



5000fish, Inc. Master Service Agreement (“MSA”)

This MSA is entered into by the 5000fish entity (“5000fish”) and customer entity (“You”) identified on the relevant Order Form and shall be effective from the date specified on the Order Form.

Your right to use 5000fish Software (“5000fish Software”) and obtain maintenance and support (“Maintenance”) and 5000fish professional services from 5000fish (“5000fish Services”) is subject to Your compliance with the terms and conditions of this MSA, the applicable Order Form identifying the specific 5000fish Software, Maintenance and/or 5000fish Services, and the Specific Program Document (“SPD”) for the 5000fish Software, Maintenance and/or 5000fish Service offering, which is located at <http://www.5kfish.com/licenseagreement> (collectively, these documents are referred to as the “Agreement”). The terms and conditions of the SPD applicable to You for the 5000fish Software, Maintenance or 5000fish Service licensed and/or purchased by You will be those that are in effect at the time that You acquire the 5000fish Software, Maintenance or 5000fish Services and shall remain binding upon both You and 5000fish for that 5000fish Software, Maintenance or 5000fish Services absent mutual written agreement to the contrary.

1. Definitions.

1.1. “**Activation Code**” means the one-time use code provided to the Customer upon download of free Software or purchase of Software from the Company’s online store which, once entered into the Software by Customer, enables the features of the Software and registers the license to the Customer.

1.2. “**Customer Data**” means data, information or material provided or submitted by Customer or any User to Vendor in the course of utilizing any Service or Software licensed under this Agreement.

1.3. “**Customer Equipment**” means the server, system, device, User computers or other equipment owned and maintained by Customer onto which the Vendor’s Software, defined below, is downloaded and installed or from which Vendor’s Software may be accessed.

1.4. “**Delivery**” means the fulfillment of Vendor’s obligations to make the Services available in accordance with this MSA.

1.5. “**Documentation**” means any brochures, instruction manuals or other material made available by Vendor to Customer in either documentary or electronic form that describes the features, functions and proper installation and usage of the Software.

1.6. “**Entity**” means a corporate entity, including its shareholders, officers, directors, employees, contractors and agents. The term “Entity” includes unincorporated divisions and departments, but does not encompass separate corporate entities regardless of whether they are under common ownership or control.

1.7. “**Fee Schedule**” means the current applicable schedule of fees maintained by Vendor for available License options.

1.8. “**License**” means one or more specific rights to access and use the Software that may be granted by Vendor to Customer as set forth in Section 3 below.

1.9. “**License Code**” means a code that identifies a particular License obtained by Customer under this MSA, and serves as a key to unlock the features of the Software purchased by the Customer.

1.10. **“Order Form”** means the form specified for Vendor for use by the Customer in ordering a particular Package of the Software.

1.11. **“Package”** means the particular set of Licenses and Services selected from the options set forth in Section 4.5, below, ordered by the Customer at the Fees and for the Term as detailed on the Order Form.

1.12. **“Serial Number”** means a unique identification number for the Software installed on particular Customer Equipment.

1.13. **“Services”** means Vendor’s services as described in Section 2 below, including but not limited to access to and use of the Software and applicable documentation on Vendor’s web site.

1.14. **“Software”** means Vendor’s software marketed under the trade name “MailSync” and made available on to Customers under the terms of this MSA.

1.15. **“Term”** means the effective period of a MailSync License, or any upgrade thereto, extending from the Effective Date of full payment of the purchase price to the date that is the later of: (i) twelve (12) months from the Effective Date, or (ii) such other date as Customer shall specify on the Order Form (“Initial Term”), plus any subsequent renewal term (“Renewal Term”). Unless otherwise specified in the initial MailSync order, the Term shall be twelve (12) months and each Renewal Term likewise shall be for twelve (12) months. Upon renewal of any upgrade, the Customer may contact the Vendor at sales@5kfish.com to obtain a co-terminus Renewal Term for all products, which shall extend to the longest Term end date.

1.16. **“User”** means any one of Customer’s employees, representatives, consultants, contractors, agents, clients or any other person who is expressly authorized by any License identified in this MSA to use the Services and is designated to receive User identifications and passwords required to utilize the License.

1.17. **“Vendor Content”** means Vendor-supplied text, audio, video, graphics and other information and data available by means of the Service or on Vendor’s web site.

2. Description of Software and Related Services.

2.1. **Description of Software.** The Software is a Microsoft Outlook Plugin designed to create, edit, and log comments in CA Service Desk under the context of the logged in user while operating on an inbound or outbound email. A trial version of the Software (“MailSync”) may be downloaded for free and used for

a 30-day period. MailSync must be downloaded from the Vendor’s web site and hosted by Customer on Customer’s own server or desktop systems.

2.2. Online Synchronization.

2.2.1. **License Management.** The Software is configured to connect Customer’s licensed systems automatically and periodically over the internet with Vendor’s license management services for the purpose of validating and synchronizing the Customer’s use of the Software with the specific features of the Software version obtained. The data transmitted and collected for synchronization is limited to license information and aggregate or anonymous usage information. Such information is not personally identifiable to the Customer. Vendor reserves the right to collect usage data with Customer’s consent, which shall not be unreasonably withheld. Customer will not circumvent or attempt to circumvent Vendor’s license management capabilities or services.

2.2.2. **Suspension of Service.** If Vendor’s license management service is unable to reach Customer’s licensed servers after five (5) days of attempts, or if in the case of MailSync payment has not been received by Vendor from Customer for an Initial or Renewal Term, as defined below, the Software will automatically initiate a “Grace Period” of fifteen (15) days. If the License issues have not been resolved by the end of the Grace Period, the Software will cease functioning and any and all Licenses will immediately terminate.

2.3. **Offline Mode.** MailSync software may be configured to operate in offline mode in Customer environments that do not allow connectivity to the internet. All the same processes described above for online synchronization will apply; provided, however, that instead of automatic online synchronization, Customer must manually download a license synchronization file from Customer Support and manually apply it to the Software periodically as required by the specific terms of Customer’s MailSync purchase and Licenses.

2.4. **Updates.** Updates to the Software, including fixes and patches, are distributed via Vendor’s website. Customer is responsible for checking regularly for Software updates and downloading and installing the updates.

3. Purchase of Software and Grant of Licenses for Use.

3.1. Purchase and Licensing of MailSync Licenses.

3.1.1. **Purchase and Activation.** MailSync Software may be obtained through purchase order by contacting sales@5kfish.com. The Activation Code will be provided by the Vendor upon receipt by the Vendor of full payment for the purchase. Customer must activate the Software by inserting the Activation Code and completing the registration process Subject to the terms, conditions, restrictions and other provisions of this Agreement.

3.1.2. **License.** Vendor grants Customer the MailSync Licenses identified in the Order Form upon receipt by Vendor of full payment for the purchase and completion of the registration process. The license shall be valid for the Term. Vendor grants Customer each of the Licenses identified in the MailSync Order Form on a non-exclusive, non-transferable basis and solely for Customer's own internal use during the Term on the computer facilities on which the Software is authorized to be installed.

3.2. **Copies.** Customer will be entitled to make a reasonable number of binary copies of the Software for backup or archival purposes only. Customer may make a reasonable number of copies of the Documentation for internal use. Customer may not copy the Software, except as permitted by this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

3.3. **Technical Support.** Vendor is not obliged to provide maintenance, technical or other support to Customer for the Software. Vendor shall provide technical support only as described in the specific maintenance SPD, which can be found at <http://www.5kfish.com/licenseagreement>. Additional information resources are available on Vendor's web site.

4. Fees and Payment for MailSync.

4.1. **Fees.** For any MailSync Software, Customer agrees to pay the fees set forth in the MailSync Order Form. Amounts due are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such amounts.

4.2. **Payment.** All amounts due are payable in U.S. dollars. Payment obligations accrue for the full Term. Unless otherwise specified in the Order Form,

payment terms are Net 30 from the date of Delivery, as defined below. If Payment is not timely made, the Service will be suspended as provided in Section 2.2.2, above. Where possible, payment should be made by credit card or electronic payment through the ACH Network over Vendor's secure web site. In cases where electronic payment is not practicable, Vendor in its discretion may accept payment by check or purchase order.

5. Delivery and Installation.

5.1. **Delivery.** Delivery of the Software after purchase will be deemed to have taken place when Vendor has emailed the Activation Code to Customer. Documentation pertaining to download and installation will be available online and will be accessible on the Vendor's Customer Support page of the web site.

5.2. **Installation.** Initial installation is via download by the Customer of MailSync from Vendor's web site. Customer is responsible for downloading and installing the Software on Customer's Equipment from Vendor's web site, activating it with the Activation Code provided by Vendor, and registering the product.

5.3. **Registration and License Codes.** At the time of installation, Customer will be given an Activation Code for each Software product installed on Customer's Equipment. Customer must register both the Serial Number and the Authorization Codes as directed in order to obtain the License Codes. The License Codes are linked to the Serial Number, which in turn is linked to the specific Customer Equipment used for installation. License Codes will be required for access to Vendor support as well as for any re-installation of the Software by Customer. Customer must contact support@5kfish.com to request re-installation on different Customer Equipment, which will require the registration of a new Serial Number, and the transfer of the License Codes to the new Serial Number. The previous installation will be deactivated before a transfer to a new Serial Number is permitted.

6. Term, Changes, Renewal and Reinstatement.

6.1. **Term.** The Software may be used only for the Term for which it is purchased. The Term begins on the Effective Date.

6.1.1. Term durations are a minimum of twelve (12) months and may be for such longer periods as Customer specifies on the Order Form:

6.1.2. In extraordinary circumstances, and only at Vendor's discretion, a Customer may

obtain a permanent right to use the Software for a perpetual Term. A perpetual Term would include the right to support and maintenance for one (1) year, after which the maintenance service must be renewed annually.

6.2. **Cancellation and Change.**

6.2.1. Once purchased, a License may not be cancelled prior to the end of the Term. However, Customer may add a License, or add Users to a License, at any time during the Term by paying the requisite additional Fee(s), which shall be prorated in accordance with the days remaining in the Term.

6.2.2. Any License may be added to or removed from a package at the time of renewal.

6.3. **Renewal.** A License may be renewed for one or more Renewal Terms of the same duration as the Initial Term by submission of payment for renewal at the applicable Fee Schedule rates then in effect on the Vendor's web site no less than thirty (30) days prior to the end of the current Term. If the License is not timely renewed, it will automatically expire.

6.4. **Reinstatement.** If an Initial Term or Renewal Term expires and is not renewed within thirty (30) days of the date of expiration, Customer may (i) reinstate the Service effective as of the original renewal date by paying a reinstatement fee equal to One Hundred and Fifty Percent (150%) of the renewal Fee; or (ii) purchase a new License under the current prevailing Fee Schedule.

7. **Customer Obligations.**

7.1. **Equipment.** Customer is responsible for ensuring that all Customer Equipment complies with Vendor's requirements and guidelines to ensure proper functioning of the Software.

7.2. **Security.** Customer is responsible for all activities that occur under Customer's User accounts. Customer is responsible for maintaining the security and confidentiality of all Installation Codes, Authorization Codes, License Codes, Serial Numbers, User usernames and passwords. Customer agrees to notify Vendor immediately of any unauthorized use of code, any username or password or account or any other known or suspected breach of security.

7.3. **Opt Out.** Customer agrees to be identified on Vendor's web site as a customer of the Software, unless Customer opts out at the time of purchase.

8. **Restrictions on Use of the Software.**

8.1. Customer will not rent, resell or sublicense the Software or offer it as a service bureau.

8.2. Customer will not merge, modify, adapt or translate the Software, or decompile, reverse engineer, disassemble, or otherwise alter the Software.

8.3. Customer will not use or access the Software to: (i) build a competitive product or service, (ii) make or have made a product using similar ideas, features, functions or graphics, (iii) make derivative works based upon the Software or the Vendor Content or (iv) copy any features, functions or graphics of the Software or the Vendor Content. Customer will not "frame" or "mirror" the Service.

8.4. Customer may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder.

8.5. Any other use or exploitation of the Software and/or the Vendor Content except as expressly permitted in this MSA is prohibited.

9. **Intellectual Property, Privacy and IP Indemnity.**

9.1. **Vendor Property.**

9.1.1. Vendor retains all rights in the Software and Vendor Content. This Agreement grants no ownership rights to Customer. No license is granted to Customer except as to use of the Services as expressly provided in this Agreement. The Vendor name, the Vendor logo, and the product names associated with the Services are trademarks of Vendor or third parties, and they may not be used without Vendor's prior written consent.

9.1.2. Customer is licensed during the Term to store, print, and display the Vendor Content and to permit Users to access it only in connection with use of the Services as permitted by this Agreement. No other use of Vendor Content is permitted. Customer will maintain, and will require its Users to maintain, Vendor Content as Confidential Information (as defined below) of Vendor.

9.2. **Customer Data.**

9.2.1. All Customer Data submitted by Customer to Vendor will remain the sole property of Customer or such Users to the full extent provided by law.

9.2.2. Vendor may aggregate anonymous statistical data regarding use and functioning of

its system by its various Users. Such aggregated statistical data will be the sole property of Vendor.

9.3. **Privacy.** Vendor's privacy policies can be accessed on Vendor's web site. Vendor reserves the right to modify its privacy and security policies from time to time in its business judgment and as it deems required for compliance with applicable law.

9.4. **IP Warranty.** Vendor warrants to Customer that it has sufficient rights to the Software to grant the Licenses and fulfill its other obligations under the terms of this Agreement. The Customer's sole and exclusive remedy for breach of this warranty is indemnification as provided for in this Agreement.

9.4.1. **IP Warranty Infringement Indemnity.** Vendor agrees to defend, indemnify, and hold Customer harmless from and against any and all costs, judgments, damages and awards in lawsuits, proceedings or actions brought by any third party, and costs in connection with the defense thereof, resulting from any claim or allegation that the Software infringes any patent, copyright, trade secret or other proprietary right of any third party ("Claims").

9.4.2. **Limitation of Indemnification.** The obligations set forth in Section 10.2 will not apply to, and Vendor assumes no liability for, any Claims to the extent arising from (i) use of a modified version of the Software, (ii) the combination, operation or use of the Software with non-Vendor programs, data, methods or technology if such infringement would have been avoided without the combination, operation or use of the Software with other programs, data, methods or technology, or (iii) unlicensed use of the Software.

9.4.3. **Procedure for Indemnification.** Vendor's obligations under this Section apply only if Customer gives Vendor: (i) prompt written notice of the Claim; (ii) sole control of the defense and settlement of such Claims; and (iii) assistance reasonably requested by Vendor at Vendor's expense.

9.4.4. **Actions by Vendor.** In the event any such infringement, Claim, action or allegation is brought or threatened or if Vendor deems that there is a material risk of a Claim, Vendor may, at its sole option and expense (i) procure for Customer the right to continue its use of the Software; (ii) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable, (iii) terminate this

MSA and repay to Customer a portion, if any, of the Fee equal to such fee less the pro rata portion thereof that this MSA has been in effect.

9.4.5. **Exclusive Remedy.** This Section states the entire liability of Vendor and Customer's exclusive remedy with respect to actual or alleged infringement of any patent, copyright, trade secret or other proprietary right.

10. Vendor's Limited Warranty Regarding MailSync Software.

Vendor warrants that for a period of thirty (30) days from the Effective Date (the "Warranty Period") the MailSync Software will perform in substantial accordance with its specifications. If during the Warranty Period the Software does not perform as warranted (a "Non-Conformity"), Vendor shall undertake to correct such Non-Conformity, or if correction is not reasonably possible, replace such Software or the media free of charge. If neither of the foregoing is commercially practicable, Vendor shall terminate this MSA and refund to Customer the Fee. The foregoing are Customer's sole and exclusive remedies for breach of this limited warranty. The warranty set forth above pertains only to MailSync Software and to no other product. It is made to and for the benefit of Customer only. The warranty will apply only if:

10.1. The Software has been properly installed and used at all times and in accordance with this MSA and the instructions for use; and

10.2. No modification, alteration or addition has been made to the Software by persons other than Vendor or Vendor's authorized representative, except as authorized in writing by Vendor.

11. Mutual Warranties.

Each party represents and warrants that it has the legal power and authority to enter into this MSA. Customer represents and warrants that it has not falsely identified itself or provided any false information to gain access to the Service and that Customer's contact and payment information is correct.

12. Exclusion and Limitations

12.1. **Warranty Exclusion.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, VENDOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. VENDOR SPECIFICALLY EXCLUDES ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS

FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

12.2. **Limitation of Liability.** In no event will Vendor be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages even if Vendor has been advised of the possibility of such damages. Vendor will not be liable for any damages caused by delay in Delivery or furnishing the Software or Services. Vendor's liability under this MSA for damages of any kind will not, in any event, exceed the Fee paid by Customer to Vendor under this Agreement.

12.3. **Claims.** No action arising out of any breach or claimed breach of this MSA or transactions contemplated by this MSA may be brought by either party more than one (1) year after the cause of action has accrued. For purposes of this MSA, a cause of action will be deemed to have accrued when a party knew or reasonably should have known of the breach or claimed breach.

13. **Confidentiality**

13.1. **"Confidential Information"** means non-public information, technical or commercial data or know-how of a party and/or its subsidiaries, which is furnished to the other party in written or tangible form in connection with this MSA. Oral disclosure will also be deemed Confidential Information if it would reasonably be considered to be of a confidential nature or if it is confirmed at the time of disclosure to be confidential. The parties agree that Vendor's Confidential Information includes this MSA and its terms, the Documentation, any copies of the Software, and any other proprietary information supplied to Customer by Vendor, or by Customer to Vendor and marked as "confidential information" or the like.

13.2. **Use Restrictions.** Neither party will use the other party's Confidential Information during the term of this MSA except as reasonably required for the performance of this MSA. In addition, the confidentiality obligations set forth in this Section will survive for five (5) years after the termination or expiration of this MSA. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party's Confidential Information to anyone other than its employees or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. In case a party receives legal process that demands or requires disclosure of the disclosing party's Confidential Information, such party will give prompt notice to the

disclosing party, if legally permissible, to enable the disclosing party to challenge such demand.

13.3. **Exclusions.** Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; or (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential. The prohibitions against disclosure of Confidential Information do not apply in the event such disclosure is: (v) approved for release by written agreement with the disclosing party; or (vi) done pursuant to the requirements of law, regulation, or court order, but only to the extent that such disclosure is required.

13.4. **Injunctive Relief.** In the event of actual or threatened breach of the provisions this Section, the non-breaching party will have no adequate remedy at law and will be entitled to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual money damages.

14. **Termination.**

14.1. **Suspension and Termination.**

14.1.1. Vendor, in its sole discretion, may suspend or terminate Customer's username and password, account, or use of the Service and/or terminate this MSA if Customer materially breaches this MSA and such breach has not been cured within 10 business days of notice of such breach.

14.1.2. This MSA is terminated as elsewhere provided in the MSA or by either party by written notice upon the occurrence of any of the following events: (i) in the event the other party materially fails to comply with any of the terms and conditions of this MSA and such default has not been cured within thirty (30) days after receiving written notice of the breach; or (ii) in the event the other party (A) terminates or suspends its business, (B) becomes subject to any bankruptcy or insolvency proceeding under Federal or state law, (C) becomes insolvent or subject to control by a trustee, receiver or similar authority, or (D) has wound up or liquidated, voluntarily or otherwise.

14.2. **Effect of Termination.**

14.2.1. All Licenses terminate upon termination of this MSA. Termination does not

entitle Customer to any refund or return of payment except as expressly stated in this MSA. Within fourteen (14) days after the date of termination or discontinuance of this MSA, Customer shall erase or destroy all copies of the Software, Documentation and Confidential Information in its possession. Upon request, Customer shall furnish Vendor with a certificate signed by an executive officer of Customer verifying that the same has been done.

14.2.2. The provisions of this MSA concerning Ownership, Exclusions and Limitations, Intellectual Property and Indemnification, Confidentiality, Verification Audit, Effect of Termination, Notices, Disputes and Miscellaneous, along with accrued financial obligations, if any, will survive any termination of this MSA.

15. Notices.

Notice will be deemed to have been given upon separately acknowledged receipt (if by electronic mail), upon the expiration of 36 hours after mailing (if sent by first class mail), or upon the expiration of 24 hours of sending (if sent by overnight courier), or, if earlier, when received. Vendor may give notice to Customer at any of the addresses specified on the registration and maintained in Customer's account. Customer may give notice to Vendor at the following address:

5000fish, Inc.
2850 Horizon Ridge Parkway
Suite 200
Henderson, Nevada 89052

Email: contracts@5kfish.com

16. Disputes.

Any dispute arising under this MSA or the termination of this MSA that cannot be resolved at the highest level of management of each party, will be subject to arbitration before a single arbitrator in Clark County, Nevada or Reston, Virginia under the Commercial Rules of the American Arbitration Association then in effect. The parties will share the arbitration fees equally. Any award will be enforceable in any court of competent jurisdiction and will not be inconsistent with the terms of this agreement. Nothing herein will prevent a party's application to a court of law for injunctive relief to prevent irreparable harm.

17. Miscellaneous.

17.1. **Choice of Law; Jurisdiction.** This MSA will be interpreted in accordance with the laws of the State of Nevada without regard to its conflicts of law principles, and applicable United States federal law. The state and federal courts located in Clark County, Nevada or Fairfax County, Virginia will have exclusive jurisdiction and venue over any dispute or controversy arising from or relating to this MSA or its subject matter.

17.2. **Severability.** If any provision of this MSA is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) will be construed, limited, modified as nearly as possible, or severed if necessary, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

17.3. **No Agency.** No joint venture, partnership, employment, or agency relationship exists between Customer and Vendor as a result of this MSA or use of the Service and nothing in this MSA will permit either party to obligate the other party to any third party.

17.4. **No Waiver.** The failure of Vendor to enforce any right or provision in this MSA will not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing.

17.5. **Force Majeure.** Except for the payment by Customer, if the performance of this MSA by either party is prevented, hindered, delayed or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action, labor disputes, act of God or any other causes beyond the control of such party, that party will be excused from such to the extent that it is prevented, hindered or delayed by such causes.

17.6. **Assignment.** This MSA may not be assigned by Customer without the prior written approval of Vendor but may be assigned by Vendor to (i) a parent or subsidiary, (ii) an acquirer of all or substantially all of Vendor's assets involved in the operations relevant to this MSA, or (iii) a successor by merger or other combination. Any purported assignment in violation of this Section will be void. This MSA may be enforced by and is binding on permitted successors and assigns.

17.7. **Entire Agreement.** This MSA, together with any applicable Schedule(s), comprises the entire agreement between Customer and Vendor and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein. No amendment to or modification of this MSA will be binding unless in writing and signed by an authorized representative of each party.