



Date \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_  
 Company Contact \_\_\_\_\_

Dear Customer:

Thank you for the opportunity to assist you with your software and technology needs. This letter will confirm the agreement between MB Technologies, LLC (“we” or “MB”) and \_\_\_\_\_ (“you” or “[Company Name]”), and the terms and conditions under which we will provide computer services to you (the “Services”). This agreement is effective when you sign this letter below approving and agreeing to its terms.

**I. The Services**

The Services may include 1) provision and installation of hardware and software, 2) maintenance, 3) troubleshooting, 4) repair, 5) consultation, and 6) any other services that you request and that we agree to perform for you. Generally, the Services do **not** include programming, regularly scheduled backups, hardware or software maintenance, or general data management or managed services, unless we **specifically agree** otherwise. We will not do work that you have not requested or agreed to, and there may also be work that you request that we cannot do. So, the Services will only include work that you request **and** that we agree to perform, in writing or by email.

The Services usually will be performed during our normal business hours, which are from 7 am to 5 pm, Hawaii Standard Time, Monday through Friday, excluding State and Federal Holidays. If you need Services outside of our normal business hours, that work will result in additional fees.

It is your responsibility to secure and to provide us with any and all necessary software licenses, permissions, access to hardware and software, passwords, and any other documents required for the performance of the Services. Furthermore, you authorize MB to perform the Services you request on your computer systems, workstations, servers, infrastructure such as firewalls, routers, switches, and software, and any other systems as needed, and you authorize our access to all of the above as necessary to perform the Services. You will not, under any circumstances, provide us with stolen, pirated, bootlegged, or unlicensed software, or materials that in any other way infringe upon the rights of third parties, for us to use in the performance of the Services. It is your responsibility to have all necessary licenses for the software that you use, and we will rely on your promise in this agreement that you do have such licenses.

## **II. Our Fees**

Our fees for the Services are calculated on an hourly basis and invoiced monthly. Currently, our standard rate is \$100 per hour, billed in fifteen (15) minute increments. Work performed outside of normal business hours is billed at \$150 per hour, billed in fifteen (15) minute increments. We reserve the right to change our rates as necessary, but will notify you in advance if we need to do so. We will add an excise tax of 4.712% to all charges due. Any purchases of hardware or software by MB on your behalf will be included in the next month's billing statement.

Payment is due upon receipt of our invoice. Payments not received within thirty (30) days of receipt of our invoice will be subject to interest at 1% per month (12% per annum), calculated from the date of the invoice. If you have any questions, concerns, or disputes regarding an invoice, please tell us right away. If you do not raise any such concerns within ten (10) business days of your receipt of our invoice, you agree that will mean you do not object to the invoice.

## **III. Term of this Agreement**

This agreement will become effective as of the date you sign this letter agreeing to its terms, or order services from us, and it will continue until either you or we terminate it. Either of us can terminate this agreement by providing thirty (30) days' written notice to the other party. Upon termination of our agreement, we will work with you to provide a smooth transition to a new service provider if you want us to do so, but we are entitled to bill you at our standard hourly rate for our work in helping you in that transition.

## **IV. Confidentiality**

Each party agrees that during the course of MB performing the Services, information that is confidential or proprietary may be disclosed to the other party, including, but not limited to, privileged information, protected health information, trade secrets, financial information, and other business information of a confidential nature ("Confidential Information"). Confidential Information will not include information that the receiving party can demonstrate: (a) is lawfully part of the public domain, (b) was known to the receiving party as of the time of its disclosure, (c) is independently developed by the receiving party, or (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party. Unless provided for in this agreement, neither party will make any disclosure of the Confidential Information to any persons other than its employees who have a good faith need to know in connection with this agreement. Each party will notify its employees of their confidentiality obligations with respect to the Confidential Information and will require its employees to comply with these obligations. The confidentiality obligations of each party and its employees will survive the expiration or termination of this agreement.

## **V. Proprietary Rights**

Any materials provided by you to MB for incorporation, modification, or customization as part of the Services ("Client Materials") will remain your sole and exclusive property. You represent

and warrant that you have the right to provide any Client Materials to us for such purposes, and that doing so will not infringe on the rights of any third parties.

We agree that anything that MB creates for you as part of the Services will belong to you, unless we agree otherwise in advance. You agree that any trade secrets, know-how, methods, and processes related to our products or services will remain our sole and exclusive property, although we grant you a license to use that property as necessary for you to utilize our Services or anything we create for you as part of the Services. You understand that we are in the business of providing computer services to the public, and you agree that we have the right to provide services to others that are the same or similar to the Services we provide to you.

#### **VI. Limited Mutual Warranties and Limitations on Our Liability and Obligations**

You represent and warrant that any request for Services, and any Client Materials you provide to us in order to perform the Services, will not violate any law, legal obligation of MB, or the rights of any third party. You warrant and represent that you have obtained, or will obtain, any software licenses or other required permission for us to perform the Services before you ask us to begin any requested Services.

We represent and warrant that any MB employee, consultant, contractor, agent, or representative assigned to perform the Services is qualified to perform the work. The Services will be performed in a professional and workmanlike manner, in accordance with current industry standards.

You are responsible for establishing and following appropriate security provisions and backup procedures for your computer system, keeping your antivirus software current, and for properly implementing your antivirus software. We are not responsible for the negligence or willful misconduct of you, your employees, or agents. We cannot predict or prevent the honest mistakes or malicious actions of others, and preventing them is not part of our obligations or the Services.

OUR WARRANTIES AND OBLIGATIONS ARE LIMITED TO THOSE EXPRESSED IN THIS AGREEMENT, AND THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED. IN NO EVENT WILL MB BE LIABLE TO YOU FOR ANY LOST PROFITS, LOST SAVINGS OR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, ARISING OUT OF THE SERVICES, THIS AGREEMENT, OR THE BREACH OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, MB'S LIABILITY WILL BE LIMITED SOLELY TO [«Address\_1»] AND WILL NOT IN ANY CASE EXCEED THE AMOUNT PAID BY [«Address\_1»] TO MB IN THE PAST TWELVE (12) MONTHS UNDER THIS AGREEMENT.

#### **VII. Indemnification**

Each party agrees to indemnify, defend, and hold harmless the other party, its directors, officers, employees, and agents, and defend against any action brought against same with respect to any

claim, demand, cause of action, debt or liability, including reasonable attorneys' fees, to the extent that such action is based upon a claim that (a) if true, would constitute a breach of the indemnifying party's representations, warranties, or agreements; or (b) any of the indemnifying party's materials provided under our agreement for the provision of the Services infringes or violates any rights of a third party, including, without limitation, rights of publicity, rights of privacy, patents, copyrights, trademarks, trade secrets and/or licenses.

In claiming any indemnification, the indemnified party will promptly provide the indemnifying party with written notice of any claim that the indemnified party believes falls within the scope of the indemnifying party's indemnification obligation. The indemnified party may, at its own expense, assist in the defense if it so chooses, provided that the indemnifying party will control such defense and all negotiations relative to the settlement of any such claim. Any settlement intended to bind indemnified party will not be final without the indemnified party's prior written consent, which will not be unreasonably withheld.

### **VIII. General Terms**

The provisions of this agreement will be interpreted, construed, and enforced in accordance with the laws of the State of Hawaii.

MB will perform the Services as an independent contractor, which means that it is not, and will not act as, your employee, agent, partner, joint venturer, or representative. MB will be liable for the payment of all income, withholding and other taxes with respect to the compensation to be paid to its employees, agents and subcontractors, if any. MB will at all times represent and disclose that it is an independent contractor, and will not represent to any third party that MB is your employee, agent, or representative.

If there is a dispute arising out of or relating to this agreement that cannot be settled through direct discussions within seven (7) days, the parties agree to first try to settle the matter through mediation under the rules of Dispute Prevention & Resolution, Inc. ("DPR"), before resorting to arbitration. After that, any unresolved disputes will be settled by arbitration in accordance with the rules of DPR then in effect. All mediation and arbitration will be held in Honolulu, Hawaii, and will be conducted by DRP, unless the parties agree otherwise. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.


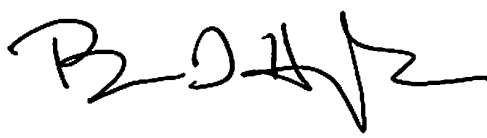
If the performance of any part of this agreement by either party is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, fire, judicial, or governmental action, labor disputes, act of God or any other causes beyond the control of either party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

If any provision of this agreement is determined by a court to be invalid for any reason, the rest of the agreement will remain enforceable. The waiver or failure of either party to exercise any right in any respect will not be a waiver of any further right.

\* \* \*

The signature below by an authorized representative of [\_\_\_\_\_] (Company Name) indicates that [\_\_\_\_\_] (Company Name) approves of and agrees to the terms and conditions of this letter, and that the person signing this letter is authorized to bind [\_\_\_\_\_] (Company Name) to its terms. We look forward to continuing to work with you.

Very truly yours,

Milton A.C. Lee  
Brian D. Hughes

MB Technologies, LLC

**APPROVED AND AGREED:**

[\_\_\_\_\_] (COMPANY NAME)

**BY:** \_\_\_\_\_

**DATE:** \_\_\_\_\_