

## **BACKGROUND**

1. The Client is of the opinion that Mac On Trak has the necessary qualifications, experience and abilities to provide computer services to the Client.
2. Mac On Trak agrees to provide such computer services to the Client as are set out (the “**Services**”) in the Contract executed between the Client and Mac On Trak (the “**Contract**”), and upon these further Terms and Conditions. The Contract and these Terms and Conditions form one complete agreement between the parties.
3. The Client understands that Mac On Trak is not affiliated with Apple Inc. in any way.
4. The Client understands that Mac On Trak will require remote access to the device/s being serviced and the Client has a functioning Time Machine Backup and/or iCloud Backup before the commencement of any services.
5. The Client understands that a singular Contract qualifies for a singular service repair only unless otherwise agreed upon, and stated in the Contract.
6. The Services will only include the computer tasks on which the Parties have agreed. Mac On Trak hereby agrees to provide these Services to the Client to the best of their ability.

## **CONFIDENTIALITY**

7. Mac On Trak respects privacy and personal data with the utmost importance.
8. During the provision of Services, Mac On Trak will not acquire or retrieve any personal information, passwords or data of any kind, unless express permission is provided by the Client.
9. Mac On Trak will use commercially reasonable efforts to ensure any Client personal information obtained during the course of the Services remains confidential and secure.
10. Mac On Trak shall in no way be liable for information breached from the Client’s computers or devices unless such breach is the direct result of the actions of Mac On Trak. The Client understands and agrees that it would be difficult to measure any breach of information leaked from their devices by other users, hidden malware, viruses or previously pawned passwords. Should a breach occur which Client wishes Mac On Trak to address, the Client must prove that no users have accessed their devices, have access to any new or old passwords and passcodes, no pre-existing malware or viruses existed on their devices prior to engaging Mac On Trak’s Services, and must provide factual evidence of this, in which case Mac On Trak agrees to provide appropriate Services and steps to help limit and prevent further breach for the Client if such a breach occurs.
11. All written and oral information and material disclosed by the Client to Mac On Trak is confidential information regardless of whether it was provided before or after the date of the Contract, or in the manner it was provided to Mac On Trak.
12. The Client understands that any pre-existing viruses, malware and ransomware on their devices and subsequent devices connected to servers, and/or sharing of the same User accounts or iCloud accounts can result in personal information, passwords, passcodes, credit card and bank information being breached and is not the direct result or responsibility of Mac On Trak.

## **TERM OF AGREEMENT**

13. The term of the Agreement will begin on the date(s) outlined in the Contract and will remain in full force and effect until the completion of the Services, subject to earlier termination as provided in terms and conditions. The Terms of the Contract may be extended with the written consent of both Parties.
14. Client represents and warrants to Mac On Trak that Client has the right to authorize Mac On Trak to repair and/or Service all items of computer products, hardware or software, which are or become subject to this Agreement.

15. Should any additional software need to be installed to facilitate the Service, Mac On Trak will only suggest legitimate sources, and thoroughly screen and scan the software prior to any installation.
16. The Client agrees to downloading and installing two free virus protection packages, “Bitdefender Virus Scanner” & “Malwarebytes” to their device(s) subject to the Services, to scan for existing malware or viruses before Services begin, and are bound to those agreements and limitations stated by such software, which are not the responsibility of Mac On Trak. Mac On Trak will guide the Client through any associated setup processes and executions.
17. Except for any deliverables as set forth in the Contract, Mac On Trak does not convey or transfer nor does Client obtain any right or interest in any of the software programs, systems, tools, data or materials or process utilized or provided by Mac on Trak in connection with the performance of its Services
18. Disclaimer of All Other Warranties. WITH THE EXCEPTION OF THE LIMITED WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, MAC ON TRAK DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED UNDER LAW, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MAC ON TRAK DOES NOT PROMISE THAT THE PRODUCTS OR SERVICES PROVIDED WILL BE ERROR-FREE OR THAT CLIENT’S COMPUTER PRODUCTS, HARDWARE OR SOFTWARE WILL OPERATE WITHOUT INTERRUPTION.
19. Limitation of Liability. MAC ON TRAK WILL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO, PROPERTY DAMAGE, LOSS OF PROFIT, LOST TIME, LOSS OF DATA, LOSS OF USE OF ANY SUCH EQUIPMENT, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, TECHNOLOGY OR SERVICES, OR ANY OTHER DAMAGES RESULTING FROM THE BREAKDOWN OR FAILURE OF ANY COMPUTER PRODUCTS, HARDWARE OR SOFTWARE, OR FROM DELAYS IN SERVICING OR THE INABILITY TO RENDER SERVICE ON ANY COMPUTER PRODUCTS, HARDWARE OR SOFTWARE EVEN IF IT HAS BEEN ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, MAC ON TRAK’S LIABILITY FOR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING BUT NOT LIMITED TO MAC ON TRAK’S NEGLIGENCE OR INSTALLATION OF DEFECTIVE PARTS OR COMPONENTS, WHETHER OR NOT SUCH DEFECT WAS KNOWN OR DISCOVERABLE, SHALL NOT EXCEED THE ACTUAL PRICE PAID TO MAC ON TRAK BY CLIENT FOR THE COMPUTER PRODUCTS, HARDWARE OR SOFTWARE, PARTS OR SERVICE WHICHEVER IS LESS.

Mac on Trak shall not be responsible for damages caused by (i) accidents, misuse, misapplication, or neglect of Client or any of its agents or employees or as a result of Service by any person other than a Mac on Trak representative; (ii) placement or operation of computer products in an area that does not comply with manufacturer's published space or environmental requirements; or (iii) improper storage, use, and movement of any computer products to be serviced.

Internet/Transmission Disclaimer. Mac on Trak does not and cannot control the flow of data over the Internet or the integrity of the Internet (the global system of interconnected computer networks). Therefore, Mac on Trak disclaims all liability for loss of data, corruption of data, or inability to provide Services, as a result of disruptions, slowdowns, breakdowns, or other technical issues affecting the Internet.

## **PERFORMANCE**

20. The Parties agree to do everything necessary to ensure that the Contract and these terms take effect and acknowledges that time is of the essence with regard to the performance of all Services.

**CURRENCY**

21. Except as otherwise stated and agreed, all monetary amounts or references to “\$” in the Contract are to the lawful currency of Canada.

**PAYMENT / COMPENSATION FOR SERVICES**

22. Mac On Trak will charge the Client for the Services as outlined in the Contract and the Client agrees that if the Services required expand the scope of the initial Services engaged, a re-adjusted fee will be agreed upon under separate or amended Contract.
23. The Client agrees to deposit 50% of the agreed flat fee prior to commencement of any Services performed by the Contractor.
24. The Client will be invoiced for the remaining fee(s) upon Service completion.
25. Invoices submitted by Mac On Trak to the Client are due within 4 days of receipt.
26. If either party terminates the Contract between the Client and Mac On Trak prior to the commencement of any Services, then Mac On Trak will refund the 50% of the deposit fee to the Client, with the remainder being non-refundable.
27. In the event that the Contract is terminated before completion of the Services but where the Services have been partially performed, Mac On Trak will be entitled to the pro-rata payment of the Compensation to the date of termination provided that there has been no breach of Contract on the part of Mac On Trak.
28. Any sales tax and duties required by law will be charged to the Client in addition to the fees and will be clearly stated in the Contract.
29. The Client understands and agrees that Mac On Trak is not responsible for any expenses or liabilities should any additional software and hardware be suggested or required by Mac On Trak in order to complete the Services. Mac On Trak shall only make recommendations with respect to any such software or hardware, and will not incur any associated expenses or liabilities to the Client without their prior express written consent.

**OWNERSHIP OF INTELLECTUAL PROPERTY**

30. Upon the expiry or termination of the Contract, Mac On Trak may retain the necessary information for payment processing and follow up contact information for the Client.
31. In providing the Services, it is expressly agreed that Mac On Trak is acting as an independent contractor or consultant and not as an employee. Mac On Trak and the Client acknowledge that the Contract does not create a partnership or joint venture between the two parties, and is exclusively a Contract for service.
32. Should Mac On Trak require the engagement of a third party subcontractor to perform some or all of the obligations, an additional agreement with respect thereto will be required and agreed upon by the Client.
33. The Client will not hire or engage any third-party technicians, friends or family to assist with the provision of the Services without the prior written consent of the Client.
34. The Client will not attempt to repair their own devices or engage other Contractors to facilitate in a repair once a Contract has been executed between the Client and Mac On Trak, and the Client covenants and agrees to provide immediate and full disclosure to Mac On Trak if this term is breached.
35. The Parties understand that any new issues that arise after the completion of Services outlined in the Contract would require a new Contract, and will thereupon be considered a separate Contract for Services.

36. Except to the extent paid in settlement from any applicable insurance policies, and to the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party, and its respective affiliates, officers, agents, employees, and permitted successors and assigns against any and all claims, losses, damages, liabilities, penalties, punitive damages, expenses, reasonable legal fees and costs of any kind or amounts whatsoever, which result from or arise out of any act or omission of the indemnifying party, its respective affiliates, officers, agents, employees, and permitted successors and assigns that occurs in connection with this Contract. This indemnification will survive the termination of the Contract for a period of two (2) years.
37. Any amendment or modification of the Contract or additional obligation in connection with the Contract will only be binding if evidenced in writing signed by each Party.
38. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting these Terms.
39. This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.