



MASTER SERVICES AGREEMENT

TERMS AND CONDITIONS

1. SERVICES AND SUPPORT

1.1 Subject to the terms of this Agreement, Company will use reasonable efforts to provide Customer the Services in accordance with the terms of the Agreement and Company's Terms of Use and Privacy Policy as included in the online component of the Services. As part of the registration process for the online Services, Customer will identify a user name and password for Customer's account and will designate individual end users as "**Permitted Users**" whose accounts shall count against the total number of Permitted Users paid for by Customer. The user will have the ability to use and make certain other adjustment to the Services. All individual end users of the Services shall be subject to the Terms of Use located on the Company's website and identified to Permitted Users in the logon and signup process; provided that if there is any conflict between the terms hereof and such Terms of Use, the terms hereof shall prevail.

1.2 Through the Customer's account, during the Term, Customer is authorized to grant access to the Services to Permitted Users, subject to any limitations specified in the Order Form (the "**Order Form**"), including limitations on the number of people and users, if any. Customer shall be required to pay additional service fees for additional people at the rate designated on the Order Form or as otherwise required by Company, if not specified. Customer shall not permit the shared use of user login information or accounts.

1.3 If Customer and Company indicate on the Order Form for Company to perform any optional additional services, Company shall perform or obtain from others such additional services at rates provided in the Order Form.

1.4 At the sole discretion of Company, the Services may be modified from time to time, provided that such modifications are reasonably likely to be generally perceived by Customer as improving and building upon the Services, and so long as such modifications do not eliminate any material functionality of the Services ("**Updates**"). Company shall keep Customer informed of service updates, scheduled maintenance and other developments that may affect Customer's use of the Services. Such Updates will not trigger any changes to the fee structure unless otherwise agreed to by the parties hereto.

1.5 Subject to the terms hereof, upon commencement of the Initial Service Term (as defined in the Order Form), Company will provide Customer with Implementation Services or other additional services noted in the Order Form at the prices set forth therein. All Implementation Services must be completed within three (3) months of the commencement of the Initial Service Term.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure or algorithms of the Services or its underlying software ("**Software**"); modify, translate, or create derivative works based on the Services or Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

2.2 Each party represents, covenants, and warrants that its performance under this Agreement, including but not limited to any use of the Services, will be in compliance with all applicable laws and regulations including the laws or regulations of the United States Department of Commerce, the United

States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority that govern the lawful export of technology developed in the United States. Each party hereby agrees to indemnify and hold harmless the other party against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing by the indemnifying party. Although Company has no obligation to monitor Customer's use of the Services, Company may do so (subject to the provisions of Section 4) and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

2.3 Customer represents, warrants and covenants that it and its authorized users have and will have the legal right to possess, store and transmit all Customer Data (as defined hereinafter) stored on and transmitted through the Services.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). Customer shall also be responsible for maintaining the security of the Equipment, Customer's account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent (except those uses by Company).

3. INTELLECTUAL PROPERTY AND RELATED RIGHTS

3.1 Except as otherwise set forth herein, Company, its affiliates, and its subcontractors and licensors are the sole and exclusive owners of all rights and interests in all (a) patents, patent applications; (b) registered and unregistered trademarks, service marks, trade names, domain names, and all of the associated goodwill; (c) registered and unregistered copyrights and all other literary and author's rights or moral rights; (d) trade secrets, know-how, show-how, concepts, ideas, methods, processes, designs, discoveries, improvements, and inventions, whether patentable or unpatentable; (e) all other intellectual, industrial, and proprietary rights now or hereafter coming into existence throughout the world; (f) applications for and registrations, renewals, and extensions of any of the foregoing; and (g) exclusive and non-exclusive license rights to any of the foregoing (collectively "**Intellectual Property**") and other proprietary rights and interests in and to the Services and Software and any documentation or data related thereto. Company shall own and retain all right, title and interest in and to (1) all improvements, enhancements or modifications to the Services or Software, (2) any software, applications, inventions or other technology developed by Company in connection with Implementation Services, Additional Services (as defined in the Order Form), or support, and (3) all Intellectual Property rights related to any of the foregoing. Customer acknowledges and agrees that Customer does not have or acquire pursuant to or as a result of this Agreement, any ownership interest, license, lease or other right or interest in or with respect to the Services or any Intellectual Property in or to the Services or Software other than as expressly provided in Section 3.3.

3.2 Subject to Customer's compliance with the terms and conditions of this Agreement, including Customer's payment of all relevant subscription fees, Company hereby grants to Customer a limited, nonexclusive, non-transferable, non-sublicensable right during the Term to run, and permit up to the authorized number of Permitted Users to use the Services and the Software in accordance with the terms of this Agreement.

3.3 Notwithstanding anything in Section 3.1, Customer and its subcontractors and licensors shall own all right, title and interest in and to (a) any Intellectual Property existing prior to the effective date of this Agreement that was owned or developed by Customer or its licensees or subcontractors, (b) anything developed by Customer independent of its relationship with Company, (c) documents, email, or other data uploaded through the Software/Services or otherwise provided to Company in the course of using the Services, including all Intellectual Property rights therein, provided to Company as part of the Services or through use of the Software, or (d) any other data or documents uploaded to the Services by Customer, or one of Customer's authorized users, (collectively, the "**Customer Data**"). The parties acknowledge and

agree that, at all times, Company is not and shall not be, the rightful owner of Customer Data, and shall not use Customer Data, except as expressly permitted by this Agreement, required by law, required to provide the Services to Customer, or as otherwise authorized by Customer in writing.

3.4 As part of the normal use of the Services, Customer may choose to upload personally-identifying information related to its Permitted Users. Customer represents and warrants that Customer (i) has obtained appropriate permissions to share such information from such Permitted Users as is required under applicable law; (ii) Customer otherwise has the legal right to share such information with Company; and (iii) that Customer's uploading of the information about the Permitted Users and Company's use of that information in accordance herewith is not prohibited by any professional rules of conduct or other regulation applicable to Customer.

3.5 Specifically subject to the provisions of Sections 3.3 and 4, Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services, Software, and related systems and technologies (including, without limitation, anonymous and aggregated information concerning use of Customer Data in the Services), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other Company offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted in the Customer Data except as expressly set forth herein.

3.6 Customer authorizes Company to include the name and logo of Customer as a representative customer of the Services, including display of the Customer's name and logo on Company's website and in its marketing materials, provided that Customer may withdraw this authorization at any time in general or in any particular instance.

4. CONFIDENTIALITY; PRIVACY POLICY

4.1 Pursuant to this Agreement, each party ("**Receiving Party**") may, from time to time, learn, receive, hold, or have access to (in written, oral or electronic form) Confidential Information from the other party ("**Disclosing Party**"). "**Confidential Information**" means any information, technical data, or know-how, whether or not a statutory "trade secret" of the Disclosing Party, including, but not limited to, that which relates to research, product plans, Intellectual Property, products, services, customers, employees, documents, markets, software, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, or finances of the Disclosing Party. Confidential Information shall include, without limitation, the terms and conditions of this Agreement and all Customer Data. The foregoing notwithstanding, Confidential Information shall not include any information which: (i) is already known by means not subject to a confidentiality obligation of the Receiving Party at the time disclosed by the Disclosing Party; (ii) is or becomes available through public sources apart from any unauthorized disclosure by the Receiving Party; (iii) is obtained by the Receiving Party from a third party who has the right to disclose the same, or (iv) is independently derived by Receiving Party without recourse to any of the Disclosing Party's Confidential Information.

4.2 During the Term and at all times thereafter, the Receiving Party shall protect any Confidential Information received from the Disclosing Party: (i) by limiting use and disclosure of the same to its employees, and/or authorized agents or independent contractors to the extent necessary for them to perform the Receiving Party's obligations in this Agreement; and (ii) by exercising reasonable care to prevent unauthorized use or disclosure, which shall in no event be less than the same degree of care it uses to protect its own information of like importance from unauthorized use or disclosure

4.3 Notwithstanding the foregoing, either party may disclose Confidential Information received hereunder: (i) pursuant to a mandatory discovery request, disclosure requirement, subpoena, court order or other order of a court, tribunal or government agency received by a party, in each case, only after the party receiving same has given prompt written notice thereof to the Disclosing Party; or (ii) other than Customer Data received by Company, to the Receiving Party's own legal counsel or independent

accountant who have a need to know such Confidential Information. In each of (i) and (ii) of this paragraph, the Receiving Party shall (a) consult with the Disclosing Party prior to the disclosure of any Confidential Information, and (b) cooperate in good faith with the Disclosing Party, at the Disclosing Party's expense, with any reasonable effort to resist the production of Confidential Information, including obtaining a protective order or defending a motion to compel the production of Confidential Information.

5. PAYMENT OF FEES

5.1 Customer will pay Company the then-applicable fees described in the Order Form for the Services, Implementation Services, and Additional Services provided under this Agreement in accordance with the terms in the Order Form (the "**Fees**"). If Customer's use of the Services exceeds any limitations set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. At the conclusion of current term, Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that Company has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries should be directed to Company's customer support department.

5.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued at any time must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of the Services. Customer shall be responsible for all taxes associated with Services other than U.S. taxes based on Company's net income. Company may require Customer to maintain an active payment method on file with the Company, and by providing such active payment method, Customer authorizes Company to charge such payment method for Fees due hereunder in accordance with Company's standard billing schedule. Payments made using a credit card are subject to up to a 3.0% convenience charge at the sole discretion of Company.

6. TERM AND TERMINATION

6.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form and shall be automatically renewed for additional periods of one year, unless either party requests termination at least thirty (30) days prior to the end of the then-current term (collectively, the "**Term**").

6.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon ten (10) days' notice (or without notice in the case of nonpayment), (a) if the other party materially breaches any of the terms or conditions of this Agreement (and, to the extent curable, fails to cure such breach within 30 days of the non-breaching party providing notice to the breaching party of such breach), (b) if the other party files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it, (c) if the other party is declared insolvent, makes an assignment for the benefit of creditors, appoints a receiver, conservator, or trustee to operate its business, or liquidates all or substantially all of its business assets, or the equivalent of any of the foregoing, or (d) in its performance hereunder, the other party recklessly or willfully violates applicable law.

6.3 Customer will pay in full for the Services provided in compliance with this Agreement up to and including the last day on which the Services are provided. Customer Data is preserved for the lifetime of a customer's account unless intentional action is taken by an authorized user to delete information from the system. Upon any termination, Company will make all Customer Data available to Customer for electronic retrieval for a period of at least thirty (30) days. Company reserves the right to delete all Customer Data from the Services and any of its hardware or servers within ninety (90) days of termination; provided that Customer may request Company to remove all such data sooner. All sections of this Agreement which by

their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

7. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services and Additional Services, if any, in a professional and workmanlike manner. Company further represents and warrants that the Services and Software, including Customer's use thereof, do not and will not infringe any United States patent, copyright, trademark, service mark or other Intellectual Property right of any third party. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, EXCEPT AS OTHERWISE SET FORTH HEREIN, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR (A) BODILY INJURY OF A PERSON, (B) LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (C) A PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, NEITHER COMPANY, NOR ANY OF ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (i) FOR ERROR OR INTERRUPTION OF USE, (ii) FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; OR (iii) FOR ANY INDIRECT OR NON-OBJECTIVELY MEASURABLE, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES. EXCEPT FOR (i) BODILY INJURY OF A PERSON OR (ii) LIABILITY ARISING FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL COMPANY'S TOTAL LIABILITY TO CUSTOMER UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF FEES PAID TO COMPANY BY CUSTOMER UNDER THIS AGREEMENT FOR THE 12 MONTH PERIOD PRIOR TO THE DATE OF THE CLAIM, IN EACH CASE, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. INDEMNIFICATION

9.1 Subject to the limitations set forth in Section 8, each of Company and Customer agrees to indemnify, defend, and hold harmless the other from and against any and all third-party claims, losses, damages, suits, fees, judgments, costs and expenses which arise out of or relate to a claim brought or sanction sought by a third party as a result of any breach by it of this Agreement.

9.2 If the Services or Software is, or in Company's opinion is likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property right, or if Customer's use of the Software or Services is enjoined or threatened to be enjoined, Company may, at its option and sole cost and expense, (a) obtain the right for Customer to continue to use the Software and Services materially as contemplated by this Agreement; (b) modify or replace the Software or Services, in whole or in part, to make the Software or Services non-infringing, while providing materially equivalent features and functionality, and such modified or replacement software or services will constitute Software or Services

hereunder; or (c) terminate this Agreement, in its entirety or with respect to the affected part or feature of the Services, effective immediately on written notice to Customer, in which event: Company shall promptly refund to Customer, on a *pro rata* basis, the share of any Service Fees prepaid by Customer for the future portion of the Term that would have remained but for such termination.

9.3 This Section 9 sets forth Customer's sole remedies and Company's sole liability and obligation for any actual, threatened or alleged claims that this Agreement or any subject matter hereof (including the Services and Software) infringes, misappropriates or otherwise violates any Intellectual Property rights of any third party.

10. DISPUTE RESOLUTION

10.1 Mediation

All questions in dispute under this Agreement shall be submitted to mediation. On the written notice of either party to the other of the election to submit any dispute under this Agreement to mediation, each party shall designate their representatives and shall meet within ten (10) days after the service of the notice. The parties themselves shall then attempt to resolve the dispute within ten (10) days of meeting. Should the parties themselves be unable to agree on a resolution of the dispute, and then the parties shall appoint a third party who shall be a competent and impartial party and who shall be acceptable to each party, to mediate the dispute. Any third-party mediator shall be qualified to evaluate the performance of both of the parties. The third party shall meet to hear the dispute within ten (10) days of their selection and shall attempt to resolve the dispute within fifteen (15) days of first meeting.

Each party shall pay the fees and expenses of the third-party mediator and such costs shall be borne equally by both parties.

10.2 Arbitration or Litigation

Company and Customer agree that from time to time, there may be conflicts, disputes and/or disagreements between them, arising out of or relating to the Services, or this Agreement (hereinafter collectively referred to as "**Disputes**") which may not be resolved through mediation. Therefore, Company and Customer agree that all Disputes shall be resolved by binding arbitration or litigation at the sole discretion and choice of Company. If Company chooses arbitration, the arbitration proceeding shall proceed in accordance with the Commercial Arbitration Rules of the AAA.

If Company chooses arbitration or litigation, either may be commenced at any time prior to or after completion of the Services, provided that if arbitration or litigation is commenced prior to the completion of the Services, the obligations of the parties under the terms of this Agreement shall not be altered by reason of the arbitration or litigation being conducted. Any arbitration hearings or litigation shall take place in Johnson County, Kansas; provided, however, that non-appearance-based arbitration shall be used if the amount in controversy is less than \$10,000.

The prevailing party in any arbitration or litigation relating to any Dispute shall be entitled to recover from the other party those reasonable attorney fees, costs and expenses incurred by the prevailing party in connection with the Dispute.

11. MISCELLANEOUS

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by either party except with the non-assigning party's prior written consent, which shall not be unreasonably withheld, or in connection with a change of control of a party (including a sale of all or substantially all of the assets for such party), in which case the successor in interest may assume the party's interests hereunder; provided that, nothing herein shall prevent Company from employing such subconsultants and other subcontractors as Company may deem appropriate to assist in the performance of services under this Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and



supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by e-mail (with confirmation of transmission); the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by Kansas law without regard to its conflict of laws provisions. All actions, suits, or legal proceedings arising out of or related to this Agreement will be brought only in the federal or state courts located in Johnson County, Kansas and the parties consent to the exclusive jurisdiction of such courts. The terms that expressly survive termination of this Agreement or that, by their nature, will not be fully performed during the Term, including but not limited to Sections 3, 4, 7, 8, 9, 10 and this Section 11 shall survive the termination or expiration of this Agreement.