**[DO NOT FORWARD without removing the “GUIDANCE” included in this template]**

**MASTER SERVICES AGREEMENT**

THIS MASTER SERVICES AGREEMENT, dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_, is by and between **PROTIVITI INC.**, a Delaware corporation (“**Protiviti**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a **[Insert Type of Entity – corporation, partnership, LLC]** (“**Client**”).

WHEREAS, Protiviti is in the business of providing internal audit, risk assessment, staff augmentation and consulting services; and

WHEREAS, Client desires to engage Protiviti with respect to such services and may desire to engage Protiviti from time to time for additional services;

THEREFORE, the parties hereto agree as follows:

**Agreement**

This Master Services Agreement, including the terms and conditions set forth in Attachment I, all exhibits referenced herein and attached hereto, and each Statement of Work (as defined below) (collectively, the “**Agreement**”) represents the entire agreement between Protiviti and Client regarding the engagement to which a Statement of Work refers, supersedes all other oral, written or electronic communications between the parties concerning the subject matter thereof, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns. If Protiviti accepts a purchase order initiated by Client on a separate form, it is done as an accommodation only and any terms and conditions contained in that form which vary, amend or supplement the terms and conditions of this Agreement or Statement of Work shall be null and void and of no effect. The term "hereunder" shall mean this entire Agreement as a whole unless reference to a specific section of this Agreement is made. In the event of conflict between any Statement of Work and this Agreement (excluding such Statement of Work), the terms set forth in this Agreement shall govern unless the parties specifically agree otherwise in such Statement of Work. This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Statements of Work**

All services that Protiviti shall provide under this Agreement shall be memorialized in a statement of work substantially in the form attached hereto as Exhibit A, which, when fully executed by both parties, shall be incorporated herein and become part of this Agreement as though fully set forth herein (each a “**Statement of Work**”). Each Statement of Work will include a description of Protiviti’s services (the “**Services**”), a summary of Protiviti’s approach, a list of the key tasks, a description of the Deliverables (as defined below), if any, a list of Client’s obligations, a description of the project staffing and the names of the engagement team leaders, fees for Services and the stipulated level of involvement by Client personnel. If Client seeks to consolidate their use of Protiviti’s services through the use of Vendor Management Systems or Managed Service Provider (“VMS”) and requires that Protiviti provide certain services through such VMS, the parties agree that Protiviti may increase its fees and costs for the provision of such services through the VMS. In addition, the parties agree that such requirement will be limited to the provision of staffing services only, and Protiviti shall not be required to provide consulting services through use of a VMS. Client acknowledges that Protiviti’s work is highly dependent on the availability of Client’s personnel, Client’s contractors and other factors beyond the control of Protiviti. Protiviti will use commercially reasonable efforts to assist Client in meeting any stated deadlines but Client acknowledges that despite these efforts, due to, among other things, the factors noted above, any stated deadlines and timelines may not be met. Periodically, Protiviti may adjust its fees to reflect (i) pricing changes and rate modifications associated with customary promotions of engagement personnel and (ii) the use of subject matter experts. Such changes will be communicated to Client in a timely manner and will apply to Client after such notice. Rates set forth in a Statement of Work are representative rates for the Services. Different or additional rates may apply to the Services. Protiviti will provide Client with written notice (which includes notice by e-mail) of such different or additional rates. Client agrees to and accepts such different or additional rates by receipt of the Services. Client shall be responsible for payment of all taxes and any related interest and/or penalties resulting from any payments made or Services rendered hereunder, other than any taxes based on Protiviti’s net income. Payment is due upon receipt of invoice. Should any invoice remain unpaid by Client for more than thirty (30) days, interest shall be paid at a rate equal to the lower of one and one-half percent (1.5%) per month or the highest rate permitted by applicable law.

“**Deliverables**” means literary works or other works of authorship (such as documentation, reports and similar works) that Protiviti is required to deliver to Client as part of the Services, in each case as specifically set forth in the Statement of Work as Deliverables. All Deliverables will be prepared solely for the use of Client’s management, employees and directors. The Deliverables may not be relied upon for any purpose by any third party without the prior written consent of Protiviti. Each party grants only the licenses and rights specified in this Agreement. No other rights or licenses (including, but not limited to, licenses or rights under patents) are granted either directly, by implication or otherwise.

|  |  |  |  |
| --- | --- | --- | --- |
| **PROTIVITI INC.** | | **INSERT FULL NAME OF CLIENT** | |
|  |  |  |  |
| By: |  | By: |  |
|  | **Insert Name of Managing Director** |  | **Insert Name of Addressee** |
|  | Managing Director |  | **Insert Title of Addressee** |
| Date: |  | Date: |  |

**ATTACHMENT I**

**Terms and Conditions to Master Services Agreement Dated as of [2018-12-12] Between**

**[INSERT NAME] (“Client”) and PROTIVITI INC. (“Protiviti”)**

1. **Client Responsibility.** Client acknowledges that the achievement of any policy, process, model, system or risk management practice depends not only on the design and implementation, but also on the quality, experience and continuity of personnel involved, the diligent ongoing execution of any such policy, process, model, system or risk management practice, and appropriate modifications as changing conditions warrant. Client understands and accepts responsibility for all decisions related to, and implementation and ongoing modification of, policies, processes, models, systems and risk management practice assessments, methods and assumptions, if any, developed in the course of the Statement of Work.

All Deliverables are based upon information made available by Client to Protiviti as of the date such Deliverables are provided to Client. Protiviti has no obligation to update any Deliverable.

**[Guidance For full outsourcing and co-outsourcing of Internal Audit work, add the following to the end of Client Responsibility section:]**

In addition, the ultimate responsibility as to the accuracy and sufficiency of Protiviti’s approach and the specific scope of Protiviti’s work and the nature, extent and timing of Protiviti’s procedures performed, in each case, rests with Client (e.g., Chief Audit Executive, management and the Audit Committee).

1. **Responsibility for Internal Controls.** Client is solely responsible for establishing and maintaining its own effective internal control system, record keeping, management decision-making and other management functions. Client shall be fully and solely responsible for (i) applying independent business judgment with respect to the Services and the Deliverables, (ii) making any implementation decision related thereto, and (iii) determining further courses of action with respect to any matters addressed in any Deliverable or Service.
2. **Regulated Activity.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services. To the extent required by applicable law (e.g., the U.S. Securities Exchange Act of 1934 and U.S. Securities and Exchange Commission regulations (referred to collectively as the “**SEC Rules**”)), Client (i) acknowledges to Protiviti that it is Client’s responsibility to design, establish and maintain a system of internal accounting controls in compliance with applicable laws (including the SEC Rules), including “disclosure controls and procedures” and “internal controls and procedures for financial reporting,” as each such term is used and defined under the Sarbanes-Oxley Act of 2002, as amended, and the interpretive guidance and regulations relating to such act, and (ii) acknowledges to Protiviti that it is Client’s responsibility to make such disclosures with respect to this engagement that are required by applicable laws (including SEC Rules).

**[Guidance: If Client is a Government entity, replace the Regulated Activity section with the following:]**

**Non-CPA Status.** Client understands that Protiviti is not a public accounting firm and does not issue opinions on financial statements or offer any attestation services.

1. **Authoritative Standards.** Client acknowledges that there is no authoritative standard against which risk management, business consulting, and technology consulting practices can be directly compared. In practice, methodologies and approaches vary considerably. New and refined practices continue to evolve and the characterization of policies, procedures or models as sound, “industry standard” or “best” practices is judgmental and subjective.
2. **Confidential Information.** Each party (the “**Recipient**”) agrees to protect the Confidential Information of the other party (the “**Disclosing Party**”) in a manner consistent with the treatment that Recipient accords its own Confidential Information of a similar nature, and the Recipient agrees to use and reproduce Confidential Information only to perform its obligations under this Agreement, for the discussion and/or evaluation of potential transactions, or for its internal collection, analysis and training purposes. The Recipient may disclose Confidential Information to its employees, agents, and subcontractors, who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. The Recipient shall be liable for any use, disclosure or dissemination of Confidential Information by such parties. In addition, unless prohibited by applicable law, Protiviti may disclose Client’s Confidential Information to its network of member firms, who may collect, use, transfer, store or otherwise process it in the various jurisdictions in which they operate to facilitate the provision of the Services, to comply with applicable law, to check for conflicts, and for any quality, risk management, or financial accounting purposes and other administrative support services. Protiviti shall be responsible to Client for maintaining the confidentiality of such Confidential Information regardless of where or by whom such information is processed on Protiviti’s behalf. Confidential Information is any information which is identified by the Disclosing Party at the time of disclosure as being of a confidential nature (including, but not limited to, business plans, products, trade secret processes or methodologies, software, documentation, design specifications, other technical documents and other proprietary rights or information) or that is disclosed to the Recipient under circumstances that would lead a reasonable person to understand that such information is confidential or proprietary in nature. Confidential Information does not include information that (i) is or becomes generally available to the public without breach by Recipient of its confidentiality obligations under this Agreement, (ii) is received by Recipient from a third party without restriction against disclosure, (iii) was known to Recipient without restriction prior to disclosure, or (iv) is independently developed by Recipient without subsequent use of Disclosing Party’s Confidential Information.  If Recipient becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, Recipient shall (to the extent legally permitted) provide Disclosing Party with prompt prior written notice of such requirement so that discloser may seek a protective order or other appropriate remedy.
3. **Distribution of Deliverables.** Deliverables or other documents or materials that are provided by Protiviti that are Protiviti-branded or marked as being authored by Protiviti, or Deliverables or other documents or materials that, based on the circumstances, context or any related communications, would lead a reasonable reader to understand that Protiviti produced, authored or contributed to such Deliverables, documents or materials (collectively, “**Branded Deliverables**”) are for the use and benefit of Client only and not for any other party (each a “**Third Party**”), including, but not limited to, Client’s affiliates, shareholders, business partners, contractors or advisors. If Client desires to disclose Branded Deliverables, or make reference to Protiviti, to any Third Party (other than Client’s legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential), Client will obtain Protiviti’s prior written approval and, if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti. Protiviti accepts no liability or responsibility to any Third Party who benefits from or uses the Services or gains access to any Deliverables, including, but not limited to, Branded Deliverables. Because Protiviti accepts no liability to any Third Party with respect to the Services or Deliverables, including, but not limited to, Branded Deliverables, Client agrees to indemnify, defend and hold Protiviti, its affiliates, directors, officers, employees, vendors, and contractors (“**Protiviti Parties**”) harmless from and against any and all losses, damages or liabilities (including costs, expenses and reasonable attorneys’ fees) resulting from or related to a Third Party claim, regardless of the legal theory asserted, arising in any manner out of or in connection with the Services or Deliverables, including, but not limited to, Branded Deliverables. The Protiviti Parties are entitled at their election to retain separate counsel; provided that it shall be at their own cost and expense, except where the need for separate counsel arises from a conflict of interest.

**[Guidance: If Client is the Government, replace the standard Distribution of Deliverables section with the following:]**

**Distribution of Deliverables.** Deliverables or other documents or materials that are provided by Protiviti that are Protiviti-branded or marked as being authored by Protiviti, or Deliverables or other documents or materials that, based on the circumstances, context or any related communications, would lead a reasonable reader to understand that Protiviti produced, authored or contributed to such Deliverables, documents or materials (collectively, “**Branded Deliverables**”) are for the use and benefit of Client only and not for any other party (each a “**Third Party**”), including, but not limited to, Client’s affiliates, shareholders, business partners, contractors or advisors. If Client desires to disclose Branded Deliverables, or make reference to Protiviti, to any Third Party (other than Client’s legal counsel and external auditors who need access to such information and who have agreed to keep such information confidential), Client will obtain Protiviti’s prior written approval and, if requested by Protiviti, obtain from such Third Party a non-disclosure agreement and release in a form satisfactory to Protiviti. Protiviti accepts no liability or responsibility to any Third Party who benefits from or uses the Services or gains access to any Deliverables, including, but not limited to, Branded Deliverables.Notwithstanding the foregoing, Client may disclose and distribute Deliverables if, and solely to the extent that, disclosure is required by the applicable public records act and Client receives a request for such disclosure; provided, that Client provides Protiviti with prior written notice of such intended disclosure in sufficient time to allow Protiviti to seek confidential treatment of such information.

**[Guidance: For FSI and Healthcare clients where this engagement is for outsourcing of the internal audit function, add the following to the end of the standard Distribution of Deliverables section:]**

Nothing contained in this Agreement shall prohibit the legally required disclosure of Deliverables to Client’s regulators, who may be granted access to such Deliverables to the extent legally required; provided that Client provides Protiviti with prior notice of such intended disclosure so that it may seek confidential treatment of such information.

1. **No Third-Party Beneficiaries.** This Agreement has been entered into solely between Client and Protiviti, and no third-party beneficiaries are created hereby.
2. **Responsibility for Information.** Protiviti shall be entitled to rely on all information provided by, and the decisions and approvals of, Client in connection with Protiviti’s work hereunder. Client hereby releases Protiviti and its personnel from any liability and costs relating to the Services to the extent that such liability and costs are attributable to any information provided, or decisions or approvals made, by Client personnel that were not complete, accurate or current. In addition, Client has the sole responsibility for (and any liability associated with) the selection and retention of the vendor (the “Vendor”) providing the services to upload, store and transmit data between Protiviti and Client. PROTIVITI HAS NO LIABILITY OR RESPONSIBILITY FOR ANYTHING ARISING OUT THE SERVICES PROVIDED BY THE VENDOR AND MAKES NO WARRANTIES WITH RESPECT TO THE VENDOR’S Products OR SERVICES.
3. **Services.** Changes to any Services must be agreed upon by Protiviti and Client and will not be considered effective unless and until both parties agree in writing to an amendment to the applicable Statement of Work. Client shall reimburse Protiviti for any fees or expenses (including, but not limited to, legal expenses) reasonably incurred by it in connection with providing evidence in, or preparing to serve or serving as a witness with respect to, any lawsuits, investigations, claims or other proceedings in any way connected with, or related to, the Services.
4. **Indemnification.** Protiviti and Client shall indemnify, defend and hold harmless the other party for any losses for bodily injury or damages to real property resulting directly from the indemnifying party’s negligence or willful misconduct.
5. **Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, Client and Protiviti agree that, regardless of the legal theory asserted (including, but not limited to, breach of contract, warranty, negligence or tort): (i) Protiviti’s entire liability to Client or any person asserting claims on behalf of or in the name of Client will not exceed in the aggregate, for all claims, liability, losses, damages or expenses, the total amount of fees paid to Protiviti under the Statement of Work that is the subject of the claim, provided that this subsection (i) shall not apply to Protiviti’s indemnification obligations under this Agreement; and (ii) neither party shall be liable to the other party or any person asserting claims on behalf of or in the name of the other party for consequential, indirect, incidental, punitive or special damages of any nature suffered by Client or Protiviti (including, but not limited to, lost profits or business opportunity costs), even if the parties have been advised of the possibility of such damages, provided that this subsection (ii) shall not apply to any indemnification obligations under the Agreement.
6. **Engagement Team Restrictions.** If for any reason any of the employees or subcontractors designated in the applicable Statement of Work is not able to complete this engagement, Protiviti will provide employees or subcontractors with similar qualifications and experience to complete the assignment. For a period commencing as of the date of this Agreement and ending one (1) year from the date that a Protiviti employee or subcontractor personnel stops providing Services to Client under this Agreement, neither Client nor any of its affiliates shall hire or solicit such individual. If Client or an affiliate hires or solicits any such Protiviti employee within the proscribed time period above, Client shall pay Protiviti a fee equal to the annual salary of such individual as liquidated damages. If Client or an affiliate hires or solicits any Protiviti subcontractor personnel within the proscribed time period above, Client shall pay Protiviti a fee equal to thirty percent (30%) of such subcontractor personnel’s proposed annual compensation with Client or its affiliate, including bonuses, as liquidated damages.
7. **Workspace.** Client shall provide workspace for Protiviti personnel at its work sites, as well as occasional administrative support services related to the Services. Client shall provide Protiviti personnel with any necessary safety orientation and security access for work on Client’s premises. In the event the Client is unable to provide reasonable workspace, Protiviti will secure appropriate space and charge Client for such expenses.
8. **Warranties.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PROTIVITI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW, COURSE OF PERFORMANCE OR DEALING, CUSTOM, USAGE IN THE TRADE OR PROFESSION OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.
9. **Publicity.** Neither party shall use the name of the other party, in part or whole, or any of their trademarks or trade names without the other party’s prior written approval. Notwithstanding the foregoing, Client consents to Protiviti’s use of Client’s name and a general description of the Services to be performed by Protiviti under this Agreement in resumes and proposals.
10. **Proprietary Rights in Deliverables and Data.** Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client’s fulfillment of all payment obligations hereunder, Protiviti agrees that Client shall own the copyright in the Deliverables, excluding any Protiviti Proprietary Materials (as defined below) and any third-party software that is incorporated into the Deliverables. Client acknowledges that as part of performing Services, Protiviti may utilize proprietary copyrights, patents, trade secrets, software, ideas, concepts, know-how, tools, models, processes, methodologies and techniques (including any derivatives, enhancements or modifications thereto) which have been originated or developed by Protiviti, or which have been purchased by, or licensed to, Protiviti (collectively, “**Protiviti Proprietary Materials**”). Client agrees that Protiviti retains all right, title, and interest in the Protiviti Proprietary Materials. Subject to the terms of this Agreement, including Section 6 (Distribution of Deliverables) and Client’s fulfillment of all payment obligations hereunder, Protiviti grants and Client accepts a nonexclusive, nontransferable license to use the Protiviti Proprietary Materials solely to the extent necessary to make use of the Deliverables as contemplated by the applicable Statement of Work.
11. **Termination of Agreement.** Either party may at any time and without cause terminate this Agreement by providing 30 days’ prior written notice of termination to the other party. The rights and obligations set forth in Sections 5, 6, 8, 9, 10, 11, 12, 14, 15, 16 and 17 shall survive termination of this Agreement. Notwithstanding the foregoing, provided neither party is in default under this Agreement, no termination of this Agreement shall be effective until the services under any then outstanding Statement of Work are completed. In the event of such termination, Client will pay Protiviti for all services rendered and expenses incurred by Protiviti through the date of termination. After conclusion of the work contemplated in a Statement of Work or the termination or expiration of a Statement of Work (a “**Prior SOW**”), for so long as Client and Protiviti are actively negotiating a new Statement of Work for Protiviti’s provision of additional Services to Client that are substantially similar to those provided under the Prior SOW, the provisions of this Agreement and the Prior SOW, including any payment terms, shall apply to such Services provided by Protiviti prior to the finalization of such new Statement of Work.
12. **Governing Law.** This Agreement and the rights and duties of the parties hereunder shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to its conflict of laws provisions.
13. **Notice.** Unless otherwise specified in the Agreement, all notices or other communications required or desired to be sent to either party shall be in writing and sent by first class mail, postage prepaid, by next-day courier or by facsimile, to the attention of the person identified below, at the address shown below or to the facsimile number shown below. Either party may change such person, address or facsimile number by written notice to the other party. Notice shall be effective on the fifth (5th) business day after mailing, on the first (1st) day after the date of sending via next-day courier, or on the date of transmission if sent by facsimile (provided that notice shall be effective on the first (1st) business day following the date of transmission if transmission is effected on a non-business day).

|  |  |
| --- | --- |
| Protiviti: | Protiviti Inc.  **Attn: [Name]**  Managing Director  **[Address]**  **[City] [State] [Postal Code]**  Facsimile: **[Fax Number]** |
| cc: | Protiviti Inc.  Attn: Legal Department  555 Market Street, Suite 1800  San Francisco, CA 94105 |
| Client: | **[Company]**  **Attn: [First Name] [Last Name]**  **[Address]**  **[City] [State] [Postal Code]**  Facsimile: **[Fax Number]** |

1. **Assignment.** Neither Protiviti nor Client may assign this Agreement, by operation of law or otherwise, without the prior written consent of the other party. Any assignment in violation of this provision shall be deemed to be null and void.
2. **Business Practices.** Each party agrees to comply with all equal employment opportunity laws applicable to the party, including, but not limited to, Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1991, the Americans with Disabilities Act, the affirmative action requirements of Executive Order 11246, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended. Client authorizes Protiviti and its affiliated entities (and their successors and assigns and contractors) to store and use Client’s business contact information wherever they do business, in connection with Protiviti’s and its affiliated entities’ services and in furtherance of Protiviti’s and its affiliated entities’ business relationship with Client. Client is responsible for obtaining any consent necessary for such authorization.
3. **Force Majeure.** Neither party shall be liable for any default or delay in the performance of its obligations (except for payment obligations) under this Agreement if such default or delay is caused by an act of God or other circumstance outside the reasonable control of the party, including, but not limited to, fire, flood, earthquake, natural disasters or other acts of God, terrorist acts, riots, civil disorders, freight embargoes, government action, or the like.
4. **Severability.** If any term of the Agreement is found to be illegal, invalid or unenforceable under applicable law, such term shall be excluded to the extent of such illegality, invalidity or unenforceability; all other terms of this Agreement shall remain in full force and effect; and, to the extent permitted and possible, the illegal, invalid or unenforceable term shall be replaced by a term that is legal, valid and enforceable and that comes closest to expressing the intention of such illegal, invalid or unenforceable term.
5. **Waiver.** No waiver shall be deemed to have been made by either party unless it is expressed in writing and signed by the waiving party. The failure of either party to insist in any one or more instances upon strict performance of any of the terms of provisions of this Agreement, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, and no waiver by either party of any one or more of its rights or remedies under this Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedies hereunder or at law.
6. **Headings and Interpretation.** The section headings in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. All parties hereto have participated substantially in the negotiation and drafting of this Agreement and each party hereby disclaims any defense or assertion that any ambiguity herein should be construed against the drafter of the Agreement.
7. **Regulatory Compliance.** Client acknowledges and agrees that it is responsible for its own legal representation and guidance related to the Services or Deliverables, and that it will consult its own legal resources before acting upon any Services or Deliverables. Client further acknowledges and agrees that Protiviti is not a law firm and is not providing legal advice or analysis and that Protiviti has not engaged legal counsel with respect to the Services or Deliverables.
8. **Export Control Laws**. Client hereby acknowledges and agrees that the Services and/or Deliverables may be subject to applicable export control and trade sanction laws, regulations, rules and licenses ("**Export Control Laws**"). Client shall comply with the Export Control Laws and agrees that it alone is responsible for ensuring its compliance with Export Control Laws.

**[Guidance: Add the following for work for financial institutions or where we may have access to non-public personally identifiable information.]**

**Non-Public Personally Identifiable Information.** In providing Services to Client, Protiviti may have access to certain proprietary information owned by Client and not generally available to the public; this information may include Non-Public Personal Information (“**NPPI**”) of Client’s customers as that term is defined in The Gramm-Leach-Bliley Act. Protiviti is authorized to use this NPPI solely in conjunction with the Services provided to Client. Protiviti, its employees and agents will not disclose any NPPI to any outside party without Client’s consent unless compelled by subpoena or other validly issued administrative or judicial request. As between the parties, the NPPI is the sole property of Client and Protiviti agrees that, upon request of Client, it will return or destroy all NPPI, unless otherwise required by law or regulation to maintain such information. If requested by Client, Protiviti shall cooperate with Client in evaluating the security measures that Client requires Protiviti have in place for the protection of NPPI. If Client requests additional security measures and Protiviti cannot for any reason meet such security measures for the engagement contemplated hereby, Protiviti shall notify Client and Client may, as its sole remedy, terminate this Agreement without cause upon written notice to Protiviti.

**[Guidance: Add the following for SharePoint Services or SAP Implementation Services.]**

**Third-Party Products.** At the Client’s request, Protiviti shall install the third-party software (the “**Third-Party Products**”) described in the Statement of Work.

Client acknowledges and agrees that all product warranties, license terms, software support and maintenance for the Third-Party Products are  provided directly by the third-party manufacturer to Client, and that Protiviti is not a party to, or liable or responsible for, such warranties, terms, support or maintenance.

PROTIVITI MAKES NO WARRANTIES WITH RESPECT TO THE THIRD-PARTY PRODUCTS AND PROVIDES SUCH PRODUCTS AS-IS, WHERE-IS.  CLIENT ACKNOWLEDGES AND AGREES THAT ANY WARRANTIES RELATING TO THE THIRD-PARTY PRODUCTS SHALL BE THOSE, IF ANY, PROVIDED BY THE THIRD-PARTY MANUFACTURERS, AND CLIENT SHALL LOOK SOLELY TO THE THIRD-PARTY MANUFACTURERS WITH RESPECT THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ISSUES REGARDING THE USE OR PERFORMANCE OF THE THIRD-PARTY PRODUCTS.

**EXHIBIT A**

**STATEMENT OF WORK**

***Check one***

**Project  Staff Augmentation**

This is a Statement of Work referred to in the Master Services Agreement (the “**Agreement**”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_, by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Client**”) and Protiviti Inc. (“**Protiviti**”). This Statement of Work shall be effective upon the first to occur of (i) the date Protiviti commences providing the Services or (ii) the date it is signed by both parties.

1. Engagement Team Leaders and Project Staffing:

Upon establishing and confirming the project schedule and specific requirements of Protiviti resources with **[Insert Name of Client Sponsor]**, Client’s project sponsor, Protiviti will require at least two weeks’ notice prior to the effective date of any modification to the Protiviti personnel schedules. In the event of a schedule change imposed by Client that occurs less than two weeks prior to the date Protiviti resources are scheduled to be deployed, Client may be subject to a redeployment fee to compensate Protiviti for the amount of hours dropped or delayed from the schedule at the rate of 75% of the applicable hourly rate if Protiviti is unable to redeploy the resource(s) to another client engagement.

1. Client’s Project Manager and Additional Client Contacts: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
2. Name of Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
3. Project Description:
   * Protiviti’s Approach
   * Key Tasks
   * Client’s Responsibilities

**[Guidance: See solutions specific client responsibilities, required information or tasks that are specific to that solution.]**

1. Special Conditions: \_\_\_\_\_\_\_\_\_\_\_

**Project Scope and Approach**

Client desires to engage Protiviti to **[Insert: summarize Client needs and the engagement]**.

Protiviti’s work will consist of:

* **[Guidance: List the overall steps that we are going to perform during the course of this project. Describe as if you were explaining the primary engagement steps to the client’s C-level executive, using basic business terminology, avoiding detailed technical terms.]**
* **[Guidance: Where this engagement is for outsourcing of the internal audit function, in addition, include scope and frequency of internal audit work to be performed or reference a separate audit schedule. Include the following statement:** The work will be conducted as a co-sourcing [or outsourcing] arrangement, under the direction of the **[**Internal Auditor or Internal Audit Liaison**]**. Protiviti will not perform management functions, make management decisions, or act, or appear to act, in a capacity equivalent to that of a member of management and will comply with applicable independence standards.**]**

Client will perform the following tasks and provide Protiviti the following information:

**[Guidance: List the primary tasks and information required from the client to help ensure efficient and effective project delivery. Some examples are (see below):**

* Maintain senior management sponsorship for the project,
* Timely access to appropriate personnel for interviewing and review,
* Maintain overall responsibility for management decisions concerning the project,
* Provide ongoing direction regarding scope and objectives,
* Timely review of Protiviti deliverables.**]**

**[Guidance: If you checked Staff Augmentation above, include the provisions provided at the end of this template. The first three paragraphs and the Job Limitation provision must be included in all Staff Augmentation SOWS. In addition, if using RH contractors, you must also include the Reference Check and Compensation provisions.]**

**[Guidance: Add the following for IT security testing work.]**

**Release; Use of Certain Automated Tools.** Client understands and agrees that Protiviti’s testing procedures and the tools that Protiviti uses, including security assessment tools and/ or security software solutions and other automated tools, are designed to detect possible weaknesses in network security controls. Client understands and acknowledges, however, that Protiviti cannot provide assurance that these tools or any other procedures that Protiviti might apply will identify all possible vulnerabilities. There is a possibility that the tools referenced above may, because of certain attributes of Client’s software, inadvertently impact Client’s network performance or Client’s software configuration or data. Client agrees not to hold Protiviti responsible or liable for any adverse effects relating to the use of such tools.

**[Guidance: Add the following for engagements that will be providing tax consulting.]**

**Release: Tax Information.** Client covenants and agrees that, should it determine that legal representation is required with regard to any U.S. federal, state, local, or foreign tax matters and the Services, Client is responsible for the provision and costs of its own legal representation concerning such matters. Client further acknowledges and agrees that (1) Protiviti may receive information requests or subpoenas from the Internal Revenue Service, other governmental authorities or other third parties with respect to Client in connection with or related to the Services, or may otherwise be required by applicable law to furnish information to the Internal Revenue Service, other governmental authorities or other third parties; (2) Protiviti will (unless prohibited by law) notify Client of such information requests from any third parties, including, but not limited to, the Internal Revenue Service; (3) while Protiviti will respect Client confidentiality and comply with all legal and appropriate requests from Client’s legal counsel to the extent legally permitted, Protiviti will comply with all legal requirements of any governmental authority or other third party; and (4) Protiviti will have sole discretion with respect to the preparation of any and all responses to such information requests and with respect to the provision of any additional information, and Protiviti will not be required to obtain consent from Client with respect to such responses and additional information.

**[Guidance: Add the following if QRM MD has approved the use of client’s portal or third-party web site to exchange and gather data and the disclaimer is not included in the MSA.]**

**Disclaimer:** Client has the sole responsibility for (and any liability associated with) the selection and retention of the vendor (the “Vendor”) providing the services to upload, store and transmit data between Protiviti and Client. PROTIVITI HAS NO LIABILITY OR RESPONSIBILITY FOR ANYTHING ARISING OUT THE SERVICES PROVIDED BY THE VENDOR AND MAKES NO WARRANTIES WITH RESPECT TO THE VENDOR’S Products OR SERVICES.

1. Fees:

Protiviti will charge for this work based upon the level of experience, expertise and time required for completing this project, plus out-of-pocket expenses and billing processing fees (e.g. VMS). These charges are billed at hourly rates in accordance with the following schedule:

**[Guidance: This is a sample bill rate table by level. Bill Rate $$ ranges by level are acceptable. Combining Levels is acceptable (ex: Director/Associate Director having the same Bill Rate Per Hour). The iBUDGET or Pricing tools must include rates for each job function level, even if not individually called out in the contract rate table. For future administrative efficiency, consider negotiating contract rates for each level or resource type even if not initially contemplated. (See additional Guidance below).**

1. **Unless contract rates by level are identical for each Resource Type, e.g. Protiviti contracting Business Unit; Contractors; Protiviti global offices; Member Firm and Affiliates; be certain to negotiate rates for each unique Resource Type. Refer to Guidance below to mitigate currency fluctuation risk.**
2. **Protiviti global offices will ultimately transfer fees and expense via an inventory transfer to be billed to client. Protiviti Global Office revenues are recorded in the Global Offices' respective revenues. Note: Protiviti Member Firm and Affiliate countries appear as Independent Contractors revenue in the Protiviti Business Unit contracting with the client.]**
3. **Include a rate table for each specialized software tool or license chargeback. This is incremental to the 6% technology fee.**
4. **If the client does not have sufficient workspace for the Protiviti engagement team, Protiviti to bill client for workspace.**
5. **For cross border resources negotiate the following guidelines to mitigate currency fluctuation risk: Net bill rates to be quoted to the client in the local currency of the country performing the work in both the proposal and contractual documents. If you quote in just one currency when multiple countries with different currencies are involved, the quoted amount to the client should include language advising that the foreign bill rate will be translated based upon exchange rates at the dates of the invoices. If the client will not accept billing country-specific local currency or the exchange rate verbiage (which shouldn't be very common), the referring office will bear the currency risk. Please remember that currency risks can be significant and at a minimum, all inventory transfers between Protiviti business units should be continuous and then invoiced and collected from the client timely.]**

|  |  |
| --- | --- |
| Level | Billing Rate |
| Managing Director | $**[** **]** |
| Senior Director/Director | $**[** **]** |
| Associate Director | $**[** **]** |
| Senior Manager | $**[** **]** |
| Manager | $**[** **]** |
| Senior II (or combine into just “Senior”) | $**[** **]** |
| Senior I (or combine into just “Senior”) | $**[** **]** |
| Range example: Senior I – Senior II | $**[** **]**-$**[** **]** |
| Consultant II (or combine into just “Consultant”) | $**[** **]** |
| Consultant I (or combine into just “Consultant”) | $**[** **]** |
| Intern | $**[** **]** |
| Additional Subject Matter Experts (enumerate each one) | $**[** **]**-$**[** **]** |
| Special Software Tools/License  --– enumerate for each too/license/other non-labor based charge | $**[** **]** |

In addition to professional fees, out-of-pocket expenses incurred (including reimbursement for use of software and research tools),and billing processing fees (e.g. VMS), a 6% charge for technology and knowledge capital usage (applied to professional fees) will be billed to Client.

Client shall provide workspace for Protiviti personnel at its work sites. If the Client is unable to provide reasonable workspace, Protiviti will secure appropriate space, provide the estimate for the workspace to the Client, and then bill the Client accordingly.

[**Guidance: Include only if client requires. Otherwise eliminate timetable:** Protiviti estimates the length of this project will be approximately **[Insert number of weeks]** weeks. ]

[**Guidance:  Include an estimated fee or fee range only if client requires:** Provided that there is no change to the scope of the work, we estimate the fees for completion of this engagement to be $**[Insert total net fees]**. **[Alternate:** Provided that there is no change to the scope of the work, we estimate that Protiviti’s fees for this engagement will run approximately $**[Insert amount per week or month]**.  If Protiviti reaches the estimated fee amount above, (i) Protiviti will: (a) provide the Client with written notice (which includes e-mail) promptly after it reaches the estimated fee amount and (b) continue to perform its Services under the terms of this Statement of Work, and (ii) Client will pay for such Services, unless and until the Client provides written notice to Protiviti otherwise.**]**

Protiviti will require an initial payment of $**[Insert fee amount]** upon execution of this Statement of Work. **[Guidance: This amount should represent approximately one month of net fees or about 25% of the project fees for smaller projects.] [Guidance: Include the following sentence for Internal Audit engagements.** Also, please be advised that, should Protiviti personnel with additional subject-matter training or experience be required, any quoted amounts or rates will be subject to increase to reflect their higher billing rates.**]**

**[Guidance: As an alternative to due upon receipt payment obligation use the following:** Subject to the Agreement, Client’s monthly payment under this Statement of Work will be $\_\_\_\_\_\_\_\_\_\_\_ **[insert an amount that represents the average monthly amount of fees to be incurred based on the estimate provided to the client]**. Protiviti will send Client a monthly notice of payment due, but failure to do so will not obviate Client’s obligation to make the scheduled monthly payment on time. The first payment will be due upon your signing this Statement of Work with each successive payment due on the \_\_\_\_\_\_\_\_\_\_\_ business day of each calendar month thereafter until our services are completed or terminated. Periodically, Protiviti may issue an additional invoice and modify the monthly payment amount if its actual fees and out-of-pocket expenses for a month or a period of months exceed the monthly payments collected for such month or period of months. Such invoice is due upon receipt. **[**If, at the end of an engagement, the monthly payments have exceeded the total actual fees and out-of-pocket expenses for such engagement, Protiviti will refund Client the excess amount paid to Protiviti within thirty (30) days.**]**

**[Guidance: Regional Managing Director approval is required to change the payment terms. Where project utilizes specialized skills or deep subject matter expertise fee section should include premium pricing. Fixed fee, not-to-exceed or contingent fee arrangements are generally discouraged and should be prepared with caution since these types of arrangements may cause unique revenue recognition and reserve accounting issues. Regional Managing Director pre-approval is required for these types of arrangements]**

**[Guidance: For SOX work, replace the second paragraph of the standard Professional Fees and Expenses section above with the following language:**

Provided that there is no change to the scope of the work, we estimate our professional fees for completion of Phase I activities to be $\_\_\_\_\_\_\_\_\_\_ (approximately \_\_\_\_ hours). In our proposal, we have provided you a rough estimate of our fees for Phase II activities by processes and locations. A firm estimate of activities in Phase II cannot be completed until we complete Phase I activities. Phase II fees can range from $\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**[Guidance: If Client’s bankruptcy appears imminent, use the language from the JAL instead of the standard Professional Fees and Expenses language. In addition, (i) provide as much detail as possible in the Project Scope section and (ii) if at all possible, estimate a range of fees either for the project as a whole or for the individual portions of it. IF A CLIENT DOES IN FACT FILE BANKRUPTCY, COUNSEL SHOULD BE CONSULTED.]**

**[Guidance: If you checked Staff Augmentation above, include the provisions provided at the end of this template. If Staff Augmentation work is performed in CT, OH or PA, or for the benefit of a client in CT, contact the Field Service Center Billing Department for further guidance on applicable sales tax.]**

1. Deliverables:

**[Guidance: See JAL for guidance on project deliverables provisions that should be included here, plus additional provisions needed in this section for FSI clients where the engagement is for outsourcing of the internal audit function.]**

**[Guidance: If you checked Staff Augmentation above, no deliverables may be provided under the SOW. Add “None” or “N/A” here to make it clear that no deliverables will be provided under the Staff Augmentation SOW.]**

1. Address for notice (if different or additional to those set forth above):

Executed this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_.

All of the terms, covenants and conditions set forth in the Agreement are incorporated herein by reference as if the same had been set forth herein in full.

|  |  |  |  |
| --- | --- | --- | --- |
| **PROTIVITI INC.** | | **INSERT FULL NAME OF CLIENT** | |
|  |  |  |  |
|  |  |  |  |
|  |  |  |  |
| By: |  | By: |  |
|  | **Insert Name of Managing Director** |  | **Insert Name of Addressee** |
|  | Managing Director |  | **Insert Title of Addressee** |

**[Staff Augmentation Provisions to include if SOW is for Staff Augmentation:**

Protiviti shall provide to Client the following personnel (“**Personnel**”): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Client shall provide day-to-day supervision, oversight and direction of the Personnel. Personnel shall provide the following Services: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties may increase, reduce or change Personnel and/or Services by mutual written agreement.

Personnel shall report directly and exclusively to Client, and Client shall be solely responsible for reviewing and approving any and all work performed by Personnel. Personnel shall observe Client’s reasonable policies regarding working conditions and business hours, to the extent such policies are made known to Personnel; provided that Protiviti’s sole responsibility for the refusal of any Personnel to observe such policies shall be to furnish Client with replacement Personnel who agree to observe such policies.

Personnel will provide Services commencing on \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_, and will provide the Services until approximately \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_. If, for any reason, any Personnel is unable to complete the service period, or if his (her) performance does not meet Client’s expectations, Protiviti will endeavor to provide a suitable replacement, subject to Client’s approval. If Protiviti is unable to identify a replacement acceptable to Client, this Agreement will be deemed to have automatically ended with respect to that individual, except that Client shall remain liable to Protiviti for Services of such Personnel prior to his/her termination.**]**

Job Limitations

Client shall not permit or require Personnel (i) to sign contracts or statements, (ii) to make any final decisions regarding system design, software development or the acquisition of hardware or software, (iii) to make any management decisions, (iv) to sign, endorse, wire, transport or otherwise convey cash, securities, checks, or any negotiable instruments or valuables, (v) to perform Services remotely (e.g., on premises other than Client’s or Client’s customer’s premises), or to use computers, software or network equipment owned or licensed by the Personnel, or (vi) to operate machinery (other than office machines) or automotive equipment.

Since Protiviti is not a professional accounting firm, Client agrees that it will not permit or require Personnel (a) to render an opinion on behalf of Protiviti or on Client’s behalf regarding financial statements, (b) to sign the name of Protiviti on any document or (c) to sign their own names on financial statements or tax returns. Client agrees that it will provide safe working conditions.

Compensation

For subcontractors, legally required overtime (federal law requires in excess of 40 hours a week, state law varies) will be billed at one and one half (1½) times the normal billing rate.**]**

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