



## MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT, TOGETHER WITH EACH STATEMENT OF WORK HERETO (EACH SUCH STATEMENT OF WORK SHALL BE INCORPORATED WITH AND INTO THIS AGREEMENT AS IF FULLY INCLUDED HEREIN) (COLLECTIVELY, "AGREEMENT"), REPRESENTS A BINDING AGREEMENT BETWEEN ASG TECHNOLOGIES GROUP, INC. ("ASG") AND THE ENTITY IDENTIFIED ON THE STATEMENT(S) OF WORK ("CLIENT"). ASG SHALL ONLY PROVIDE SERVICES TO CLIENT UPON THE CONDITION THAT CLIENT ACCEPTS AND COMPLIES WITH THIS AGREEMENT. CLIENT'S ACCEPTANCE OF THIS AGREEMENT SHALL BE DEEMED EFFECTIVE ON THE DATE ON WHICH THE FIRST OF THE FOLLOWING OCCURS: (1) THE CLICKING OF A BOX INDICATING ACCEPTANCE, (2) THE EXECUTION OF A STATEMENT OF WORK, OR (3) THE USE OR RECEIPT OF SERVICES ("EFFECTIVE DATE"). THE ENTITY OR INDIVIDUAL ACCEPTING THIS AGREEMENT ON BEHALF OF CLIENT HEREBY REPRESENTS THAT HE/SHE/IT IS AUTHORIZED TO BIND SUCH CLIENT TO THE TERMS AND CONDITIONS HEREOF; IF SUCH ENTITY OR INDIVIDUAL DOES NOT HAVE THE AUTHORIZATION DESCRIBED, THIS ENTITY OR INDIVIDUAL SHALL NOT ACCEPT THIS AGREEMENT AND SUCH ENTITY OR INDIVIDUAL, TOGETHER WITH THE CLIENT, SHALL BE PROHIBITED FROM USING AND/OR RECEIVING THE SERVICES. SERVICES TO BE PERFORMED BY ASG SHALL BE AS DESCRIBED IN THE STATEMENT OF WORK(S).

### 1 SERVICES, DELIVERABLES, CUSTOMIZED SOFTWARE, AND CUSTOM DEVELOPMENT

- 1.1 **Scope of Services.** Subject to ASG's receipt of all amounts due, and Client's complete adherence to the terms of this Agreement and each Statement of Work hereto, ASG shall perform the services specified in each properly executed Statement of Work ("Services").
- 1.2 **Out of Scope.** Except as expressly and explicitly set forth in a Statement of Work, all other services and deliverables shall be deemed out of scope.
- 1.3 **ASG Personnel and Subcontractors.** ASG reserves the right, in its sole and absolute discretion, and at any time, to substitute personnel of equal or greater skill level during the provision of Services. ASG further reserves the right, in its sole and absolute discretion, and at any time, to hire a subcontractor to perform any part of the Services.
- 1.4 **Deliverables.** Deliverables shall mean the tangible work product developed by ASG, solely for the use and benefit of Client, in connection with the performance of the Services under the applicable Statement of Work; to qualify as a Deliverable hereunder, a deliverable must be expressly and explicitly identified as a "Deliverable" in the applicable Statement of Work. For the purpose of this Agreement, Deliverables expressly exclude ASG Pre-Existing Technology, Customized Software, and Custom Development.
- 1.5 **Customized Software.** A Client's unique computer environment may require ASG to design certain software routines or utilities to more finely tune ASG's software products ("Customized Software"). Customized Software will be identified as such in the applicable Statement of Work.
- 1.6 **Custom Development.** Custom Development shall mean, without limitation, Field Developed Interfaces, Custom Application Interfaces, Application Programming Interfaces, and any other programming work prepared or performed by ASG alone or together with Client or any third party on Client's behalf ("Custom Development"). Custom Development will be identified as such in the applicable Statement of Work.
- 1.7 **AS-IS Condition.** All Customized Software and Custom Development will be delivered in "AS-IS" condition and all representations, warranties, and other guarantees shall not apply and are hereby disclaimed.
- 1.8 **Maintenance of Deliverables, Customized Software, and Custom Development.** Except as explicitly stated otherwise in the applicable Statement of Work, ASG shall not provide maintenance for Deliverables, Customized Software, or Custom Development.
- 1.9 **Compatibility of Deliverables, Customized Software, and Custom Development.** Deliverables, Customized Software, and/or Custom Development may not be compatible with future releases of ASG software products. Should Client require such compatibility, where such compatibility does not yet exist, ASG and Client shall use good faith and best efforts to

negotiate and agree upon a Statement of Work pursuant to which ASG shall perform certain Services to provide such compatibility.

## 2 STATEMENT OF WORK AND PURCHASE ORDER

- 2.1 **Statement of Work.** Statement of Work shall mean a document substantially in the form attached hereto as Exhibit A. Each Statement of Work shall describe the Services to be performed by ASG, the timeframe during which the Services are to be performed, the obligations of each party with respect to the particular Services, the fees to be paid by Client to ASG for such Services ("Fees"), and the applicable Deliverables. This Agreement may be supplemented from time to time by a Statement of Work, executed as proscribed in Section 2.2 below.
- 2.2 **Execution of Statement of Work; Purchase Order or Binding Purchase Letter Required.** A Statement of Work shall only be deemed valid and enforceable upon the mutual execution thereof by the authorized signatories of each party and receipt by ASG from Client of a Purchase Order ("PO") or a Binding Purchase Letter ("BPL") corresponding thereto.
- 2.3 **Purchase Order and Binding Purchase Letter.** Each PO or BPL, as applicable, must include an amount to cover all Fees set forth in, and all expenses to be incurred under, the Statement of Work to which it pertains. Each PO or BPL, as applicable, must also be issued to the ASG address specified in the applicable Statement of Work. If the PO or BPL, as applicable, does not include an amount which covers all such Fees and expenses, ASG shall be permitted to invoice, and Client shall be liable to pay, all Fees and expenses which are not otherwise covered by or included in such PO or BPL. ASG hereby disclaims any and all additional and/or inconsistent terms and conditions contained in a PO, BPL, or similar document; all such additional and/or inconsistent terms and conditions shall be deemed null and void.
- 2.4 **Rescheduling of Services.** Should Client request to reschedule the Services, Client must notify ASG, in writing, at least ten (10) business days in advance of the date on which the Services are to commence ("Commencement Date"). ASG and Client shall then use good faith and best efforts to reschedule the Services accordingly. Client shall be assessed a fee of ten percent (10%) of the total Fees and expenses of the Services should Client fail to notify ASG of its request to reschedule as proscribed herein. Client shall only be permitted to reschedule the Services, under any Statement of Work, one (1) time. Except as expressly and explicitly stated to the contrary herein, termination or cancellation of Services, for convenience and/or for any reason other than breach, is strictly prohibited.
- 2.5 **Automatic Termination.** If the Commencement Date has not been scheduled within ninety (90) days of the date of the applicable Statement of Work's execution (as proscribed in Section 2.2 above), such Statement of Work shall automatically terminate with no further obligation of either party as it pertains to the same.
- 2.6 **Incorporation.** Each properly executed Statement of Work attached hereto is hereby incorporated by reference and made an integral part of this Agreement.
- 2.7 **Inconsistency.** In the event of inconsistency between a Statement of Work and this Agreement, this Agreement shall control unless such Statement of Work identifies the provision of this Agreement which it intends to supersede, in which case, the Statement of Work shall control only as it pertains to such provision and only as it pertains to the Statement of Work itself. All other terms and conditions of this Agreement shall remain in full force and effect.

## 3 CHANGE REQUESTS AND CHANGE ORDERS

- 3.1 **Change Request.** A party may request changes to a Statement of Work ("Requesting Party") by completing the Change Request form attached hereto as Exhibit B ("Change Request"). The Change Request shall describe the requested change, the reason for the change, and the anticipated effect the change will have on the Services and/or Deliverables, including any additional effort, fees, and/or expenses which may be required. If Client is the Requesting Party, ASG may charge, and Client shall be liable to pay, fees for ASG's review and investigation of the Change Request.

- 3.2 **Review of Change Request.** The party receiving the Change Request (“Non-Requesting Party”) shall, within five (5) business days of receiving the same, accept or reject the Change Request.
- 3.2.1 **Rejected Change Request.** In the event of rejection, the Non-Requesting Party shall advise the Requesting Party, in writing, as to the reasons for its rejection. The Requesting Party shall then have five (5) business days, from the date on which it received the notice of rejection, to resubmit the Change Request. Should the Requesting Party resubmit the Change Request, the Non-Requesting Party shall have five (5) business days to accept or reject the resubmitted Change Request. If the Non-Requesting Party rejects the Change Request after resubmission, or the Requesting Party otherwise fails to resubmit the Change Request in the first instance, the Statement of Work shall continue unamended unless otherwise terminated as provided herein.
- 3.2.2 **Accepted Change Request.** In the event of acceptance, the authorized signatories of each party shall execute the Change Request (“Change Order”) and shall attach the same to the applicable Statement of Work as an addendum. The Change Order shall effectively amend the terms of the Statement of Work to which it applies. In the event of inconsistency between the Statement of Work and the Change Order, the Change Order shall control only as it pertains to the terms and conditions expressly and explicitly modified. All other terms and conditions of the Statement of Work shall remain in full force and effect.
- 3.3 **Change Orders.** A Statement of Work may only be modified by a Change Order executed by the authorized signatories of each party hereto. All changes require a Change Order to avoid out of scope charges.

## 4 REQUIREMENTS AND ASSUMPTIONS

- 4.1 **Client Furnished Resources.** The performance of Services by ASG shall be conditioned upon the provision by Client to ASG, at Client’s sole cost and expense, of each of the following:
- 4.1.1 **Client Contact.** Client shall identify a single Client contact for each Statement of Work (“Client Contact”). The Client Contact shall be ASG’s primary point of contact for the provision of Services under a Statement of Work. The Client Contact shall be responsible for gathering and providing to ASG the resources required of Client under this Agreement and the applicable Statement of Work and for further ensuring adherence of Client to its obligations. ASG may, in its sole and reasonable discretion, and at any time, request replacement of the Client Contact. Client shall then promptly replace the Client Contact with a reasonably qualified Client employee.
- 4.1.2 **Client Employees.** In addition to the Client Contact, Client shall provide sufficiently and appropriately qualified employees, as requested by ASG, to assist in the performance of the Services; such assistance may include, but shall not be limited to, answering functional, technical, and strategy-related questions. Client employees shall be made available during ASG’s business hours and after hours, during the weekend, or on a holiday, as needed. ASG may, in its sole and reasonable discretion, and at any time, request replacement of the Client employees with whom ASG engages. Client shall then promptly replace Client employees with other reasonably qualified Client employees.
- 4.1.3 **Client Facilities and Equipment.** If onsite work is required, as specified in a Statement of Work, all such work shall be performed at Client’s facilities, using Client’s computer resources. Client shall also be required to provide workspace, furniture, supplies, and equipment, inclusive of telephone and building access badges (as applicable), as reasonably required by ASG in the performance of the Services.
- 4.1.4 **Remote Access.** If remote access is required, as specified in a Statement of Work, Client shall provide such access through VPN/WebEx or similar connectivity as requested by ASG. Client shall further provide viable logins to allow for such access.
- 4.2 **Other Client Obligations.** The performance of Services by ASG shall be conditioned upon Client’s adherence, at its sole cost and expense, to each of the following:
- 4.2.1 **Client Cooperation.** Client must fully cooperate, in good faith and with best efforts, with ASG in its performance of the Services. Cooperation shall include, but shall not be limited, the timely provision of all Client furnished

resources to ASG and timely adherence by Client to its obligations under this Agreement and each Statement of Work. Any delay in ASG's performance of Services caused by Client's repeated acts or omissions may result in additional Fees and expenses.

- 4.2.2 **Software Licenses.** Client hereby represents and warrants that all ASG software products, for and/or on which the Services are being performed, have been properly licensed from ASG. Client further represents and warrants that its use of all licensed ASG software products is in conformance with the terms and conditions governing the same. ASG's performance of Services for ASG software products which Client has not properly licensed and/or Client has not used in conformance with the terms and conditions governing the same shall not act to amend such terms and conditions, and/or to grant and/or expand the scope of any license to such ASG software products, and shall not otherwise act as a notification of breach or a waiver of any claim which ASG may have as a result. If it is discovered that Client is utilizing or accessing unlicensed ASG software products, or is otherwise utilizing or accessing ASG software products in an unauthorized manner, Client shall fully cooperate with ASG in the immediate rectification of such unlicensed or unauthorized utilization or access which shall include, but shall not be limited to, responding to validation documents, submitting system reports, and paying applicable licensing and other fees.
- 4.2.3 **Review of ASG Support Matrix.** Client shall review the ASG Support Matrix, if available, for each ASG software product for which the Services are being provided. Client shall procure all software products, hardware, and related equipment at its sole cost and expense. If the Services include installation, as specified in the applicable Statement of Work, Client must complete the Installation Prerequisite Checklist before ASG will commence any such Services. The Installation Prerequisite Checklist may include, but shall not be limited to, the installation and configuration, by Client, of non-ASG software products which are required to support the ASG software products.
- 4.2.4 **Accurate Sample.** Sample data provided to ASG by Client, as requested and required by ASG at the commencement of Services, must be an accurate and complete representation of all data that will be encountered by Client in production; this shall be used by the parties as a baseline for acceptance. If ASG and/or Client find data, during the provision of Services, that is different from the sample data first provided, the parties shall use good faith and best efforts to adjust the baselines, Deliverables, and costs accordingly; all such adjustments shall be submitted through the Change Request process described in Section 3 above.
- 4.2.5 **Sanitized Data.** Client shall be prohibited from providing ASG with any personally identifiable information. As such, Client shall be solely responsible for ensuring that any data provided is sanitized and/or anonymized. ASG shall have no responsibility or liability to Client or any other party as it pertains to any personally identifiable information of Client or its clients, employees, etc.
- 4.2.6 **Backups of Data.** Client shall have complete backups of all data prior to the commencement of, and during, the performance of Services. ASG assumes no responsibility for the loss and/or destruction of any Client data - all such risk shall be borne solely by Client.
- 4.2.7 **Testing.** Except as expressly and explicitly stated to the contrary in the applicable Statement of Work, ASG shall not conduct any testing. Accordingly, Client shall be responsible for creating a user test plan and for providing resources for testing.
- 4.2.8 **Production Database Copy.** As applicable, Client shall create a copy of the production database for testing, current as of the Commencement Date.
- 4.2.9 **Weekly/Monthly Time Summaries.** Client agrees to review and sign the weekly or monthly time summaries, as applicable and/or required, within three (3) business days of receipt. Client's unavailability or refusal to sign the weekly or monthly time summaries will not constitute grounds for non-payment. Time summaries shall be attached to invoices as support.
- 4.3 **Assumptions.** Except as expressly and explicitly stated to the contrary in the applicable Statement of Work, the following shall be assumed for each Statement of Work:
- 4.3.1 **Business Hours.** ASG shall only perform Services during its normal business hours: Monday through Friday, hours and time zone as specified in the applicable Statement of Work. If Client shall require Services to be rendered after

hours, during the weekend, and/or on a holiday, Client must submit a Change Request to ASG at least two (2) weeks in advance of the date on which such after hours, weekend, and/or holiday Services are to be performed.

- 4.3.2 **Lead Time.** To allow ASG to assign personnel to the Services under a Statement of Work, ASG must receive the properly executed Statement of Work a minimum of two (2) weeks in advance of the Commencement Date; the Commencement Date shall be as specified in the applicable Statement of Work or as later negotiated between ASG and Client in writing.
- 4.3.3 **Acceptance.** Acceptance of the Services and Deliverables shall be assumed unless Client provides to ASG written notice of nonconformity as set forth in Section 6.1.3 below.

## 5 FEES AND PAYMENT

- 5.1 **Fees.** Fees shall be as set forth and specified in a Statement of Work. Fees may be calculated on a time and materials basis or may be fixed. Should Fees be calculated on a time and materials basis, the daily/hourly rate shall be set forth in the Statement of Work. All Fees are quoted in the currency specified in the applicable Statement of Work. All estimates and Fees are conditioned upon Client's adherence to the terms and conditions of this Agreement and the applicable Statement of Work; Client's failure to adhere to such terms and conditions may result in an increase in estimates and/or Fees due and payable by Client to ASG. All estimates are for Client's budgeting purposes only and are not a guarantee that the Services will be performed for such amount.
- 5.2 **Expenses.** Except as explicitly stated otherwise in a Statement of Work, Client shall reimburse ASG for all reasonable travel and related expenses incurred by ASG in performing its obligations under this Agreement and each Statement of Work. All travel and related expenses will be incurred in accordance with ASG's travel policy. ASG will document travel and related expenses as part of the applicable invoice, but copies of receipts shall not be provided.
- 5.3 **Minimum.** For each Statement of Work for which Fees are calculated on a time and materials basis, ASG shall invoice, and Client shall be liable for, a minimum of six (6) hours for each calendar day on which Services are rendered at a Client location. For all Statements of Work, ASG shall invoice, and Client shall be liable for, a minimum of eight (8) hours for each calendar day on which Services are rendered during the weekend or on a holiday, whether such Services are rendered remotely or at Client's location; if a Statement of Work does not provide for an hourly rate, the hourly rate shall be ASG's hourly rate current as of the date on which the weekend or holiday Services were performed.
- 5.4 **After Hours, Weekend, and Holiday.** For all Statements of Work, ASG shall invoice, and Client shall be liable for, one and one-half (1.5) times the hourly rate per hour worked for Services rendered after hours, during the weekend, or on a holiday, whether such Services are rendered remotely or at a Client location; if a Statement of Work does not provide for an hourly rate, the hourly rate shall be ASG's hourly rate current as of the date on which the after-hours, weekend, or holiday Services were performed.
- 5.5 **Taxes.** Unless ASG is provided with a valid tax exemption certificate, Client shall be responsible for prompt payment of all federal, state, local, foreign, and other taxes of any kind whatsoever, exclusive only of U.S. taxes based on ASG's net income, whether such taxes are presently or hereafter imposed in relation to the Services.
- 5.6 **Invoicing and Payment.** For Fees calculated on a time and materials basis, Client shall be invoiced monthly in arrears. For Fees which are fixed, Client shall be invoiced upon Client's execution of the applicable Statement of Work. All invoices shall be payable by Client upon receipt. Invoices not paid within thirty (30) days of receipt shall be subject to one and one half percent (1.5%) rate of interest per month (or such lower rate as the highest permissible contract rate under applicable law) which shall be added to any amounts due and owing to ASG.
- 5.7 **Suspension of Services for Non-Payment.** Without limiting any of ASG's other rights, should Client fail to pay any amount due within the time period proscribed, ASG may, in its sole and absolute discretion, and without liability, suspend the Services until all amounts are paid in full.

## 6 WARRANTY

### 6.1 Warranties. ASG warrants each of the following:

- 6.1.1 **Professionalism.** The Services shall be performed in a professional and workmanlike manner in accordance with generally accepted industry standards.
- 6.1.2 **Non-infringement.** The Deliverables shall not infringe upon or misappropriate any third party's copyright, trade secret, or patent provided that Client: (a) uses the Deliverables in accordance with this Agreement, the applicable Statement of Work, specifications, documentation, and ASG's instructions, (b) does not alter, modify, or convert all or part of the Deliverables unless it shall have received ASG's prior written consent, (c) does not use the Deliverables with other services, work product, software, hardware, or equipment, without which the Deliverables would not be infringing or misappropriating, and (d) does not breach this Agreement or otherwise act negligently, willfully, or fraudulently.
- 6.1.3 **Conformance of Deliverables.** For a period of thirty (30) days following delivery of the Deliverables to Client, the Deliverables shall substantially conform to the specifications expressly and explicitly set forth in the applicable Statement of Work ("Warranty Period"). In the event that the Deliverables do not substantially conform as stated, Client shall promptly notify ASG, in writing, of such nonconformity prior to the expiration of the Warranty Period. Such written notification must clearly identify, and include sufficient detail of, the perceived nonconformity. Within thirty (30) days of receipt of such notification, ASG will use commercially reasonable efforts, which ASG determines as necessary to cause the Deliverable to substantially conform as proscribed, to correct any such nonconformity. If, after investigation by ASG, ASG determines that the nonconformity is the result of an act or omission of Client, ASG shall charge Client at ASG's rates then in effect as of the date on which ASG received notice of the nonconformity, for all services rendered and costs incurred by ASG in investigating and/or remedying such nonconformity. ASG shall have no obligation hereunder if the nonconformity is in any way attributable to Client's: (a) failure to use the Deliverables in accordance with this Agreement, the applicable Statement of Work, specifications, documentation, and ASG's instructions, (b) alteration, modification, or conversion of all or part of the Deliverables without ASG's prior written consent, (c) use of the Deliverables with other services, work product, software, hardware, or equipment, without which the Deliverables would be conforming, and/or (d) breach, negligence, willful misconduct, or fraudulence. THE REMEDIES SET FORTH IN THIS SECTION 6.1.3 ARE EXCLUSIVE AND SHALL CONSTITUTE CLIENT'S SOLE REMEDIES AS IT PERTAINS TO THE NONCONFORMITY OF THE DELIVERABLES AND SERVICES.

- 6.2 **Disclaimer.** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. ASG DOES NOT WARRANT THAT THE SERVICES WILL RESULT IN INCREASED EFFICIENCY IN THE USE OF HARDWARE, SOFTWARE, DATA, OR PROGRAMS. CLIENT SHALL UNDERTAKE ALL MEASURES TO PREVENT OR MINIMIZE LOSS.

## 7 PROPRIETARY RIGHTS

- 7.1 **Ownership of ASG Pre-Existing Technology.** ASG Pre-Existing Technology shall include, but shall not be limited to, software, documents, technologies, trade secrets, specifications, designs, analyses, processes, methodologies, concepts, inventions (whether patentable or reduced to practice), know-how, programs, program listings, programming tools, documentation, user materials, reports, drawings, databases, spreadsheets, machine-readable data, text and files, financial models and work product, and other works of authorship, copyrightable works, processes or inventions, whether tangible or intangible, made, created, developed, conceived, or reduced to practice by ASG, or any of its predecessors, licensors, subsidiaries, affiliates, or related companies, prior to this Agreement, or during this Agreement, but which are outside the scope thereof or which were not otherwise created, developed, conceived, or reduced to practice specifically for Client; any materials, products, and deliverables not specifically identified as "Deliverables" in the applicable Statement of Work; and any information constituting ASG's Confidential Information. ASG shall own all right, title, and interest in and to any and all ASG Pre-Existing Technology and all such ASG Pre-Existing Technology shall, at all times remain, the property

of ASG; Client shall have no right, title, or interest therein except as expressly described in this Agreement or in the applicable Statement of Work.

- 7.2 **Ownership of Customized Software and Custom Development.** ASG shall own all right, title, and interest in and to any and all Customized Software and Custom Development, inclusive of source code and documentation. Customized Software and Custom Development, inclusive of source code and documentation, shall, at all times remain, the property of ASG; Client shall have no right, title, or interest therein except as expressly described in this Agreement or in the applicable Statement of Work. Upon receipt by ASG of all amounts due, ASG shall grant to Client a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sublicensable license to use the Customized Software or Custom Development, as applicable, but only for so long as Client maintains a license to the ASG software products, for which the Customized Software or Custom Development was created, in accordance with Section 4.3.2 above. Client shall only be permitted to use the Customized Software and Custom Development for its own internal use and benefit, and only as is necessary for proper use of the Deliverables and ASG software products for which Client is properly licensed, and shall not transfer, sublease, assign, or deliver to another company, or provide or otherwise make the Customized Software or Custom Development available to anyone other than Client's own employees or otherwise use the Customized Software or Custom Development to process for the benefit of any other entity or person.
- 7.3 **Ownership of Deliverables.** Except as expressly provided herein, ASG shall own all right, title, and interest in and to any and all Deliverables. Upon receipt by ASG of all amounts due, ASG shall grant to Client a non-exclusive, non-transferable, non-assignable, non-sublicensable, royalty-free, perpetual license to the Deliverables; Client shall have the right to use the Deliverables solely for its own internal use and benefit. Client shall not transfer, sublease, assign, or deliver to another company or provide or otherwise make available the Deliverable to anyone other than Client's employees or otherwise use the Deliverable to process for the benefit of any other entity or person. Deliverables expressly exclude ASG's Pre-Existing Technology, Customized Software, Custom Development, and Confidential Information.

## 8 INDEMNIFICATION AND LIMITATION OF LIABILITY

- 8.1 **Indemnification by ASG.** ASG shall indemnify, defend, and hold harmless Client from any damage, liability, cost, or expense, including reasonable attorneys' fees, directly incurred as a result of a Deliverable's infringement upon or misappropriation of a third party's copyright, trade secret, or patent ("Claim"). The foregoing indemnification obligation shall be conditioned upon Client: (a) promptly notifying ASG of any such Claim, (b) fully cooperating with ASG in the defense of any such Claim; (c) giving ASG sole control of the defense and settlement of the Claim; and (d) not defending or responding to any such Claim independently. Alternatively, ASG, may, in its sole and absolute discretion: (i) procure for Client the right to continue using all or part of the Deliverable; (ii) replace the Deliverable with a functionally equivalent non-infringing deliverable; or (iii) modify the Deliverable so to become non-infringing. ASG shall have no obligation under this Section 8.1 if the infringement or misappropriation is in any way attributable to Client's: (w) failure to use the Deliverables in accordance with this Agreement, the applicable Statement of Work, specifications, documentation, and ASG's instructions, (x) alteration, modification, or conversion of all or part of the Deliverables without ASG's prior written consent, (y) use of the Deliverables with other services, work product, software, hardware, or equipment, without which the Deliverables would not be infringing or misappropriating, and/or (z) breach, negligence, willful misconduct, or fraudulence. The foregoing shall constitute ASG's entire liability with respect to a copyright, trade secret, patent, or other intellectual property right infringement or misappropriation claim.
- 8.2 **Indemnification by Client.** Client shall indemnify, defend, and hold harmless ASG from any damage, liability, cost, or expense, including reasonable attorneys' fees, incurred as a result of (a) Client's breach of this Agreement or a Statement of Work, (b) Client's use of the Deliverables or Services except as expressly permitted, or (b) any other negligent, willful, or fraudulent act or omission of Client.
- 8.3 **Limitation of Liability.** ASG'S TOTAL LIABILITY TO CLIENT FOR ALL CLAIMS ARISING OUT OF OR CONCERNING THIS AGREEMENT SHALL BE LIMITED TO THE FEES ACTUALLY PAID BY CLIENT FOR THE SERVICES GIVING RISE TO LIABILITY, NOT TO EXCEED THE FEES ACTUALLY PAID BY CLIENT FOR THE YEAR PRIOR TO THE DATE ON WHICH THE LIABILITY FIRST AROSE. ASG SHALL IN NO EVENT BE LIABLE FOR LOSS OF PROFIT, REVENUE, OR GOODWILL, OR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES SUFFERED BY CLIENT OR OTHERS IN ANY WAY ATTRIBUTABLE TO THE SERVICES OR ANY ACT

OR OMISSION OF ASG, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT ASG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 9 CONFIDENTIALITY AND NONDISCLOSURE

- 9.1 **Confidential Information.** “Confidential Information” means the confidential, secret or proprietary information of either ASG or Client, including, without limitation, financial and business information, financial and business plans, financial statements, marketing plans, business processes, business ideas and strategies, clients, contracts, personally identifiable information and information and ideas concerning software, roadmaps and development, which has been or may hereafter be disclosed or delivered, directly or indirectly to the other party hereunder, either orally, in writing or in any other material form.
- 9.2 **ASG Confidential Information.** In addition to the foregoing, ASG’s Confidential Information shall also include, but shall not be limited to, ASG Pre-Existing Technology, Customized Software, and Custom Development. Client hereby acknowledges that all ASG Pre-Existing Technology, Customized Software, and Custom Development contain proprietary and confidential information of ASG (whether or not any portion thereof may be validly copyrighted or patented). Client agrees to keep ASG Pre-Existing Technology, Customized Software, and Custom Development strictly confidential and will use all reasonable care and take all necessary steps to ensure the same. Client agrees not to reverse compile, disassemble, or otherwise attempt to obtain the source code of any ASG Pre-Existing Technology, Customized Software, or Custom Development. Client further agrees not to use, copy, modify, transfer, download, merge, make any translation, or derivative work, or otherwise deal with ASG Pre-Existing Technology, Customized Software, and Custom Development except as expressly provided in this Agreement.
- 9.3 **Nondisclosure.** Each party agrees to maintain the confidential nature of the other’s Confidential Information. Each party will exercise at least the same degree of care to protect the confidentiality of the other’s Confidential Information as it would exercise in protecting its own similar Confidential Information, but in any event, no less than reasonable care. Each party will ensure that the other’s Confidential Information will not be disclosed to, or used by, any person, association or entity except the party’s employees, and then only to the extent necessary for the receipt or provision of Services and consistent with the protection required by this Section 9 and any other agreement between ASG and Client. Confidential Information will not include information that is previously known to the other party without obligation of confidence and without breach of this Agreement, is publicly disclosed other than by the recipient and without fault of recipient, is rightfully received by recipient from a third party without an obligation of confidence, or is developed independently and without use of the Confidential Information.

## 10 TERM AND TERMINATION

- 10.1 **Term.** This Agreement shall commence on the Effective Date first set forth above and shall be valid for an initial period of one (1) year. Thereafter, this Agreement shall automatically renew for additional one (1) year periods unless terminated, in writing, by a party at least thirty (30) days prior to the date on which this Agreement is to renew.
- 10.2 **Termination by ASG.** ASG may immediately terminate this Agreement and/or any Statement of Work, upon written notice to Client, if:
- 10.2.1 **Breach.** Client breaches any obligation under this Agreement or any Statement of Work and fails to cure the same within thirty (30) days’ written notice thereof; or
- 10.2.2 **Insolvency.** Client: (a) becomes insolvent or unable to pay its debts as they become due; (b) makes an assignment for the benefit of a creditor; (c) suffers the appointment of a receiver or trustee for the benefit of its creditors; (d) initiates a moratorium, suspension of payments, or composition of creditors; and/or (e) initiates a bankruptcy or dissolution and liquidation proceeding or has any such proceeding initiated against it that is not judicially dismissed within thirty (30) days.



- 10.3 **Termination by Client.** Client may immediately terminate this Agreement and/or any Statement of Work, upon written notice to ASG, if:
- 10.3.1 **Breach.** ASG materially breaches any obligation under this Agreement or any Statement of Work and fails to cure the same within thirty (30) days' written notice thereof.
- 10.4 **Consequences of Termination/Expiration.** The consequences of termination/expiration shall be as follows:
- 10.4.1 **Remaining Statements of Work.** As of the effective date of termination or expiration of this Agreement, no further Statements of Work may be executed between the parties. Notwithstanding the effective date of termination or expiration of this Agreement, this Agreement shall remain in effect for each Statement of Work properly executed prior to, and still in effect as of, the effective date of termination or expiration of this Agreement ("Remaining Statement of Work"). This Agreement shall continue to remain in effect for each of such Remaining Statements of Work until the later of the completion of all Services thereunder or the termination or expiration of the last Remaining Statement of Work.
- 10.4.2 **Continuing Obligations.** Following the termination or expiration of this Agreement and/or a Statement of Work: (a) Client shall remain liable for all amounts due until the same have been paid to, and received by, ASG; and (b) should this Agreement and/or a Statement of Work be terminated due to breach, the breaching party shall not be released from liability to the non-breaching party for such breach.
- 10.4.3 **Surviving Provisions.** Those provisions which are intended to survive termination or expiration shall survive the termination or expiration of this Agreement.

## 11 GENERAL PROVISIONS

- 11.1 **Dispute Resolution.** Prior to the commencement of any formal proceedings, the parties shall attempt, in good faith and with best efforts, to reach a negotiated resolution or settlement to any dispute arising out of or concerning this Agreement.
- 11.2 **Notice.** Any notice to be given under this Agreement shall be in writing and addressed to the party at the address stated herein. Notices will be deemed given and effective (i) if personally delivered, upon delivery, (ii) if sent by a service with tracking capabilities, upon receipt, (iii) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal, or (iv) if sent by return receipt certified or registered mail, upon receipt by the sender of the return receipt.
- 11.3 **Relationship of the Parties.** ASG is an independent contractor and retains sole discretion and judgment concerning the manner in which the Services are performed. Neither party is, nor will be considered to be, an agent, distributor, partner, joint venturer, or representative of the other party for any purpose.
- 11.4 **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement or any Statement of Work.
- 11.5 **Hiring of ASG Personnel.** Client may not recruit or hire any personnel of ASG who are or have been assigned to perform work until one (1) year after the completion of the last Statement of Work in effect between the parties.
- 11.6 **Force Majeure.** Except for Client's payment obligations, neither party shall be responsible for any delay or failure in performance resulting from acts beyond the control of such party. Such acts may include, but shall not be limited to, an act of God, an act of war, riot, an epidemic, fire, flood or other disaster, an act of government, a strike or lockout, a communication line failure, or power failure.
- 11.7 **Waiver.** No failure or delay in exercising any right hereunder shall operate as a waiver of that right. A waiver of any breach of this Agreement must be in writing and shall not be deemed a waiver of any other breach or of the provision breached.

- 11.8 **Severability.** If any provision of this Agreement shall be held to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.
- 11.9 **Assignment.** Client may not assign its rights, or delegate its duties hereunder - including, but not limited to, as a consequence of merger, acquisition, divestiture, change of ownership, or change of control - without the prior written consent of ASG.
- 11.10 **Modification.** This Agreement may be amended and/or modified by ASG, at any time, in its sole and absolute discretion, upon notice to Client.
- 11.11 **Applicable Law.** This Agreement shall be governed by the laws of the State of Florida, without regard to conflicts of law principles. The parties irrevocably consent to the exclusive jurisdiction of the Florida Courts in connection with any and all legal actions, proceedings, and processes relating to this Agreement and to the service of process, pleadings and notices in connection therewith. Notwithstanding the foregoing, ASG may pursue remedies and/or injunctive relief in any court of competent jurisdiction. The U.N. Convention on the International Sale of Goods is expressly excluded.
- 11.12 **Exclusive Remedies.** The Client's remedies in this Agreement are exclusive.
- 11.13 **Entire Agreement.** This Agreement, together with each Statement of Work hereto, represent the entire agreement of the parties with respect to the subject matter thereof and supersede any prior or contemporaneous oral or written matter not included therein. There are no other terms, conditions, promises, covenants, or undertakings other than those expressly and explicitly set forth in this Agreement and each Statement of Work hereto. Accordingly, no representation or statement not expressly and explicitly contained in this Agreement or a Statement of Work shall be binding on either party.