

# SERVICE AGREEMENT

between  
[PARTY NAME]  
and  
[PARTY NAME]  
dated as of [DATE]

## 1. Recitals

Services Agreement (this "Agreement"), dated as of \_\_\_\_\_ [DATE] (the "Effective Date"), is by and between \_\_\_\_\_ [SERVICE PROVIDER NAME], a \_\_\_\_\_ [STATE OF ORGANIZATION] corporation, with offices located at \_\_\_\_\_ [ADDRESS] (the "Service Provider") and \_\_\_\_\_ [CUSTOMER NAME], a \_\_\_\_\_ [STATE OF ORGANIZATION] corporation, with offices located at \_\_\_\_\_ [ADDRESS] (the "Customer"). [WHEREAS, the Customer desires to retain the Service Provider to provide certain \_\_\_\_\_ [DESCRIPTION OF SERVICES] services upon the terms and conditions hereinafter set forth, and the Service Provider is willing to perform such services.

## 2. Services

The Service Provider shall provide the Services to the Customer [and the Authorized Service Recipients] as described in more detail in the Statement of Work in accordance with the terms and conditions of this Agreement. The Statement of Work shall include the following information, if applicable:

- (a) a detailed description of the Services to be performed pursuant to the Statement of Work;
- (b) the date upon which the Services will commence and the term of such Statement of Work;
- (c) [the names of any Key Personnel;]
- (d) the fees to be paid to the Service Provider under the Statement of Work;
- (e) any criteria for completion of the [Services/Project]; and
- (h) any other terms and conditions agreed upon by the parties in connection with the Services to be performed pursuant to such Statement of Work.

## 3. Service Provider's Obligations

The Service Provider shall:

- (a) Subject to the prior written approval of the Customer, appoint:

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- (i) a Service Provider employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of the Service Provider in connection with matters pertaining to this Agreement (the "Service Provider Contract Manager"); and
- (ii) [[Key Personnel/Service Provider Personnel], who shall be suitably skilled, experienced, and qualified to perform the Services;]

(b) Maintain the same Service Provider Contract Manager [and other Key Personnel] throughout the Term of this Agreement, except for changes in such personnel due to:

- (i) The Customer's request pursuant to Section 3.1(c); or
- (ii) the resignation or termination of such personnel or other circumstances outside of the Service Provider's reasonable control;

(c) Upon the [reasonable] written request of the Customer, promptly replace the Service Provider Contract Manager and any other Service Provider Personnel;

(d) Before the date on which the Services are to start, obtain, and at all times during the Term of this Agreement maintain, all necessary licenses and consents and comply with all relevant Laws applicable to the provision of the Services;

(e) Prior to any Service Provider Personnel performing any Services hereunder:

- (i) ensure that such Service Provider Personnel have the legal right to work in the United States; and
- (ii) at its sole cost and expense, conduct background checks on such Service Provider Personnel, which background checks shall comprise, at a minimum, a review of credit history, references, and criminal record, in accordance with state, federal, and local law;

(f) Comply with, and ensure that all Service Provider Personnel comply with, all rules, regulations, and policies of the Customer that are communicated to the Service Provider in writing, including security procedures concerning systems and data and remote access thereto, building security procedures[, including the restriction of access by the Customer to certain areas of its premises or systems for security reasons,] and general health and safety practices and procedures;

(g) Maintain complete and accurate records [relating to the provision of the Services under this Agreement, including records] of the time spent and materials used by the Service Provider in providing the Services in such form as the Customer shall approve.

During the Term [and for a period of [two] years thereafter], upon the Customer's written request, the Service Provider shall allow the Customer or the Customer's representative to inspect and make copies of such records and interview Service Provider Personnel in connection with the provision of the Services[; provided that any such inspection shall take place during regular business hours no more than once per year and the Customer provides the Service Provider with at least [[ten/[OTHER NUMBER]]] business days/reasonable] advance written notice];

(h) Obtain the Customer's written approval[, which shall not be unreasonably withheld or delayed/which may be given or withheld in the Customer's sole discretion,] prior to entering into agreements with or otherwise engaging any Person, including all subcontractors and Affiliates of the Service Provider, other than the Service Provider's employees, to provide any Services and Deliverables to the Customer (each such approved subcontractor or other third parties, a "Permitted Subcontractor").

The Customer's approval shall not relieve the Service Provider of its obligations under the Agreement, and the Service Provider shall remain fully responsible for the performance of each such Permitted Subcontractor and its employees and for their compliance with all of the terms and conditions of this Agreement as if they were the Service Provider's own employees. Nothing contained in this Agreement shall create any contractual relationship between the Customer and any Service Provider subcontractor or supplier; and

(i) Require each Permitted Subcontractor to be bound in writing by the confidentiality and intellectual property assignment or license provisions of this Agreement, [and, upon the Customer's written request, to enter into a non-disclosure or intellectual property assignment or license agreement in a form that is reasonably satisfactory to the Customer].

#### **4. Time is of the Essence**

The Service Provider is responsible for all Service Provider Personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

The Service Provider acknowledges that time is of the essence with respect to the Service Provider's obligations hereunder and that prompt and timely performance of all such obligations, [including all timetables, Project Milestones, and other requirements in this Agreement and [the/each] Statement of Work,] is strictly required.

#### **5. Additional Obligations and Services Performed in the US**

[The obligations of the Service Provider under this Agreement shall be performed fully within the United States unless approved in writing in advance by the Customer.]

[\_\_\_\_\_ [ANY ADDITIONAL SERVICE PROVIDER OBLIGATIONS].]

#### **6. The Customer's Obligations**

The Customer shall:

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(a) Cooperate with the Service Provider in all matters relating to the Services and appoint [and, in its reasonable discretion, replace] a Customer employee to serve as the primary contact with respect to this Agreement and who will have the authority to act on behalf of the Customer with respect to matters pertaining to this Agreement (the "Customer Contract Manager");

(b) Provide, subject to Section letter (f) in section III above, such access to the Customer's premises and such office accommodation and other facilities as may reasonably be [requested/required] by the Service Provider [and agreed with the Customer in writing in advance], for the purposes of performing [the Services/each Project];

(c) Respond promptly to any request from the Service Provider to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for the Service Provider to perform Services in accordance with the requirements of this Agreement;

(d) Provide such [Customer Materials/information] as the Service Provider may [reasonably] request [and the Customer considers reasonably necessary], in order to carry out the Services, in a timely manner, and ensure that it is complete and accurate in all material respects; [and]

(e) Obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services[, the installation of the Service Provider Equipment, the use of Customer Materials, and the use of Customer Equipment in relation to the Service Provider Equipment] [to the extent that such licenses, consents, and Law relate to the Customer's business, premises, staff, and equipment], in all cases before the date on which the Services are to start[./; and]

(f) Keep and maintain the Service Provider Equipment in good condition and in accordance with the Service Provider's instructions as notified in writing from time to time, and shall not dispose of or use the Service Provider Equipment other than in accordance with the Service Provider's written instructions or authorization.]

(g) \_\_\_\_\_ [ANY ADDITIONAL CUSTOMER OBLIGATIONS.]

## 7. Term and Termination

This Agreement shall commence as of the Effective Date and shall continue thereafter [until the completion of the Services for a period of \_\_\_\_\_[TERM], unless sooner terminated pursuant to this section.

Upon expiration of the Initial Term, this Agreement shall automatically renew for \_\_\_\_\_[an/[NUMBER]] additional \_\_\_\_\_[NUMBER] \_\_\_\_\_[month/year] term[s] unless \_\_\_\_\_[ the Customer/the Service Provider/either party] provides written notice of nonrenewal at least \_\_\_\_\_[NUMBER] days prior to the end of the then-current term (each a "Renewal Term" and together with the Initial Term, the "Term").

If the Term is renewed for one or more Renewal Terms, the terms and conditions of this Agreement during each Renewal Term shall be the same as the terms and conditions in effect immediately prior to

such renewal[, subject to any change in fees in accordance with this Agreement. If \_\_\_\_\_[the Customer/the Service Provider/either Party] provides timely notice of nonrenewal, then this Agreement shall terminate on the expiration of the then-current Term, unless sooner terminated as provided in this section

Either party, in its sole discretion, may terminate this Agreement [or any Statement of Work], in whole or in part, at any time without cause, by providing at least \_\_\_\_\_[NUMBER] days' prior written notice to the other party.

Either party may terminate this Agreement, effective upon written notice to the other party (the "Defaulting Party"), if the Defaulting Party:

- (a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a [material] breach capable of cure, the Defaulting Party does not cure such breach within \_\_\_\_\_[NUMBER] days after receipt of written notice of such breach; or
- (b) (i) Becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within \_\_\_\_\_[NUMBER] business days or is not dismissed or vacated within \_\_\_\_\_[NUMBER] days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

## **8. Effects of Termination or Expiration**

Upon expiration or termination of this Agreement for any reason:

(a) The Service Provider shall:

- (i) Promptly deliver to the Customer all Deliverables (whether complete or incomplete) for which the Customer has paid, all Customer Equipment and all Customer Materials in its possession.
- (ii) Promptly remove any Service Provider Equipment located at the Customer's premises.
- (iii) Provide reasonable cooperation and assistance to the Customer [upon Customer's written request and at the Customer's expense in transitioning the Services to a different Service Provider; and
- (iv) On a pro rata basis, repay all fees and expenses paid in advance for any Services not performed or Deliverables not provided.

(b) Each party shall:

- (i) return to the other party all documents and tangible materials (and any copies) containing, reflecting, incorporating, or based on the other party's Confidential Information.

- (ii) permanently delete all of the other party's Confidential Information from its computer systems; and
- (iii) certify in writing to the other party that it has complied with the requirements of this clause.

(c) In no event shall the Customer be liable for any Service Provider Personnel termination costs arising from the expiration or termination of this Agreement.

## 9. Payment Terms

In consideration of the provision of the Services by the Service Provider and the rights granted to the Customer under this Agreement, the Customer shall pay the fees set forth in the Statement of Work. Payment to the Service Provider of such fees and the reimbursement of expenses pursuant to this section shall constitute payment in full for the performance of the Services, and, the Customer shall not be responsible for paying any other fees, costs, or expenses.

Where the Services are provided on a time and materials basis:

(a) The fees payable for the Services shall be calculated in accordance with the Service Provider's [daily/hourly] fee rates set forth in the [applicable] Statement of Work; [and]

(b) [The Customer shall reimburse the Service Provider, at the Service Provider's actual cost [plus a \_\_\_\_\_[NUMBER]% markup], for any materials, machinery, equipment, and third-party services (collectively, "Materials") reasonably necessary for the provision of the Services. The Service Provider shall obtain the Customer's written consent prior to the purchase of all Materials, [which shall not be unreasonably withheld]; and

(c) The Service Provider shall issue monthly invoices to the Customer in arrears for its fees for time for the immediately preceding month, calculated as provided in this section, together with a detailed breakdown of any expenses for such month incurred in accordance with the following sections.

Where Services are provided for a fixed price, the total fees for the Services shall be the amount set out in the [applicable] Statement of Work. The total price shall be paid to the Service Provider in installments, as set out in the Statement of Work, [with each installment being conditional on the Service Provider achieving the corresponding Project Milestone].

[On achieving a Project Milestone/At the end of a period specified in the [applicable] Statement of Work in respect of which an installment is due], the Service Provider shall issue invoices to the Customer for the fees that are then payable, together with a detailed breakdown of any expenses incurred in accordance with the following sections.

The Customer agrees to reimburse the Service Provider for all [actual, documented, and] reasonable travel and out-of-pocket expenses incurred by the Service Provider in connection with the performance of the Services [that have been approved in advance in writing by the Customer][; provided, that such

expenses conform to the Customer's standard travel and expense policy, a copy of which is attached as Exhibit \_\_\_\_\_[EXHIBIT]].

(d) The parties agree that [after the initial \_\_\_\_\_[NUMBER] months of the Term,] for Services provided on a time and materials basis, the Service Provider may increase its standard fee rates specified in the [applicable] Statement of Work upon written notice to the Customer; provided, that:

- (i) The Service Provider provides the Customer written notice of such increase at least [90] days prior to the effective date of such increase;
- (ii) such increases occur no more frequently than once per contract year of the Term; and
- (iii) the amount of such increase shall not exceed the lesser of:
  - (1) the percentage rate of increase for the immediately preceding \_\_\_\_\_[NUMBER]-month period in the \_\_\_\_\_[INDEX] or, if such index is not available, such other index as the parties may agree most closely resembles such index; or
  - (2) [five/\_\_\_\_\_ [NUMBER]] percent ([5/\_\_\_\_\_ [NUMBER]]%).]

(e) The Service Provider shall issue invoices to the Customer only in accordance with the terms of this Section, and the Customer shall pay all properly invoiced amounts due to the Service Provider within [NUMBER] days after the Customer's receipt of such invoice [except for any amounts disputed by the Customer in good faith]. All payments hereunder shall be in US dollars and made by check or wire transfer.

The Customer 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 the Customer hereunder. Any such taxes, duties, and charges currently assessed or which may be assessed in the future, that are applicable to the Services are for the Customer's account, and the Customer hereby agrees to pay such taxes; provided, that, in no event shall the Customer pay or be responsible for any taxes imposed on, or with respect to, the Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

## **10. Intellectual Property Rights**

The Customer is, and shall be, the sole and exclusive owner of all right, title, and interest in and to the Deliverables, including all Intellectual Property Rights therein. The Service Provider agrees that with respect to any Deliverables that may qualify as "work made for hire" as defined in 17 U.S.C. §101, such Deliverables are hereby deemed a "work made for hire" for the Customer. To the extent that any of the Deliverables do not constitute a "work made for hire", the Service Provider hereby irrevocably assigns to the Customer, in each case without additional consideration, all right, title, and interest throughout the world in and to the Deliverables, including all Intellectual Property Rights therein.

The Service Provider shall cause the Service Provider Personnel to irrevocably waive, to the extent permitted by applicable Law, any and all claims such Service Provider Personnel may now or hereafter have in any jurisdiction to so-called "moral rights" or rights of droit moral with respect to the Deliverables.

Upon the [reasonable] request of the Customer, the Service Provider shall, and shall cause the Service Provider Personnel to, promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, as may be necessary to assist the Customer to prosecute, register, perfect, or record its rights in or to any Deliverables.

The Customer and its licensors are, and shall remain, the sole and exclusive owner of all right, title, and interest in and to the Customer Materials, including all Intellectual Property Rights therein. The Service Provider shall have no right or license to use any Customer Materials except solely during the Term of the Agreement to the extent necessary to provide the Services to the Customer. All other rights in and to Customer Materials are expressly reserved by the Customer.

## **11. Confidential Information**

The Receiving Party agrees:

(a) Not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party without the prior written consent of the Disclosing Party; provided, however, that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, and legal advisors who have a "need to know", who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this section;

(b) To use the Confidential Information of the Disclosing Party only for the purposes of performing its obligations under the Agreement or, in the case of the Customer, to make use of the Services and Deliverables; and

(c) To [immediately/promptly] notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of the Disclosing Party.

(d) If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party shall provide:

(i) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedies; and

(ii) reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Receiving Party remains required by Law to disclose any Confidential Information, the Receiving Party shall disclose no more than that portion of the Confidential Information which, on the advice of the Receiving Party's legal counsel, the Receiving Party is legally required to disclose.

## 12. Representations and Warranties

Each party represents and warrants to the other party that:

- (a) it is duly organized, validly existing, and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;
- (b) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder;
- (c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate action of the party; and
- (d) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.
- (e) The Service Provider represents and warrants to the Customer that:
  - (i) it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner [in accordance with [best/generally recognized/commercially reasonable] industry standards for similar services] and shall devote adequate resources to meet its obligations under this Agreement;
  - (ii) It is in compliance with, and shall perform the Services in compliance with, all applicable Laws;
- (f) To Service Provider's knowledge none of the Services, Deliverables, and the Customer's use thereof infringe or will infringe any Intellectual Property Right/registered or issued patent, copyright, or trademark of any third party arising under the Law of the United States/ \_\_\_\_\_ [IDENTIFY SPECIFIC JURISDICTIONS].
- (g) The Services and Deliverables will be in conformity in all respects with all requirements or specifications stated in this Agreement and the Statement of Work for a period of \_\_\_\_\_ [NUMBER] days after delivery to or acceptance by the Customer.
- (h) [ \_\_\_\_\_ [ADDITIONAL REPRESENTATIONS AND WARRANTIES]. ]

## 13. Indemnification

The Service Provider shall defend, indemnify, and hold harmless the Customer Indemnitees from and against all Losses [awarded against a Customer Indemnitee in a final judgment] based on a claim that any of the Services or Deliverables or the Customer's receipt or use thereof infringes any Intellectual Property Right of a third party [arising under the Laws of the United States][; provided, however, that the Service Provider shall have no obligations under this Section 11.2 with respect to claims to the extent arising out of:

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- (a) any Customer Materials or any instruction, information, designs, specifications, or other materials provided by the Customer in writing to the Service Provider;
- (b) use of the Deliverables in combination with any materials or equipment not supplied to the Customer or specified by the Service Provider in writing, if the infringement would have been avoided by the use of the Deliverables not so combined; or
- (c) any modifications or changes made to the Deliverables by or on behalf of any Person other than the Service Provider or the Service Provider Personnel].
- (d) The Customer shall defend, indemnify, and hold harmless the Service Provider [and the Service Provider's Affiliates] and [its/their] officers, directors, employees, agents, successors, and permitted assigns from and against all Losses [awarded against the Service Provider in a final judgment] [arising out of or resulting from any third-party Action] arising out of or resulting from:
  - (i) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the [grossly] negligent or willful acts or omissions of the Customer; and
  - (ii) The Customer's [material] breach of any [representation, warranty, or obligation of the Customer in this Agreement/representation or warranty set forth in this Agreement].

(e) The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any Action and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense.

The indemnified party's failure to perform any obligations under this section shall not relieve the indemnifying party of its obligations under this section, except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

- (f) Notwithstanding anything to the contrary in this Agreement, the indemnifying party is not obligated to indemnify[, hold harmless,] or defend the indemnified party against any claim (whether direct or indirect) [if/to the extent] such claim or corresponding losses arise out of or result from[, in whole or in part,] the indemnified party's:
- (i) [gross] negligence or more culpable act or omission (including recklessness or willful misconduct); [or]
  - (ii) bad faith failure to [materially] comply with any of its [material] obligations set forth in this Agreement.

## 14. Non-Solicitation and Non-Compete

During the Term of this Agreement and for a period of [[NUMBER] months] thereafter, neither party shall, directly or indirectly, in any manner solicit or induce for employment any person who performed any work under this Agreement who is then in the employ of the other party.

A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet, shall not be construed as a solicitation or inducement for the purposes of this section, and the hiring of any employee or independent contractor who freely responds thereto shall not be a breach of this section.

If either party breaches this Agreement, the breaching party shall, on demand, pay to the non-breaching party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker, or independent contractor plus the recruitment costs incurred by the non-breaching party in replacing such person.

The Service Provider [retains/does not retain] the right to perform the same or similar type of services for third parties during the Term of this Agreement [, except that, during the Term, the Service Provider shall not provide services to the following direct competitors of the Customer:

**[LIST DIRECT COMPETITORS].]**

## 15. Relationship to the Parties

Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party[, which shall not be unreasonably withheld or delayed].

All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by [facsimile (with confirmation of transmission)/email] if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the [third/\_\_\_\_\_] [OTHER NUMBER]] day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this section.

If to the Service Provider: \_\_\_\_\_ [SERVICE PROVIDER ADDRESS]  
[Facsimile: \_\_\_\_\_ [FAX NUMBER]] [Email: \_\_\_\_\_ [EMAIL ADDRESS]] Attention:  
\_\_\_\_\_ [TITLE OF OFFICER TO RECEIVE NOTICES]

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If to the Customer: \_\_\_\_\_[CUSTOMER ADDRESS] [Facsimile: \_\_\_\_\_[FAX NUMBER]]  
[Email: \_\_\_\_\_[EMAIL ADDRESS]] Attention: \_\_\_\_\_[TITLE OF OFFICER TO  
RECEIVE NOTICES].

## **16. Entire Agreement**

This Agreement, together with all Schedules, Exhibits, and Statements of Work and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

## **17. Assignment**

Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, including by operation of law, change of control, or merger, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, that, upon prior written notice to the other party, either party may assign the Agreement to an Affiliate of such party or to a successor of all or substantially all of the assets of such party through merger, reorganization, consolidation, or acquisition.

No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

## **18. Amendment and Modification**

This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

## **19. Severability**

If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

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## 20. Choice of Law

This Agreement shall be governed by and construed in accordance with the internal laws of the State of \_\_\_\_\_ [RELEVANT STATE] without giving effect to any choice or conflict of law provision or rule (whether of the State of \_\_\_\_\_ [RELEVANT STATE] or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of \_\_\_\_\_ [RELEVANT STATE].

## 21. Attorney's Fees

[If any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of [or related to] this Agreement, the prevailing party shall be entitled to recover its [reasonable/actual] attorneys' fees and court costs from the non-prevailing party.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**[SERVICE PROVIDER NAME]**

By \_\_\_\_\_

Name:

Title:

**[CUSTOMER NAME]**

By \_\_\_\_\_

Name:

Title:

## EXHIBITS

**EXHIBIT A \_\_\_\_\_ [SERVICE PROVIDER PROPOSAL]**

**EXHIBIT B \_\_\_\_\_ [FORM OF STATEMENT OF WORK]**