

## MASTER SERVICES AGREEMENT

This Master Services Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”) by and between [Entity] (“**Client**”) and \_\_\_\_\_, a \_\_\_\_\_ corporation, having a principal place of business at \_\_\_\_\_ (“**Contractor**”) for the provision of professional services in accordance with the following terms and conditions. The term “**Agreement**” includes the body of this Master Services Agreement, the attached exhibits, and each Statement of Work. Client and Contractor may be referred to in this Agreement individually as a “**Party**” and together as the “**Parties**.”

1. **Services.** Contractor will provide the professional services (“**Services**”) and deliver the deliverables (“**Deliverables**”) described in one or more written, statements of work that incorporate this Agreement by reference (each, a “**Statement of Work**”). Each Statement of Work will be effective only when signed by Client and Contractor. All Statements of Work will be governed by a Master Statement of Work entered into by the Parties. In the event of a conflict between the body of this Agreement and any Statement of Work or exhibit, the body of this Agreement will govern. Contractor will ensure all project staff assigned to perform under this Agreement must have appropriate experience in performing the tasks to which they will be assigned. Contractor may not assign, transfer, delegate, or subcontract its rights or obligations under this Agreement without the prior written consent of Client. In the event Client consents to Contractor’s use of a subcontractor, Contractor will ensure the subcontractor complies with all relevant terms of this Agreement. Any breach by the subcontractor will constitute a breach by Contractor. No contract between Contractor and a subcontractor will purport to bind Client.

2. **Acceptance.** When Contractor has completed a Service and/or Deliverable, it will notify Client in writing. Client will have thirty (30) days (or another period as may be expressly set forth in a Statement of Work) from receipt of the notice to test the Service and/or Deliverable (the “**Testing Period**”) to determine whether they comply in all material respects with the requirements of this Agreement and any applicable Statement of Work (the “**Specifications**”). Upon completion of Client’s review and testing, Client will notify Contractor whether it has accepted the Services and/or Deliverables (“**Accept**”) or whether it has identified discrepancies with the Specifications (“**Reject**”). If Client Rejects a Service and/or Deliverable, Client will provide a written list of items that must be corrected. On receipt of Client’s notice, Contractor will promptly commence, at no additional charge to Client, all reasonable efforts to complete, as quickly as possible, the necessary corrections, repairs and modifications to the Services and/or Deliverables as will permit them to be ready for retesting, but in no event will the corrective measures exceed twenty (20) days (or another period as may be agreed upon by the Parties in writing) from receipt of Client’s notice. The testing and evaluation process will resume, as described above, with Client having an additional Testing Period. If Client determines that the Services and/or Deliverables, as revised, still do not comply in all material respects with the Specifications, Client may either (1) afford Contractor the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to Client, or (2) depending on the nature and extent of the failure in Client’s sole judgment, terminate the relevant Statement(s) of Work. The foregoing procedure will be repeated until the Services and/or Deliverables materially conform to the Specifications, or Client elects to terminate the Statement(s) of Work as provided above. If Client terminates a Statement of Work, Contractor will pay to Client, within

ten (10) business days of written notice of termination, all sums paid to Contractor by Client under this Agreement for the Services and/or Deliverables as to which the termination applies. If Contractor fully performs by making complete reimbursement to Client as provided herein, the reimbursement remedy will be Client's sole remedy and will preclude any other remedy available under this Agreement or at law or in equity for failure of acceptance testing.

3. **Term and Termination.** This Agreement will commence on the Effective Date, or the date Contractor commenced providing Services, whichever is earlier, and will continue for the greater of one (1) year thereafter or the period in which any Statement(s) of Work are pending (the "**Term**"), unless earlier terminated as provided herein. Either Party may terminate this Agreement on written notice to the other Party if the other Party is in material breach of its obligations hereunder and fails to cure the breach within thirty (30) days of receipt of the written notice. Client may terminate this Agreement or any Statement of Work for convenience at any time, without cause or further obligation, on ten (10) days prior written notice to Contractor. The following Sections will survive any termination or expiration of this Agreement: 5.1 (Ownership), 5 (Intellectual Property), 6 (Confidential Information), 6.4 (Indemnification), 7 (Warranties and Remedies), 8 (Limitation of Liability), and 9 (General Provisions).

4. **Fees and Expenses.**

4.1 In General. Contractor will render the Services for the fees identified in the Statements of Work. Except as expressly provided otherwise in a Statement of Work or in a Change Order, (i) Contractor will be responsible for all costs and expenses incurred in rendering the Services; (ii) there are no other fees or costs to be paid by Client to Contractor in connection with the Services, Deliverables, or this Agreement; (iii) any work performed by Contractor and not specifically authorized by Client in writing will be considered gratuitous and Contractor will have no right or claim whatsoever to any form of compensation; and (iv) all undisputed payments will be due thirty (30) days after Client's receipt of Contractor's invoice. Client will be responsible for those sales, use, and similar taxes associated with its receipt of the Services and Deliverables, excluding taxes based on Contractor's income, real property, or personnel. The Parties will reasonably cooperate to more accurately determine each Party's tax liability and to minimize the liability to the extent legally permissible.

4.2 Travel and Living Expenses. In the event that Client requests in writing that Contractor to provide Services at a location greater than 10 miles away from the metropolitan area of Contractor's regular place of business, Client will reimburse Contractor for reasonable travel and living expenses incurred by Contractor that would not have been incurred in any event if the Services had been performed at Contractor's regular place of business. Receipts or other reasonable evidence is required for commercial travel, car rental, parking, and lodging. Contractor will submit monthly expense reports to Client on or before the 24<sup>th</sup> day of each month. When Contractor employees visit more than one client on the same trip, the expenses incurred will be apportioned in relation to time spent with each client. Contractor will obtain Client's prior written approval, which will not be unreasonably withheld, before incurring any expenses. All air travel will be coach class on generally scheduled commercial flights. Contractor will use commercially reasonable efforts to make airline reservations for travel sufficiently in advance of the travel date so as to obtain the lowest airfare. Travel time is not billable hourly time.

4.3 Audits and Records. Contractor will maintain complete and accurate books and records relating to the fees and costs charged to Client under this Agreement and will keep the records for not less than three (3) years, even if this Agreement is terminated during the three (3) year period. Client or its duly authorized representatives may, at a mutually agreed-upon date and time, during the term of this Agreement and for a period of three (3) years thereafter examine and copy the books and records. The cost for the on-site audit will be borne by Client. Contractor will reasonably cooperate in the audit at no charge to Client. Should an audit reveal Contractor has overcharged Client, whether intentionally or inadvertently, then Client will be entitled to a prompt refund of any overage. In the event of an overcharge in excess of ten percent (10%) of the amounts actually due Contractor hereunder, Contractor will reimburse Client for the reasonable cost of the audit.

## 5. **Intellectual Property.**

5.1 Ownership. Contractor assigns, transfers and conveys to Client, exclusively and perpetually, all rights, titles, and interests throughout the world it may have or acquire in the Work Product (as defined below), including, without limitation, all intellectual property or other proprietary rights (including, without limitation, copyrights, patents rights, trade secret rights, rights of reproduction, trademark rights, rights of publicity, and the right to secure registrations, renewals, reissues, and extensions of those rights) (collectively “**Intellectual Property Rights**”) in the Work Product or otherwise arising from the performance of this Agreement. No rights of any kind in and to the Work Product, including all Intellectual Property Rights, are reserved to or by the Contractor or will revert to Contractor. Contractor agrees to execute further documents and to do further acts, at Client’s expense, as may be necessary to perfect, register or enforce Client’s ownership of the Intellectual Property Rights, in whole or in part. In the event Client is unable for any reason to secure Contractor’s signature to any document Client requests Contractor to execute under this Section, Contractor hereby irrevocably designates and appoints Client and Client’s duly designated authorized officers and agents as Contractor’s agents and attorneys-in-fact to act for and in Contractor’s behalf and instead of Contractor to execute such document and to file such application and to do all other lawfully permitted acts with the same legal force and effect as if executed by Contractor.

5.2 Source Code. To the extent applicable, Contractor will promptly deliver to Client all Source Code associated with the Work Product. For purposes of this Agreement “**Source Code**” shall mean, with respect to Work Product comprising software, the source code of such software and all related compiler command files, build scripts, scripts relating to the operation and maintenance of such application, application programming interface (API), graphical user interface (GUI), object libraries, all relevant instructions on building the object code of such application, and all documentation relating to the foregoing, such that collectively the foregoing will be sufficient to enable a person possessing reasonable skill and expertise in computer software and information technology to build, load and operate the machine-executable object code of such application, to maintain and support such application and to effectively use all functions and features of such software.

5.3 Work Product and Background Intellectual Property. “**Work Product**” means all Deliverables and all concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer

architecture, artwork, software, programming, applets, scripts, designs, processes, and methods of doing business, and any other media, materials, and other tangible objects produced by Contractor under this Agreement. However, Work Product does not include any intellectual property that was developed by Contractor prior to performance or independent of performance of this Agreement (“**Background Intellectual Property**”). Contractor retains all right, title, and interest in and to any Background Intellectual Property. However, to the extent Background Intellectual Property is incorporated into Work Product or Deliverables or required for Client to fully enjoy the Work Product or Deliverables, Contractor grants to Client a perpetual, fully paid up, royalty free, worldwide, non-exclusive license to use, prepare derivative works, and otherwise fully exploit all or any portion of the Background Intellectual Property incorporated into the Work Product and Deliverables. Notwithstanding the foregoing, Client may not exploit or use the Background Intellectual Property separate from the Work Product or Deliverables or attempt to derive the source code or reverse engineer the Background Intellectual Property.

5.4 Use of Client Property. Client may, but is not required to (unless provided otherwise in a Statement of Work), provide certain hardware, software, data, databases, office space, security access or other materials, intellectual property, technologies or services to Contractor in connection with this Agreement (“**Client Property**”). Client grants Contractor a non-exclusive, non-transferable license to use the Client Property solely for Client’s benefit in connection with Contractor’s performance of the Services. Contractor shall not reverse engineer or decompile the Client Property or other computer programs, algorithms, techniques, processes, methods, know-how or other related technology supplied by Client. Client may terminate this license at any time, without cause, on written notice to Contractor. Unless specifically authorized in a Statement of Work, Contractor will use the Client Property only in the form provided by Client, without modification. In addition, Contractor will maintain and use Client Property in accordance with any written instructions and/or specifications provided by Client. Except for the limited license provided in this Section 5.4, nothing contained in this Agreement will be construed as granting Contractor any right, title, or interest in or to any of the Client Property.

5.5 Third Party Intellectual Property; Open Source Software. In the event Contractor will provide any third party software or other intellectual property owned by a third party (collectively, the “**Third Party Intellectual Property**”) to Client in connection with this Agreement, including in the creation of the Deliverables and/or Work Product, Contractor will (i) specifically identify the Third Party Intellectual Property in the relevant Statement of Work; (ii) include in the Statement of Work a description of how the Third Party Intellectual Property will be used; (iii) any applicable royalties or license fees to be paid by Client for the Third Party Intellectual Property; and (iv) attach to the Statement of Work copies of all third party terms and conditions applicable to Client relating to the Third Party Intellectual Property. Any failure of Contractor to comply with the terms of this Section will constitute a material, non-curable breach of the Agreement. For purposes of this provision, Third Party Intellectual Property includes any Open Source Software, as defined below. Contractor may not, without Client’s prior written authorization, make any contribution containing any Client intellectual property, including the Client Property and Work Product, to any Open Source Software development project, site, or organization. For purposes of this provision, “**Open Source Software**” means any software, programming, or other intellectual property that is subject to (i) the GNU General Public License, GNU Library General Public License, Artistic License, BSD license, Mozilla Public License, or any similar license, including, but not limited to, those licenses listed at [www.opensource.org/licenses](http://www.opensource.org/licenses) or (ii) any agreement with terms requiring any intellectual property

owned or licensed by Client (including the Client Property and Work Product) to be (a) disclosed or distributed in source code or object code form; (b) licensed for the purpose of making derivative works; or (c) redistributable.

## 6. **Confidential Information.**

6.1 Confidential Information. During the course of this Agreement, each Party may disclose to the other certain non-public information or materials relating to a Party's products, intellectual property, personnel, customers, business, marketing programs and efforts, and other confidential information and trade secrets ("**Confidential Information**"). Notwithstanding the foregoing, Confidential Information does not include information that: (a) is or becomes publicly available through no breach by the receiving Party of this Agreement; (b) was previously known to the receiving Party prior to the date of disclosure, as evidenced by contemporaneous written records; (c) was acquired from a third party without any breach of any obligation of confidentiality; (d) was independently developed by a Party hereto without reference to Confidential Information of the other Party; or (e) is required to be disclosed pursuant to a subpoena or other similar order of any court or government agency, provided, however, that the Party receiving a subpoena or order will promptly inform (unless notice is precluded by the applicable process) the other Party in writing and provide a copy thereof, and will only disclose that Confidential Information necessary to comply with the subpoena or order.

6.2 Protection of Confidential Information. Except as expressly provided in this Agreement, the receiving Party will not use or disclose any Confidential Information of the disclosing Party without the disclosing Party's prior written consent, except disclosure to and subsequent uses by the receiving Party's employees or consultants on a need-to-know basis, provided that those employees or consultants have executed written agreements restricting use or disclosure of the Confidential Information that are at least as restrictive as the receiving Party's obligations under this Section 6. Subject to the foregoing nondisclosure and non-use obligations, the receiving Party agrees to use at least the same care and precaution in protecting the Confidential Information as the receiving Party uses to protect the receiving Party's own most confidential information and proprietary information, which shall not be less than the standard of care imposed by state and federal laws and regulations relating to the protection of that type of information and, in the absence of any legally imposed standard of care, the standard will be that of a reasonable person under the circumstances. Each Party acknowledges that due to the unique nature of the other Party's Confidential Information, the disclosing Party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party will be entitled to seek injunctive relief to prevent the unauthorized use or disclosure. Neither Party will remove or alter any proprietary markings (e.g., copyright and trademark notices) on the other Party's Confidential Information. In connection with this Agreement, Contractor may be required to execute a Non-disclosure Agreement ("**NDA**") with Client. In such event, the NDA is incorporated here in full and made a part of this Agreement. In the event of a conflict between the body of this Agreement and the NDA, the NDA shall govern.

6.3 Protected Health Information. Contractor may, in the course of performing the services set forth in this Agreement, have access to certain Protected Health Information ("**PHI**"), the terms and conditions of the disclosure of which is subject to the Health Insurance Portability and Accountability Act ("**HIPAA**"), the American Recovery and Reinvestment Act of

2009 (“ARRA”), and the Health Information Technology for Economic and Clinical Health Act (“HITECH”). Contractor will comply with all applicable laws necessary to perform this Agreement. Applicable laws include Federal, State and local laws, statutes, acts, codes, regulations and judicial or administrative decisions promulgated by any governmental or self-regulatory agency, including the [designated jurisdiction], any state health information technology commissions, any Federal, State or local action having the effect of the law, as any of the foregoing may be amended, modified, codified, re-enacted, promulgated or published, in whole or in part, in effect from time to time. Without limiting the generality of the foregoing, this would include HIPAA, ARRA, HITECH, the Rehabilitation Act of 1973, the Anti-Lobbying Act as revised by the Lobbying Disclosure Act, Section 503 of the Department of Labor, Health and Human Services, and education and related agency section of the FY1997 Omnibus Consolidated Portions Act and [insert any relevant state law]. In connection with this Agreement, Contractor may be required to execute a Business Associate Agreement (“BAA”) with Client. In such event, the BAA is incorporated here in full and made a part of this Agreement. In the event of a conflict between the body of this Agreement and the BAA, the BAA shall govern.

6.4 **Indemnification.** Contractor will defend, indemnify, and hold harmless Client and its directors, officers, agents, employees, subsidiaries and successors in interest from and against any claim, action, proceeding, liability, loss, damage, fine, cost, or expense, including, without limitation, attorneys' fees, experts' fees and court costs, arising out of any claim by a third party (i) that Client's authorized use of the Services, Background Intellectual Property, and/or Deliverables (collectively, the “Indemnified Items”) infringe that third party's intellectual property rights; and/or (ii) arising from Contractor’s violation of any law or regulation applicable to its performance of this Agreement (collectively, “Claim(s)”), including the payment of all amounts that a court awards or that Contractor agrees to in settlement of any Claim(s) as well as any and all reasonable expenses or charges as they are incurred by Client or any other party indemnified under this Section in cooperating in the defense of any Claim(s). Client will: (i) give Contractor prompt written notice of the Claim; and (ii) allow Contractor to control, and fully cooperate with Contractor (at Contractor’s sole expense) in, the defense and all related negotiations. Contractor will not enter into any stipulated judgment or settlement that purports to bind Client without Client's express written authorization, which will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Contractor will have no indemnity obligation for infringement claims arising from (i) use of the Indemnified Items in excess of the rights granted in this Agreement; (ii) use of the Indemnified Items in combination with software and/or hardware that is not approved or provided by Contractor; or (iii) Client's failure to implement an update or enhancement to the Indemnified Items, provided Contractor provides the update or enhancement at no additional charge to Client and provides Client with written notice that implementing the update or enhancement would avoid the infringement. If the Indemnified Items, or any portion of them, become or are likely to become the subject of an infringement claim, then, in addition to defending the claim and paying any damages and attorneys' fees as required above, Contractor will, at its option and in its sole discretion, either (a) immediately replace or modify the Indemnified Items, without loss of material functionality or performance, to make them non-infringing or (b) immediately procure for Client the right to continue using the Indemnified Items pursuant to this Agreement. Any costs associated with implementing either of the above alternatives will be borne by Contractor. If Contractor fails to provide one of the foregoing remedies within forty-five (45) days of notice of the claim, Contractor will refund to Client all

sums paid by Client for the infringing Indemnified Items, prorated over three (3) years from the date of initial delivery of the relevant Indemnified Items.

7. **Warranties.** Contractor represents and warrants that (i) it has full power, capacity and authority to enter into and perform this Agreement and to make the grants of rights contained in Section 5, and Contractor's performance of this Agreement does not violate or conflict with any agreement to which Contractor is a party; (ii) the Services will be performed in a professional manner consistent with the level of care, skill, practice and judgment exercised by other professionals in performing Services of a similar nature under similar circumstances by personnel with requisite skills, qualifications and licenses needed to carry out the work; (iii) all Services and Deliverables will materially conform to the Specifications for a period of one (1) year from Acceptance; (iv) to the best of Contractor's knowledge, Client's permitted use of the Indemnified Items will not infringe the Intellectual Property Rights of any third party; (v) there is no pending or threatened litigation that would have a material adverse impact on its performance of this Agreement; and (vi) it will use industry best practices to prevent the introduction of any viruses, worms, or other harmful or destructive code into the Services, Deliverables, and Client's systems. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, QUIET ENJOYMENT, QUALITY OF INFORMATION, OR TITLE/NON-INFRINGEMENT AND ALL OF THOSE WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED.

8. **Limitation of Liability.** EXCEPT FOR COMPANY'S INDEMNITY OBLIGATION IN SECTION 6.4 (INDEMNIFICATION), COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, COMPANY'S VIOLATION OF APPLICABLE LAW, OR EITHER PARTY'S BREACH OF SECTION 6 (CONFIDENTIAL INFORMATION), (A) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES, AND (B) EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) WILL NOT EXCEED THE TOTAL FEES PAID HEREUNDER BY ONE PARTY TO THE OTHER DURING THE TWELVE MONTHS PRECEDING THE INITIAL EVENT GIVING RISE TO SUCH LIABILITY.

9. **Force Majeure.** If either Party cannot perform any of its obligations because of any act of God, court order, fire, war, or any other cause not within the Party's control (a "**Force Majeure Event**"), then the non-performing Party will: (i) immediately notify the other Party; (ii) take reasonable steps to resume performance as soon as possible; and (iii) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of five (5) or more business days, Client may terminate this Agreement by providing written notice to Contractor. For the avoidance of doubt, in the event Contractor's performance of the Services is the subject of a Force Majeure Event, the fees to be paid by Client will be equitably adjusted to reflect the period in which Contractor's performance was effected.

10. **Non-Solicitation.** Contractor agrees that during the term of this Agreement and for a period of one year following its termination, Contractor will not employ, or solicit for employment any current or former employee of Client, solicit any business with any current or former employee of Client, or contract with any customer of Client or perform any services that are in direct competition with the services of Client or the services provided pursuant to the terms of this Agreement.

11. **General Provisions.** It is the express intent of the Parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of Client. Contractor will be solely responsible for paying all necessary employment taxes for its personnel and to report employees' income and withhold all required taxes from that income, as may be required by law. Employees of Contractor will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by Client pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for Client employees. In addition, Contractor agrees that it will provide for Workers' Compensation, unemployment, and all other coverage relevant to its employees as required under applicable local, state or federal law. This Agreement contains all of the covenants and agreements between the parties with respect to the rendering of the Services and any other matter hereunder, and supersedes any and all prior negotiations, representations and agreements, whether written or oral, between the Parties with respect to the rendering of the Services and any other matter in this Agreement. No other agreement, statement or promise not contained in this Agreement, and no changes or modifications to the Agreement, will be effective unless it is in writing and signed by both parties. In particular, no shrink-wrap, click-wrap, or other terms and conditions or agreements ("**Additional Terms**") provided with any products, services, or software hereunder will be binding on Client, even if use of the products, services, and software requires an affirmative "acceptance" of those Additional Terms before access is permitted. All Additional Terms will be of no force or effect and will be deemed rejected by Client in their entirety. All waivers must be in writing, and failure at any time to require the other Party's performance of any obligation under this Agreement will not affect the right subsequently to require performance of that obligation. Any and all disputes, claims or litigation arising from or related in any way to this Agreement will be resolved exclusively by the courts in [designated jurisdiction]. Contractor waives any objections against and agrees to submit to the personal jurisdiction of the state and federal courts in [designated jurisdiction]. The interpretation and enforcement of this Agreement will be governed by the law of [designated jurisdiction].

The Parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

**Contractor**

**[Entity]**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



Date: \_\_\_\_\_

Date: \_\_\_\_\_