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SAAS MSP AGREEMENT AND TERMS OF SERVICE

Please review these terms carefully, as this SaaS MSP Agreement and Terms of Service (“Agreement”) governs your purchase of services on the Captain’s Chair website or application and constitutes a binding legal agreement between you and Captain’s Chair IT, LLC (herein referred to as “Company”), the owner of the www.captainschairit.com website and the captainschair.app website (collectively, the “Website”). All changes to this SaaS MSP Agreement are effective when posted on the Website.

- I. By clicking the button or checking the box above labeled “I Accept”, or by accessing or using the services offered through the Website, you (also referred to herein as “MSP Partner”) are indicating your acceptance and agreeing to all of the terms and conditions of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to the terms and conditions of this Agreement, in which case the terms “MSP Partner” shall refer to such entity and its affiliates.
- II. You hereby agree to the use of electronic communications in order to enter into this Agreement, to create other records and to the electronic delivery of notices, policies and records of transactions between you and Captain’s Chair with respect to the services offered, purchased and this Agreement. You hereby waive any rights or requirements under any laws or regulations in any jurisdiction which require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent permitted under applicable mandatory law.
- III. The Company has produced and licenses for use certain existing software that provides managed services for end user networks, including allowing the managed service provider to access controls and produce reports related to such networks (the “Services”), and desires to have MSP Partner, as an independent contractor, market and distribute the Services and provide certain related services in accordance with the terms set forth herein.
- IV. MSP Partner is experienced in software sales and understands the benefits of the Services and wishes to engage in the marketing and sale of the Services for the Company. MSP Partner will sell all Services directly to its customers (each a “Customer” and collectively, “Customers”), in addition to providing certain support services relating to the Services.
- V. Terms and Conditions. The parties agree to the above and as follows:
 1. Appointment. The Company hereby appoints MSP Partner as a managed service provider of the Services worldwide (the “Territory”), and MSP Partner hereby accepts that appointment, all on and subject to the provisions of this Agreement.
 2. MSP Partner Duties and Sales. During the term of this Agreement, MSP Partner agrees to use its commercially reasonable efforts to diligently promote the Services to potential users and to distribute the Services and subscriptions for usage of the Services from the Company on and subject to the provisions of this Agreement with a goal of maximizing sales of the Services and preserving the goodwill that is associated with the name and reputation of the Company and the Services. MSP Partner shall be an independent contractor, responsible for its own personnel and other expenses and shall not have authority to bind the Company except as specifically set forth in this Agreement. MSP Partner shall not make any representations or warranties relating to the Services without obtaining Company’s express, prior, written consent thereto and shall not make any additional representations and warranties to those offered by Company with respect to the Services. MSP Partner shall be solely liable and responsible for all representations and warranties relating to the Services that are made by MSP Partner in addition to those offered by Company.
 3. MSP Partner Representations and Warranties. MSP Partner represents and warrants that: (i) MSP Partner shall at all times comply with the confidentiality obligations set forth herein; (ii) MSP Partner shall comply with all applicable laws and regulations in its performance hereunder; (iii) MSP Partner shall provide the support obligations in accordance with this Agreement; (iv) MSP Partner shall not make any modifications or changes to the Services without obtaining Company’s express, prior written consent thereto; and (v) MSP Partner shall ensure that all agreements with Customers have the same or similar terms related to restrictions on Services, confidentiality, and limitations on Company’s liability as set forth in this Agreement.
 4. Service Changes. The Company may at any time and in Company’s sole and absolute discretion, change the specifications and features of the Services. The Company may at any time discontinue the Services without liability to MSP Partner. The Company may upgrade the Services and substitute the upgrades for the previous version of the Services at any time. Notwithstanding the foregoing, Company shall provide MSP Partner notice of any such changes, discontinuation or upgrades and shall fulfill any orders pending at the time of such notice or during such notice period. Nothing in this Agreement shall require that the Company provide other or newly released products unrelated to the Services hereunder to MSP Partner for sale under this Agreement.



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5. Set-up Costs. MSP Partner will promptly register each new Customer or end-user through the Services. As used herein, “Site” is defined as one structure or building at a certain location with a single street address for a customer utilizing the Services. The Company may change the cost for set-up upon 30 days prior written notice to the MSP Partner.

6. Subscription Pricing; Trial Services.

(a) MSP Partner shall remit to the Company the amounts set forth on the Website for all licenses and installations of the Services, regardless of whether Customers remit payment to MSP Partner. MSP Partner shall have the right to set its own pricing to Customers and retain the difference, if any, between the pricing charged by MSP Partner and remitted to the Company as set forth on the Website. MSP Partner acknowledges and agrees that MSP Partner is and shall remain solely responsible for collecting all fees due for the Services from Customers and that MSP Partner’s failure to collect any such fees from its Customers will not affect MSP Partner’s payment obligations to Company hereunder.

(b) If available, the Services may be activated with no-cost evaluation key. If MSP Partner activates the Services with an evaluation key (“Evaluation Product”) MSP Partner may use the Evaluation Product for 30 days (or such other period as agreed in writing by Company) (the “Trial Period”) only to evaluate the suitability of the Evaluation Product for licensing on a for-fee basis. If the Services are provided to MSP Partner at no charge on a trial or evaluation basis, then the Services may be used only for the Trial Period, unless MSP Partner purchases additional licenses to the Services before or at the end of the Trial Period.

(c) THE EVALUATION PRODUCT IS PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. COMPANY BEARS NO LIABILITY FOR ANY DAMAGES RESULTING FROM USE (OR ATTEMPTED USE) OF THE EVALUATION PRODUCT THROUGH AND AFTER THE TRIAL PERIOD. Company has no duty to provide support during use of the Evaluation Product.

7. Payments to the Company. MSP Partner shall pay to Company all amounts due in advance of Services, pursuant to the offering of Services elected by MSP Partner for each Customer. The obligation to pay shall continue following the termination of this Agreement with respect to amounts owed and with respect to future payments received by MSP Partner for all licenses and installations of the Services existing as of the time of termination of this Agreement.

8. MSP Partner Training. The Company shall offer MSP Partner initial training either remotely or in person, at the Company’s sole discretion, with respect to the use and operation of the Services. MSP Partner shall be responsible for travel expenses of its personnel, including transportation, food and lodging.

9. Installation, Use and Service. MSP Partner will be solely and exclusively responsible for the demonstration, training, installation and use of the Services pursuant to the specifications and instructions provided by the Company from time to time and following all training provided by the Company. MSP Partner shall further be responsible for providing certain support to setup Customers to be discussed by Company and MSP Partner after the effective date of this Agreement. MSP Partner will be responsible for promptly responding to Customer complaints and issues concerning the use of the Services, including but not limited to login issues, and user interface; provided, that the Company is responsible for providing certain necessary back-up support to MSP Partner to enable MSP Partner to fulfill its obligations to Customers under this Agreement. MSP Partner shall keep the Company informed as to complaints concerning the Services made by any Customer that MSP Partner is unable to resolve satisfactorily by its own efforts and shall provide such information to the Company promptly and in writing upon those complaints coming to the attention of MSP Partner.

10. Services. The Services are licensed (and not sold) to MSP Partner strictly in accordance with the terms set forth herein. Company grants to MSP Partner a nonexclusive, limited, non-transferable (transferable only to Customers as provided herein), revocable license to use the Services in the Territory solely as set forth herein. MSP Partner may not, and will include in its agreements with all Customers that they should not, modify, decompile, imitate or reverse engineer the Services or to attempt to discover any source code or intellectual property rights therein in any manner. MSP Partner shall defend, indemnify and hold harmless Company and its affiliates from and against any and all claims resulting from its breach of this Section 10.

11. Patented Services. If any Services are covered by any patent owned by or licensed to Company, MSP Partner shall include in its agreements with its Customers that the end user of those Services shall use it only in the field of use to which the Company has rights, including without limitation by restricting permitted use of the Services by contract. MSP Partner shall use commercially reasonable efforts to report to the Company any violation of the field of use limitation of which MSP Partner becomes actually aware.



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12. Title; No Rights Granted. The Company retains the ownership of all rights, title and interest in and to the Services and all other proprietary rights related thereto as well as all rights, title and interest in all developments of and enhancements to the Services. MSP Partner does not acquire by virtue of this Agreement or otherwise any right, title or interest in or to the Services or any other intellectual property rights, other than the limited right during the term of this Agreement to use such rights to the extent expressly set forth herein and only for the purposes herein set forth.

13. Trademarks. During the term of this Agreement, MSP Partner shall be permitted to use the Company's trademarks, trade names, service marks, logos or other designation used or adopted by the Company with respect to or in connection with the Services, whether registered or unregistered (collectively, the "Trademarks"), in promoting the Services provided that all such use shall inure to the benefit of the Company. MSP Partner expressly acknowledges and agrees that (i) it will not have or acquire any right in or to any Trademark; (ii) the Company owns and possesses the exclusive right, title and interest in and to the Trademarks; and (iii) MSP Partner will not dispute the ownership by the Company of any Trademark. MSP Partner agrees that it will not adopt, use or register as a trademark, service mark, trade name, business name, corporate name or any part thereof, any word or symbol or combination thereof which is identical or confusingly similar to any Trademark. Upon termination of this Agreement, MSP Partner shall immediately discontinue all use of each Trademark, and MSP Partner shall return all papers, documents and other materials on which any Trademark appears. Without the prior written consent of the Company, MSP Partner shall not remove or alter any Trademark applied to the Services. MSP Partner may use the Trademarks in connection with MSP Partner's advertisement, promotion and marketing of the Services, but any use shall be subject to the prior written approval of the Company. When using the Trademarks, MSP Partner shall indicate the Company's ownership of the Trademarks. The Company may provide to MSP Partner specifications and requirements for the exact use of the Trademarks, and MSP Partner agrees to follow all Trademark specifications and requirements of the Company. All use by MSP Partner of the Trademarks shall be for the exclusive benefit of the Company.

14. Cooperation. MSP Partner shall use commercially reasonable efforts to promptly notify the Company of any actual or suspected infringement, imitations, illegal uses or misuses of the Services, Trademarks or other intellectual property rights of the Company that come to MSP Partner's actual attention, and shall, at the Company's request and expense, reasonably assist the Company with the protection of such rights.

15. Non-Solicitation.

(a) MSP Partner agrees that for so long as this Agreement is in effect and for a period of one year thereafter (provided that such restriction shall only last for the term of this Agreement in the event of termination for the Company's uncured breach or non-renewal by the Company), it will not directly or indirectly solicit or attempt to solicit, or endeavor to entice, any clients, customers, suppliers, licensees or other business relations of Company to divert their business to any other person or entity away from or to cease doing business with Company, or in any way interfere or attempt to interfere with the relationship between any such customer, supplier, licensee or business relation and Company.

(b) MSP Partner agrees that for so long as this Agreement is in effect and for a period of one year thereafter (provided that such restriction shall only last for the term of this Agreement in the event of termination for the Company's uncured breach), it will not, without the prior written consent of the Company, solicit the employment of, or permit any affiliate to, directly or indirectly, solicit the employment of, any person who is employed by the Company, or whom provides services to the Company on a contractual basis.

16. Term and Termination. This Agreement shall have a term duration as selected by MSP Partner in the ordering process, which is either a month-to-month term, or a term of one year from the effective date of the Agreement. This Agreement shall renew automatically for successive terms of equal length of the initial term unless either party provides notice of termination at least 30 days prior to the expiration of then current term; provided, however, evaluation and/or no-fee Services shall not renew. This Agreement may be terminated prior to the regular expiration of the term or any extension term upon the occurrence of any of the following:

(a) If the parties mutually agree in writing to terminate this Agreement;

(b) Upon the election of one party in the event of material breach by the other party of any of the terms and conditions of this Agreement which is not cured within 30 days of receipt of written notice by the breaching party from the non-breaching party of that breach; and

(c) Immediately upon notice by Company to MSP Partner in the event of violation by MSP Partner of any material sections of this Agreement, including but not limited to Sections 10 or 15 hereof.



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17. Effect of Termination. Upon termination or expiration of this Agreement for any reason, the parties shall have the following rights, covenants and obligations:

(a) Any Customer using the Services through a subscription or otherwise shall not be allowed to continue to use the Services upon termination of this Agreement unless such Customer is transferred to another managed service provider with written consent of Company. Company may retain any data collected or provided by MSP Partner and/or Customers after termination in order to offer to continue servicing Customer under another managed service provider or based on Company's reasonable data retention policies and procedures.

(b) The obligations under the provisions of Sections 6, 7, 10, 11, 12, 13, 14, 16, 17, 18, 19, and 20 through 28, and 30 shall survive in accordance with their terms.

(c) Immediately upon any termination or expiration hereof, MSP Partner shall discontinue holding itself out as a managed service provider of the Services on behalf of the Company (except to the extent required to communicate with any current Customer) and shall cease entering into new licenses and installations of the Services with customers. All designs, drawings, or other data, depictions, renderings, samples, literature and sales aids of every kind shall remain the property of the Company, and shall be returned to the Company at MSP Partner's expense within fifteen days of the Agreement's termination.

(d) Neither party shall be liable to the other for compensation, indemnification, reimbursement or damages on account of the loss of Customers, prospective profits on anticipated sales or on account of expenditures, inventory, investments, leases or commitments made in connection with this Agreement or in connection with the business or goodwill of the other party. Each party agrees that it has no expectation and has received no assurances (i) that its business relationship with the other party will continue beyond the term of this Agreement; (ii) that any investment by a party in the promotion of the Services will be recovered or recouped in any way, or (iii) that a party will obtain any anticipated amount of profits by virtue of this Agreement or otherwise, or any vested, proprietary or other right in the promotion of the Services or in any goodwill created by its efforts hereunder. **THE PARTIES ACKNOWLEDGE THAT THIS SECTION HAS BEEN INCLUDED AS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT AND THAT THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT BUT FOR THE LIMITATIONS OF LIABILITY AS SET FORTH HEREIN.**

18. Confidentiality.

(a) "Confidential Information" shall mean all trade secrets, specifications, designs, plans, drawings, formulas, ideas, know-how, software, data, pricing and expense information, customer and supplier information, and other business, financial, and technical information and other proprietary information, in whatever form and on whatever medium (whether in written, oral, electronic, or other form or medium), disclosed by the Disclosing Party hereunder and/or its parents, subsidiaries, and affiliates, except for the following:

(i) information that is in the public domain at the time of initial disclosure to the Receiving Party by the Disclosing Party, or subsequently becomes publicly known through no wrongful act of the Receiving Party;

(ii) information that is known to the Receiving Party prior to the time of initial disclosure not through any breach of confidentiality obligations, as evidenced by competent and contemporaneous written documentation;

(iii) information that is furnished to a third party by the Disclosing Party without confidentiality restrictions substantially similar to those herein;

(iv) information that is rightfully received by the Receiving Party, without restriction as to further disclosure, from a third party who had the lawful right to disclose such information; and

(v) information that is independently developed by the Receiving Party without the use of or reference to Confidential Information, as can be evidenced by Receiving Party's written records.

(b) For purposes of this Agreement, the party disclosing the Confidential Information shall be referred to as "Disclosing Party" and the party receiving the Confidential Information shall be referred to as "Receiving Party."

(c) All information relating to any Customers, including without limitation, all data collected from such Customer's devices, shall be considered the Confidential Information of Company.

(d) The Receiving Party shall safeguard the Confidential Information of the Disclosing Party by using at



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least those efforts used in the protection of its own proprietary information to prevent its disclosure to or use by third parties, provided that such standard of care is no less than reasonable care under the circumstances. Receiving Party shall only disclose Confidential Information provided hereunder to its employees who have a need to know of such information and who are bound in advance, in writing to obligations of confidentiality and non-use at least as protective as those set forth herein.

(e) The Receiving Party shall use Confidential Information solely for the purposes of performing this Agreement and not for any other purpose.

(f) All Confidential Information shall remain the sole and exclusive property of the Disclosing Party and shall be promptly returned to the Disclosing Party or destroyed upon written request by Disclosing Party. In any event, all Confidential Information shall be returned to the Disclosing Party (or destroyed at the Disclosing Party's written election) upon expiration or termination of this Agreement. The Receiving Party shall not retain copies of Confidential Information, except that Receiving Party may retain one (1) copy of Confidential Information for legal purposes only.

(g) MSP Partner hereby acknowledges that it is aware, and that it shall advise its representatives who are informed as to the matters which are the subject of this Agreement, that the Confidential Information of Company and its affiliates may include material, non-public information and the MSP Partner agrees to, and agrees to cause its representatives to, handle such material, non-public information only in accordance with applicable law, including, without limitation, United States securities law prohibitions on trading in a company's securities while in possession of material, non-public information. Notwithstanding anything herein to the contrary, the MSP Partner acknowledges and agrees that Company and its affiliates and their respective representatives may disclose any Confidential Information of the MSP Partner and its affiliates as required under applicable securities law or any contractual obligation with respect to any indebtedness of Company or its affiliates that may exist from time to time.

(h) The parties recognize that serious injury could result to the Disclosing Party and its business if the Receiving Party or its representatives breaches its/their obligations under this Agreement. Therefore, the Receiving Party agrees (on behalf of itself and its representatives) that the Disclosing Party shall be entitled to a restraining order, injunction, or other equitable relief if the Receiving Party or its representatives breach(es) its/their obligations under this Agreement, without the requirement to post any bond or other security, and such right shall be in addition to any other remedies that would be available at law or in equity to Disclosing Party.

(i) A Receiving Party may disclose Confidential Information if such item is required to be disclosed pursuant to proper governmental or judicial process, provided that written notice of such process is promptly provided to the Disclosing Party, except where prohibited by law, in order that Disclosing Party may have every reasonable opportunity to intervene in such process to contest such disclosure. Receiving Party shall reasonably cooperate with Disclosing Party to prevent or limit disclosure of Confidential Information and any information disclosed pursuant to this Section 18(i) shall not lose its status as "confidential" hereunder.

19. No Warranty. EXCEPT WHERE PROHIBITED BY LAW, COMPANY MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE IN CONNECTION WITH THE SALE OR USE OF THE SERVICES, AND COMPANY DOES NOT AUTHORIZE ANY PERSON OR PARTY TO ASSUME ON COMPANY'S BEHALF ANY OTHER OBLIGATION OR LIABILITY.

20. Indemnification and Limitation of Liability.

(a) MSP Partner shall defend, indemnify and hold harmless Company, its affiliates and their respective officers, directors, employees, shareholders, agents, successors and assigns, from and against any and all claim, losses, liabilities, damages and costs (including reasonable attorneys' fees) arising out of or resulting from: (i) MSP Partner's gross negligence or willful misconduct; (ii) MSP Partner's breach of its confidentiality obligations as set forth herein; (iii) MSP Partner's breach of its representations and warranties as set forth herein; (iv) MSP Partner's breach of any applicable laws or regulations; or (vi) MSP Partner's use, modification or combination of the Services in any manner that results in the alleged or actual infringement of any third party's intellectual property rights. MSP Partner may not settle any claim against Company without obtaining Company's express, prior written consent to any such settlement.

(b) TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL COMPANY BE LIABLE TO MSP PARTNER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) THAT RELATE TO THIS AGREEMENT AND/OR TO THE SERVICES. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY'S TOTAL LIABILITY FOR DAMAGES RELATING TO THIS AGREEMENT AND



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THE SERVICES SHALL NOT EXCEED THE AMOUNTS ACTUALLY RECEIVED BY THE COMPANY FROM MSP PARTNER DURING THE MOST RECENT THREE MONTHS OF THIS AGREEMENT.

21. Audit Right. MSP Partner shall keep complete, true and accurate books and records of account containing reasonable particulars that may be necessary for the purpose of showing the amounts payable to the Company hereunder and for the purpose of showing compliance with all other obligations under this Agreement and applicable laws and regulations relating hereto (“Records”). MSP Partner shall make available all such Records for two (2) years following the end of the calendar year to which they pertain for inspection and copying by the Company or its agents, upon reasonable notice. MSP Partner shall promptly pay the Company for any underpayment discovered and confirmed by MSP Partner. Should any inspection of the Records lead to the discovery of a discrepancy in reporting to the Company’s detriment, in addition to any other amounts due to the Company, MSP Partner will pay the reasonable cost of the audit and inspection.

22. Nature of Relationship. The Company’s appointment of, and relationship with, MSP Partner is on a non-exclusive basis. Without limitation, the Company shall be permitted to authorize other resellers, and Company itself, for the Services in the Territory, including with any Customers, at Company’s sole and absolute discretion.

23. Compliance with Applicable Laws. The parties agree to comply with all applicable laws and regulations concerning the activities pursuant to this Agreement.

24. Governing Law and Venue. The terms of this Agreement shall be governed by the laws of the State of Florida, without regard to any conflicts of laws principles. The United Nations Convention on Contracts for International Sales of Goods shall not apply. The parties agree that the exclusive venue for any lawsuit or other decision making process with respect to matters arising under this Agreement shall be in the applicable state and federal courts located in the State of Florida, and the parties hereby irrevocably consent to personal jurisdiction over them in that venue.

25. Assignment. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. MSP Partner shall not assign or transfer any of its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the Company. Company may freely assign or transfer this Agreement without further consent from MSP Partner.

26. Waiver. The waiver of any breach or violation of any term or provision of this Agreement shall not constitute a waiver of any subsequent breach or violation of this Agreement.

27. Partial Invalidity. If any provision of this Agreement is found by a court to be unenforceable, that court shall substitute in place of the unenforceable provision a less restrictive provision to the maximum extent enforceable so as to carry out the intent of the parties as expressed herein. The invalidity or unenforceability of any provision of this Agreement shall not invalidate the remainder of this Agreement.

28. Notices. Any notice to be provided pursuant to this Agreement shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof, (b) if by mail, five days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, or (c) if by next day courier service, upon such delivery. All notices shall be addressed to the respective parties at the addresses indicated above or such other addresses as they shall specify by notice.

29. Grant of License. MSP Partner grants Company the non-exclusive, non-transferable, non-revocable, worldwide, transferable right and license (the “License”), in perpetuity to any photographs, trademarks, logos or other marks used to create any materials relating to the Services. At all times, Company, at its sole option, shall have the right to transfer the License to any affiliated entity or third party. MSP Partner shall ensure that any of its customers agree in writing to provide Company with such unrestricted license as provided herein.

30. Entire Agreement. This Agreement, and any referenced attachments or documents set forth herein constitutes the entire agreement between the parties. Any modification, waiver or amendment of this Agreement shall require a writing signed by both parties.