



**Westcon Services
Master Services Agreement**

This Master Services Agreement (the “Agreement”) entered into as of [____], 20[] is by and between [INSERT RESELLER LEGAL NAME], a [INSERT ENTITY TYPE], with its principal place of business located at [INSERT BUSINESS ADDRESS] (“Reseller” “or “Customer”) and Westcon Group Inc., a Delaware corporation, with a place of business located at 520 White Plains Road, Tarrytown, NY 10591 (“Westcon”).

1.0 General

1.1 Agreement Number

This agreement may be referred to as MSA Agreement #: [INSERT AGREEMENT NUMBER] on related Statements of Work, as defined herein.

1.2 Services/Deliverables

This Agreement establishes a relationship between the parties so that Customer may, at Customer’s option, engage Westcon to provide certain services (“Services”) and deliverables (the “Deliverables”) to Customer or Customer’s direct customers (each, an “End User”) on Customer’s behalf. This Agreement does not require Customer to purchase Services from Westcon. If Customer chooses to select Westcon as a services provider, those Services will be governed by this Agreement and will be described in one or more written Statements of Work (each an “SOW” or “Statement of Work”) that both parties will execute and that will become a part of this Agreement. Nothing in this Agreement or any SOW prohibits or limits in any manner Supplier’s ability to provide goods or services of any kind to any other person.

1.3 Definitions & Defined Terms Applicable to the Services

Throughout this Agreement and subsequent Statements of Work, Westcon refers to certain defined terms in describing the Services to be provided. Those definitions are available at http://www.goldseal.support/pdfs/Definitions_Terms.pdf and shall apply to this Agreement and the SOW. To the extent that Reseller and/or End User has its own set of defined terms related to the Services, Westcon’s Service definitions shall apply.

1.4 Term and Termination

The term of this Agreement (the “Term”) shall commence on the date first written above and shall expire two (2) years thereafter, unless earlier terminated in accordance herewith, provided that the Term shall be deemed extended until the completion of any outstanding Statement(s) of Work, but only for such Statement(s) of Work. Either party shall have the right to terminate this Agreement, or any Statement of Work, in whole or in part, for convenience, upon at least sixty (60) days’ prior written notice to the other party, or in the event of a material breach by the other party, upon written notice specifying such breach and the passage of at least thirty (30) days’ without the breach being cured. In the event of any termination, Westcon shall be paid for Services rendered prior to termination.

2.0 Statements of Work

Services and Deliverables will be as set forth in a written SOW. The SOW may be modified from time to time by Westcon to reflect changes in its service offerings and/or delivery models, which will be posted on Westcon’s website. Westcon will perform the Services in accordance with industry standards. Each SOW will contain pertinent business parameters, including pricing, payment, minimum purchase requirements, term of services, expense reimbursement, if any, a detailed description of the Services to be provided, and to whom the Services will be provided. Those business parameters shall control as to the engagement described

in an SOW. Statements of Work must be signed by the authorized representatives of both Parties. Westcon will not begin performing work described in an SOW unless Westcon has a fully signed SOW.

2.1 Resource Assignment

Resources will be assigned to implement the SOW following Westcon's receipt of a fully executed and completed SOW by the Reseller. Reseller agrees that Westcon may use a channel partner or subcontractor resources to perform the Services.

2.2 Cancellation and Rescheduling

Reseller may cancel or reschedule the SOW, without charge, at any time prior to submitting a purchase order for the Services. If Reseller cancels or substantially reduces the scope of the SOW after it submits a purchase order, then Westcon may charge Reseller, and Reseller hereby agrees to pay Westcon fees for Services already performed plus a fee in an amount not to exceed twenty-five percent (25%) of the total price of the Services set forth in the Pricing section. In addition, Reseller agrees to pay any penalties or rescheduling fees for airline tickets, hotels, or other travel commitments of the Resource(s) resulting from Reseller's cancellation or change after the submission of a purchase order.

2.3 Change Request Management

It may become necessary to amend the SOW for various reasons. In the event either party desires to change the SOW, the following procedures will apply:

- A) The party requesting the change will deliver a Change Request Management document, in the form substantially similar to Attachment A, to the other party. The Change Request Management will describe the nature of the change, the reason for the change, and the effect the change will have on the SOW, which may include changes to the deliverables and the schedule.
- B) A Change Request Management may be initiated by either party for any material changes to the SOW. The designated Resource of the requesting party will review the proposed change with his/her counterpart. The parties will evaluate the Change Request Management and negotiate in good faith the changes to the Services and the additional charges, if any, required to implement the Change Request Management. If both parties agree to implement the Change Request Management, the appropriate authorized representatives of the parties will sign the Change Request Management, indicating the acceptance of the changes by the parties.
- C) Upon execution of the Change Request Management, said Change Request Management will be incorporated into, and made a part of, the SOW. The Reseller will provide a revised purchase order, as required.
- D) Whenever there is a conflict between the terms and conditions set forth in a fully executed Change Request Management and those set forth in this Agreement or in a previous fully executed Change Request Management, the terms and conditions of the most recent fully executed Change Request Management shall prevail for the specific SOW identified in the Change Request Management document.

- 2.4 Customer may terminate specified Service(s) after the commencement of the SOW upon sixty (60) days' written notice to Westcon. If Customer does so, or if Service is terminated by Westcon hereunder as the result of Customer's default, Customer shall pay Westcon a termination charge equal to the sum of: (i) all unpaid amounts for Service actually provided; (ii) 100% of the remaining monthly recurring charges for months 1-12 of the Service Term; (iii) 50% of the remaining monthly recurring charges for month 13 through the end of the Service Term; and (iv) if not recovered by the foregoing, any termination liability payable to third parties resulting from the termination and any out of pocket costs of construction to the extent such construction was undertaken to provide Services hereunder. Customer acknowledges that the charges in this Section are a genuine estimate of Westcon's actual damages and are not a penalty.

- 2.5 Customer shall perform in a timely manner all of its obligations and responsibilities as set forth in this Agreement and in each Statement of Work issued under this Agreement, including providing all information reasonably requested by Supplier.
- 2.6 Each party will act in good faith in the performance of its respective responsibilities under this Agreement and will not unreasonably delay, condition, or withhold the giving of any consent, decision, or approval that is requested or reasonably required by the other party in order to perform its responsibilities under this Agreement.

3.0 Payments and Invoicing

3.1 Payment Terms

If no other payment terms are agreed, Reseller shall pay Westcon in full within thirty (30) days from the date of the invoice. Any amounts payable by Reseller that remain unpaid for thirty-one (31) or more days from the date of invoice shall be subject to a late charge equal to 1.5% of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law if less.

3.2 Taxes and Fees

Reseller is responsible for all taxes and fees arising in any jurisdiction imposed on or incident to the provision, sale or use of Service, including but not limited to value added, consumption, sales, use, gross receipts, withholding, excise, access, bypass, ad valorem, franchise or other taxes, fees, duties or surcharges (including regulatory and 911 surcharges), whether imposed on Westcon or a Westcon affiliate, along with similar charges stated in a statement of work (collectively "Taxes and Fees"). Some Taxes and Fees, and costs of administering the same, are recovered through imposition of a percentage surcharge(s) on the charges for Service. If Reseller is required by law to make any deduction or withholding of withholding Taxes from any payment due hereunder to Westcon, then, notwithstanding anything to the contrary contained in the SOW, the gross amount payable by Reseller shall be increased so that, after any such deduction or withholding for such withholding Taxes, the net amount received by Westcon will not be less than Westcon would have received had no such deduction or withholding been required. Charges for Service are exclusive of Taxes and Fees. Reseller may present Westcon with an exemption certificate eliminating Westcon's liability to pay certain Taxes and Fees; Westcon will give effect thereto prospectively. Reseller shall pay all Taxes and travel and living expenses of the Resource(s), if any, all of which shall be invoiced as separate line items.

3.3 Purchase Orders

Westcon will accept the SOW upon receipt of Reseller's signature on the SOW along with a purchase order from Reseller that includes the fees for the Services and any estimated travel and living expenses of the Resource(s) described in Pricing section of the SOW, if applicable. Westcon's acceptance is subject to receipt of the signed unaltered SOW and purchase order received prior to the expiration date described in the SOW. In the event that Customer submits a purchase order or other written work order to Westcon that contains additional or alternatives terms and conditions or any alteration of legal provisions, such terms shall not be deemed to apply unless they are expressly accepted in writing signed by both Parties and such writing shall be in the form of an amendment to the SOW.. The acceptance of a purchase order by Westcon shall be administrative in nature and shall not be deemed to amend the SOW. Notwithstanding the foregoing, Westcon retains an absolute right to reject a signed copy of the SOW and purchase order provided by Reseller.

3.4 Acceptance

Following completion of the Services, Reseller shall sign a "Completion of Services" or "Service Site Acceptance" form. Failure to provide such Completion of Services/Service Site Acceptance shall not excuse Reseller's obligation to remit payment for the Service performed unless, Reseller indicates rejection thereof

and immediately provides written notification to Westcon, describing why Reseller is rejecting the Project completion. Reseller's failure to provide any written notice of rejection within ten (10) days of Westcon's request for signature on a Completion of Services/Service Site Acceptance form will be deemed an acceptance by Reseller on the eleventh (11th) day and Reseller shall be responsible to pay for the Services. Westcon shall have ten (10) days after the receipt of any written rejection notice from Reseller to correct the error, given it is within Westcon's scope to do so. Such time period to correct the error may be extended by mutual written consent of the parties hereto.

4.0 Representations and Warranties

4.1 End User Agreement

Reseller may not resell or distribute any Services to any End Users unless the End User enters into an agreement with Reseller (the "End User Agreement") that at a minimum:

- A) completely disclaims Westcon's liability for all matters arising out of or related to Services to be provided hereunder to the extent permissible by law and requires the End User to look solely to Reseller with respect to such matters, unless otherwise agreed by writing by Westcon;
- B) requires the End User to agree that all End User use of the Services shall be lawful and to ensure that each End User complies fully with the applicable terms and laws pertaining to the Services;
- C) prohibits the End User from reselling or distributing the Services;
- D) indemnifies, defends and holds Westcon and its supplier(s), and their respective affiliates, officers, directors, employees and suppliers harmless from and against any third-party claims arising out of or relating to the End User's (or its authorized users') use of the Services;
- E) protects Westcon's supplier's proprietary rights in the Services to at least the same degree as the terms and conditions of the SOW; and
- F) makes no representations or warranties on behalf of Westcon.

4.2 Warranty, Service Disclaimer and Indemnity

- A) **By Westcon.** Westcon represents, warrants and covenants that:
 - (i) the Services will be provided in accordance with the requirements set forth in the applicable Statement of Work (the "Performance Warranty"); and
 - (ii) it has the full legal right and corporate power and authority to enter into and perform all its obligations under the SOW.
 - (iii) Westcon's sole and exclusive liability, and Reseller's sole and exclusive remedy, for a failure of a Performance Warranty shall be to re-perform the deficient Services, or, if Westcon in its sole discretion determines re-performance is not feasible, to refund Reseller a pro-rated portion of the fees attributable to the deficient Services or Deliverables.
- B) **By Reseller.** Reseller represents, warrants and covenants that:
 - (i) it has the full legal right and corporate power and authority to enter into and perform all its obligations under the SOW; and
 - (ii) it shall comply with all applicable laws, rules and regulations in the performance of the SOW.
- C) EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION, THE SERVICES AND DELIVERABLES ARE PROVIDED ON AN "AS IS," "WHERE IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO ADVICE OR INFORMATION GIVEN BY WESTCON, ITS AFFILIATES OR ITS CONTRACTORS OR THEIR RESPECTIVE EMPLOYEES SHALL CREATE ANY

WARRANTY. IN ADDITION, RESELLER ACKNOWLEDGES AND AGREES THAT WESTCON'S THIRD PARTY SERVICE PROVIDERS DO NOT MAKE ANY WARRANTIES TO RESELLER UNDER THIS AGREEMENT AND WESTCON DOES NOT MAKE ANY WARRANTIES ON BEHALF OF SUCH SERVICE PROVIDERS.

- D) Reseller confirms that it may request Westcon that install certain software products (collectively, the "Software Product") on Reseller's equipment, which installation shall be in accordance with: (i) the Description of Services of the SOW; and (ii) any applicable Change Management Request.

If the applicable installation of Software Products requested herein utilizes default settings, Reseller shall indicate "Default Settings Apply" on its purchase order under the SOW; on the other hand, if the installation of Software Products does not use any default settings, Reseller shall (a) indicate "Default Settings – N/A" and (b) provide/describe in the project description under the SOW any and all information required/needed to implement the project before Westcon can provide any Technical Services thereto.

Reseller understands and agrees that Westcon does not manufacture the Software Product and is only installing on Reseller's equipment the Software Product procured by Reseller, which installation shall be in accordance with the SOW. If Reseller does not complete, nor provide accurate or correct details on, the project description under the SOW, Westcon shall not be liable for any and all consequences arising from Westcon's installation of the Software Product on Reseller's equipment pursuant to the SOW; in such event, Reseller shall solely be liable for any and all such consequences. Westcon has not examined the Software Product and therefore the Software Product is installed by Westcon "as is" and "with faults". Westcon makes no representations or warranties of any kind concerning (A) the safety, suitability, lack of viruses, inaccuracies, typographical errors, or other harmful components of the Software Product, or (B) any effect and/or impact of Westcon's installation of the Software Product on Reseller's equipment.

If any third-party software or hardware is provided to Reseller in connection with the Services or as part of the Services (whether or not provided by Westcon), that hardware or software is sold subject to an End User License Agreement ("EULA") or other terms of use agreement that is between Reseller (or End Users as applicable) and the third party software publisher or hardware manufacturer (collectively, "OEM") and is not between Reseller (or End Users, as applicable) and Westcon. Westcon is contractually prohibited from modifying an OEM EULA or use agreement in any way. To the extent that a license is required to install and/or use the Software Product on Reseller's equipment, Westcon assumes no responsibility for procuring, or ensuring compliance with, the license to install and/or use the Software Product on Reseller's equipment, which procurement of license and/or compliance therewith shall be Reseller's sole responsibility.

Further, there may be inherent dangers in the installation and/or use of the Software Product on Reseller's equipment, and Reseller shall be solely responsible for determining whether the Software Product is compatible with Reseller's equipment and/or any other software previously installed or to be installed on Reseller's equipment. Reseller shall also be solely responsible for the protection of its equipment and the backup of its data on said equipment, and Westcon will not be liable for any damages Reseller may suffer or incur in connection with Westcon's installation of the Software Product on Reseller's equipment pursuant to the terms of the SOW, or Reseller using, modifying, or distributing the Software Product.

Reseller will indemnify, defend and hold harmless Westcon and its directors, officers, employees, agents, and Resources from and against all claims, losses, liabilities, damages, costs and expenses (including attorneys' fees), judgments or settlement accounts arising out of or in connection with any injury or damage incurred to persons or property arising out of (i) the installation of the Software Product as stated in "Warranty, Service Disclaimer and Indemnity" section of this Agreement, or (ii) performance of the SOW by Westcon.

5.0 Confidentiality

Each party acknowledges that in the course of performing under this Agreement, it (the "Receiving Party") may be exposed to or acquire information that is proprietary or confidential to the other party or its customers (the "Disclosing Party"). The Receiving Party agrees to hold such information in strict confidence and not disclose such information to third parties or use such information for any purposes whatsoever, other than as necessary to perform its obligations under this Agreement, without the express written permission of the Disclosing Party. Without limiting the foregoing, the Receiving Party shall be permitted to disclose Confidential Information to its officers and employees who have a need to know such Confidential Information in order to fulfill its contractual obligations herein and who are informed of and agree to be bound by this Agreement. As used herein, "Confidential Information" shall mean, without limitation: (i) any idea, proposal, plan, information, procedure, technique, formula, technology or method of operation, any written or oral information of a proprietary nature, and any intellectual property owned or licensed by the Disclosing Party or relating to the Disclosing Party's or any of its principals' or affiliates' business, projects, operations, finances, activities or affairs, whether of a technical nature or not (including trade secrets, know-how, processes, and other technical or business information), or any proposed change thereto, (ii) information or materials concerning the Disclosing Party's contacts, customer and business partner lists, prospective contacts, customer and business partner lists, telemarketing lists, vendor lists, personnel information and policies and procedures, and (iii) any other information disclosed by the Disclosing Party and designated as confidential. As between the parties, Confidential Information is and shall remain the sole property of the Disclosing Party. Neither party shall gain any interest or rights in or to the Confidential Information by virtue of its being disclosed to such party for the limited purposes contemplated under this Agreement.

Notwithstanding the obligations set forth hereof, the confidentiality obligations herein shall not extend to information that: (i) is, as of the time of its disclosure, or thereafter becomes, available to the public through a source other than the Receiving Party or another entity having a confidentiality obligation to the Disclosing Party with respect to such information; and (ii) was already rightfully known to the Receiving Party as of the time of its disclosure by the Disclosing Party. In addition, the Receiving Party shall be permitted to disclose Confidential Information hereunder solely to the extent the same is required to be disclosed pursuant to a subpoena, court order, or government authority, whereupon the Receiving Party shall provide prompt written notice to the Disclosing Party prior to such disclosure, so that the Disclosing Party may seek a protective order or other appropriate remedy.

Upon the termination or expiration of this Agreement, or at such earlier time as the Disclosing Party may request, the Receiving Party shall promptly, at the Disclosing Party's option, either return or destroy all (or, if the Disclosing Party so requests, any part) of the Confidential Information in the Receiving Party's possession or control, and all copies thereof.

6.0 Ownership of Work Product

Any intellectual property which may be created by (or on behalf of) Westcon during the performance of a SOW, including, without limitation, (including all patent, copyright, trademark, trade secret and all other intellectual property and proprietary rights) all Deliverables, work products, materials, ideas, know-how and techniques, shall be the property of Westcon, whether produced solely or jointly with others (collectively, the "Work Product"). Westcon retains all rights, title and interest to all such intellectual property under the copyright laws of the United States, Canada or any other jurisdiction or under any federal, state, or foreign laws.

Solely to the extent necessary for the End User to make use of the Services and Deliverables, Westcon hereby grants to the End User, or shall obtain for the benefit of the End User, a limited, royalty free, non-exclusive, non-transferable, non-sublicensable license to use Work Product to the extent it is incorporated in any Deliverable. Any and all artwork, logos, graphics, video, text, data and other materials and information supplied by Reseller or End User to Westcon in connection with the SOW shall remain the sole and exclusive property of Reseller or End User and may be used by Westcon solely as necessary to perform the Services.

Reseller shall be solely responsible for obtaining in writing any and all rights, licenses, permissions, releases, approvals, clearances and credit or attribution information necessary for Westcon to provide, and for the End User to receive, use and benefit from, as applicable, the Services and Deliverables provided by Westcon as contemplated by the terms of the SOW.

7.0 Indemnity

7.1 By Westcon

Westcon agrees to indemnify, defend and hold Reseller, its partners, parents, subsidiaries and affiliates, and their respective successors, assigns, members, principals, officers, directors, employees and agents, harmless from and against any and all claims, lawsuits, investigations or demands (and reasonable costs, liabilities, damages and expenses arising therefrom (including reasonable attorneys' fees), to the extent such claims, lawsuits, investigations or demands arise out of or are in connection with: (i) personal injury or death, or damage to real or tangible property, caused by Westcon's negligence or willful misconduct; or (ii) the actual or alleged infringement of the Work Product or Deliverables of a U.S. patent or copyright, except to the extent of Reseller's usage (other than in accordance with the SOW), modification, or combination, of the Work Product with any other intellectual property.

7.2 By Reseller

Reseller agrees to indemnify, defend and hold Westcon, its partners, parents, subsidiaries and affiliates, and their respective successors, assigns, members, principals, officers, directors, employees and agents, harmless from and against any and all claims, lawsuits, investigations or demands (and reasonable costs, liabilities, damages and expenses arising therefrom (including reasonable attorneys' fees), to the extent such claims, lawsuits, investigations or demands arise out of or are in connection with: (i) personal injury or death, or damage to real or tangible property, caused by Reseller's negligence or willful misconduct; (ii) the actual or alleged infringement of the Work Product or Deliverables of a U.S. patent or copyright to the extent arising out of Reseller's usage (other than in accordance with the SOW), modification, or combination, of the Work Product with any other intellectual property; or (iii) the use of the Services, Deliverables or Work Product.

7.3 Limitation of Liability

IN NO EVENT SHALL WESTCON BE LIABLE TO CUSTOMER, AN END USER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, AND SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER WESTCON HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WESTCON'S AGGREGATE LIABILITY FOR ANY REASON AND ALL CAUSES OF ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, CONTRACT, TORT (INCLUDING NEGLIGENCE) AND STRICT PRODUCT LIABILITY)) SHALL BE LIMITED TO THE FEES PAID OR OWED BY CUSTOMER UNDER THE STATEMENT OF WORK THAT IS THE SUBJECT MATTER OF THE CLAIM IN THE SIX (6) MONTHS PRECEDING THE DATE THE CLAIM ARISES. THE FOREGOING SHALL NOT APPLY WITH RESPECT TO WESTCON'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD. IN NO EVENT SHALL WESTCON'S AFFILIATES, THIRD PARTY SERVICE PROVIDERS OR SUPPLIERS HAVE ANY LIABILITY TO CUSTOMER UNDER THIS AGREEMENT.

FOR ANY FAILURE OF THE SERVICES TO MEET OR EXCEED ANY APPLICABLE SERVICE LEVELS SET FORTH IN A SERVICE LEVEL AGREEMENT INCLUDED AS PART OF A STATEMENT OF WORK AUTHORIZING THE APPLICABLE SERVICES, RESELLERS'S SOLE REMEDY WILL BE AS SET FORTH IN THE STATEMENT OF WORK, WHICH WILL CONSTITUTE RESELLER'S SOLE AND EXCLUSIVE FINANCIAL REMEDY AND WESTCON'S SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY IN RESPECT OF THE FAILURE.

8.0 Penetration Testing

If penetration testing is included in the Services or provided at any time as additional Services. The following terms will apply:

8.1 By Reseller

- A) RESELLER REPRESENTS THAT IS HAS THE LEGAL RIGHT TO SUBJECT THE DESIGNATE SYSTEMS TO PENETRATION TESTING AND THAT IF IT IS NOT THE OWNER OF THE SYSTEMS IT HAS OBTAINED SUCH RIGHT FROM THE LEGAL OWNER OF THE SYSTEM.
- B) RESELLER AND END USER WILL NOT HOLD WESTCON LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGE (INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, USE, DATA OR OTHER ECONOMIC ADVANTAGE) HOWEVER IT ARISES, WHETHER FOR BREACH OR IN TORT, EVEN IF WESTCON HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- C) Reseller has the sole responsibility for adequate protections and backup of data and/or equipment used in connection with the penetration testing and will not make any claim against Westcon for lost data, re-run time, inaccurate output, work delays, or lost profits resulting from penetration testing.
- D) Reseller and End User accept that penetration testing may slow systems and networks. Reseller and End User accept that penetration testing may cause systems to stop functioning until testing ceases and/or systems are reset.
- E) Westcon will not be held responsible for any failure to discover any security or configuration issues on any system.
- F) Reseller or End User, at any time during the tests, may direct Westcon to promptly stop the tests. Ending the penetration testing at the Reseller's request will incur the agreed charges.

8.2 By Westcon

- A) Westcon will perform security penetration testing to attempt to identify security vulnerabilities and/or software configuration errors on one or more systems owned and/or operated by the Reseller.
- B) Westcon may use manual, partially automated and fully automated tools and techniques. Westcon may use "social engineering" techniques.
- C) Westcon will not divulge any information about the End User's systems it received as a result of penetration testing unless directed otherwise by the End User, to the Reseller, or when required to do so by law, judicial body or government agency.

9.0 **Miscellaneous**

9.1 Independent Contractor

Nothing contained in the SOW is intended to give rise to, or gives rise to, a partnership, joint venture, agency, fiduciary, employment, or other relationship between the parties or imposes upon the parties any of the duties or responsibilities of partners, joint venturers or employer-employee, beyond the relationship of independent parties to a commercial contract. Persons furnished by Westcon are not employees or agents of Reseller; such persons shall be solely the employees or agents of Westcon and shall be under the sole and exclusive direction and control of Westcon. Neither Reseller nor Westcon has the power or authority to bind the other to any third person, to incur any debts or liabilities in the name of or on behalf of the other party, or otherwise to act in any way as the representative of the other unless otherwise expressly agreed to in writing signed by both parties. The SOW shall not be interpreted or construed to impose any liability attributable to such a relationship upon either party.

9.2 Force Majeure

Except for Reseller's payment obligations, performance under the SOW is subject to, but not limited to, acts of God, terrorism, war, riot, civil disturbance, embargo, strike, labor disturbance, fire, explosion, weather, natural disaster, flood, utility outages, regulation or governmental acts, any unauthorized access to or

destruction or modification of the Services, shortage or failure of supply of materials or merchandise or, without limiting the foregoing, any event of circumstance which is beyond a party's reasonable control. Upon the occurrence of any such event or circumstance and for the duration of such event or circumstance, the affected party shall not be liable for any loss, delay, or failure to perform arising therefrom.

9.3 Exceptional Government Actions

The parties acknowledge and agree that where a sovereign government in a country where Services are to be performed, either remotely or on-site, introduces capital controls, exchange rate mechanisms or other analogous monetary measures restricting the flow of capital or use of foreign currency, the agreed pricing may become commercially unviable for the Westcon. In the event that such controls are introduced and could not have been reasonably anticipated, the Parties shall use all commercially reasonable endeavors to revise the pricing and/or provide additional discount for the affected sites to restore the pricing assumptions and margin expectations in place prior to the government measures being taken.

9.4 Regulatory and Legal Changes

If changes in applicable law, regulation, rule or order materially affect delivery of the Service, the parties will negotiate appropriate changes to the SOW. If the parties cannot reach agreement within thirty (30) days after Westcon's notice requesting renegotiation:

- A) Westcon may, on a prospective basis after such thirty (30) day period, pass any increased delivery costs on to Reseller; and,
- B) if Westcon does so, Reseller may terminate the affected Service on notice to Westcon delivered within thirty (30) days.

9.5 Compliance with Laws

- A) Each party will comply with all laws, regulations, statutes, ordinances and other similar rules of any governmental authority or entity or regulatory body having jurisdiction over such party related to the performance of the SOW. Data Protection
 - (i) During the Term of this Agreement in connection with any processing of personal data which it receives under a SOW, each Party shall comply with all applicable laws, rules, regulations, regulatory requirements and codes of practice including, but not limited to laws and regulations implementing Directive 95/46/EC (such as the UK Data Protection Act 1998, as amended) any such replacement Directive or regulation applicable in the EU, or similar privacy or data protection laws applicable in the state, country or countries where personal data is collected or held or otherwise processed under this Agreement (collectively, the "Data Protection Laws").
 - (ii) Nothing in this Agreement shall be deemed to prevent any party from taking the steps it reasonably deems necessary to comply with the Data Protection Laws, including requiring signature of each Party on additional terms and conditions related to the Data Protection Laws prior to providing any personal information, and neither Party shall take any action which a reasonable person knowledgeable in the Data Protection Laws should know may cause or otherwise result in a violation of the Data Protection Laws.
 - (iv) Westcon's privacy policy is located at https://www.westconcomstor.com/us/en/privacy-policy/global_privacy_policy.html (the "Privacy Policy") and is hereby incorporated herein by reference. Westcon may use, store or otherwise process and may transfer or disclose any personal data provided by Reseller to any member of the Westcon Group wherever located in the world for the purpose of administration of this Agreement and relationship management on an ongoing basis. Reseller agrees to inform its employees of the same. Reseller will have the obligation to take necessary steps to provide prior notice to the data subject that their information may be used, stored, or otherwise processed by Westcon wherever located in the world. Reseller may use, store

or otherwise process personal data provided by Westcon for relationship management purposes, but shall not pass any personal data to third parties without prior notification to the data subject. In the event that Westcon is managing personal information of Reseller's agents or End Users, this information will be managed in accordance with Westcon's Privacy Policy. In the event Reseller is collecting data of its customers and/or End User, Reseller is responsible to adhere to all applicable data privacy laws including notice and consent provisions.

B) Anti-Bribery and Ethics

Both Parties shall maintain internal controls and procedures sufficient to prevent the giving, offering or receiving of bribes, including monitoring of compliance and detection of violations. Each party shall reasonably assist the other Party, upon the other Party's reasonable request and expense, to comply with obligations related to bribery and corruption as required by law. Neither party shall offer nor accept in the performance of this Agreement, any payment, promise to pay, or authorization of the payment of any money, offer, gift, promise to give, or authorization of the giving of anything of value, directly or indirectly to or from any person or entity with the intention of obtaining or retaining business or securing any improper advantage in the Territory. Notwithstanding the foregoing, and without limitation, the parties shall conduct their respective business operations in accordance with the UK Anti-Bribery Act, the US Foreign Corrupt Practices Act, and all applicable laws and regulations in the Territory regarding the prevention of bribery and corruption. The Reseller shall promptly notify the Westcon of any allegation of fraud, bribery or corrupt practices made against the Reseller in court, arbitration or administrative proceedings, or if any investigation is commenced in respect of such allegations; at any time during the term of this Agreement, where legally permitted to do so.

C) Export Control

Each party represents that neither it nor any of its subsidiaries:

- (i) is an individual or entity ("Person") that is, or is owned or controlled by Persons that are the subject of any applicable sanctions issued, administered or enforced by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the United States Department of State, the United Nations Security Council, the European Union or Her Majesty's Treasury (collectively, "Sanctions"); or,
- (ii) will, directly or indirectly, use any benefit derived from this Agreement to fund any activities or business of or with any Person, including a Reseller, who is subject to Sanctions or in any other manner that would result in a violation of Sanctions by any Person.

Each party certifies its compliance in all material respects with all applicable foreign and domestic laws and regulations, including Sanctions, pertaining to each jurisdiction in which it operates, and to maintain operational procedures to ensure that it does not breach any applicable Sanction or other law or regulation applicable to it. Reseller agrees to comply with all applicable laws and regulations related to export, re-export, and foreign reshipments and will, at its own expense, pay for all export licenses, customs charges, duties and related fees, and take all other actions required to accomplish the legal usage of the Services.

D) Electronic Surveillance & Eavesdropping

Some systems may include features which allow for the interception, overhearing, recording or retransmission of the private communications of a third-party. Westcon may implement these features as a component of the Services; however, Westcon does not provide legal advice regarding their use. The Reseller is responsible for complying with all laws and regulations regarding the use of these features. Westcon recommends the Reseller consult their legal counsel prior to use the features by the End User.

E) Copyright & Rebroadcast

Some systems may include features which allow for the retransmission of copyrighted, or otherwise protected, materials. Westcon may implement these features as a component of the Services; however, Westcon does not provide legal advice regarding their use. The Reseller is responsible for complying with all laws and regulations regarding the use of these features. Westcon recommends the Reseller consult their legal counsel prior to the use the features by the End User.

9.6 Insurance

Each Party shall maintain, at its sole expense, for a period of one year from the completion of the Services, Comprehensive General Liability Insurance including Products Liability/Completed Operations Insurance in the minimum amount of one million dollars (USD \$1,000,000) per occurrence, two million dollars (USD \$2,000,000) annual aggregate.

9.7 Access to Emergency Services

RESELLER WILL DEFEND, INDEMNIFY, AND HOLD HARMLESS WESTCON, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AGENTS, SUBCONTRACTORS, AND ASSIGNS, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES) BY, OR ON BEHALF OF ANY THIRD-PARTY RELATING TO THE ABSENCE, FAILURE, INABILITY TO DIAL 911, INCORRECT ROUTING OF EMERGENCY CALLS, AND/OR THE INABILITY OF ANY USER TO ACCESS EMERGENCY SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE.

Reseller agrees to test 911 or other emergency services access upon system acceptance and following the performance of any Service by Westcon.

Reseller accepts responsibility for complying with all Local, State and Federal 911/E911 statutes. Westcon personnel may not make any recommendations regarding 911/E911 statutes; therefore, Westcon recommends the Reseller consult legal counsel to determine specific requirements and practices.

9.8 Non-Solicitation

During the term of this Agreement and for a period of twelve (12) months following the completion of the Services of a SOW subject to this Agreement, the parties hereby agree not to solicit, hire or induce any employee of the other party. Notwithstanding the foregoing, solicitation of either party's current employees or independent contractors by means of a general media solicitation or trade publication or advertisement shall not constitute a breach of this provision.

9.9 Notices

Any notice required to be given under this Agreement shall be deemed to have been duly given after receipt by the other party, if in writing and delivered:

- (i) by certified or registered mail, return receipt requested;
- (ii) by commercial overnight mail service; or,
- (iii) by personal delivery;

to the address first set forth above, or to any subsequent address designated by either party, on notice to the other party pursuant hereto, for the purpose of receiving notices pursuant to this Agreement.

9.10 Waivers and Amendments

This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning such subject matter of this Agreement. No representation or statement which is not expressly contained in this Agreement shall be binding on either party under this Agreement, unless such representation or statement is covered by a written amendment to this Agreement or a Change Management Request, signed by the parties hereto.

No waiver or forbearance by either party hereto of any rights under this Agreement in any particular instance shall act to preclude such party from exercising those rights in any other instance.

9.11 Assignment

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors, permitted assigns, heirs and legal representatives, as the case may be. Neither party may assign, delegate or transfer this Agreement, or its obligations hereunder, except with the prior written consent of the other party. Notwithstanding the foregoing, however, Westcon, at its option, may exercise any of its rights or remedies under this Agreement, and/or perform any of its duties or obligations hereunder, by itself or through any Westcon affiliate or subcontractor, but in any event, Westcon shall be responsible for the acts and omissions of its subcontractors. Any assignment in violation of the foregoing shall be null and void.

9.12 Interpretation and Severability

The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. If any provision, section or subsection of this Agreement or a SOW is adjudged by any court to be void or unenforceable in whole or in part, this adjudication shall not affect the validity of the remainder of this Agreement or the SOW, including any other provisions, section or subsection.

9.13 Survival

Any obligations which either expressly or by their nature are to continue after the termination or expiration of this Agreement shall survive and remain in effect.

9.14 Governing Law, Jurisdiction and Venue

This Agreement and any SOW executed by the Parties shall be governed by the laws and exclusive jurisdiction is as set forth in the countries as defined below dependent on the location where WGI or its subsidiary performs Services pursuant to the SOW as follows:

- A) Australia and New Zealand – the laws and jurisdiction of the Territory of New South Wales.
- B) North America, South America and Canada – laws and jurisdiction of the State of New York without regard to its conflicts of law principles. The parties agree that the state and federal courts located in New York City, New York, shall have sole and exclusive jurisdiction and venue over any matter arising out of these Conditions and each party hereby submits itself and its property to the venue and jurisdiction of such courts. Each party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such proceeding in such court, including any claim that such proceeding has been brought in an inappropriate or inconvenient forum.
- C) The European Union, Turkey, the UAE and Switzerland – the laws and jurisdiction of England and Wales.
- D) Malaysia, Singapore and Indonesia – the laws and jurisdiction of Singapore.
- E) Republic of South Africa – the laws and jurisdiction of South Africa

The UN Convention on Contracts for the International Sale of Goods does not apply. Each party waives any right it may have to claim that the chosen jurisdiction under this Agreement is not a convenient forum. The Reseller has requested that this Agreement be drawn up in English. *Le client a exigé que les présents termes et conditions soient rédigés en anglais.*

9.15 Waiver of Jury Trial

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS, OR STATUTORY CLAIM, COUNTERCLAIM, OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THIS AGREEMENT, BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE

REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.

9.16 Audit Rights

Reseller shall keep and maintain true and complete records pertaining to this Agreement and any SOW and shall make such records available upon reasonable notice, during regular business hours, for inspection and copying by Westcon and its representatives. Reseller shall maintain such records for at least two (2) years after the end of the calendar year to which they pertain.

9.17 Electronic Signatures; Counterparts

Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., .pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. This Agreement may be executed on separate counterparts, any one of which need not contain signatures of more than one party, but all of which when taken together shall constitute one and same agreement.

9.18 No Publicity

Neither party shall use the other party's names, logos, insignia, brands, trademarks, trade names, or service marks, or otherwise issue any publicity releases or make any public statement(s) (including without limitation in the form of news releases, advertising or solicitation materials, or blog or social media postings) relating to this Agreement or the Services to be performed hereunder, without the prior written approval of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

WESTCON

RESELLER

Westcon Group, Inc.

[INSERT RESELLER LEGAL NAME]

Name

Name

Title

Title

Date

Date

Signature

Signature

Attachment A – Change Request Management Form

The purpose of this document is to request a change in the performance of work by Westcon Technical Services as outlined in the approved Statement of work (SOW) between Westcon Technical Services and Customer.

Change Request Management Approval Form		
Current SOW# (if applicable):		Date Issued: / /
Basic Information		
Date Requested: / /	Requested By:	User Organization:
Date Required: / /	User Phone:	User e-mail:
Priority:	<input type="checkbox"/> High <input type="checkbox"/> Medium <input type="checkbox"/> Low	Additional Time Required: *Pricing based of agreed hourly rate
Synopsis of Requested Change:		
Supporting Documentation Attached? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Change Approval/Disapproval		
Final Disposition:	<input type="checkbox"/> Disapprove Request <input type="checkbox"/> Approve Request	Reason for Rejection:
Client Management: (Name/Title)	Phone Number:	e-mail Address:
Authorizing Client Signature:		Date Authorized:
Project Manager:	Phone Number:	e-mail Address:
Project Manager Signature:		Date Authorized: