

New Mexico Dealer Support Services Inc. (NMDSS)

Tapestry Support Services Agreement

1. Term of Agreement

This Agreement ("Agreement") between _____
Herein referred to as "Client", and **New Mexico Dealer Support Services Inc.**, herein referred to as "Service Provider", is effective on _____, 20____ and remains in force for a period of 6 months (the "Initial Term") or 1 year if eligible. The Service Agreement continually renews for a subsequent 6-month or 1 year term, unless either party gives thirty (30) days' written notice of its intent not to renew the Agreement prior to the end of the term.

- A. This Agreement may be terminated by either party upon thirty (30) days' written notice if either party:
 - i. Fails to fulfill any portion of its material obligations under this Agreement and does not cure such failure within thirty (30) days of receiving written notice.
 - ii. Breaches any material term or condition of this Agreement and fails to remedy such breach within thirty (30) days of receipt of such written notice.
 - iii. Terminates or suspends its business operations, except either party may assign this Agreement to its successor or assigns with the written consent of the other party.

- B. Client may terminate this Agreement for its convenience upon thirty (30) days written notice. If Client terminates this Agreement for its convenience prior to the full initial contract term, Client agrees to accept from Service Provider a full prorated credit for services prepaid for less an early termination fee of \$360. If Client terminates this agreement for its convenience after the initial 6-month term, the early termination fee will be \$180.

2. Fees and Payment Schedule

The fee for this contract will be billed for services rendered at \$750.00 for a minimum of 6 months or \$1300.00 for a minimum of 1 year (early termination fee applies). This fee will be paid in a single upfront payment of \$750.00 or \$1300.00 plus GRT, made out to NMDSS.

- A. Service Provider is requiring the initial 6 months or 1 year be prepaid to include calls/services.
- B. A \$50.00 fee will be charged for payments that are returned for insufficient funds.
- C. **Services will be suspended if payment has not been received within 15 days following the due date.** All monies due the Service Provider are due no later than 15 days after the invoice date.

3. Service Provider Responsibilities

A. Locations/Addresses of Buildings Covered:

- 1. _____

- 2. _____

B. Total User Enumeration: All services listed below are engaged on the below list of users. Client is responsible for at least quarterly updates on staff changes if any.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____
- 7. _____
- 8. _____
- 9. _____
- 10. _____

C. Support:

- i. As needed limited technical support along with MVD Tapestry trained phone/user support will be provided during the hours of 8:30am – 5:00pm MST Monday through Friday. Service Provider reserves the right to determine issues that are too extensive for phone remediation.
- ii. Onsite technical support will be the responsibility of the Client. Service Provider may be able to provide onsite support on an as needed basis and will be billed at \$180.00/hour.

4. Client Responsibilities Acceptance of this agreement constitutes compliance, understanding, and agreement with all terms and conditions of this contract and prepayment of the initial 6-month term of the service contract for services due.

5. Agreement Exclusions

Any of the below exclusions will be billed according to our standard hourly rate:

- A. Any onsite or remote support required due to any equipment or of issues resulting from any equipment not meeting MVD Tapestry minimum standards. Service Provider will notify the Client in writing any time the Client’s network, equipment or environment falls outside of Service Provider’s minimum standards.
- B. The cost of parts, equipment, software, software licensing, software renewals and shipping charges of any kind.
- C. The cost of any 3rd Party Vendor or Manufacturer Support or incident fees of any kind.

- D. Failures due to acts or events described in the Force Majeure & Malicious Acts clause set forth below in Paragraph 2 of the General Terms & Conditions Section.
- E. **Projects:** Projects are defined as planned one-time endeavors such as hardware, software and/or solution deployments. All prospective project work will be accompanied by a Proposal from Service Provider to Client prior to performing requested work. Examples of projects can be, but not limited to; server and workstation installations, server reconfigurations structured wiring, equipment relocation, and new software installations, and endeavors that require multiple Service Provider resources and core network upgrades and replacements.

General Terms & Conditions

1. **Typographical Errors** – Service Provider shall not be bound by or held responsible for typographical errors or omissions made by Client.
2. **Force Majeure & Malicious Acts** – This agreement is designed to cover the support needs of the Client during normal operating conditions. Service Provider shall not be liable for delay or default in performance if such delay or default is caused by conditions beyond its reasonable control including, but not limited to acts of God, fire, flood, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections, and/or any other cause beyond the reasonable control of either party.
3. **Loaned/Rented Equipment** – the Client agrees that any equipment owned or leased by and utilized by Service Provider, in the execution of this or any service that is not explicitly purchased by the Client shall remain the property of Service Provider and must be returned if requested. Client further agrees to cease the use of any technology loaned or rented to Client by Service Provider upon termination of this agreement.
4. **Confidentiality** – Neither party shall disclose any proprietary or confidential information obtained from the other unless so directed by a court of law or government authority. The Client agrees not to disclose rate(s), term(s), or any information regarding this Agreement without the prior written consent of Service Provider.
5. **Limitation of Liability** – In no event shall the Service Provider be liable for the loss of any data or for losses resulting from the interruption of service, unless the loss was caused by the negligence of the Service Provider or an intentional act by Service Provider or its employees or agents. Service Provider shall not be held liable for any indirect, special, incidental or consequential damages related to such losses, including but not limited to loss of profits or revenue, loss of use of equipment, lost data, costs of substitute equipment or other costs, unless the loss was caused by the negligence of the Service Provider or an intentional act by Service Provider or its employees or agents.
6. **Equipment Standards** – All equipment residing on or connected to Client’s network must meet Service Provider’s and MVD Tapestry minimum specifications. Service Provider reserves the right to deny coverage on any equipment or of issues resulting from any equipment not meeting Service Provider’s minimum standards. Service Provider will make equipment upgrade or replacement recommendations in writing to Client’s Technical Contact. Service Provider must deem any equipment/services Client may want to add to this Agreement, after the acceptance date, acceptable. If additions are acceptable to Service Provider, an adjustment to the monthly charges for this Agreement will be made.

7. **Authority** – Client’s signatory represents and warrants that he or she has full corporate power and authority to execute this Agreement and to bind their company. Only individuals with title of Chief Executive or Chief Financial Officer or any person designated by either of those two individuals shall have power and authority to bind Client.
8. **Contractor Status** – The relationship of Service Provider to the Client is that of an independent contractor and not that of an agent or employee of the Client. It is expressly understood and agreed by the parties that the Client shall not have, nor exercise, any control or direction over the manner or methods by which Service Provider provides services other than the right to require that the performance of such services be in accordance and consistent with the terms set forth in this agreement.
9. **Warranty** – Service Provider warrants that: (i) the work complies with all applicable laws and regulations; (ii) the work will be performed in a professional and workmanlike manner in accordance with current industry standards by qualified personnel with the necessary skills and qualifications to perform the work; and (iii) the work shall conform to all applicable specifications set forth in the agreement. No other warranties exist, expressed or implied.
10. **Attorney Fees** – If any dispute between the parties related to this Agreement, the enforcement of this Agreement, or the collection of any amounts due under this Agreement arises, then the prevailing party in any litigation arising from the dispute is entitled to recovery of all reasonable attorney fees, costs and expenses incurred, which shall include, but is not limited to reasonable attorneys’ fees, costs, and expenses arising from any administrative, trial, or appellate proceeding.
11. **No Third-Party Beneficiary** – All of the provisions of this Agreement are solely for the benefit of the parties hereto, and no provision contained within this Agreement shall inure to the benefit of any person or entity that is not a party to this Agreement, and no third party shall have any rights hereunder.
12. **Consequential and Incidental Damages** – Service Provider shall not be held liable for any indirect, special, incidental or consequential damages, including but not limited to loss of profits or revenue, loss of use of equipment, loss of data, loss of use of data, costs of substitute equipment or other costs, unless the loss was caused by the negligence of the Service Provider or an intentional act by Service Provider or its employees or agents.
13. **Indemnification** – To the fullest extent permitted by law, Service Provider shall indemnify Client and Client’s officers, directors, partners, employees, and representatives from and against losses, damages, and judgments arising from claims by third parties, including reasonable attorney’s fees and expenses recoverable under applicable law, which arise out of or in connection with: (i) any actual or alleged breach of a warranty or representation made by Service Provider hereunder; (ii) infringement or misappropriation of any patent, copyright, trademark or other intellectual property or proprietary right related to the work provided by Service Provider; (iii) any other claim but only to the extent caused by a negligent act, error, or omission of the Service Provider or any of the Service Provider’s officers, directors, members, partners, agents, employees, or sub-consultants in the performance of services under this Agreement. If claims, losses, damages, and judgments are found to be caused by the joint or concurrent negligence of Client and Service Provider, Service Provider’s liability shall be reduced to the proportion caused by its negligence.
14. **Entire Agreement** – This Agreement is the exclusive statement of the agreement of the parties with respect to its subject matter and supersedes all prior agreements, negotiations, representations, proposals, and awards, written or oral, relating to its subject matter. The Client and Service Provider agree that in the event any term, covenant or condition herein contained is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term,

covenant or condition shall in no way affect any other term, covenant or condition herein contained. Headings, titles and paragraph captions are inserted in the Agreement for convenience, are descriptive only and shall not be deemed to add to or distract from or otherwise modify the meaning of the paragraphs.

15. Jurisdiction – This Agreement shall be governed by and construed in accordance with the laws of the State of New Mexico.

16. Assignment – Service Provider or Client may assign this Agreement to a parent, subsidiary or affiliated entity. Notwithstanding the foregoing, Service Provider or Client shall have the right to assign or otherwise transfer this Agreement in whole or in part incident to any sale, transfer, or other disposition by Service Provider or Client of all or substantially all of the assets of itself upon written notice to Licensor.

Acceptance of Service Agreement

By signing below, parties are indicating that they have read and agreed to the terms of this agreement in its entirety, and that they are authorized to make such decisions for their respective organizations.

Client Name: _____

Signature: _____

Title: _____

Date: _____

Service Provider: **New Mexico Dealer Support Services Inc.**

Signature: _____

Title: _____

Date: _____

Contract Start Date: _____