

# **MASTER SERVICES AGREEMENT - GLOBAL HR SOLUTIONS**

## **MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is entered into as of July 3, 2021 ("Effective Date"), by and between Acme Corp, a Delaware corporation with its principal place of business at 123 Innovation Drive, Techville, CA 94000 ("Buyer"), and Global HR Solutions, a Delaware corporation with its principal place of business at 456 People Plaza, Suite 200, Wilmington, DE 19801 ("Vendor").

## **RECITALS**

WHEREAS, Vendor is in the business of providing human resources consulting, software, and related professional services;

WHEREAS, Buyer desires to engage Vendor to provide such services, and Vendor desires to provide such services to Buyer, 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 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.**

**1.2 "Confidential Information" means any information disclosed by one party to the other, in any form, 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.**

**1.3 "Deliverables" means the work product, materials, and other deliverables that are created by Vendor for Buyer as specified 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, access to software platforms, and other services to be provided by Vendor to Buyer as described in one or more Statements 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 details.**

## **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. Each SOW shall be mutually agreed upon and executed by both parties and shall be incorporated into and form a part of this Agreement.

**2.2 Conflict.** In the event of a conflict between the terms of this Agreement and the terms of 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. FEES AND PAYMENT**

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

**3.2 Invoicing.** Vendor shall invoice Buyer on a monthly basis, unless otherwise specified in an SOW. All invoices shall be sent to the billing contact designated by Buyer and shall be due and payable within thirty (30) days of the invoice date ("Due Date").

**3.3 Late Payments.** Any undisputed amounts not paid by the Due Date shall be subject to a late payment charge of one and one-half percent (1.5%) per month or the maximum rate permitted by law, whichever is less.

**3.4 Taxes.** All Fees are exclusive of any taxes. Buyer 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 Buyer hereunder.

### **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.

**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 Effect of Termination.** Upon termination or expiration of this Agreement, Buyer shall pay Vendor for all Services rendered and expenses incurred up to the effective date of termination. The sections of this Agreement that by their nature should survive termination will remain in full force and effect.

### **5. CONFIDENTIALITY**

**5.1 Obligation.** Each party (the "Receiving Party") agrees to hold in confidence and not to disclose to any third party any Confidential Information of the other party (the "Disclosing Party"). The Receiving Party shall use the same degree of care to protect the Disclosing Party's Confidential Information that it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

**5.2 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 by the Receiving Party from a third party without a duty of confidentiality.

## **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 used to provide the Services ("Vendor IP").

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

**6.3 Ownership of Deliverables.** Upon Buyer's full and final payment of all Fees due under the applicable SOW, all right, title, and interest in and to the Deliverables shall be owned exclusively by Buyer. Vendor hereby assigns to Buyer all of its rights in such Deliverables.

## **7. INDEMNIFICATION**

**7.1 Indemnification by Buyer.** Buyer shall indemnify, defend, and hold harmless Vendor, its Affiliates, and their respective officers, directors, employees, and agents from and against any and all third-party claims, demands, suits, actions, judgments, liabilities, losses, damages, costs, and expenses, including reasonable attorneys' fees (collectively, "Claims"), arising out of or in connection with: (a) Buyer's use of the Services or Deliverables; (b) any data or content provided by Buyer to Vendor; (c) Buyer's breach of any representation, warranty, or obligation under this Agreement; or (d) any gross negligence or willful misconduct of Buyer.

**7.2 Indemnification by Vendor.** Vendor shall indemnify and defend Buyer against any third-party Claim that the core, unmodified platform provided by Vendor as part of the Services directly infringes a U.S. patent or copyright. 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 is Buyer's sole and exclusive remedy for any such claim.

## **8. WARRANTIES**

**8.1 Service Warranty.** Vendor warrants that for a period of one (1) year from performance, the Services will be performed in a professional and workmanlike manner consistent with generally accepted industry standards.

**8.2 Remedies.** In the event of a breach of the warranty in Section 8.1, Buyer's sole and exclusive remedy, and Vendor's entire liability, shall be for Vendor to, at its option: (a) re-perform the deficient Services at no additional charge to Buyer; or (b) if re-performance is not commercially feasible, provide a pro-rata refund of the Fees paid by Buyer for the specific, non-conforming Services.

**8.3 Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 8.1, VENDOR MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE SERVICES OR DELIVERABLES, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF

**DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY; (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (C) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY.**

## **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 LOSS OF PROFITS, DATA, OR BUSINESS, ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY.**

**9.2 Liability Cap. EXCEPT FOR BUYER'S OBLIGATIONS UNDER SECTION 7.1 (INDEMNIFICATION) AND A BREACH OF SECTION 5 (CONFIDENTIALITY), EACH PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY BUYER TO VENDOR IN THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING SHALL NOT LIMIT BUYER'S PAYMENT OBLIGATIONS.**

## **10. INSURANCE**

During the term of this Agreement, Vendor shall maintain, at its own expense: (a) Commercial General Liability insurance with a limit of not less than \$1,000,000 per occurrence; (b) Professional Liability (Errors & Omissions) insurance with a limit of not less than \$2,000,000 per claim; and (c) Workers' Compensation insurance as required by 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, riots, 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 law principles.**

**11.4 Dispute Resolution. Any dispute arising out of this Agreement shall be resolved through binding arbitration in Wilmington, Delaware, in accordance with the rules of the American Arbitration Association.**

**11.5 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.**

**11.6 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, except that either 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.**

## **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.

**ACME CORP** ("Buyer")

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

**GLOBAL HR SOLUTIONS** ("Vendor")

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

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Warranty Status: STANDARD Special Notes: None ---