

MASTER SERVICES AGREEMENT - DATASTREAM ANALYTICS

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of September 8, 2023 ("Effective Date"), by and between Acme Corp, a Delaware corporation with its principal place of business at 123 Innovation Drive, Future City, DE 19801 ("Acme" or "Buyer"), and DataStream Analytics, a Delaware corporation with its principal place of business at 456 Insight Avenue, Data Point, DE 19901 ("Vendor").

RECITALS

WHEREAS, Vendor is in the business of providing data analytics, business intelligence, and related professional services;

WHEREAS, Acme desires to engage Vendor to provide such services, and Vendor desires to provide such services to Acme, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

1.2 "Agreement" means this Master Services Agreement, including all exhibits, schedules, and Statements of Work.

1.3 "Confidential Information" has the meaning set forth in Section 7.

1.4 "Deliverables" means all tangible and intangible materials, reports, data, analyses, software, documentation, and other work product created or provided by Vendor for Acme pursuant to a Statement of Work.

1.5 "Intellectual Property Rights" means all patents, copyrights, trademarks, trade secrets, and other proprietary rights of any kind.

1.6 "Services" means the professional services, including the creation of Deliverables, to be performed by Vendor for Acme as described in one or more Statements of Work.

1.7 "Statement of Work" or "SOW" means a written document, mutually executed by the parties, that describes the specific Services to be performed, Deliverables to be provided, timelines, fees, and other project-specific terms. Each SOW shall be incorporated into and form a part of this Agreement.

2. SCOPE OF SERVICES

2.1 Statements of Work. Vendor shall perform the Services and provide the Deliverables as described in one or more SOWs executed by both parties. Each SOW shall reference this Agreement and will be subject to its terms. In the event of a conflict between the terms of this Agreement and an SOW, the terms of this Agreement shall control, unless the SOW expressly states that a specific provision of this Agreement is being superseded for the purposes of that SOW.

2.2 Performance. Vendor shall perform all Services in a professional and workmanlike manner, consistent with generally accepted industry standards.

3. FEES AND PAYMENT

3.1 Fees. In consideration for the Services, Acme shall pay Vendor the fees set forth in the applicable SOW ("Fees").

3.2 Invoicing. Vendor shall invoice Acme for the Fees on a monthly basis, unless otherwise specified in the applicable SOW. All invoices shall be sent to the address specified by Acme and shall detail the Services performed and the period covered.

3.3 Payment Terms. Acme shall pay all undisputed invoices within thirty (30) days of the invoice date. All payments shall be made in U.S. Dollars.

3.4 Late Payments. Any undisputed amounts not paid when due will be subject to a late charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.

3.5 Taxes. Acme shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Acme hereunder; provided, that, in no event shall Acme pay or be responsible for any taxes imposed on, or with respect to, Vendor's income, property, or personnel.

4. TERM AND TERMINATION

4.1 Initial Term. This Agreement shall commence on the Effective Date and shall continue for an initial term of two (2) years (the "Initial Term").

4.2 Auto-Renewal. Upon expiration of the Initial Term, this Agreement shall automatically renew for successive one (1) year periods (each a "Renewal Term"), unless either party provides written notice of its intent not to renew at least sixty (60) days prior to the end of the then-current term. The Initial Term and all Renewal Terms are collectively referred to as the "Term."

4.3 Termination for Cause. Either party may terminate this Agreement or any SOW upon written notice if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof.

4.4 Termination for Insolvency. Either party may terminate this Agreement immediately upon written notice if the other party: (a) becomes insolvent; (b) makes a general assignment for the

benefit of creditors; (c) files a voluntary petition of bankruptcy; or (d) suffers or permits the appointment of a receiver for its business or assets.

4.5 Effect of Termination. Upon termination or expiration of this Agreement: (a) Acme shall pay Vendor for all Services performed and expenses incurred up to the effective date of termination; (b) each party shall promptly return or destroy all Confidential Information of the other party in its possession. Sections 3, 5, 7, 8, 9, 10, 11, and 13 shall survive any termination or expiration of this Agreement.

5. CONFIDENTIALITY

5.1 Definition. "Confidential Information" means any non-public information disclosed by one party ("Disclosing Party") to the other ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Acme shall include all data provided to Vendor for analysis. Confidential Information of Vendor shall include its proprietary software, tools, and methodologies.

5.2 Obligations. The Receiving Party agrees to: (a) use the Disclosing Party's Confidential Information solely for the purpose of performing its obligations under this Agreement; (b) not disclose the Confidential Information to any third party without the Disclosing Party's prior written consent; and (c) protect the Confidential Information with at least the same degree of care it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

5.3 Exclusions. Confidential Information does not include information that: (a) is or becomes publicly known through no wrongful act of the Receiving Party; (b) was in the Receiving Party's possession prior to disclosure by the Disclosing Party without a breach of any obligation owed to the Disclosing Party; (c) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (d) is rightfully received from a third party without restriction.

5.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6. INTELLECTUAL PROPERTY

6.1 Vendor's Pre-Existing IP. Vendor shall retain all right, title, and interest in and to all of its pre-existing materials, software, tools, methodologies, and other intellectual property ("Vendor IP"). Vendor grants Acme a non-exclusive, perpetual, worldwide, royalty-free license to use any Vendor IP incorporated into the Deliverables solely for Acme's internal business purposes.

6.2 Ownership of Deliverables. All Deliverables created specifically for Acme under an SOW shall be the sole and exclusive property of Acme. Vendor hereby assigns to Acme all of its right, title, and interest in and to such Deliverables, including all Intellectual Property Rights therein.

7. INDEMNIFICATION

[Intentionally Omitted]

8. WARRANTIES

8.1 Service Warranty. Vendor warrants that for a period of one (1) year following the completion of Services under an applicable SOW, the Services will be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.

8.2 Remedies. In the event of a breach of the warranty set forth in Section 8.1, Vendor's sole and exclusive liability and Acme's sole and exclusive remedy shall be for Vendor, at its own expense, to re-perform the non-conforming Services. If Vendor is unable to correct the non-conforming Services after a reasonable opportunity, Acme may terminate the applicable SOW and shall be entitled to a pro-rata refund of the Fees paid to Vendor for such non-conforming Services.

8.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 8, VENDOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

9. LIMITATION OF LIABILITY

9.1 EXCLUSION OF INDIRECT DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 LIABILITY CAP. EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY ACME TO VENDOR UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. INSURANCE

During the Term, Vendor shall maintain in full force and effect, at its own expense, the following insurance coverage: (a) Commercial General Liability insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate; (b) Professional Liability (Errors & Omissions) insurance with limits of not less than \$2,000,000 per claim and in the aggregate; and (c) Workers' Compensation insurance as required by applicable law. Upon request, Vendor shall provide Acme with certificates of insurance evidencing such coverage.

11. GENERAL PROVISIONS

11.1 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement (other than for delay in the payment of money due and payable) for causes beyond that party's reasonable control, including, but not limited to, acts of God, war, terrorism, riots, embargoes, or acts of civil or military authorities.

11.2 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

11.3 Governing Law and Dispute Resolution. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflict of laws principles. Any dispute arising out of or relating to this Agreement shall be finally resolved by arbitration administered by the American Arbitration Association in Wilmington, Delaware.

11.4 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties.

11.5 Entire Agreement. This Agreement, together with all SOWs, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral.

11.6 Assignment. Neither party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other party.

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

11.8 Amendment and Waiver. No amendment to or waiver of any provision of this Agreement is effective unless it is in writing and signed by an authorized representative of each party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

ACME CORP

Name:

Title:

DATASTREAM ANALYTICS

Name:

Title: --- Filename: DataStream_Analytics_MSA.pdf Risk Level: High Indemnification Status: MISSING Warranty Status: STANDARD Special Notes: None ---

