



## MASTER SERVICE AGREEMENT

This Master Service Agreement ("MSA") is entered into effective as of the date set forth in the signature block ("Effective Date") of the Client Service Order or written quote for purchase of services and/or goods (collectively referred to herein as "Service Order") by and between Xirtix Consulting, LLC ("Service Provider") and the client identified and signing the Service Order ("Client") for the provision of certain services ("Services"), as set forth therein, to Client by Service Provider and its Affiliates. Service Provider's and Client's "Affiliates" shall include, but is not limited to all of its parents, subsidiaries, direct and indirect parent entities, related entities, partners, members, managers, joint ventures, officers, directors, employees, agents, consultants, trustees, trustors, administrators, estates, representatives, beneficiaries, predecessors, successors, and assigns.

As used in this MSA and in any document incorporated into the Agreement by reference, "Agreement" means this MSA, its attachments, other documents referred to herein by reference, including, without limitation, the Service Order accepted by Service Provider pursuant to the terms hereof and any and all supplements. In consideration of the mutual promises and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider (or, as applicable, its Affiliate) agrees to provide and Client agrees to purchase the Services according to the terms of the Agreement. BY SIGNING THE SERVICE ORDER, BUYER ACKNOWLEDGES AND REPRESENTS THAT PRIOR TO ITS EXECUTION OF THE SERVICE ORDER IT HAS FULLY READ AND UNDERSTANDS (a) THIS MASTER SERVICE AGREEMENT, (b) EACH OF THE APPLICABLE SERVICE SUPPLEMENTS, (c) ALL OTHER REFERENCED SCHEDULES, EXHIBITS AND/OR ATTACHMENTS, AND (d) SERVICE ORDERS EXECUTED IN CONJUNCTION HERewith OR PURSUANT TO THE TERMS HEREOF AND AGREES THAT THE APPLICABLE PRODUCT SUPPLEMENTS, SERVICE ORDERS AND ANY OTHER DOCUMENTS REFERRED TO AND INCORPORATED INTO THE AGREEMENT ARE A PART OF THE AGREEMENT AS IF SET FORTH HEREIN IN THEIR ENTIRETY. EXECUTION OF THE SERVICE ORDER CONSTITUTES AN AGREEMENT AND ACKNOWLEDGMENT THAT THE RELEASE, INDEMNIFICATION, AND LIMITATION OF LIABILITY PROVISIONS CONTAINED IN THE AGREEMENT COMPLY WITH THE EXPRESS NEGLIGENCE RULE AND ARE CONSPICUOUS.

## TERMS AND CONDITIONS

### 1) Term of Agreement.

a) The term of the Agreement shall be (1) year(s) from the Effective Date ("Initial Term"). Upon the expiration of the Initial Term, the Agreement automatically renews from year to year (each subsequent year being a "Renewal Term"). In the event either party wishes to terminate the Agreement, it must deliver written notice to the other party terminating the Agreement sixty (60) days prior the expiration of the Initial Term or then-current Renewal Term.

b) Each Service Order placed under this Agreement may have its own term, as indicated on such Service Order ("Service Term"). Each Service Term will renew automatically on a year to year basis ("Service Renewal") if it is not terminated as set out in such Service Order. In the event either party wishes to terminate the Service Order, it must deliver written notice to the other party terminating the Service Order sixty (60) days prior the expiration of the Service Term or then-current Service Renewal. Notwithstanding anything stated herein, the term of the Agreement shall be extended and remain in effect to reconcile with the term of any Service Orders currently in effect.

c) Client acknowledges that the amount of the fee for the Services is based on Client's agreement to pay the fee for the entire Initial Term, Service Term, Renewal Term or Service Renewal, as applicable. In the event Service Provider terminates the Agreement for Client's breach of the Agreement, or Client terminates the Agreement, other than in accordance with the Agreement for Service Provider's breach, the unpaid fees for each month remaining in

the Initial Term, Service Term, then-current Renewal Term or then-current Service Renewal, as applicable, are due on the business day following termination of the Agreement.

**2) Payment Terms.** All invoices are due upon receipt. Payment not received within 30 days of the date of the invoice is past due. Service Provider shall suspend Services when invoice becomes sixty (60) days past due. Service Provider reserves the right to charge interest of 1.5% a month non-prorated interest on any outstanding balances. The Agreement is subject to credit approval, and, as such, Client authorizes Service Provider to ask for and exchange credit information with credit-reporting agencies for credit information about Client.

**3) Taxes.** It is understood that any federal, state or local taxes applicable shall be added to each invoice for Services rendered under the Agreement. Client shall pay any such taxes unless Client provides a valid tax exemption certificate to Service Provider for the state of use.

**4) Software and Technology Licensing.** The Service Provider will not knowingly install any un-licensed, copied, or pirated software. A Client request for such activity is grounds for immediate termination of the Agreement.

**5) Ownership of Software and Equipment.** Title to the software and equipment used to provide the Services are not transferred to Client. Service Provider and/or a third-party owner either own the entire right, title and interest in and to the software and equipment which also includes the software and equipment used by Service Provider to provide the Services. Client acknowledges that the software and any copies that Service Provider uses to provide Services is the intellectual property of and are owned by Service Provider or a third party. The structure, organization and code of the software are the valuable trade secrets and Confidential Information (as defined below) of Service Provider, with the exception of certain third party software. The software is protected by copyright, including, without limitation, by United States Copyright Law. Client acknowledges that Service Provider or a third-party owner retain the ownership of all patents, copyrights, trade secrets, trademarks and other intellectual property rights pertaining to the software and equipment. Client will take no actions which adversely affect Service Provider's intellectual property rights in the software or equipment. Service Provider reserves the right to change, remove, install and uninstall this software and equipment, as needed, to provide the Services provided and at the termination of Services regardless of the reason for termination.

**6) Nondisclosure.**

a) *Confidential Information.* "Confidential Information" refers to any information one party to the Agreement discloses (the "Disclosing Party") to the other (the "Receiving Party"). The confidential, proprietary or trade secret information in the context of the Agreement may include, but is not limited to, business information and concepts, marketing information and concepts, financial statements and other financial information, customer information and records, corporate information and records, sales and operational information and records, and certain other information, papers, documents, studies and/or other materials, technical information, and certain other information, papers, documents, digital files, studies, compilations, forecasts, strategic and marketing plans, budgets, specifications, research information, software, source code, discoveries, ideas, know-how, designs, drawings, flow charts, data, computer programs, market data; digital information, digital media, and any and all electronic data, information, and processes stored on Company servers, portable storage media and/or cloud storage (remote servers) technologies, and/or other materials, both written and oral. Notwithstanding the foregoing, Confidential Information does not include information that: (A) is in the Receiving Party's possession at the time of disclosure; (B) is independently developed by the Receiving Party without use of or reference to Confidential Information; (C) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (D) is approved for release in writing by the Disclosing Party.

b) *Nondisclosure Obligations.* The Receiving Party will not use Confidential Information for any purpose other than to facilitate performing Services pursuant to the Agreement. The Receiving Party: (i) will not disclose Confidential Information to any employee or contractor of the Receiving Party unless such person needs access in

order to facilitate the Services and executes a nondisclosure agreement with the Disclosing Party, with terms no less restrictive than those of this Section 6); and (ii) will not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent. Without limiting the generality of the foregoing, the Receiving Party will protect Confidential Information with the same degree of care it uses to protect its own Confidential Information of similar nature and importance, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority; however, the Receiving Party will give the Disclosing Party prompt notice of any such legal or governmental demand and will reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.

c) *Injunction.* The Receiving Party agrees that breach of this Section 6) might cause the Disclosing Party irreparable injury, for which monetary damages would not provide adequate compensation, and that in addition to any other remedy, the Disclosing Party will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

d) *Termination and Return.* The obligations of Section 6) above will terminate thirty-six (36) months after the termination date of the Agreement. Upon termination of the Agreement or upon the Disclosing Party's written request, the Receiving Party will return all copies of Confidential Information to the Disclosing Party or upon authorization of Disclosing Party, certify in writing the destruction thereof.

e) *Retention of Rights.* This Section 6) does not transfer ownership of Confidential Information or grant a license thereto. Except to the extent that another section of the Agreement specifically provides to the contrary, the Disclosing Party will retain all right, title, and interest in and to all Confidential Information.

7) **Non-Solicitation.** Service Provider and Client agree that neither party will, at any time within twelve (24) months after the termination of the Agreement, solicit, attempt to solicit or employ any of the personnel who were employed or otherwise engaged by the other party at any time during which the Agreement was in effect, except with the express written permission of the other party. Parties agree that the Damages (as defined below) for any breach of this Section 7) will be substantial, but difficult to ascertain. Accordingly, the party that breaches this Section 7), shall pay to other party an amount equal to the annual compensation of the employee solicited or hired, which amount shall be paid as liquidated damages, as a good faith effort to estimate the fair, reasonable and actual damages to the aggrieved party and not as a penalty. Nothing in the Agreement shall be construed to prohibit either party from pursuing any other available rights or remedies it may have against the respective employee(s).

8) **Indemnification.** "Indemnified Parties" shall mean, in the case of Service Provider, Service Provider, its Affiliates and subcontractors, and each their respective directors, officers, employees, contractors and agents and, in the case of Client, Client, its Affiliates, and each of their respective directors, officers, employees, contractors and agents.

a) *Service Provider Indemnity.* Service Provider shall defend, indemnify and hold harmless the Client Indemnified Parties from any damages, costs and liabilities, expenses (including reasonable and actual attorney's fees) ("Damages") actually incurred or finally adjudicated as to any third-party claim or action alleging that the Services performed or provided by Service Provider and delivered pursuant to the Agreement infringe or misappropriate any third party's patent, copyright, trade secret, or other intellectual property rights enforceable in the country(ies) in which the Services performed or provided by Service Provider for Client or third-party claims resulting from Service Provider's gross negligence or willful misconduct ("Indemnified Claims"). If an Indemnified Claim under this Subsection 8)a) occurs, or if Service Provider determines that an Indemnified Claim is likely to occur, Service Provider shall, at its option: (A) obtain a right for Client to continue using such Services; (B) modify such Services to make them non-infringing; or (C) replace such Services with a non-

infringing equivalent. If (A), (B) or (C) above are not reasonably available, either party may, at its option, terminate the Agreement will refund any pre-paid fees on a pro-rata basis for the allegedly infringing Services that have not been performed or provided. Notwithstanding the foregoing, Service Provider shall have no obligation under this Section 8) for any claim resulting or arising from: (Y) modifications made to the Services that were not performed or performed or provided by or on behalf of Service Provider; or (Z) the combination, operation or use by Client, or anyone acting on Client's behalf, of the Services in connection with a third-party product or service (the combination of which causes the infringement).

b) *Client Indemnity.*

- (1) Client shall defend, indemnify and hold harmless the Service Provider Indemnified Parties from any Damages actually incurred or finally adjudicated as to any (i) third-party claim or action alleging that the Client's data ("Client Data") infringes a copyright or misappropriates any trade secrets enforceable in the country(ies) where the Client Data is accessed, provided to or received by Service Provider or was improperly provided to Service Provider in violation of Client's privacy policies or applicable laws (or regulations promulgated thereunder), and (ii) claim or action by Client's Affiliates arising from or relating to the Services. For the avoidance of doubt, Client's indemnity obligations in clause (ii) of this Section 8) shall not affect Client's rights or remedies under the Agreement.
  - (2) Subject to the other provisions of the Agreement, Client, on behalf of itself, its Affiliates, successors, assigns, officers, directors, employees and agents, agrees to indemnify, defend and hold harmless Service Provider, and its Affiliates, from and against any and all liabilities, losses, expenses and claims (i) for personal injury or property damage that arise from or out of Client's or its Affiliate's negligence or willful misconduct, (ii) arising from or relating to the Services or any content used or transmitted by Client or any of its Affiliates over the Services, (iii) made against Service Provider by Client or its Affiliates, or (iv) arising from or relating to Client's or any its Affiliates breach of any of Client's representations or obligations under the Agreement. The term "property" as used in this Section 8)b) shall include real, personal, tangible, and intangible property. THE PARTIES INTEND THAT THE INDEMNITY OBLIGATIONS IN THIS SECTION SHALL APPLY EVEN IF CAUSED, IN WHOLE OR IN PART, BY THE SOLE, JOINT OR CONCURRENT NEGLIGENCE OR OTHER FAULT, WHETHER PASSIVE OR ACTIVE, OF SERVICE PROVIDER, ITS AFFILIATES, SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS; HOWEVER CLIENT HAS NO OBLIGATION TO INDEMNITY SERVICE PROVIDER FOR SERVICE PROVIDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- c) *Indemnification Procedures.* The Indemnified Party will (i) promptly notify the indemnifying party in writing of any claim, suit or proceeding for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby, and (ii) allow the indemnifying party to solely control the defense of any claim, suit or proceeding and all negotiations for settlement. In no event may either party enter into any third-party agreement which would in any manner whatsoever affect the rights of the other party or bind the other party in any manner to such third party, without the prior written consent of the other party.
- (1) This Section 8) states each party's exclusive remedies for any third-party claim or action, and nothing in the Agreement or elsewhere will obligate either party to provide any greater indemnity to the other.
  - (2) This Section 8) shall survive any expiration or termination of the Agreement.

**9) Data Breach Liability.**

- a) SERVICE PROVIDER WILL NOT BE LIABLE FOR (i) ANY LOSS INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF GOODWILL, LOSS OF DATA, WHETHER CAUSED BY TORT (INCLUDING NEGLIGENCE), BREACH OF CONTRACT OR OTHERWISE, EVEN IF FORESEEABLE, OR (ii) DAMAGE CAUSED BY VIRUSES OR OTHER TECHNOLOGICALLY HARMFUL MATERIAL THAT MAY INFECT CLIENT'S COMPUTER EQUIPMENT, COMPUTER PROGRAMS, DATA OR OTHER PROPRIETARY MATERIAL LOSS OF BUSINESS OR ANTICIPATED SAVINGS, DUE TO THE SERVICES PROVIDED HEREIN EXCEPT TO THE EXTENT CAUSED BY SERVICE PROVIDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.
- b) Service Provider strongly recommends Client should obtain cyber-insurance to protect itself from cyberattacks and risks relating to information technology infrastructure including, but not limited to, data breaches and network security failures. Service Provider will provide assistance to Client to remediate, manage and respond to such cyberattack and bill Client at Service Provider's current standard services rates.

**10) Disclaimer of Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, SERVICE PROVIDER PROVIDES THE SERVICES "AS IS" AND WITH ALL FAULTS. SERVICE PROVIDER HEREBY EXPRESSLY DISCLAIMS, AND CLIENT HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER REMEDIES, WARRANTIES, GUARANTEES, OBLIGATIONS, REPRESENTATIONS AND LIABILITIES, EXPRESS OR IMPLIED, ARISING IN FACT, LAW, EQUITY, CONTRACT, TORT, UNDER STATUTE, UNDER WARRANTY OR OTHERWISE. FURTHER, SERVICE PROVIDER DOES NOT WARRANT THAT THE SERVICES WILL BE FREE OF BUGS, ERRORS, VIRUSES OR OTHER DEFECTS.

**11) Limitation of Liability.** IN NO EVENT SHALL SERVICE PROVIDER BE HELD LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF SERVICES PROVIDED HEREUNDER INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF EQUIPMENT, LOST DATA, COSTS OF SUBSTITUTE EQUIPMENT, OR OTHER COSTS. If applicable law limits the application of the provisions of this Section 11), Service Provider's liability will be limited to the least extent permissible.

**12) Breach of Agreement.** The Agreement may be terminated by non-breaching party after sending written notice to breaching party if breaching party:

- a) If for non-payment, fails to cure such breach within seven (7) days of receipt of such written notice from non-breaching party;
- b) Breaches any material non-payment term or condition of the Agreement and fails to cure such breach within thirty (30) days of receipt of such written notice from the non-breaching party, or, if such breach cannot reasonably be cured within such period of thirty (30) days, breaching party fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion (Notwithstanding anything stated herein this Section 12)b), breaching party is not in breach of the Agreement if non-breaching party directly or indirectly hinders and/or prevents breaching party from curing such breach as set out herein this Section 12)b)); or
- c) Terminates or suspends its business operations, unless it is succeeded by an assignee permitted by the non-breaching party's written authorization.

If either party terminates the Agreement, Client shall have option for Service Provider to assist Client in the orderly termination of Services, including timely transfer of the Services to another designated provider. If Client exercises such option, Client agrees to pay Service Provider the actual costs of rendering such assistance.

**13) Miscellaneous.**

- a) *Notices.* Notices pursuant to the Agreement will be sent to the addresses in the signature blocks below, or to such others as either party may provide in writing. Such notices will be deemed received at such addresses upon the earlier of (i) actual receipt or (ii) delivery in person, by fax with written confirmation of receipt, or by certified mail return receipt requested.
- b) *Independent Contractors.* The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other nor may neither bind the other in any way, unless authorized in writing. The parties agree that no Service Provider employee or contractor will be an employee of Client's. Service Provider will be responsible for all employment rights and benefits of Service Provider employees, including without limitation: (i) federal, state, and local income and employment taxes and social security contributions; (ii) workers' compensation, health benefits, vacation pay, holiday pay, profit sharing, retirement, pension, disability benefits, and other health and welfare benefits, plans, or programs; and (iii) insurance.
- c) *No Waiver.* Neither party will be deemed to have waived any of its rights under the Agreement by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of a breach of the Agreement will constitute a waiver of any prior or subsequent breach of the Agreement.
- d) *Force Majeure.* The performance of the Agreement shall be subject to events of Force Majeure. Events of "Force Majeure" shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.
- e) *Assignment and Successors.* Neither party may assign the Agreement or any of its rights or obligations hereunder without the other's express written consent, except that either party may assign the Agreement to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, the Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.
- f) *Severability.* In case any provision of the Agreement should be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall remain and continue to be in full force and effect as if such invalid, illegal, or unenforceable provision had been deleted from or never included in the Agreement; provided however that if any such provision may be modified in such a way as to make it valid, legal, or enforceable, then such provision shall be so modified so as to make its effect as close as possible to that which was originally contemplated prior to the aforementioned holding of invalidity, illegality, or enforceability.
- g) *Conflicts Among Attachments and Other Agreements.* In the event of any conflict between the terms of this main body of the Agreement and those of any attachment(s) or any other agreement, the terms of this main body will govern.
- h) *Executions.* The Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument. The exchange of copies of the Agreement and of signature pages by facsimile or other transmission methods shall constitute effective execution and delivery of the Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or other transmission methods shall be deemed to be their original signatures for all purposes.
- i) *Construction.* The parties agree that the terms of the Agreement result from negotiations between them. The

Agreement will not be construed in favor of or against either party by reason of authorship.

- j) *Governing Law; Consent to Jurisdiction.* The Agreement shall be governed by and construed in accordance with the laws of the State of Texas. The parties hereto submit to the exclusive jurisdiction and venue of Harris County, Texas District Court in Houston, Texas for purposes of any legal action arising out of the Agreement.
- k) *Dispute Resolution.*
- (1) Negotiation. The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to the Agreement or the Services hereunder (“Dispute”) through face-to-face negotiation with persons fully authorized to resolve the Dispute to be completed with thirty (30) days.
  - (2) Mediation.
    - (i) If the Dispute has not been resolved by negotiation in accordance with subparagraph (1) herein, then the parties shall proceed to mediation. A “Notice of Mediation” shall be served to commence the mediation process. The parties shall mutually agree on a mediator; however, if they are unable to agree within fourteen (14) days, each party shall appoint their own mediator to appoint the mediator that will mediate the Dispute. Mediation shall commence within thirty (30) days of appointment of the mediator.
    - (ii) If no settlement agreement results from mediation, any of the parties or the mediator can send a “Notice of Termination of Mediation”.
    - (iii) Each side shall bear an equal share of the mediation costs unless the parties agree otherwise.
    - (iv) All communications, both written and oral, during negotiation and mediation are confidential and shall be treated as settlement negotiations for purposes of applicable rules of evidence.
  - (3) Notwithstanding the foregoing, either party will have the right to seek from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.
  - (4) In the event the parties are unable to resolve the Dispute as set out herein, the parties shall be free to pursue all remedies available at law or in equity.
- l) *Jury Trial Waiver.* TO THE EXTENT PERMITTED BY LAW, IN ANY ACTION TO ENFORCE OR INTERPRET THE AGREEMENT, THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT TO A TRIAL BY JURY, THIS WAIVER BEING A MATERIAL INDUCEMENT TO ENTERING THE AGREEMENT.
- m) *Attorney Fees.* If either party employs an attorney or attorneys to enforce or interpret any of the terms of the Agreement, the losing party agrees to reimburse the prevailing party any fees and costs incurred by prevailing party including, but not limited to, reasonable attorney fees, court costs, and expenses.
- n) *Mutual Limited Publicity.* While the Agreement is in effect, either party may include the name and logo of the other party in promotional materials (including on its website) of clients, customers and/or vendors in accordance with the other party’s standard logo and/or trademark usage guidelines. Except as set forth herein,

neither party may use the trademarks and trade names of the other party without the prior written consent of the other party.

- o) *Client Comments and Opinions.* From time to time, Service Provider will send out surveys and other mechanisms to gather Client's opinions and other information. Client agrees that Service Provider may publish the data obtained in such a manner as Service Provider may determine in its sole discretion. Client further agrees that Service Provider may publish edited or partial versions of such comments and opinions. However, Service Provider will not edit comments and opinions in such a way as to create a misleading impression of Client's views.