

MY SERVICE DEPOT LICENSE AND SERVICES AGREEMENT

This Agreement is entered into between Licensee and MSD regarding the Software and Services.

1. Definitions

As used in this License Agreement, the following terms have the meanings set forth in this provision.

1.1 “Documentation” means manuals, guides, functional specifications or other written or electronic materials provided or made accessible by MSD to its customers generally pertaining to the Software, with any additions, modifications or amendments thereto.

1.2 “Finance Company” means any entity providing or offering lease or other financing of fees charged by MSD.

1.3 “Hosting Service” means one of the MSD approved hosting services engaged by Licensee that will install, or permit the installation of, the Software on the hosting service’s computers for purposes of providing remote access to Licensee solely for Licensee’s use.

1.4 “Licensee” means the business entity identified in the Quote as the Licensee.

1.5 “MSD” means My Service Depot, LLC, an Ohio limited liability company.

1.6 “Quote” means a written or electronic Quote or similar order form provided by MSD and signed by Licensee (either electronically or manually) which identifies Software licensed to, and Services purchased by, Licensee.

1.7 “Services” means all services provided by MSD to Licensee during the term of this Agreement or in connection with the Software, including support, installation, training, programming and other services.

1.8 “Software” means all computer software programs, applications, and modules identified in a Quote that is accepted by Licensee. Software shall also include all Updates to the Software used or installed by Licensee during the term of this Agreement and Upgrades purchased by Licensee.

1.9 “Subscription Software” means all Software identified in the attached Products Schedule or in a Quote as Subscription Software.

1.10 “Supported Systems” means the computer hardware, operating systems, network configuration and third-party software required for use of the Software, as published by MSD and amended from time to time.

1.11 “User” means an individual who accesses or uses the Software.

1.12 “Update” means an updated version of the Software that may consist of correction of errors, additional functions and features, or both and that is provided by MSD to its customers licensing such Software without separate charge therefor.

1.13 “Upgrade” means a computer software program, module, or add-on that is licensed by MSD for a fee that may perform different functions than, or enhance the functionality of, the Software or perform the same functions as the Software on a different operating system, operating system version, coding language, or technology platform.

2. Software License

2.1 Grant. Licensee is granted a limited, non-exclusive license to use, execute and display the Software on Supported Systems and to use the Documentation subject to the terms and conditions herein.

2.2 Basis of License; Permitted Uses. MSD’s software products are licensed for use by a number of Users or on a number of devices, as set forth in the attached Product Licensing Table. Licensee may permit the use of the Software by the number of Users or on the number of devices specified on Licensee’s Quotes. Licensee may make one

copy of the Software for its internal use in disaster recovery, backup and archival purposes.

2.3 Restrictions. Except as expressly provided herein, Licensee may not copy, modify, rent, sell, lend, transfer or otherwise distribute the Software or Documentation or decompile, reverse engineer, disassemble, or otherwise reduce the Software, or any part thereof, to human-perceivable form or create derivative works based upon the Software or any part thereof. Licensee agrees not to remove, obscure, or alter any notice of MSD's copyright or other notice of proprietary rights in the Software or in trade marks.

2.4 Amendments to Subscription Software License and Services. MSD may amend the terms and conditions on which it offers its Subscription Software or its Services by written notice to Licensee. Any such amendments will be effective beginning on the earlier of Licensee's signing (either manually or electronically) a Quote that incorporates such amended terms and conditions or the first day of the next renewal term of this Agreement, in which case such amended terms and conditions will be deemed accepted by Licensee by its continued use of the Software and Services.

3. Services

3.1 Support Services. During the term of this Agreement and provided that Licensee has paid current installments of the fee for support Services, MSD will provide remote support Services to Licensee for an unlimited number of incidents. Such support Services will include providing technical support, answering "how to" type questions concerning use of the Software, and making Updates available to Licensee when they are made generally available to MSD's customers. MSD will use commercially reasonable efforts to correct any errors or failures in the Software to the extent that such error or failure is verifiable and reproducible and causes the Software to operate other than as described in the Documentation. Support Services are provided by MSD remotely with MSD accessing Licensee's computer systems as necessary.

3.2 Limitations. Although support Services include answering customers' questions concerning use of the Software, support Services are not intended as a substitute for training. Accordingly, MSD reserves the right to limit support Services to the extent that the nature of the support incident is to receive instruction in the use of the Software and exceeds a reasonable time as determined by MSD.

3.3 Hours of Operation. Unless otherwise provided in the Quote, all installation, training, and support Services will be provided during MSD's regular business hours as published by MSD from time to time.

3.4 Other Services.

3.4.1 Training. MSD offers both remote training and on-site Services. Remote training may be purchased in half hour increments with a minimum purchase of one hour. On-site training Services at Licensee's location may be purchased in one-day increments. Training Services are provided for fees published by MSD and may be used for instruction in the use of any MSD Software products. All travel expenses incurred by MSD in connection with on-site training Services will be charged to Licensee in addition to fees charged for the service. Training Services may be used at any time within six months of purchase but is subject to scheduling based on the availability of MSD's training staff.

3.4.2 Custom Reports, Forms, Programming, and Data Conversion. Custom development of reports and forms, programming, data conversion and similar Services are provided by MSD for such fees and on such terms and conditions as are separately agreed to by MSD and Licensee in writing. All work product produced in connection with such Services shall be owned by, and remain the property of, MSD to the same extent as the Software. Licensee's rights in such work product shall be limited to a license to use such work product in connection with its use of the Software and such use is subject to all limitations and restrictions applicable to the Software. Any revisions or alterations to such work product, whether required by Updates or otherwise, will be subject to additional fees and a new agreement.

3.4.3 Payment Terms. Unless otherwise specifically stated in this License Agreement or agreed in writing, fees for Services, will be due and payable in advance, in the case of Services provided for a fixed fee, or upon completion of the work product for such Services when provided on a time and materials basis.

4. Ownership

4.1 Ownership of Software. Licensee acknowledges and agrees that MSD is the owner of the Software or has the right to license such Software to Licensee and legal title and all rights of ownership therein will remain with MSD or its licensor.

4.2 Access by Third Parties. Licensee acknowledges and agrees that the Software and Documentation comprise and contain proprietary and copyrighted information and trade secrets of MSD. Licensee agrees to take reasonable measures to prohibit access to and copying of the Software and Documentation and Updates, Upgrades, and amendments thereto by anyone other than Licensee and its employees and agents.

5. Fees and Payment

5.1 Fees. Licensee will pay the fees stated in Quotes. Except as otherwise expressly stated herein or in a Quote, payment obligations are non-cancelable and fees paid are non-refundable.

5.2 Invoicing and Payment. Licensee will provide MSD with valid and updated credit card information or bank account information for purposes of recurring charges for support Services and Subscription Software. Licensee authorizes MSD to charge such credit card or bank account for all Software and Services in a Quote and, in the case of Subscription Software or Services, for any recurring charges. Such charges shall be due and payable in advance, either annually or in accordance with any different billing frequency stated in the applicable Quote. If the Quote specifies that payment will be by a method other than a credit card or ACH transfer, MSD will invoice Licensee in accordance with the relevant Quote. Unless otherwise stated in the Quote, invoiced charges are due and payable 30 days from the invoice date. Licensee agrees to notify MSD of any changes to its billing information.

5.3 Overdue Charges. If any amount is not received by the due date, MSD may charge a late fee of 1.5% per month (or the maximum amount permitted by law, if lower) on the unpaid balance until the balance is paid.

5.4 Suspension of Services and Acceleration. If any amount owed by Licensee to MSD is more than 10 days overdue, MSD may suspend Services and the use of Subscription Software. If any amount owed by Licensee to MSD is more than 30 days overdue, MSD may accelerate unpaid fees for the remainder of the current term such that all unpaid fees become immediately due and payable.

5.5 Taxes. Unless the Quote includes a separate item that specifies the taxes charged, all fees are exclusive of sales, use, value added tax or equivalent, personal property and other taxes, which are the responsibility of Licensee. MSD will charge sales or similar taxes as required by applicable law.

5.6 Delivery of Software. Except as provided in Section 5.7, the Software will be made available to Licensee for download and activated, upon confirmation of payment.

5.7 Financing of Fees. MSD may make financing programs available to Licensee through one or more Finance Companies by referral. To the extent Licensee elects to finance fees charged by MSD through a Finance Company, under a lease or other financing arrangement, the Software will be made available to Licensee upon MSD's receipt of the Finance Company's confirmation of approval of Licensee's application in a form acceptable to MSD. Licensee acknowledges and agrees that no Finance Company is affiliated with MSD; that the application for, and approval, denial, and/or terms of, any lease or financing agreement is exclusively between Licensee and Finance Company; and that MSD will have no liability in connection.

6. Warranties/Exclusions /Limitation of Liability

6.1 Authority. Each party warrants that it has validly entered into this Agreement and has the full power and authority to do so.

6.2 Infringement. MSD will defend any claim or action brought, and pay all damages and costs finally awarded, against Licensee to the extent that it is based on a claim that the unmodified Software furnished under this Agreement and used in accordance with this Agreement infringe a patent or copyright or misappropriate a trade secret, provided that (a) Licensee notifies MSD promptly in writing of any such claim, (b) MSD has sole control of the defense of any such claim and all related settlement negotiations and (c) Licensee cooperates with MSD in the defense of such claim. If such claim of infringement is made, or in MSD's opinion is likely to be made, Licensee agrees to permit MSD, at MSD's option and expense either to (a) procure for Licensee the right to continue using the Software and Documentation, (b) replace or modify the

Software and Documentation so that it becomes non-infringing, or (c) accept return of the infringing Software and Documentation and refund the license fee paid for perpetually licensed Software as amortized over five years from the date of delivery of the Software and any prepaid amounts for Subscription Software. The foregoing states the entire obligation of MSD, and the exclusive remedy of Licensee, with respect to infringement of patents, copyrights, trade secrets, or other proprietary rights.

6.3 Indemnification by Licensee. Licensee will defend any claim or action brought, and pay all damages and costs finally awarded, against MSD arising out of Licensee's use of the Software and Services, other than as set forth in Section 6.2.

6.4 EXCLUSION OF OTHER WARRANTIES. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS", AND MSD DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, OMISSIONS, COMPLETENESS, SECURITY AND DELAYS. MSD DOES NOT WARRANT THAT THE SOFTWARE IS FREE FROM BUGS, VIRUSES, ERRORS, OR OTHER PROGRAM LIMITATIONS.

6.5 LIMITATION OF LIABILITY. MSD'S ENTIRE LIABILITY, IF ANY, FOR ANY CLAIM(S) FOR DAMAGES RELATING TO THE SOFTWARE OR SERVICES WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR WARRANTY, IS LIMITED TO THE AMOUNT PAID BY LICENSEE FOR THE SOFTWARE AND SERVICES DURING THE 6 MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT WILL MSD BE LIABLE TO LICENSEE FOR ANY CLAIM(S) FOR LOST PROFITS OR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES RELATING IN WHOLE OR IN PART TO LICENSEE'S RIGHTS HEREUNDER OR USE OF OR INABILITY TO USE, THE SOFTWARE, EVEN IF MSD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Term and Termination

7.1 Initial Term and Renewal. The term of this Agreement will begin on the date that Licensee's initial Quote is accepted by Licensee and shall continue for one year thereafter. The term shall automatically renew for successive one-year terms until terminated as provided herein.

7.2 Termination other than for Default. Either party may terminate this Agreement upon written notice to the other at least 30 days prior to the end of the term or any renewal term.

7.3 Termination for Default. Either party may terminate this Agreement on 30 days' written notice to the other for the other's failure to comply with any term or condition of this Agreement, as amended, or of any term or condition of any separate license agreement relating to the Software or Services.

7.4 Effect of Expiration or Termination. Upon expiration or termination of this Agreement by either Licensee or MSD

7.4.1 MSD will have no further obligation to provide Software Updates, support or other Services to Licensee;

7.4.2 Licensee must discontinue its use of any Subscription Software and remove all Subscription Software from all computers on which it is installed within 15 days of the date of termination; and

7.4.3 In the case termination under Section 7.2, Licensee may continue to use Software that is perpetually licensed Software, but Licensee will not be entitled to receive any Updates to such Software after the effective date of termination.

7.5 Term of Subscription Software. Subscription Software is licensed for use by Licensee for one year terms. The initial term will begin on the date that Licensee accepts a Quote for such Subscription Software and shall continue for one year thereafter. The term shall automatically renew for successive one-year terms unless a party terminates the term of the Subscription Software upon written notice to the other at least 30 days prior to the end of the term or any renewal term or until the termination of this Agreement as provided in this Section 7.

8. Notices

Unless otherwise specifically provided herein, all notices or approvals required or permitted under this Agreement will be in writing and will be deemed to have been given upon: (i) personal delivery, (ii) the third business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day

after sending by email (provided email shall not be sufficient for notices of termination or to assert a claim for indemnification or other legal claim).

Mailed notices to MSD may be sent to:

My Service Depot
Attn: Legal Department
8774 Cotter St.
Lewis Center, OH 43035

Notices to Licensee will be sent to the email or street address set forth in the Quote. Either party may change its address for notices hereunder by providing notice to the other of such change in accordance with this provision.

9. Regulatory Provisions

9.1 Federal Government End Use Provisions. MSD provides the Services and Software for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Software and Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with MSD to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

9.2 Export Compliance. The Software, Services and other technology that MSD makes available and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. Licensee shall not permit Users to access or use any Software or Service in a U.S.-embargoed country (currently Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or regulation.

10. General Provisions

10.1 Mutual Non-Disparagement. Each party agrees that it will not publish any statement that disparages the other or that could reasonably be foreseen to cause harm to the other's business and/or professional reputation and will take reasonable steps to cause its employees to abide by the foregoing, provided that the foregoing shall not apply to limit any statements made under oath or in connection with legal proceedings arising out of, or relating to, this Agreement. The parties agree that it would be impracticable, if not impossible, to ascertain the amount of actual damages caused by a breach of this Section 10.1. Accordingly, the parties agree that if a party violates this provision, such party shall pay to the other, as liquidated damages, the amount of \$3,000 for each breach. The parties agree that this liquidated damages provision represents reasonable and proportionate compensation for the loss which would be incurred due to any such breach. Nothing herein is intended to limit a party's right to injunctive and other relief as may be appropriate.

10.2 Use of Trade Marks. Each party grants the other a non-exclusive, limited license to use the business name, logos, and trademarks (collectively, "Marks") of the other in connection with marketing and promotional materials, provided that such use is consistent with Section 10.1 and accurately represents the parties' relationship.

10.3 Effect of Partial Invalidity/Waiver. The invalidity or unenforceability of any provision of this Agreement will not affect the validity or enforceability of any other provision. In the event that any provision of this Agreement is held to be invalid, such provision will be deemed amended to the least extent as to render such provision enforceable, and the remaining provisions will be deemed to continue in full force and effect. Failure of either party to enforce any provision of this Agreement will not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

10.4 Force Majeure. MSD's performance under this Agreement is subject to interruption and delay due to causes beyond its reasonable control, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies and the like.

10.5 Entire Agreement. All prior conversations, discussions, and agreements between the parties hereto as to the subject matter herein are hereby merged into, and set forth in writing as a part of, this Agreement together with applicable Quotes, which constitute the entire agreement of the parties as to such subject matter.

10.6 Modifications. No changes, alterations, modifications, additions, or qualifications to the terms of this Agreement may be made unless (i) made in accordance with the express provisions of this Agreement governing changes by MSD in the terms and conditions of the license of the Software or Services or (ii) made in writing which specifically references this Agreement by title and which is signed by both of the parties hereto. To the extent that MSD and Licensee are parties to a prior agreement concerning the license and use of the Software and Services, this Agreement will supersede and replace such earlier agreement.

10.7 Continuing Obligations. All rights and obligations of the parties under this Agreement which by their nature would continue beyond the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement and include those set forth in Sections 2.3, 4, 5, 6, 7.4, 8, and 10.

10.8 Governing Law and Forum. This Agreement will be governed by and construed under the law of the State of Ohio without regard to choice of law principles. The parties agree that the state courts in Delaware County, Ohio (or the U.S. District Court for the Southern District of Ohio, Eastern Division if such court has appropriate subject matter jurisdiction) will have exclusive jurisdiction over any claim arising out of, or related to, this Agreement (as amended), the Software, or the Services, and each party consents to the exclusive jurisdiction of such courts.

10.9 Assignment. Licensee may not assign this Agreement, the license, or any of its rights or delegate its obligations without the prior written consent of MSD. For purposes of this Section, a change in control of a majority ownership interest in Licensee shall be deemed an assignment. Notwithstanding the foregoing, Licensee may assign its license to use the Software in connection with a sale of all or substantially all of its assets or in connection with a change in control of a majority ownership interest in Licensee provided (i) all amounts due and payable to MSD are paid in full and (ii) the assignee signs a current MSD License and Services Agreement with respect to the Software licensed hereunder.

11. 30-Day Money Back Guarantee

11.1 Return. Within 30 days of the date of payment for Licensee’s initial purchase of Smart Service, Licensee may notify MSD in writing that it wishes to return the Software for a refund of fees paid for the Software. In such event, Licensee agrees to provide MSD with access to its computers and servers for purposes of uninstalling the Software or to provide MSD with other evidence, as determined by MSD, that the Software has been uninstalled. This right of refund does not apply to any fees for Services, whether or not such Services were prepaid or actually provided within such 30-day period.

11.2 Refund. Upon MSD’s verification that the Software has been uninstalled and upon Licensee’s acknowledgement of the amount of the fees to be refunded, MSD will refund within 15 days thereafter such amount to the account used by Licensee to make the original payment or if payment was by check, then by mailing such payment to Licensee. Upon completing the refund, this Agreement will terminate, subject to Section 10.7.

11.3 Exclusion for Lease/Financed Purchases. Because any financing or lease arrangement through a Finance Company is subject to Licensee’s agreement with a third-party, MSD is unable to offer a return or refund of the Software for financed purchases. Accordingly, to the extent that Licensee utilizes a Finance Company to finance (through a lease or otherwise) fees for the Software, the provisions of Sections 11.1 and 11.2 will not apply.

Product Licensing Table

<i>Software Product</i>	<i>License</i>	<i>Subscription / Perpetual</i>	<i>Additional Terms</i>
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Smart Service	Number of Concurrent Users / Single Database	Perpetual or Subscription	Smart Service licensing is for a single QuickBooks file and corresponding Smart Service database. Licensing for additional QuickBooks files is available for a separate charge. Smart Service is licensed as perpetually licensed software unless otherwise stated in the Quote.
iFleet	Number of Devices	Subscription	MSD may offer iFleet licenses for a one-time purchase price. With the one-time purchase price, no further payments will be required for iFleet licensing, but an active Smart Service support Services plan must still be maintained to continue to use iFleet.
Routzy	Number of Devices	Subscription	Requires an active Smart Service support Services plan
Google Calendar Integration	Number of Employee Calendars	Subscription	MSD may offer Google Calendar Integration for a one-time purchase price. With the one-time purchase price, no further payments will be required for Google Calendar Integration, but an active Smart Service support Services plan must still be maintained to

			continue to use Google Calendar Integration.
Smart Routes	Number of Users	Subscription	Requires an active Smart Service support Services plan
Multi-Location Inventory	Number of Smart Service Concurrent Users	Perpetual	
Service Agreements	Number of Smart Service Concurrent Users	Perpetual	
Smart Leads	One website (No user or device limitation applicable)	Subscription	
Smart Backup	Single Database (and corresponding QuickBooks file)	Subscription	Requires an active Smart Service support plan. Additional charges apply for storage needs in excess of 25 GB