

# Master Services Agreement

## edition 202108

### 1. Purpose

- a. This Master Services Agreement (MSA) defines the relationship between Client and Service Provider (aka "ITG") and their general obligations to each other. Client will purchase, and Service Provider will supply, information technology services and tangible goods as more specifically defined in a separate Statement of Work (SOW).
- b. The SOWs, when signed by both parties, will describe the deliverable services to be rendered and any tangible goods to be delivered to Client. A SOW may describe an ongoing (recurring) relationship, or a project of defined scope and limited duration. SOWs will be deemed incorporated by reference into this MSA and multiple SOWs may be carried under this MSA simultaneously.
- c. Should there be any conflict between the terms of any Statement of Work and those of this Master Services Agreement, the terms of the Statement of Work will prevail.

### 2. Effective Date and Termination

- a. This Master Services Agreement (MSA) will begin on the Effective Date and will continue until each Statement of Work is fulfilled, expires, or is terminated.
- b. Client may terminate this MSA and any SOW upon sixty (60) days written notice if the Service Provider:
  - i. Fails to fulfill its obligations in any material respect and does not cure such failure within thirty (30) days of receipt of a written notice; or
  - ii. Breaches any material term or condition of MSA and/or any SOW and fails to remedy such breach within thirty (30) days of receipt of a written notice.

Client acknowledges and agrees to promptly pay for all billable labor and goods received up to the date of termination.

- c. Service Provider may terminate this MSA and/or any SOW for any reason upon sixty (60) days written notice to the Client.
- d. In the case of payment failure by Client per Paragraph 4d (Payment Terms) below, only 5 business days' notice of termination by Service Provider will be required.
- e. If either party terminates this Master Services Agreement, Service Provider will assist Client in the orderly termination of Services, including timely transfer of the Services to a replacement IT services provider. Client agrees to pay Service Provider the actual costs (labor and material) of rendering such transitional assistance.

### 3. Cost of Work; Pricing

- a. The prices charged within a SOW will be based Service Provider's "then-current" rates and fees. Service Provider reserves the right to revise pricing if the information and projections provided by Client are determined to be inaccurate or

insufficient. In such case, the SOW may be modified with a written agreement signed by both parties as to an adjustment in price.

If Client is not able to agree to an increased price adjustment, Service Provider has the right to terminate the SOW.

- b. If Client requests work outside the scope of an SOW that cannot be agreed upon in advance (e.g., emergency responses), separate additional charges may apply.
- c. Client acknowledges that SOW pricing includes payment by Service Provider to the Third Party for Services, Software, and Products, which may change from time to time.

Such Third Party cost increases may be passed on to Client.

#### **4. Payment Terms (Sales Tax, Interest, Delinquencies)**

- a. Recurring Fees will be invoiced prospectively to Client at the beginning of each month for service to be rendered in the forthcoming month. Nonrecurring fees will be billed upon completion of the work, or incrementally if work takes place in stages. Payment will be due within 30 days of issuance date.
- b. Applicable Federal, State or Local Taxes shall be added to each invoice for Services, products, or materials furnished under this Master Services Agreement. Client shall pay all such taxes unless a valid tax exemption certificate (state and/or federal) is furnished to Service Provider.
- c. If payment is not received by the invoice due date, interest shall accrue at the rate of one and one-half percent (1.5%) per month from the date due until paid in full. This right to recover interest shall survive any termination of the MSA.
- d. If Client accumulates a debt equal to 2 months of unpaid fees, Service Provider reserves the right to reduce or suspend services, and to withhold undelivered material goods.

If Client accumulates a debt equal to 3 months of unpaid fees, despite reminders of lateness, Service Provider reserves the right to terminate this MSA and any pending Statement(s) of Work upon 5 business days' written notice.

#### **5. Independent Contractor**

The relationship of the parties established by this Agreement is that of independent contractors. Nothing in this Master Agreement shall be construed to create any agency or employment relationship between the parties or any of their employees. Neither Party shall have any right, power or authority to assume, create or incur any expense, liability or obligation, express or implied, on behalf of the other.

#### **6. Mutual Confidentiality**

- a. Service Provider, its employees, agents, and assigns will keep in strict confidentiality any business and personal information of Client discovered during the course of work. Service Provider will not disclose or share any Client information, except as necessary to or consistent with fulfilling the Statements of Work, collecting overdue payment, or assisting Client with a transition to a replacement service provider.
- b. Client, its employees, agents and assigns will keep in strict confidentiality any proposals, discussions, pricing, implementation strategies, or innovations generated by Service Provide during the course of this MSA.

## 7. Service Provider's Standard of Care

- a. Service Provider represents and warrants that
  - i. each employee and subcontractor assigned to Client's work possesses the necessary knowledge, skills, experience, rights, and resources to provide and perform the services described in any Statement of Work (SOW);
  - ii. the services contained in any SOW will be performed in a prompt, diligent and professional manner in accordance with preferred industry standards;
  - iii. ITG will comply fully with all state, federal, county, municipal or other laws and regulations affecting its operations and its personnel (principals, employees, agents, assigns), and subcontractors (if any).
- b. ITG shall carry at all times during the course of this MSA, adequate business liability and workers compensation insurance. Client may request evidence of insurance at any time.

## 8. Limitation of Warranties

Except as expressly stated in 7(a) above, **SERVICE PROVIDER MAKES NO OTHER WARRANTIES WITH RESPECT TO ANY SERVICES OR PRODUCTS, AND CLIENT DISCLAIMS ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES**

THERE IS NO WARRANTY THAT THE WORK WILL BE FREE FROM PROGRAMMING ERRORS.

THERE IS NO WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY HARDWARE OR SOFTWARE BEYOND THE WARRANTIES THAT A MANUFACTURER OR DEVELOPER PROVIDES ITG.

THERE IS NO WARRANTY AS TO THE RELIABILITY OR PERFORMANCE OF ANY INTERNET CONNECTIVITY PROVIDED BY CLIENT'S INTERNET SERVICE PROVIDER.

All warranty claims by Client must be made in writing within ninety (90) days of the date on which the allegedly non-compliant or defective work is discovered by Client.

Client's remedies, and ITG's obligations with respect to the foregoing warranties, shall be limited to re-performance of any Work, at no additional cost to Client, in order to remedy any material defect that fails to meet any warranty or representation contained in this MSA or a Statement of Work.

## 8. Limitation of Liability

Service Provider shall have no obligation for any consequences, financial, operational, or regulatory, resulting from any of the following:

- a. Client failure to uphold any provision of Section 10 below;
- b. Modification of the work or deliverables described in any Statement of Work that Service Provider (or its agents) did not perform or was not informed of,

- c. Client rejects recommendations and/or fails to follow instructions as to the proper use and maintenance of the hardware and software provided,
- d. Breach of password protection by Client's employees or persons under Client's control,
- e. Client's noncompliance with HIPAA (Health Insurance Portability and Accountability Act), SOX (Sarbanes-Oxley Act), or PCI (credit card) protocols, or other regulations applicable to Client's line of business.

## **9. Client's Cooperation and Responsibilities**

- a. Client will provide Service Provider reasonable access during its normal business hours to the work space(s), equipment, and personnel as necessary for ITG to develop a proposed Statement of Work and to fulfill it.
- b. Client will use good faith efforts to provide complete, accurate, and punctual information to Service Provider when requested. Service Provider will not be responsible for any delays, programming failures, or additional costs incurred by any omission, inadequacy, or inaccuracy of information supplied by Client
- c. Client will use good faith efforts to prevent its employees, agents, and other third parties from modifying the work or services provided by ITG, without ITG's prior notice and consent.
- d. Client will undertake reasonable measures to protect the equipment and software installations from vandalism, damage, or mechanical failure due to adverse environmental conditions such as moisture, overheating, electrical interference, power surge, excessive vibration or jolts.
- e. Client shall carry at all times during the course of this MSA, adequate business liability and workers compensation insurance. Service Provider may request evidence of insurance at any time.

Depending on Client's risk profile, Client may want to consider obtaining Business Interruption Insurance to cover losses resulting from loss of IT capability, cyber attacks, and cyber extortion.

## **10. Assignability**

Client may NOT assign this Master Service Agreement nor any Statement of Work to any other entity (including any successor entities) without the prior written consent of Service Provider. Unauthorized assignment will automatically terminate and void the relationship between the parties.

Service Provider may assign its rights and obligations hereunder to any person or entity that succeeds to all or substantially all of Service Provider's business without the prior consent of Client. Client shall receive 30 days advance notice of such assignment.

## **11. Non-Solicitation of Employees**

During the term of this agreement and for a period of 12 months after termination of this MSA, neither party (directly or indirectly through another party) shall solicit for employment any employee(s) of the other party.

## **12. Referrals and Marketing**

ITG may ask Client to act as a reference of ITG's work to prospective customers. Client may be identified as a satisfied customer, or asked to provide testimonials, for use in

Service Provider's marketing materials and internet presence. In any event, Client's written consent and conditions of use will be obtained in advance.

### **13. Governing Law**

This Master Services Agreement and all associated Statements of Work shall be governed by the laws of the State of North Carolina. Any suit, action or proceeding with respect to this MSA or any SOW shall be brought in the courts of *Durham County, State of North Carolina*. The parties hereto accept the exclusive jurisdiction of those courts for the purpose of any such suit, action or proceeding.

### **14. Integration**

Upon execution, the MSA and SOWs shall constitute the complete understanding and agreement of the parties and shall supersede all prior agreements, negotiations or understandings whether written or oral. No changes shall be made to the MSA or to any SOW except in a writing signed by both parties. "Writing" may include electronic communications such as email or chat, if acknowledged and consented to via the same medium.

### **15. Force Majeure**

Neither Party shall be deemed in breach due to circumstances beyond its control, including but not limited to, changes in market conditions, utility disruptions, changes in the law, labor strike, embargo, civil unrest, criminal acts, natural disasters, sickness, death, or other Acts of God.

**END OF TEXT**