

MANDIANT[®]

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement"), dated October 11, 2012 (the "Effective Date"), is between South Carolina Department of Revenue with offices at 300A Outlet Pointe Blvd., Columbia SC 29210 (hereafter "Customer") and MANDIANT Corporation, a Delaware corporation with offices at 2318 Mill Road, Suite 500 Alexandria, VA 22314 (hereafter "MANDIANT"). Customer and Mandiant will each be referred to as a "Party" and, collectively, as the "Parties".

1. DEFINITIONS

1.1. "Deliverables" means any and all deliverables set forth on Exhibit A.

1.2. "Effective Date" means the date set forth above.

1.3. "Indicators of Compromise" or "Indicators" means a set of data provided by MANDIANT for use with the MANDIANT Hardware and MANDIANT Software. Indicators are configurations and specifications of anomalies, configurations, or other conditions that the MANDIANT Hardware and/or MANDIANT Software are capable of identifying within an information technology infrastructure.

1.4. "MANDIANT Hardware" means any computer, device or other hardware used by MANDIANT to provide the Services, and includes any firmware or other intellectual property copied to or installed on the MANDIANT Hardware.

1.5. "MANDIANT IP" means all MANDIANT proprietary materials, including without limitation the MANDIANT Hardware, the MANDIANT Software, and the Indicators of Compromise.

1.6. "MANDIANT Software" means any computer software used by MANDIANT to provide the Services, and includes all updates, patches and fixes to such software.

1.7. "Service" or "Services" means the professional services described on Exhibit A.

2. DESCRIPTION/CONDITIONS OF SERVICE

2.1. **Service and Deliverables.** MANDIANT agrees to perform the Services and provide the Deliverables, if any, on the schedule set forth on Exhibit A or as otherwise agreed by the Parties in writing.

2.2. **Additional Engagements.** Additional engagements will be detailed in separate Statements of Work which will be individually executed and treated as addenda to this agreement.

2.3. **Hardware and Software Deployment.** If the Services require the installation and use of MANDIANT Hardware and/or MANDIANT Software, customer shall facilitate the installation and maintenance thereof and shall provide physical space, electrical power, Internet connectivity and physical access as reasonably determined and communicated by MANDIANT.

3. PAYMENT AND EXPENSES

3.1. **Payment Terms.** Customer agrees to pay MANDIANT in accordance with the fee schedule set forth on Exhibit A. In the absence of a fee schedule, Customer agrees to pay MANDIANT's then-current hourly rates for the Services.

3.2. **Invoicing.** MANDIANT shall invoice Customer as set forth on Exhibit A or, in the absence of an invoice schedule, shall invoice Customer monthly. MANDIANT's invoices will be in US Dollars unless otherwise indicated in the Exhibit A. Customer shall

be responsible, and MANDIANT shall invoice Customer, for all taxes applicable to the Services and on goods supplied, including without limitation state and local sales, VAT, excise taxes based on gross revenue, and any other taxes or amount in lieu thereof paid or payable by MANDIANT in connection with this Agreement, the Services or goods supplied, with the exception of those taxes based solely on MANDIANT's net income.

3.3. **Payment.** Customer shall pay MANDIANT within thirty (30) calendar days after receipt of each invoice. Customer agrees to pay interest on all delinquent amounts at the lesser of 1.5% per month or the maximum rate permitted by applicable law.

3.4. **Expenses.** Customer shall reimburse MANDIANT for any and all expenses that fall within one or more of the expense categories set forth on Exhibit A so long as such expenses are attributable to work performed under this Agreement.

4. INTELLECTUAL PROPERTY

4.1. **Grant of License.** Upon full payment by Customer, MANDIANT shall assign to Customer all copyrights in and to the Deliverables developed for and delivered to Customer with the exception of any MANDIANT IP included therein.

4.2. **Intellectual Property Rights.** Customer acknowledges that MANDIANT may use MANDIANT IP to provide the Services, and that Customer may obtain access to certain MANDIANT IP as a result of MANDIANT's performance of its obligations under this Agreement. MANDIANT IP is and shall remain the sole and exclusive property of MANDIANT and MANDIANT shall retain all right, title and interest in and to the MANDIANT IP and all derivative works thereof. Between Customer and MANDIANT, MANDIANT shall retain all rights and title in and to any indicators of compromise (data developed by MANDIANT for use in identifying malware, vulnerabilities, anomalies, compromises or other potentially harmful conditions within an information technology infrastructure) developed by MANDIANT during the term of this Agreement.

4.3. **Restrictions.** Subject to the exceptions set forth below, Customer agrees not to reproduce or modify any portion of the MANDIANT IP, and will not disclose, sell, sublicense or otherwise transfer or make available all or any portion of the MANDIANT IP to any third party without the prior written consent of MANDIANT; provided, however, that Customer may share Deliverables with U.S. federal law enforcement agencies. Nothing contained in this Agreement shall directly or indirectly be construed to assign or grant to Customer any right, title or interest in or to the trademarks, copyrights, patents or trade secrets of MANDIANT or any ownership rights in or to the MANDIANT IP. Customer shall not cause or permit the reverse engineering, reverse assembly, or reverse compilation of, or otherwise attempt to derive source code from, the MANDIANT IP. Customer shall not create derivative works based upon all or part of the MANDIANT IP. Notwithstanding the foregoing, Customer may disclose Indicators to its third party infrastructure provider(s) (each an "Infrastructure Vendor") to the

extent such disclosure is necessary for the Infrastructure Vendor to provide services to Customer; provided, however, that prior to such disclosure, Customer shall ensure that Vendor has signed a nondisclosure agreement at least as restrictive as this Agreement.

4.4. **No Resale, Third Party Services.** Customer shall not resell, redistribute or make available MANDIAN IP, the Services or the Deliverables to any third party, and shall not use the MANDIAN IP or the Deliverables to provide services to any third party.

5. TERM AND TERMINATION

5.1. **Term.** The initial term of this Agreement is one (1) year (the "Initial Term") from the Effective Date unless otherwise terminated pursuant to the provisions hereof. The Agreement will automatically renew for successive periods of the same duration as the Initial Term (each a "Renewal Term") unless terminated by either Party upon written notice to the other Party provided at least thirty (30) calendar days prior to the end of the then-current term.

5.2. **Termination.** Either Party shall have the right to terminate this Agreement: (a) upon thirty (30) days written notice for any reason; or upon fifteen (15) days written notice in the event that the other Party, or any of its officers, employees or agents, violates any provision of this Agreement and fails to cure such breach within the fifteen (15) day notice period; or (b) immediately in the event the other Party (i) terminates or suspends its business; (ii) becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute; or (iii) becomes insolvent or becomes subject to control by a trustee, receiver or similar authority. Termination of the Agreement shall be in addition to and not in lieu of any remedies available.

5.3. **Consequences of Termination.** Upon the termination or expiration of this Agreement, MANDIAN shall have the right to immediate possession of the MANDIAN IP and all documentation (including all copies thereof) wherever located, without demand or notice. Within five (5) days after termination of the Agreement, Customer will return to MANDIAN the MANDIAN IP or, upon request by MANDIAN, destroy the MANDIAN IP (with the exception of the MANDIAN Hardware) and all copies thereof.

5.4. **Survival.** All Sections of this Agreement that by their nature should survive termination or expiration will survive, including without limitation Sections 2.3, 3, 4.2, 4.3, 4.4, 5.3, 5.4 and 5.5 through 9. Without limiting the foregoing, termination of this Agreement shall not relieve Customer of the obligation to pay for Services rendered or goods provided prior to such termination.

5.5. **Stop Work.** MANDIAN will stop all work on a project within twenty-four (24) hours after receiving a written stop-work order from Customer. Work on a project suspended by a stop-work order will not resume until Customer provides MANDIAN with a written request to resume work.

6. CONFIDENTIALITY

6.1. **Confidential Information.** During the term of this Agreement, each Party or its employees, consultants, or agents may be exposed to information that is proprietary or confidential to the other Party or its affiliates, to include, but not limited to, state and federal tax information, social security numbers, taxpayer identification numbers, federal employment identification numbers and any such other information contained on a federal or state tax return ("Confidential Information"). Any non-public information of any form obtained by either Party or its employees while performing this Agreement shall be deemed Confidential Information. Each Party

agrees to hold the Confidential Information of the other Party in confidence and not to disclose such information to any third parties or to use the information for purposes outside the scope of this Agreement. Each Party will advise its employees of their responsibilities under this Agreement and that arise by virtue of South Carolina Code Ann. 12-54-240 pertaining to confidential state tax information. Confidential Information shall not include information that is (a) part of or becomes part of the public domain (other than by disclosure by the receiving Party in violation of this Agreement); (b) previously known to the receiving Party without an obligation of confidentiality; (c) independently developed by the receiving Party outside this Agreement; or (d) rightfully obtained by the receiving Party from third parties without an obligation of confidentiality. At the end of this Agreement, or earlier if requested by the disclosing Party, the receiving Party shall promptly return or destroy all Confidential Information.

6.2. **Exceptions.** Notwithstanding Section 6.1, if Customer has hired MANDIAN to perform a PCI DSS Compliance Audit or a PCI investigation, MANDIAN may provide The Payment Card Industry Security Standards Council, LLC (PCI SSC), card companies and the relevant merchant bank with all Reports of Compliance (ROC) and all related assessment and investigative report documents generated in connection with such work. Notwithstanding Section 6.1, either Party may disclose the Confidential Information of the other Party to the extent such disclosure is required to comply with applicable law or the valid order of a court of competent jurisdiction, provided that the disclosing Party (a) restricts such disclosure to the maximum extent legally permissible; (b) notifies the Party to whom the Confidential Information belongs as soon as practicable of any such requirement; and (c) that subject to such disclosure, such disclosed materials shall in all respects remain subject to the restrictions set forth in this Agreement.

7. NON-SOLICITATION

7.1. During the term of the Agreement and for a period of twelve (12) months following the termination or expiration thereof, neither Party shall directly or indirectly solicit, recruit or encourage any of the other Party's employees to terminate their then-current employment.

8. WARRANTIES, LIABILITY

8.1. **Limited Warranty.** MANDIAN warrants that the Services will be provided in a professional manner pursuant to industry standards for the same or similar services. THE ABOVE-STATED LIMITED WARRANTY REPLACES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF CONDITION, UNINTERRUPTED USE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT, AND MANDIAN DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.

8.2. **Exclusive Remedy.** Customer's sole and exclusive remedy and MANDIAN CORPORATION's sole obligation in the event of a breach of the warranty set forth in Section 8.1 (provided that customer notifies MANDIAN of the breach of the warranty within thirty (30) days) is to re-perform that portion of the Services that did not comply with the warranty. If after using commercially reasonable efforts MANDIAN is unable to furnish services that comply with the above warranty, customer will be entitled to a refund of the fees paid to MANDIAN for that portion of the Services that

did not comply with the warranty.

8.3. Indemnification.

(a) By MANDIANT, MANDIANT agrees to defend Customer from and against any third party claim that MANDIANT's provision of the Services infringes any copyright, trade secret or U.S. patent issued as of the Effective Date, and MANDIANT agrees to indemnify Customer from any finally awarded costs and/or damages against Customer in any such infringement claim or action or settlement thereof, provided that (i) MANDIANT is promptly notified in writing of such claim, (ii) Customer grants MANDIANT sole control of the defense and any related settlement negotiations, and (iii) Customer cooperates with MANDIANT in defense of such claim. MANDIANT shall have no obligation for any alleged infringement that arises from (a) the combination, operation, or use of the Deliverables or MANDIANT IP with products, services, information, technologies, or processes not furnished or approved by MANDIANT; (b) modifications to the Deliverables or MANDIANT IP not made or authorized by MANDIANT; (c) failure to permit MANDIANT to update the Deliverables or MANDIANT IP; or (d) use of the Deliverables or the MANDIANT IP except in accordance with the express terms of this Agreement or MANDIANT's written instructions (the foregoing clauses (a), (b), (c) and (d), collectively, "Customer Indemnity Responsibilities"). Upon the occurrence of a claim for which indemnity is or may be due under this Section, or in the event that MANDIANT believes that such a claim is likely, MANDIANT may, at its option (i) appropriately modify the Services, the Deliverables and/or the MANDIANT IP so that it becomes non-infringing, or substitute functionally equivalent hardware, software, or services; (ii) obtain a license to the applicable third-party intellectual property rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer a portion of the fees paid by Customer hereunder, pro-rated on a five (5)-year straight-line basis. The foregoing states the entire liability of MANDIANT and Customer's sole remedy for any actual or alleged infringement or misappropriation with respect to infringement of any patents, copyrights, trade secrets, or other proprietary rights by the Deliverables, MANDIANT IP, or any part thereof.

8.4. **Limitation of Liability.** THE CUMULATIVE LIABILITY OF MANDIANT TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED THE TOTAL AMOUNT OF ALL AMOUNTS PAID TO MANDIANT BY CUSTOMER UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRIOR TO THE FIRST EVENT GIVING RISE TO SUCH LIABILITY. THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. IN NO EVENT SHALL MANDIANT BE LIABLE FOR ANY LOST REVENUES OR PROFITS, OR OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES PERFORMED UNDER THIS AGREEMENT, EVEN IF MANDIANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The disclaimers, exclusions and limitations of liability set forth in this Agreement form an essential basis of the bargain between the Parties and, absent any of such disclaimers, exclusions or limitations of liability, the provisions of this Agreement, including without limitation the economic terms, would

be substantially different.

9. GENERAL

9.1. **Governing Law.** This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of South Carolina, U.S.A., without reference to conflict of laws principles. Customer agrees to abide by the intellectual property laws and all other applicable laws (including export laws) of the United States.

9.2. **Local Law.** If any part of the Services requires the installation and use of any MANDIANT Hardware and/or MANDIANT Software on any system or network located in a jurisdiction outside the U.S.A. ("local jurisdiction") or involves the collection or monitoring of data traffic on a network located in a local jurisdiction, by MANDIANT in the provision of the Services, Customer shall remain solely responsible for compliance with its obligations under the law of such local jurisdiction relating to access granted to a third party to any network or data within the control of Customer, including without limitation, any laws relating to network integrity or security or to data privacy (where Customer shall remain the data controller and MANDIANT will have obligations only as applicable to a data processor). If the law of the local jurisdiction places obligations on Customer to obtain from any third party granted access to the network or such data, undertakings in connection with the integrity or security of such network or the processing of such data, MANDIANT will not unreasonably withhold or delay its execution of such agreement(s) as may reasonably be required by Customer in connection with such obligations in the local jurisdiction.

9.3. **Assignment.** Any assignment of this Agreement by Customer to another party, including any transfer by operation of law or otherwise, without MANDIANT's prior written consent, shall be null and void.

9.4. **Severability.** Any provision of this Agreement that is held to be invalid by a court of competent jurisdiction shall be severed from this Agreement, and the remaining provisions shall remain in full force and effect.

9.5. **Force Majeure.** Neither Party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder (with the sole exception of payment obligations) if such delay or default is caused by conditions beyond its reasonable control including without limitation acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), acts of terrorism, wars or insurrections.

9.6. **Waiver.** Failure or delay by either Party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

9.7. **Independent Parties.** MANDIANT and any third party providing software, equipment or services in conjunction with this Agreement, if applicable, are independent parties; neither MANDIANT nor such third party shall be liable for the performance or failure to perform of the other.

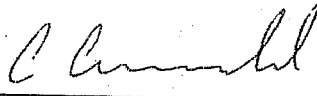
9.8. **Independent Contractor.** For purposes of this Agreement, MANDIANT is an independent contractor. Nothing contained herein shall be construed to create an employment, principal-agent relationship, or joint venture between MANDIANT and Customer, and neither Party shall have the right, power or authority to obligate the other to any third party.

9.9. **Entire Agreement.** This Agreement and any Exhibits attached hereto set forth the entire understanding and agreement of the Parties and supersede any and all oral or written agreements or understandings between the Parties as to the subject matter of this

Agreement. This Agreement shall control over any conflicting provisions of any purchase order or other business form, and such conflicting provisions are expressly rejected. This Agreement may be amended or changed only by a writing signed by both Parties.

IN WITNESS WHEREOF, this Master Services Agreement has been executed by MANDIANT and Customer as of the Effective Date.

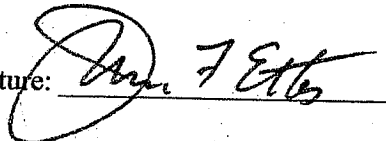
MANDIANT CORPORATION

Signature: 

Name: Charles Carmakal

Title: Director, Professional Services

South Carolina Department of Revenue

Signature: 

Name: JAMES F. EYER

Title: Director

EXHIBIT A
Statement of Work 1

This Statement of Work Number 1 ("SOW") is made and entered into as of October 11, 2012 by and between MANDIANT Corporation ("MANDIANT"), a Delaware corporation, with its principal place of business at 2318 Mill Road, Suite 500, Alexandria, VA 22314 USA, and South Carolina Department of Revenue ("Customer"), with a principal place of business at 300A Outlet Pointe Blvd., Columbia SC 29210. This SOW is hereby incorporated into and made part of the Services Agreement (the "Services Agreement"), dated as of October 11, 2012, between Customer and MANDIANT.

1. DESCRIPTION OF SERVICES

During the term of this Agreement, MANDIANT Corporation agrees to provide professional services as directed by Customer. The objective of this professional services engagement is to assist Customer with responding to a suspected security incident. The activities to be performed may include but are not limited to the following:

- Investigative support and direction as requested.
- Malware, forensic and log analysis as required.
- Remediation planning and assistance.
- Regular status reporting and project management-related activities.
- Reporting and/or presentations associated with findings and recommendations.
- Deployment support and execution of investigative tools such as MANDIANT Intelligent Response (MIR) and/or Mandiant's Network Threat Analysis Program (NTAP).

Note that the MIR agent can be installed only on systems with the operating systems listed below. For operating environments other than the ones listed, traditional collection and analysis approaches are required:

WORKSTATION	SERVER
Microsoft Windows 7 SP1 (32-bit and 64-bit)	Microsoft Windows Server 2008 R2 SP1 (64-bit)
Microsoft Windows 7 (32-bit and 64-bit)	Microsoft Windows Server 2008 R2 (64-bit)
Microsoft Windows Vista SP2 (32-bit)	Microsoft Windows Server 2003 R2 (32-bit and 64-bit)
Microsoft Windows Vista SP1 (32-bit)	Microsoft Windows Server 2003 SP2 (32-bit and 64-bit)
Microsoft Windows XP Professional SP3 (32-bit)	Microsoft Windows Server 2003 (32-bit and 64-bit)
Microsoft Windows XP Professional SP2 (32-bit)	Microsoft Windows 2000 Server SP4
Microsoft Windows 2000 Professional SP4	

2. DELIVERABLES

The deliverables MANDIANT Corporation will produce or assist with producing will be identified and defined during the course of the engagement, but would typically include:

- Regular Status Reporting: Summarizes activities completed, issues requiring attention and plans for the next reporting period. Initially, daily updates will be provided on status of work; thereafter, weekly update reports to be provided. It also contains key statistics and information such as scanning progress, indicators of compromise identified, compromised systems and time line of attacker activity.
- Investigative Reporting: The results of any investigative or analysis activities performed during the course of the work. This document would typically include an executive summary as well as descriptions of the attack vector, summary of

the attack, extent of compromise, data exposure, remediation recommendations, malware analysis, forensic analysis and related exhibits.

3. FEES

Customer agrees to pay the fee of \$386.56 per hour for work performed and \$125 per hour for travel related to services. In addition to professional services, Customer agrees to pay \$9,000 monthly for each MANDIANT Intelligent Response (MIR) controller and \$5,000 monthly for each network monitoring sensor deployed at Customer site during the course of this investigation.

4. EXPENSES

Customer shall reimburse MANDIANT Corporation for the following expense categories that are directly attributable to work performed under this SOW:

- Travel and living expenses as allowed by State of South Carolina travel reimbursement guidelines.
- Mileage in company or personal vehicles at the rate approved by the U.S. General Services Administration as of the contract date.
- Telephone, fax, and Internet charges.
- Computer storage media.
- Postage and courier services.
- Printing, reproduction and binding.
- Any other expenses resulting from the work performed under this Agreement.

5. INVOICING AND PAYMENT

All fees and expenses will be invoiced monthly.

6. CONTACT INFORMATION

Business Line Contact:

Name:

Email:

Telephone:

Fax:

Street:

City:

State:

Zip Code:

Payables Contact:

Name:

Email:

Telephone:

Fax:

Street:

City:

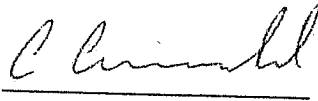
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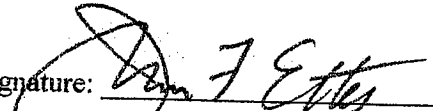
Zip Code:

IN WITNESS WHEREOF, this Statement of Work has been executed by MANDIANT Corporation and Customer as of the Effective Date.

MANDIANT Corporation

South Carolina Department of Revenue

Signature: 

Signature: 

Name: Charles Carmakal

Name: JAMES F. ETTER

Title: Director, Professional Services

Title: Director