# MASTER SERVICES AGREEMENT

This Services Agreement (the “**Agreement**”) sets forth terms under which MagicSoft, Inc. a Washington Corporation (“**Company**”) located at 600 4th Ave, Seattle, WA 98104 shall provide services to Daltech, Inc., a Washington Corporation (the “**Client**”) located at 701 1st St, Kirkland, WA 98033. This Agreement is effective as of February 15, 2021 (“**Effective Date**”).

**A. STANDARD SOFTWARE AND SERVICES AGREEMENT**

**1.** **Deliverables.** Company shall provide Client with software, technical support, product management, development, and testing services (“**Services**”) to the Client as described on one or more Statements of Work signed by Company and Client that reference this Agreement (“**SOW**” or “**Statement of Work**”). Company shall perform Services in a prompt manner and have the final product or service (“**Deliverable**”) ready for Client no later than the due date specified in the applicable SOW (“**Completion Date**”). This due date is subject to change in accordance with the Change Order process defined in the applicable SOW. Client shall assist Company by promptly providing all information requests known or available and relevant to the Services in a timely manner.

**2. Onsite Services.**

**2.1** Onsite visits will be charged on a daily basis (minimum 8 hours).

**2.2** Time and expenses will be charged based on actuals unless otherwise described in an Order Form or accompanying SOW.

**2.3** All work will be executed during regular working hours Monday-Friday 0800-1900. For work outside of these hours on weekdays, Company will charge one hundred percent (100%) of the regular hourly rate and two hundred percent (200%) for Saturdays, Sundays and public holidays applicable to Company.

**2.4** If scheduled onsite visits are cancelled less than ten (10) working days in advance of the scheduled date, Company is entitled to charge fifty percent (50%) of the expected revenue associated with this onsite activity as compensation.

**3.** **Deposit.** An initial payment (the “**Deposit**”) of One Hundred Thousand Dollars ($100,000) is due to Company at signing.

**4.** **Dates of Performance.** Company will begin performing services upon receipt of signed Agreement and Deposit. Unless terminated as provided in this Agreement, Company will complete Services by the Completion Date. Deliverable shall be furnished to Client within 72 hours of final payment for the Services.

**5.** **Change in Services.** If Client desires changes to the SOW, Client shall submit to Company a written request in accordance with the change order process defined in the applicable SOW. The parties may execute additional Statements of Work describing Services, which will become part of this Agreement upon execution by Company and the Client. If additional SOW are executed, then Client shall pay Company for all services performed prior to the additional SOW before Company begins work on the new SOW.

**6.** **Termination. This agreement** shall continue in force and effect until May 31, 2025 and shall be automatically renewed for successive one-year terms annually thereafter unless notice of non-renewal is given by the Company or the Client before the end of the term. Company shall have the right to modify, reject, or terminate any SOW and any related work in process with five days written notice to Client. In the event Company terminates the SOW prior to completion of Services, the Client shall pay Company the fees due under the SOW with respect to Services completed as of the date of termination. Payment for completed work will be deducted from the deposit. Company will retain the non-refundable 50% of the Deposit and return any unearned portion exceeding 50% of the Deposit. Any amount due for services performed by Company above the deposit will be billed to Client and Client shall promptly pay.

**7.** **Payment.** In exchange for Company’s Services under this Agreement, the Client shall pay Company the contract price and deposit set forth above. Company will submit a final invoice to Client for all services rendered by the Services Completion Date and Client shall promptly pay. Client is restricted from using any form of the Deliverable until final payment is received. Client shall pay travel and other expenses incurred by Company in performing the Services. In the event of a good faith dispute with regard to an item appearing on an invoice, Company shall have the right to withhold the Deliverable while the parties attempt to resolve the disputes.

**8.** **Representations and Warranties.**

**8.1 Company’s Representation.** Company represents that any materials used in the Deliverable will not knowingly (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy or (b) violate any law, statute, ordinance or regulation.

**8.2 Client’s Representation.** Client represents that any materials provided to Company by Client for incorporation into the Deliverable will not (a) infringe on the intellectual property rights of any third party or any rights of publicity or privacy or (b) violate any law, statute, ordinance or regulation.

**8.3 Warranty Disclaimer.** EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT AND ANY SOW, EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**9.** **Indemnification.** Client will defend, indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys’ fees and court costs) arising from or relating to any claims regarding elements or materials provided by Client and incorporated into the Deliverable. Additionally, Client will defend, indemnify and hold Company harmless from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys’ fees and court costs) arising from or relating to any claims regarding Client’s unauthorized use of any music, images, or other materials comprising the Deliverable.

**10.** **Limitation of Liability.** COMPANY WILL NOT BE LIABLE FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.** **Compliance with Laws.** Each party shall perform all of its obligations under this Agreement in compliance at all times with all foreign, federal, state and local statutes, orders and regulations, including those relating to privacy and data protection.

**12.** **General Provisions.**

**12.1 Insurance** Company will maintain during the entire Term of this Agreement, at its own expense, the types of insurance coverage specified below, on standard policy forms and with insurance companies with at least an A.M. Best Rating of A-VII authorized to do business in the jurisdictions where the Company services are to be performed.

(a) Workers’ Compensation insurance prescribed by applicable local law and Employers Liability insurance with limits not less than $1,000,000 per accident/per employee. This policy shall include a waiver of subrogation against Client.

(b) Business Automobile Liability covering all vehicles that Company owns, hires or leases with a limit of no less than $1,000,000 (combined single limit for bodily injury and property damage) for each accident.

(c) Commercial General Liability insurance including Contractual Liability Coverage, with coverage for products liability, completed operations, property damage and bodily injury, including death, with an aggregate limit of no less than $2,000,000. This policy shall name Client as an additional insured with respect to the provision of services provided under this Agreement. This policy shall include a waiver of subrogation against Client.

(d) Technology Professional Liability Errors & Omissions policy (which includes Cyber Risk coverage and Computer Security and Privacy Liability coverage) with a limit of no less than $5,000,000 per occurrence and in the aggregate.

(e) Crime policy with a limit of no less than $5,000,000 per occurrence and in the aggregate.

(f) Excess Liability/Umbrella coverage with a limit of no less than $9,000,000 per occurrence and in the aggregate (such limit may be achieved through increase of limits in underlying policies to reach the level of coverage shown here). This policy shall name Client as an additional insured with respect to the provision of services provided under this Agreement. This policy shall include a waiver of subrogation against Client.

Upon Client's request, Company agrees to deliver to Client a certificate(s) of insurance evidencing the coverage specified in this Section. Such certificate(s) will contain a thirty (30) day prior notice of cancellation provision. Company will be solely responsible for any deductible or self-insurance retentions. Such insurance coverage will be primary and any other valid insurance existing will be in excess of such primary insurance policies. The required insurance coverage and limits of liability set forth above shall not be construed as a limitation or waiver of any potential liability of satisfaction of any indemnification/hold harmless obligation of Company.

**12.2 Intellectual Property.**

**12.2.1 Preexisting Intellectual Property**. Except for rights expressly granted under this agreement, each party will retain exclusive interest in and ownership of its Intellectual Property developed before this agreement or developed outside the scope of this agreement.

**12.2.2 Independently Developed Intellectual Property**. Any Intellectual Property developed solely by a party under this agreement without the participation of the other party is and will remain the sole and exclusive property of the developing party.

**12.3 Assignment** Neither party may assign this Agreement without the prior written consent of the other party and any attempt to do so will be void. Any notice or consent under this Agreement will be in writing to the address specified below. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect. Any waivers or amendments shall be effective only if made in writing signed by a representative of the respective parties. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties, and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Both parties agree that the Agreement is signed by a duly, authorized company representative authorized to bind the company to its terms and services and no consent from any third party is required.

**12.4 Force Majeure.** Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement for causes beyond that party’s reasonable control and occurring without that party’s fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Client or Client employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**13.** **Choice of Law.** This Agreement will be deemed to have been made in, and shall be construed pursuant to the laws of the State of Washington and the United States without regard to conflicts of laws provisions thereof. Any suit or proceeding arising out of or relating to this Agreement shall be commenced in a federal or state court in Kirkland, Washington, and each party irrevocably submits to the jurisdiction and venue of such courts.

**14.** **Remedies.** Company reserves all remedies available at law or equity for any disputes that arise under this Agreement. In the event of a suit or proceeding under this Agreement, Client agrees to pay all attorneys’ fees if the federal or state court renders judgment substantially in Company’s favor.

**B. INITIAL STATEMENT OF WORK (SOW)**

The purpose of this SOW is to describe the Software and Services that Company will initially provide to Daltech, Inc. the “**Client**”) under the terms and conditions of the Services Agreement entered into between the parties on June 15, 2021 (the “**Agreement**”). Additional terms and conditions may be set forth in this SOW, and additional SOWs that may be subsequently signed.

To the extent the terms and conditions of this SOW are inconsistent with those of the Agreement, the terms of this SOW will control with respect to the Services described herein. Capitalized terms used herein shall have the same meaning as those used in the Agreement.

This SOW is an attachment to, and is incorporated by this reference into the Agreement as if fully set forth therein and made a part thereof. This SOW, together with the Agreement, represents the complete and total understanding of the parties regarding the Services to be provided by Company hereunder.

1. **Services Period.** Unless otherwise terminated earlier in accordance with the terms of the Agreement, the Services will end upon the completion of the Services by Company, which in no event shall be later than February 15, 2022, and payment by client.

2. **Fees.** The Services outlined in this SOW reflect the initial understanding of Client’s desired Deliverable and Company reserves the right to alter the manner in which Services are provided if Company determines different services are necessary to complete the Deliverable. Company shall provide the following Services to the Client:

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| --- | --- | --- |
| Itemized Fees | | Fee |
| Software | MagicSoft Mobile x 250 seats | $220,000 |
| MagicSoft Connect x 250 seats | $75,000 |
| MagicSoft Hub Connector | $25,000 |
| All services provided below are subject to additional costs for work performed outside of regular working hours, as specified in section 2.3 of the MSA. All new work will be scoped with Customer before commencing. | | |
| Service | Initial Setup | $22,000 |
| Profile Customizations | $22,000 |
| Connector Enablement | $10,000 |
| **Total** | **$374,000** |

3. **Fees and Terms.**

Fixed Price: $374,000

Start Date: 03/15/2021

End Date: 07/01/2021

If the Client desires to initiate changes to the SOW, it shall submit to Company a written request to do so. The request will set forth the nature of the Company’s proposed changes to the SOW. Contractor shall complete and return to the Company a written document (“**Change Order**”) setting forth (i) a written description of the changes to the SOW, (ii) any changes to the schedule, (iii) any changes or additions to the Deliverables and (iv) any changes or additions to the fees.

A Change Order will be binding only if signed by both parties. Any and all Change Orders will be governed by the terms and conditions set forth in this Agreement, and are hereby incorporated by this reference. Any additional Deliverables described in the Change Order will be subject to the Payment provisions as described in Section 7 of the Agreement.

4. **Hours of Operation**

* Engineering:
  + Monday-Friday 6AM-6PM PST
  + [engineering@digitalmemex.com](mailto:engineering@digitalmemex.com)
  + (206) 684-8889
* Support:
  + 24 x 7 x 365
  + [support@digitalmemex.com](mailto:support@digitalmemex.com)
  + (206) 684-8888

5. **Travel.** If the Deliverable will be completed according to a fixed price SOW and travel is required, then Client must sign the Agreement and SOW and pay required Deposit at least 30 days prior to proposed travel. If the Agreement and SOW are not signed and Deposit is not received at least 30 days prior to proposed travel, Company reserves the right to amend the SOW estimate solely with regard to travel and lodging expenses so that the SOW estimate reflects actual costs incurred by Company.

[Signature Page Follows]

Accepted and agreed to as of the SOW Effective Date by the authorized representative of each party.

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| --- | --- |
| **Daltech, Inc.** | **MagicSoft, Inc.** |
| Signature: | Signature: |
| Print Name: James Carter | Print Name: Morris Minor |
| Print Title: CTO | Print Title: CEO |
| Date: 06/01/2021 | Date: 06/01/2021 |
| Email: carter@daltech.com | Email: morris@magicsoft.com |