# **ACCTTWO MASTER SERVICES AGREEMENT**

This Master Services Agreement (this “**Agreement**”) is a legal agreement between AcctTwo Shared Services, LLC, a Texas limited liability company (“**AcctTwo**”) and you (the “**Customer**”), effective as of the date of the last to execute the Order Schedule (“**Effective Date**”).

WHEREAS, Customer may from time to time desire to retain AcctTwo to provide certain services upon the terms and conditions hereinafter set forth (“**Terms**”) and in an executed Statement of Work (“**SOW**”), and if AcctTwo is willing to perform such services, such services will be subject to the terms and conditions set forth herein and in the relevant SOW.

### TERMS AND CONDITIONS

1.0 **APPLICABILITY**

1.1 This Agreement governs the provision of services by AcctTwo to Customer or its Affiliate identified as the customer associated with a SOW.

1.2 Completion of any specific Services or termination of any specific SOW will not terminate this Agreement, it being the intent of the parties to leave this Agreement in effect for any future SOW or otherwise effective SOW between the parties.

2.0 **SERVICES**

2.1 AcctTwo shall provide the services to Customer as described in the SOW (the "**Services**") in accordance with this Agreement, either directly by its employees or through such subcontractors (at AcctTwo’s expense) as AcctTwo deems necessary to perform the Services. AcctTwo will be responsible for the work and activities of subcontractors in connection with AcctTwo’s provision of the Services, including liability for such subcontractors to the same extent AcctTwo would be liable hereunder. All work will be performed remotely from AcctTwo’s offices unless travel is specifically requested and approved by Customer.

2.2 AcctTwo will be responsible for the overall project delivery including:

a. Management of scope;

b. Planning, Scheduling, and Project Controls;

c. Conducting Status Meetings; and

d. Completion of AcctTwo’s activities as specified in the SOW.

2.3 Customer will designate a single point of contact who shall be the Executive Sponsor, and who shall have full authority to act on behalf of Customer with regard to this Agreement. Customer's Executive Sponsor will have full authority to act on behalf of Customer with respect to:

a. Decision and signatory authority,

b. Managing Customer's deliverables for the project

c. Reviewing, accepting, and approving project deliverables;

d. Authorizing payments; and

e. Obtaining and maintaining all necessary licenses, including Intacct and other third-party software licenses, and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

2.4 For each SOW, Customer will designate a single point of contact who shall be the Project Sponsor, and who shall have full authority to act on behalf of Customer with regard to this Agreement. Customer's Project Sponsor will have full authority to act on behalf of Customer with respect to:

a. Facility and meeting coordination at Customer's site;

b. Arranging interviews;

c. Interfacing with AcctTwo to ensure there is an efficient exchange of information and that important and timely decisions are made;

d. Provide timely and accurate information, attend meetings, and work with the AcctTwo team members to provide information as requested by AcctTwo;

e. Provide access to Subject Matter Experts (SMEs) in a timely manner when requested by AcctTwo;

f. Have responsibility for the quality of data provided to AcctTwo; consultation for validation of data provided and feedback to assist Customer in providing accurate data will be billed in addition to the SOW described in the project as standard rates; and

g. Use best efforts to notify AcctTwo of meeting changes or cancellations at least twenty-four (24) hours prior to the scheduled meeting time; if Customer consistently postpones or cancels meetings without proper notice, AcctTwo reserves the right to charge for the time allocated for any cancelled meeting; and

h. Provide such customer materials or information as AcctTwo may reasonably request to carry out the Services in a timely manner, including software IDs, software testing environments, and testing data, and ensure that such customer materials or information are complete and accurate in all material respects.

2.5 If AcctTwo's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, AcctTwo shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

3.0 **FEES AND PAYMENT TERMS**

3.1 In consideration of the provision of the Services by AcctTwo and the rights granted to Customer under this Agreement, Customer shall pay the fees set forth in the SOW.

3.2 All initial fixed fee milestones and software subscriptions require payment in full prior to the commencement of Services.

3.3 Customer agrees to reimburse AcctTwo for all reasonable travel and out-of-pocket expenses incurred by AcctTwo in connection with the performance of the Services including airfare, lodging, mileage, rental car, meals, etc., if such expenses are approved by Customer in advance.

3.4 Customer agrees that additional AcctTwo services time required to accommodate Customer delays (such as additional status meetings, redesign, training, etc.) will be billed as set forth in the applicable SOW, or at hourly billing rates if there is no pricing specified for resource extensions in the applicable SOW. If no hourly billing rates and no resource reservation fees are defined in the applicable SOW, services time to accommodate Customer delays will be billed at current standard billing rates for the resources utilized. Resource extensions for Customer delays are subject to availability, may require rescheduling project milestones or travel dates, and may require assignment of new or different professional service resources. AcctTwo will make commercially reasonable efforts to preserve original project team resources.

3.5 Customer shall pay all invoiced amounts due to AcctTwo within 30 days of receipt of AcctTwo's invoice. Customer shall make all payments hereunder in immediately available US dollars by wire transfer, ACH, check or other method accepted by AcctTwo.

3.6 Services provided by AcctTwo (such as implementations, new modules, custom code, or other specified deliverable) will not go-live or be put into production until Customer’s account is current.

3.7 In the event any payments due are not received by AcctTwo after becoming due, AcctTwo has provided Customer with at least two formal email notices of the missed payment, and payment is not received within sixty (60) days of becoming due, AcctTwo reserves the right to:

a. charge interest on any such unpaid amounts at a rate of 1% per month or, if lower, the maximum amount permitted under applicable law, from the date such payment was due until the date paid; and

b. suspend performance for all Services as well as access to software purchased through AcctTwo until payment has been made in full; and

c. suspend access to any applications hosted for customer from AcctTwo hosting services until payment has been made in full.

4.0 **TAXES**

4.1 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity in connection with this Agreement, and will reimburse AcctTwo for any such amounts that AcctTwo may be required to collect or pay. AcctTwo will be responsible for all AcctTwo payroll tax and other taxes resulting from the employment of its personnel and for AcctTwo’s income taxes.

5.0 **INTELLECTUAL PROPERTY**

5.1 Customer acknowledges that AcctTwo’s service model is to provide services with respect to and to develop customizations and improvements for certain software applications, and that AcctTwo must retain ownership of and control over such customizations and improvements. Accordingly, all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product, including source code, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of AcctTwo in the course of performing the Services, including any items identified as such in the SOW (collectively, the "**Deliverables**"), except for any Confidential Information of Customer, shall be exclusively owned by AcctTwo. To the extent Customer acquires any rights in such Deliverables, by operation of law or otherwise, Customer hereby assigns all rights, title, and interests in such Deliverables to AcctTwo, without the need of additional consideration. AcctTwo hereby grants to Customer a worldwide, perpetual, irrevocable, non-exclusive, transferable, fully paid-up license, with the right to grant sublicenses, to use, execute, reproduce, display, perform, modify, enhance, distribute and create derivative works of all Deliverables provided by AcctTwo to Customer hereunder for Customer’s own internal commercial use and provided that such Deliverables are not separately commercially exploited for the benefit of any third party. Notwithstanding the foregoing, AcctTwo may independently create derivative works of the Deliverables without reference to any Customer derivative works and AcctTwo shall own all Intellectual Property Rights in and to the derivative works created by AcctTwo.

6.0 **CONFIDENTIAL INFORMATION AND DATA SECURITY**

6.1 All non-public, confidential or proprietary information of a party, including, but not limited to, trade secrets, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing, and marketing (collectively, such party’s **Confidential Information**), disclosed by such party to the other party, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as confidential, in connection with the provision of the Services and this Agreement is confidential, and shall not be disclosed or copied by the receiving party without the prior written consent of the disclosing party, except that the receiving party may disclose Confidential information to such employees, subcontractors, representatives and agents as is reasonably necessary for such party to perform such party’s obligations under this Agreement or any SOW. Confidential Information does not include information that is:

a. in the public domain;

b. known to the receiving party at the time of disclosure;

c. rightfully obtained by the receiving party on a non-confidential basis from a third party; or

d. is independently developed by the receiving party other than through a breach of the receiving party’s confidentiality obligations.

6.2 Each party agrees to use the Confidential Information only for the purpose of performing its obligations under this Agreement and the SOWs or to make use of the Services and Deliverables.

6.3 Each party agrees that (i) the other party may be irreparably injured and entitled to seek equitable relief and (ii) equitable relief is not exclusive of other remedies to which the non-breaching party may be entitled at law.

6.4 The receiving party will promptly notify the disclosing party, through the appropriate management channels, of any unauthorized disclosure that it becomes aware of, in accordance with any applicable privacy laws and regulations.

6.5 AcctTwo will maintain a commercially reasonable data security program, which will include reasonable technical, organizational and security measures designed to protect against the destruction, loss, unavailability, unauthorized access or alteration of Customer data in the possession or under the control of AcctTwo. AcctTwo will promptly inform Customer of any relevant Customer data breaches under this Agreement.

7.0 **WARRANTIES**

7.1 AcctTwo represents and warrants that the Services and Deliverables provided hereunder will be provided in a good and workmanlike manner and in accordance with generally accepted industry standards. AcctTwo shall not be liable for a breach of this warranty unless Customer provides written notice of the defective Services or Deliverable, reasonably described, to AcctTwo within sixty (60) days of the time when Customer tests and approves the Services or the Deliverables, and in any event, prior to go-live. In the event of a breach of this warranty, AcctTwo will re-perform the applicable services, or if reperformance is not commercially reasonable in AcctTwo’s discretion, AcctTwo shall credit or refund to Customer the fees incurred to date related to such Services at the pro rata contract rate. The foregoing will be Customer's sole and exclusive remedies, and AcctTwo’s sole and exclusive obligations, for a breach of the warranty set forth in this Section 7.1.

AcctTwo covenants that it will maintain data security and data privacy protections in accordance with generally accepted industry good practices. AcctTwo covenants that it will provide the Services and Deliverables in accordance with local, state, national and foreign laws and regulations applicable to AcctTwo.

7.2 **EXCEPT AS SPECIFICALLY PROVIDED FOR IN SECTION 7.1, THERE ARE NO WARRANTIES WITH RESPECT TO THE SERVICES OR THE USE OR OPERATION OF DELIVERABLES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT.**

7.3 **CUSTOMER ACKNOWLEDGES THAT THE OCCURRENCE OF BUGS AND MINOR DEFECTS IN SOFTWARE AND SOFTWARE CUSTOMIZATIONS ARE TO BE EXPECTED IN CONNECTION WITH SERVICES PERFORMED IN ACCORDANCE WITH INDUSTRY STANDARDS, AND THAT SECTION 7.1 SHALL NOT BE INTERPRETED TO MEAN THAT ALL SERVICES PERFORMED BY ACCTTWO HEREUNDER WILL BE ERROR-FREE.**

8.0 **AUTHORITY**

8.1 Each party represents and warrants to the other party that:

a. it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws of its jurisdiction of incorporation or organization;

b. it has the full right, power, and authority to enter into this Agreement and to perform its obligations hereunder;

c. the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of such party; and

d. when executed and delivered by such party, this Agreement shall constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

9.0 **LIMITATION OF LIABILITY**

9.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY SOW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 EXCEPT AS SET FORTH IN SECTION 9.3 BELOW, IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO ACCTTWO PURSUANT TO THE APPLICABLE SOWs IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

9.3 THE LIMITATIONS ON LIABILITY STATED IN SECTION 9.2 ABOVE SHALL NOT APPLY TO THE FOLLOWING:

a. LIABILITY FOR PERSONAL INJURY; OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY ARISING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT;

b. LIABILITY FOR A PARTY’S BREACH OF ARTICLE 5 (INTELLECTUAL PROPERTY);

c. LIABILITY ARISING FROM A PARTY’S INDEMNIFICATION OBLIGATIONS UNDER THE AGREEMENT;

d. LIABILITY ARISING FROM FRAUD; AND

e. PAYMENTS PROPERLY OWING FROM ONE PARTY TO THE OTHER PARTY UNDER THE AGREEMENT.

9.4 EACH PARTY ACKNOWLEDGES THAT THE OTHER PARTY HAS ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT. IF ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED OF ITS ESSENTIAL PURPOSE, ALL LIMITATIONS OF LIABILITY, DISCLAIMERS AND EXCLUSIONS OF WARRANTY AND DAMAGES SET FORTH HEREIN WILL REMAIN IN EFFECT.

10.0 **INDEMNITY**

10.1 **General Mutual Indemnity.** The parties shall each hold the other harmless, defend and indemnify the other against all liabilities, losses, costs, damages and expenses arising out of the gross negligent or willful misconduct actions of the indemnifying party or a fraudulent misrepresentation of such party.

10.2  **Infrigement.**

a. **By AcctTwo.** AcctTwo will defend at its expense any third party claim, suit or proceeding (each, a “Claim”) brought against Customer in the United States to the extent such Claim is based upon (i) a claim that the AcctTwo Intellectual Property Rights, or portion thereof, or the use or possession thereof infringes or violates such third party’s United States copyrights, patents or trade secret rights;. Subject to Sections 10.4(a) and 10.5 below, AcctTwo will pay all costs and damages paid in connection with any settlement agreement approved in writing by AcctTwo or finally awarded against Customer by a court of competent jurisdiction as a result of any such Claim.

b. **By Customer.** Customer will defend at its expense any Claim brought against AcctTwo by any third party in the United States to the extent such Claim is based upon a claim that the Customer Intellectual Property Rights, or portion thereof, or the use or possession thereof infringes or violates such third party’s United States copyrights, patents or trade secret rights. Subject to Sections 10.4(b) and 10.5 below, Customer will pay all costs and damages paid in connection with any settlement agreement approved in writing by Customer or finally awarded against AcctTwo by a court of competent jurisdiction as a result of any such Claim.

10.3 **AcctTwo Remedial Actions.** In the event that, as a result of a third party Claim for which AcctTwo is obligated to defend Customer in accordance with Section 10.2(a) above, or in the opinion of AcctTwo it appears likely that such a Claim could be initiated, AcctTwo will, at its option, (i) secure the right of Customer to continue using such AcctTwo Intellectual Property Rights, or portion thereof, (ii) replace or modify such AcctTwo Intellectual Property Rights, or portion thereof, to make it non-infringing, without substantially altering its capabilities and functioning, or, if (i) or (ii) are not available on commercially reasonable terms, then (iii) terminate Customer’s access to and use of the subject AcctTwo Intellectual Property Rights and refund to Customer any unused, prepaid fees for such AcctTwo Intellectual Property Rights.

10.4 **Indemnification Conditions.**

a. The indemnification, defense and other obligations of AcctTwo pursuant to Section 10.2(a) will not apply if (i) Customer modifies the AcctTwo Intellectual Property Rights or any portion thereof and such modification causes the infringement, (ii) Customer uses the AcctTwo Intellectual Property Rights or portion thereof in a manner not permitted or contemplated hereunder or otherwise in violation of this Agreement, and such use causes such infringement, (iii) the United States copyright is owned, controlled or licensable by Customer or any affiliate thereof, (iv) infringement results from the combination of the AcctTwo Intellectual Property Rights or portion thereof with any other hardware, data or software, (v) Customer’s failure to use corrections or modifications to the AcctTwo Intellectual Property Rights made available by AcctTwo, if such corrections or modifications would have prevented the infringement, (vi) Customer’s use of the AcctTwo Intellectual Property Rights in combination with any product not owned or developed by AcctTwo, unless such use was authorized by AcctTwo in the AcctTwo documentation, or (vii) any aspects of the AcctTwo Intellectual Property Rights developed based on information, materials, instructions or specifications provided by or on behalf of Customer, Customer affiliates or any Customer third party or agent.

b. The indemnification, defense and other obligations of Customer pursuant to Section 10.2(b) will not apply if (i) AcctTwo modifies the Customer Intellectual Property Rights outside of the provision of the Services set forth in an SOW or not in compliance with Customer’s instructions and such modification causes the infringement, (ii) AcctTwo uses the Customer Intellectual Property Rights or portion thereof in a manner not permitted or contemplated hereunder or otherwise in violation of this Agreement, and such use causes such infringement, (iii) the United States copyright is owned, controlled or licensable by AcctTwo or any affiliate thereof, or (iv) AcctTwo’s failure to use corrections or modifications to the Customer Intellectual Property Rights made available by Customer, if such corrections or modifications would have prevented the infringement.

10.5 **Indemnification Procedures.** If a party entitled to indemnification hereunder (an “**Indemnitee**”) seeks indemnification, it shall promptly notify the party from whom indemnification is sought pursuant hereto (the “**Indemnitor**”) of any matter for which such indemnification shall be sought, and if such matter is a third party proceeding, the Indemnitor will have the right, at its expense, to assume the defense thereof using counsel of its own choosing (and so long as such defense is being assumed by the Indemnitor in accordance herewith, any separate legal fees incurred by the Indemnitee to hire separate counsel shall be borne by the Indemnitee). The Indemnitee shall have the right to participate, at its own expense, with respect to any such third party proceeding. In connection with any such third party proceeding, the parties hereto shall cooperate with each other and provide each other with access to relevant books and records in their possession. No settlement of a Claim that involves a remedy other than the payment of money by the Indemnitor will be entered into without the consent of the Indemnitee.

11.0 **TERMINATION**

11.1 The initial term of this Agreement will begin on the Effective Date and extend automatically for successive additional consecutive one (1) year periods, unless either party notifies the other in writing thirty (30) days prior to the expiration of the current term.

11.2 Either party may terminate this Agreement for convenience upon sixty (60) days prior written notice to the other party.

11.3 In the event either party fails to cure a material breach of this Agreement or an SOW within thirty (30) days after receiving written notice thereof, then the non-breaching party may terminate this Agreement or the applicable SOW upon written notice. For the avoidance of doubt, the parties agree that an uncured material breach of an SOW may result in the termination of only that SOW and all other SOWs shall continue under their terms. If the Agreement is terminated pursuant to this Article 11, then all SOWS shall be terminated as of the same date. Upon any termination of the Agreement or an SOW, Customer shall remain obligated to make payment in full for Services performed under any SOW prior to termination.

12.0 **NON-SOLICITATION**

12.1 During the term of this Agreement, and for 12 months after any termination of this agreement, either party will not directly or indirectly induce or attempt to induce any employee to leave the other party. If, for any reason, either party hires, on a full or part-time basis, any employee of the other party during the term of, or during the 12 months after termination of this agreement, the hiring party agrees to pay the other party an amount equal to that employee’s compensation received from employer in the twelve months prior to departure, or if that employee worked for employer for a period of less than twelve months, an amount equal to that employee’s compensation on an annualized basis based upon the compensation actually received. Parties agree the exact damages to the other party resulting from a violation of this provision would be difficult to ascertain with reasonable certainty, and that this amount is a reasonable proxy for such damages and is not a penalty. In addition to obtaining liquidated damages for any breach, either party may also seek injunctive relief to prevent any future breach of this provision.

*- we accept mutual non-solicitation, however we are rejecting remedy deletion.*

13.0 **INSURANCE**

13.1 During the term of this Agreement and for a period of 12 months thereafter, AcctTwo shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to:

* 1. Workers’ Compensation/Employers Liability Insurance, including occupational illness or disease coverage, or other similar social insurance in accordance with the statutory laws of the exercising jurisdiction where services are being rendered, with a minimum limit of $1,000,000 per occurrence.
  2. Commercial General Liability Insurance with a minimum combined single limit of $1,000,000 per occurrence/$2,000,000 aggregate.
  3. Errors and Omissions/ Professional Liability Insurance covering the liability for financial loss due to error, omission, negligence in an amount of at least $1,000,000.
  4. Excess/Umbrella Liability Insurance with a minimum limit of at least $5,000,000.

13.2 During the term of this Agreement and for a period of 12 months thereafter, any Customers which require AcctTwo employees to be on-site to perform any of the services shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to:

* 1. Workers’ Compensation/Employers Liability Insurance, including occupational illness or disease coverage, or other similar social insurance in accordance with the statutory laws of the exercising jurisdiction where services are being rendered, with a minimum limit of $1,000,000 per occurrence.
  2. Commercial General Liability Insurance with a minimum combined single limit of $1,000,000 per occurrence/$2,000,000 aggregate.
  3. Excess/Umbrella Liability Insurance with a minimum limit of at least $2,000,000.
* Rejected deletion of 13.2

14.0 **WAIVER**

14.1 No waiver by either party of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by that party. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15.0 **FORCE MAJEURE**

15.1 AcctTwo shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of AcctTwo including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

16.0 **ASSIGNMENT**

16.1 Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of AcctTwo, other than assignments to a third-party purchaser of substantially all of Customer’s assets or assignments by operation of law (such as a merger to which Customer is a party). Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

16.2 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17.0 **RELATIONSHIP**

17.1 The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. AcctTwo shall be solely responsible for determining the method, details and means of performing the Services.

18.0 **GOVERNING LAW/ARBITRATION**

18.1 All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule.

18.2 Subject to compliance with Section 18.3 below, any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Texas, as applicable, in each case located in the City of Houston and County of Harris, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

18.3 In the event of a dispute or controversy arising under or in connection with this Agreement, the parties shall first promptly try in good faith to settle such dispute or controversy by informal executive escalation before resorting to arbitration. If such dispute or controversy remains unresolved, in whole or in part, for a period of thirty (30) days after it arises, except for actions to protect proprietary or intellectual property rights and to enforce arbitration decisions hereunder, the parties shall settle any remaining dispute or controversy exclusively by arbitration in accordance with the rules of the American Arbitration Association (“AAA”) then in effect. All arbitrators will possess such experience in, and knowledge of, the subject area of the dispute or controversy so as to qualify as an “expert” with respect to such subject matter. The arbitration will be conducted by three (3) arbitrators, one of whom will be appointed by AcctTwo, one by Customer, and the third by the first two arbitrators. If the first two (2) arbitrators cannot agree on the appointment of a third arbitrator, the third arbitrator will be appointed by AAA. The arbitration will take place in any location mutually agreed by the parties. The findings of the arbitration will be final and binding on the parties and the prevailing party will be entitled to receive its reasonable attorneys’ fees and all costs relating to the arbitration. Any award rendered by arbitration will be final and binding on the parties and judgment thereon may be entered in any court of competent jurisdiction.

19.0 **NOTICES**

19.1 All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to AcctTwo at the address set forth in Section 19.2 below and to Customer at the address set forth in each applicable SOW or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

19.2 Notice to AcctTwo shall be given at:

*AcctTwo Shared Services, LLC*

*1111 North Loop West Suite 250*

*Houston, TX 77008*

*Attention: Ken West*

20.0 **ENTIRE AGREEMENT**

20.1 Together the SOW(s), the order schedule, and this Agreement comprise the entire agreement between the parties with respect to the Services in such SOW, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. In the event of any conflict between this Agreement and a SOW, this Agreement shall govern, unless the SOW expressly states that any conflicting terms and conditions of the SOW shall control.

20.2 This Agreement prevails over any of Customer's general terms and conditions regardless whether or when Customer has submitted its request for proposal, order, or such terms. Provision of services to Customer does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

21.0 **MODIFICATIONS**

21.1 This Agreement and any SOW may only be amended or modified in writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party. Each person signing on behalf of a party represents, warrants and guarantees that he/she has been duly authorized and has full authority to execute this Amendment on behalf of such party.

21.2 If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. AcctTwo shall, within a reasonable time after such request, provide a written estimate to Customer of:

a. the likely time required to implement the change;

b. any necessary variations to the fees and other charges for the Services arising from the change;

c. the likely effect of the change on the Services; and

d. any other impact the change might have on the performance of this Agreement.

21.3 Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "**Change Order**"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

22.0 **HEADINGS**

22.1 The paragraph headings set forth in this Agreement are for the convenience of the Parties, and in no way define, limit, or describe the scope or intent of this Agreement and are to be given no legal effect.

23.0 **SEVERABILITY**

23.1 If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24.0 **SURVIVAL**

24.1 Provisions of this Agreement or any SOW which by their nature should apply beyond their terms, will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Intellectual Property, Confidentiality, Indemnity, Limitation of Liability, Governing Law, Non-Solicitation, and Customer’s obligation to pay for Services performed prior to termination.

25.0 **COUNTERPARTS**

25.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (to which a signed PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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### **Addendum A: Software Development Services**

The following additional terms and conditions apply when Services include software development performed by AcctTwo.

1.0 **TECHNICAL SERVICES**

1.1 AcctTwo shall provide the software development services to Customer as described in the SOW (the "Development Services") in accordance with this Agreement, either directly by its employees or through such subcontractors (at AcctTwo’s expense) as AcctTwo deems necessary to perform the Services. All work will be performed remotely from AcctTwo’s offices unless travel is specifically requested and approved by Customer.

1.2 The Development Services typically will be developed using PHP, HTML, and JavaScript. Other technologies may be used as needed. The technologies, language, libraries, methods, etc. used will be at AcctTwo’s discretion unless otherwise specified in the applicable SOW.

1.3 Customer responsibilities for Development Services include:

a. Providing AcctTwo with appropriate test environments of all relevant systems for development of solution, typically a sandbox of production environments.

b. Customer is responsible for creating any necessary test data, including Intacct data, 3rd party system data, input files, etc.; and

c. Testing solution provided with all relevant workflow processes, functions, and data combinations.

d. Agrees to have Sage Intacct Web Services (Developer), and the cost of Web Services is paid for by Customer as part of the Sage Intacct subscription. Customer’s Web Services Sender ID and Password will be used in the integration. Customer is responsible for providing AcctTwo with Providing Sender ID and Password for Intacct Web Services.

e. If JavaScript is used within the Sage Intacct application, customer must have Platform Services (Standard or Developer) enabled. Platform Services must be included as part of Customer’s Sage Intacct subscription. MODIFICATIONS MADE IN THIS WAY ARE NOT WARRANTIED AND MAY STOP WORKING IF INTACCT ALTERS THE USER INTERFACE IN A WAY THAT AFFECTS THE CUSTOMIZATIONS OR RELEASES A NEW USER INTERFACE IN THE FUTURE. If this occurs, additional services may be required at rates and terms specified in a subsequent SOW.

1.4 Software Services process will be as follows:

a. AcctTwo performs scoping of development project with Customer either before or after Software Services SOW is signed.

b. AcctTwo develops solution with input from Customer.

c. AcctTwo informs Customer when solution is available for test and confirmation.

d. Customer tests and provides feedback to AcctTwo.

e. AcctTwo resolves issues identified by Customer during testing.

f. Customer retests solutions, repeating process as needed until no issues identified.

g. Once no issues have been identified, or upon direction from Customer, AcctTwo proceeds with deployment of solution to production environment.

h. Once moved to production, Customer accepts product “as is”, unless customer and AcctTwo have mutually agreed in writing on outstanding development to occur subsequent to the initial deployment to production.

1.5 Each SOW will be considered complete upon Customer’s first use of the deployed solution in a production environment and/or it has been more than thirty (30) days since production deployment.

2.0 HOSTING

2.1 Unless otherwise specified in the SOW, any Development Services requiring hosting shall be exclusively hosted by AcctTwo under terms set forth in the applicable SOW.

2.2 AcctTwo will host the code on behalf of the Customer for an annual hosting fee and term set forth in the applicable SOW and/or subsequent renewal orders.

3.0 SUPPORT

3.1 Support for custom software is not provided under essential Sage Intacct support or Unlimited Help plans. AcctTwo will provide support and maintenance for custom software at an annual fee and term as set forth in the applicable SOW and/or subsequent renewal orders, or on a time and materials basis as defined in the SOW.

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### **ADDENDUM B: California Consumer Privacy Act**

This Addendum B applies to the extent AcctTwo has access to, collects, receives, stores, uses or otherwise processes Personal Information (as defined in the California Consumer Privacy Act of 2018, as amended (“**CCPA**”)) of California residents from or on behalf of Customer in connection with the Services provided under this Agreement.

1. To the extent applicable, the parties agree to the following:
   1. AcctTwo will process such Personal Information only on behalf of Customer.
   2. AcctTwo will not retain, use, or disclose any Personal Information for any purpose other than (a) providing the Services and/or products specified in this Agreement and any applicable Addendum and (b) as otherwise permitted under the CCPA.
   3. Each party will comply with their respective obligations under the CCPA including, but not limited to, complying with consumer requests to exercise their rights under the CCPA. In the event that AcctTwo receives a consumer requests from Customer’s clients or employees, AcctTwo shall direct such requests to Customer for Customer to handle as the direct provider to the consumer.
   4. If the provision of Services by AcctTwo to Customer does not require the processing of Personal Information, Customer agrees that Customer shall not provide Personal Information to AcctTwo.