Master Services Agreement

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| --- | --- |
| Date | 02/07/2018 |
| Client | [CLIENT] |
| Requested By | [Client Requester] |
| From | [CONSULTANT], [CONSULTANT TITLE] |

# Summary

This Master Service Agreement (“Agreement”) will formalize our agreement as to the terms and conditions applicable to services delivery work performed for you by [CONSULTANCY NAME]. This Agreement is entered into by:

* [CLIENT FULL CORPORATE NAME](“Company”)
* [CONSULTANCY NAME]

This Agreement is effective as of the date of the last signature below (“Effective Date”). As used in this Agreement, the words “we,” “us” and “our” refer to [CONSULTANCY NAME] and the words “you” and “your” refer to Company.

## 1. Engagement

We will provide you with the services described in individual Statements of Work (each, an “SOW”) attached hereto or separately executed (the “Services”) and deliver the deliverables, designs, documentation, products and other materials specified in the applicable SOW (the “Deliverables”) in accordance with the terms, specifications, and timeline set forth in such SOW. We agree to provide the Services in a professional and workmanlike manner in accordance with the terms of this Agreement and the applicable SOW. The length of each SOW and duration of the Services will be specified in the applicable Statement of Work (the “Services Term”). The Statement of Work will form part of and be subject to the terms and conditions contained in this Agreement. In the event of a direct conflict, the terms and conditions of the Statement of Work will take precedence over the terms and conditions of this Agreement.

## 2. Confidentiality

We acknowledge that in the course of our relationship with you, we may be exposed to or generate non-public information that relates to your business affairs or those of your Affiliates (“Confidential Information”). We agree to:

* hold all Confidential Information in strict confidence, not disclose the Confidential Information or use it for the benefit of any third party;
* not to use the Confidential Information in any way, except to perform the Services for the sole benefit of Company;
* to protect its confidentiality as if it were our own using no less than reasonable care.
* to only share Confidential Information with employees who need to know such information and are bound by confidentiality terms similar to no less restrictive than those in this Agreement.

Confidential Information includes, but is not limited to: your past, present, and future development and business activities, software, software designs, software design elements, software specifications, software configurations, data structures, tools, methodologies, platforms, hardware specifications, hardware configurations, number of servers, location of servers, website traffic, database contents, database designs, database architectures, system architectures, processes, user demographics, customer lists, usability information, price lists, prices paid by you for goods and services, and other details of the conduct of your business that are not a matter of public knowledge. In addition, Confidential Information of Company includes all Work Product, the terms and conditions of this Agreement, and any log-ins or passwords provided to us in connection with the Services as well as all data, information and reports accessible to or generated by us through such log-ins and passwords.

Notwithstanding anything to the contrary in this Agreement, “Confidential Information” does not include: (i) any information that was already known to us from a third party source prior to the receipt of the information from you, as shown by our records provided such third party has the right to disclose it and provides it to us without restriction as to use or disclosure; (ii) any information that is developed by us independently of the information received from or services provided for you, as shown by our records; (iii) any information that is presently in the public domain or that becomes available to the public through no fault of ours; and (iv) any information provided to us by a third party who has no obligation of confidentiality to you. At any time upon the request of Company, we will promptly deliver to you all of your Confidential Information in our possession or control. In addition, we will return or destroy all of your Confidential Information promptly following the expiration or termination of this Agreement.

## 3. Relationship of the Parties

This Agreement establishes between the parties an independent contractor relationship, and all of the terms of this Agreement are to be interpreted in light of that relationship. The parties do not intend to create an employer-employee relationship, and nothing in this Agreement will be construed to create such a relationship. Neither party is, nor will it hold itself out to be, vested with any authority to bind the other party contractually, or to act on behalf of the other party as a broker, agent or otherwise. We will be solely responsible for all compensation for our personnel and the payment of all withholding taxes, social security, workers’ compensation, unemployment and disability or similar items required by any government agency.

## 4. Your Obligations

You agree to provide us with input and approvals within a reasonable time period of receiving materials from us to review. You also agree to provide us with materials specified in a SOW and assistance as reasonably requested by us and necessary for the performance of the Services. You will promptly notify us if any of the passwords or logins that you provide to us in connection with the Services change or become invalid. We will promptly notify you if we have reason to believe your passwords or logins have been compromised or obtained by anyone not authorized. You agree to use commercially reasonable efforts to implement all initiatives or tasks in a timely fashion if such initiatives or tasks affect our ability to deliver Deliverables within any timeline set forth in a SOW.

## 5. Fees and Payments

In exchange for our performance of the Services, you agree to pay us the fees set forth in the Statement of Work. In addition, you agree to reimburse us for any “out-of-pocket,” documented expenses that are pre-approved by you in writing and are necessary or otherwise mutually agreed to for our performance of the Services provided that we furnish you with copies of receipts for any such expenses. All payments are due within **45 days** after the receipt of invoice. Any amounts (excluding those that are the subject of a good faith dispute) not timely paid will bear interest at the rate of 1.5 % per month from the date due until paid. In the event of late payment more than sixty (60) days past due, you agree to pay our reasonable costs of collection (including reasonable attorneys’ fees, if applicable). You agree that if you fail to timely pay any undisputed amounts due under this Agreement, we have the right, after written notice to you and an additional five (5) business days to cure, to suspend performing Services until collection of all undisputed amounts due under this Agreement.

## 6. Term

This Agreement will become effective as of the Effective Date and unless earlier terminated will continue for a period of one year. The term of each SOW will be set forth in the applicable SOW (the “Services Term”), unless earlier terminated by either party pursuant to the termination rights below.” Either party may terminate this Agreement or a particular SOW if the other party materially breaches the Agreement and such breach is not cured within fifteen (15) days after the breaching party has received written notice of the breach from the non-breaching party. You may terminate this Agreement for any or no reason upon thirty (30) days prior written notice. In addition, you may terminate any SOW upon fifteen (15) days prior written notice. If you terminate pursuant to the previous sentence, you shall owe us any previously agreed upon amounts for reasonably satisfactory work already completed. Any additional termination rights that are specified in the attached Statement of Work will also be available to the parties in accordance with their terms.

**7. Ownership**

Notwithstanding anything to the contrary, we understand and agree that Company will have exclusive ownership of: (i) the Deliverables, (ii) all other materials created, prepared, or obtained by us in connection with the Services or otherwise derived from the Services, (iii) all components of the foregoing, and (iv) all intellectually property rights in and to any of the materials described in subsections (i) through (iii) above (collectively, the “Work Product”). We further understand and agree that such Work Product will be considered a “work for hire” for Company to the fullest extent permitted by law. If any portion of the Work Product is determined not to be a work for hire, we hereby irrevocably assign and transfer exclusively to you all of our ownership and intellectual property rights in the Work Product worldwide in perpetuity in all media now known or hereafter existing, and further agree to waive any “artist’s rights” or “moral rights” in such Work Product. If for any reason, we are unable to fully assign or transfer such rights to you, we hereby grant you a worldwide, perpetual, exclusive, fully-paid, irrevocable license to use, reproduce, display, distribute, publicly perform, transmit, modify, create derivative works of, make, have made, use, offer to sell, sell, import, copy, modify, create derivative works based upon, distribute, sublicense, and otherwise fully exploit the Work Product, in whole or in part, in all media now known or hereafter existing.

## 8. Miscellaneous

(a) If you wish to retain us to perform additional services in the future, we will ask you to execute a new Statement of Work. Any such Statement of Work executed by you and us will automatically become subject to the terms of this Agreement.

(b) We represent and warrant to you that the services performed under this Agreement will be performed in a quality and professional manner conforming to industry standards and practices, and in conformance with the terms of this Agreement and the applicable SOW. If you are reasonably dissatisfied with Services performed by us, we will re-perform such Services as soon as reasonably possible. If we fail to re-perform the Services to your reasonable satisfaction, your sole remedy shall be to terminate this Agreement and obtain a refund of the amounts paid for the unsatisfactory Services. In addition, we represent and warrant to you that: (i) we will perform the Services in compliance with all applicable law and that the Deliverables (excluding any component thereof created, supplied or developed by you) will not infringe, misappropriate or violate any intellectual property or other proprietary or privacy right of any third party. Except as stated above, we make no representations or warranties of any kind, express or implied, as to the Services or the performance or effectiveness of any Services. To the full extent permissible by applicable law, EACH PARTY DISCLAIMS ALL OTHER PROMISES, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO PRODUCTS OR SERVICES PROVIDED UNDER THIS AGREEMENT WHETHER EXPRESS OR IMPLIED, INCLUDING (BUT NOT LIMITED TO) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

(c) Neither party will be liable to the other (whether in contract, warranty, tort or for claims of negligence, product liability or other claim) for any loss of profit, revenue, business, or data or indirect, punitive or consequential damages arising out of or relating to this Agreement, even if such party has been advised of the possibility of such costs or damages. Each party’s aggregate liability arising out of, or in connection with, this Agreement (or transactions contemplated by this Agreement) will not exceed the greater of: $150,000 or the total amounts paid by the Company during the six-month period prior to the date the claim arose. Notwithstanding the above, the limitations of liability described in this Section 8(c) will not apply to: (i) claims for indemnification, (ii) breaches of confidentiality, or (iii) a party’s gross negligence or willful misconduct.

(d) Each party (the “indemnifying party”) agrees to indemnify, defend and hold the other party, and its directors, officers, employees, and agents (collectively, “Indemnified Parties”) harmless from and against all claims, demands, liabilities, losses, and expenses, including reasonable attorneys’ fees (collectively, “Losses”), that the Indemnified Parties (or any of them) may suffer resulting from, arising out of, or in connection with (i) a material breach by the indemnifying party of its obligations, representations or warranties under the Agreement, (ii) in the case of us as the indemnifying party, any actual or alleged infringement of any third party intellectual property or other proprietary rights by the Deliverables, (iv) in the case of us as the indemnifying party, the use of any passwords, logins, or materials accessible thereby for any purpose outside of the Services; or (iv) failure to comply with all applicable laws. Each party is solely responsible for ensuring that their respective websites do not infringe the intellectual property rights of others or contain false, misleading, fraudulent, unsubstantiated, defamatory, indecent, or offensive content and does not violate any applicable laws.

(d) Each party owns and shall retain all rights, title and interest in and to its names, logos and service marks, its preexisting proprietary features, technologies, methodologies and tools, and its trade secrets, patents, copyrights, trademarks, and other proprietary rights of any type under the laws of any governmental authority, domestic or foreign, including, without limitation, rights in and to all applications and registrations relating to any of the foregoing Without limiting the foregoing, we reserve all rights in and to any software, tools, utilities, standards, methodologies, processes, documentation or other materials owned by us as of the Effective Date and used to provide the Services.

(e) Except with respect to delays or failures caused by the negligent act or omission of either party, any delay in or failure of performance by either party under this Agreement will not be considered a breach of this Agreement and will be excused to the extent caused by any occurrence beyond the reasonable control of such party including, but not limited to, acts of God, power outages, or failures of the Internet, provided that the party affected by such event will immediately begin or resume performance as soon as practicable after the event has abated.

(g) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements between the parties to the extent they related to such subject matter. No amendment or waiver of any provision of this Agreement will be valid unless it is in writing and signed by both parties. This Agreement will be governed by and construed in accordance with the law of the State of Delaware. The parties agree on behalf of themselves and on behalf of any person claiming by or through them that the sole jurisdiction and venue for any litigation arising from or relating to this Agreement will be an appropriate federal or state court located in New Castle County, Delaware. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, the Company may assign the Agreement to any corporation or limited partnership or limited liability company which controls, is controlled by or is under common control with the Company, or to any corporation resulting from the merger of or consolidation with the Company or an acquisition of all or substantially all of the Company’s stock or assets (“Affiliates”). Any notice provided pursuant to this Agreement will be in writing and will be deemed given (i) if by hand delivery, upon receipt thereof; (ii) if mailed, five (5) days after deposit in the U.S. mails, postage prepaid, certified mail return receipt requested; or (iii) if sent via overnight courier, upon receipt. All notices pertaining to this Agreement will be addressed to the parties at the respective addresses below, or such other address as a party may designated from time to time in writing. This agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(h) Any and all provisions in this Agreement that would reasonably be expected to be performed after the termination or expiration of this Agreement will survive and be enforceable after such termination, including without limitation provisions relating to confidentiality, ownership of materials, disclaimers of warranties, indemnification, limitations of liability, and governing law.

(i) We understand that we may not use your name, logo, trademark, and/or service mark on our website, in any of our marketing materials, or in any other manner without your express prior written approval (by an authorized representative of your marketing department) in each instance.

# Acceptance

Authorized representatives of the parties agree to the terms of this Master Services Agreements. The parties

hereto are each acting with proper authority by their respective companies.

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| [CONSULTANCY NAME] |  | [CLIENT FULL CORPORATE NAME] |
| Company Name |  | Company Name |
| [CONSULTANT] |  |  |
| Full Name |  | Full Name |
| [CONSULTANT TITLE] |  |  |
| Title |  | Title |
|  |  |  |
| Signature |  | Signature |
| 02/07/2017 |  |  |
| Date |  | Effective Date |