**MASTER PROFESSIONAL SERVICES AGREEMENT**

This Master Professional Services Agreement (this “**Agreement**”) is made effective as of \_\_\_\_\_\_\_\_\_\_ (the "**Agreement Effective Date**"), between Customer with offices at 123 Happy Lane, HappyLand, California, 12345-1234 (“**Customer**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("**Contractor**").

*Note: This is a generic version of a Tangible template. Customer is referred to as ‘*Customer’ *where a generic reference is used and ‘*Customer’ *where the particular entity name is used.*

**RECITALS**

1. Contractor is in the business of providing creative, software development, consulting or other professional services to its customers; and
2. This Agreement sets forth the terms and conditions under which Contractor will provide creative, software development, consulting or other professional services to Customer or to its Affiliates under one or more Work Orders (as defined below).

**TERMS AND CONDITIONS**

Customer and Contractor agree as follows:

# Definitions. Capitalized terms, which are not otherwise defined in the body of this Agreement, have the following meanings:

## “**Affiliate**” means, as to either Party, any individual or entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with that Party, where “**Control**” means the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

## “**Applicable Law**”means the laws, regulations or decrees of governmental authorities that are applicable to a particular Party’s conduct, the Services, Deliverables, any Work Order and this Agreement.

## “**Business Day**” means Monday through Friday, excluding legal holidays observed by the United States government.

## “**Deliverables**” means any tangible property and any information inscribed on a tangible medium or stored in an electronic or other medium, which Contractor or any of its Resources creates, develops or provides, or is to create, develop or provide, under any Work Order, including images, text, software, user manuals, instructions, specifications, project plans and Developments (as such term is defined in Section 8.1 (Additional Definitions)).

## “**Parties**” means, as to this Agreement, Contractor and Customer, and "**Party**" means either of them individually. “**Parties**” means, as to a particular Work Order, Contractor and the applicable Purchaser, and “**Party**” means either of them individually.

## “**Purchaser**” means an entity (either Customer or an Affiliate of Customer) which enters into a Work Order with Contractor.

## “**Resource**” means any individual who works on behalf of Contractor in connection with Contractor’s performance of Services, including any employee, temporary worker or independent contractor of Contractor or its subcontractors.

## “**Representatives**”means a Party's Affiliates, and the directors, officers, employees, agents, consultants, advisors, and other representatives (including legal counsel and accountants) of a Party or any of its Affiliates. In the case of Contractor, the term “Representatives” also includes Resources in addition to the foregoing list.

## “**Services**” means all services that Contractor performs or is to perform under this Agreement or any Work Order, including the production and delivery of Deliverables.

## “**Term**” means the period of time during which this Agreement is in effect, as set forth in Section 18.1.

## “**Work Order**” means any work order, scope of work, statement of work, S.O.W. or any other ordering document or document of similar effect (regardless of its title or designation), under which Purchaser is purchasing, and Contractor is providing, Services and Deliverables (if any) to Customer. A template for Work Orders is attached as ***Exhibit A.***

# Overview.

## **Scope.** A Purchaser may at any time engage Contractor’s Services by entering into a Work Order with Contractor. Each Work Order will be subject to the terms and conditions of this Agreement, regardless of whether such Work Order references this Agreement.

## **Affiliates as Parties.** For purposes of each Work Order, (a) all instances of the term “Purchaser” in this Agreement refer to the particular Purchaser which executed the Work Order, and (b) only the Purchaser which executed the Work Order will incur any obligation or liability to Contractor under that Work Order.

## **No Volume Commitment.** This Agreement does not obligate Customer or any of its Affiliates to order Services. Contractor is not required to perform Services, and neither Customer nor any of its Affiliates is required to make any payment, unless and until a Work Order is executed.

# Work Orders.

## **Work Order Requirements.** Each Work Order will include the following information, as applicable: (i) the designated Purchaser; (ii) a description of the Services and Deliverables to be performed and provided by Contractor under the Work Order; (iii) the work schedule, including commencement, completion and delivery dates for the Services and Deliverables; (iv) the fees to be paid to Contractor under the Work Order for the Services and Deliverables; (v) any Assumptions that apply to the Services and Deliverables; (vi) whether any acceptance testing is required, and if so, the procedures for testing and acceptance of the Services and Deliverables by Customer; and (vii) any other terms and conditions applicable to the Services or Deliverables. For purposes of this Section 3.1, the term “**Assumption**” means a statement that is stipulated by the Parties to a Work Order, describing an event which must occur, a condition which must be satisfied, a factor that must be present or a risk that must fail to materialize, in order for particular Services to be performed or a particular milestone to be achieved; provided, however, that a statement constitutes an Assumption only if (a) its success or failure is outside of Contractor’s control and (b) it is explicitly characterized as an Assumption and labeled as such in the Work Order.

## **Additional and/or Inconsistent Terms.** Each Work Order supersedes all prior and contemporaneous oral and written agreements and understandings concerning the Services or Deliverables described in that Work Order, including any projections and requests for proposals, quotes, bids or information. Any subsequent proposal, quote, bid, purchase order, invoice, acknowledgement, confirmation or other document will have no force or effect to the extent it is inconsistent with a Work Order or proposes additional terms, unless such terms are incorporated into a duly executed Change Order as described in Section *Change Orders*). ).

# Fees and Other Charges; Invoicing; Payment.

## **Fees.** For purposes of calculating the fees to be charged for Services and Deliverables, only productive time counts. Contractor will not charge Purchaser for (a) time spent by Resources performing administrative activities such as accounting and billing, preparation of internal management reports, preparation of change requests, performance of or assistance with acceptance testing or nonworking travel time, or (b) time spent transitioning a Resource off of the Services due to illness or reassignment and training his or her replacement (in such case billing may resume only when there has been a full knowledge transfer to the replacement Resource). Contractor will promptly notify Purchaser in writing if Contractor has reason to believe that the Services and Deliverables set forth in the Work Order cannot be completed without exceeding the applicable fees set forth in the Work Order. Purchaser will not be liable for any amount greater than the fees or fee estimate set forth in that Work Order; provided, however, that, subject to Section 6 (*Change Orders*), Contractor will not be required to continue performing Services if billing for such additional time or at such higher rate would result in a total fee in excess of the fees set forth in the Work Order. Notwithstanding anything to the contrary in the foregoing, if a Work Order is to be billed on a fixed-fee or milestone completion basis, the Purchaser will not be liable for any amount greater than the sum of the fees for the milestones that are actually completed and delivered by Contractor and accepted by Purchaser, regardless of the time spent by Resources on the Services and Deliverables, unless Purchaser has approved a Change Order as described in Section 6.

## **Expenses.** Unless otherwise provided in the Work Order, Contractor will bear all of its own costs and expenses in performing and providing the Services and Deliverables, including, but not limited to, labor, overhead and supplies, except that if Contractor’s performance requires Resources to travel more than 30 miles from the areas where such Resources ordinarily work, then Contractor may invoice Purchaser for such Resources’ travel-related expenses; provided, however, that all expenses permitted to be charged to Purchaser under this Section 4.2, whether or not travel-related, must be pre-approved by Purchaser, reasonable, well-documented (with such documentation, including receipts submitted to Purchaser), actually incurred, out-of-pocket expenses of Contractor or Resources, and in accordance with Purchaser’s then-current Expense Reimbursement Policy. Contractor also will not charge or invoice Purchaser for any expenses, which exceed any estimates or limitations set forth in the applicable Work Order.

## **Contractor Rates.** Contractor’s hourly rates for Contractor’s Resources (the “**Contractor Rates**”) are set forth in ***Exhibit B*** (*Contractor Rates*). Except as otherwise provided in this Section 4.3, Contractor will not charge any Purchaser rates for Services or Deliverables, which exceed the Contractor Rates for the applicable Resource classification. The Contractor Rates may not increase for three (3) years from the Agreement Effective Date. Following the third anniversary of the Agreement Effective Date, and upon ninety (90) days’ prior written notice to Customer and any Purchasers who then have active Work Orders in place with Contractor, Contractor may increase the Contractor Rates by an amount not to exceed three percent (3%) of the then-current Contractor Rates; provided that, (a) Contractor may not increase the Contractor Rates more than once during a twelve (12) month period, (b) Customer may terminate this Agreement, and the applicable Purchaser may terminate a Work Order, upon written notice to Contractor if Customer and/or the Purchaser do not agree to the increase in the Contractor Rates, and (c) no increase in the Contractor Rates will apply to any then-active Work Orders during the term of such Work Orders.

## **Taxes.** Purchaser will be responsible for and pay to Contractor, all sales, use, excise taxes and any other similar taxes, duties and charges imposed by any federal, state or local governmental entity on any amounts payable by Purchaser under this Agreement or any Work Order; provided, however, that in no event will Purchaser or Customer pay or be responsible for any taxes imposed on, or with respect to, Contractor’s income, revenues, gross receipts, Resources or real or personal property or other assets. Contractor will timely remit to the appropriate governmental authorities any such taxes, duties or charges.

## **Invoicing.** For time and materials Work Orders, Contractor will invoice Purchaser no more often than on a monthly basis and in arrears unless Purchaser requests invoicing upon Purchaser’s acceptance of any applicable milestones. For fixed price Work Orders, Contractor will invoice Purchaser upon Purchaser’s acceptance of each milestone or all Services and Deliverables. Each invoice will describe in detail the Services that have been performed and the Deliverables that have been provided, the Resources who performed the Services and the calculation of the fees and expenses (i.e., actual productive hours multiplied by the agreed rate, plus any itemized reimbursable expenses).

## **Payment.** Notwithstanding anything to the contrary in Section 4.5 (*Invoicing*), Purchaser will pay, within sixty (60) days of Purchaser’s receipt of Contractor’s properly submitted invoice, all undisputed amounts set forth in the invoice, and which are in accordance with the applicable Work Order and this Agreement, subject to Purchaser’s acceptance of the applicable Services and Deliverables in each case. Non-payment of an invoice, in the absence of a good-faith dispute as to the amount invoiced, will constitute a material breach of the applicable Work Order, for purposes of Section 18.3.1 (*Termination of a Work Order for Cause*), but will not be deemed a material breach of this Agreement, for purposes of Section 18.2.1 (*Termination of this Agreement for Cause*).

## **Set-off.** Purchaser may at any time withhold from the payment of any invoice or from any other amount otherwise payable to Contractor under this Agreement or any Work Order, any liability, debt or other obligation that Contractor owes to Purchaser or to any Affiliate of Purchaser.

## **Recordkeeping and Inspection**. Contractor will keep complete and accurate records of all Services performed, invoices issued and payments received. Once a year Customer (or its Affiliate) may, at any time during ordinary business hours, audit (or to cause its Representative to audit) Contractor’s records with respect to any amount payable to Contractor under this Agreement or any Work Order. Audits will be conducted at Customer’s (or Customer’s Affiliate’s) expense; provided, however, that if an audit discloses that Customer or any Purchaser overpaid Contractor, then Contractor will refund to Customer or the applicable Purchaser, as applicable, the amount of that overpayment, and if that audit discloses that Contractor invoiced Customer and/or any Purchaser a cumulative total of three percent (3%) or more than the amounts actually due to Contractor during the period covered by the audit, then Contractor will also reimburse Customer (or its Affiliate, as applicable) for the costs of that audit.

# Flex Program. As an Affiliate of Customer, Purchaser is or may become, a participating entity in Customer’s Flex program (the “Flex Program”), which is a program with special protocols and processes for the engagement, payment and management of certain categories of service providers (for purposes of this Agreement, “In-Scope Vendors”). If Purchaser is or becomes a participating entity in the Flex Program and designates Contractor as an In-Scope Vendor, the provisions set forth in *Exhibit I* will apply.

# Change Orders. In the event of an actual or Purchaser-requested material change in the scope, performance or provision of the Services or Deliverables, the Parties will negotiate in good faith a reasonable and equitable adjustment to the fees, schedules and other relevant terms and conditions of the applicable Work Order. Contractor will continue to perform and provide the Services and Deliverables in accordance with the existing Work Order and will have no obligation to perform any modified Services or Deliverables unless and until the Parties have agreed in writing to such an equitable adjustment under a written change order (“Change Order”), a template of which is attached as *Exhibit D*. Likewise, the Purchaser will not incur any additional fees or charges unless and until the Parties execute a Change Order. In the case of engagements covered by the Flex Program and recorded in the Flex System, Contractor must enter the changes set forth in the Change Order into the Flex System in the manner required by the Flex System.

# Evaluation and Acceptance.

## **Purchaser’s Acceptance or Rejection.** Notwithstanding anything to the contrary in this Agreement, all Services and Deliverables performed or provided by Contractor under this Agreement or any Work Order will be subject to the applicable Purchaser’s evaluation and acceptance. Purchaser may accept or reject all Services and Deliverables that do not conform to the Purchaser’s requirements; provided that Purchaser will not unreasonably withhold its acceptance. If, in Purchaser’s reasonable discretion, Purchaser determines that the Services or Deliverables do not conform to Purchaser’s requirements and thus, rejects the Services or Deliverables, and Contractor is unable to correct the non-conformity within a reasonable period of time, Purchaser will be entitled to a refund of any pre-paid fees and may terminate the applicable Work Order. Any such termination will be deemed one for cause pursuant to Section 18.3.1 (*Termination of a Work Order for Cause*).

## **Evaluation and Acceptance Process.** Unless otherwise agreed to by the Parties in the applicable Work Order, the evaluation and acceptance process set forth in this Section 7.2 will apply. Purchaser will have ten (10) Business Days from the date of Purchaser’s receipt of the Deliverables or notice of Contractor’s completion of the Services or applicable milestone(s), as applicable, to accept or reject the applicable Services and/or Deliverables. Following such time period, if Contractor has not received Purchaser’s acceptance or rejection, Contractor may send notice (via email acceptable) to Purchaser’s designated business lead or manager requesting Purchaser’s acceptance or rejection. If Purchaser’s acceptance or rejection is still not received within five (5) Business Days after Purchaser’s receipt of the initial notice, then Contractor may send a formal written notice to Purchaser in accordance with Section 19.9 (*Notices*), requesting Purchaser’s acceptance or rejection. If Purchaser’s acceptance or rejection is still not received within five (5) Business Days after Purchaser’s receipt of the formal written notice, then the Services and Deliverables will be deemed accepted by Purchaser.

# Intellectual Property Rights.

## **Additional Definitions.** For purposes of this Section 8 and this Agreement, the following additional defined terms will apply:

### “**Contractor Property**” means (a) all Inventions and Works of Authorship that are or were made or discovered by Contractor or Resources or were acquired by Contractor other than in connection with performing Services and (b) all Intellectual Property Rights therein.

### “**Developments**” means (a) all Inventions and Works of Authorship that are (i) made, created, discovered or reduced to practice by Contractor or Resources in performing Services, or (ii) created based upon Customer’s or Purchaser’s Confidential Information; and (b) all related Intellectual Property Rights. Notwithstanding the foregoing, "Developments" does not include Contractor Property.

### “**Intellectual Property Rights**” means all patent rights, copyrights, Moral Rights, trademark rights, trade name rights, service mark rights, trade dress rights, trade secret rights, proprietary rights, privacy rights, rights of publicity, name or likeness and other intellectual property rights, whether or not those rights have been filed or registered under any statute or are protected or protectable under Applicable Law.

### “**Inventions**" means any inventions, ideas, designs, patterns, specifications, prototypes, concepts, processes, methods, algorithms, formulas, techniques, know-how or other discoveries, whether or not patentable and whether or not made, conceived or reduced to practice alone or jointly with others.

### “**Moral Rights**” means any right to claim authorship of a Work of Authorship, to object to or prevent the modification or destruction of a Work of Authorship, to withdraw from circulation or control the publication or distribution of a Work of Authorship, and any similar right, existing under judicial or statutory law of any country in the world, or under any treaty, regardless of whether or not such right is called or generally referred to as a “moral right.”

### “**Works of Authorship**” means any works of authorship fixed in a tangible medium of expression, including software, designs, patterns, plans, text, graphics, photographs, drawings and all other architectural, literary, pictorial, graphic, sculptural, audio visual, collective and other works described in Section 101 of the United States Copyright Act of 1976, as amended, and all adaptations, modifications, improvements, enhancements, revisions and derivative works of any of the preceding, whether or not registered.

## **Ownership.**

### Nothing in this Agreement (a) grants to Purchaser any rights in the Contractor Property, except as specified in Section 8.3 (*License to Purchaser*); or (b) except as set forth in Section 8.4 (*License to Contractor*), grants Contractor any rights in the Inventions, Works of Authorship or other Intellectual Property Rights of Purchaser or of its Affiliates.

### Contractor will promptly disclose to Purchaser all Developments.

### Purchaser will own the tangible property in all Deliverables.

### Contractor agrees that each item of Developments will be a work made for hire owned exclusively by Purchaser. Contractor agrees that regardless of whether an item of Developments is a work made for hire, Purchaser will own all right, title and interest in and to all Developments, and Contractor hereby irrevocably assigns and agrees to assign to Purchaser exclusively, without any compensation other than that set forth in the applicable Work Order, all present and future right, title and interest in and to the Developments, and the Developments and their related benefits will immediately and automatically be the sole and absolute property of Purchaser. Upon Purchaser's request and at Purchaser's cost, Contractor will execute and deliver to Purchaser all documents necessary to perfect, document or evidence Purchaser's right, title and interest in and to each Development, both domestically and abroad. Contractor hereby irrevocably designates and appoints Purchaser and its duly authorized agents as Contractor's attorneys-in-fact, to act for and on its behalf to execute and file such documents for this limited purpose if Purchaser is unable, after reasonable effort, to secure Contractor's assistance for any reason.

### Contractor also (a) hereby waives, and agrees never to assert, any and all Moral Rights that Contractor or any Resource may have, during and after the Term, in or with respect to the Developments, together with all claims for damages and other remedies asserted on the basis of Moral Rights, and (b) hereby irrevocably assigns, and agrees to assign, to Purchaser the benefit of any waivers granted to Contractor of any such Moral Rights.

## **License to Purchaser.** Contractor, on behalf of itself and its Affiliates, grants to Purchaser a nonexclusive, royalty-free, perpetual, irrevocable, sub-licensable, world-wide license to make, have made, use, sell directly or through one or more tiers of distributors, market, have marketed, import, have imported, copy, have copied, modify, have modified, publicly display and perform or have publicly displayed or performed, to the extent necessary for Purchaser or its Affiliates to use the Deliverables, Developments and Services for Purchaser's or its Affiliates’ business purposes, (a) any Contractor Property that is incorporated into any Deliverables or Developments and (b) any Deliverables and/or Developments that Purchaser at any time fails or ceases to own for any reason and (c) any third party materials to which Purchaser has consented pursuant to Section 11.5(b) (*Liens, Claims and Encumbrances*).

## **License to Contractor.** For each Work Order, Purchaser will supply to Contractor any technology or materials identified in the applicable Work Order to be supplied by Purchaser for use by Contractor in connection with the Services (the “**Purchaser Technology and Materials**”). Purchaser grants to Contractor a limited, non-exclusive, non-sublicensable, non-transferable, terminable license to use the Purchaser Technology and Materials solely for the purpose of, and to the extent necessary, to perform the Services under the applicable Work Order. Contractor agrees that the Purchaser Technology and Materials are Customer’s Confidential Information within the meaning of Section 9.1 (*Meaning of Confidential Information*). Contractor will comply with any other restrictions pertaining to the Purchaser Technology and Materials or the use thereof set forth in the Work Order.

## **Assignment from Resources.** Contractor represents and warrants that all Resources, whether employees of Contractor, or temporary workers, subcontractors, employees of subcontractors or other non-employees, have executed appropriate agreements upon the commencement of their employment or their engagement, as the case may be, to assign to Contractor any Intellectual Property Rights that do not automatically vest in Contractor; such that those individuals do not have ownership claims in the Deliverables or Developments and to require the individuals to cooperate with Contractor and Purchaser in connection with Contractor's obligations under Section 8.2 (*Ownership*) and Section 8.3 (*License to Purchaser*).

# Confidentiality and Data Security.

## **Meaning of Confidential Information.** The term “**Confidential Information**”means all information relating to Customer's business, whether disclosed by Customer or its Representatives, whether disclosed to Contractor before, on or after the Agreement Effective Date, regardless of the form or medium on which the information is stored, recorded, accessed, conveyed or communicated, and whether or not specifically identified as “Confidential” or “Proprietary,” including but not limited to information pertaining to business operations and strategies, cost, pricing, profit, production, forecast and other accounting, economic and financial data, technical drawings, product designs and specifications, artistic and scientific data, equipment specifications, manufacturing know-how, research and development, inventions (whether or not patentable), trade secrets, technology, information that Customer must keep confidential as result of obligations to third parties, business and marketing plans and strategies, information about Customer’s customers, suppliers and personnel, and the existence of this Agreement or any Work Order, or the fact that there was, is or may be a business relationship between the Parties. Notwithstanding the foregoing, information will not be considered "Confidential Information" if Contractor can prove that the information: (i) was disclosed or became generally available to the public without breach of this Agreement and through no act or omission of Contractor or its Representatives; (ii) was independently developed by Contractor, as evidenced by Contractor's written records, without reference to the Confidential Information, and before the date Contractor received the Confidential Information; or (iii) was received, without a duty of confidentiality, by Contractor before Customer disclosed it to Contractor, from a third party that did not violate any agreement, duty or Applicable Law in disclosing the information to Contractor. For the purposes of this Section 9.1, each reference to *“*Customer*”* means Customer or any of its Affiliates.

## **Non-Use of Confidential Information.** Contractor will not use any Confidential Information for its own benefit, to Customer's or any of Customer’s Affiliates’ detriment, or for any purpose other than as strictly necessary to perform its obligations under this Agreement. Contractor will not disassemble, reverse engineer or replicate in any way samples, products or prototypes embodying Confidential Information.

## **Non-Disclosure of Confidential Information.** Contractor will hold all Confidential Information in strict confidence and will not disclose any Confidential Information to any person other than to Contractor's Representatives who (a) have a “need to know,” (b) have been advised of the confidential and proprietary nature of the Confidential Information, and (c) are bound by confidentiality and use restrictions that are at least as restrictive as those described in this Agreement. Contractor will be liable for any use or disclosure of Confidential Information by its Representatives that is not permitted pursuant to this Section 9 and will take any action, legal, equitable or otherwise, to cause its Representatives to comply with this Section 9 (including all actions that Contractor would take to protect its own confidential information). Contractor will protect all Confidential Information by using the same degree of care that Contractor would exercise regarding its own confidential information, but not less than reasonable care.

## **Orders to Disclose.** If Contractor or its Representatives are requested or ordered to disclose Confidential Information in any judicial, administrative or other legal or investigative process, including by subpoena or in a request to produce, Contractor will: (a) promptly notify Customer or its Affiliate (as applicable) of the terms and the circumstances surrounding the request or order so that Customer or its Affiliate may seek an appropriate protective order or take other efforts to limit the disclosure or protect the confidentiality of the Confidential Information; (b) consult in good faith with Customer or its Affiliate regarding the request or order and cooperate with Customer's or its Affiliate’s efforts to narrow the scope, obtain a protective order or produce documents or information in a way that preserves the confidentiality of the Confidential Information; (c) if disclosure is required to prevent Contractor from being subject to contempt sanctions or other penalties, disclose only the Confidential Information that is legally required to be disclosed, consistent with a reasonable interpretation of the request or order; and (d) otherwise continue to maintain the confidentiality of the Confidential Information as required pursuant to this Agreement.

## **Return of Confidential Information.** Upon expiration or termination of this Agreement for any reason, or within five (5) Business Days after Customer’s request, Contractor will return to Customer or its Affiliate (as applicable), or destroy and certify the destruction of, all copies of documents and other tangible material embodying or containing Confidential Information, including all Confidential Information in its Representatives’ possession.

## **Publicity Restrictions.** Contractor will not: (a) disclose to any other person the existence or monetary value of this Agreement or any Work Order; (b) make any public announcement regarding Contractor's association with Customer; (c) use Customer's name or any other trademark, service mark, logo or copyright-protected work (whether or not registered) of Customer in any of Contractor's promotional materials, marketing activities or elsewhere; (d) identify Customer on Contractor's customer list or website (or on any other person's website that identifies Contractor) or in any metatags or key words for those websites; or (e) include a hyperlink from any website maintained by Contractor to any Customer website. For the purposes of this Section 9.6, each reference to “Customer” means Customer or any of its Affiliates.

## **Data Security.** Without limiting any of Contractor’s obligations under this Section 9, Contractor will comply with ***Exhibit C*** and any applicable sub-exhibits within ***Exhibit C***. As between Customer and/or Purchaser on the one hand and Contractor on the other, Purchaser Data (as defined in ***Exhibit C***) is deemed to be the Confidential Information of Customer and/or Purchaser.

# Personnel and Staffing; Other Performance Requirements.

## **Staffing.** Contractor will ensure that all Resources will (a) hold, at all times, any permits or licenses required to perform the Services and provide the Deliverables, and (b) be appropriately screened for fitness. Without limiting the generality of the foregoing, Contractor will, at a minimum, perform background checks on potential Resources as more fully described in ***Exhibit H***, and will not assign a Resource to perform the Services or provide the Deliverables if such Resource did not pass such screening. During the Term and thereafter for a period not less than six (6) years following (i) the conclusion of the particular Work Order under which a Resource was engaged, or (ii) the termination of a Resource’s placement with or engagement to perform Services for Purchaser, whichever is later, Contractor will retain records of employment or engagement-related screening tests for such Resource, including background checks.

## **Contractor Responsibility.** Contractor will select and supervise the performance of the Resources who will perform Services or provide Deliverables under this Agreement or any Work Order, and may reassign Resources as necessary; provided, however, that if Contractor reassigns any of the Resources before completion of the Services and Deliverables under a Work Order for any reason, Contractor will, at no cost to Purchaser, promptly provide a substantially equivalent replacement Resource and ensure an effective transition so that each replacement Resource has the necessary training and knowledge of the purpose, status, issues and requirements of the Services and Deliverables before Contractor begins charging for that replacement Resource’s time or efforts. Contractor retains sole and absolute discretion in (a) the hiring, dismissal and promotion of Resources and (b) the manner and means of carrying out its obligations under this Agreement and under Work Orders. In particular, Contractor will be solely responsible for all aspects of human resource management and any other management relating to Resources.

## **Subcontracting.** Notwithstanding anything to the contrary in this Agreement, Contractor will not retain a subcontractor to perform all or any part of its obligations under this Agreement or any Work Order without Customer’s or Purchaser’s (as applicable) prior written approval, which Customer or Purchaser may grant, withhold or condition in Customer’s or Purchaser’s sole discretion. If Customer or Purchaser (as applicable) authorizes Contractor to retain a subcontractor, that authorization will not release Contractor from any of its obligations under this Agreement or any Work Order.

## **No Employment Relationship.** Contractor acknowledges that Resources (whether Contractor employees, the employees of approved subcontractors or independent contractors) will not be eligible to participate in, or receive any benefit from, any benefit plan or program available to employees of Purchaser or its Affiliates, and that neither Purchaser nor its Affiliates will (a) provide workers' compensation coverage for Resources or (b) withhold or pay with respect to any sums due under this Agreement any taxes, including but not limited to income taxes (domestic or foreign), unemployment insurance, workers compensation insurance or other taxes or assessments that are payable with respect to statutory employees. Purchaser will have no right or obligation to direct or control Resources’ activities or working conditions.

## **Use of and Access to Purchaser’s Premises.** If a Work Order provides that Contractor or any Resources will perform Services at a location owned or controlled by Purchaser or any of its Affiliates, Contractor will ensure that each Resource complies with Purchaser’s (or its Affiliate’s) safety procedures and physical and electronic security guidelines, which Purchaser may provide or otherwise communicate to Contractor from time to time.

## **Disaster Recovery and Back-up Services.** Contractor will implement, maintain and continuously improve upon a disaster recovery and business continuity plan for its own operations. Contractor will provide back-up services for its own operations, which permit rapid restoration of Contractor’s operations and services within two (2) hours.

# Representations, Warranties and Covenants. Contractor represents, warrants and covenants each of the following:

## **Due Authorization.** Contractor is duly organized, validly existing and in good standing under the laws and regulations of its jurisdiction of incorporation, organization or chartering. Contractor has the full right, power and authority to enter into this Agreement and any Work Order and to grant the rights and licenses granted under this Agreement and any Work Order and to perform its obligations under this Agreement and any Work Order. The execution of this Agreement by Contractor’s representative whose signature is set forth at the end of this Agreement has been duly authorized by Contractor and all necessary corporate action of Contractor (as applicable). When executed and delivered by Contractor, this Agreement will constitute the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms.

## **Compliance with Law; No Conflicts.** Contractor has complied, and will continue to comply, with Applicable Law in connection with the execution, delivery and performance of this Agreement and all Work Orders, including but not limited to all applicable laws and regulations relating to privacy and data security. Contractor has the right to enter into this Agreement and any Work Order, and doing so will not interfere or conflict with Contractor’s contractual obligations to any third party.

## **Performance Standards.** Contractor will (a) use well-trained and well-qualified personnel to perform all Services, (b) ensure that all Services will be performed in a professional, timely and workmanlike manner in accordance with the prevailing standards in Contractor's industry, and (c) devote adequate resources to meet its obligations under this Agreement and any Work Order.

## **Quality of Accepted Services and Deliverables.** All Services and Deliverables will conform to all applicable documentation, specifications and agreed-upon requirements.

## **Liens, Claims and Encumbrances.** All Services and Deliverables will be free from liens, encumbrances or claims. Purchaser may use all Services and Deliverables and may benefit from them without payment other than as set forth in the applicable Work Order. In particular:

#### except as provided in Subsection (b) below, all Deliverables will be original and will not incorporate or include any third-party materials, including third party materials subject to an open source license; and

#### Prior to including third party materials with Deliverables or incorporating third party materials into Deliverables, Contractor (i) will provide to Purchaser any third party licenses and will inform Purchaser of terms and conditions that apply to such third party materials; (ii) notify Purchaser of the proposed use of such third party materials; and, following the foregoing disclosures; and (iii) obtain Purchaser’s prior written consent to incorporate third party materials into Deliverables or include third party materials with Deliverables.

## **No Infringement of Intellectual Property Rights.** None of the Services or Deliverables infringe or will infringe, misappropriate or otherwise violate the rights, including but not limited to any Intellectual Property Rights, of any third party.

## **No Surreptitious Code.** Contractor (a) has and will run a commercially available anti-virus and vulnerability scan on all Deliverables that consist of or contain software code, and (b) will not knowingly include in any Deliverables any malicious code designed to disrupt or otherwise impair the operation of any systems or networks or to permit the surreptitious collection of information.

11.8 **Corrections.** Contractor will, at its own expense, correct any non-conformity to Purchaser’s reasonable satisfaction within thirty (30) days after Purchaser’s notice of the non-conformity to Contractor. If Contractor fails to correct such non-conformity, then Purchaser will be entitled to a refund of all applicable fees paid to Contractor for such non-conforming Services, Deliverables and/or Developments, and Purchaser may terminate the applicable Work Order. Any such termination will be deemed one for cause pursuant to Section 18.3.1 (*Termination of a Work Order for Cause*). Nothing in this Section 11 will be interpreted to limit Purchaser's rights or remedies in the event that any Services or Deliverables are rejected in accordance with Section 7 (*Evaluation and Acceptance*).

# Anti-Terrorism and Anti-Corruption.

## **Anti-Terrorism and Anti-Corruption.** Contractor agrees to, and will comply with, the provisions and requirements in ***Exhibit*** ***E***.

## **Gifts.** Contractor acknowledges that Customer and its Affiliates have a policy regarding gifts, gratuities and other payments given to their employees. A copy of the policy is attached as ***Exhibit J***. Contractor will not take any action that could reasonably be expected to induce an employee of Customer or any of its Affiliates to violate the policy. In particular, but without limiting the foregoing, Contractor will not (a) give a cash gift in any amount to such employee, (b) give a non-cash gift worth more than $200 to such employee except where the manager of the employee has confirmed in writing that the gift serves a legitimate business purpose, or (c) give a gift of any kind to any relative, friend, associate or charitable organization favored by such employee if there is any implied expectation of a return favor.

# Limitation of Liability.

## **Limitations.** EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3 (*EXCEPTIONS*), IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY LOSS OF USE, LOSS OF PROFITS, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES OF ANY KIND, HOWEVER CAUSED, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY WORK ORDER, WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS OTHERWISE PROVIDED IN SECTION 13.3, IN NO EVENT WILL EITHER PARTY’S OR ITS AFFILIATES’ LIABILITY FOR ANY DAMAGES OR LOSSES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY WORK ORDER EXCEED TWO (2) TIMES THE AGGREGATE AMOUNTS PAID OR PAYABLE TO CONTRACTOR PURSUANT TO THIS AGREEMENT.

## **Applicability.** THE EXCLUSIONS AND LIMITATIONS SET FORTH IN SECTION 13.1 (*LIMITATIONS*) WILL APPLY REGARDLESS OF THE LEGAL THEORY OF LIABILITY, WHETHER UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY WHATSOEVER.

## **Exceptions.** The exclusions and limitations set forth in Section 13.1 (*Limitations*) will not apply to any claim, damages or other liabilities arising out of or related to: (a) fraud, gross negligence or willful misconduct; (b) infringement, misappropriation or violation of any Intellectual Property Right of a Party; (c) death or bodily injury or damage to real or tangible personal property; (d) Losses that are recoverable by any Indemnitee under Section 14 (*Indemnification*); or (e) breach of Section 9 (*Confidentiality and Data Security*).

# Indemnification.

## **Indemnification by Contractor.** Contractor will indemnify, defend and hold harmless Customer, its Affiliates and their respective officers, directors, shareholders, employees and agents from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including all reasonable attorneys’ fees (whether incurred prior to, at trial or any other proceeding and in any appeal or other post judgment proceedings), the cost of enforcing any right to indemnification under this Section 14 and the cost of pursuing any insurance providers (collectively, “**Losses**”), arising out of or relating to any claim, suit, proceeding (including bankruptcy proceedings), action or regulatory action (collectively, “**Claim**”) by a third party (including a Resource) to the extent based on or arising from any: (a) negligent act or omission of the Contractor, its Affiliates or Resources, or their respective officers and directors, employees or agents, or of the fraud, gross negligence or willful misconduct of such parties; (b) infringement, misappropriation or other violation of any person's Intellectual Property Right by any Deliverable, Development or Service; (c) breach of any representation, warranty or obligation of Contractor set forth in this Agreement, including but not limited to a breach of Section 9 (*Confidentiality and Data Security*) and Section 4.4 (*Taxes*); (d) violation of Applicable Law by Contractor, its Affiliates or Resources, or their respective officers, directors, employees or agents; or (e) a claim that Customer or any Affiliate of Customer is the employer, co-employer or joint employer of any of Contractor's employees, principals or Resources, or that Contractor's employees, principals or Resources are otherwise entitled to employment-related benefits.

## **Indemnification by Purchaser.** Purchaser will indemnify, defend and hold harmless Contractor and its officers, directors, shareholders, employees and agents from and against all Losses, arising out of or relating to any Claim by a third party to the extent based on or arising from any: (a) fraud, gross negligence or willful misconduct by Purchaser; or (b) violation of Applicable Law by Purchaser.

## **Procedures.** The party or parties seeking indemnification under this Section 14 (each, an “**Indemnitee**”) will promptly notify the indemnifying party (“**Indemnitor**”) in writing of the Claim or Loss and cooperate with the Indemnitor at the Indemnitor’s sole cost and expense, except that an Indemnitee’s failure to perform any obligations under this Section 14.3 will not limit, impair or otherwise affect the Indemnitee’s rights under this Section 14 unless the Indemnitor is prejudiced by that failure, and then only to the extent of such prejudice. The Indemnitor will immediately take control of the defense and investigation of such Claim; provided, however, that the Indemnitor will not settle any claim without the Indemnitees’ prior written consent unless that settlement includes a full and final release of all Claims against the Indemnitees and imposes no obligations on the Indemnitees.

## **Additional Remedies.** If any Deliverables, Developments or Services are held in any infringement suit to infringe the Intellectual Property Right of another person, if their use is enjoined, or if in Contractor's reasonable opinion those Deliverables, Developments or Services are likely to become the subject of an infringement claim, Contractor will immediately notify Purchaser and, at its own expense and in the following order, will: (a) immediately obtain a license for Purchaser and its Affiliates to continue using those Deliverables and Developments and receiving those Services and pay (without any reimbursement from Purchaser or its Affiliates) any fee that may be charged in connection with such license; and (b) modify, replace and resubmit the Deliverables and Developments and re-perform the Services so they become non-infringing while giving substantially equivalent performance, and, if the Services included training, will provide retraining that is functionally equivalent to the original training. If neither of the preceding is commercially feasible, Customer may terminate this Agreement and/or Purchaser may terminate the applicable Work Order, either in full or only as to the infringing Deliverables, Developments or Services, and Contractor will refund all fees paid to Contractor for those Deliverables, Developments and Services. Any such termination of this Agreement or the applicable Work Order will be deemed a termination for cause under Section 18.2.1 (*Termination of this Agreement for Cause*)and Section 18.3.1 (*Termination of a Work Order for Cause*), respectively.Neither Contractor’s election to proceed under Subsections (a) or (b) above nor Customer’s or Purchaser’s election to terminate will relieve Contractor of its indemnification obligations that arose prior to such election.

# Exclusivity. For purposes of this Section 15, the term “Customer Competitor” means a person or entity which, directly or through an Affiliate, designs, manufactures, markets or distributes: (a) sports, athleisure or casual apparel; (b) sports-related equipment or accessories, including but not limited to balls and inflatables, bags, headbands, wristbands and protective pads; (c) sunglasses and other eyewear; (d) sports timing and other electronic devices; (e) athletic or athletically-inspired or derived footwear; or (f) products that bear any of the brand names listed in *Exhibit F*; provided, however, that a bona fide retailer which derives less than twenty percent (20%) of its revenues from the sale of such products will not be deemed to be a "Customer Competitor". During the term of any Work Order, Contractor will not, directly or through any of its Affiliates, accept any engagement with, supply goods to, license Intellectual Property Rights (including Contractor Property) to, or perform services for, any Customer Competitor.

# Insurance. Without limiting Contractor’s obligation to indemnify any Customer Indemnitee, or any other obligations under this Agreement, Contractor will, at its sole cost and expense, procure and maintain in effect at all times during the Term, and for one (1) year following the Term, insurance policies described in *Exhibit G* and will comply with the other terms and conditions described in *Exhibit G*.

# Force Majeure. No Party will be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement or any Work Order, for any failure or delay in performing its obligations under this Agreement or any Work Order, when and to the extent such failure or delay is caused by, or results from, acts beyond the affected Party’s reasonable control, including but not limited to: (a) severe natural disaster or act of God (tornado, hurricane, flood, earthquake or tsunami); (b) war, act of terrorism or riot; (c) epidemic or pandemic; or (d) other similarly catastrophic and unforeseeable event or condition (each, a “Force Majeure Event”), except that any failure or delay on Contractor’s part will not be excused unless Contractor has fulfilled its obligations with regard to disaster recovery, business continuity and back-up services. The Party whose performance is affected by the Force Majeure Event must: (i) immediately notify other Party in writing, describing the Force Majeure Event and its effects and stating the estimated time when the affected Party’s performance is expected to resume; and (ii) use diligent efforts to resume its performance and minimize the effects of the Force Majeure Event. During the period of non-performance by the affected Party, the other Party, which is not affected by the Force Majeure Event may suspend its own performance.

# Term and Termination.

## **Term.** The term of this Agreement will commence on the Agreement Effective Date and will remain in effect until terminated in accordance with Section 18.2 (*Termination of this Agreement*).

## **Term****ination of this Agreement.** Customer or Contractor may terminate this Agreement at any time, with or without cause, by written notice to the other Party, as set forth below.

### **Termination of this Agreement for Cause.** Customer or Contractor may terminate this Agreement, effective immediately, by written notice, if the other Party is in material breach of this Agreement and that breach (a) is not capable of being cured, or (b) if capable of being cured, remains uncured for thirty (30) days after receipt of written notice of such breach. For purposes of this Section 18.2.1, any breach of Sections 8 (*Intellectual Property Rights*), 9 (*Confidentiality and Data Security*), 10 (*Personnel and Staffing; Other Performance Requirements*), 12 (*Anti-Terrorism and Anti-Corruption*), 15 (*Exclusivity*), 19.1 (*Independent Contractor*) or 19.2 (*Assignment; Succession*) will, without limitation, be deemed to be a material breach that is incapable of cure. Upon termination of this Agreement for material breach pursuant to this Section 18.2.1, all Work Orders in effect will automatically and concurrently terminate and such terminations will be deemed for cause.

### **Elective Termination of this Agreement.** Either Party may terminate this Agreement without cause. A Party’s notice of intent to terminate without cause will be effective on the date specified in the notice, except that, if any Work Orders are in effect on such date, the elective termination of this Agreement will take effect when all such Work Orders have been either completed or terminated.

## **Termination of Work Orders.**

### **Termination of a Work Order for Cause.** Either Contractor or the applicable Purchaser may terminate a Work Order by written notice, effective immediately, if the other Party is in material breach of such Work Order and that breach (a) is not capable of being cured or (b) if capable of being cured, remains uncured for thirty (30) days after written notice.

### **Elective Termination of a Work Order.** Purchaser may at any time terminate a Work Order, without cause, by written notice effective on the date specified in the notice.

## **Effect of Termination.** In the event of a termination or expiration of this Agreement or any Work Order for any reason, the following terms and conditions will apply:

### **Payments upon Termination.** Within thirty (30) days following termination or expiration of this Agreement or a Work Order, Contractor will, as applicable: (a) refund to Purchaser or Customer, as applicable, any credits which remain unpaid or uncredited, together with any unused pre-paid fees; (b) deliver to Purchaser any completed Deliverables; and (c) invoice Purchaser for Services and Deliverables completed by Contractor and accepted by Purchaser. Subject to the foregoing, within sixty (60) days following the termination or expiration of this Agreement or a Work Order, as applicable, and receipt of invoice from Contractor, Purchaser will pay to Contractor all undisputed amounts due and payable for Services and Deliverables completed by Contractor and accepted by Purchaser prior to the effective date of termination or date of expiration.

### **Return of Materials.** In addition to the obligations set forth in Section 9.5 (*Return of Confidential Information*), upon termination or expiration of this Agreement or any Work Order: (a) Contractor will return to Customer or the applicable Purchaser (as applicable) any other data, programs and materials delivered by Customer or Purchaser to Contractor for purposes of performing this Agreement or any Work Order; and (b) each Party (in this context, the “**Returning Party**”) will return to the other Party (in this context, the “**Providing Party**”), or permit the Providing Party to remove, any of the Providing Party’s tangible properties then-situated on the Returning Party’s premises.

## **Transition Assistance Services.** In the event of a termination or expiration of this Agreement or any Work Order for any reason, the following terms and conditions will apply:

### **Extension of Agreement and Work Orders.** Customer and Purchaser, as applicable, will be entitled to extend the Term and the applicable Work Order for a period of up to six (6) months (“**Transition Extension Period**”) upon written notice to Contractor in order to effect the orderly transition of the applicable Services in whole or in part. During the Transition Extension Period, (a) the terms and conditions of this Agreement and the applicable Work Order will remain in full force and effect; and (b) the Parties will perform all obligations under the Agreement and the applicable Work Order (e.g., the provision of Services and Deliverables by Contractor and the timely payment of all undisputed invoices owed by Purchaser).

### **Termination Assistance Services.** Contractor will provide to Purchaser and the supplier or service provider selected by Purchaser (the “**Successor Provider**”), at Purchaser’s sole cost and expense, assistance reasonably requested by Purchaser in order to effect the orderly transition of the applicable Services, in whole or in part, to Purchaser or to the Successor Provider (such assistance referred to as the “**Termination Assistance Services**”) during the Transition Extension Period and prior to or following the expiration or termination of this Agreement or the applicable Work Order. Contractor will provide the Termination Assistance Services at an hourly blended rate to be mutually agreed to by the Parties in writing.

## **Survival.** Sections 8 (*Intellectual Property Rights*), 9 (*Confidentiality and Data Security*), 11 (*Representations, Warranties and Covenants*), 13 (*Limitation of Liability*), 14 (*Indemnification*), 16 (*Insurance*), 18 (*Term and Termination*), 19 (*Miscellaneous*), and any other provision of this Agreement that expressly or by its nature provides for rights, obligations or remedies that extend after the Term, will survive and continue in full force and effect following the termination of this Agreement.

# Miscellaneous.

## **Independent Contractor.** Nothing in this Agreement will be construed to create a joint venture or partnership or establish a relationship of principal and agent or of employer and employee, or any other relationship other than that of independent contractor and customer. Neither Party will represent the other Party in any capacity, bind the other Party to any contract, or create or assume any obligation on behalf of the other Party for any purpose whatsoever, except as expressly authorized by this Agreement.

## **Assignment; Succession.** Except as may be permitted otherwise in accordance with Section 10.3 (*Subcontracting*), neither Party may assign, transfer or delegate this Agreement, any Work Order or any or all of its rights or obligations under this Agreement or any Work Order without the prior written consent of the other Party; provided, however, that Customer and Purchaser (as applicable) may assign, transfer or delegate this Agreement, any Work Order, or their respective rights or obligations under this Agreement or any Work Order to an Affiliate of Customer or Purchaser or to a successor of all or substantially all of the assets of Customer or Purchaser (as applicable) through merger, reorganization, consolidation or acquisition. For purposes of this Section 19.2, the following will be deemed to be an "assignment": (a) any change in a majority ownership interest in a Party; or (b) any change in the control (voting or otherwise) of a Party by contract or otherwise. No assignment will relieve the assigning Party of any of its obligations under this Agreement or any Work Order, unless: (i) that authorization expressly releases the assigning Party; (ii) the assignee agrees in writing to be bound by this Agreement and the applicable Work Orders (if any); and (iii) the assigning Party and assignee agree in writing that that the non-assigning Party has the right to enforce the assigning Party's rights against the assignee. Any attempted assignment by a Party other than as set forth in this Section 19.2 will be void and will constitute a material breach of this Agreement. This Agreement will bind and inure to the benefit of each of the Parties and their respective permitted successors, assigns and delegates.

## **Governing Law; Forum Selection.** This Agreement and all Work Orders will be interpreted under, and any disputes arising out of this Agreement or any Work Order will be governed by, the laws of the state of \_\_\_\_\_\_\_\_\_\_, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement or any Work Order. Each Party: (a) irrevocably consents to the jurisdiction of the courts located in \_\_\_\_\_\_\_\_\_\_, in connection with all actions arising out of or in connection with this Agreement or any Work Order and waives any objections that venue in such courts is an inconvenient forum; (b) further agrees that it will not initiate any action against the other Party or any of its Affiliates in any other jurisdiction; and (c) agrees that a final judgment in any such action or proceeding will be conclusive and may be enforced in any other jurisdiction (including the appropriate courts of the jurisdiction in which the other Party is a resident or in which any property or an office of the other Party is located) in any manner provided by law.

## **Remedies; Injunctive Relief.** Contractor acknowledges that its breach of Sections 8 (*Intellectual Property Rights*), 9 (*Confidentiality and Data Security*), 11 (*Representations, Warranties and Covenants*), 12 (*Anti-Terrorism and Anti-Corruption*), 14 (*Indemnification*), 15 (*Exclusivity*) or 19.1 (*Independent Contractor*) will irreparably harm Customer or the applicable Purchaser, and that such harm will not be susceptible to accurate measurement. Accordingly, Customer or any Affiliate of Customer, in addition to seeking and recovering money damages and other remedies available at law, will have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of such Sections, without the necessity of posting a bond or other security. Such remedies and all other remedies described in this Agreement will not be deemed to be exclusive but will be in addition to any other remedies available at law or in equity, subject to any express exclusions or limitations set forth in this Agreement to the contrary.

## **Third Party Beneficiaries.** All Affiliates of Customer are intended third party beneficiaries of this Agreement.

## **Amendments.** The Parties may amend this Agreement only by a written instrument that: (a) expressly states the Parties intent to amend this Agreement; (b) expressly refers to the provision(s) of this Agreement to be amended; (c) provides the full text of the amendment or otherwise fully describes the scope of the amendment; and (d) is signed by an authorized representative of both Customer and Contractor. A Purchaser and Contractor may amend a Work Order only by a Change Order.

## **Effect of Standard Forms.** Contractor acknowledges and agrees that any shrink-wrap agreement or end user license agreement (EULA), invoice or other standard form which purports to govern the acquisition of goods or the provision of services will be ineffective to modify this Agreement or any Work Order unless it is executed in accordance with Section 19.6 (*Amendments*).  In the case of terms set forth on a website, clicking on a website acceptance button will not constitute a Party’s consent to amendment.

## **Waiver.** A Party's delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. A Party's waiver of any right granted under this Agreement on one occasion will not (a) waive any other right, (b) constitute a continuing waiver, or (c) waive that right on any other occasion.

## **Notices.** Each notice, consent, request or other communication required or permitted under this Agreement (each, a “**Notice**”) will be (a) in writing, (b) delivered personally or sent by certified mail (postage prepaid, return receipt requested), by a nationally recognized overnight courier (receipt requested), or by facsimile (with confirmation of transmission), and (c) sent to the recipient's address or facsimile number, as applicable and as set forth below. In addition to the foregoing, Customer and Purchaser may send a Notice to Contractor by email (with confirmation of transmission) at the email address set forth below:

# If to Customer: With a copy to:

|  |  |  |
| --- | --- | --- |
| Customer |  | Customer |
| Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Attn: General Counsel |
| 123 Happy Lane |  | 123 Happy Lane |
| HappyLand, CA 12345-1234 USA |  | HappyLand, CA 12345-1234 USA |
| Facsimile: (123) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Facsimile: (123) 456-7890 |

#

# If to Purchaser:

To the address designated on the first page of the applicable Work Order

Attention: To the individual who signed the applicable Work Order on behalf of Purchaser.

# If to Contractor: With a copy to:

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
|  |  |  |
| Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_ |  | Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_ |

Each Notice will be deemed to have been received by the Party to which it was addressed (a) when delivered if delivered personally, (b) when received by the addressee if sent by overnight courier, (c) on the fifth Business Day after the date of mailing if sent by certified mail, (d) on the date sent by facsimile if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (e) in the case of Customer or Purchaser as the sender, on the date sent by email if sent during normal business hours of Contractor, and on the next Business Day if sent after normal business hours of Contractor. Each Party may change its address for purposes of this Agreement by giving written notice to the other Party.

## **Interpretation.** All exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and any Work Order, the conflicting or inconsistent provision in the Work Order will have no force or effect; provided, however, that if the Parties mutually agree that a conflicting or inconsistent provision in a Work Order should govern over this Agreement, then such conflicting or inconsistent provision must comply with Section 19.6 (*Amendments*) and such Work Order must also be signed by an authorized representative of Purchaser’s Legal Department. In such case, the conflicting or inconsistent provision in the Work Order will apply only to that particular Work Order. Each Party has had the opportunity to have this Agreement reviewed by its attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.

## **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect. Such invalidity, illegality or unenforceability also will not invalidate or render unenforceable such provision in any other jurisdiction.

## **Counterparts and Delivery.** This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single agreement. Facsimile and digital signatures will be deemed original signatures for all purposes under this Agreement. When properly signed, this Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

## **Integration.** This Agreement is the entire agreement between the Parties concerning its subject matter and supersedes all prior and contemporaneous oral and written agreements, commitments and understandings concerning its subject matter.

IN WITNESS WHEREOF, the Parties have caused this Master Professional Services Agreement to be executed as of the Agreement Effective Date.

|  |  |
| --- | --- |
| **Customer (“Customer”)** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”)** |
| By: Signature | By: Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date:  | Date:  |

***EXHIBIT A***

**TEMPLATE FOR WORK ORDERS**

------------------------------------------------------------------------

**WORK ORDER NO. \_\_\_\_**

**UNDER**

**MASTER PROFESSIONAL SERVICES AGREEMENT**

This Work Order No. \_\_\_ (this “**Work Order**”) is made effective as of \_\_\_\_\_\_\_ (the “**Effective Date**”) between \_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Purchaser**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Contractor***”*). This Work Order is incorporated into, forms a part of, and is in all respects subject to the terms of, the Master Professional Services Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Agreement**”).

**Background (Nature of the Project):**

1. **Definitions.** Capitalized terms not otherwise defined in this Work Order will have the meanings set forth in the Agreement.
2. **Description of Services.** Contractor will perform the following Services under this Work Order:
3. **Description of Deliverables.** Contractor will provide the following Deliverables under this Work Order:
4. **Timetable.** Contractor will perform the Services and provide the Deliverables in accordance with the following timetable:
* The Services will commence on the Effective Date, and all Services and Deliverables under this Work Order will be fully completed and delivered to Purchaser no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
* Additionally, the Services and Deliverables under this Work Order will be subject to the following work schedule:
1. **Compensation Arrangement and Fees.** The fees for the Services and Deliverables are as follows:
2. **Additional Terms (if any):**

The Parties have caused this Work Order to be executed as of the Effective Date.

|  |  |
| --- | --- |
| **Customer (“Customer”)** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”)** |
| By: Signature | By: Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date:  | Date:  |

***EXHIBIT B***

**CONTRACTOR RATES**

[*Complete or attach schedule.*]

***EXHIBIT C***

**DATA SECURITY**

Contractor acknowledges and agrees that, as between Purchaser and Contractor, Purchaser is and will remain the exclusive owner and controller of all data provided to Contractor under this Agreement and/or any Work Order (“Purchaser Data”). Contractor shall access, use, or otherwise handle Purchaser Data only to perform the Services under a Work Order and not for the benefit of Contractor or any third party. Contractor will keep and maintain Purchaser Data in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure of the data. Contractor will implement and maintain reasonable administrative, technical, and physical safeguards to protect Purchaser Data, as appropriate to the nature and scope of Contractor’s activities and Services, and as reasonably requested by Purchaser. Contractor will, on an ongoing basis, ensure that its information security program and safeguards are designed, maintained, updated, and adjusted, as necessary, to protect against reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of Purchaser Data. Contractor will only allow persons with a need to handle Purchaser Data to perform services under a Work Order to access or handle Purchaser Data and shall remain responsible for any handling of Purchase Data within its custody or control by its employees, workers or contractors. If Contractor becomes aware, or reasonably believes, that Purchaser Data may have been accessed or acquired by an unauthorized party, Contractor shall promptly notify Purchaser via email with a read receipt to 1234@happy.com and a subject line including the words “Security Event” with a copy to Contractor’s primary business contact within Purchaser. Contractor shall fully cooperate with Purchaser to investigate and remediate any such unauthorized access to or acquisition of Purchaser Data.

Version: GL.LT.062017

*INTERNAL TANGIBLE NOTE: If necessary; remove & replace this exhibit with the appropriate DPSE template document. Please delete this note prior to sending out draft.*

***EXHIBIT D***

**TEMPLATE FOR CHANGE ORDERS**

------------------------------------------------------------------------

**CHANGE ORDER NO. \_\_\_\_\_\_\_**

**TO**

**WORK ORDER NO. \_\_\_\_\_\_\_**

This Change Order No. \_\_\_ (this “**Change Order**”) is made effective as of \_\_\_\_\_\_ (the “**Effective Date**”), between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Purchaser**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Contractor***”*).

This Change Order modifies the terms of the above-referenced Work Order, dated as of \_\_\_\_ (the “**Work** **Order**”), which was issued under the Master Professional Services Agreement between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and Contractor, dated \_\_\_\_\_\_\_ (the “**Agreement**”).

The Parties agree that the Work Order is hereby amended, supplemented or otherwise modified as follows (check as applicable and provide details):

[ ]  **Description of Services.** The Services are modified as follows:

[ ]  **Description of Deliverables.** The Deliverables are modified as follows:

[ ]  **Timetable.** The timetable for the Services and Deliverables is modified as follows:

[ ]  **Compensation and** **Fees.** The fees set forth in the Work Order are modified as follows:

[ ]  **Other Terms**. Other terms in the Work Order are modified as follows:

Capitalized terms not otherwise defined in this Change Order, will have the meanings set forth in the Work Order, or, if not defined in the Work Order, they will have the meanings set forth in the Agreement.

Except as expressly amended, supplemented or otherwise modified in this Change Order, the terms of the Work Order will remain unchanged, and the Work Order (as modified herein) and the Agreement are in all respects hereby ratified and confirmed.

The Parties have caused this Change Order to be executed as of the Effective Date.

|  |  |
| --- | --- |
| **Customer (“Customer”)** | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”)** |
| By: Signature | By: Signature |
| Name:  (Print or Type) | Name:  (Print or Type) |
| Title:  (Print or Type) | Title:  (Print or Type) |
| Date:  | Date:  |

***EXHIBIT E***

**ANTI-TERRORISM AND ANTI-CORRUPTION**

1. **Qualifying Information.** Contractor represents and warrants that any information that it conveyed to Customer or Purchaser in connection with Customer’s or Purchaser’s vendor qualification process, whether submitted in response to a request for proposals, via Customer’s vendor qualification portal, or otherwise, is and will remain during the Term accurate and complete.
2. **Ethical Conduct.** Contractor will at all times conduct its business in an ethical manner in compliance with Applicable Law. Without limiting the foregoing, Contractor will not, directly or indirectly through a third party, offer, pay, promise or authorize the offer or payment of, any financial or other benefit or advantage, or anything of value, to any person: (a) to improperly obtain a business advantage or to obtain or retain business; (b) to induce the person to perform any function or activity improperly, or to provide a reward for doing so; or (c) to corruptly influence, directly or indirectly, any act or decision of any government official, employee, candidate for public office, or political party.
3. **Certification.** Contractor will, at Customer’s request, certify in writing its compliance with Paragraph 2 (*Ethical Conduct*) above, and report to Customer immediately any actual or suspected violations. Contractor will, at Customer’s request, make its managers reasonably available to participate in training regarding bribery laws and gifts policies. Customer may at any time, at its own expense, audit or arrange for its Representatives to audit, Contractor’s compliance with this Paragraph 3 (*Certification*), and Contractor will, at its own expense, fully cooperate with any such audit.
4. **SDN List.** Contractor represents and warrants that none of its principals are on the Specially Designated Nationals and Blocked Persons List (the “**SDN List**”) provided by the Office of Foreign Assets Control of the US Treasury Department (“**OFAC**”) and updated from time to time at: [www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx](http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx), or such other website as designated by OFAC, and that Contractor does not, and during the Term will not, employ any individual whose name appears on the SDN List. In its dealings with governmental entities, Contractor will not represent Customer or any of its Affiliates or purport to represent or otherwise act on behalf of Customer or any of its Affiliates.

***EXHIBIT F***

**BRAND NAMES OF CUSTOMER COMPETITORS**

• Competitor 1 Name

***EXHIBIT G***

**INSURANCE REQUIREMENTS**

Contractor will maintain insurance policies that meet the following requirements:

1. **General Requirements.** All policies (a) will be written by insurers that are licensed to do business in the jurisdiction where the Services are to be performed; (b) will be written by insurers which are S&P A rated or higher; and (c) will be primary and non-contributory with respect to any insurance policies Purchaser or its Affiliates carry or any self-insurance programs maintained by Purchaser or its Affiliates. All policies except workers compensation will include a waiver of subrogation in favor of Customer and its Affiliates and their officers, directors and employees. The limits specified below may be achieved through a combination of primary and umbrella policies. Contractor will ensure that Purchaser receives written notice of cancellation, non-renewal or a material change in coverage with respect to any of the policies listed below. Contractor is responsible for (and will pay) all deductible payments and self-insured retentions that are applicable to Contractor’s insurance policies.
2. **Certificates of Insurance.** Upon execution of this Agreement, and thereafter as the insurance policies renew, Contractor and its subcontractors will furnish Purchaser with certificates of insurance evidencing the insurance coverage required herein and attaching endorsements evidencing compliance with these insurance requirements. Renewal certificates of insurance will be delivered to Purchaser no later than thirty (30) days after the expiration of any policy.
3. **Request for Copies of Policies.** Contractor will upon request provide Purchaser with copies of any insurance policies required under this Agreement.
4. **Contractor’s Minimum Insurance Coverages and Limits.** Each policy will be written on an occurrence form (excepting Errors & Omissions "E&O"). All polices, except for Workers Compensation, E&O and Employer’s Liability, will name Customer and its subsidiaries as additional insureds with respect to the negligence of Contractor, its subsidiary and affiliated companies, directors, officers, subcontractors of each and every tier, employees and agents. Contractor will also ensure that each of its subcontractors names Customer and its subsidiaries as additional insureds with respect to the negligence of the subcontractor and its subsidiary and affiliated companies, directors, officers, subcontractors of each and every tier, employees and agents. Contractor will maintain the following coverages and meet the following limits:
	1. **Commercial General Liability.** Commercial general liability insurance, applicable to liability arising out of premises, operations, products, completed operations, contractual liability including tort liability of another assumed in a business contract, including bodily injury (including death) property damage, independent contractors, personal injury and advertising injury, along with associated defense costs, as well as any of Purchaser’s property in the care, custody or control of Contractor, with a limit of not less than one million US dollars ($1,000,000) each occurrence and two million US dollars ($2,000,000) aggregate.
	2. **Umbrella or Excess Liability.** An Umbrella or Excess liability policy with a minimum policy limit of five million US dollars ($5,000,000) each occurrence and in the aggregate.
	3. **Workers Compensation.** Workers compensation coverage with statutory limits, as required by Applicable Law. The requirement for workers compensation insurance may be satisfied through a government-sponsored and certified employee health scheme or program, in which case Contractor will, provide evidence reasonably satisfactory to Purchaser of its compliance with such government sponsored program.
	4. **Employer’s Liability.** Employer’s liability insurance with a limit of not less than one million US dollars ($1,000,000) per accident, one million US dollars ($1,000,000) for each employee by disease and one million US dollars ($1,000,000) policy limit by disease.
	5. **Business Automobile.** Business automobile liability insurance for any vehicle licensed for public road use, including without limitation, owned, non-owned and hired autos, with a one million US dollars ($1,000,000) combined single limit per accident on vehicles owned, leased or rented by Contractor or by its subcontractors while performing under this Agreement.
	6. **Professional Liability (Errors & Omissions).** Errors & Omissions will be written on a claims made or project specific basis with a limit of not less than five million US dollars ($5,000,000) per claim. Such insurance will include coverage for all errors, omissions or negligent acts in the delivery of Services and Deliverables contemplated under this Agreement, including but not limited to, contingent bodily injury and property damage liability, non-owned intangible property of others (such as data that could be damaged, lost, stolen or inappropriately disclosed by Contractor), degradation, nonperformance and infringement of any proprietary right of any third party, including copyright, trade secret and trademark infringement as related to Contractor's performance under this Agreement and defense costs. The policy will cover the liability of Customer or any Affiliate of Customer by reason of any actual or alleged error, omission or other negligent act or willful misconduct of Contractor committed in rendering or failing to render any Services and Deliverables in accordance with this Agreement. The Professional Liability and Errors & Omissions Liability Insurance retroactive coverage date will be no later than the first day work is performed for a Work Order. This coverage will be maintained until the termination of this Agreement, and thereafter Contractor will maintain an active policy, or purchase an extended reporting period providing for claims first made and reported to the insurance company within six (6) years after final payment for the Services.

***EXHIBIT H***

**SCREENING OF RESOURCES**

A Resource who is not a Contractor employee and who (a) will work at any site operated by Customer or its Affiliates or (b) will work from a location outside the United States will not be assigned to perform any Services unless the Resource has successfully passed the following screens:

(i) Social Security Number trace and seven-year criminal background check (U.S.-based workers only);

(ii) credit history and investigation;

(iii) driving record;

(iv) prohibited parties check; and

(v) e-verify check or verification of right to work in the U.S. for U.S. based workers.

***EXHIBIT I***

**FLEX PROGRAM**

1. For purposes of this ***Exhibit I***, the following additional defined terms will apply:
	1. “**Flex System**” means an electronic portal, and associated software and databases, through which (a) Customer and its Affiliates from time to time submit Requisitions for services to designated In-Scope Vendors, (b) hours worked by the personnel of such In-Scope Vendors are tracked, and (c) such In-Scope Vendors submit invoices.
	2. “**Requisition**” means a request for proposals submitted by a Purchaser through the Flex System, to Contractor, or to Contractor along with other potential In-Scope Vendors.
2. Customer’s or Purchaser’s designation of Contractor as an In-Scope Vendor will become effective only upon written notice to Contractor, and the provisions of this ***Exhibit I*** will apply to only Work Orders that are initiated after the date of such notice.
3. A Requisition is not an offer but instead is an invitation to Contractor and other In-Scope Vendors to submit offers in response to the Requisition. Contractor may offer to perform the requisitioned services by issuing a Work Order, which in turn is subject to acceptance by the Purchaser who submitted the Requisition. If the Work Order is accepted by Purchaser and executed, it will supersede any inconsistent terms in the Requisition or in Contractor’s response to the Requisition. Nothing in this Agreement grants exclusive rights to Contractor; Contractor acknowledges that a Requisition may be broadcast to multiple In-Scope Vendors for the purpose of soliciting offers.
4. Except as otherwise set forth in this Agreement, Purchaser will not be liable for any amounts payable to Contractor for Services or Deliverables under any Work Order subject to the terms of this ***Exhibit I***, unless Contractor submits its request for payment via the Flex System. Each such request (a) will constitute an invoice; and (b) will be deemed to have been received by Purchaser on the date submitted into the Flex System. Purchaser has the right to withhold from each payment to Contractor, an administrative fee of one percent (1%) of Contractor’s invoiced amounts. Under the current Flex Program policy, this administrative fee will be waived if Contractor has 5 or fewer employees.
5. Customer and its Affiliates may adjust the policies and processes for the Flex Program from time to time, including any applicable administrative fee and any waiver of the administrative fee that may apply. Any changes to the Flex Program policies and processes will become effective on Contractor only upon written notice to Contractor.

***EXHIBIT J***

**GIFTS POLICY**

An employee of Customer or any of its Affiliates (“**Customer Employee**”) may not accept a gift, gratuity, entertainment or a favor that has a value of $200 (U.S. dollars) or more. (Business or geographic organizations may set a lower threshold.) A Customer Employee may never accept or offer cash at any time, and may never accept gifts, gratuities, entertainment or favors if there is any expectation of a return favor implied, regardless of the value of the gift, and regardless of whether the gift benefits the Customer Employee or an organization designated by the Customer Employee. Any Customer Employee who is offered a gift that clearly falls outside of the acceptable guidelines and is likely intended to influence an employee’s business judgment must report it to Employee Relations. Any questions about the application of this policy also should be directed to Employee Relations, and any exceptions to it must be approved in advance by Employee Relations.

Making bribes, kickbacks or other improper payments to government officials, civil servants or anyone else to influence them is prohibited. The U.S. Foreign Corrupt Practices Act (“**FCPA**”) makes it illegal for anyone at Customer or any of its Affiliates to offer, promise or pay money or anything of value, directly or indirectly to any foreign government official or employee, political party or candidate for public office for the purpose of obtaining or maintaining business or for any other business advantage. The fact that bribery may be an accepted local practice in a country does not relieve Customer Employees from complying with the FCPA. The FCPA permits payments under specific circumstances. Consult the Customer Legal Department with any questions related to FCPA.