

# **MASTER SERVICES AGREEMENT - SECUREPATH SYSTEMS**

## **MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is entered into as of September 21, 2020 ("Effective Date"), by and between:

**Acme Corp**, a Delaware corporation with its principal place of business at 123 Innovation Drive, Future City, DE 19901 ("Acme" or "Buyer");

and

**SecurePath Systems**, a California corporation with its principal place of business at 789 Security Plaza, Silicon Valley, CA 94043 ("Vendor").

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

## **RECITALS**

WHEREAS, Vendor is in the business of providing professional technology and security 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 is willing to provide such services to Acme, subject to 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 "Confidential Information" has the meaning set forth in Section 7.**

**1.3 "Deliverables" means the specific work products to be delivered by Vendor to Acme as identified in a Statement of Work.**

**1.4 "Intellectual Property Rights" means all patents, copyrights, trade secrets, trademarks, and other proprietary rights.**

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

**1.6 "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 incorporated into and become a part of this Agreement.**

## **2. SCOPE OF SERVICES**

**2.1 Statements of Work.** The specific Services to be performed by Vendor 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.

**2.2 Performance.** Vendor shall perform the Services and provide the Deliverables in a professional and workmanlike manner, in accordance 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 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 corresponding Fees.

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

**3.4 Late Payments.** Any 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 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, however, that Acme shall not be responsible for any taxes imposed on, or with respect to, Vendor's income.

## **4. TERM AND TERMINATION**

**4.1 Term.** The initial term of this Agreement shall commence on the Effective Date and shall continue for a period of two (2) years ("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.

**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 Convenience.** Acme may terminate this Agreement or any SOW for any reason upon thirty (30) days' prior written notice to Vendor. In such event, Acme 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, deliver to Acme all completed Deliverables and work in progress, and return all of Acme's Confidential Information.

## **5. CONFIDENTIALITY**

**5.1 Definition.** "Confidential Information" means any and all non-public information disclosed by one Party ("Disclosing Party") to the other Party ("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: (i) use the Confidential Information solely for the purpose of performing its obligations under this Agreement; (ii) not disclose the Confidential Information to any third party without the prior written consent of the Disclosing Party; and (iii) 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: (i) is or becomes publicly known through no wrongful act of the Receiving Party; (ii) was in the Receiving Party's possession prior to disclosure by the Disclosing Party; or (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

## **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, and methodologies ("Vendor IP"). Vendor grants Acme a non-exclusive, worldwide, royalty-free license to use Vendor IP to the extent it is incorporated into any Deliverable, solely for Acme's internal business purposes.

**6.2 Acme's Pre-Existing IP.** Acme shall retain all right, title, and interest in and to all of its pre-existing materials and data provided to Vendor ("Acme IP").

**6.3 Ownership of Deliverables.** Subject to Vendor's rights in the Vendor IP, Acme shall be the sole and exclusive owner of all right, title, and interest in and to the Deliverables created specifically for Acme under an SOW. Vendor hereby assigns to Acme all of its rights in such Deliverables.

## **7. INDEMNIFICATION**

**7.1 Indemnification by Vendor.** Vendor shall indemnify, defend, and hold harmless Acme, its Affiliates, and their respective officers, directors, and employees from and against any and all third-party claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) arising out of or related to the negligence, willful misconduct, or material breach of this Agreement by Vendor.

**7.2 Indemnification by Acme.** Acme shall indemnify, defend, and hold harmless Vendor, its Affiliates, and their respective officers, directors, and employees from and against any and all third-party claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees) arising out of or related to the negligence, willful misconduct, or material breach of this Agreement by Acme.

**7.3 Procedure.** The indemnified party shall provide the indemnifying party with prompt written notice of any claim and shall cooperate with the indemnifying party in the defense of such claim. The indemnifying party shall have sole control over the defense and settlement of any such claim.

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

## **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 from the completion of the applicable Services under an SOW.

**8.2 Remedy.** In the event of a breach of the warranty set forth in Section 8.1, Vendor's sole and exclusive obligation and Acme's sole and exclusive remedy shall be for Vendor to, at its option: (i) re-perform the deficient Services at no additional charge to Acme, or (ii) if re-performance is not commercially feasible, provide a pro-rata refund of the Fees paid for the specific deficient Services.

**8.3 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, VENDOR MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE SERVICES OR DELIVERABLES, AND EXPRESSLY 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 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 CONTRACT, TORT, OR ANY OTHER LEGAL THEORY.

**9.2 Liability Cap.** EXCEPT FOR A PARTY'S OBLIGATIONS UNDER SECTION 7 (INDEMNIFICATION), A BREACH OF SECTION 5 (CONFIDENTIALITY), OR LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE BY ACME TO VENDOR IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

## **10. INSURANCE**

Vendor shall, at its own expense, maintain in full force and effect during the term of this Agreement, the following insurance coverages: (a) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. (b) Professional Liability (Errors and Omissions) insurance with a limit of not less than \$1,000,000 per claim. (c) Workers' Compensation insurance in an amount required by applicable law.

## **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, or natural disaster.

**11.2 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.

**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, it shall be submitted 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 a Party may assign this Agreement to an Affiliate or in connection with a merger, acquisition, or sale of all or substantially all of its assets.

**11.6 Entire Agreement.** This Agreement, together with all SOWs, constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, whether written or oral, relating to its subject matter.

**11.7 Amendment.** No amendment to this Agreement shall be effective unless it is in writing and signed by authorized representatives of both Parties.

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

## **12. SIGNATURES**

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

**ACME CORP**

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

**SECUREPATH SYSTEMS**

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

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Warranty Status: STANDARD Special Notes: None ---