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**MDI THIRD PARTY SUPPLIER AGREEMENT**

(August 2010)

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| **MDI GROUP, INC. (MDI)** | |
| **Corporate Headquarters Address:** | **780 Johnson Ferry Road, Suite 650** |
| **City, State, Zip Code:** | **Atlanta, GA 30342** |
| **MDI Client Manager:**  **Office:**  **Mobile:**  **Email Address:** |  |
| **Send a copy of all notices to:** | **ATTENTION: MDI SUPPLIER PROGRAM OFFICE**  **780 Johnson Ferry Road, Suite 650**  **Atlanta, GA 30342**  **AND by email to: adevito@mdigroup.com** |

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| **THIRD PARTY SUPPLIER (SUPPLIER)** | |
| **Business Federal EIN:** |  |
| **Legal Business Name:** |  |
| **Corporate Headquarters Address:** |  |
| **City, State, Zip Code:** |  |
| **Supplier Primary Account Manager:**  **Office:**  **Mobile:**  **Email Address:** |  |
| **Agreement Effective Date:** |  |
| **Term of Agreement:** | This Agreement shall be effective beginning the Agreement Effective Date and shall automatically renew each anniversary date for a period of one (1) year unless otherwise terminated according to the terms of this Agreement. Notwithstanding, this Agreement expires thirty-six (36) months from the Agreement Effective Date. |

**MDI and Supplier mutually agree to enter into this MDI Third Party Supplier Agreement by evidence of authorized signature & initials below. Each represents that it has the authority to bind the respective contracting entities to the terms of this Agreement. Notwithstanding anything in this Agreement to the contrary, until the Parties have executed and delivered an Exhibit A, nothing in this Agreement shall be construed as MDI engaging Supplier for any Services. Supplier acknowledges that the execution and delivery of this Agreement does not entitle Supplier to provide any Services to MDI or its affiliates or Clients.**

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| **MDI GROUP, INC.** | **THIRD PARTY SUPPLIER** |
| **Signature: Date:** | **Signature: Date:** |
| **Print Name:** | **Print Name:** |
| **Print Title:**  **For Internal Use Only**  **🞏 C2C**  **🞏 3PS**  **🞏 Limited** | **Print Title:** |

**RECITALS**

Management Decisions, Inc. (MDI), with its principal office located at 780 Johnson Ferry Road, Suite 650, Atlanta, GA 30342 and       (Supplier), with its principal office located at       hereby agree to the terms and conditions set forth in this MDI Third Party Supplier Agreement (the “Agreement”) effective            , 20     .

**WHEREAS** MDI’s business is locating technical services employees for various Clients, including the Client (hereinafter “Client”) listed in any Exhibit A executed by MDI and Supplier and referencing this Agreement, to provide technical services to Client according to the Client’s specifications; and

**WHEREAS** Supplier agrees that MDI will spend substantial resources and time evaluating, qualifying, proposing and/or providing Supplier's technical services employee to Client, and that MDI was selected by Client to provide such employee to Client at the Client locations listed in any attached Exhibit A; and

**WHEREAS** Supplier is in a similar business and desires to join efforts with MDI for the purpose of providing qualified candidates for the Client of MDI; and

**WHEREAS** MDI and Supplier wish to enter into an Agreement pursuant to which Supplier will introduce technical services employee candidates to MDI and MDI may submit said technical services employee to provide their services to Client.

**NOW THEREFORE**, in consideration of the mutual promises and covenants, the Parties agree as follows:

**1. DEFINITIONS**

* 1. “**Affiliate**” means, with respect to an entity, any person or entity that directly or indirectly owns, is owned by, or is under common ownership with that entity.
  2. “**Agreement**” means (i) this MDI Third Party Supplier Agreement, (ii) any policies or procedures referenced in this Agreement, (iii) any applicable Exhibit A’s, work orders, purchase orders or Statement(s) of Work and (iv) any other Amendments, Addendums, Exhibits or attachments to this Agreement.
  3. **“Deliverables”** means all products, works, materials, documentation and information that are provided to MDI or Client (whether by Supplier, its employees, agents or contractors) pursuant to an Exhibit A as defined below.
  4. **“Materials**” means any equipment or other tangible materials, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, data and/or any other information that is provided by MDI or Client to Supplier in connection with any Exhibit A, work order or purchase order.
  5. “**Services**” means the services that Supplier will perform under this Agreement.
  6. **“Exhibit A(s)”** means any of the following, describing Services and/or Deliverables ordered under this

Agreement: (i) MDI purchase order(s), or work order(s) or Statement(s) of Work (SOW), (ii) an electronic or written Exhibit A, or (iii) written agreement(s), including schedules amendments or addendums, signed by duly authorized representatives of both Parties expressly referencing this Agreement.

* 1. “**Subcontractor**” means either a third party or a Supplier Agent or Affiliate that is not contracting directly with MDI to whom Supplier delegates one or more of its obligations under this Agreement.

**TERMS AND CONDITIONS**

Supplier hereby agrees to comply with the following, policies, procedures terms and conditions described in this Agreement. Supplier’s compliance, however, does not necessarily satisfy, nor does it waive, Supplier’s obligation to comply with any other provision, attachment, addendum, schedule or Exhibit A of this Agreement.

**2. Affirmative Action.**

Suppliers doing business with MDI will comply with all Federal, State, and local laws pertaining to labor and employment, including Title VII of the 1964 Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Immigration Reform and Control Act, and Executive Order 11246, Executive Order 11246 (41 C.F.R. Section 60-1 & 2), the Veterans Laws at 38 U.S.C. Sections 4211-12, and the Rehabilitation Act of 1973. Suppliers will not discriminate in any aspect of employment based on race, religion, sex, age, marital status, sexual orientation, status as a qualified veteran, physical or mental disability, or national origin in accordance with applicable laws and regulations.

**3. Audits.**

During the term of this agreement, MDI will have the right to audit and/or inspect Supplier records related to any Exhibit A to verify Supplier statements and compliance with this Agreement. Supplier will provide MDI reasonable access to relevant Supplier records and the ability to photocopy records for audit evidence.

**4. Assignment**.

The “Services” of the Supplier are personal and unique, and MDI relies on the qualifications, reputation and expertise of Supplier to perform and fulfill Supplier’s obligations under this Agreement. Accordingly, Supplier will not sell, assign, transfer, pledge or encumber this Agreement or any right arising under or in connection with this Agreement, or delegate any duty or obligation under this Agreement, by assignment or operation of law, without MDI’s prior written consent. MDI may assign this Agreement to any of its Affiliates. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers and trustees of each party.

**5. Breach.**

MDI or Supplier may terminate this Agreement effective immediately, upon twenty-four (24) hours written notification to the other in any and all cases of breach of the terms of this Agreement not resolved by the party in breach within 48 hours of notification of the discovery of breach.

**6. Confidentiality.**

Supplier will implement security procedures sufficient to prevent disclosure of MDI and Client Confidential Information to all unauthorized third Parties. The terms of the Non-Disclosure Agreement (“NDA”) attached to this Agreement will govern use of Confidential Information (as defined in the NDA) exchanged under this Agreement.

* 1. **Additional Confidential Information.**

The following information is also confidential for purposes of the NDA and this section: (i) the existence and terms of this Agreement; and (ii) information provided by MDI under this Agreement or obtained or created by Supplier in the course of providing the Services, including (A) information contained in any reports provided to MDI, (B) any electronic or written correspondence between the Parties, (C) MDI customer lists, customer information and Personal Information regardless of the source, and (D) transactional, sales and marketing information related to the Services.

* 1. **Personal Information.**

“Personal Information” means information provided by MDI or Client or collected by Supplier in connection with this Agreement that identifies or can be used to identify, contact, or locate the person to whom that information pertains. Personal Information includes: name, address, phone number, fax number, email address, social security number or other government-issued identifier, and credit card information. Additionally, to the extent any other information (including a personal profile, unique identifier, biometric information, and/or IP address) is associated or combined with Personal Information, then that information is also Personal Information. Supplier will not access or collect any Personal Information except to the extent strictly necessary to perform the Services or to fulfill any legal requirements. Supplier will not use Personal Information accessed or collected while performing the Services for any purpose other than those expressly permitted by this Agreement.

**7. Criminal and Investigative Background Checks.**

A complete criminal background investigation, by a company specified by MDI or its Client and as listed on Exhibit A hereto attached, is required for all employees assigned to Client prior to the first day of the assignment. Successful completion of background verification is required prior to the commencement of any services under any Exhibit A. Fees for all required background investigations will be deducted, in full, from Suppliers first invoiced payment.

**8. Direct Contact.**

Supplier agrees that it will not communicate in any fashion with any Client technical or administrative (including contracting, procurement, human resources, etc.) employee concerning any effort to provide additional technical services to Client by Supplier except that Supplier’s technical services employee may communicate with the Client concerning those technical services already being performed by Supplier through MDI under this Agreement or those technical services already being performed by Supplier under a separate State of Work between Supplier and Client or technical services as defined in Section 17 of this agreement.

**9. Employment of Temporary Personnel.**

During the period covered by any Exhibit A hereto attached, and for a period of twelve (12) months from the termination date of such Exhibit A, MDI will not directly or indirectly, other than through Supplier, solicit for hire, contract with, or engage or receive the services of, any temporary technical personnel located by Supplier pursuant to such Exhibit A.

Should at any time MDI determine Supplier has failed to make timely and accurate payments to any employee under the terms of this Agreement, or any attached Exhibit A, MDI shall deem a breach of the terms of this Agreement and at the discretion of MDI, (i) immediately discontinue all payments to Supplier and (ii) immediately invoke the terms of Section 5 of this Agreement and (iii) immediately transition the employee as an employee of MDI, an employee of an approved MDI Supplier Partner or as an independent contractor or subcontractor to this Agreement.

**10. Entire Agreement, Precedence and Amendment**.

This Agreement and any written Purchase Orders, Amendments, Addendums or Exhibits executed hereunder, contain the entire agreement between the Parties with respect to the matters covered herein. Supplier acknowledges that it is entering into this Agreement solely on the basis of the agreements and representations contained herein. Each executed Exhibit A shall be deemed to be incorporated into this Agreement. In the event of a conflict between an Exhibit A and the terms and conditions of this Agreement, the terms and conditions of Exhibit A shall control. All transactions between MDI and Supplier during the term of this Agreement shall be covered by this Agreement and any applicable Exhibit A. This Agreement supersedes all prior agreements and communications, whether written or oral. This Agreement may be modified only by a written agreement signed by duly authorized representatives of both Parties.

**11. Equipment and Technology**.

If MDI or Client provides any hardware or other equipment to Supplier for its use in performing Services Supplier will: (i) assume the risk of, and take all reasonable precautions to protect the Equipment against, loss, damage, theft or disappearance; (ii) take no actions that will affect title or interest in the Equipment; (iii) abide by specifications and use instructions for the Equipment; (iv) not give access to the Equipment to any third party without prior written consent; and (v) return all Equipment upon completion of Services. Supplier further agrees the Equipment will not be used for any purpose other than performing the Services.

**12. Governing Law/Jurisdiction**.

This Agreement will be construed and controlled by the laws of the State of Georgia, USA. **Supplier consents to the exclusive jurisdiction and venue in the federal courts sitting in Gwinnett County, Georgia unless no federal subject matter jurisdiction exists, in which case Supplier consents to the exclusive jurisdiction and venue in the Superior Court of Gwinnett County, Georgia. Supplier waives all defenses of lack of personal jurisdiction and forum non conveniens.** Process may be served on either party in the manner authorized by applicable law or court rule. In any action to enforce any right or remedy under this Agreement, or to interpret any provision of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses, including the costs and fees incurred on appeal or in a bankruptcy or similar action.

**13. Indemnity**

Because of the independent status of Supplier, it is solely and completely accountable for the services it provides to the Client. Neither MDI nor its affiliates, nor the Client or its affiliates, nor any of Client’s contractors, subcontractors, Customers or Clients, shall have any liability whatsoever to any party for such services provided by Supplier or its employee. MDI **will not** indemnify Supplier for any liability incurred by Supplier, or its technical service employee. Although MDI will act in good faith to describe the task requirements set forth by the Client, MDI has no right to control any aspect of the project on which Supplier will be working. Supplier hereby releases MDI from any liability relating to representations about the task requirements or to the conditions under which Supplier will be working. Supplier shall indemnify MDI if Supplier causes MDI to breach its agreement with the Client. Supplier also agrees to release MDI from any liability for statements made by MDI, without malice, to third Parties who may inquire about Supplier’s performance.

**14. Insurance.**

Before providing services, Supplier will obtain for itself and its employee at its own expense, comprehensive insurance coverage as set forth in Exhibit A. Supplier shall also require its MDI approved agents or subcontractors, if any, who may enter upon Client’s premises to maintain the same insurance coverage required herein. All commercial liability policies required herein shall name MDI and the Client as an additional insured with respect to work performed under this Agreement. Before starting work and upon renewing each coverage required herein, Supplier shall furnish MDI with all certificates of insurance and/or adequate proof of the foregoing insurance.

**15. Intellectual Property Ownership and Use.**

All Deliverables are “work made for hire” for MDI or Client under applicable copyright law. To the extent any Deliverables do not qualify as a work made for hire, by signing this Agreement, Supplier assigns and will assign to MDI or Client (and its successors and assigns) all right, title and interest in and to the Deliverables, including all intellectual property rights in the Deliverables. Supplier waives, and agrees not to assert, all moral rights that may exist in the Deliverables. Deliverables will include any data entered into any Supplier database in connection with performance of the Services. All modifications and derivative works of Materials will be treated as Deliverables. Supplier will promptly disclose to MDI, in writing, any inventions, works of authorship, improvements, developments or discoveries conceived, authored, made or reduced to practice by Supplier or its Affiliates or Subcontractors, either solely or in collaboration with others, in connection with performing the Services or creating Deliverables. At MDI’s request and expense, Supplier will sign documents and take any other action reasonably necessary to evidence, perfect or protect MDI’s rights in the Deliverables. Supplier will cooperate with MDI in the filing and prosecution of any copyright, trademark or patent applications that MDI may elect to file on the Deliverables or inventions and designs relating to the Deliverables. Supplier irrevocably appoints MDI as Supplier’s attorney-in-fact (which appointment is coupled with an interest) to sign those documents on Supplier’s behalf. Supplier will not challenge, oppose or interfere with any MDI applications relating to the Deliverables or file any applications on its own behalf.

Supplier will not use any third party intellectual property, software or other materials to perform Services without MDI’s prior express written consent. To request MDI’s consent, Supplier will submit to MDI a list of any third party intellectual property, software or other materials that it would like to use in the performance of the Services, along with the license terms or other agreements that govern the use of those materials. If the Services requested

by MDI require as part of its Deliverables the inclusion of third party intellectual property (e.g., creation of case studies, reports on usability testing), Supplier will obtain all necessary rights from those third Parties.

**16. Invoicing and Payment.**

* 1. **Invoicing.**

If Supplier's candidates are selected by Client to provide services, Supplier will be compensated by MDI in accordance with Exhibit A to be attached hereto for each individual who provides such services through MDI. A Client approved timesheet shall be accompanied by an invoice reflecting the number of Client approved billable hours worked during each period. Should Supplier be required to complete a Client timesheet along with MDI's timesheet, the Supplier must ensure that the same information is contained

in both documents. Supplier agrees to invoice MDI for payment MONTHLY AND WITHIN 30 DAYS AFTER THE LAST DATE OF EACH MONTH. Invoices submitted more frequently than 30 days will be rejected by MDI. Invoices submitted more than 90 days after the last date of service provided are ineligible for payment.

* 1. **Expenses.**

Pre-approved travel expenses will be reimbursed to Supplier at cost, with no mark-up. All pre-approved expenses must be included in the Supplier’s invoice along with accompanying receipts. Approval for travel and related expenses must be obtained by Supplier from Client PRIOR TO EACH required business related trip.

* 1. **Payment.**

All approved Supplier submitted invoices will be paid NET45 from the date of receipt of the invoice. If Client reduces the amount paid to MDI for any reason, for services provided by Supplier, MDI will reduce applicable payments to the Supplier by an equal amount including all fees, discounts and rebates imposed by Client. Should the terms of any Exhibit A conflict this Agreement, the terms of the Exhibit A shall have precedence over Section 16.3 of this Agreement.

**17. Non-Compete.**

During the term of Supplier’s performance of services for a Client on behalf of MDI and for one year after the termination of the performance of such services, Supplier agrees that it, its agents, subcontractors and employees, will not provide or attempt to provide (or advise others of the opportunity to provide) other than through MDI, directly or indirectly, any services to any Client to which Supplier is providing or has provided services through MDI. The provisions of this paragraph shall be waived in the event that Client(s) issues a Request for Proposal or similar business solicitation document directly to Supplier for any business or work described therein.

**18. Non-Solicitation of Employee or Clients.**

During the term of this Agreement and for 12 months after the termination of each Exhibit A:

1. MDI agrees that it will not hire or solicit for hire any of Supplier's technical services employee who was performing services through MDI for Client pursuant to each specific Exhibit A or any other Supplier employee about whom MDI received information or to whom it was introduced as the direct result of any services performed pursuant to each specific Exhibit A except as permitted in Section 9 of this Agreement.
2. Should Supplier fail to pay its employee in a timely manner, resulting in the termination of such employee’s relationship with Supplier, then MDI shall be relieved of its commitments under Section 18 of this Agreement.
3. Supplier agrees that it will not hire or solicit for hire any of MDI’s employee, consultants, or any Client employee about whom it has received information or to whom it was introduced as the direct result of any services performed pursuant to this Agreement for a period of 12 months after the termination of this Agreement.

For the purposes of Section 18, the term "Client" includes any customers, contractors, subcontractors, or clients of the Client for whom Supplier's employee performed services under this Agreement or for whom MDI proposed that Supplier would perform services under this Agreement.

**19. Performance Reviews.**

Upon MDI’s request, Supplier will meet with MDI to review Supplier’s performance and discuss issues related to compliance with performance standards described in any Schedule, Exhibit A, Service Level Agreement or provision of this Agreement.

**20. Publicity and Use of MDI Name, Logos, Trademarks and Service Marks.**

Supplier will not use the MDI name, logos, trademarks or service marks, or those of MDI’s Client, except as permitted in this section:

1. Supplier will not issue press releases in any form that relate to Supplier’s relationship with MDI, this Agreement or MDI’s Client without the expressed written consent of MDI.
2. Where Supplier use of MDI corporate name, logo and trademarks is permitted, Supplier may use only those specific trademarks and logos identified and provided by MDI.
3. Supplier agrees to correct any misuse of MDI corporate name, logo and trademarks immediately upon notice from MDI and to cease all uses of approved MDI corporate name, logo and trademarks upon completion of the Services or termination of this Agreement or any applicable Exhibit A.

**21. Safety and Security Policies.**

Supplier will comply with all applicable physical and information security policies of MDI and Client. MDI reserves the right to change its physical and information security policies as it deems necessary from time to time, and Supplier agrees to comply with those modifications. If Supplier becomes aware that a “significant” injury to

someone or damage to property has occurred on MDI or Client’s premises, Supplier will notify MDI and Client promptly and provide adequate details to enable MDI and Client to investigate the cause.

**22. Severability**.

If a court of competent jurisdiction finds any clause or provision of this Agreement to be unenforceable, then this Agreement will be deemed amended to exclude that clause or provision and the remainder of this Agreement will continue in full force and effect, unless otherwise terminated pursuant to Section 26 below**.**

**23. Supplier Licensing and Registrations.**

Supplier will, at its own expense, (i) obtain and maintain any approvals, licenses, filings or registrations necessary to its performance, and (ii) comply with all local, state, federal and foreign laws and regulations that are applicable to it. Initial and on-going participation in the MDI Supplier Program is dependent upon timely receipt of an executed copy of this Agreement, Supplier’s completed IRS Form W-9, a copy of Supplier’s valid Certificate of Organization and a valid Certificate of Insurance as required in Section 14 of this Agreement.

**24. Supplier Relationship and Employees.**

This Agreement is intended to create an independent contractor relationship between MDI and Supplier. Nothing in this agreement is to be construed as creating an exclusive relationship between the Parties. Under no circumstance will Supplier’s employees or subcontractors be construed as MDI or Client employees. If the

Internal Revenue Service, a state, provincial, local or federal agency, or a court determines that Supplier, or

Supplier’s employees or subcontractors are common law employees of MDI, then Supplier will fully indemnify MDI for all costs or damages incurred as a result of that determination. Supplier hereby agrees to the following requirements for its employees:

* 1. **Appointment of Account Manager.**

Supplier will appoint one employee (a MDI “Account Manager”) who is authorized to make binding decisions for Supplier with respect to this Agreement. Account Managers will ensure timely and accurate communication between the Parties. Supplier may change the designated Account Manager upon reasonable advance written notice to MDI.

* 1. **Selection and Removal of Employees.**

Supplier will recruit, select and train its employee(s) in accordance with the requirements of the applicable Exhibit A. Supplier will only use persons qualified to perform the Services requested in Exhibit A. Supplier will not charge Fees for Services performed by employee who are not qualified to perform those Services. At MDI’s or Client’s request for any business reason, Supplier will promptly remove or replace any individual performing Services.

* 1. **W-2 Status of Employees.**

SUPPLIER AGREES THAT ANY AND ALL EMPLOYEES PROVIDED BY SUPPLIER ARE, AND WILL REMAIN AT ALL TIMES DURING THE TERM OF EACH EXHIBIT A UNDER THIS AGREEMENT, “W-2 EMPLOYEES” OF SUPPLIER. Supplier further agrees: (i) Supplier’s employees are not employees of MDI or Client; (ii) that Supplier at all times retains the primary control over its employee, including the right to recruit, qualify, hire, terminate, set compensation and benefits, establish codes of conduct, monitor, discipline, establish minimum or maximum work hours and other conditions of work; (iii) that Supplier's employee will not be entitled to any rights, benefits or privileges provided by MDI or Client to its own employees; (iv) that neither MDI nor Client will be

liable for payment of employment taxes, worker's compensation, previous sponsorship/visa fees, or other benefits provided to Supplier's employee, and that Supplier is responsible for these matters and for paying/withholding FICA, FUTA, FIT and similar taxes with respect to its Employees; (v) that Supplier's employee will abide by the confidentiality and restrictive covenant provisions of this Agreement; (vi) and, that Supplier will advise its employee and obtain their agreement to the foregoing in writing prior to the commencement of their services hereunder. Supplier shall indemnify and hold harmless MDI from all damages, costs and expenses resulting from any claims by Supplier’s employee that such employee for benefits and/or are covered by the Client’s or MDI’s employee benefit plans.

SUPPLIER FURTHER ACKNOWLEDGES THAT ALL CANDIDATES SUBMITTED TO MDI BY SUPPLIER WILL BE ASKED TO CONFIRM THAT HE/SHE IS A W-2 EMPLOYEE OF THE SUPPLIER. Further, in cases where the candidate declines to become a W-2 employee of the submitting Supplier, MDI will consider all non-solicitation language in this Agreement null and void with respect to that candidate.

Should, at any time, MDI determine that an employee is not a W-2 employee of Supplier, MDI shall deem a breach of the terms of this Agreement and at the discretion of MDI, (i) immediately discontinue all payments to Supplier and (ii) immediately invoke the terms of Section 5 and Section 9 of this Agreement and (iii) immediately transition the employee as an employee of MDI, an employee of an approved MDI Supplier Partner or as an independent contractor or subcontractor to this Agreement.

* 1. **Alien Workers.**

If applicable, for each employee provided by the Supplier to MDI, Supplier agrees and warrants that it will comply with all laws related to work being performed by alien workers in the United States including, but not limited to, the following:

(i) Supplier is a United States of America (“USA”) corporation. Supplier's technical services employees will be employees of Supplier, and Supplier will be their employer. Accordingly, the employee will be on the payroll of Supplier, and supplier will maintain copies, in the USA, of all payroll, wage and hour, and similar records required by the United States Department of Labor.

(ii) Supplier's sponsored employee must have a valid H-1B visa based on a Labor Condition Application (“LCA”) validly filed and maintained by Supplier. For all work performed in the USA, Supplier's sponsored technical services employee will be paid the higher of the actual or prevailing wage in accordance with the LCA for such work in the locality where the work is being performed. Supplier represents that such wage will be properly stated on the LCA required to be filed with the Department of Labor for such employee, and such wage does not and will not include the value of any non-cash or in-kind benefits such as apartment or auto rentals, or any amounts reimbursed to the employee as per diem expenses, or the value of any other such fringe benefits. For each employee under this Agreement, if requested by either Client or MDI, Supplier will provide a copy of the LCA to MDI.

Supplier represents that it is responsible for and in control of the payment of wages to its employee(s) under this Agreement, and that all required federal, state and local taxes, whether income, employment, excise or of any other type, will be paid by Supplier as the employer of all employee under this Agreement.

(iv) Supplier agrees that MDI may require the technical services employee provided pursuant to this Agreement to execute such forms as MDI may request to confirm the representations in this Agreement, including INS Form I-9.

(v) Supplier agrees that any breach of Section 24 of this Agreement shall constitute a material breach of this Agreement with MDI.

* 1. **Subcontractors.**

SUPPLIER WILL NOT SUBCONTRACT THE PERFORMANCE OF ANY SERVICES TO ANY SUBCONTRACTOR WITHOUT MDI’S PRIOR WRITTEN CONSENT. If MDI approves the use of a Subcontractor, Supplier will comply with the following requirements:

1. Supplier remains obligated under this Agreement for the performance of the Services and guarantees the Subcontractor’s fulfillment of applicable Supplier obligations.
2. SUPPLIER WILL SUBCONTRACT ONLY TO THE ACTUAL W-2 EMPLOYER OF THE EMPLOYEE.
3. Supplier indemnifies MDI for all damages and costs of any kind incurred by MDI or any third party and caused by Subcontractor’s willful or unwilling acts or omissions.
4. Supplier will require each Subcontractor to consent in writing to all terms and conditions set forth in this Agreement applicable to the portion of the work being performed by the Subcontractor, and to acknowledge in writing that MDI or Client is an intended third-party beneficiary of those terms and conditions.
5. Supplier will make all payments to each approved Subcontractor. If Supplier fails to pay a Subcontractor, MDI will have the right (but not the obligation) to pay Subcontractor and to offset those amounts against amounts owed to Supplier.
6. Supplier will not mark up any fees or costs because of Supplier’s use of a Subcontractor.

**25. Survival**

Provisions of this Agreement, which by their terms extend beyond the termination or nonrenewal of this Agreement, will remain effective after termination or nonrenewal.

**26. Term and Termination.**

* 1. **Term.**

This Agreement shall be effective beginning the Agreement Effective Date and shall automatically renew each anniversary date for a period of one (1) year unless otherwise terminated according to the terms of this Agreement. Notwithstanding, this Agreement expires thirty-six (36) months from the Agreement Effective Date.

* 1. **Termination.**

Without prejudice to any other remedies:

* + 1. **Termination for Convenience.**

MDI may terminate this Agreement, or any Exhibit A, or any other parts thereof at any time without cause and without further obligation to Supplier except for payment due for Services or Deliverables accepted by MDI or Client prior to the effective date of termination or for Services performed or provided by Supplier in compliance with this Agreement, and which MDI or Client retain the benefit of after the effective date of termination.

MDI may terminate an Exhibit A under this Agreement at any time, effective immediately upon written notice to Supplier.

* + 1. **Termination for Cause.**

1. MDI may terminate this Agreement or any Exhibit A effective immediately upon written notice of any breach by Supplier or the acquisition of all or a substantial part of Supplier’s assets by, or its merger with, another entity or through impeding or declared bankruptcy.
2. Supplier may terminate this Agreement effective immediately upon written notice of any breach by MDI of the NDA.

* + 1. **Effect of Termination.**

Within ten (10) calendar days of the effective date of termination of the Agreement, or any Exhibit A, Supplier will deliver to MDI all Deliverables in progress and all data and materials related to them, and each party will return the Confidential Information and property of the other party unless otherwise instructed by MDI. If requested, Supplier will assist MDI with the post-termination transition, not to exceed sixty (60) calendar days, with compensation based on rates as described in the applicable Exhibit A for Services.

**27. Waiver**.

Failure or delay by a party to exercise any right or remedy will not be a waiver and will not prevent the enforcement of that or any other right.

**28. Warranties and Representations.**

Supplier makes the following representations and warranties for itself and its Subcontractors:

1. Supplier has full rights to enter into and perform according to this Agreement, and
2. Supplier’s performance will not violate any agreement or obligation between Supplier and any third party.
3. All Services and Deliverables will strictly comply with the terms of this Agreement.
4. Services, Deliverables and/or Supplier IP will not infringe or violate any patent, copyright, trademark, trade secret or other proprietary right of any third party.
5. Deliverables will be originally created by Supplier or Supplier will obtain all rights to the Deliverables needed to assign ownership to MDI as required by Section 15.
6. The Deliverables will not be subject to license terms that seek to require any product, service, or documentation incorporating or derived from the Deliverables, or any intellectual property, to be licensed or shared with any third party; and to the extent that Deliverables include software, that software will not be, in whole or in part, governed by an Excluded License.
7. The Services will be performed in a professional manner and will be of high grade, nature and quality; and Supplier will dedicate appropriate facilities, skilled employees, and resources to complete Services.
8. The software component of any Deliverables as delivered will not contain any viruses or other applications or executables that will degrade or infect any Deliverables, product, service, or any other software or network or systems (including, for example, any “trap doors,” “worms” and “time bombs”).
9. Supplier has implemented an information security program that is reasonably designed to provide protection to the security, confidentiality, integrity and availability of Personal Information, and at a minimum, includes risk assessment and controls for (i) system access, (ii) system and application development and maintenance, (iii) change management, (iv) asset classification and control, (v) incident response, physical and environmental security, (vi) disaster recovery/business continuity, and (vii) employee training.