

# Master Agreement

**YOU AGREE THAT, BY PLACING AN ORDER THROUGH A PROVIDER ORDERING DOCUMENT SUCH AS A PROPOSAL OR SOW FOR PROFESSIONAL SERVICES, SUCH ORDERING DOCUMENT INCORPORATES AND IS GOVERNED BY THE TERMS OF THIS MASTER AGREEMENT, AND THAT YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE ORDERING DOCUMENT AND THIS MASTER AGREEMENT.**

THIS MASTER AGREEMENT (together with all applicable Ordering Documents, as defined below, and all applicable schedules thereto, the "Master Agreement"), is effective as of the date (the "Effective Date") on which the initial Ordering Document is entered into by iRely LLC, a Delaware limited liability company, with a principal place of business located at 4242 Flagstaff Cove, Ft. Wayne, Indiana, 46815 ("Provider") and the other party to such initial Ordering Document ("Customer"), with a principal place of business as specified in such Ordering Document. Customer and Provider are hereafter referred to collectively as the "Parties" and sometimes individually as a "Party".

## **BACKGROUND**

Provider is in the business of providing licensed access to software applications for managing extended enterprise data and development, implementation and other services for such applications. Customer wishes to obtain licensed access to such applications and certain project management, development, implementation, consulting and other services from Provider, on the terms and conditions of this Master Agreement and Schedules thereto.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and for other good and valuable consideration, the receipt and sufficiency thereof the Parties hereby acknowledge, the Parties hereby agree as follows, such agreement evidenced by the Parties' execution of the initial Ordering Document between the Parties and/or electronic assent provided in connection with such Ordering Document (or, as applicable, by means of any other commercially reasonable method of indicating the Parties' assent):

## **1. SCOPE OF AGREEMENT AND SCHEDULES**

This Master Agreement includes applicable Schedules, described below, that specify the types of Products and Services ordered by Customer through applicable Ordering Documents. Each applicable Schedule is incorporated herein by reference. Provider's current forms of the Schedules listed below are available at <http://help.irelyserver.com/>, as such forms may be periodically updated by Provider.

- 1.1. **Schedule 1 – Proposal**, defines the scope of products and services to be provided under this Master Agreement and applicable Schedules. Once agreed to by both Parties, each Proposal and SOW become an "Ordering Document" hereunder.

- 1.2. **Schedule 2.1 – Software License Agreement**, governs the licensing of Software, if Customer has elected to use the Software installed on its own servers or as hosted by Provider.
- 1.3. **Schedule 2.2 – SaaS Agreement**, governs the provision of the SaaS Services, if Customer has elected to use the SaaS Services.
- 1.4. **Schedule 3 – Statement of Work (SOW)**, describes the implementation process and related services and processes for the Application.
- 1.5. **Schedule 4 – Maintenance Agreement**, describes the Maintenance Services that Provider may provide to Customer.
- 1.6. **Schedule 5 – Invoicing and Payment**, describes Provider's invoicing procedures and Customer's payment obligations.
- 1.7. **Schedule 6 – Change Procedure**, describes the process by which the Parties may make changes to the scope of products and services during the Term of this Master Agreement.
- 1.8. **Schedule 7 – Hosting Agreement**, governs Provider's hosting of the Application and Customer Data on its servers.

## 2. DEFINITIONS

For the purposes of this Master Agreement and Schedules, the terms set forth below have the applicable meanings ascribed in this Section 2. Additional capitalized terms defined elsewhere in this Master Agreement or Schedules have the respective meanings ascribed therein.

- 2.1. "Affiliate" means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Master Agreement, for as long as such relationship remains in effect; "control" and cognates means the direct or indirect beneficial ownership of a majority interest in the voting stock, or other ownership interests, of such Person, or the power to elect at least a majority of the directors or trustees of such Person, or majority control of such Person, or such other relationship that constitutes actual control.
- 2.2. "Application" means, collectively, the Products, Deliverables, and Services to which Customer may have access pursuant to this Master Agreement and applicable Schedules.
- 2.3. "Confidential Information" means all financial, technical, strategic, marketing, and other information relating to a disclosing Party or its actual or prospective business, products, or technology that may be, or has been, furnished or disclosed to the other Party by, or acquired by receiving Party, directly or indirectly from the disclosing Party, whether disclosed orally or in writing or electronically or some other form.
- 2.4. "Customer Data" means any data, information, content or material which Customer or its Affiliates enter, load onto, or use in connection with the Application, and all results from processing such items through the Application.

- 2.5. "Deliverables" means Software modifications and other items created by Provider for Customer during the performance of Professional Services and pursuant to an Implementation Project Plan.
- 2.6. "Documentation" means the materials created by or on behalf of Provider that describe or relate to the functional, operational or performance capabilities of the Application, regardless of whether such materials are in written or digital form, including all operator's and user manuals, training materials, guides, commentary, technical, design or functional specifications, requirements documents, product descriptions, proposals, schedules, listings and other materials related to the Software.
- 2.7. "Fees" means, collectively, the applicable license, subscription, maintenance, hosting, professional services and other Provider fees described in the Ordering Documents and payable in accordance with **Schedule 5-Invoicing and Payment**.
- 2.8. "Intellectual Property Rights" means all (a) copyrights and copyrightable works, whether registered or unregistered; (b) trademarks, service marks, trade dress, logos, registered designs, trade and business names (including internet domain names, corporate names, and e-mail addresses), whether registered or unregistered; (c) patents, patent applications, patent disclosures, mask works and inventions (whether patentable or not); (d) trade secrets, know-how, data privacy rights, database rights, know-how, and rights in designs; and (e) all other forms of intellectual property or proprietary rights, and derivative works thereof; in each case in every jurisdiction worldwide.
- 2.9. "Ordering Document" means, collectively, **Schedule 1 - Proposal** to this Master Agreement and all subsequent proposals and SOWs agreed to by the Parties in accordance with this Master Agreement.
- 2.10. "Permitted Users" means employees of Customer and of Customer Affiliates who are expressly authorized to use the Application in accordance with this Master Agreement and who are specifically supplied user identifications and/or passwords in accordance with this Master Agreement.
- 2.11. "Person" means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.
- 2.12. "Products" means, collectively, the Software and Documentation provided by Provider as set forth in either **Schedule 2.1 – Software License Agreement** or **Schedule 2.2 – SaaS Agreement**, as applicable.
- 2.13. "Professional Services" means custom software development and other professional services provided by Provider in connection with implementation or ongoing use of the Application.
- 2.14. "Proprietary Provider Items" means, collectively, the Application, the object code and the source code for the Application, the visual expressions, screen formats, report formats and other design features of the Application, all development tools and methodologies used in connection with the Application and other Provider services, as applicable, all ideas, methods, algorithms, formulae and concepts used in developing and/or

incorporated into the Application, all future modifications, revisions, updates, releases, refinements, improvements and enhancements of the Application, all Intellectual Property Rights in such foregoing items, and all copies of the foregoing.

- 2.15. "Services" means, collectively, the Professional Services and all other services described in the Ordering Documents.
- 2.16. "Software" means the Provider software described in **Schedule 2.1 – Software License Agreement** or **Schedule 2.2 – SaaS Agreement**, as applicable, including all Updates to such software.
- 2.17. "SOW" means a Statement of Work created as described in Schedule 3 – Statement of Work, which sets forth the Deliverables, timelines and cost estimates for Professional Services required as a result of the implementation process or otherwise as a result of a Change Procedure described in **Schedule 6 – Change Procedure**, such SOW constituting Customer's acceptance of Provider's costs and other terms and conditions for such Professional Services and Deliverables.
- 2.18. "Subscription" means Customer's right to use and access the Application as described in **Schedule 2.2 – SaaS Agreement**, upon payment of all applicable subscription Fees.

### **3. PERFORMANCE OF SERVICES**

Provider will use commercially reasonable efforts to ensure that all Services will be performed in a workmanlike and professional manner by qualified representatives of Provider who are fluent in written and spoken English.

### **4. MAINTENANCE SERVICES**

Maintenance Services available to Customer are as described in **Schedule 4 – Maintenance Agreement**.

### **5. PAYMENT AND INVOICING**

Invoicing and payment terms for Products and Services is described in **Schedule 5 – Payment and Invoicing**.

### **6. CONFIDENTIALITY AND OWNERSHIP**

- 6.1. Confidential Information. During the term of this Master Agreement and in perpetuity thereafter, each Party will keep in confidence all of the Confidential Information of the other party, and will not use such Confidential Information of the other Party without such other Party's prior written consent. No Party will disclose the Confidential Information of any other party to any Person, except to its own employees, agents and independent contractors to whom it is necessary to disclose the Confidential Information

for the sole purpose of performing their duties and/or exercising their rights under this Master Agreement, and who have agreed to receive the Confidential Information under terms at least as restrictive as those specified in this Master Agreement. Each Party will maintain the confidentiality of the other Party's Confidential Information using, at a minimum, the standard of care that an ordinarily prudent Person would exercise to maintain the secrecy of its own most confidential information. Each Party will immediately give notice to the other Party of any unauthorized use or disclosure of the other Party's Confidential Information. Each Party agrees to assist the other Party in remedying such unauthorized use or disclosure of Confidential Information. Each Party will return or destroy all copies of Confidential Information of the other Party, upon the other Party's reasonable request, and will provide a certification in writing to such effect.

- 6.2. Proprietary Provider Items and Ownership. The Proprietary Provider Items are trade secrets and proprietary property of Provider, having great commercial value to Provider. All Proprietary Provider Items made available to Customer under this Master Agreement are being provided on a strictly confidential and limited-use basis. Customer will not, directly or indirectly, communicate, publish, display, loan, give or otherwise disclose any Proprietary Provider Item to any Person, or permit any Person to have access to or possession of any Proprietary Provider Item. Title to all Proprietary Provider Items and all related Intellectual Property Rights will be and remain exclusively with Provider, even with respect to such items that were created by Provider specifically for or on behalf of Customer and whether or not such were created with reference to Customer IP (as defined below). This Master Agreement is not an agreement of sale, and no Intellectual Property Rights to any Proprietary Provider Items are transferred to Customer by virtue of this Master Agreement. All copies of Proprietary Provider Items in Customer's possession will remain the exclusive property of Provider and will be deemed to be on loan to Customer during the term of this Master Agreement.
- 6.3. Customer Intellectual Property. For the purposes of this Master Agreement, "Customer IP" means all Customer Confidential Information, Customer Data and all Intellectual Property Rights in such items. Customer IP will be owned exclusively by Customer. Provider will have the right to use Customer IP as reasonably necessary for Provider to provide access to Customer of the Application and to perform the Services and Provider's other obligations hereunder. Customer represents and warrants to Provider that Customer owns all Customer IP or has all necessary rights to use and input Customer IP into the Application; Customer IP will not infringe upon any third-party Intellectual Property Rights or violate any rights against defamation or rights of privacy; and Customer has not falsely identified itself nor provided any false information to gain access to the Application, and that Customer's billing information is correct. If Customer resides or operates in the European Union ("EU") or if any transfer of information between Customer and the Application is governed by the EU Data Protection Directive, EU General Data Protection Regulation ("GDPR"), or similar directives and regulations, and national laws implementing such directives and regulations, then Customer expressly consents to, except to the extent prohibited by applicable law, the transfer of such information outside of the EU to the United States and to such other countries as may be required by Provider for the proper operation of the Application under this

Master Agreement. Customer will indemnify Provider against all third-party liability arising from such transfer.

- 6.4. Use Restrictions. Customer will not do, attempt to do, nor permit any other Person to do, any of the following: (a) use any Proprietary Provider Items for any purpose, at any location or in any manner not specifically authorized by this Master Agreement; (b) make or retain any copy of any Proprietary Provider Items except as specifically authorized by this Master Agreement; (c) create or recreate the source code for the Application, or re-engineer, reverse engineer, decompile or disassemble the Application; (d) modify, adapt, translate or create derivative works based upon the Application, or combine or merge any part of the Application with or into any other software or documentation; (e) refer to or otherwise use any Proprietary Provider Items as part of any effort either to develop a program having any functional attributes, visual expressions or other features similar to those of the Application or to compete with Provider or its Affiliates; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any Proprietary Provider Items, or fail to preserve all copyright and other proprietary notices in any copy of any Proprietary Provider Items made by Customer; or (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, consultant or partner, any right to use any Proprietary Provider Items, whether on Customer's behalf or otherwise, except as specifically and expressly authorized in this Master Agreement.
- 6.5. Provider Right to Develop. Customer acknowledges that Provider is engaged in the development of software for clients other than Customer, and that Provider can and will develop software and provide services for its other clients and will utilize and market software, services and other items, including Deliverables, Maintenance Services and all other Products and Services created under or in connection with this Master Agreement, without any restrictions hereunder or any obligations to Customer, and may solicit and provide similar Products and Services on behalf of Persons that Customer may consider to be its direct or indirect competitors, provided that Customer's Confidential Information will remain subject to the confidentiality and nondisclosure restrictions set forth in Section 6.1.
- 6.6. Notice and Remedy of Breaches. Each Party will promptly give written notice to the other of any actual or suspected breach by it of any of the provisions of this Section 6, whether or not intentional, and the breaching Party will, at its expense, take all steps reasonably requested by the other Party to prevent or remedy the breach.
- 6.7. Enforcement. Each Party acknowledges that the restrictions in this Master Agreement are reasonable and necessary to protect the other's legitimate business interests. Each Party acknowledges that any breach of any of the provisions of this Section 6 will result in irreparable injury to the other for which money damages could not adequately compensate. If there is a breach, then the injured Party will be entitled, in addition to all other rights and remedies which it may have at law or in equity and notwithstanding the provisions of Section 11.5.2, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons

involved from continuing the breach. The existence of any claim or cause of action that a Party or any other Person may have against the other Party will not constitute a defense or bar to the enforcement of any of the provisions of this Section 6.

## **7. CHANGE CONTROL PROCEDURE**

Provider's current procedures for managing changes to the Application or Services are as set forth in **Schedule 6 – Change Control**.

## **8. TERM; TERMINATION**

8.1. Initial Term. The initial term of this Master Agreement begins on the Effective Date specified in the first executed Ordering Document and continues in full force and effect for the applicable term specified in such Ordering Document and, if longer, the applicable terms specified in subsequent Ordering Documents, unless such term is extended or terminated earlier pursuant to this Master Agreement or as stated in such Ordering Documents (the "Initial Term").

8.2. Renewal Terms. Certain Products and Services will automatically renew in accordance with the relevant Ordering Documents (each a "Renewal Term"; the Initial Term and Renewal Term are collectively referred to as the "Term"), unless a Party delivers written notice to the other Party of its intent to terminate at least sixty (60) days before the expiration of the then current Term, unless the applicable Ordering Document specifies a different period of notice. Unless otherwise set forth in an Ordering Document, both SaaS Subscriptions and Maintenance Services will automatically renew for additional one (1) year Renewal Terms at the end of the then current Term.

8.3. Termination.

8.3.1. Either Party may terminate this Master Agreement and all applicable Schedules at any time during the Term: (a) upon thirty (30) days' prior written notice to the other Party, if the other Party breaches a material provision of this Master Agreement or applicable Schedules and fails to cure such breach within thirty (30) days after it receives such notice (or immediately, if such breach is not reasonably capable of being cured during such period) or (b) as provided in Section 9 of this Master Agreement.

8.3.2. Either Party may terminate this Master Agreement and all applicable Schedules immediately upon written notice if the other Party becomes insolvent or files, or has filed against it, a petition for bankruptcy, provided that such petition is not dismissed within sixty (60) days.

8.3.3. Provider may terminate this Master Agreement and all applicable Schedules on thirty (30) days' written notice if Customer fails to make timely payments hereunder.

8.4. Effect of Termination. When this Master Agreement terminates or expires for any reason:

- 8.4.1. Customer will pay Provider for all Products provided, Services performed and expenses incurred by Provider on or before the date of termination. If this Master Agreement was terminated before the end of the then current Term for reasons other than Provider's breach or insolvency, then Customer will repay all discounts set forth in the Ordering Document with respect to the early-terminated Term.
- 8.4.2. Provider will discontinue (and cause its contractors and personnel to discontinue) all use of Customer IP.
- 8.4.3. Customer will: (a) immediately discontinue all use of the Application, (b) promptly return to Provider all copies of the Software and Documentation and all other Proprietary Provider Items then in Customer's possession and (c) give written notice to Provider certifying that all copies of the Products have been permanently deleted from its computers. Customer will remain liable for all payments due to Provider with respect to the period ending on the date of termination. The provisions of Section 5 (with respect to payments due and payable upon termination), Section 6, this Section 8, Section 10 and Section 11 will survive any termination of this Master Agreement, whether under this Section 8 or otherwise.

## 9. **FORCE MAJEURE**

Neither Party will be liable under or deemed to be in breach of this Master Agreement for any delay or failure in performance under this Master Agreement or an applicable Ordering Document that is caused by any of the following events: acts of God, civil or military authority; act, order or requirement of any governmental or regulatory authority or body; war; fires; power outages; earthquakes; floods; unusually severe weather; strikes or labor disputes; disruptions of labor forces or supply chains; delays in transportation or delivery; epidemics, pandemics or viral or communicable disease outbreaks; quarantines; national emergencies; terrorism or threats of terrorism; and any similar event that is beyond the reasonable control of the non-performing Party (collectively, a "Force Majeure Event"). This Section 9 does not excuse either Party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligations to pay for Products and Services ordered or delivered. The Party affected by the Force Majeure Event must diligently attempt to perform all of its obligations hereunder. During a Force Majeure Event, the Parties will use commercially reasonable efforts to negotiate changes to this Master Agreement in good faith to address the Force Majeure Event in a fair and equitable manner. If a Force Majeure Event continues for ten (10) days or longer, and if the non-performing Party is delayed or unable to perform under this Master Agreement or any Ordering Document because of the Force Majeure Event, then the performing Party will have the right to terminate this Master Agreement and applicable Schedules, in whole or in part, immediately upon written notice to the non-performing Party.

## 10. **DISCLAIMERS AND LIMITATIONS OF LIABILITIES**

**10.1. NO WARRANTIES. THE APPLICATION, DELIVERABLES, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER PRODUCTS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER ARE "AS IS",**



**AND PROVIDER MAKES NO REPRESENTATIONS OR WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT WITH RESPECT TO THE APPLICATION, DELIVERABLES, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER PRODUCTS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER OR WITH RESPECT TO ANY OTHER MATTER PERTAINING TO THIS MASTER AGREEMENT OR SCHEDULES HERETO. CUSTOMER'S USE OF THE APPLICATION, DELIVERABLES, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER PRODUCTS AND SERVICES PROVIDED TO CUSTOMER HEREUNDER WILL NOT BE DEEMED LEGAL, TAX OR INVESTMENT ADVICE.**

- 10.2. LIMITATION ON LIABILITY. PROVIDER'S TOTAL LIABILITY UNDER THIS MASTER AGREEMENT AND SCHEDULES HERETO WILL UNDER NO CIRCUMSTANCES EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID BY CUSTOMER TO PROVIDER UNDER THIS MASTER AGREEMENT AND SCHEDULES HERETO DURING THE THREE (3) MONTHS PRIOR TO THE EVENT OF LIABILITY, LESS ALL AMOUNTS PAID BY PROVIDER TO CUSTOMER IN CONNECTION WITH ANY OTHER EVENTS OF LIABILITY HEREUNDER.**
- 10.3. EXCLUSION OF DAMAGES. UNDER NO CIRCUMSTANCES WILL PROVIDER (OR ANY PROVIDER AFFILIATES PROVIDING PRODUCTS, DELIVERABLES, HOSTING SERVICES, SAAS SERVICES, PROFESSIONAL SERVICES, MAINTENANCE SERVICES AND OTHER PRODUCTS AND SERVICES TO CUSTOMER HEREUNDER) BE LIABLE TO CUSTOMER, ANY PERMITTED USER, ANY CLIENT OR AFFILIATE OF CUSTOMER, OR ANY OTHER PERSON FOR LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, TRADING LOSSES, OR ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING SUCH DAMAGES ARISING FROM ANY BREACH OF THIS MASTER AGREEMENT OR SCHEDULES HERETO, OR FROM ANY TERMINATION OF THIS MASTER AGREEMENT OR SCHEDULES HERETO, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF PROVIDER HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.**
- 10.4. Additional Limitations and Exclusions. Provider will have no liability to Customer under the following circumstances: Customer fails to fully observe Provider's instructions relating to the Application, Hosting Services, Maintenance Services, SaaS Services, Professional Services or other Services provided by Provider; the Application, Hosting Services, Maintenance Services, SaaS Services, Professional Services or other Services provided by Provider are used in violation of this Master Agreement and applicable Schedules; the Application is configured, customized, installed or maintained by any Person other than Provider; Customer modifies any portion of the Application without the prior written consent of Provider; and/or the Application, Hosting Services,

Maintenance Services, SaaS Services, Professional Services and other Services provided by Provider are used in conjunction with any hardware, software, products or interfaces not expressly specified by Provider. The obligations of Provider under this Master Agreement run only to Customer and not to its Affiliates, Permitted Users, clients or any other Persons. Under no circumstances will any Affiliate, Permitted User or client of Customer or any other Person be considered a third-party beneficiary of this Master Agreement or otherwise entitled to any rights or remedies under this Master Agreement, even if such Affiliates, Permitted Users, clients or other Persons are provided access to the Application or any Hosting Services, SaaS Services, Professional Services, Maintenance Services or other Services hereunder. Customer will have no rights or remedies against Provider except as specifically provided in this Master Agreement. No action or claim of any type relating to this Master Agreement or applicable Schedules may be brought or made by Customer more than one (1) year after Customer first has knowledge of the basis for the action or claim. The exclusions, disclaimers and limitations set forth in this Master Agreement have been considered and accepted by the Parties in the pricing of the Application, Products and Services provided in this Master Agreement.

**11. OTHER PROVISIONS.**

11.1. Notices. All notices from a Party to the other Party under this Master Agreement will be in writing and will be deemed given when: (a) delivered personally with receipt signature; (b) sent via certified mail with return receipt requested; or (c) sent by commercially recognized air courier service with receipt signature required, to the following address:

if to iRely, LLC:

*iRely, LLC*

*4242 Flagstaff Cove*

*Ft. Wayne, Indiana, 46815*

*ATTENTION: Chris Pelz ([chris.pelz@irely.com](mailto:chris.pelz@irely.com))*

if to CUSTOMER:

*[NAME & ADDRESS]*

*ATTENTION: \_\_\_\_\_*

*and*

*ATTENTION: \_\_\_\_\_*

11.2. Export Control. Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Application. Customer acknowledges and

agrees that such export laws govern its use of the Application (including technical data) and Services provided under this Master Agreement, and Customer will fully comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Customer further agrees that no Products will be exported, directly or indirectly, in whole or in part, in violation of these laws, or will be used for any purpose prohibited by these laws. Provider makes no representation that the Application is appropriate or available for use in any particular locations. Customer is solely responsible for compliance with all applicable laws, including export and import regulations of other countries.

- 11.3. Publicity. Customer hereby grants Provider the right (a) to name Customer as a Provider client, to use Customer's name and logo on Provider's websites and on written and digital marketing materials and to include links to Customer's website and company introduction; the foregoing in all modalities of Provider's marketing efforts; and (b) to refer to Customer as a Provider Customer during sales pitches to Provider prospects. Provider will seek Customer's consent before using Customer's name in white papers or other similar written materials.
- 11.4. Integration and Amendments. This Master Agreement and applicable Schedules constitute a complete and exclusive final written expression of the terms of agreement between the Parties regarding the subject matter hereof. This Master Agreement supersedes all earlier and contemporaneous proposals, agreements, understandings and negotiations concerning the subject matter hereof. In the event of a conflict or inconsistency between this Master Agreement and any Schedule, the terms of this Master Agreement will prevail, provided that if this Master Agreement is silent on or does not expressly provide for or address a right, limitation or obligation, then the applicable Schedule will govern and control this Master Agreement to the extent the Schedule expressly provides for or addresses a right, limitation or obligation hereunder. The Parties may amend this Master Agreement only in writing, and no oral representation or course of dealing will modify this Master Agreement.
- 11.5. Governing Law; Dispute Resolution.
  - 11.5.1. **THE CONSTRUCTION AND PERFORMANCE OF THIS MASTER AGREEMENT AND SCHEDULES HERETO WILL BE GOVERNED BY THE SUBSTANTIVE LAWS OF THE STATE OF DELAWARE, UNITED STATES OF AMERICA, WITHOUT REGARD TO CONFLICTS OF LAWS PROVISIONS. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS WILL NOT APPLY TO THIS MASTER AGREEMENT.**
  - 11.5.2. Any controversy or claim arising out of or relating to this Master Agreement, or the breach thereof, will be settled by arbitration administered by the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitration will be conducted in Allen County, Indiana by a single arbitrator appointed by the AAA. Any appeal of the arbitration decision will be brought exclusively in the federal or state courts

situated in the State of Delaware. Customer hereby consents to exclusive personal jurisdiction and venue in Delaware.

- 11.6. Assignment. This Master Agreement will bind, benefit and be enforceable by and against Provider and Customer and, to the extent permitted hereby, their respective successors and assigns. Customer will not assign this Master Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without Provider's prior written consent, except that such consent will not be required in the case of an assignment to (a) a purchaser of or successor to substantially all of Customer's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of Provider or any of its Affiliates), provided that the scope of the rights granted this Master Agreement and the number of Permitted Users, permitted locations and similar license or use conditions does not change and that the purchaser or successor pays Provider's then current relicensing fees, or (b) an Affiliate of Customer, provided that the scope of the rights granted this Master Agreement and the number of Permitted Users, permitted locations and similar license or use conditions does not change and that Customer guarantees in writing the obligations of the assignee hereunder. Any assignment by Customer in breach of this Section 11.6 will be void. Any express assignment of this Master Agreement, any change in control of Customer, any acquisition of additional business by Customer (by asset acquisition, merger or otherwise by operation of law) and any assignment by merger or otherwise by operation of law, will constitute an assignment of this Master Agreement by Customer for purposes of this Section 11.6.
- 11.7. Severability; Certain Terms. If any provision of this Master Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision will be construed, as nearly as possible, to reflect the intentions of the original provision, with all other provisions remaining in full force and effect. For the purposes of this Master Agreement, "including" and cognates thereof means "including but not limited to".
- 11.8. No Agency. The Parties acknowledge and agree that each is an independent contractor, and nothing herein constitutes a joint venture, partnership, employment, or agency between Customer and Provider. Neither Party will have the right to bind the other Party or cause it to incur liability.
- 11.9. Waiver. The failure of either Party to enforce any right or provision in this Master Agreement will not constitute a waiver of such right or provision unless expressly acknowledged and agreed to by such Party in writing.
- 11.10. Non-Solicitation. During the Term and for a period of one (1) year thereafter, neither Party will, except with the other Party's prior written approval, solicit the employment of any employee, consultant or subcontractor of such other Party that directly participated in the activities set forth in this Master Agreement. The foregoing will specifically not apply to general solicitations of employment issued by either Party to which an employee of the other Party may voluntarily respond.
- 11.11. Counterparts; Electronic Signatures. This Master Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but together they shall constitute one and the same instrument. Facsimile and .pdf signatures shall

be deemed valid and binding to the same extent as the original and the Parties affirmatively consent to the use thereof, with no such consent having been withdrawn. Each Party agrees that this Master Agreement and any Schedules and other documents to be delivered in connection with this Master Agreement may be executed by means of an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, and/or any other relevant electronic signatures law, in each case to the extent applicable. Any electronic signatures appearing on this Master Agreement and such other Schedules and documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility. Each Party hereto shall be entitled to conclusively rely upon, and shall have no liability with respect to, any electronic signature or faxed, scanned, or photocopied manual signature of any other Party and shall have no duty to investigate, confirm or otherwise verify the validity or authenticity thereof.

*By clicking the "I agree" box in connection with the initial Ordering Document between you and Provider or, as applicable, by means of another commercially reasonable method of indicating your assent, you acknowledge that you are entering into a legally binding agreement with Provider, and that you have read, understood, and agreed to the terms of this Master Agreement and the terms of all applicable Schedules.*