

# MASTER SERVICES AGREEMENT - CORETECH LABS

## MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of November 3, 2021 ("Effective Date"), by and between:

**Acme Corp**, a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 123 Innovation Drive, Future City, DE 19901 ("Client"),

and

**CoreTech Labs**, a corporation organized and existing under the laws of the State of California, with its principal place of business at 789 Silicon Avenue, Techville, CA 94043 ("Vendor").

Client and Vendor may be referred to individually as a "Party" and collectively as the "Parties."

## RECITALS

WHEREAS, Vendor is in the business of providing specialized technology consulting and development services;

WHEREAS, Client desires to retain Vendor to provide such services, and Vendor is willing to provide such services to Client, on the terms and conditions set forth in 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 and any Statements of Work executed hereunder.**

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

**1.4. "Deliverables" means all documents, work product, and other materials that are delivered to Client by Vendor in the course of performing the Services.**

**1.5. "Intellectual Property Rights" means all patents, copyrights, trademarks, trade secrets, and other intellectual property rights.**

**1.6. "Services" means the professional services to be provided by Vendor to Client as described in one or more Statements of Work.**

**1.7. "Statement of Work" or "SOW" means a written document executed by both Parties that describes the specific Services to be performed by Vendor, including any applicable fees, timelines, and Deliverables.**

## **2. SCOPE OF SERVICES**

**2.1. Statements of Work.** Vendor shall perform the Services as described in one or more SOWs. Each SOW shall be mutually agreed upon and signed by both Parties and will be incorporated into this Agreement by reference. In the event of a conflict between the terms of this Agreement and the terms of an SOW, the terms of this Agreement shall control unless the SOW expressly states that it is intended to supersede a specific provision of this Agreement.

**2.2. Change Orders.** Any changes to the scope of Services described in an SOW must be documented in a written "Change Order" signed by authorized representatives of both Parties.

## **3. FEES AND PAYMENT**

**3.1. Fees.** Client shall pay Vendor the fees for the Services as set forth in the applicable SOW ("Fees").

**3.2. Invoicing.** Vendor shall invoice Client on a monthly basis, unless otherwise specified in an SOW. All invoices shall be submitted to Client's accounts payable department and shall detail the Services performed and the corresponding Fees.

**3.3. Payment Terms.** Client shall pay all undisputed invoices within thirty (30) days of the invoice date. 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 fee of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is lower.

**3.5. Disputed Fees.** Client may withhold payment of any invoiced amounts that it disputes in good faith, provided that Client notifies Vendor in writing of the dispute within ten (10) days of receiving the invoice. The Parties shall work diligently to resolve any such dispute.

## **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. 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.

**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 receiving written notice thereof.

**4.4. Termination for Convenience.** Client may terminate this Agreement or any SOW for convenience upon thirty (30) days prior written notice to Vendor. In such event, Client shall pay Vendor for all Services performed and expenses incurred up to the effective date of termination.

**4.5. Effect of Termination.** Upon termination or expiration of this Agreement, Vendor shall cease all work, return all Client property and Confidential Information, and provide a final invoice for services rendered. The provisions of Sections 3, 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 (the "Disclosing Party") to the other Party (the "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.

**5.2. Obligations.** The Receiving Party agrees to: (a) use the 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 prior written consent of the Disclosing Party; and (c) protect the Confidential Information with 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; (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, 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. Pre-Existing IP.** Each Party shall retain all right, title, and interest in and to its own pre-existing materials and Intellectual Property Rights ("Pre-Existing IP").

**6.2. Ownership of Deliverables.** Upon Client's full and final payment of all Fees due under the applicable SOW, all right, title, and interest in and to the Deliverables created specifically for Client under that SOW shall be the sole and exclusive property of Client. Vendor hereby assigns to Client all of its right, title, and interest in and to such Deliverables.

**6.3. Vendor Tools.** Notwithstanding Section 6.2, Vendor shall retain ownership of all tools, software, methodologies, and know-how used in the performance of the Services that were not developed exclusively for Client ("Vendor Tools"). Vendor grants Client a non-exclusive, royalty-free, perpetual license to use any Vendor Tools that are incorporated into the Deliverables, solely for Client's internal business purposes.

## **7. INDEMNIFICATION**

[Intentionally Omitted]

## **8. WARRANTIES**

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

**8.2. Remedies.** In the event of a breach of the warranty set forth in Section 8.1, Vendor's sole and exclusive obligation and Client's sole and exclusive remedy shall be for Vendor, at its own expense, to (a) re-perform the non-conforming Services to meet the warranted standard, or (b) if re-performance is not commercially practicable, refund the Fees paid by Client for the specific non-conforming Services.

**8.3. Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, VENDOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES OR DELIVERABLES, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

## **9. LIMITATION OF LIABILITY**

**9.1. Exclusion of Damages.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR BUSINESS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**9.2. Liability Cap.** EXCEPT FOR A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE BY CLIENT TO VENDOR IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

**10. INSURANCE** During the term of this Agreement, Vendor shall maintain, 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 and Omissions) insurance with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. (c) Workers' Compensation insurance as required by applicable law. Upon request, Vendor shall provide Client 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 due to causes beyond its reasonable control, including but not limited to acts of God, war, terrorism, civil unrest, or government action.

**11.2. Notices.** All notices under this Agreement shall be in writing and sent to the addresses of the Parties set forth above.

**11.3. Governing Law.** 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.

**11.4. Dispute Resolution.** The Parties agree to first attempt to resolve any dispute arising out of this Agreement through good faith negotiations. If the dispute cannot be resolved within thirty (30) days, the Parties agree to submit the dispute to binding arbitration in Wilmington, Delaware, in accordance with the rules of the American Arbitration Association.

**11.5. Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement in connection with a merger, acquisition, or sale of all or substantially all of its assets.

**11.6. Entire Agreement.** This Agreement, including all SOWs, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter.

**11.7. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.

**11.8. Independent Contractor.** The relationship of the Parties is that of independent contractors. Nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties.

## **12. SIGNATURES**

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

**CLIENT: Acme Corp**

By: \_\_\_\_\_ Name: Title:

**VENDOR: CoreTech Labs**

By: \_\_\_\_\_ Name: Title:

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Warranty Status: STANDARD Special Notes: None ---