECT TO PARAGRAPH 6.8 (DISPUTE RESOLUTION). ANY LEGAL ACTION UNDERTAKEN UNDER THIS AGREEMENT SHALL BE BROUGHT ONLY IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN SACRAMENTO, CALIFORNIA. THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF ALL STATE AND FEDERAL COURTS IN SACRAMENTO, CALIFORNIA AND HEREBY AGREE THAT ANY SUCH COURT SHALL BE A PROPER FORUM FOR THE DETERMINATION OF ANY DISPUTE HEREUNDER, SUBJECT TO THE DISPUTE RESOLUTION PROVISIONS BELOW.

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**6.8      Dispute Resolution.** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against MY-IT, its agents, employees, successors, assigns, or affiliates (collectively for the purposes of this paragraph, “MY-IT”) arising out of or relating to this Agreement or MY-IT’s advertising (a “Dispute”) through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.

**6.9      Order of Precedence.** If any inconsistencies or conflicts arise between the provisions of this Agreement, any Service Application, Supplemental Terms and Conditions, any other applicable Customer signed agreement, or invoice, the following order of precedence shall apply in order of priority:

- a.        This Agreement
- b.        Supplemental Terms and Conditions
- c.        Service Application
- d.        Any applicable customer signed agreement;
- e.        Invoice

**6.10    Limitation of Actions.** Neither you nor MY-IT will bring a legal action, related to SBITS, more than one year after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

**6.11    Force Majeure.** Neither you nor MY-IT is responsible for failure to fulfill any obligation due to causes beyond its control. If MY-IT’s ability to render SBITS is impaired by circumstances beyond MY-IT’s control, MY-IT may terminate this Agreement, in which event, provided that circumstances resulting in MY-IT’s impaired ability to provide such services did not result from your actions or inaction, you will receive a refund for any unused portion of your service term from which you have paid.

**6.12    Transfer of this Agreement.** You may not assign, or otherwise transfer, this Agreement or your rights under it, or delegate your obligations, without MY-IT’s prior written consent. Any attempt to do so is void. MY-IT may assign this Agreement to qualified third party service providers.

**6.13    Savings Clause.** In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

**6.14    Additional Services.** Supplemental Terms and Conditions for SBITS may be incorporated into this Agreement and a written notice of its incorporation will be sent to you.