

# **MASTER SERVICE AGREEMENT**

## **CATALPA LABS, LLC**

Thank you for your interest in Catalpa Labs, LLC. Below, we describe some important terms relating to the delivery of our services.

1. DEFINITIONS. For the purposes of this agreement the terms identified in quotation marks shall have the specific meanings assigned herein. Here are the special terms that we will use:
  - A. "Agreement" means this Master Service Agreement, the applicable statements of work, and any properly executed addenda, which together shall constitute the entire covenant between you and Catalpa Labs, LLC.
  - B. "Catalpa Labs, LLC" means Catalpa Labs, LLC, a Colorado limited liability company, and its successors and assigns. "We", "us", and "our" refer to Catalpa Labs, LLC.
  - C. "Change order" is an addendum to this agreement that modifies a particular statement of work.
  - D. "Confidential information" is defined in the section labeled *Confidentiality* below.
  - E. "Courts" (capitalized and plural only) is defined in the section labeled *Applicable Law, Jurisdiction, and Venue* below.
  - F. "General deliverables" is defined in the section labeled *Intellectual Property* below.
  - G. "Master Service Agreement" or "MSA" is the document you are reading now, including any future amendments to it. We may update the MSA from time to time by giving notice to you. We shall provide professional services to you subject to this Master Service Agreement. Your signature (or similar indication of acceptance) is not required on the MSA but is encouraged so that you and we are clear on the terms of this agreement.
  - H. "Party" or "parties" refers to you and Catalpa Labs, LLC.
  - I. "Section", as used with respect to the MSA, refers to the language following a numbered, all capitalized heading, LIKE THIS, and ending with the next such heading, or to the specifically enumerated and identified part thereof. As used with respect to a SOW, change order, or other addendum, "section" refers to the language following a reasonably identifiable heading and ending with the next such heading, or to the specifically indicated part thereof.
  - J. "Specific deliverables" is defined in the section labeled *Intellectual Property* below.
  - K. "State" (capitalized only) is defined in the section labeled *Applicable Law, Jurisdiction, and Venue* below.
  - L. "Statement of work" or "SOW" means a document specifying the particular services you engage us to perform at any given time and which is subject to this Master Service Agreement.
  - M. "Venue" is defined in the section labeled *Applicable Law, Jurisdiction, and Venue* below.
  - N. "You" and "your" refer to the person(s) or entity(ies), individually and collectively, named in a SOW and that engages Catalpa Labs, LLC via a SOW.

- O. "Your business" is defined in the section labeled *Intellectual Property* below.
- P. "Your representative" is defined in the section labeled *Your Responsibilities* below.

2. SCOPE.

- A. We shall determine with you the scope of the representation that we will provide to you. Pricing shall be based on the scope of the representation and shall be mutually agreed to by the parties.
- B. In the event that you would like to change the scope of a SOW, you and we may execute either a change order or a new SOW. Change orders may be made either verbally or in writing; SOWs shall be in writing. The new change order or SOW shall describe the new work to be performed and the corresponding terms of payment.
- C. Unless otherwise agreed by the parties, we shall perform the services described in the SOW, change order, or addenda for the stated price.

3. YOUR RESPONSIBILITIES.

- A. At your own expense, you shall assist us in the performance of our obligations under this agreement. You shall make available to us a designated representative ("your representative"), who shall be authorized to make binding decisions for you regarding the obligations that are the subject of this agreement.
- B. You acknowledge that we shall rely upon your representative as having the authority specified in this section and that all official communications from us to you may be addressed to your representative.

4. CONFIDENTIALITY.

- A. You and we acknowledge that you and we may have access to and become acquainted with certain confidential information used by the other party in connection with the operation of its business, including trade secrets, intellectual property, records, specifications, methods, customer lists, login identifications, passwords, accounts, procedures, files, records, documents, specifications, computer files, information, letters, notes, media lists, original artwork, original creations, notebooks, and similar items relating to the party's business (the "confidential information"). You and we agree not to disclose any of the confidential information, directly or indirectly, or use any of it in any manner, either during the term of this agreement or at any time thereafter, except as required or permitted in the course of this engagement. All of your confidential information, whether prepared by us or otherwise coming into our possession, shall remain your exclusive property. All of our confidential information shall remain our exclusive property. Upon the expiration or earlier termination of this agreement, or whenever requested by the other party, all confidential information, including any and all copies and records thereof, shall be immediately delivered to the party owning such information or, when requested by the owning party, destroyed.
- B. We shall be permitted to disclose via advertising, promotional materials, or otherwise in summary form the nature of the work performed for you under applicable statements of work and change

orders; provided, however, that we shall not disclose any of your confidential information.

5. INTELLECTUAL PROPERTY.

A. *Definitions.*

1. "Your business" means your normal operations as a going concern.
2. "Specific deliverables" means deliverables that are specific to your business, including source code and documentation associated therewith. Examples of specific deliverables include the specification and implementation of Ruby on Rails model and controller classes used by the developers and analysts to build applications.
3. "General deliverables" means deliverables that are not specific to your business, including technical frameworks, tools, methodologies, know-how, object code, source code, data models, object models, and documentation associated therewith. Examples of general deliverables include patches and enhancements to open source libraries.

B. Except as otherwise provided herein, the entire right, title, and interest in and to specific deliverables, including the software, documentation, source code, and all modifications to the foregoing and all portions thereof, together with all proprietary rights relating thereto, including all copyrights, patents, and trade secret rights, are owned exclusively by you. Specific deliverables shall be deemed works made for hire as defined in section 101 et seq. of the United States Copyright Act, Title 17, United States Code, and shall be your exclusive property. We hereby assign to you any and all right, title, and interest in and to any specific deliverables that do not qualify as works made for hire, as soon as such work is fixed in a tangible form or medium.

C. Except as otherwise provided herein, the entire right, title, and interest in and to general deliverables, including the software, documentation, source code, and all modifications to the foregoing and all portions thereof, together with all proprietary rights relating thereto, including all copyrights, patents, and trade secret rights, are owned exclusively by us.

D. We hereby grant to you a perpetual, irrevocable, limited, non-exclusive, non-transferable, worldwide license, without the right to grant sub-licenses (except that you may grant sub-licenses to your affiliates and/or subsidiaries), to use the general deliverables in furtherance of your business.

6. BILLING.

A. We may send you invoices for fees or expenses incurred in the course of representation. Unless stated otherwise in a SOW, a change order, or an addendum, invoices shall be sent no more frequently than every two (2) weeks and payments on invoices are due immediately upon receipt of the invoice and are past due thirty (30) days after the date of the invoice. If an invoice payment is past due, we reserve the right to require an additional fee deposit before performing further work.

B. If an invoice remains unpaid, we may, at our option, do any or all of the following: suspend work under an applicable SOW, change order, or addendum; terminate any current SOW, change

order, or addendum; terminate this agreement in its entirety; or continue performing pursuant to this agreement. When we incur costs to collect the amount due, we shall be entitled to our collection costs and reasonable attorney fees. All amounts on your account remaining unpaid for more than thirty (30) days after invoicing shall accrue interest at one percent (1%) per month and shall be subject to an additional one hundred dollar (\$100) late fee per month, which late fee shall be prorated per day.

C. In the event of any dispute with regard to a portion of an invoice, the undisputed portion shall be paid as provided herein.

7. EXPENSES. We shall be responsible for all costs and expenses incurred in the performance of our obligations, unless specifically authorized in advance by you or as otherwise specified in a SOW or change order. We shall include authorized expenses on invoices sent to you, and you shall pay such expenses.

8. ADVANCE FEE DEPOSIT. To begin or continue representation, we may require an advance fee deposit. We will apply any such deposit to professional fees and expenses as they are incurred.

9. EMAIL USE.

A. You hereby grant permission to us to use your email address(es) for important matters that relate directly to the services that we provide to you hereunder.

B. You hereby grant permission to us to use your email address(es) for other promotions or non-essential purposes. However, if at any time you wish to be removed from our email list for these non-essential purposes, click "unsubscribe" in the email message you receive or otherwise let us know you would like to be removed, and you will not receive further such messages until you grant us permission to put your email address(es) back on the list.

C. We will never sell, rent, or provide your email address(es) to others without your permission unless required by law to do so.

10. INDEPENDENT CONTRACTOR.

A. Except as may otherwise be provided herein, we are and shall remain an independent contractor. This agreement shall not render us an employee, partner, agent of, or joint venturer with you for any purpose unless otherwise specifically stated, and no party shall have the authority to bind another in any manner, except as may otherwise be provided herein.

B. We represent that we do not rely solely on you for income. Accordingly, our offering of services is not exclusive to you, and we shall have no claim against you hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker's compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind.

C. Your engagement of us is not exclusive, and you reserve the right to engage other persons to perform required services.

D. We shall be solely responsible for the profit or loss incurred through the operation of our business. You make no guarantee or representation regarding the profitability of our business.

- E. Unless otherwise stated in an applicable SOW or change order, we shall have sole discretion over the identity of our personnel used to provide services pursuant to this agreement, provided that we shall ensure that the personnel are in all cases suitably qualified and experienced. Where personnel are specified in an applicable SOW or change order, we shall use reasonable efforts to provide the services through those personnel, provided that we shall be entitled to replace such personnel with personnel of equivalent qualification and experience upon fifteen (15) days prior notice to you.
11. NON-HIRE PROVISION. During the term of this agreement and for a period of one (1) year following any termination, we shall not, directly or indirectly, solicit, divert, take away, or encourage to leave you any of your employees, consultants, contractors, or customers.
12. TAXES. We shall be responsible for payment of all taxes and insurance applicable under existing laws, including payroll taxes and federal, state, and local income taxes (but excluding any taxes on your net income) incurred in connection with the services.
13. TERMINATION. Except as otherwise provided herein, any party may terminate this agreement at any time by giving notice to every other party.
14. SURVIVAL. The provisions of the following sections shall survive the termination of this agreement: 1, 4, 5, 6, 7, 9, 11, 20, 21, 28, 29, 30, and 31.
15. CONSIDERATION. This agreement is entered into for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.
16. DEFAULT. Upon default by any party, the non-defaulting party or parties shall have all remedies available at law and equity.
17. ENTIRE COVENANT. This agreement constitutes the entire covenant concerning the subject matter hereof between or among the parties.
18. MODIFICATION. Except as may otherwise be provided herein, this agreement may be modified at any time by a writing signed by all parties.
19. WRITINGS. Unless otherwise indicated, any provision of this agreement that requires consent in writing includes writings in electronic form.
20. WARRANTIES.
- A. We shall provide the services contemplated herein to you in a professional manner consistent with generally accepted industry standards.
- B. The warranties set forth in this agreement are exclusive and are in lieu of all other warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose. Except as otherwise provided herein, the services or materials produced pursuant to this agreement are provided to you as is, without warranty of any kind, either expressed or implied. The entire risk as to the quality and performance of the services or materials provided under this agreement rests solely with you. Should any software or program prove defective, you assume the cost of all necessary servicing, repair, or correction, including any debugging.

C. Except as otherwise provided herein, no party makes any warranties of any kind or nature, whether express or implied, including warranties related to information or business advice provided, warranties related to outcomes based on information or advice provided, warranties of merchantability or mercantile quality, warranties of fitness for a particular purpose or use, warranties or conditions arising by statute or otherwise in law, or warranties of any products or services provided by third person vendors.

D. The parties represent and warrant that their disclosure and delivery of any information, documents, software, and other materials, and the use thereof as contemplated by this agreement, shall not knowingly infringe or violate any proprietary right of any third person, including any copyright, known patent, or trade secret right.

21. **LIMITATION OF LIABILITY.** To the extent allowed by law, no party shall be liable to another party for lost profits or for indirect, consequential, or punitive damages in relation to this agreement. No party's liability for damages from any cause of action whatsoever, regardless of the form of action, shall exceed the fees paid or to be paid by you pursuant to all applicable SOWs or change orders.
22. **WAIVER.** No party shall be deemed to have waived any right or remedy under or with respect to this agreement, including by forbearance, unless such waiver or consent is expressed in a writing signed by such party, except as otherwise provided herein. A waiver or consent given in one instance shall not operate or be construed as a waiver or consent in any other instance.
23. **SET OFF.** No party shall have the right to withhold or set off any payments due to another party hereunder, except as otherwise provided herein.
24. **SEVERABILITY.** If any provision of this agreement is held to be invalid or unenforceable, such holding shall not be deemed to render any other provision hereof invalid or unenforceable.
25. **HEADINGS, PRONOUNS, ETC.** Headings contained in this agreement shall not be considered in construing this agreement. The words "herein," "hereof," and "hereunder" refer to this agreement in its entirety. The word "include" and its derivatives are not intended to exclude or limit. Words in the singular include the plural, words in the plural include the singular, and words importing a gender include all genders, as the context requires.
26. **NO THIRD PERSON BENEFICIARIES.** This agreement creates no rights benefiting third persons, and no third person shall have any right to enforce any provision hereof, except as may be specifically provided herein.
27. **REMEDIES.** Each remedy provided herein is distinct from and cumulative to all other rights or remedies herein or afforded by law or equity, and may be exercised concurrently, independently, or successively.
28. **MEDIATION.** Except where impracticable, the parties shall submit any and all controversies or claims arising out of or relating to this agreement, or the breach thereof, to mediation. The parties shall jointly appoint an acceptable mediator and shall share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved

within thirty (30) days of the date written notice requesting mediation is delivered by one party to every other party. This section shall not alter any date in this agreement, unless otherwise agreed by the parties.

29. BINDING ARBITRATION.

- A. Any and all controversies or claims arising out of or relating to this agreement, or the breach thereof, if not resolved via mediation, shall be submitted to, and conclusively determined by, binding arbitration in accordance with this section. The provisions of this section shall not preclude any party from seeking injunctive or other provisional or equitable relief in order to preserve the status quo of the parties pending resolution of the dispute, and the filing of an action seeking injunctive or other provisional relief shall not be construed as a waiver of that party's arbitration rights.
- B. The arbitration of any dispute between the parties to this agreement shall be governed by the rules of the American Arbitration Association (AAA). In the case of any dispute between the parties to this agreement, any party shall have the right to initiate the binding arbitration process provided for in this section by serving upon the other party or parties a demand for arbitration. Within thirty (30) days of service of a demand for arbitration by any party to this agreement, the parties shall endeavor in good faith to select a single arbitrator. In the absence of a selection, AAA shall appoint an arbitrator. Such arbitration shall proceed in the State named below, and shall be governed by the laws of the State.
- C. If the arbitrator(s) finds any disputed claim to be meritorious, the arbitrator(s) shall have the authority to order legal relief, equitable relief, or both appropriate to the claim; provided that in no event shall the arbitrator(s) have authority to award punitive or exemplary damages.

30. APPLICABLE LAW, JURISDICTION, AND VENUE. In the event any party commences a judicial action or proceeding relating to this agreement, this section shall apply to such action or proceeding; provided that nothing in this section shall be deemed to invalidate the mediation or arbitration requirements above. This agreement shall be governed by the laws of the State named below. Exclusive jurisdiction and venue of all actions relating to this agreement shall be in the Venue named below. Each party submits to the personal jurisdiction of the Venue and waives any and all rights to object to such jurisdiction. If jurisdiction is not obtainable by the Venue, all actions relating to this agreement shall be brought in the Courts named below.

- A. The State shall be: Colorado.
- B. The Venue shall be: District Courts of Boulder County, Colorado.
- C. The Courts shall be: District Courts of Colorado or the United States District Court for Colorado.

31. ATTORNEY FEES. In the event there is any litigation or arbitration arising out of this agreement, the court or arbitrator(s) shall award to the substantially prevailing party its reasonable costs and expenses, including attorney fees.

32. ASSIGNMENT. This agreement shall be binding upon and shall inure to the benefit of the parties,

their respective heirs, personal representatives, successors, and assigns. No party shall assign this agreement, or any interest therein, or payments due under this agreement, without the written consent of every other party, except as otherwise provided herein. Any such unauthorized assignment shall be void and of no effect.

33. NOTICES. Unless otherwise specifically permitted by this agreement, all notices required by this agreement shall be in writing and may be delivered electronically or physically. Electronic notices shall be effective when sent. Physical notices shall be conclusively presumed to be received three (3) business days after deposition, with sufficient payment, in the U.S. Mail or with a commercial carrier; provided that physical hand delivery without the use of the U.S. Mail or a commercial carrier shall be effective when hand delivered. Each party shall be responsible for providing the other party or parties with accurate and timely written contact information, though electronic contact information shall not be required.
  - A. Our current contact information is as follows: Catalpa Labs, LLC, 77 Bramer Rd., Ward, CO 80481, [contact@catalpalabs.com](mailto:contact@catalpalabs.com).
34. FORCE MAJEURE. No party shall be liable to another party for any delay or failure to perform that results from causes outside its reasonable control.
35. CONSTRUCTION. This agreement is the result of substantial negotiations between or among the parties, and the authorship of this agreement shall be immaterial. This agreement shall not be strictly construed against any party.
36. TIME OF ESSENCE. Time is of the essence for this agreement.
37. CONSISTENCY. In the event there is a conflict between or among the MSA, a SOW, and any addenda (including change orders), later executed addenda shall govern over previously executed addenda, all addenda shall govern over a SOW and the MSA, and a SOW shall govern over the MSA.
38. FURTHER ACTION. Each party shall take such further action to execute and deliver such additional instruments as the other party or parties may, from time to time, reasonably request in order to effectuate this agreement, or to otherwise accomplish the purposes of this agreement.
39. COUNTERPARTS. This agreement may be executed in any number of counterparts or duplicates, each of which shall be deemed an original and all of which shall constitute the same instrument. Physical and electronic copies of this agreement shall be effective and enforceable as originals, and third parties shall be entitled to rely on such copies of this agreement for the full force and effect of all stated terms.
40. AUTHORITY. The persons executing this agreement warrant that they have the requisite authority to do so and that this agreement shall not conflict with, limit, or be contrary to any other covenant to which the parties such persons represent are bound.



By signing below, you acknowledge that you have read this MSA and you agree to its terms. You specifically acknowledge that we may alter the terms of this MSA, in our sole discretion, at any time by providing notice to you. You will not be making a financial commitment until you sign an applicable SOW.

By: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title and Company

**Thank you for your trust in Catalpa Labs!**