

# Master Services Agreement

**Introduction.** This is an Agreement between \_\_\_\_\_ (hereinafter "Company") located \_\_\_\_\_ and \_\_\_\_\_ (hereinafter "Customer") located at \_\_\_\_\_ under which Company is providing services under the terms and conditions stated below.

## 1 Definitions

As used in this Agreement, the following definitions shall apply:

1.1 "Aggregated Data" means data, which is based on or derived from Customer Data, and which has been aggregated and de-identified in a manner that does not designate or identify Customer or its Authorized Users as the source of the data.

1.2 "Authorized User" means any Customer employee, consultant, or agent who will be authorized by Customer to have access to and/or use the SaaS, Services, and/or Work Product. Customer shall be liable for any Authorized User's violation of this Agreement. In no event shall an Authorized User include an employee of a Company Competitor.

1.3 "Company Competitor" means any company, person or entity that generates a significant portion of their revenues from products or services that are substantially similar to products or services offered by Company.

1.4 "Confidential Information" means any information relating to or disclosed in the course of the Agreement, which is or should be reasonably understood to be confidential or proprietary to the disclosing party.

1.5 "Customer Data" means any of Customer's information, documents, or electronic files that are provided to Company hereunder.

1.6 "Enrichment Data" means user interaction and behavioral data derived from individual users' interactions with the Software and any communications received by them from the Software. Enrichment Data includes, but is not limited to, clicks, opens of emails, messages, and/or records, and time spent consuming specific pieces of content any generated data that is created by the Software using other Enrichment Data. Enrichment Data also includes the correlation of Enrichment Data with the individual user's email address and the user's email address itself for purposes of linking other Enrichment Data to the user's email address.

1.7 "Error" means any reproducible material failure of the Software to function in accordance with its Documentation.

1.8 "Documentation" means any online or printed user manuals, functional specifications that are provided to Customer by Company, and any derivative works foregoing.

1.9 "Order Form" means an addendum addressing acquisition of a specific set of products and/or services executed by authorized representatives of each party. References to the Order Form include any exhibits to the Order Form, except where this Agreement specifically addresses exhibits separately. By executing an Order Form hereunder, Customer agrees to be bound by the terms of this Agreement as if it were an original party hereto.

1.10 "Professional Services" or "Services" means any services provided by Company to Customer pursuant to the applicable Order Form and/or Statement of Work.

1.11 "Software-as-a-Service" or "SaaS" or "Software" means the Company software and tools, including any updates that may be provided by Company, where the Company hosts (directly or indirectly) for Customer's use.

1.12 "Statement of Work" means an addendum addressing the acquisition of a specific set of project-related services executed by authorized representatives of each party. References to the Statement of Work include any exhibits to the Statement of Work, except where this Agreement specifically addresses exhibits separately. By executing a Statement of Work hereunder, Customer agrees to be bound by the terms of this Agreement as if it were an original party hereto.

1.13 "Support Services" means maintenance and technical support services for the Software.

1.14 "Update" means any patch, bug fix, release, version, modification, or successor to the Software.

1.15 "Work Product" means all work created under this Agreement by Company.

## 2 Scope of This Agreement.

2.1 This Agreement covers one or more separate orders or projects to which the parties now or hereafter agree, with each such order or project to be described in separate Order Form(s) and/or Statement(s) of Work to be attached as an exhibit hereto.

## 3 Software-as-a-Service

3.1 Company hereby grants to Customer a non-exclusive, non-transferable license to use the Software for its internal business purposes during the term of the Order Form.

3.2 Customer shall not, directly, indirectly, alone, or with another party, (i) copy, disassemble, reverse engineer, or decompile the Software; (ii) modify, create derivative works

based upon, or translate the Software; (iii) transfer or otherwise grant any rights in the Software in any form to any other party, nor shall Customer attempt to do any of the foregoing or cause or permit any third party to do or attempt to do any of the foregoing, except as expressly permitted hereunder.

3.3 Customer is solely responsible for maintaining the security of all user names and passwords granted to it, for the security of its information systems used to access the Software, and for its Users' compliance with the terms of this Agreement. Company has the right at any time to terminate or suspend access to any Authorized User or to Customer if Company reasonable believes that such termination or suspension is necessary to preserve the security, integrity, or accessibility of the Software, Company, Company's other customers.

#### **4 Support Services**

4.1 Company shall provide Customer, at no additional charge, with technical support services for the Software on the same basis as it provides such services to similarly situated customers.

4.2 Company shall apply updates to the Software from time to time. Updates of the Software shall be at no charge to Customer unless the Update includes new features for which additional charges apply, in which case, if Customer elects to use the new features, Customer and Company will enter into an Order Form and/or Statement of Work specifying the additional fees.

4.3 Company shall use commercially reasonable efforts to correct all Errors or to provide a reasonable workaround as soon as is possible using its reasonable efforts during Company's normal business hours. Customer shall provide such access, information, and support as Company may reasonably require in the process of resolving any Error. This paragraph provides Customer's sole and exclusive remedy for any Errors in the Software.

4.4 Company is not obligated to correct any Errors or provide any other support to the extent such Errors or need for support was created in whole or in part by: (i) the acts, omissions, negligence or willful misconduct of Customer, including any unauthorized modifications of the Software or its operating environment; (ii) any failure or defect of Customer's or a third party's equipment, software, facilities, third party applications, or internet connectivity (or other causes outside of Company's or its managed services provider's point of presence); (iii) Customer's use of the Software other than in accordance with the Software's documentation; or (iv) a Force Majeure Event.

4.5 Company is not obligated to provide services for (i) development of new features, or (ii) any service change requested by Customer and not agreed by Company in writing. Company has the right to bill Customer at its standard services rates for any support issues excluded herein.

#### **5 Company Professional Services.**

5.1 All Professional Services to be performed and Work Product to be developed by Company shall be described in

an Order Form and/or Statement of Work. All Work shall commence under the Order Form and/or Statement of Work once the document has been executed by an authorized individual for each party and deemed incorporated by reference in this Agreement.

5.2 If it becomes necessary to modify an Order Form or Statement of Work for any reason, Company may initiate, or Customer may request a change order ("Change Order") with respect to the Statement of Work. A Change Order may modify start date, completion date, cost or any other element of the Order Form or Statement of Work as may be mutually agreed upon by the parties. A Change Order shall take effect once it has been signed by an authorized individual for each party, at which time it shall become an exhibit to the applicable Order Form or Statement of Work, and deemed incorporated by reference in this Agreement.

5.3 Work Product may not be used by any person or entity that is not an Authorized User. Work Product is to be used for Customer's internal use and only to process information or data of Customer, or such other data which Customer may through contractual agreements, have secured from third parties during the normal course of Customer's business.

#### **6 Fees**

6.1 Company shall bill Customer the fees and charges ("Fees") pursuant to the billing schedule agreed to in each Order Form and/or Statement of Work. Payment terms for all invoices shall be defined in each Order Form and/or Statement of Work. Fees are non-cancelable and non-refundable.

6.2 Without limiting its other rights or liabilities, if any undisputed amount is owing by Customer, Company may (a) terminate the applicable Order Form and/or Statement of Work; (b) accelerate Customer's unpaid fee obligations under the applicable Order Form and/or Statement of Work; or (c) suspend the applicable Services until all undisputed overdue amounts are paid in full.

6.3 Customer shall have 10 days from receipt of invoice to advise Company in writing of any disputed charge appearing on an invoice. Customer shall not unreasonably dispute an invoice from Company. Customer agrees that time is of the essence in the resolution of disputes and agrees to work with Company to resolve disputes in a timely fashion.

6.4 Unless otherwise stipulated in the applicable Order Form and/or Statement of Work, Company shall also be entitled to reimbursement for all reasonable out-of-pocket and other expenses it incurs, and for which it provides documentation, directly related to performing services under this Agreement, including but not limited to all round trip travel costs, food, and lodging costs. For any single expense in excess of \$750 USD, Company shall receive prior approval from Customer before incurring the expense. For purposes of this Subsection 6.4, prior approval may include email approval of an expense. If any work is performed by Company for Customer without an Order Form and/or Statement of Work in effect, Company will be paid according to its then-current rate schedule, plus

reimbursement for all reasonable out-of-pocket and other expenses it incurs.

## 7 Intellectual Property

7.1 Customer acknowledges that it obtains no ownership rights in any Services, Software, and/or Work Product. All rights to the Services, Software, and/or Work Product, including but not limited to any accompanying technical documentation, Confidential Information, trade secrets, trademarks, service marks, patents, and copyrights, are, shall be, and will remain the property of Company or any third party from whom Company has licensed software or technology. Upon full payment of all relevant fees associated with each Order Form and/or Statement of Work, Company hereby grants Customer a limited, non-exclusive, perpetual, worldwide license to make use of the Work Product and create derivative works subject to the same restrictions in Section 4.1.

7.2 Company acknowledges that it obtains no ownership rights in any Work Product that is developed by Customer without Company's assistance.

7.3 Customer owns all right, title and interest in the Customer Data. During the term of this agreement, Customer hereby grants to Company, a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display the Customer Data solely for purposes of providing the Software and related services to Customer hereunder. Company shall not use the Customer Data except as necessary to perform its obligations hereunder. **Customer is solely responsible for obtaining any and all consents from individuals or third-party entities that are necessary or legally required for Customer to provide the Customer Data to Company hereunder and for the Software to distribute communications to those individuals or third party entities hereunder.**

7.4 Customer hereby grants to Company a perpetual, irrevocable, worldwide, royalty-free, sublicensable, non-exclusive license to create, process, reproduce, store, display, modify, translate, create derivative works from, make available and otherwise use Aggregated Data in connection with developing, providing, maintaining, supporting, or improving Company's current and future products and services, as they may be provided to Customer or other customers of Company, or for any other lawful purpose.

7.5 Company owns all right, title and interest in the Enrichment Data. During the term of this agreement, Company shall provide, at Customer's request, access to summarized Enrichment Data derived from Customer's use of the Software hereunder, and hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right and license to use, copy, transmit, modify and display that Enrichment Data solely for its internal business purposes and not for any other purpose. Notwithstanding anything else to the contrary in this agreement regarding Customer Data, Company may retain the identity of an individual user for purposes of associating, supplementing, and maintaining Enrichment Data on that individual including the individual's email address. Customer acknowledges that

Company utilizes Enrichment Data across its entire service to benefit the experience of all Customers and all Users and that Enrichment Data will not be deleted upon termination of this Agreement, except to the minimum extent required by applicable law. Company agrees that after termination of this Agreement, it shall not contact Users using email addresses provided by Customer and retain those emails solely for the purpose of associating previously generated Enrichment Data for future use if another Customer already has said email address in their own database. Company further represents that under no circumstances will it sell email addresses to any 3rd party.

## 8 Confidential Information

8.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Software or Services. The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

## 9 Overall Limitation of Damages

9.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT 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: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO COMPANY FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **10 Indemnification**

10.1 Company agrees to indemnify and hold Customer harmless against any loss, damage, expense, or cost, including reasonable attorneys' fees, arising out of any third party claim, demand, or suit asserting that the Services or any Company Work Product infringes or violates any copyright, patent, trade secret, trademark, or proprietary right existing under the laws of the United States or any state or territory thereof ("Claim"), subject to the overall limitation of damages hereunder.

10.2 The indemnification obligation in this section shall be effective only if (1) at the time of the alleged infringement, Customer gave prompt notice of the Claim and permitted Company to defend, and (2) Customer has reasonably cooperated in the defense of the claim. Company shall have no obligation to Customer to defend or satisfy any claims made against Customer that arise from the use, sale, licensing, or other disposition of the Work Product by Customer other than as permitted by this Agreement or from the Customer's modification of the product.

## **11 Termination.**

11.1 It is agreed that either party may terminate this Agreement immediately upon written notice to the other party in the event that such other party (a) becomes insolvent or makes an assignment for the benefit of creditors; (b) files or has filed against it any petition under any Title of the United States Code or any applicable bankruptcy, insolvency, reorganization or similar debtor relief law which is not discharged within 30 days of said filing; or (c) requests or suffers the appointment of a trustee or receiver, or the entry of an attachment or execution as to a substantial part of its business or assets; (d) becomes unresponsive, or halts the program at any time during the contract, for a period of 45 days or greater.

11.2 Company may terminate this Agreement in the event Customer (a) fails to make when due any payment required under this Agreement and such failure continues for a period of 30 days after notice thereof by Company to Customer; (b) commits a material breach of any of its obligations concerning scope of use or the protection of, Work Product, intellectual property of Company, and Confidential Information; (c) materially breaches any of its other obligations under any provision of this Agreement, which breach is not remedied within 30 days after notice thereof by Company to Customer.

11.3 Either party may terminate this Agreement for any reason after all obligations associated with any associated Order Forms and/or Statements of Work have been fully satisfied by furnishing thirty days advance written notice to the other party.

## **12 Rights Upon Termination.**

12.1 In the event that termination of this Agreement should occur as a result of Customer's failure to successfully execute its obligations under this Agreement, Customer shall immediately turn over to Company any Confidential Information relating to the services provided.

12.2 Upon termination, Customer shall pay Company all fees due through the end of the applicable Order Form's

and/or Statement of Work's term and all rights granted with respect to the services will immediately terminate.

12.3 The termination of this Agreement shall not extinguish any rights or obligations of the parties relating to protection of Confidential Information or to the protection of Company's intellectual property rights.

## **13 Assignment.**

13.1 Customer may not sell, pledge, assign, sublicense, or otherwise transfer or share its rights or delegate its obligations under this Agreement without the prior written consent of Company. Any attempted sale, pledge, assignment, sublicense or other transfer in violation hereof shall be void and of no force or effect. Company may assign its rights and delegate its duties hereunder at any time without the consent of Customer.

## **14 Employee Relationship.**

14.1 Neither party will hire, employ, or contract for services directly with any current employee or agent of the other without prior written consent of the other, for a minimum time period of twelve months after termination of this agreement or completion of last completed Order Form and/or Statement of Work, whichever is earlier. Either party may hire any prior employee or agent of the other so long as said employee or agent has been terminated from such relationship with the other party for at least twelve months.

## **15 General Provisions**

**15.1 Relationship to Order Forms, Statements of Work and Change Orders.** If there is a conflict between this Agreement and the provisions of an individual Order Form, Statement of Work, or Change Order the terms of the Order Form, Statement of Work, or Change Order will control, with the most recently executed document controlling the conflicting provision(s).

**15.2 Applicable Law.** The parties agree that this Agreement and interpretation thereof shall be governed, construed and performed in accordance with the laws of the State of Louisiana, exclusive of its choice of law provisions. The parties agree that the United Nations Convention for the International Sale of Goods shall not apply to this agreement.

**15.3 Taxes.** Customer shall pay, in addition to the other amounts payable under this Agreement, all local, state and federal and/or national excise, sales, use, personal property, gross receipts and similar taxes (excluding taxes imposed on or measured by Company's net income) levied or imposed by reason of the transactions under this Agreement. Customer shall, upon demand, pay to Company an amount equal to any such tax(es) actually paid or required to be collected or paid by Company.

**15.4 Required Consents.** Customer warrants that it has obtained lawful permission to use all hardware and software required in order for the services to take place.

**15.5 Publicity.** The terms of the Agreement, including Exhibits attached hereto, shall not be disclosed by the Customer or any person or entity having access to it. The

existence but not any of the terms of this Agreement may be disclosed by either party without the prior written consent of the other. Each of the parties may reveal the terms of this Agreement to its own officers, directors, shareholders, employees, agents, investors or prospective investors who have a need to know the terms of this Agreement, and who are subject to confidentiality agreements no less restrictive than the relevant provisions herein.

**15.6 Public Reference.** Customer must consent to any public use of its name as a Customer of Company. Upon approval by Customer of a specific instance of use (such as a case study or press release), the specific instance of use may be provided by Company to any number of individuals or entities without additional consent from Customer. Upon written notice by Customer, Company will remove all reference to Customer's name that is within Company's control as soon as reasonably possible.

**15.7 Modification.** This Agreement may not be modified or amended except in writing when signed by authorized representatives of each of the parties. No purported modification or amendment shall be binding until approved in writing by an authorized representative of Company.

**15.8 No Waiver.** The failure of either party to exercise any right or the waiver by either party of any breach, shall not prevent subsequent exercise of such right or be deemed a waiver of any subsequent breach of the same or any other term of the Agreement.

**15.9 Notices.** Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after mailing, or (c), except for notices of termination or an indemnifiable claim ("Legal Notices"), which shall clearly be identifiable as Legal Notices, the day of sending by email. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer.

All other notices to Customer will be addressed to the relevant contact designated by Customer. Daily correspondence required to manage the actual project can take the form of electronic mail.

**15.10 Force Majeure.** Neither party shall be deemed in default of this Agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies or any other cause beyond the control of such party ("Force Majeure"), provided that such party gives the other party written notice thereof promptly and, in any event, within fifteen days of discovery thereof and uses its best efforts to cure the delay. In the event of such

Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of twelve months.

**15.11 Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written promises or agreements. There are no promises, covenants, or undertakings other than those expressly set forth in this Agreement and any related Statements of Work.

**15.12 Equitable Remedies.** The parties recognize that money damages are not an adequate remedy for any breach or threatened breach of any obligation hereunder by Customer involving intellectual property or Confidential Information. The parties therefore agree that, in addition to any other remedies available hereunder, by law or otherwise, Company and any third party from whom Company has licensed software or technology shall be entitled to an injunction against any such continued breach by Customer of such obligations.

**15.13 Late Fees, Costs, and Attorneys' Fees.** A late payment charge of 1.5% per month, compounded monthly, shall apply to any undisputed payment due from Customer that is in arrears for a period exceeding 30 days. Any disputes not timely submitted per Section 6.3 of this Agreement shall also be subject to the late payment charge in this section. In any legal action or arbitration proceeding brought on account of a breach, the prevailing party shall recover from the other party all costs of litigation or arbitration, including reasonable attorneys' fees.

**15.14 Exclusive Jurisdiction and Venue.** Any cause of action arising out of or related to this Agreement, including an action to confirm or challenge an arbitration award, may only be brought in the courts of applicable jurisdiction in New Orleans Louisiana, and the parties hereby submit to the jurisdiction and venue of such courts.

**15.15 Dispute Resolution.** Any dispute occurring or relating to this agreement, or breach thereof, should be determined by arbitration in accordance with the arbitration rules of the American Arbitration Association. Any arbitration shall proceed in the State of Louisiana. Judgment upon the award of the arbitrator(s) may be entered in any court having jurisdiction thereof.

So agreed between the parties signing below.

**Company**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Customer**

By: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_