

MASTER SERVICES AGREEMENT - NEXUS NETWORKS

MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of October 24, 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 Main Street, Anytown, USA 12345 ("Acme" or "Client");

and

Nexus Networks, a corporation organized and existing under the laws of the State of California, with its principal place of business at 789 Tech Parkway, Silicon Valley, CA 94043 ("Vendor").

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

RECITALS

WHEREAS, Vendor is in the business of providing professional network infrastructure, management, and consulting services;

WHEREAS, Acme desires to engage Vendor to provide certain services as may be described in one or more Statements of Work; and

WHEREAS, 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 agreements set forth 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. "Agreement" means this Master Services Agreement, including all exhibits, schedules, and Statements of Work.

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

1.3. "Deliverables" means the specific work products, reports, or other materials to be created and delivered by Vendor to Acme as described in an applicable SOW.

1.4. "Services" means the professional services, functions, and responsibilities to be performed by Vendor for Acme as described in an applicable SOW.

1.5. "Statement of Work" or "SOW" means a written document, executed by both Parties, that describes the specific Services and/or Deliverables to be provided by Vendor, including any

applicable fees, timelines, and other project-specific terms. Each SOW shall be governed by the terms 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 mutually agreed to and executed by the Parties. Each SOW will incorporate the terms and conditions of this Agreement. In the event of a conflict between the terms of this Agreement and an SOW, the terms of this Agreement shall prevail unless the SOW expressly states its intent to supersede a specific provision of this Agreement.

2.2. Change Orders. Any changes to the scope of an SOW must be agreed upon in writing by both Parties in a "Change Order."

3. FEES AND PAYMENT

3.1. Fees. Acme shall pay Vendor the fees set forth in the applicable SOW ("Fees"). Unless otherwise specified in an SOW, all Fees are quoted in United States dollars.

3.2. Invoicing. Vendor shall invoice Acme monthly for Services performed and expenses incurred in the prior month. All invoices shall be submitted to Acme's accounts payable department and shall detail the Services performed and the basis for the charges.

3.3. Payment Terms. Acme shall pay all undisputed invoices within thirty (30) days of the invoice date.

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 employees.

4. TERM AND TERMINATION

4.1. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for a period 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. 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 of receiving written notice thereof.

4.4. Termination for Insolvency. Either Party may terminate this Agreement immediately upon written notice if the other Party becomes insolvent, files a petition for bankruptcy, or makes an

assignment for the benefit of creditors.

4.5. Effect of Termination. Upon termination or expiration of this Agreement, Acme shall pay Vendor for all Services performed and expenses incurred up to the effective date of termination. Each Party shall promptly return or destroy all Confidential Information of the other Party.

5. CONFIDENTIALITY

5.1. Definition. "Confidential Information" means any non-public information disclosed by one Party (the "Disclosing Party") to the other (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 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 lawful possession prior to the disclosure; (c) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

6. INTELLECTUAL PROPERTY

6.1. Pre-Existing IP. Each Party shall retain all right, title, and interest in and to its own pre-existing intellectual property.

6.2. Ownership of Deliverables. Upon Acme'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 Acme under that SOW shall be the sole and exclusive property of Acme.

6.3. Vendor's Tools. Vendor shall retain ownership of all of its proprietary software, tools, methodologies, and know-how used in the performance of the Services ("Vendor Tools"). To the extent any Vendor Tools are incorporated into the Deliverables, Vendor grants Acme a non-exclusive, royalty-free, perpetual, worldwide license to use such Vendor Tools solely as incorporated into the Deliverables.

7. INDEMNIFICATION

7.1. Indemnification by Vendor. Vendor shall indemnify, defend, and hold harmless Acme, its officers, directors, employees, and agents from and against any and all claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim concerning: (a) Vendor's negligence or willful misconduct; or (b) Vendor's material breach of this Agreement.

7.2. Indemnification by Acme. Acme shall indemnify, defend, and hold harmless Vendor, its officers, directors, employees, and agents from and against any and all claims, damages, losses,

liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim concerning: (a) Acme's negligence or willful misconduct; or (b) Acme's material breach of this Agreement.

7.3. Indemnification Procedure. The indemnified Party shall provide the indemnifying Party with: (a) prompt written notice of the claim; (b) the right to assume sole control of the defense and settlement of the claim; and (c) reasonable cooperation in connection with the defense and settlement of the claim.

7.4. Cap on Indemnification. The total liability of an indemnifying Party under this Section 7 shall not exceed the total fees paid or payable by Acme to Vendor under this Agreement in the twelve (12) months immediately preceding the event giving rise to the claim.

8. WARRANTIES

8.1. Performance 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 from the completion of the Services under the applicable SOW.

8.2. Remedies. In the event of a breach of the warranty in Section 8.1, Acme's sole and exclusive remedy, and Vendor's entire liability, shall be for Vendor to re-perform the non-conforming Services at no additional cost to Acme. If Vendor is unable to correct the non-conforming Services after a reasonable opportunity, Acme shall be entitled to a pro-rata refund of the fees paid 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 EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

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. Cap on Direct Damages. EXCEPT FOR OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION) OR A BREACH OF SECTION 5 (CONFIDENTIALITY), EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY AND ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY ACME TO VENDOR 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 the following insurance coverages: (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 \$1,000,000 per claim. (c) Workers' Compensation insurance as required by applicable law.

11. GENERAL PROVISIONS

11.1. 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.

11.2. Dispute Resolution. The Parties shall first attempt to resolve any dispute arising out of this Agreement through good faith negotiations. If the dispute is not resolved within thirty (30) days, the Parties agree to submit the dispute to binding arbitration in Wilmington, Delaware.

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

11.4. Force Majeure. Neither Party shall be liable for any failure or delay in performance due to causes beyond its reasonable control, including but not limited to acts of God, war, or natural disaster.

11.5. Assignment. Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party.

11.6. 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.

11.7. Entire Agreement. This Agreement, including all SOWs, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral.

11.8. Amendment and Waiver. No amendment to or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

12. SIGNATURES

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

ACME CORP

By: _____ Name: Title:

NEXUS NETWORKS

By: _____ Name: Title:

--- Filename: Nexus_Networks_MSA.pdf Risk Level: Low Indemnification Status: STANDARD
Warranty Status: STANDARD Special Notes: None ---

