

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY

Contract Number

23-514

SAP Number

County Counsel

Department Contract Representative	Tom Bunton
Telephone Number	(909) 387-5455
Contractor	MOXFIVE LLC and Cipriani & Werner, P.C.
Contractor Representative	
Telephone Number	
Contract Term	April 27, 2023 until terminated by either party
Original Contract Amount	
Amendment Amount	
Total Contract Amount	\$8,250.00
Cost Center	

Briefly describe the general nature of the contract:

Agreement with MOXFIVE LLC and Cipriani & Werner, P.C. for specialized consulting services in connection with a network disruption in an amount of \$8,250.00 for a contract period beginning April 27, 2023 until terminated by either party.

FOR COUNTY USE ONLY

Approved as to Legal Form

Julie Surber, Principal Assistant County Counsel
Date 5/26/23

Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

Date



MOXFIVE

San Bernardino County - Data Recovery

Prepared for:
San Bernardino County

MOXFIVE

MOXFIVE - San Bernardino County - Data Recovery

San Bernardino County
385 N Arrowhead Ave
San Bernardino, CA 92415
United States

Record Id: 37246125
Quote created: Apr 27, 2023
Quote Expires: May 28, 2023

This Quote is made and entered into as of the earlier date on the signature block below ("Quote Effective Date"), by and between MOXFIVE LLC ("MOXFIVE") and Cipriani & Werner P.C. ("Counsel") on behalf of San Bernardino County ("Client"). This Quote is for the Purchase of the Third-Party Deliverables listed below. The Third-Party Provider under this Quote is Total Data Migration ("Provider"). This Quote is valid until May 28, 2023 and shall be governed by the terms and conditions set forth in the Master Services Agreement dated Thursday, April 27, 2023 ("Agreement"), provided that in the event of a direct conflict, the provisions of this Quote shall control. Capitalized terms not defined in this Quote shall have the meanings provided in the Agreement.

The purpose of the engagement under this Agreement is to enable Counsel to render legal advice to Client and its affiliates (the "Client Entities"). Therefore, all communications to Client Entities related to services shall be directed to the attention of Counsel, and MOXFIVE's work and services under this agreement are confidential and are subject to the privileges and protections afforded to such materials under state and federal law under the attorney-client privilege, self-evaluative privilege, or other privileges or protection. All communications between MOXFIVE and Counsel, as well as communications between MOXFIVE and Client Entities, shall be regarded as confidential, made solely for the purpose of assisting Counsel in giving legal advice to Client Entities and subject to the terms of this Agreement.

Fees, Expenses, and Invoicing

MOXFIVE will invoice the Client upon signature acceptance of the Quote. Full payment of \$8,250.00 and any applicable sales tax is required in advance of receiving Third Party Deliverables. Any shipping fees will be invoiced at cost upon delivery. All items are priced in U.S. Dollar and MOXFIVE accepts payments in U.S. Dollars only.

Products & Services

Item & Description	SKU	Quantity	Unit Price	Total
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MOXFIVE

Device Assessment Assessment of client-provided device and/or transfer of data over secure method, containing impacted files, source data, backups and associated files to determine next steps and requirements to recover data and/or restore environments	TDMI-DA-1	1	\$8,250.00	\$8,250.00
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One-Time Subtotal \$8,250.00

Total \$8,250.00

Additional Provisions

Client acknowledges and agrees to the Provider's Terms & Conditions available [here](#), which shall apply to Client's access and use of the Third-Party Deliverables. Client's continued use of the Third-Party Deliverables is subject to its express acceptance of the Terms & Conditions in force at the time of use.

Client has read and agreed to MOXFIVE's additional provisions available [here](#) and must execute the Quote and the Agreement. This Quote shall automatically terminate if it is not accepted by Provider and any payments made by Client to MOXFIVE hereunder shall be promptly returned.

Contact Information

	MOXFIVE Point of Contact
Name	Michael Pincus
Email	michael.pincus@moxfive.com
Phone	267-337-4852
Address	1751 Pinnacle Dr., Suite 600, Tysons, VA 22102

	Client Technical Point of Contact	Client Accounts Payable
Name		
Address		
Title		
Email		

MOXFIVE

	Client Technical Point of Contact	Client Accounts Payable
Phone		

Acceptance of Quote

By signing below, the Parties hereby agree to the terms contained herein.

Agreed and Accepted for MOXFIVE

Amy Doan

Signature

Amy Doan

Name

Sr. Director of Finance

Title

2023-04-27

Date

1751 Pinnacle Dr, Suite 600, Tysons, VA 22102

Address

Agreed and Accepted for Client

Jordan Morgan

Signature

Jordan Morgan

Name

Partner

Title

4/28/2023

Date

450 Sentry Parkway, Suite 200, Blue Bell, PA 19422

Address

Agreed and Accepted for Counsel

Tom Bunton

Signature

Tom Bunton

Name

County Counsel

Title

04/28/2023

Date

385 N. Arrowhead Ave., 4th Flr., San Bernardino, CA 92415

MOXFIVE

Address

Please return signed copy to the MOXFIVE POC

MOXFIVE

MOXFIVE LLC MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (the "Agreement") is entered into as of Apr 27, 2023 (the "Effective Date"), by and between MOXFIVE LLC, a Delaware Limited Liability Company ("MOXFIVE"), and Cipriani & Werner (hereafter "Counsel") on behalf of San Bernardino County (hereafter "Client").

1. Agreement, Statement(s) of Work, and Quote(s).

1.1. CLIENT hereby engages MOXFIVE to provide services (the "Services") described in one or more statement(s) of work or quote(s) attached hereto (collectively, "Addendum"). The Services may include the delivery of products, including, without limitation, data, reports, test plans, documentation and software (collectively, "Deliverables"), as specified in each applicable Addendum. The Deliverables may include eLearning modules (including any scripts, quizzes, exercises, etc), material provided as part of instructor-led training (including any student workbooks, slides, training labs and exercises, etc), and course material (including training content, train-the-trainer content, etc.) (the "Training Materials"). MOXFIVE shall provide Services only in connection with an Addendum agreed to by both parties. Upon execution by both parties, each Addendum shall be successively numbered, attached hereto and incorporated herein.

Certain of the Services and Deliverables may be provided under agreements between MOXFIVE and Third-Party Providers. As used in this Agreement, "Third Party Provider" or "Third Party Providers" means those entities providing Third Party Services or Third-Party Deliverables for use by CLIENT in connection with the Services. "Third Party Services" and "Third Party Deliverables" means certain software and other technology, and/or products that are supplied by Third Party Providers and which MOXFIVE provides access to as part of the Services. CLIENT may elect to purchase or license (as applicable) Third Party Services or Third-Party Deliverables by signing an Addendum covering such items. Third Party Services or Third-Party Deliverables and CLIENT's access to and use thereof is subject to both the provisions of this Agreement as supplemented in the Addendum, and to all licenses and related terms and conditions imposed by the applicable Third-Party Provider, provided that in the event of an express conflict, the terms of this Agreement shall control. CLIENT agrees to comply with the terms and conditions imposed by such Third Party Providers. MOXFIVE reserves the right to substitute and replace Third Party Providers and related Third Party Services or Third Party Deliverables, in its sole discretion with notice to CLIENT, provided that the Services shall not be materially and adversely impaired as the result of such substitution or replacement.

All communications to Client related to Services shall be directed to the attention of Counsel. MOXFIVE's work and Services under this Agreement are confidential and are subject to the privileges and protections afforded to such materials under state and federal law under the attorney-client privilege, attorney work product doctrine, self-evaluative privilege or other privilege or protection. All communications between MOXFIVE and Counsel, as well as communications between MOXFIVE and Client, shall be regarded as confidential, made solely for the purpose of assisting Counsel in giving legal advice to Client and subject to the terms of this Agreement.

1.2 If there is any conflict between the provisions of any Addendum attached hereto and the provisions of this Agreement, the provisions of the Addendum shall control, with the exception of Section 17.9 of this Agreement, which shall control over any and all Addendum. No terms, conditions or other provisions associated with any purchase order or similar document issued by CLIENT (other than a Addendum executed by both parties under Section 1.1 of this Agreement) in connection with a request or authorization for Services or

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Deliverables shall be given any effect unless MOXFIVE expressly agrees to such terms, conditions or other provisions in writing.

2. Changes in Services to be Provided. Any modifications to the specifications or other requirements contained in any Addendum shall require the execution of a substitute or amending Addendum specifically referencing the prior Addendum to be substituted for or amended, as applicable.

3. Method of Performing Services. MOXFIVE shall determine the method, details and means of performing the Services, subject to the standards set forth in the applicable Addendum. MOXFIVE, in its sole discretion, may engage contractors to provide Services or Deliverables, or any portion thereof, provided that MOXFIVE shall remain primarily liable for all Services and Deliverables to be provided hereunder. During the term of this Agreement and thereafter, MOXFIVE shall retain the right to perform any and all services for other clients, and CLIENT shall retain the right to cause work of the same or a different kind to be performed by its own personnel or other contractors, subject to any applicable restrictions contained herein on the use of Deliverables and the disclosure of confidential information.

4. Term and Termination.

4.1. Term. This Agreement shall be effective on the Effective Date and thereafter shall remain in effect until terminated as provided hereunder. Each Addendum shall be effective upon execution by both parties and shall continue until (i) all Services and Deliverables to be provided thereunder have been provided and accepted by CLIENT, or (ii) such Addendum is terminated as provided hereunder, whichever is first to occur.

4.2. Termination for Default.

4.2.1. Termination of Agreement for Default. In the event that either party materially defaults in the performance of any of its duties or obligations hereunder and does not substantially cure such default within thirty (30) days after receipt of written notice from the non-defaulting party specifying the default, the non-defaulting party may, by written notice to the defaulting party, terminate this Agreement as of the date specified in such notice.

4.2.2. Termination of Addendum. In the event that either party materially defaults in the performance of any of its duties or obligations under an Addendum and does not substantially cure such default within thirty (30) days after receipt of written notice from the non-defaulting party specifying the default, the non-defaulting party may, by written notice to the defaulting party, terminate such Addendum as of the date specified in such notice. Termination of an Addendum for cause shall have no effect upon other Addendums that may be in effect under this Agreement. CLIENT shall not offset disputed amounts payable under one Addendum against payments due under any other Addendum.

4.3. Termination upon Completion of all Addendums. If there are no outstanding Addendums, either party may terminate this Agreement upon at least thirty (30) days' written notice to the other party, such termination to take effect as of the date specified in such notice.

4.4. Termination for Nonpayment. Notwithstanding any other provision hereof, if CLIENT fails to pay any amount due to MOXFIVE within the time specified in Article 5, MOXFIVE may immediately suspend work under all Addendums until payment is received. If CLIENT does not cure such default within thirty (30) days after the date CLIENT received the corresponding invoice, MOXFIVE may immediately terminate this Agreement and all Addendums upon written notice to CLIENT.

4.5. Termination for Insolvency. Notwithstanding any other provision hereof, in the event that either party becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation, insolvency or the appointment of a receiver, makes an assignment for the benefit of all or substantially all of its

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creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations, the other party may immediately terminate this Agreement upon written notice to such party.

4.6. Effect of Termination. Upon termination of this Agreement for any reason, CLIENT shall pay MOXFIVE for all Services and Deliverables provided pursuant to all Addendums through the effective date of such termination. Upon termination of a particular Addendum for any reason, CLIENT shall pay MOXFIVE for all Services and Deliverables provided pursuant to such Addendum through the effective date of such termination. Upon termination of this Agreement or Addendum for any reason, (a) CLIENT shall return to MOXFIVE all materials, software, hardware, documents and other tangible items which are not expressly designated in the applicable Addendum as items to be retained by CLIENT, (b) CLIENT shall return to MOXFIVE any Deliverables and any other materials, software, hardware, documents and other tangible items for which CLIENT has not paid the applicable fee, and (c) the intellectual property rights of the parties with respect to the Services and Deliverables provided hereunder shall be as specified in Article 13, except as otherwise expressly provided in any Addendum.

4.7. Survival. Termination of this Agreement shall terminate each party's obligations under this Agreement, except that the provisions of Articles 5 (Payments to MOXFIVE), 6 (Confidentiality), 8 (CLIENT Representations and Warranties), 9 (MOXFIVE Representations and Warranties), 10 (Exclusion of Warranties), 11 (Limits of Liability), 12 (Indemnification), 14 (Non-Solicitation) and 17 (General) shall survive such termination.

5. Payments to MOXFIVE.

5.1. Fees. For the Services performed hereunder, CLIENT shall pay to MOXFIVE the fees in the amount and manner set forth in the applicable Addendums. All fees and all expenses incurred by MOXFIVE in the performance of the Services will be billed to CLIENT on a monthly basis or as set forth in the applicable Addendum.

5.2. Expenses. CLIENT shall pay, or reimburse MOXFIVE for, all reasonable and customary out-of-pocket expenses, including, without limitation, expenses for travel (including local transportation), lodging, meals, telephone calls, shipping and duplicating, incurred by MOXFIVE in connection with the performance of MOXFIVE's obligations hereunder. MOXFIVE shall bill such expenses to CLIENT at actual cost. Travel expenses incurred by MOXFIVE personnel on behalf of CLIENT shall be consistent with MOXFIVE's standard travel policies.

5.3. Taxes. CLIENT shall pay all sales, use, transfer, privilege, excise or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transactions contemplated hereby, excluding taxes on the profits or net income of MOXFIVE.

5.4. Time of Payment. Any amounts due to MOXFIVE hereunder shall be due and payable within thirty (30) days after invoice date. If CLIENT fails to pay any amount due within such thirty (30) day period, late charges in the amount of 1½% per month shall be applied to the unpaid balance and shall be payable by CLIENT. In addition, failure of CLIENT to pay any amount due within such thirty (30) day period shall be deemed a material breach of this Agreement and shall give MOXFIVE the right to suspend performance of the Services and terminate this Agreement as provided in Article 4. If either party fails to perform its obligations hereunder, including the obligation to pay fees and expenses when due, such non-performing party shall pay, in addition to any amounts otherwise due, all reasonable expenses incurred by the other party to enforce its rights or the non-performing party's obligations hereunder. No failure by MOXFIVE to request any such payment or to demand any such performance shall be deemed a waiver by MOXFIVE of CLIENT's obligations hereunder or a waiver of MOXFIVE's right to terminate this Agreement as provided hereunder.

6. Confidentiality.

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6.1. During the term of this Agreement, each party may disclose to the other party certain Confidential Information (defined in Section 6.2). The receiving party shall hold the disclosing party's Confidential Information in confidence and shall use its best efforts to protect it. The receiving party shall not disclose the disclosing party's Confidential Information to any person other than employees and independent contractors of the receiving party who need to know such Confidential Information in order to perform services for the receiving party and who are bound by a written confidentiality agreement with the receiving party that is no less protective of such Confidential Information as this Agreement. Upon request of the disclosing party, the receiving party will provide the disclosing party with reasonable evidence of such written confidentiality agreement. The receiving party shall use such Confidential Information for the sole purpose of performing its obligations hereunder. Upon termination of this Agreement, the receiving party shall either return to the disclosing party all of the disclosing party's Confidential Information in its possession (including all copies) or shall, at the disclosing party's direction, destroy the disclosing party's Confidential Information (including all copies) and an officer of the receiving party shall certify its destruction to the disclosing party.

6.2. For the purposes of this Agreement, "Confidential Information" means any information or know-how (in oral, written, digital or other form), including, without limitation, information relating to research, product plans, products, services, clients, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration, marketing or finances, provided by one party to the other party, obtained by one party from the other party, or prepared by one party upon review of the other party's information or know-how. The Training Materials shall be Confidential Information of MOXFIVE. The receiving party shall require any of its employees and independent contractors who receive Confidential Information of the disclosing party to comply with the provisions of this Article 6 and shall be responsible for any use or disclosure of the Confidential Information of the disclosing party by any such persons as though such use or disclosure were made by the receiving party.

6.3. Notwithstanding Section 6.2, the term "Confidential Information" shall not include any information which (a) is publicly known at the time of disclosure or enters the public domain following disclosure through no fault of the receiving party, (b) the receiving party can demonstrate was already in its possession prior to disclosure hereunder or was subsequently disclosed to the receiving party with no obligation of confidentiality by a third party having the right to disclose it, or (c) is independently developed by the receiving party without reference to or use of the disclosing party's Confidential Information.

6.4. The receiving party may disclose the disclosing party's Confidential Information upon the order of any competent court or government agency, provided that prior to such disclosure the receiving party shall inform the disclosing party of such order and provide the disclosing party with reasonable assistance to prevent or limit such disclosure.

6.5. Each party agrees that its obligations under this Article 6 are necessary and reasonable in order to protect the disclosing party and its business, and each party expressly agrees that monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of such obligations. Accordingly, each party agrees and acknowledges that any such breach or threatened breach will cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available at law, in equity or otherwise, the disclosing party shall be entitled to obtain injunctive relief against the continued breach or threatened breach of the receiving party's obligations under this Article 6, without the necessity of proving actual damages.

6.6. To the extent that a non-disclosure or confidentiality agreement has been executed by the parties prior to the Effective Date, such non-disclosure or confidentiality agreement shall survive the execution of this Agreement, provided, however, that the provisions of this Article 6 shall take precedence over any provisions of

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such earlier non-disclosure or confidentiality agreement to the extent there is a conflict between such provisions.

6.7. In an attempt to minimize the likelihood of dissemination of confidential or sensitive information about CLIENT's business, MOXFIVE will, within six months of the completion of Services to CLIENT, use good faith efforts to delete completely from wherever they are stored all documents in MOXFIVE's possession or under its control arising from or related to those Services which MOXFIVE determines in its reasonable, good faith discretion are not necessary to keep for purposes related to the Services. The deletions will be in accordance with a document retention protocol set up internally by MOXFIVE, and applied in a good faith effort, to carry out the intent of this paragraph. Among documents that MOXFIVE is encouraged by CLIENT to delete after six months are, without limitation, non-essential emails, voicemails, text messages, and recordings of conference calls (e.g., Slack, Zoom, RingCentral, WhatsApp). MOXFIVE will use reasonable, good faith efforts not to delete for at least three years after completion of Services to CLIENT (a) documents constituting an agreement with CLIENT, (b) documents from CLIENT containing instructions to MOXFIVE, (c) MOXFIVE's responses to such documents, (d) documents from MOXFIVE to CLIENT or a third-party constituting advice or provision of Services for CLIENT, (e) documents generated by MOXFIVE or its subcontractor necessary to performance of Services for CLIENT, and (f) documents that MOXFIVE is required by law to retain for longer than six months.

7. Advertising; Proprietary Markings.

7.1. The parties may issue and disseminate press releases, announcements and publications which state that MOXFIVE is performing the Services on behalf of CLIENT, provided that any use by either party of the other party's insignia, logos, trademarks, trade names or service marks (collectively, the "Marks") shall require the other party's prior written approval, which shall not be unreasonably withheld. All use by either party of the other party's Marks will inure to the benefit of the party owning the Marks. Upon termination of this Agreement, neither party shall have any continuing right to use the other party's Marks and each party shall immediately cease all use of the other party's Marks. During the term of this Agreement and thereafter, MOXFIVE may list CLIENT as a client of MOXFIVE in all MOXFIVE marketing materials and may include a URL or plain text link to CLIENT's Web site on MOXFIVE's Web site.

7.2. In no event shall either party alter, remove, obscure, erase, deface or hide from view any copyright, trademark or other proprietary rights notice of the other party contained in or incorporated into any Deliverable or other product or document provided to such party hereunder.

7.3. Neither party will take any action intended to appropriate or perfect rights in the intellectual property of the other, including, without limitation, the filing of patent, trademark or service mark applications or copyright registrations.

8. CLIENT Representations and Warranties. CLIENT represents and warrants that (a) CLIENT has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby, and (b) this Agreement has been duly and validly executed and delivered by CLIENT and constitutes the valid and binding agreement of CLIENT, enforceable against CLIENT in accordance with its terms.

9. MOXFIVE Representations and Warranties. MOXFIVE represents and warrants that (a) MOXFIVE has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby, (b) this Agreement has been duly and validly executed and delivered by MOXFIVE and constitutes the valid and binding Agreement of MOXFIVE, enforceable against MOXFIVE in accordance with its terms, (c) all Services to be provided hereunder shall be provided in a professional and workmanlike manner

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commensurate with standards in the industry for the type of services to be provided hereunder, and (d) to the knowledge of MOXFIVE, no Services shall infringe on the intellectual property rights of third parties.

10. Exclusion of Warranties. APART FROM ANY EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ALL SERVICES AND DELIVERABLES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS. NEITHER MOXFIVE NOR ANY OF ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS OR LICENSORS WARRANTS THAT PARTICULAR RESULTS MAY BE OBTAINED BY CLIENT IN CONNECTION WITH MOXFIVE'S PROVISION OF SERVICES OR DELIVERABLES HEREUNDER. MOXFIVE AND ITS AFFILIATES, EMPLOYEES, OFFICERS, DIRECTORS, AGENTS AND LICENSORS MAKE NO WARRANTY, GUARANTEE OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE MERCHANTABILITY, TITLE OR FITNESS FOR A PARTICULAR PURPOSE OF ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER. MOXFIVE MAKES NO WARRANTY OR GUARANTEE WITH RESPECT TO ANY THIRD-PARTY SERVICES OR THIRD PARTY DELIVERABLES OR OTHER PRODUCTS DELIVERED WITH OR EMBODIED IN THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER.

11. Limits of Liability.

11.1. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR OTHER SIMILAR TYPE OF DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES BASED UPON LOSS OF PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PERFORMANCE HEREOF, THE USE OF THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER, AND SUCH PARTY'S ALLEGED BREACH OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY IS INFORMED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. IN ADDITION, THE DECISION TO ACQUIRE THIRD PARTY SERVICES OR THIRD PARTY DELIVERABLES IS SOLELY THAT OF CLIENT, EVEN IF MOXFIVE ASSISTS IN THEIR IDENTIFICATION, EVALUATION, SELECTION OR IMPLEMENTATION. MOXFIVE IS NOT RESPONSIBLE FOR, AND EXPRESSLY DISCLAIMS LIABILITY FOR, PERFORMANCE OR QUALITY OF THIRD PARTY SERVICES AND THIRD PARTY DELIVERABLES, AND THEIR FAILURE WILL NOT AFFECT CLIENT'S OBLIGATIONS TO MOXFIVE. ANY CLAIM BY CLIENT IN CONNECTION WITH THE THIRD PARTY SERVICES OR THIRD PARTY DELIVERABLES, AND ANY REMEDIES FOR SUCH CLAIMS ARE THE RESPONSIBILITY OF THE THIRD PARTY PROVIDER.

11.2. UNDER NO CIRCUMSTANCES WHATSOEVER SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PERFORMANCE HEREOF, THE SERVICES AND DELIVERABLES PROVIDED HEREUNDER, AND SUCH PARTY'S ALLEGED BREACH OF THIS AGREEMENT IN ANY AMOUNT OF MONEY WHICH SHALL EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID OR PAYABLE BY CLIENT TO MOXFIVE WITH RESPECT TO THE ADDENDUM UNDER WHICH THE CLAIM IS MADE OR FROM WHICH THE CLAIM AROSE. IN ADDITION, UNDER NO CIRCUMSTANCES SHALL SUCH PARTY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE TO MOXFIVE IN THE TWELVE (12) MONTHS PRECEDING THE DATE OF ANY CLAIM.

11.3. THE LIMITATIONS ON LIABILITY SET FORTH IN THIS SECTION SHALL APPLY TO ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION AND OTHER TORTS, AND LIABILITY BASED UPON THE PROVISIONS OF ANY PART OF THIS AGREEMENT AND ANY FEDERAL, STATE OR LOCAL LAW OR ORDINANCE. THE DISCLAIMERS OF WARRANTY AND LIMITATIONS OF LIABILITY SET FORTH IN THIS AGREEMENT ARE FUNDAMENTAL TERMS OF THIS AGREEMENT, AND THE PARTIES WOULD NOT HAVE ENTERED INTO THIS AGREEMENT WITHOUT THEIR INCLUSION.

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11.4. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ARISEN.

12. Indemnification. Subject to the provisions and limitations of Article 11, if a third party brings an action against CLIENT alleging infringement of a United States patent or copyright based on CLIENT's use of the Services or Deliverables provided by MOXFIVE hereunder, MOXFIVE shall, at its own expense and in its sole discretion, settle the claim or defend CLIENT in such proceeding, and MOXFIVE will pay all settlements, costs, damages and legal fees and expenses finally awarded, provided that CLIENT shall promptly notify MOXFIVE in writing of the proceeding, provide MOXFIVE with a copy of all information received by CLIENT with respect to the proceeding, cooperate with MOXFIVE in defending or settling the proceeding, and allow MOXFIVE sole control of the defense and settlement of the proceeding, including the selection of attorneys. CLIENT may observe the proceeding at its own expense. Notwithstanding the foregoing, MOXFIVE shall have no indemnification obligation under this Article 12 for infringements resulting from the modification of any Deliverable by CLIENT or a third party or from the use of any Deliverable in a manner other than that for which it was intended.

13. Intellectual Property Rights

13.1. The parties acknowledge that, except with respect to Training Materials and except as expressly agreed in a Addendum, (a) CLIENT owns the intellectual property rights in any software, in object and source code formats, MOXFIVE creates specifically for incorporation into CLIENT's software or computer systems pursuant to this Agreement, (b) CLIENT owns the copyright in any reports and other documents describing the results of the Services delivered by MOXFIVE to CLIENT pursuant to this Agreement, and (c) MOXFIVE owns the intellectual property rights in its testing code, in object and source code formats, and its testing methodologies, and its software risk management methodologies and practices and any improvements made thereto

13.2. The parties acknowledge that, except as expressly agreed in a Addendum, all right, title and interest in and to any Training Materials, whether created independently by MOXFIVE or pursuant to this Agreement shall vest in MOXFIVE.

13.3. CLIENT agrees to use the reports and other documents described in this Section 13.1(b) solely for CLIENT's internal business purposes and not to disclose such reports and documents to any third party, and acknowledges and agrees that its rights in any such reports and documents are subject to MOXFIVE's rights in any MOXFIVE intellectual property described or embodied therein. CLIENT hereby grants a non-sublicenseable, non-transferable, perpetual license to MOXFIVE to use such reports and other documents solely for MOXFIVE's internal business purposes and not for disclosure to any third party.

13.4. Notwithstanding any other provision of this Agreement, all right, title and interest in and to all testing tools and utilities; testing software and plans; strategies, processes and methodologies; models and historical data; Training Materials; and related materials and documentation owned or possessed by MOXFIVE prior to, or developed during the course of MOXFIVE's performance of, this Agreement shall vest in MOXFIVE regardless of the use of such material in any engagement or the inclusion of such material in any deliverables of any type.

13.5. Except as specified in this Article 13 or as expressly agreed in a Addendum, neither party shall license any rights in its intellectual property to the other party. Except as expressly agreed in a Addendum, a party granted a license pursuant to this Agreement shall not sublicense or transfer such license to any third party.

13.6. If this Agreement or any Addendum is terminated prior to the completion of any Services and Deliverables, MOXFIVE shall not be obliged to provide incomplete Deliverables to CLIENT. If at the time of such

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termination CLIENT has not paid all fees due for any Services and Deliverables under the applicable Addendums, CLIENT shall receive no right, title, interest or license in or to such Services and Deliverables.

14. **Non-Solicitation.** During the term of this Agreement and for one (1) year thereafter, neither party shall induce or attempt to induce, directly or indirectly, any employee or contractor of the other party to leave the employ thereof other than by general solicitations, such as advertising, not specifically targeted at employees or contractors of the other party. For purposes of this Article 14, a "party" includes a party and any of its affiliates. Each party acknowledges that in the event that it breaches its obligations under this Article 14, the other party shall suffer irreparable harm for which no adequate remedy at law exists and shall be entitled to obtain injunctive relief against the continued breach of such obligations without the necessity of proving actual damages, in addition to any other remedies that may be available at law, in equity or otherwise.

15. **Notice.** Any notice required or permitted to be given hereunder shall be in writing and deemed received by the party to whom it is addressed (a) immediately, if delivered personally or by facsimile with proof of successful transmission, (b) one (1) business day after dispatch by nationally recognized courier, or (c) five (5) business days after dispatch by certified U.S. mail, postage prepaid and return receipt requested. All notices shall be sent to the other party at its address as set forth below or at such other address as such party shall have specified in a notice given in accordance with the provisions hereof.

16. **Force Majeure.** Neither party shall be liable to the other party for any delay or failure to perform its obligations hereunder due to causes beyond its reasonable control. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

17. **General.**

17.1. **Residual Knowledge.** Nothing herein shall be construed to prevent MOXFIVE from using general knowledge, skill and expertise acquired in the performance of this Agreement, not to include any Confidential Information of CLIENT, in any current or subsequent endeavor. CLIENT shall have no interest in any such endeavor.

17.2. **Assignment.** Neither party shall assign or otherwise transfer its rights, duties or obligations hereunder to any other person, corporation or other entity without the express prior written approval of the other party, except to an entity that (a) is not a direct competitor of the other party, and either (b)(i) enters into a merger or consolidation agreement with, or purchases all or substantially all the assets of, the assigning or transferring party, or (b)(ii) is the parent or sister company of the assigning party and the assignment will not affect performance of the obligations of the assigning party. Any purported assignment or transfer that does not conform with the provisions hereof shall be void.

17.3. **Governing Law; Compliance with Laws.** This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to any conflicts-of-law principle that would require or permit the application of the substantive law of any other jurisdiction. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. CLIENT agrees to use the Services and Deliverables provided hereunder solely for the use identified in Agreement and applicable Addendums and only for proper business purposes in accordance with all applicable federal, state and local laws and regulations, including, without limitation, all laws and regulations respecting data privacy, international communications, foreign corrupt practices, the transfer of intellectual property and the export and import of data and software.

17.4. **Severability.** If any provision of this Agreement is or becomes illegal, unenforceable or invalid (in whole or in part, for any reason), the remainder of this Agreement shall remain in full force and effect without being impaired or invalidated in any way.

MOXFIVE

17.5. Headings. The article and section titles and headings in this Agreement are intended solely for convenience of reference and are not intended to explain, modify or place any construction or limitation upon any provision of this Agreement.

17.6. Entire Agreement. No representations or statements of any kind made by either party that are not expressly stated herein or in any written amendment hereto shall be binding on such party. This Agreement and all Addendums appended hereto shall constitute the complete and exclusive statement of the agreement between the parties and shall supersede all prior or contemporaneous proposals, oral or written, and all other communications between the parties relating to the subject matter hereof.

17.7. No Third-Party Beneficiaries. Nothing in this Agreement is intended to, or shall, create any third-party beneficiaries, whether intended or incidental, and neither party shall make any representations to the contrary.

17.8. No Implied Waiver. Neither party shall be deemed to have waived any term, condition or other provision hereof or to have consented to any breach hereof by the other party unless such waiver or consent is in writing and executed by a duly authorized representative of such party. No consent by either party to, or waiver by either party of, a breach by the other party, whether such consent or waiver is express or implied, shall constitute a consent to, waiver of or excuse for any different or subsequent breach.

17.9. Non-Agency. Nothing in this Agreement shall be construed to make the parties partners, joint venturers, representatives or agents of each other, and neither party shall represent to any third party that the parties have any such relationship. The parties hereunder are acting in performance of this Agreement as independent contractors engaged in the operation of their respective businesses. A party's employees, agents or representatives are not employees or agents of the other party and are not entitled to any benefits offered by the other party, including, without limitation, wages, stock options or profit sharing. Neither party shall be responsible for payment of workers' compensation, disability benefits or unemployment insurance, or for withholding or paying employment-related taxes, for or with respect to the other party or its employees.

17.10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute a single agreement.

MOXFIVE

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

Agreed and Accepted for MOXFIVE

Amy Doan

Signature

Amy Doan

Name

Sr. Director of Finance

Title

2023-04-27

Date

1751 Pinnacle Dr, Suite 600, Tysons, VA 22102

Address

Agreed and Accepted for Client

Jordan Morgan

Signature

Jordan Morgan

Name

Partner

Title

4/28/2023

Date

450 Sentry Parkway, Suite 200, Blue Bell, PA 19422

Address

Agreed and Accepted for Counsel

Tom Bunton

Signature

Tom Bunton

Name

County Counsel

Title

04/28/2023

Date

385 N. Arrowhead Ave., 4th Flr., San Bernardino, CA 92415

Address



Additional Provisions

Once signed by Client, this Quote is non-cancellable and non-terminable by Client. MOXFIVE may suspend performance under this Quote (including provision of the Third Party Deliverables) if Client fails to make any payments required under this Quote.

MOXFIVE may terminate this Quote upon ten (10) days' written notice for Client's a material breach of this Quote or the Provider's Terms & Conditions or EULA. In addition, MOXFIVE may discontinue provision of the Third Party Deliverables if and to the extent discontinued by Provider. Provider (and not MOXFIVE) is responsible for provision of any end of life notices. MOXFIVE will use reasonable efforts to provide Client with replacement Third Party Deliverables but shall not be liable if unable to do so (and MOXFIVE shall have the right in such event to terminate this Quote). Client may be required to accept new terms in connection with any replacement Third Party Deliverables.

Upon any termination for any reason of any agreements in connection with the Third Party Deliverables, (i) no refund of any prepaid or due and payable fees, or other agreed upon amounts, shall be due in any amount to Client in connection with such termination and (ii) any fees or other amounts owed by Client to MOXFIVE will become immediately due and payable.

WARRANTY DISCLAIMER. MOXFIVE AND, EXCEPT FOR ANY LIMITED EXPRESS WARRANTIES MADE BY PROVIDER TO CLIENT OR COUNSEL IN AN END USER LICENSE AGREEMENT OR OTHER WRITTEN AGREEMENT, PROVIDER DO NOT MAKE ANY WARRANTIES RELATING TO THE THIRD PARTY DELIVERABLES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY.

CLIENT ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT NEITHER MOXFIVE NOR PROVIDER GUARANTEE OR WARRANT THAT USE OF THE THIRD PARTY DELIVERABLES WILL FIND, LOCATE OR DISCOVER ALL SYSTEM THREATS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND WILL NOT HOLD MOXFIVE OR PROVIDER RESPONSIBLE THEREFOR.

THE THIRD PARTY DELIVERABLES ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN ANY HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE OR OPERATION. THE THIRD PARTY DELIVERABLES ARE NOT FOR USE IN THE OPERATION OF AIRCRAFT NAVIGATION, NUCLEAR FACILITIES, OR COMMUNICATION SYSTEMS, WEAPONS SYSTEMS, DIRECT OR INDIRECT LIFE-SUPPORT SYSTEMS, AIR TRAFFIC CONTROL, OR ANY APPLICATION OR INSTALLATION WHERE FAILURE COULD RESULT IN DEATH, SEVERE PHYSICAL INJURY OR PROPERTY DAMAGE.

Client's sole remedy against MOXFIVE and Provider for liability arising out of this Quote and/or the Third Party

Deliverables is limited to the lesser of the limits stated in the Agreement or those stated in the EULA or other Terms & Conditions issued by Provider to Client in connection with the Third Party Deliverables.

Neither MOXFIVE nor Provider nor their employees, agents or contractors shall be liable for any delay or failure to perform for any cause beyond their reasonable control.

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833-568-6695

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TOTAL DATA MIGRATION TERMS & CONDITIONS

In connection with the purchase of the goods and/or services ("Products") purchased by the Client from Total Data Migration LLC ("TDM") via MOXFIVE, Client agrees to the following terms and conditions:

Project Assumptions

The following assumptions and recommendations were used in the preparation of the processing, delivery, and pricing estimates. Any deviation from the assumptions contained herein may impact any or all of the pricing estimates:

- All Source Media processing will be performed at TDM facilities or agreed upon location.
- TDM will provide status reports to Client daily or on predetermined schedule.
- Upon completion of these project requirements or at the request of Client, TDM will return the Source Data to Client according to a delivery schedule agreed upon by both parties in writing.
- Client may require additional services pertaining to this project from TDM, for which an Addendum to this Schedule maybe required.
- Tape services rendered that fail to complete due to tape media issues and/or errors, will be billed to the client at 85% of the quoted service cost.
- The cost of carriage of tapes & deliverabledata are the responsibility of the client.
- Where on-site work is proposed, all hardware, software and resource are included but expenses such as travel, accommodation, subsistence, incidental costs and any output hardware are excluded and will be charged.
- Applicable taxes excluded from all prices.

Processing

If Client requires a specific production sequence to meet time commitments to other Client or external processes, please inform TDM prior to the commencement of Services so as to minimize the impact to the production processes and to determine the degree to which TDM can accommodate Client's request.

- An estimated time of completion will be generated once TDM receives media or gets confirmation of tape numbers, types, and formats.
- Services will be performed as quickly as technically feasible, taking into consideration technical limitations beyond TDM and Client's control.
- Services to be performed in satisfaction of the requirements contained herein do not include decrypting encrypted documents or email, removal of passwords on password protected files, nor do they include processing or manipulation of abnormal or atypical file types.

Return Delivery and Storage Billing

- All Source Media and resultant data will be delivered to a contact at an address specified by Client in writing, within a mutually agreeable timetable.
- Data storage will be charged based on the rates set forth below, subject to a monthly \$500 minimum charge, until Client notifies TDM that it no longer desires TDM to store its data.
- Physical media - data storage costs for physical media received by TDM will be incurred by the client beginning on the day the media arrives at TDM.
- Work product – data storage costs for work product or project resultant data that is stored on TDM's network(s) will be incurred by the client upon completion of the specific project and/or project deliverable.
 - a. From 0-5 TB: \$0.50 per GB per month
 - b. From 5-10 TB: \$0.25 per GB per month
 - c. Over 10 TB: \$0.12 per GB per month
 - d. Media Storage: \$1.00 per Piece of Source Media per month
- It is the Client's responsibility to notify TDM when storage of data/media is no longer desired. In the absence of such Client notification, TDM will continue to bill for monthly storage at the same rates. If TDM has not received direction from Client regarding the disposition of work product/project resultant data 90 days after project completion, TDM will purge such data from TDM's network. Should Client request elements of that work product data after it is purged, TDM may need to re-perform procedures on source media, which would be billed as a new work effort beyond the original project.
- The client may opt to cancel storage billing at any time, but storage will be billed at a minimum of a two-week prorated period based on the date of cancellation. Billing for storage will be calculated and invoiced on the 1st day of each month following the initial storage period.
- Upon cancellation of storage billing media will be returned to Client. A separate Quote will be required if Client requests destruction of the media or return of any restored or recovered data that is beyond the scope of this Quote.
- Return shipping of data/media will be charged to Client at cost to TDM, or Client may opt to provide a Federal Express number under which TDM will ship data/media.

Terms & Conditions

CONFIDENTIALITY & NON-DISCLOSURE: TDM adheres to strict information and data security policies in accordance with ISO27001 standards. All reports and documents prepared by TDM shall be delivered to, and all communications by TDM shall be with, Client or such persons working with Client as Client shall designate. All communications between TDM, Client, or others in connection with this Scope of Work shall be regarded as confidential and made solely for the purpose of assisting counsel in giving legal advice. TDM, and any subcontractor it engages, will take appropriate precautions to protect Client's proprietary information, the work it and its subcontractors create, and any confidential attorney-client communications. TDM will disclose its work product only

to Client and to persons working on this Scope of Work on a need to know basis. TDM's obligation of confidentiality shall not extend to information that: (i) is already known to TDM or its agents at the time the information is received by TDM; (ii) is or becomes known to the public through no fault or action of TDM or its agents; or (iii) is available to TDM from a third party not bound to secrecy by contractor court order. TDM will not disclose to anyone, without Client's written permission or pursuant to an order of a court of competent jurisdiction, the nature or content of any oral or written communications concerning this Scope of Work, nor any information gained from the inspection of any data, record, or document submitted to TDM with respect to this Scope of Work, including information obtained from corporate or publicly available records or documents, and TDM will not permit inspection of any data, papers, or documents concerning this Scope of Work without Client's prior written permission or an order of a court of competent jurisdiction. The preceding sentence will not be construed to limit TDM's testimony at any administrative hearing.

PRIOR AGREEMENTS: This project may be part of a previous order that has been extended, and/or may have a Master Services Agreement associated with it. Unless explicitly stated to the contrary in this Statement of Work, conflicts in requirements and/or terms between this agreement and any previous contract or purchase order shall be governed by the details of the information in this document.

LEGAL REQUESTS: TDM will immediately notify Client of the happening of either of the following events: (i) the exhibition or surrender of any documents or records covered in this Scope of Work, in a manner not expressly authorized, or (ii) a request by anyone to examine, inspect or copy such documents or records covered by this Scope of Work.

COURT ORDER: TDM shall give immediate notice to Client of a court order or subpoena to testify and/or to produce any documents or records arising from this Scope of Work and shall cooperate fully in any efforts that Client may undertake with respect to that order or subpoena.

WORK PRODUCT: All work papers, records, or other documents prepared or obtained with respect to this Scope of Work, **excluding internal notes, modifications to TDM proprietary software to process Client's data and internal job processing notes**, shall be treated as Client's work product and shall be held by TDM solely for Client's convenience and subject to Client's unqualified right to instruct TDM with respect to possession and control. Work papers prepared by TDM, or under TDM's direction, in connection with this Scope of Work belong to Client, and will be turned over to Client at Client's request. TDM will be afforded reasonable access to such work papers in the event that TDM is involved with litigation or administrative proceedings where such access is necessary.

CONFLICT: TDM affirms that it has undertaken a limited inquiry of its records to determine conflicts with this Scope of Work and that no such conflicts have been found. Client acknowledges, however, that the very nature, diversity, magnitude, and volume of TDM and its past and present clients and professional relationships does not allow TDM

to be certain that each and every possible relationship or potential conflict has come to its attention. In the event that additional relationships or potential conflicts come to TDM's attention, TDM will promptly notify Client. **TDM operates as a neutral third-party vendor in all cases, except when retained to act specifically in a consulting capacity.** This Scope of Work will not preclude TDM's future services for clients adverse to Client on matters that are not substantially related to the matter TDM is handling in connection with this Scope of Work, so long as these future services do not require TDM to use or disclose information obtained during the course of this Scope of Work.

LIMITED LIABILITY: It is understood and agreed that TDM is an independent contractor. Accordingly, TDM will not assume liability for Client's actual use of the information provided to Client as result of services performed under terms of this Scope of Work, nor does Client assume liability for TDM's activities in gathering information, which TDM has represented will be done in full compliance with all applicable laws and regulations. **Client warrants to TDM that it is the owner of, and/or has the right to bein possession of, all Materials furnished to TDM, and that such materials are furnished for a lawful purpose.**

HEADINGS: The headings and titles used in this document are purely for convenience purposes, and no legal meaning should be attached to such headings.