

Tech Solutions  
You Can Trust



**Fuel Your Business**  
**With The Technology**  
**You Need To Succeed.**

Prospect Heights School District 23 (D23)  
Prepared Exclusively For:

## EMPIST Managed Services Proposal

<b>Client Name:</b>	Prospect Heights School District 23 (D23)	<b>Solution Name:</b>	Managed Services
<b>EMPIST Solution Part #:</b>	EMP-MSP	<b>Date Prepared:</b>	07/11/2024
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### Why EMPIST?

With over 23 years of accomplished technological experience, EMPIST has become a leader in technology solutions. The word EMPIST is derived from the Greek word meaning "trust" and we want you to place your trust in us as your IT **Partner**. We've gained a lot of wisdom and knowledge over the years, thus perfecting our process. When it comes to your company's IT needs, we're here to facilitate affordable, scalable, and customized solutions.

### Our People

Happy Employees = Happy Customers! Company culture is at the heart of everything we do here at EMPIST. We believe that creating a space where employees feel supported and heard shines through in our customer service. Our diverse and talented staff is here to help our clients every step of the way to create a seamless customer experience.

### Our Experience

Our technical knowledge and inherited experience have made us who we are today. With clients in 27 different countries, we've had the pleasure of working with companies of all sizes and all major industries. Over the years, we have seen astronomical success with clientele in Professional Services, Legal, Finance, Manufacturing, and Healthcare. Our next success story could start with you!

### Awards

We let our service do the talking, but it only feels right to mention our credentials. For several years now, EMPIST has been awarded a place in Inc. 5000's Fastest Growing Businesses and Channel Futures' Top 501 list of Managed Service Providers Worldwide.



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## Our Partners

EMPIST prides itself on impeccable customer service and technical support. We've partnered with the best of the best technology partners to improve and maintain every aspect of your business's IT operation.

Our strategic partnerships include: Cisco, Meraki, Microsoft, VMware, Hewlett Packard Enterprise, Veeam, Dell, Barracuda, Datto, Duo Security, Veriato, Netwrix and KnowBe4. Our team maintains high-level certifications with our strategic partners to properly support the technologies for you. For a full list of partnerships, please visit <https://empist.com/our-partners>

## Advantages of our Managed Services

We provide an array of Managed Services, so you can find the ideal solution for your company's technical needs. There are so many outstanding benefits to improve your IT services. The items listed below highlight some of the incredible features Managed Services has to offer.

- Increased operational efficiency
- Improved performance
- Predictable / Budgeted pricing
- Disaster recovery and business continuity
- Maximized system security
- Unlimited remote/onsite support
- Cybersecurity
- Staff & Resource Augmentation
- Less headaches!

## Our Approach

Our process starts by taking a detailed look at your current IT infrastructure to create a strategic roadmap that guides your company towards the future. Managed Services is all about giving you 24/7/365 proactive, preventative, remote and onsite comprehensive care for your technology systems. Our team will be there assisting you with every technology related matter that comes your way. Our solutions are built around ITSM (IT Service Management) practices. We also believe in ongoing technology alignment to better utilize technology to help drive your business forward.

## Team Based Support

There will be many teams involved in properly supporting your company. The team's goal is to provide the highest level of customer experience to you. In order to do this, our Service Delivery Managers and all Support teams will monitor ticket trends, improve documentation, and monitor CSAT (Customer Satisfaction) scores. The Service Delivery teams will regularly collaborate with our Strategic Account Management Team to ensure we are delivering the best quality of services and aligning the technology and solutions with your ongoing needs. We understand your needs will change over time, so our teams can quickly adapt to changes. Even while we employ a team-based approach to balance our support for your organization, you will have a Strategic Account Manager there for you on a daily basis to address any and all issues you may encounter as well as guiding your strategy and technology roadmap development for your organization.

## Technology Systems

We utilize the best-in-class Enterprise ITSM compliant tools for providing secure remote and onsite support, ticket tracking, documentation, configurations, licensing, and reporting. Our commitment is to be an extension of your business and provide the highest level of transparency. To uphold this level of transparency, we can provide you with direct access to the same tools used by the team supporting your business.



## Response and Resolution Times

We understand that there is a high level of dependency on technology and our job is to keep you up and running. Any downtime or issues is problematic for both of us. Having our goals aligned has allowed us to develop our service level commitments ensure the highest level of user satisfaction.

## Customer Satisfaction

Measuring your satisfaction is very important to us. To properly measure, a survey is included in each comment we post and at the completion of any ticket. Measuring with every comment is important so that we can identify if there is a problem long before a ticket is completed. Actionable CSAT intelligence allows us to improve our services for you. Below is an example of what we include in our emails. Green = Great, Blue = Good, Red = Bad.



Traditionally, the industry CSAT average is 79% and we are consistently hitting **92%** across our entire client base.

## Vendor Management

We understand that there may be other IT Vendors responsible for various levels of technology to support your company. To centralize the management of the Vendors, we will act as your Single Point of Contact (SPOC) for all IT Vendors. This will allow us to escalate issues on your behalf without taking up your time and resolves the finger pointing for technology related issues. This also avoids not knowing who to contact to report an issue because all you have to remember is contact EMPIST for all issues. Common IT Vendors includes, but not limited to, Internet Service Provider (ISP), software vendors, cell phone providers and print/copy/scan.

## Procurement

When it comes to evaluating and purchasing technology, we have you covered. Our team works directly with manufacturers when building solutions and we purchase directly from distribution, cutting out the middleman. Although procurement is not required through EMPIST, our customers do realize great benefits and cost savings when we are involved in every stage of implementing new systems or technologies.

## Account Management

As your technology partners, we believe in conducting quarterly business reviews (QBR's) and ongoing technology alignment to review services and advise you on technology. You will have a dedicated Strategic Account Manager that will establish a cadence of meetings and develop an IT Roadmap that aligns with the overall strategic direction of your business.

## Onboarding

Our onboarding process has been refined by successfully onboarding hundreds of customers. We have made it very simple for you to transition to our services. Our onboarding project manager will be there with you every step of the way. We understand you have other responsibilities within your company, so we will manage the entire process for you.

## Frequently Asked Questions

**Q: Is there an onboarding fee for managed services?**

A: No. Onboarding fees when building a long-term relationship isn't right.

**Q: Can I have access to the documentation that you develop for us?**

A: Yes. We will provide you with a login account, so you can access the same documentation we use. You can even contribute to it.

**Q: How long will it take to resolve my problems?**

A: We hate to answer this with "it depends" but we will make every effort to address all problems as swiftly as possible. We understand problems for you are problems for us, so we will do everything possible to prevent problems.

**Q: Do you provide references?**

A: Yes. References are available upon request.

**Q: How do you protect access to our systems from your staff?**

A: We secure all access to your systems using MFA (Multi-Factor Authentication).

**Q: Can you work with my internal IT Team?**

A: Absolutely. We have many successful relationships where we augment the efforts of the internal team and fill gaps, as necessary.

**Q: How long is the term for Managed Services?**

A: We offer flexible 1, 3 and 5-year terms.

**Q: How quickly can you get started?**

A: We can begin providing support on the next business day with the understanding that the support on day 1 will not be the same as day 90. An onboarding manager will work on properly onboarding you over a 4-6-week period.

## Your Results Matter

Your feedback is important to us. It helps establish where we're succeeding and where we need improvement. View some of our customer reviews below to see what our clients have to say about our service.

"Fabulously responsive and knowledgeable service. My needs were addressed swiftly and with great competence." - Craig W

"Excellent service! When given the problem and the timeline, EMPIST got right on the solution and managed it in time for me to leave on my trip." - Michelle W

"From the initial issue to it being fixed EMPIST was great. The engineer followed up consistently to make sure the issue was resolved!" - Rick S

"Great turnaround. Ticket was submitted and response acknowledging ticket was received within a few minutes. Problem resolved!" - Karen D

## Let's Talk Business

There is a lot to be said for how a company conducts business. Here at EMPIST, we want to cultivate business relationships that are a good fit for us and *you*. If our goals do not align with yours, we believe honesty is the best policy. With that, we take great pride in knowing that our IT expertise can provide you with the technical solutions your business needs.

### Solution Overview

As a result of our discussions, EMP IST has prepared this MSP Statement of Work ("MSP SOW") as the solution we feel will best serve your technological needs. Upon execution between Prospect Heights School District 23 (D23) ("Client") and EMP IST, LLC. ("EMP IST"), these services are subject to the terms and conditions entered into between the Parties under the MSP Master Services Agreement ("MSP MSA") or MSP Agreement. Any term not otherwise defined herein shall have the meaning specified in the MSP MSA or MSP Agreement and in the event of any conflict or inconsistency between the terms, this MSP SOW shall govern. Upon execution of this MSP SOW, EMP IST will provide the below listed Services to Client on a recurring monthly basis, quantities of which are subject to change based on utilization.

**EMPIST**  
 116 N York, Suite 210  
 Elmhurst, IL 60126  
 United States  
 T: (312) 360-1900

Quote #	23797
Date	07/11/2024
Expires	08/30/2024
Contact	Brad Hardtke

**Prepared for** Prospect Heights School District 23 (D23)  
 Amy McPartlin  
 700 North Schoenbeck Road  
 Prospect Heights, IL 60070  
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**ACCEPT QUOTE**

## D23 - 3-Year EMPIST Managed Services Proposal with MSA

### Monthly Fees

Category	Item	Qty	Price	Total
Services / Managed Services	<b>Managed Services~Network Support Services and Security Services (Quantities below)</b> This includes: <ul style="list-style-type: none"> <li>Qty 290 for EDR</li> <li>Qty 248 for Security Awareness Training</li> <li>Qty 1 for Dark Web Monitoring</li> </ul>	1	\$8,750.00	\$8,750.00 <sup>†</sup>

<sup>†</sup> Non-taxable item

Please contact us if you have any questions.

<b>Total Monthly</b>	<b>\$8,750.00 USD</b>
One-Time	\$0.00
Recurring Up-front	\$8,750.00*
<b>Total Up-front</b>	<b>\$8,750.00 USD</b>

\* Recurring fees billed monthly with 1 upfront payment(s).

**ACCEPT QUOTE**

### Cost Breakdown

Category	Monthly Fees
Services / Managed Services	\$8,750.00
<b>Total</b>	<b>\$8,750.00 USD</b>

The EMPIST Support+ Solution



Support+ Solution is the ultimate way to achieve your business objectives and operations. You'll be assigned a single point of contact to handle any business technology-related questions and issues. Rest assured as our support reviews your management progress, compiles technology solutions, and adapts them to meet your business needs. View the additional benefits of the Support+ Solution below.

- Minimizes business technology infrastructure downtime
- Responds to Support Requests (SRs) from end users
- Monitors system performance and ensures optimal operation
- Produces budgets and configurations for technology projects and services not covered by the Support+ Services
- Performs regular & scheduled managed services tasks on MSP supported machines

### Support+ Service Desk

Your users will have access to the Service Desk to resolve all technical support requests promptly and efficiently. Users will be able to submit requests using email, phone, chat or through our secure online portal. View the additional benefits of the Support+ Service Desk below.

- Unlimited access to the Service Desk 24/7/365
- 60 minutes or less response time for requests
- Speak with a live engineer and not an automated phone tree
- Documentation will be created for reported issues to improve resolution time for future / similar issues
- Client access portal to submit requests and check status

### Support+ NOC Services

Support+ Network Operations Center (NOC) is here 24/7/365 to proactively monitor all aspects of your network. This includes, but is not limited to servers, networks, wireless connectivity, computers, websites, logs, and security. If a problem is detected, the NOC will attempt to remediate and resolve the issue through a series of escalation procedures. The goal of the NOC is to identify and solve these problems before you even realize them.

### Support+ Server Care

Support+ Server Care will perform all needed actions to ensure your servers are running on all cylinders. Our team will manage and maintain all aspects of your servers and update all relevant software and hardware components with patches and updates. We guarantee that, in the event of server problems, you will not be billed for the labor to restore the server's condition. A complete list of server-supported services can be found at <https://empist.com/managed-services-breakdown>.

### Support+ Desktop Care

Support+ Desktop Care will monitor and manage your user's machines. Our team will work on standardizing the configuration and deployment of the machines to reduce the number of problems due to unneeded /rogue software. All support related to the machine, operating system, software, and locally attached printers are covered with Desktop Care. A complete list of desktop-supported services can be found at <https://empist.com/managed-services-breakdown>.

### Support+ Network Care

Support+ Network Care will perform all needed actions to ensure your networks are operating at full performance. Our team manages and maintains network devices (firewalls, switches, wireless, etc.) and performs the changes required for network optimization. We will also update all relevant software and hardware with recommended manufacturer updates. Lastly, our staff will provide 3rd party escalation and act as your Single Point of Contact (SPOC) for all technology issues. Remote access, VPN connections and Network Printers will also be covered through Network Care. A complete list of network-supported services can be found at <https://empist.com/managed-services-breakdown>.

### Support+ Advanced Security

Support+ Security Suite is there to provide security services to your servers and desktops. We install, configure, and maintain Enterprise Anti-Virus and Web-filtering protection. We will proactively monitor for threats and, if detected, remove malicious software. Most importantly, operating system and 3rd party software patches will also be installed to protect the supported systems.

### Support+ Backup & Disaster Recovery

Support+ Backup & Disaster Recovery (BDR) is there to give you the peace of mind that your data is protected. Let us install, configure, and maintain all operations related to BDR to protect your most valuable business asset - **your data**. Our team will also perform backups, replicate your backups to geographically disperse locations and test the backups to provide you with ultimate protection and, most importantly, peace of mind.

### Support+ Spam & Virus Email Filtering

Support+ Spam & Virus Email Filtering system keeps your email securities updated and rids your inbox of spam. We will check your email for Spam and Viruses before reaching your mailbox to keep the bad stuff away from your network.

### Training as a Service

We will configure training accounts to keep your staff training on the latest productivity apps. More information can be found <https://empist.com/it-services/training-as-a-service-taas/>

### Dark Web Monitoring

The award-winning platform combines human and sophisticated Dark Web intelligence with search capabilities to identify, analyze and proactively monitor for your organizations compromised or stolen employee and customer data.

### Enterprise Security Awareness

We will provide best-in-class, simulated phishing attacks against your users. We will combine the attacks with security awareness training content to train your staff and improve the security posture of your organization.

### Managed MFA

We will provide you with a managed MFA solution that includes a variety of authentication methods to make it easy for every user to securely and quickly login. We will configure push notifications for the users to verify their identify and configure mobile passcodes, SMS, and phone callback options.

### Microsoft 365

We will administrator and manage your Microsoft 365 environment. This includes adds, removes, change and monitoring of services. More information can be found here <https://empist.com/microsoft-365/>

### New Computer Deployments

We install, migrate and setup new computers for supported users. More information can be found here <https://empist.com/it-services/new-computer-setup-services/>

### vCIO Services

We will provide you with helpful IT solutions, including the development of a strategic technology roadmap, the analysis & maintenance of your IT infrastructure, vendor management, and much more. More information can be found here <https://empist.com/it-services/virtual-cio-vcio/>

## Reporting

We believe in full transparency and as a part of the Managed Services package, we present you with a full monthly report. These reports can include items such as tickets, system health updates and other valuable KPI's. Monthly reports are created by default to be sent monthly or per your request if requiring reports more frequently.

## Additional Services

We know one size does not fit all so we have built an extensive portfolio of services to cover all technology needs. Below is a list of additional services provided by EMPIST.

- Compliance Auditing
- Vulnerability Scanning
- Office365 Implementation and Support
- Office365 Licensing
- Managed Detection & Response (MDR)
- Business Process Improvement (BPI)
- Cloud Services
- Professional Services / IT Consulting
- Website Development
- Application Development
- Digital Marketing
- Email Archiving
- Datacenter Colocation
- Hosted VoIP / Unified Communications

## Service Levels

To ensure problems & issues with covered machines do not impact business operation, MSP will provide the following service levels:

- The EMPIST Support Center has a target objective to answer new calls 24x7x365
- 60-minute response to service desk requests.
- 4-hour onsite response for servers or core network hardware that is not operational and creates total network downtime.
- Next business day response when users cannot work due to machine problems that cannot be resolved remotely. The number of hot spare machines that are in place at Client site will determine the number of end users back to work on the hot spare(s) within 15 minutes of identifying a problem that cannot be resolved remotely.
- Scheduled responses to non-critical problems, as needed.
- MSP will update each machine with suggested manufacturer updates within 5 days of release and after testing reveals no issues with the updates. If there is an issue and MSP cannot execute system updates, Client will be informed within the same time frame.
- Server(s) maintenance will be applied after 2AM M-F or on weekends, local time zone, unless a mutually agreed upon time is determined. Server(s) may still be available after 2AM and before 7AM but during that time, we will perform server maintenance.
- Desktop(s) maintenance will be performed between 11PM and 7AM local time zone unless a mutually agreed upon time is determined.
- Each user call and MSP task executed will be audited. MSP will review the results of the MSP services delivered. If the stated service levels are not met in any given prior quarter reviewed, Client will receive 1 hour of onsite user training, or a 2% reduction in fees for the next month of service delivered.

- MSP will provide Client with a 2-week notice of any non-emergent, scheduled maintenance which will temporarily restrict or degrade Client's access to supplied services. Such notice to Client will be given either via e-mail or posted on MSP's status website <http://status.empist.com>

Response and Resolution Time Objectives

Priority Level	Acknowledgement – Initial Contact	Diagnosis	Escalation	Target Resolution
Critical	10 minutes from event	30 minutes	45 minutes	120 minutes
Major	30 minutes from event	45 minutes	60 minutes	240 minutes
Standard	60 minutes from event	60 minutes	120 minutes	480 minutes
Minor	120 minutes from event	60 minutes	160 minutes	960 minutes

Priority Definitions

**Critical** – Complete system failure or critical business function failure, or >50% of users affected. Production application down or major malfunction resulting in a product inoperative condition. Users unable to reasonably perform their normal functions.

**Major**– No system failure but system degradation where users are unable to access or execute critical system functions, or 25%-50% users affected. Critical loss of application functionality or performance resulting in high number of users unable to perform their normal job functions. Major feature/product failure; inconvenient workaround or no workaround exists. System access is severely limited.

**Standard** - Moderate loss of application functionality or performance resulting in multiple users impacted in their normal functions. Minor feature/product failure, convenient workaround exists/minor performance degradation/not impacting production. Applications not performing properly, but users can perform basic job

**Minor** - Minor loss of functionality, feature requests, how-to questions.

Hours of Coverage

- Services are available 24/7/365. Support is provided 24/7/365 and alarms and alerts are responded to in the order they are received and based on severity.
- MSP management agent and other basic management tools must be setup on Client's server(s) and user machines. This provides MSP the ability to monitor and manage Client's technology infrastructure. MSP has included setup of management tools.

General Conditions

- Any Client owned, leased, or licensed hardware and/or software product that MSP determines to be unreliable and problematic may need to be replaced if it will continue to be supported by the MSP. MSP will review unreliable and

- problematic machines as needed, or during regular review meetings.
- All-In-User Pricing excludes any licensing. Included services are at a 1:1 ratio. Any additional quantities above the user count will be added as additional line items on the invoice
  - MSP will provide Client with a training session for up to 2 hours during of on-boarding process, upon Client approval. Client users will be introduced to the MSP Support Services.
  - MSP reserves the right to bill for labor incurred during a server recovery if circumstances surrounding Client's server failure meet the following conditions in whole or in part:
    1. Environmental failure events that render hardware unusable.
    2. Force Majeure events beyond MSP's reasonable control, including but not limited to Acts of God, government regulation, labor strikes, riot, material change in applicable law or regulation, decree of any court, natural disaster, war, and national emergency.
    3. Any act or omission on the part of any third party other than MSP.

## Execution of Agreement

This MSP Statement of Work may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument.

**Representations and Warranties.** Each Party represents and warrants to the other Party that (1) the Party has full authority to enter into this Agreement and perform its obligations hereunder, (2) the Party's performance of its obligations shall not constitute a breach or violation of any other Agreement or legal obligations to which a Party is bound; and (3) each Party shall perform its obligations in full compliance with all applicable laws, regulations, ordinances, or licenses.

## MSP MASTER SERVICES AGREEMENT

This MSP Master Services Agreement ("Service Agreement") entered into on 07/11/2024 is between EMPIST, LLC, an Illinois Corporation ("EMPIST, "we", "us", "our") having its principal place of business at 55 W. Monroe Street | Suite 400 | Chicago, Illinois, and Prospect Heights School District 23 (D23) , ("Client, "your, yours") having its principal place of business at 700 North Schoenbeck Road Prospect Heights IL 60070 (collectively "Parties"). EMPIST is in the business of providing technology services ("Services"). Client wants EMPIST to provide Services to Client, and the Parties wish to establish the terms under which EMPIST provides those Services.

**Services.** EMPIST shall perform those services specified in any MSP Statements of Work signed by the Client and EMPIST that reference this Agreement and that the Client and EMPIST enter into during the term of this Agreement (each such statement of work, "MSP SOW"; any such services, "Services"). EMPIST shall perform any Services in accordance with this Agreement and the MSP SOW for those Services. If this Agreement and any SOW are inconsistent, this Agreement will control. The timeframe for performing any Services will be as stated in the SOW for those Services.

**Change Orders.** It is a condition to any change in Service that EMPIST and the Client sign a written change order ("Change Order") stating the change and its effect on those Services.

### 1. Definitions.

"Haas", when used herein, shall mean Hardware as a Service

"BDR", when used herein, shall mean Backup and Disaster Recovery

"Fair Market Value", when used herein, shall mean the appraised value for a particular asset

"Managed Services", when used herein, shall mean monthly recurring services provided to Client

"Rate", when used herein, shall mean the fixed per unit price charged for a particular good or service from time to time.

"Business Day", when used herein, shall mean Monday thru Friday excepting only federally recognized holidays.

### 2. Fees & Payment

#### 2.1 Fees, Rate, Change in Quantity and/or Services

2.1.1 Except as described below in regard to MSP SOW, Client shall be obligated to pay all fees specified in all Order Forms, SOWs and Change Orders executed under this Agreement, including sales tax and any other taxes or governmental fees associated with the Services. If Client qualifies for a tax exemption, Client must provide EMPIST with a valid certificate of exemption or other appropriate proof of exemption. Upon execution, Client agrees to make an initial payment equal to one (1) month of MSP Services to be delivered as agreed to under that agreement. The initial payment will be applied to month 13 MSP invoice or to the final invoice of a completed term, whichever is earliest. Payments are to be made via ACH collections on the first of each month. Billing shall commence at the earlier of either instance: (1) services are turned up, or (2) six weeks following the start of this Agreement, provided there are no significant delays attributable to EMPIST.

2.1.2 EMPIST reserves the right to increase its Rate for any Service and will provide Client with no less than thirty (30) days prior written notice thereof. EMPIST guarantees that a Rate increase will not occur during the initial term of three (3) years. Any increased Rate shall remain in effect and is not subject to additional increase for another twelve (12) months from the date of the Rate change.

2.1.3 EMPIST reserves the right to review and audit on a monthly basis any changes to quantities or Services that Client is subscribed to and/or is the beneficiary of. This audit may be a review of the prior 12 months at a maximum. Client will be made aware of these findings and an invoice or credit will be issued the next billing cycle. Change in quantities and/or types of Services may change at any time based on Client usage.

2.1.4 If Client is subscribed to All-In-User Pricing, all included services are a 1:1 ratio. Any overages will be billed as a separate line item.

**2.2 Overdue Payments.** Client's failure to timely pay any fees and expenses that are not the subject of a good faith dispute (as referenced in 2.3 Dispute Invoices) shall constitute a material breach of the Agreement. EMPIST may assess a late fee for past due invoices. If any amounts for which Client is responsible are overdue, then EMPIST may provide Client with written notice of the same (a "Late Notice"). If Client fails to pay all overdue amounts within 10 business days after Client's receipt of the Late Notice, then EMPIST may, in addition to any of its other rights or remedies, EMPIST reserves the right, but not the obligation, to suspend part or all of the Services without prior notice to you in the event that any portion of undisputed fees are not timely paid. Monthly or recurring charges (if applicable) will continue to accrue during any period of suspension.

If Client fails to pay all overdue amounts within 30 after Client's receipt of the Late Notice, then EMPIST may terminate the Agreement, including all outstanding Order Forms and SOWs and shall be entitled to recover from Client (i) interest on all overdue amounts at the maximum rate permitted by law ("Interest"); and (ii) all fees and costs (including reasonable attorney's fees, court costs and collection agency fees) incurred in seeking collection of such overdue amounts ("Collection Costs").

**2.3 Dispute Invoices.** In the event Client shall have any dispute with any invoice from EMPIST, Client shall provide written notice to EMPIST of the nature and extent of such dispute ("Dispute Notice") within no more than five (5) days of Client's receipt of such invoice. In the event Client fails to provide Dispute Notice within said five (5) day period, all charges set forth under said invoice shall be conclusively deemed acceptable to and approved by Client. In the event Client shall provide a Dispute Notice, Client agrees to pay to EMPIST the full amount disputed unless EMPIST expressly agrees to defer such payment for any period of time, in EMPIST's sole and absolute discretion.

### 3. Term and Termination

**3.1 Terms for all Services and Termination Rights at the end of a Term.** shall commence upon execution of MSP SOW by Client and EMPIST and will extend for a period of three (3) years with regard to all Services, HaaS and BDR services included, and will automatically renew for successive one (1) year periods thereafter, unless either Party gives the other Party written notice within the Notice Period of its intent that the term expire at the end of the then current term. The Notice Period for both Parties shall be no less than sixty (60) days prior to the expiration of the then current term.

**3.2 Termination Rights and Obligations of Parties.** Upon a termination date for any reason, all Client's data will be deleted and non-recoverable and all EMPIST owned property shall be returned to EMPIST HQ at Client's expense.

**3.2.1 End of term without early termination** - if either Party terminates with proper notice as indicated in 3.1, EMPIST will provide Client with all of their data specific to that agreement/service and begin a turndown of Services after Client has paid all outstanding invoices and other monetary obligations and has executed a Termination of Services form.

**3.2.2 EMPIST Termination for Non-Payment by Client-** In addition to any other rights under this Agreement, EMPIST shall have the right to terminate this Agreement upon notice to Client in the event Client fails to pay any invoice for any Services when due to EMPIST. In the event of such termination by EMPIST, all amounts which would have been due and payable by Client for all Services thru the expiration of the term at a monthly rate of the contracted amount, or at the time of termination, whichever is greater, and shall be immediately due and payable by Client upon invoice from EMPIST. EMPIST will provide Client with a final termination date at which time all Services will be turned off and all data will be deleted and non-recoverable. Client may request in writing an extension on that date which EMPIST will review and quote an amount for the extension.

**3.2.3 Termination due to Default** - In the event either Party shall default on any term or provision of this Agreement, as stated in Section 14 below, and fail to cure such default within the applicable notice and cure period set forth in the Section 14, the other Party may terminate this Agreement upon written notice to the other Party ("Termination Notice"), in which event the Agreement shall terminate effective on the thirtieth (30th) day after the Termination Notice. Termination for breach will not alter or affect the terminating party's right to exercise any

other remedies for breach available under this Agreement. Upon termination all data will be deleted and non-recoverable.

**3.2.4 Termination of Services by Client not due to EMPiST default** – If Client's staff, personnel, contractors, or representatives engages in any unacceptable act or behavior that renders it impracticable, imprudent, or unreasonable for EMPiST to provide the Services, then in addition to EMPiST's other rights under this Agreement, EMPiST will have the right upon providing you with ten (10) days prior written notice, to terminate this Agreement or the applicable Quote For Cause and Client shall pay EMPiST all amounts which would have been due and payable by Client for any and all subscribed Services thru the expiration of the initial three (3) year period, or currently renewal term, upon receipt of an invoice from EMPiST.

**3.3 Payments due upon Termination** - In the event of any termination EMPiST will provide Client with all of their data under that agreement as requested, provided Client has paid all invoices and any other monetary obligations accruing to EMPiST in full, including any invoices in a situation where Client is obligated to pay for Services until the end of the term at a monthly rate at the contracted amount, or the monthly rate at the time of termination, whichever is greater. In the event of termination by Client for any reason, except when EMPiST has failed to cure a breach as stated in Section 3.2.3, Client shall pay EMPiST all amounts which would have been due for each Service thru the expiration of their respective current term as outlined in subsections below, at a monthly rate of the contracted amount, or the rate at the time of termination, whichever is greater. Payment of all open invoices and execution of a Termination of Services Form will be required for EMPiST to begin any turn-down of Services.

**3.3.1 Termination by EMPiST for Client default** will result in Client paying all invoices which includes all Services until the end of the current term.

**3.3.2 Termination by Client for EMPiST default** will result in Client paying all invoices for services up to and including the date of termination.

**3.3.3** In any instance, Client must return to EMPiST HQ any property owned by EMPiST.

**3.4 Return of Confidential Information and Proper Turn-down of Services**– Upon termination, each Party shall return or destroy, after giving the other Party proper notice, all the other Party's Confidential Information in its possession. Both Parties will cooperate in transferring to the other all equipment or other tangible property owned by the other Party that is in their possession. In the event either Client or EMPiST terminates an Agreement for any reason, EMPiST will provide Client with all of their data specific to that agreement, provided Client has paid all invoices and any other monetary obligations accruing to EMPiST in full and have executed a Termination of Services Form. For the purposes of clarity, it is understood and agreed that the retrieval and provision of passwords, log files, administrative server information, or conversion of data are transition services, and are subject to the preceding requirements. Client also understands and agrees that any software configurations created by EMPiST are our proprietary information and shall not be disclosed under any circumstances. Unless otherwise expressly stated, we will have no obligation to store or maintain any Client data in our possession or control following the termination of this Agreement or the applicable Services.

**4. Confidentiality.** In connection with the Services performed under this and any agreement each Party may have access to the other Party's Confidential Information. "Confidential Information" means (i) non-public information that the disclosing Party designates as being confidential or which under the circumstances surrounding disclosure or the nature of the information the receiving Party should reasonably understand to be the disclosing Party's Confidential Information, and/or (ii) non-public information received by the disclosing Party from third parties that the disclosing Party is obligated to treat as the third party's Confidential Information, provided the disclosing Party shall disclose to the receiving Party the confidential nature of such third party information. "Confidential Information" shall not include any information that: (i) is already known to the receiving party or its affiliates to be free of any obligation to keep it confidential; (ii) is or becomes publicly known through no wrongful act of the receiving Party or its affiliates; (iii) is received by the receiving Party from a third party without any restriction on confidentiality; (iv) is independently developed by the receiving party or its affiliates; (v) is disclosed to third parties by the disclosing Party without any obligation of confidentiality; (vi) is approved for release by prior written authorization of the disclosing Party; or (vii) is required to be disclosed pursuant to a lawful subpoena or other compulsory disclosure demand issued by a court or government agency having proper jurisdiction to do so; provided that in the event a receiving Party is served with a subpoena or other compulsory disclosure demand that would require the receiving Party to disclose any of the disclosing Party's Confidential Information, the receiving Party shall promptly provide the disclosing Party with a copy of such subpoena or disclosure demand and shall cooperate with the disclosing Party on reasonable terms and conditions in any effort by the disclosing Party to quash the subpoena or demand or secure an appropriate protective order.

The Parties agree to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other Party's Confidential Information by preventing any unauthorized copying, use, distribution, installation or transfer of possession of such information. Each Party agrees to maintain at least the same procedures regarding the other Party's Confidential Information that it maintains with respect to its own Confidential Information, but in no event less than a reasonable standard of care to ensure that the Confidential Information shall not be disclosed or disseminated in contravention of this Agreement. Without limiting the generality of the foregoing, neither Party shall permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any Confidential Information provided by the disclosing Party and the receiving Party shall not permit its personnel to reproduce or copy any Confidential Information except as expressly authorized hereunder. A Party's Confidential Information may only be used by the other Party in order to fulfil its obligations under this Agreement.

Each Party acknowledges that the other may, as a result of its receipt of or exposure to the other Party's Confidential Information, increase or enhance the knowledge and experience retained in the unaided memories of its directors, employees, agents or contractors. Notwithstanding

anything to the contrary in this Agreement, each Party and its directors, employees, agents or contractors may use and disclose such knowledge and experience in such Party's business, so long as such use or disclosure does not involve specific Confidential Information received from the other Party. The disclosing Party will not have rights in such knowledge and experience acquired by the receiving Party, or rights in any business endeavours of the receiving Party which may use such knowledge and experience, or rights to compensation related to the recipient party's use of such knowledge and experience.

All information relating to EMPIST that is known to be Confidential Information or proprietary Information, or which is clearly marked as such, will be held in confidence by Client and will not be disclosed or used by Client except to the extent that such disclosure or use is reasonably necessary to the performance of Client's duties and obligations under this Agreement. These obligations of confidentiality will extend for a period of twelve (12) months after the termination of this Agreement.

**5. Non-Solicitation of Employees.** Client agrees not to solicit, hire, employ, retain, or contract with any employee of EMPIST without first receiving EMPIST's written consent. Furthermore, Client agrees not to entice or induce any employee of the EMPIST to terminate or not renew his or her employment or relationship with the EMPIST. If any employee terminates his or her employment with EMPIST for any reason and is employed by Client (or any affiliate or subsidiary of Client) in any capacity either during or within a six (6) month period, or if any employee terminates his or her employment with EMPIST due to Client's breach of the covenants set forth herein, (either event referred to as an "Employment Violation") Client shall immediately pay EMPIST an amount equal to 50% of the yearly salary or wage paid by EMPIST to such employee at the end of employee's employment with EMPIST ("Employment Violation Penalty"). Client agrees and acknowledges that EMPIST will suffer damages in the event any Employment Violation and, although the amount of such damages is difficult or impossible to determine, the Parties agree that the Employment Violation Penalty set forth under this Section is a reasonable estimate of EMPIST's loss in the event of an Employment Violation. Thus, EMPIST shall accept the Employment Violation Penalty set forth under this Section as liquidated damages but not as a penalty. Such liquidated damages shall constitute EMPIST's sole and exclusive remedy for an Employment Violation.

## **6. CHOICE OF LAW, VENUE & DISPUTE RESOLUTION**

THE VALIDITY, CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT OF THIS AGREEMENT, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO, SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES, EXCEPT TO THE EXTENT THAT ANY REMEDIES HEREUNDER ARE GOVERNED EXCLUSIVELY BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF ILLINOIS, THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS. CLIENT WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE IN ANY COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION. EACH PARTY HERETO WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LAWSUIT BROUGHT BY THE OTHER PARTY FOR ANY ACTION OR CLAIM UNDER THIS AGREEMENT OR OTHERWISE RELATED TO THE SERVICES PROVIDED BY EITHER PARTY TO THE OTHER PARTY.

Except for legal actions concerning the payment of charges incurred by Client and for any actions concerning a temporary restraining order, a preliminary injunction, or other equitable relief to preserve the status quo or prevent irreparable harm, any controversy or claim arising out of or relating to this Agreement or to its breach shall be settled by arbitration by a single arbitrator in accordance with Commercial Arbitration Rules of the American Arbitration Association, pursuant to an arbitration held in Illinois, and judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The decision of the arbitrator shall be in writing and counterpart copies shall be delivered to the parties to this Agreement, which decision shall be rendered not later than thirty (30) days after the arbitration hearing has been completed. Notwithstanding anything to the contrary contained herein, the arbitrator shall have no power to change any of the provisions of this Agreement in any respect, nor shall he have the power of reformation, and the jurisdiction of the arbitrator is expressly limited accordingly. Neither party shall interrupt the progress of its performance under this Agreement pending the determination in the arbitration proceeding. Each party shall equally bear the expenses and fees of the arbitrator, and each party shall bear the expenses of its own counsel, experts, and the preparation of proof. If the parties cannot agree on arbitration services to use, then parties agree that EMPIST shall have the right to designate a reputable arbitration company to act as arbitrator, such as the American Arbitration Association. A judgment may be entered on the award of the arbitration and may be enforced, provided said award shall be rendered and enforced in accordance with the laws of the state of Illinois. The prevailing Party shall be entitled to receive from the other party its attorney's fees and costs incurred in connection with any action, proceeding or arbitration hereunder.

## **7. Independent Contractor/Contractors/Third Party Providers/Services**

**7.1** EMPIST is an independent contractor. Neither EMPIST nor Client are, nor shall be deemed for any purpose to be, employees or agents of the other and neither Party shall have the power or authority to bind the other Party to any contract or obligation unless expressly authorized in writing. This Agreement shall not be construed as a partnership or joint venture.

**7.1.1 Contractors.** Should we elect to use contractors to provide onsite services to you (such as the installation of equipment or the installation of software on local devices), we will guarantee that work as if we performed that work ourselves. For the purposes of clarity, you understand and agree that Third Party Services are resold to you and, therefore, are not contracted or subcontracted services; and Third Party Providers are not our contractors or subcontractors.

**7.1.2 Data & Service Access.** Some of the Services may be provided by persons outside of the United States and/or your data may occasionally be



accessed, viewed, or stored on secure servers located outside of the United States. You agree to notify us if your company requires us to modify these standard service provisions, in which case additional (and potentially significant) costs will apply.

**7.1.3 "Per Seat" Licensing Fees.** The Services may require us to purchase certain "per seat" licenses from Third Party Providers (such as, for example, Microsoft which sells per seat licenses under its "New Commerce Experience" licensing model). Unless otherwise expressly stated in a Quote, per seat licenses cannot be canceled once they are purchased and cannot be transferred to any other customer. If we purchase per seat licenses for you, then those licenses will require a definite term—such as a one (1) or three (3) year term—which may be paid annually or monthly but, in all cases, must be paid in full by you; please see your Quote for details. For that reason, you understand and agree that regardless of the reason for termination of the Services, you are required to pay for all applicable per seat licenses in full for the entire term of those licenses. Provided that you have paid for those licenses in full, you will be permitted to use the licenses until they expire, even if you move to a different managed service provider.

**7.2** Some services may be provided to you directly by our personnel, such as situations in which our personnel install software agents on managed devices or physically install equipment at your premises. These services are distinguishable from services that are provided to you or us by third party providers, who are often referred to in the industry as "upstream providers." (In this Agreement, we refer to upstream providers as "Third Party Providers" and the services that are provided by Third Party Providers are referred to as "Third Party Services"). By way of example, Third Party Services may include help desk services, malware detection and remediation services, firewall and endpoint security-related services, backup and disaster recovery solutions, and the provision of software used to monitor the managed part of your network, among others.

**7.2.1 Selection.** As your managed information technology provider, we will select the Third Party Providers that provide services appropriate for your managed information technology environment (the "Environment") and facilitate the provision of Third Party Services to you. Not all Third Party Services will be expressly identified as being provided by a Third Party Provider, and we reserve the right to change Third Party Providers in our sole discretion as long as the change does not materially diminish the Services that we are obligated to provide to you under a Quote.

**7.2.2 Reseller.** We are resellers and/or facilitators of the Third Party Services and do not provide those services to you directly. For this reason, we are not and cannot be responsible for any defect, omission, or failure of any Third Party Service, or any failure of any Third Party Provider to provide its services to you or to us. Third Party Services are provided on an "as is" basis only. If an issue requiring remediation arises with a Third Party Service, then we will endeavor to provide a reasonable workaround or, if available, a "temporary fix" for the situation; however, we do not warrant or guarantee that any particular workaround or fix will be available or achieve any particular result, or that Third Party Services will run in an uninterrupted or error-free manner.

**7.2.3 Price Increases.** We reserve the right to pass through to you any increases in the costs and/or fees charged by Third Party Providers for the Third Party Services ("Pass Through Increases"). Since we do not control Third Party Providers, we cannot predict whether such price increases will occur, however, should they occur, we will endeavor to provide you with as much advance notice as reasonably possible.

**8. Severability.** If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

**9. Force Majeure.** Neither Party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed Party's reasonable control including, but not limited to, Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption loss of an IP address or other disruption to Internet connection.

**10. No Waiver.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. The waiver by any Party of any breach of any covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the Party waiving its rights.

**11. Attorneys' Fees & Costs.** If any litigation or arbitration is necessary to enforce the terms of this Agreement, each Party shall cover their attorneys' fees and costs.

## **12. Limitation of Liability**

**12.1 Hardware/Software Purchases** -- All equipment, machines, hardware, software, peripherals, or accessories purchased through EMPIST ("Third Party Products") are generally nonrefundable once the item is obtained from EMPIST's third party provider or reseller. If Client desires to return a Third-Party Product, then the third-party provider's or reseller's return policies will apply. EMPIST does not guarantee that Third Party Products will be returnable, exchangeable, or that re-stocking fees can or will be avoided, and Client agrees to be responsible for paying all re-stocking or return-related fees charged by the third-party provider or reseller. EMPIST will use reasonable efforts to assign, transfer and facilitate all warranties (if any) and service level commitments (if any) for the Third Party Products, but will have no liability whatsoever for the quality, functionality, or operability of any Third Party Products, and EMPIST will not be held liable as an insurer or guarantor of the performance, uptime or usefulness of any Third Party Products. Client will be responsible for all fees and costs (if any) charged for warranty service. All Third-Party Products are provided "as is" and without any warranty whatsoever as between EMPIST and Client (including but not limited to implied warranties).

**12.2 Liability Limitations** -- This paragraph limits the liabilities arising from the Services and is a bargained-for and material part of the business

relationship with Client. Client acknowledges and agrees that EMPIST would not provide any Services, or enter into any Quote, SOW, or this Agreement, unless EMPIST could rely on the limitations described in this paragraph. In no event will either party be liable for any indirect, special, exemplary, consequential, or punitive damages, such as lost revenue, loss of profits (except for fees due and owing to EMPIST), savings, or other indirect or contingent event-based economic loss arising out of or in connection with the Services, this Agreement, any Quote, any SOW, or for any breach hereof or for any damages caused by any delay in furnishing Services under this Agreement or any Quote, even if a party has been advised of the possibility of such damages; however, reasonable attorneys' fees awarded to a prevailing party (as described below), your indemnification obligations, and any amounts due and payable pursuant to the non-solicitation provision of this Agreement shall not be limited by the foregoing limitation. Except for the foregoing exceptions, a responsible party's ("Responsible Party's") aggregate liability to the other party ("Aggrieved Party") for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Aggrieved Party's actual and direct damages, not to exceed the amount of fees paid by you (excluding hard costs for licenses, hardware, etc.) to EMPIST for the specific Service upon which the applicable claim(s) is/are based during the three (3) month period immediately prior to the date on which the cause of action accrued or \$10,000, whichever is greater. The foregoing limitations shall apply even if the remedies listed in this Agreement fail of their essential purpose; however, the limitations shall not apply to the extent that the Claims are caused by a Responsible Party's willful or intentional misconduct, or gross negligence. Similarly, a Responsible Party's liability obligation shall be reduced to the extent that a Claim is caused by, or the result of, the Aggrieved Party's willful or intentional misconduct, gross negligence, or to the extent that the Aggrieved Party failed to reasonably mitigate (or attempt to mitigate, as applicable) the Claims. Under no circumstances shall EMPIST have any liability for any claims or causes of action arising from or related to Out of Scope Services.

12.3 Waiver of Liability for Admin/Root Access -- Legacy Devices (defined below) may fail from time to time or cause other parts or processes of the Environment to operate improperly or (in some cases) fail. If a Legacy Device must remain in the Environment, or if EMPIST agrees to allow a Legacy Device to operate within the Environment, or if Client declines to promptly replace a Legacy Device when requested to do so, then Client understands and agrees that (i) neither EMPIST nor any Third Party Provider will be responsible for the remediation of issues arising from or related to the existence or use of the Legacy Device in the Environment, and (ii) EMPIST and its Third Party Providers will be held harmless from and against all issues, claims, and causes of action arising from or related to the existence or use of the Legacy Device in the Environment. As used herein, "Legacy Device" means a piece of equipment, device, hardware, or software that is outdated, obsolete, incompatible with industry-standards, and/or no longer supported by its original manufacturer.

**13. Indemnification.** Each party (an "Indemnifying Party") agrees to indemnify, defend, and hold the other party (an "Indemnified Party") harmless from and against any and all losses, damages, costs, expenses or liabilities, including reasonable attorneys' fees, (collectively, "Damages") that arise from, or are related to, the Indemnifying Party's breach of this Agreement. The Indemnified Party will have the right, but not the obligation, to control the intake, defense and disposition of any claim or cause of action for which indemnity may be sought under this section. The Indemnifying Party shall be permitted to have counsel of its choosing participate in the defense of the applicable claim(s); however, (i) such counsel shall be retained at the Indemnifying Party's sole cost, and (ii) the Indemnified Party's counsel shall be the ultimate determiner of the strategy and defense of the claim(s) for which indemnity is provided. No claim for which indemnity is sought by an Indemnified Party will be settled without the Indemnifying Party's prior written consent, which shall not be unreasonably delayed or withheld.

#### **14. Default and Remedies**

##### 14.1 Client Default -

Client shall be in default if Client fails to make timely payments after having been given proper notice by EMPIST. EMPIST may, after providing notice to Client, suspend any and all Services. Client shall be in default if Client attempts to sell, trade, hypothecate or encumber any hardware, software or equipment owned by EMPIST, Client allows access to unauthorized 3<sup>rd</sup> parties, Client does anything to hinder EMPIST from meeting its obligations under this or any Agreement.

##### 14.2 Default by Either Party --

A Party shall be in default of this Agreement if such Party breaches any of its other obligations, representations or warranties under this Agreement or any other agreement between the Parties, and the breaching Party fails to make a substantial step in curing such breach within thirty (30) days of receipt of the non-breaching Party's written notice stating the nature of the breach and the steps to be taken by the breaching Party to cure the breach, except that in the case of a default which cannot with due diligence be cured within said thirty (30) day period, the breaching Party shall have such longer period to cure as reasonably necessary to cure provided the breaching party shall have commenced with cure within said thirty (30) day period and thereafter is prosecuting the curing of such default with due diligence (it being intended if in connection with a default not susceptible to being cured with due diligence within said thirty (30) day period that the time of either Party within which to cure the same shall be extended for such period as may be necessary to complete the same with all due diligence). EMPIST will be found in default if such default is found to be exclusively the result of EMPIST without any contributing factors of Client.

##### 14.3 Remedy --

In the event Client shall be in default under this Agreement, EMPIST may declare immediately due and payable the entire unpaid balance of the payments due for the remainder of the term under the Agreement, including but not limited to all fees for HaaS/BDR Services; EMPIST may file legal action against Client for and receive the total amount due under the Agreement plus, as applicable, the anticipated end of agreement Fair Market Value of the BDR Equipment as determined by EMPIST (for HaaS/BDR Services); and/or Client shall be liable to reimburse EMPIST for all reasonable costs and expenses (including but not limited to attorney's fees and costs) incurred by EMPIST and related to the collection or attempted collection of any fees or charges due to EMPIST for services provided by EMPIST under this Agreement, whether or not legal action was instituted by EMPIST.

Except as otherwise provided, all rights and remedies provided for herein or otherwise existing at law or in equity are cumulative and the exercise of one or more rights or remedies by EMPIST shall not preclude or waive its rights to the exercise of any or all other rights in law or equity.

**14.4 Service Tickets.** Given the vast number of interactions between hardware, software, wireless, and cloud-based solutions, a managed network may occasionally experience disruptions and/or downtime due to, among other things, hardware/software conflicts, communication-related issues, obsolete equipment, and/or user error ("Conflicts"). We cannot and do not guarantee that such Conflicts will not occur, and you understand and agree that the number of service tickets submitted by you is not, by itself, an indication of default by EMPIST.

## 15. Exclusions and Reimbursements

**15.1** Rollouts, setups, deployments, installations or the like, that are net new to the Client's environment, will be budgeted for and invoiced separately.

**15.2** If EMPIST needs to purchase any spare parts, licenses, other equipment, supplies, accessories or software on Client's behalf and for use at Client's site, or in order to deliver the Service to Client, agrees to reimburse EMPIST for all such costs and expenses incurred under this Agreement. No purchases will be made without prior Client approval. Any equipment, supplies, accessories or software for which Client reimburses EMPIST shall be the property of Client.

**15.3** Any hardware or software that is required in order for EMPIST to deliver the Services listed in the Agreement that are not being provided by EMPIST shall be the responsibility of the Client.

**15.4** Any hardware or software obtained by Client prior to the commencement of this Agreement, or after the execution of this Agreement which was not procured and installed by EMPIST will be Client's responsibility.

**15.5** IMPORTANT: EMPIST will make ongoing security recommendations to Client in order to protect its data and environment. These recommendations may include, but are not limited to, implementing a password policy, vulnerability audit recommendations and implementing 2-Factor Authentication. If Client fails to implement any security recommendations made by EMPIST, failure of which results in a data breach, outages, or the like, in Client's environment, any remediation or work performed by EMPIST to resolve any issues related to that failure will be billable at a rate of \$175 per hour per resource and will fall outside the scope of this Agreement. Moreover, Client's failure to implement such recommendations shall relieve EMPIST from all liability and damages, responsibility of which shall fall solely on Client.

**15.6** Incident Response services are not included within the scope of managed services. In the event of a security incident, our expert Incident Response team will work diligently to mitigate risks and threats. These specialized incident response services will be billable rate of \$300/hour and provided to Client as a separate quote for approval. The number of hours required will vary depending on the complexity and magnitude of the incident.

## 16. Implementation

**16.1 Advice;Instructions --** From time to time, we may offer you specific advice and directions related to the Services ("Advice"). For example, our Advice may include increasing server or hard drive capacity, increasing CPU power, replacing obsolete equipment, or requesting that you refrain from engaging in acts that disrupt the Environment or that make the Environment less secure. You are strongly advised to promptly follow our Advice which, depending on the situation, may require you to make additional purchases or investments in the Environment at your sole cost. We are not responsible for any problems or issues (such as downtime or security-related issues) caused by your failure to promptly follow our Advice. If, in our reasonable discretion, your failure to follow our Advice makes part or all of the Services economically or technically unreasonable or impracticable to provide, then we may terminate the applicable Services For Cause (explained below) by providing notice of termination to you or, alternatively, we may adjust the scope of the Quote to exclude any impacted or affected portion of the Environment. Unless specifically and expressly stated in writing by us (such as in a Quote), any services required to remediate issues caused by your failure to follow our Advice, or your unauthorized modification of the Environment, as well as any services required to bring the Environment up to or maintain the Minimum Requirements (defined below), are out-of-scope.

**16.1.1 Co-Management.** In co-managed situations (e.g., where you have designated other vendors or personnel, or "Co-Managed Providers," to provide you with services that overlap or conflict with the Services provided or facilitated by us), we will endeavor to implement the Services in an efficient and effective manner; however, (a) we will not be responsible for the acts or omissions of Co-Managed Providers, or the remediation of any problems, errors, or downtime associated with those acts or omissions, and (b) in the event that a Co-Managed Provider's determination on an issue differs from our position on a Service-related matter, we will yield to the Co-Managed Provider's determination and bring that situation to your attention.

**16.1.2 Prioritization.** All Services will be implemented and/or facilitated (as applicable) on a schedule, and in a prioritized manner, as we determine reasonable and necessary. Exact commencement / start dates may vary or deviate from the dates we state to you depending on the Services being provided and the extent to which prerequisites (if any), such as transition or onboarding activities, must be completed.

**16.2.3 Modifications.** To avoid a delay or negative impact on the Services, we strongly recommend that you refrain from modifying or moving the Environment, or installing software in the Environment, unless we expressly authorize such activity. In all situations (including those in which we are co-managing an Environment with your as described above), we will not be responsible for changes to the Environment that are not authorized by us or any issues or errors that arise from those changes

**16.2 Third Party Support** -- If, in our discretion, a hardware or software issue requires vendor or OEM support, we may contact the vendor or OEM (as applicable) on your behalf and invoice you for all fees and costs involved in that process ("OEM Fees"). If OEM Fees are anticipated in advance, we will endeavor to obtain your permission before incurring such expenses on your behalf unless exigent circumstances require us to act otherwise. We do not warrant or guarantee that the payment of OEM Fees will resolve any particular problem or issue, it being understood that the resolution process can sometimes require the payment of OEM Fees to narrow (or potentially eliminate) potential issues.

**16.3 Authorized Contact(s)** - We will be entitled to rely on any directions or consent provided by your personnel or representatives who you designate to provide such directions or consent ("Authorized Contacts"). If no Authorized Contact is identified in an applicable Quote or if a previously identified Authorized Contact is no longer available to us, then your Authorized Contact will be the person (i) who accepted the Quote, and/or (ii) who is generally designated by you during our relationship to provide us with direction or guidance. We will be entitled to rely upon directions and guidance from your Authorized Contact until we are affirmatively made aware of a change of status of the Authorized Contact. If your change is provided to us in writing (physical document or by email), then the change will be implemented within two (2) business days after the first business day on which we receive your change notice. If your change notice is provided to us in person or by telephone (live calls only), the change will be implemented on the same business day in which the conversation takes place. Do not use a ticketing system or help desk request to notify us about the change of an Authorized Contact; similarly, do not leave a recorded message for us informing us of a change to your Authorized Contact. We reserve the right but not the obligation to delay the Services until we can confirm the Authorized Contact's authority within your organization.

**16.4 Access** - We will be entitled to rely on any directions or consent provided by your personnel or representatives who you designate to provide such directions or consent ("Authorized Contacts"). If no Authorized Contact is identified in an applicable Quote or if a previously identified Authorized Contact is no longer available to us, then your Authorized Contact will be the person (i) who accepted the Quote, and/or (ii) who is generally designated by you during our relationship to provide us with direction or guidance. We will be entitled to rely upon directions and guidance from your Authorized Contact until we are affirmatively made aware of a change of status of the Authorized Contact. If your change is provided to us in writing (physical document or by email), then the change will be implemented within two (2) business days after the first business day on which we receive your change notice. If your change notice is provided to us in person or by telephone (live calls only), the change will be implemented on the same business day in which the conversation takes place. Do not use a ticketing system or help desk request to notify us about the change of an Authorized Contact; similarly, do not leave a recorded message for us informing us of a change to your Authorized Contact. We reserve the right but not the obligation to delay the Services until we can confirm the Authorized Contact's authority within your organization.

**17. Assignment Rights.** Neither this Agreement nor any Quote may be assigned or transferred by a party without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, we may assign our rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale of substantially all of the assets of our business or any other transaction in which ownership of more than fifty percent (50%) of our voting securities are transferred; provided, however, that the assignee expressly assumes our obligations hereunder.

## **18. Miscellaneous.**

**18.1 End User Agreements.** Portions of the Services may require Client to accept the terms of one or more third party end user license agreements, third party customer agreements and/or third party subscription agreements (collectively, "End User Agreements"). If the acceptance of an End User Agreement is required in order for Client to receive any Services, then Client hereby grants EMPIST permission to accept the applicable agreement(s) on Client's behalf. End User Agreements may contain service levels, warranties and/or liability limitations that are different than those contained in this Agreement. Client agrees to be bound by the terms of all applicable End User Agreements. If, while providing the Services, Client or EMPIST are required to comply with an End User Agreement and that agreement is modified or amended, EMPIST reserve the right to modify or amend any applicable service level for continued compliance with the terms of the applicable End User Agreement.

**18.2 BYOD.** Client represents and warrants that EMPIST is authorized to access all devices, peripherals and/or computer processing units, including mobile devices (such as notebook computers, smart phones and tablet computers) that are connected to the Environment (collectively, "Devices"), regardless of whether such Devices are owned, leased or otherwise controlled by Client. Unless otherwise stated in writing by EMPIST, Devices managed will not receive or benefit from the Services while the devices are detached from, or unconnected to, the Environment. Client is strongly advised to refrain from connecting Devices to the Environment where such devices are not previously known to EMPIST and are not expressly covered under a managed service plan ("Unknown Devices"). EMPIST will not be responsible for the diagnosis or remediation of any issues in the Environment caused by the connection or use of Unknown Devices in the Environment, and will not be

obligated to provide the Services to any Unknown Devices.

**18.3 Equipment.** The information on equipment returned to EMPIST at the end of the Services will be deleted; however, EMPIST cannot and do not guarantee that deleted information will be rendered irrecoverable under all circumstances. For that reason, it is strongly recommend that Client permanently deletes any personal, confidential, and/or highly-sensitive information from such equipment before returning that equipment to EMPIST.

**18.4 Compliance.** Services are not intended, and will not be used, to bring Client into full regulatory compliance with any rule, regulation, or requirement that may be applicable to Client's business or operations. Depending on the Services provided, the Services may aid Client's efforts to fulfill regulatory compliance; however, the Services are not (and should not be used as) a compliance solution.

**18.5 Disclosure.** Client warrants and represents that it knows of no law or regulation governing Client's business that would impede or restrict EMPIST's provision of the Services, or that would require EMPIST to register with, or report our provision of the Services (or the results thereof), to any government or regulatory authority. Client agrees to promptly notify EMPIST if Client becomes subject to any of the foregoing which, in EMPIST's discretion, may require a modification to the scope or pricing of the Services. Similarly, if Client is subject to responsibilities under any applicable privacy law (such as HIPAA), then Client agrees to identify any data or information subject to protection under that law prior to providing such information, as applicable, prior to giving EMPIST access to such information.

**18.5 No Fiduciary.** The scope of our relationship with Client is limited to the specific Services provided; no other relationship, fiduciary or otherwise, exists or will exist between the Parties. If, by operation of law, a fiduciary relationship is imposed or presumed for out-of-scope services, Client hereby waives that relationship and any fiduciary obligations thereunder.

**18.6 Virtual Security.** Client understands and agrees that no security solution is one hundred percent effective, and any security paradigm may be circumvented and/or rendered ineffective by certain malware, such as certain ransomware or rootkits that were unknown to the malware prevention industry at the time of infection, and/or which are downloaded or installed into the Environment. EMPIST does not warrant or guarantee that all malware or malicious activity will be capable of being detected, avoided, quarantined or removed, or that any data deleted, corrupted, or encrypted by such malware ("Impacted Data") will be recoverable. The recovery of Impacted Data is out-of-scope. Moreover, EMPIST will not be responsible for activating multifactor authentication in any application in or connected to the Environment. Client is strongly advised to (i) educate its employees to properly identify and react to "phishing" activity (i.e., fraudulent attempts to obtain sensitive information or encourage behavior by disguising oneself as a trustworthy entity or person through email), and (ii) obtain insurance against cyberattacks, data loss, malware-related matters, and privacy-related breaches, as such incidents can occur even under a "best practice" scenario. Unless a malware-related incident is caused by EMPIST intentionally malicious behavior or our gross negligence, we are held harmless from any costs, expenses, or damages arising from or related to such incidents.

**18.7 Physical Security.** Client agrees to implement and maintain reasonable physical security for all managed hardware and related devices in your physical possession or control. Such security measures must include (i) physical barriers, such as door and cabinet locks, designed to prevent unauthorized physical access to protected equipment, (ii) an alarm system to mitigate and/or prevent unauthorized access to the premises at which the protected equipment is located, (iii) fire detection and retardant systems, and (iv) periodic reviews of personnel access rights to ensure that access policies are being enforced, and to help ensure that all access rights are correct and promptly updated.

**18.8 Updates.** Patches and updates to hardware and software ("Updates") are created and distributed by third parties—such as equipment or software manufacturers—and may be supplied to us from time to time for installation into the Environment. If Updates are provided to Client as part of the Services, EMPIST will implement and follow the manufacturers' recommendations for the installation of Updates; however, (i) we do not warrant or guarantee that any Update will perform properly, (ii) we will not be responsible for any downtime or losses arising from or related to the installation, use, or inability to use any Update, (iii) we will not be responsible for the remediation of any device or software that is rendered inoperable or non-functional due to the Update, and (iv) we reserve the right, but not the obligations, to refrain from installing an Update until we have determined, in our reasonable discretion, that the Updates will be compatible with the configuration of the Environment and materially beneficial to the features or functionality of the affected software or hardware.

**19. Usage in Trade.** It is understood and agreed that no usage of trade or other regular practice or method of dealing between the Parties to this Agreement will be used to modify, interpret, or supplement in any manner the terms of this Agreement.

**20. Representations and Warranties.** Each Party represents and warrants to the other Party that (1) the Party has full authority to enter into this Agreement and perform its obligations hereunder, (2) the Party's performance of its obligations shall not constitute a breach or violation of any other Agreement or legal obligations to which a Party is bound; and (3) each Party shall perform its obligations in full compliance with all applicable laws, regulations, ordinances or licenses.

**21. Authorization.** Client acknowledges that the person signing this Agreement on its behalf is authorized to do so and may bind Client to all the covenants, terms and conditions contained herein, and represents and warrants that such person is acting within the scope of his or her authority as an officer, director or duly authorized agent or employee of Client.

**22. Entire Agreement and Modifications.** Each Party acknowledges that it has read this Agreement and further agrees that the Agreement is the complete and exclusive statement of the Parties and superseded and merges all prior proposals, understanding, and agreements, oral or written, between the Parties relating to the subject matter hereof, including without limitation, the terms of any Client request for proposal, quote or estimate. No modification, amendment, supplement to or waiver of this Agreement shall be binding upon the Parties hereto unless

made in writing and duly signed by both Parties.

**23. Notice.** Any notice, including changes to the terms of this Agreement, which a Party is required or may desire to give the other Party shall be in writing and shall be sent by (i) personal delivery; (ii) by certified mail, postage prepaid and return receipt requested, (iii) by overnight courier regularly providing proof of delivery such as Federal Express, (iv) by facsimile transmission or (v) by electronic transmission to the following address:

IF TO EMPIST:	IF TO CLIENT:
EMPIST, LLC	Prospect Heights School District 23 (D23)
116 N YORK, SUITE 210	700 North Schoenbeck Road
ELMHURST, IL 60126	Prospect Heights Illinois 60070
<a href="mailto:athena@empist.com">athena@empist.com</a>	<a href="mailto:amcpartlin@d23.org">amcpartlin@d23.org</a>

Notice shall be effective on the receiving Party (i) upon personal delivery if personally delivered; (ii) three (3) business days after deposit with US Postal service if sent via certified mail; (iii) one (1) business day after deposit with overnight courier; or (iv) upon facsimile transmission if sent by 5PM CST on a Business Day, otherwise on the next Business Day; of (v) upon email transmission if sent by 5PM CST on a Business Day, otherwise on the next Business Day. Either Party shall have the right to designate a different address, facsimile number or email address by notice to the other Party as set forth above.

**23. Execution of Agreement.** This Agreement may be executed in one or more counterparts, each of which shall be considered an original, but all of which together shall constitute one and the same instrument