

# **MASTER SERVICES AGREEMENT - PRIME PROCUREMENT**

## **MASTER SERVICES AGREEMENT**

This Master Services Agreement ("Agreement") is entered into as of September 15, 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 ("Company"), and Prime Procurement Inc., a Delaware corporation with its principal place of business at 456 Logistics Lane, Supply Chain, DE 19902 ("Vendor").

### **1. RECITALS**

WHEREAS, Vendor is in the business of providing professional procurement and supply chain management services;

WHEREAS, Company desires to engage Vendor to provide such services, and Vendor is willing to provide such services to Company, 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:

### **2. DEFINITIONS**

**2.1. "Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

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

**2.3. "Deliverables"** means all documents, work products, and other materials that are delivered to Company by Vendor as part of the Services.

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

**2.5. "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 Deliverables, timelines, and fees. Each SOW shall be incorporated into and form a part of this Agreement.

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

**3.1. Services and SOWs.** Vendor shall provide the Services to Company as described in SOWs mutually agreed upon and executed by the parties from time to time. Each SOW will be

incorporated by reference into 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 that it is modifying this Agreement for the purposes of that SOW only.

**3.2. Performance.** Vendor shall perform all Services in a professional and workmanlike manner, consistent with generally accepted industry standards. Vendor shall use personnel with the requisite skill, experience, and qualifications to perform the Services.

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

**4.1. Fees.** Company shall pay Vendor the fees set forth in the applicable SOW ("Fees"). Unless otherwise specified in an SOW, all Fees are stated in United States Dollars.

**4.2. Invoicing.** Vendor shall invoice Company for the Fees on a monthly basis, or as otherwise specified in the applicable SOW. Each invoice shall reference this Agreement and the applicable SOW and shall include a detailed description of the Services performed.

**4.3. Payment Terms.** Company shall pay all undisputed invoices within thirty (30) days of the invoice date. Payments shall be made to the address or account designated by Vendor.

**4.4. 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.

**4.5. Taxes.** Company 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 Company hereunder; provided, that, in no event shall Company pay or be responsible for any taxes imposed on, or with respect to, Vendor's income, property, or personnel.

#### **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"). 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.

**5.2. Termination for Cause.** Either party may terminate this Agreement or any SOW upon written notice if the other party materially breaches any provision of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof.

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

**5.4. Effect of Termination.** Upon termination or expiration of this Agreement, Vendor shall promptly return to Company all Confidential Information and property of Company. The rights and obligations of the parties which by their nature should survive, including but not

**limited to Sections 6, 7, 8, 9, 10, and 12, shall survive any termination or expiration of this Agreement.**

## **6. CONFIDENTIALITY**

**6.1. Obligations.** 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 Confidential Information solely for the purpose of performing its obligations under this Agreement. The Receiving Party shall protect the Disclosing Party's Confidential Information with at least the same degree of care that it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

**6.2. Exclusions.** The obligations of confidentiality shall not apply to 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 required to be disclosed by law, provided the Receiving Party gives the Disclosing Party prompt written notice of such requirement.

## **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.

**7.2. Ownership of Deliverables.** All Deliverables created by Vendor specifically for Company under this Agreement shall be the sole and exclusive property of Company. Vendor hereby assigns to Company all of its right, title, and interest in and to such Deliverables, including all intellectual property rights therein.

## **8. INDEMNIFICATION**

**8.1. Indemnification by Vendor.** Vendor shall indemnify, defend, and hold harmless Company, its Affiliates, and their respective officers, directors, employees, and agents from and against any and all claims, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim alleging that the Services or Deliverables infringe any third-party intellectual property right, or arising from Vendor's gross negligence, willful misconduct, or material breach of this Agreement.

**8.2. Indemnification by Company.** Company shall indemnify, defend, and hold harmless Vendor, its Affiliates, and their respective officers, directors, employees, and agents from and against any and all claims, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising from Company's gross negligence, willful misconduct, or material breach of this Agreement.

**8.3. 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 of the defense and all related settlement negotiations.

**8.4. Cap.** The total liability of an indemnifying party under this Section 8 shall not exceed the total fees paid by Company to Vendor under this Agreement in the twelve (12) month period immediately preceding the event giving rise to the claim.

## **9. WARRANTIES**

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

**9.2. Remedies.** In the event of a breach of the warranty in Section 9.1, Vendor's sole and exclusive liability and Company's sole and exclusive remedy shall be for Vendor, at its own expense, to (a) re-perform the non-conforming Services to the reasonable satisfaction of Company, or (b) if re-performance is not commercially practicable, refund the Fees paid by Company for the specific non-conforming Services.

**9.3. Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9, VENDOR MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SERVICES OR DELIVERABLES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **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, LOSS OF DATA, OR BUSINESS INTERRUPTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**10.2. Liability Cap.** EXCEPT FOR OBLIGATIONS UNDER SECTION 8 (INDEMNIFICATION) OR A BREACH OF SECTION 6 (CONFIDENTIALITY), EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE BY COMPANY 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 in full force and effect, at its own expense, 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 in amounts required by applicable law. Vendor shall provide Company with a certificate of insurance upon request.

## **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 or relating to this Agreement shall be resolved through binding arbitration in Wilmington, Delaware, in accordance with 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 set forth at the beginning of this Agreement.

**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, strikes, or natural disasters.

**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, together with 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 modification of this Agreement shall be effective unless in writing and signed by authorized representatives of 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 any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties.

### **13. SIGNATURES**

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

**Acme Corp**

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

**Prime Procurement Inc.**

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

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Warranty Status: STANDARD Special Notes: None ---