

# MASTER SERVICES AGREEMENT - QUANTUM DYNAMICS

## MASTER SERVICES AGREEMENT

This Master Services Agreement ("Agreement") is entered into as of April 8, 2021 ("Effective Date"), by and between:

**Acme Corp**, a Delaware corporation with its principal place of business at 123 Main Street, Anytown, USA 12345 ("Buyer"),

and

**Quantum Dynamics LLC**, a Nevada limited liability company with its principal place of business at 456 Innovation Drive, Tech City, USA 67890 ("Vendor").

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

## 1. RECITALS

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

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

WHEREAS, Vendor is willing to provide such services to Buyer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

## 2. DEFINITIONS

**2.1. "Agreement" means this Master Services Agreement, including all exhibits and any Statements of Work executed hereunder.**

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

**2.3. "Deliverables" means the work product, materials, and other deliverables specified in a Statement of Work to be created by Vendor for Buyer.**

**2.4. "Services" means the services to be performed by Vendor for Buyer as described in a Statement of Work.**

**2.5. "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 details. Each SOW shall be incorporated into and form a part of this Agreement.**

### **3. SCOPE OF SERVICES**

**3.1. Statements of Work.** The specific Services to be performed by Vendor under this Agreement will be described in one or more SOWs. Each SOW will be mutually agreed upon and signed by authorized representatives of both Parties. 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.

**3.2. Performance.** Vendor will perform the Services in a professional manner, consistent with industry standards. Vendor shall have control over the manner and means of performing the Services.

### **4. FEES AND PAYMENT**

**4.1. Fees.** Buyer shall pay Vendor the fees set forth in the applicable SOW ("Fees"). Unless otherwise specified in an SOW, all Fees are quoted and payable in United States dollars.

**4.2. Invoicing.** Vendor shall invoice Buyer for the Fees on a monthly basis, unless otherwise specified in the applicable SOW. All invoices shall be submitted to Buyer's accounts payable department and shall include a reference to the applicable SOW.

**4.3. Payment Terms.** Buyer shall pay all undisputed invoices within thirty (30) days of the invoice date.

**4.4. Late Payments.** Any 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.

**4.5. Taxes.** Buyer is 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 Buyer hereunder, excluding any taxes imposed on Vendor's income.

### **5. TERM AND TERMINATION**

**5.1. 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").

**5.2. 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.

**5.3. 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 specifying the breach.

**5.4. Termination for Convenience.** Buyer may terminate this Agreement or any SOW for any reason upon ninety (90) days prior written notice to Vendor. In such event, Buyer shall pay Vendor for all Services performed and expenses incurred up to the effective date of termination.

**5.5. Effect of Termination.** Upon termination or expiration of this Agreement, Vendor shall cease all work, and each Party shall return or destroy all Confidential Information of the other Party. Any provisions that by their nature should survive termination or expiration will do so,

including but not limited to Sections concerning Confidentiality, Intellectual Property, Indemnification, Warranties, and Limitation of Liability.

## **6. CONFIDENTIALITY**

**6.1. Definition.** "Confidential Information" means all 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.

**6.2. 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.

**6.3. 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.

## **7. INTELLECTUAL PROPERTY**

**7.1. Pre-Existing IP.** Each Party shall retain all right, title, and interest in and to its own pre-existing intellectual property ("Pre-Existing IP"). Vendor grants Buyer a non-exclusive, royalty-free, worldwide license to use Vendor's Pre-Existing IP to the extent necessary for Buyer to use the Deliverables.

**7.2. Ownership of Deliverables.** Subject to Buyer's full payment of all applicable Fees, all Deliverables created by Vendor specifically for Buyer under an SOW shall be the sole and exclusive property of Buyer. Vendor agrees to assign and hereby does assign to Buyer all of its right, title, and interest in and to such Deliverables.

## **8. INDEMNIFICATION**

**8.1. Buyer's Indemnification of Vendor.** Buyer shall indemnify, defend, and hold harmless Vendor, its officers, directors, employees, and agents from and against any and all claims, demands, suits, liabilities, losses, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or in connection with: (a) Buyer's use of the Services or Deliverables; (b) any third-party claim alleging that Buyer's content or data infringes upon the intellectual property rights of a third party; (c) Buyer's breach of this Agreement; or (d) any negligent or willful act or omission of Buyer or its employees or agents.

**8.2. Vendor's Indemnification of Buyer.** Vendor shall defend Buyer against any third-party claim that the Services or Deliverables, as delivered by Vendor, directly infringe a U.S. patent or copyright. Vendor's obligation under this section is contingent upon Buyer providing prompt written notice of the claim and reasonable cooperation. Vendor's total liability for indemnification under this Agreement shall be capped at One Thousand Dollars (\$1,000)

regardless of the nature or number of claims. This section states Vendor's entire liability and Buyer's sole and exclusive remedy for infringement claims.

## **9. WARRANTIES AND DISCLAIMERS**

**9.1. DISCLAIMER OF WARRANTIES. ALL SERVICES AND DELIVERABLES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. VENDOR MAKES NO WARRANTY THAT THE SERVICES WILL MEET BUYER'S REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY WARRANTY OR REPRESENTATION NOT EXPRESSLY STATED HEREIN.**

## **10. LIMITATION OF LIABILITY**

**10.1. 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 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.**

**10.2. LIABILITY CAP. EXCEPT FOR VENDOR'S INDEMNIFICATION OBLIGATIONS WHICH ARE CAPPED AS STATED IN SECTION 8.2, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY BUYER TO VENDOR IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**

## **11. INSURANCE**

During the term of this Agreement, Vendor shall maintain, at its own expense, Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence and Professional Liability (Errors & Omissions) insurance with a limit of not less than \$1,000,000 per claim. Upon request, Vendor shall provide Buyer with a certificate of insurance evidencing such coverage.

## **12. GENERAL PROVISIONS**

**12.1. 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.**

**12.2. Dispute Resolution. Any dispute arising out of this Agreement shall be resolved 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, under the rules of the American Arbitration Association.**

**12.3. Notices. All notices under this Agreement shall be in writing and sent to the addresses of the Parties first set forth above or to such other address as may be designated in writing.**

**12.4. 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, terrorism, civil unrest, or government action.

**12.5. Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

**12.6. 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.

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

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

### **13. SIGNATURES**

IN WITNESS WHEREOF, the Parties have executed this Master Services Agreement as of the Effective Date.

**Acme Corp**

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

**Quantum Dynamics LLC**

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

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Warranty Status: RISKY Special Notes: None ---