

JMT Consulting

Master Services Agreement



This Master Services Agreement (the "Agreement") is by and between **JMT Consulting Group, Inc.**, a New York corporation with a place of business at 2200-2202 Route 22, Patterson, NY 12563 ("JMT") and **the organization receiving services noted in the purchase agreement referencing this Master Services Agreement** ("Client") and is entered into as of the date of your original contract referencing this agreement ("Effective Date").

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, JMT and Client agree as follows:

1. Services.

While this Agreement is in effect and as requested by Client and/or any of its affiliates, when applicable (in which event the term "Client" shall thereafter refer to Client and such affiliates), JMT shall provide the services or human resources that are more particularly described on the Statement of Work, which is either attached and incorporated by reference ("SOW"), or provided under a separate cover explicitly referencing this agreement, or future Statements of Work signed by the parties (the "Services"). Services shall conform to the specifications in an SOW or otherwise agreed to in writing by JMT and Client, and JMT shall use reasonable efforts to meet any performance dates specified in the SOW. JMT also agrees to use reasonable efforts to ensure the continuity of JMT Personnel assigned to perform the Services so that any change in JMT Personnel does not materially impede the progress of the performance of the Services in accordance with the schedule described in the applicable SOW.

2. Change Orders.

(a) If either party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. JMT shall, within a reasonable time after such request, provide a written estimate to Client of:

- (i) the likely time required to implement the change;
- (ii) any necessary variations to the fees and other charges for the Services arising from the change;

(iii) the likely effect of the change on the Services; and

(iv) any other impact the change might have on the performance of this Agreement.

(b) Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon by both parties in writing.

(c) JMT may, from time to time change the Services without the consent of Client provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Order Confirmation.

(d) JMT may charge for the time it spends assessing and documenting a change request from Client on a time and materials basis in accordance with the Order Confirmation.

3. Client Obligations.

Client shall:

(a) cooperate with JMT in all matters relating to the Services and provide such access to Client's premises, and such office accommodation and other facilities as may reasonably be requested by JMT, for the purposes of performing the Services;

(b) respond promptly to any JMT request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for JMT to perform Services in accordance with the requirements of this Agreement. If Client does not respond to an intermediate milestone or final milestone acceptance written request within ten (10) business days, the intermediate or final milestone will be deemed by JMT to have been accepted and payment for that intermediate or final milestone will be due according to the terms of the SOW;

(c) provide such Client materials or information as JMT may reasonably request to carry out the Services in a timely manner and ensure that such Client materials or information are complete and accurate in all material respects;

(d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in

relation to the Services before the date on which the Services are to start; and(e) If JMT's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, JMT shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay.

4. Fees and Expenses.

This is a fixed price engagement. In consideration for the provision of the Services by JMT and the rights granted to Client under this agreement, Client shall pay the fee indicated on the applicable SOW. Except as may be expressly provided in the applicable SOW, Client shall reimburse JMT for all reasonable expenses incurred by JMT in the performance of the Services including, without limitation, travel and lodging expenses, communications charges and supplies. JMT will retain copies of receipts for any expenses over \$25 agreed in writing to be paid by Client, which shall be part of any invoice JMT submits. JMT agrees to obtain prior written approval from Client on expenses prior to incurring such expenses or requesting reimbursement.

5. Invoices and Payment.

JMT will invoice for services and expenses according to the terms in each SOW. If an SOW does not include invoice or expense terms, then JMT will invoice for services in advance and expenses in arrears. Client shall pay JMT net fifteen (15) days from the date Client receives an invoice. Notwithstanding any other rights of JMT, in the event of late payment by Client, JMT shall: (i) be entitled to interest on the amount that remains unpaid for fifteen (15) days following written notice of such failure at a rate of lesser of 1.0% per month or the highest rate allowed by applicable law, calculated from the due date until the date of actual payment, or (ii) suspend performance for all Services until payment has been made in full. JMT shall add to each invoice any sales, use, excise, value-added, services and other applicable transaction taxes that are levied by any taxing authority upon the provision of the services unless Client completes a valid tax exemption certification form and returns it to JMT.

Payments should be made electronically whenever possible. Payments may also be made by check at 1982 Providence Pkwy, Suite 258, Mt. Juliet, TN 37122.

6. Term and Termination.

(a) This Agreement shall be effective on the Effective Date, shall continue for a term of one (1) year, and shall automatically renew for an additional term of (1) year unless terminated by either party with (30) days prior written notice prior to the expiration of the then-current term. If this paragraph allows a termination date prior to the termination date of an SOW attached to this Agreement, then this Agreement may not terminate until the termination of the attached SOW.

(b) This Agreement may be terminated at any time by mutual written agreement of the parties. If either party defaults in the performance of its obligations (including compliance with any covenants) under this Agreement and such default is not cured within thirty (30) days of the receipt of written notice thereof, then the non-defaulting party shall have the right (in addition to any other rights it may have) by further written notice to terminate this Agreement on any future date not less than ten (10) days from the date of such further notice.

(c) In the event of expiration or termination of this Agreement for any reason other than the non-payment of fees, in whole or in part, where all or some portion of the Services will be performed by Client itself or elsewhere, JMT agrees to cooperate in the orderly transition of the Services, including but not limited to, provision of reports, files, and similar media necessary for continuation of the Services transferred, continuation of Services at reducing levels if necessary during a transition period, and at reduced levels if Services are transferred in part. Compensation, if any, for reduced work will be mutually agreed upon by the parties in writing.

(d) Any provision in this Agreement which by its nature is intended to survive the expiration or termination of the Agreement shall survive the expiration or termination of this Agreement.

7. Intellectual Property.

All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks service marks, trade secrets, methodologies, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "**Intellectual Property Rights**") in and to all documents, work product and other materials that

are delivered to Client under this Agreement or prepared by or on behalf of the JMT in the course of performing the Services (collectively, the "Deliverables") except for any Confidential Information of Client or Client materials, shall be owned by JMT. JMT hereby grants Client a license to use all Intellectual Property Rights free of additional charge and on a non-exclusive, worldwide, non-transferable, non-sublicenseable, fully paid-up, royalty-free and perpetual basis to the extent necessary to enable Client to make reasonable use of the Deliverables and the Services.

8. Confidential Information.

- a) The Parties will furnish and/or have access to confidential information, trade secret assets or other Confidential Information to each other which the Parties desire to be treated by the Party receiving the same as "Confidential Information" as defined below.
- b) Confidential Information. As used in this Agreement, the term "Confidential Information" shall include, without limitation, Work Product, all financial, operating, proprietary, scientific and technological information, corporate records and books, trade secret assets or other confidential or Confidential Information designated as such information in writing by the Parties, whether by letter or by the use of an appropriate proprietary stamp, legend or otherwise.
- c) Disclosure of Confidential Information. The Parties and their respective shareholders, owners, members, managers, officers, directors, employees, agents, contractors, affiliates and representatives shall hold in confidence, and shall not disclose to any person, except as provided below, any Confidential Information. The Parties shall use such Confidential Information only for the purpose of providing the Services and/or fulfilling the terms and conditions of this Agreement and shall not use or exploit such Confidential Information for their own benefit, or for the benefit of another, without the other Party's prior written consent. The Parties shall disclose Confidential Information received under this Agreement only to such employees, contractors or other individuals who have a need to know such Confidential Information in the course of the performance of their duties and who agree in writing to protect the confidentiality of such Confidential Information.

d) Limitation on Obligations. The obligations of the Parties specified herein shall not apply, and the Parties shall have no further obligations to each other, with respect to any Confidential Information to the extent that such Confidential Information:

- i. is generally known to the public at the time of disclosure;
 - ii. was, with the disclosing Party's knowledge and consent, in the receiving Party's possession prior to the date of this Agreement otherwise than as a result of the receiving Party's breach of any legal obligation owed by the receiving Party to the disclosing Party; or
 - iii. is required to be disclosed by either of the Parties to comply with applicable laws or governmental regulations, provided that the receiving Party provides prior written notice of such disclosure to the disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.
- e) Ownership of Confidential Information. The Parties agree that the disclosing Party, as the case may be, is and shall remain the exclusive owner of its Confidential Information and all trade secrets and other rights therein. Except as otherwise provided in this Agreement, no license or conveyance of any such rights to either Party is granted or implied under this Agreement.
- f) Physical Documents. The Parties shall, upon the earlier of: (i) the request of the other Party; or (ii) the termination of this Agreement, destroy all documents and other tangible manifestations of Confidential Information received by either of the Parties pursuant to this Agreement (and all copies and reproductions thereof). Upon request in writing, the Parties may request that documents be returned to the disclosing party.

9. Irreparable Harm.

The parties acknowledge that use or disclosure of any Confidential Information of the other in a manner inconsistent with this Agreement will give rise to irreparable injury to the disclosing party or third parties who have entrusted information to the disclosing Party that is inadequately compensable in damages. Accordingly, in addition to any other legal remedies that may be available, at law or in equity, the disclosing Party or such third parties shall be entitled to seek equitable or injunctive relief against

the unauthorized use or disclosure of Confidential Information.

10. Representations and Warranty.

Each Party (as applicable) warrants and represents that:

- a) Each Party will cause each Party's Personnel and its employees to comply with the Confidentiality provisions of this Agreement.
- b) Each Party has full corporate power and authority to enter into this Agreement and to undertake its obligations contained herein.
- c) JMT warrants that the Services will be performed in a good and workmanlike manner. THIS IS A SERVICES AGREEMENT. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTY ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. Client's sole and exclusive remedy and JMT's entire liability for breach of the above warranty will be re-performance of Services. Any claim for breach of JMT's warranty must be provided to JMT in writing within 90 days of performance of the Services at issue.

11. Limitation of Liability.

- a) IN NO EVENT SHALL JMT OR CLIENT BE LIABLE TO THE OTHER OR TO ANY THIRD PARTIES INCLUDING REPRESENTATIVES, AGENTS, ASSIGNS, SERVICE PROVIDERS, CONSULTANTS, AND SUBCONTRACTORS OF JMT OR SUBCONTRACTORS OF CLIENT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS OR ANY RELATED AGREEMENT (INCLUDING, WITHOUT LIMITATION ANY ATTACHMENTS HERETO), WHETHER ARISING UNDER THEORIES OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- b) Except as stated in Section 11.(c) below, in no event shall either party's aggregate liability for any and all claims, damages or obligations arising out of or relating to this Agreement, whether the cause of action is for breach of contract, tort liability or based on any other theory of

recovery, exceed the total fees paid by Client to JMT in the six (6) month period immediately preceding the date upon which the claim is accrued.

- c) Client accepts responsibility for maintaining good business practices and Client agrees to hold JMT harmless for any damages arising from failure to perform ordinary and necessary best practices including, but not limited to, (a) Maintaining good and complete backups of all operating systems, applications, data sources, configurations, reports and source code (b) Updating tax rates and tables (c) Compliance with payment card industry standards and requirements on all systems (d) Protection of protected health information
- d) Client agrees to provide written notice to JMT at the commencement of any project in which JMT may be exposed to protected health information during the course of that Scope of Work.
- e) Client agrees JMT does not provide accounting, tax, financial or general business advice or counsel nor will Client rely on JMT for accounting, tax, financial or general business advice or counsel.
- f) Client accepts responsibility for the calculation and timely filing and remittance of all tax return and payments and agrees to hold JMT harmless for any and all penalties that might be imposed on failure to correctly calculate, file and/or remit tax returns and payments.

12. Frustration of Performance.

In the event JMT staff reports to Client's site to work and is unable to work a full or a portion of an 8-hour day because of Client's equipment failure, Client's early closing, Client's meetings that suspend work, Client's failure to make its employees available as necessary, Client's failure to satisfy previously identified prerequisites, or any other factor under Client's control, JMT will bill for a full, or the appropriate portion of a normal 8-hour day for each staff member so affected. Any such time billed will be considered by the parties to be in addition to the Cost Summary provided above.

13. Independent Contractors.

Client and JMT are acting hereunder as Independent Contractors. Neither party shall be considered or deemed to be an agent, employee, joint venturer, or partner of the other. JMT Personnel shall not be considered employees of Client, shall not be entitled to any benefits that Client grants employees and shall

not hold themselves out as Client employees. JMT shall be responsible for paying all payroll taxes or contributions for JMT and JMT Personnel performing Services hereunder, shall be liable for failure to do so.

14. Marketing Consideration.

Client agrees to participate in a mutually agreeable press release announcing your selection of solution presented herein within 30 days of the signed agreement. Further, your organization agrees to participate in a mutually agreeable press release announcing your go-live on the new solution within 90 days of going live.

15. Governing Law and Venue.

This Agreement and performance hereunder and actions related hereto shall be governed by the internal laws of the State of Tennessee, without regard to its conflict of laws principles. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Tennessee in each case located in the City of Nashville and County of Davidson, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

16. Dispute Resolution.

The parties agree to promptly meet to attempt to resolve all disputes between the parties arising out of or relating to this Agreement in good faith by a senior representative of each party who is familiar with the transactions ("Dispute Meeting"). If a resolution cannot be reached within five (5) business days of the date that either party requests a Dispute Meeting, the parties may then pursue any remedies to which they may be entitled, by operation of law, in equity or otherwise. The parties agree that if a suit is brought in order to enforce the terms of this Agreement, the successful party shall recover, in addition to all damages awarded, all court costs, fees and expenses of experts and reasonable attorney's fees.

17. Notices.

Any notice given under this Agreement shall be in writing and addressed as set forth above. A notice shall be effective and an invoice shall be deemed received (i) upon receipt if delivered by hand or (ii) three (3) days after deposit in the U.S. mails, postage prepaid, certified mail return receipt requested.

Either party may change its address at any time by giving written notice of the change.

18. General.

This Agreement, including any Exhibits or SOW made a part hereof, shall not be altered, amended or modified except in writing and signed by each of the Parties hereto or as otherwise provided in this Agreement. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument. Facsimile signatures constitute original signatures for purposes of the execution of this Agreement. There are no third-party beneficiaries of this Agreement. The illegality, invalidity or unenforceability of any provision hereof under the laws of any jurisdiction will not affect its legality, validity or enforceability under the laws of any other jurisdiction, nor the legality, validity or enforceability of any other provision. This Agreement constitutes the complete and exclusive statement of agreement between the parties, and supersedes all prior proposals and other agreements, oral and written, between the parties relating to the subject matter of this Agreement. The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder. This Agreement shall bind and benefit each of the Parties, and their respective successors and assigns.

19. Force Majeure.

The JMT shall not be liable or responsible to Client, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of JMT including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage; provided that, if the event in question continues for a continuous period in excess of thirty days, Client shall be entitled to give notice in writing to JMT to terminate this Agreement.

20. Assignment.

Neither Party may assign this Agreement without the prior written consent of the other Party.

IN WITNESS THEREOF, the parties have executed this Agreement as of the Effective Date.