

## MASTER SERVICES AGREEMENT

This Master Services Agreement (the "**Agreement**") provided by Helient Technologies, LLC ("**Helient**") establishes the terms and conditions under which certain information technology services and related deliverables will be provided and received.

WHEREAS, Customer wishes to retain Helient to perform certain information technology services (the "**Services**"), and provide certain equipment and software (the "**Deliverables**"), as defined in one or more Statements of Work referencing this Agreement and agreed to by authorized representatives of both parties in writing (each, an "**SOW**"), and Helient wishes to perform such Services and deliver such Deliverables in accordance therewith;

NOW, THEREFORE, in exchange for good and adequate consideration that the parties hereby acknowledge as having been received, the parties agree as follows:

1. **Scope of Agreement.** Helient agrees to perform for Customer the Services, and deliver to Customer the Deliverables, as described in each SOW entered into by the parties, in accordance with the terms of each applicable SOW and this Agreement. Unless otherwise specifically provided in an SOW, any schedules or deadlines set forth therein are good faith estimates only. Helient may subcontract all or some of the work set forth in an SOW, or assign an SOW or this Agreement, to one or more affiliates or subsidiaries of Helient. If Helient elects to do so, Helient shall remain responsible for performance of Services, and delivery of the Deliverables, as set forth therein.
2. **Term.** The term of this Agreement ("**Term**") shall begin on the Effective Date and shall continue until the delivery of, and payment for, all Services and Deliverables as required by this Agreement and any SOWs, unless earlier terminated pursuant to Article 7 below. The term of each SOW shall begin on the date it is signed by authorized representatives of both parties, and shall continue until the earlier of: (i) the termination or expiration of this Agreement; (ii) the termination of the SOW pursuant to this Agreement; or (iii) the termination or expiration of the SOW pursuant to its terms.
3. **Statements of Work.** Each and every SOW issued by Helient and signed by Customer shall be binding under this Agreement. In the event of a conflict between the terms of this Agreement and those of an SOW, the terms of this Agreement shall prevail unless the SOW specifically references that it is amending the Agreement. Each SOW will address the following, as applicable: scope of Services, Deliverables, pricing, payment terms, and such other matters as to which the parties may agree.
4. **Acceptance of Services and Deliverables.** Unless otherwise set forth in an applicable SOW, all Services performed by Helient for Customer under the SOW shall be deemed accepted when rendered. Unless otherwise set forth in an applicable SOW, all Deliverables shall be deemed accepted upon delivery to Customer. Unless otherwise specified in an applicable SOW all equipment Deliverables are manufactured by a third-party manufacturer, and all software Deliverables are owned by a third-party licensor. Upon the earlier to occur of payment by Customer for equipment Deliverables, or transfer of title pursuant to the applicable SOW, Helient will assign to Customer, to the extent it is permitted to do so, any warranty issued by the third-party manufacture of such equipment Deliverables. All software Deliverables are subject to the terms of any license agreement required by the third-party licensors of such software Deliverables.
5. **Customer Responsibilities.** Customer's responsibilities with respect to Services performed by Helient under this Agreement and any SOW shall include the following: (i) providing full cooperation and timely access to all required Customer personnel and facilities during the course of this Agreement and each SOW; (ii) providing all equipment, space and utilities required by Helient to perform Services and deliver the Deliverables under this Agreement and each SOW; (iii) backing up the data on Customer's system and providing adequate security for same, it being understood and agreed that HELIENT IS NOT RESPONSIBLE FOR THE LOSS OF DATA OR THE LOSS OF ANY USE OF CUSTOMER'S COMPUTER OR NETWORK SYSTEMS RESULTING FROM CUSTOMER'S FAILURE TO PROVIDE RESTORABLE BACK-UPS; (iv) obtaining permission for Helient to access and use Customer's system, the data on it, and all software and hardware components included in it for purposes of providing the Services and delivering the Deliverables hereunder and any SOW, which such permission must be obtained before Helient commences any work under the applicable SOW; and (v) such other responsibilities

as are set forth in an applicable SOW. Helient shall not be liable for any default or delay in performance of its obligations under this Agreement and/or any SOW caused in whole or in part by Customer's failure to obtain any such permissions, which such permissions must be obtained at Customer's sole costs and expense.

## **6. Payment.**

A. Fees. As payment for the Services and Deliverables, and Helient's performance of its obligations under each SOW, Customer agrees to pay Helient pursuant to the fee schedule set forth in that SOW. Unless otherwise indicated on the SOW, Helient will perform such obligations on a time-and-materials basis at the rates set forth in the SOW, and if no rates are specified, at Helient's then current hourly rates. Helient may provide Customer with an estimate of the cost to perform certain of its obligations under the SOW. Customer acknowledges and agrees that the actual cost will be based on the actual time spent, and expenses incurred by Helient in performing such obligations, and may be more or less than the estimate. Helient shall not change its rates during the term of an SOW, unless permitted by the SOW, but may adjust its rates applicable to any new SOW entered by the parties. All fees referred to in this Agreement and any SOW are in U.S. Dollars and do not include any duties or taxes.

B. Expenses: Taxes. Customer shall reimburse Helient for all out-of-pocket expenses incurred by Helient or its employees, consultants or subcontractors in performing any aspect of this Agreement or any SOW, including reasonable travel and living expenses associated with trips to Customer's location(s) or on behalf of Customer which may include air fare, train fare and mileage at the maximum reimbursement rate then permitted by the Internal Revenue Service. Customer shall be responsible for the payment of all taxes based on any Services performed and Deliverables delivered to Customer pursuant to this Agreement and any SOW.

C. Invoices: Payment: Late Fees. Helient will submit monthly invoices for Services rendered and Deliverables delivered under this Agreement and any SOW, and for any reimbursable expenses pursuant to Section 6.B above, and Customer will remit payment in full on each invoice to Helient within thirty (30) days of its receipt of such invoice. Customer will pay a late fee on any unpaid, past-due amount equal to one and a half percent (1.5%) per month. Customer will reimburse Helient for all reasonable collection expenses, including reasonable attorneys' fees and court costs, incurred in collecting past-due amounts hereunder.

## **7. Default: Termination.**

A. Default: Acts of Insolvency. Either party has the right to terminate an SOW or this Agreement if the other party is in default of any material obligation under the instrument (whether an SOW or this Agreement) sought to be terminated, which default is incapable of cure or which, being capable of cure, has not been cured within thirty (30) calendar days after receipt of written notice of such default (or such additional cure period as the non-defaulting party may authorize in writing). Either party may terminate this Agreement by written notice to the other party and may regard the other party as in default of this Agreement, if the other party makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated, voluntarily or otherwise.

B. Effect of Expiration or Termination. In the event this Agreement expires or is terminated: (i) all rights and obligations of both parties including without limitation those set forth in Sections 5 through 22 shall survive said expiration or termination, to the extent, and except, as expressly provided therein; and (ii) all rights and obligations of both parties under all SOWs shall terminate, with the exception of those rights and obligations that by their nature or express terms are to survive. Upon the written request of either party hereunder, the other party shall forthwith return to the other all papers, materials and other properties of such other party held by it in connection with the performance of this Agreement or any SOW. The termination of an SOW shall not terminate any other SOWs absent the termination of this Agreement.

8. Intellectual Property. Unless otherwise set forth in an applicable SOW, each party shall retain ownership of all information and materials owned by it prior to execution of this Agreement or developed by it pursuant to this Agreement. Ownership of software Deliverables shall remain with the applicable third-party licensor of such Software. Customer's rights in and to any materials owned by Helient shall be limited to those set forth in an applicable SOW, if any.

## 9. **Indemnification.**

A. Helient. Helient hereby agrees to defend Customer from and against any and all claims and actions alleging damage to property, personal injury, or death caused by Helient's **gross** negligence or willful misconduct (each, an "**Indemnified Claim**"). Helient shall pay all unappealable judgments finally awarded by a court of competent jurisdiction in connection with any such Indemnified Claim, in addition to all reasonable attorneys' fees and costs of suit incurred in defense of such claim by counsel chosen by Helient in its sole discretion. Customer shall have the right to have counsel of its own choosing participate in the defense of any Indemnified Claim at the sole expense of Customer. In the event that Customer receives a claim or notice of suit likely to give rise to a request for indemnification hereunder, Customer shall immediately give Helient notice of same. Customer shall provide Helient with such assistance in connection with the defense of the Indemnified Claims as Helient may reasonably request in the performance of its indemnity obligations hereunder, all at Helient's expense. Helient shall have sole authority to settle any Indemnified Claim. Customer shall not settle or attempt to settle any matter for which Helient is providing Customer an indemnity.

B. Customer. Customer hereby agrees to defend Helient from and against any and all claims and actions alleging damage to property, personal injury, or death caused by Customer's negligence or willful misconduct (each, an "**Indemnified Claim**"). Customer shall pay all unappealable judgments finally awarded by a court of competent jurisdiction in connection with any such Indemnified Claim, in addition to all reasonable attorneys' fees and costs of suit incurred in defense of such claim by counsel chosen by Customer in its sole discretion. Helient shall have the right to have counsel of its own choosing participate in the defense of any Indemnified Claim at the sole expense of Helient. In the event that Helient receives a claim or notice of suit likely to give rise to a request for indemnification hereunder, Helient shall immediately give Customer notice of same. Helient shall provide Customer with such assistance in connection with the defense of the Indemnified Claims as Customer may reasonably request in the performance of its indemnity obligations hereunder, all at Customer's expense. Customer shall have sole authority to settle any Indemnified Claim. Helient shall not settle or attempt to settle any matter for which Customer is providing Helient an indemnity.

## 10. **Confidentiality.**

A. **Definition of "Confidential Information."** For purposes of this Agreement, the term "Confidential Information" shall mean the following, regardless of whether disclosed by one party (each party, when disclosing its Confidential Information hereunder is referred to herein as "**Discloser**") to the other party (each party, when receiving Confidential Information hereunder is referred to herein as "**Recipient**") prior to, or after, the execution of this Agreement, and regardless of whether it is disclosed orally or in writing, or by the observation or inspection of equipment, materials or processes used by Discloser: (a) information or materials disclosed by Discloser to Recipient; (b) information or material that is proprietary or confidential information of a third party, which Discloser is authorized to disclose under the terms of this Agreement to Recipient; (c) any information or materials referred to as Confidential Information in an applicable SOW; and (d) any other materials or information disclosed by or on behalf of Discloser which are marked "confidential," known or reasonably known by Recipient to be confidential, or of a proprietary nature learned or disclosed in the course of discussions or other work undertaken between the parties. Confidential Information may include information and materials related to software or product development, source code, related programmers' notes and documentation, economic information, business and technical information, market strategies, pricing, customers, vendors and employees. The parties agree that the covenant not to disclose Confidential Information shall not apply to any information or materials to the extent that any of the following conditions exist or come into existence ("**Non-Protected Information**"): (a) the Recipient can establish that the information or materials, at the time access is gained by Recipient, is already in Recipient's possession or is available to it from any other source rightfully in possession of it owing no obligation of confidentiality to Discloser; and/or (b) the information or materials is published or made generally available to the public, other than through the actions of Recipient or a breach of confidentiality obligations owed to Discloser; and/or (c) the information or materials, after access is gained to the disclosure, is at any time obtained by Recipient from any other source rightfully in possession of it owing no obligation of confidentiality to Discloser; and/or (d) the Recipient can establish that the information or materials was developed independently by Recipient without access to Discloser's Confidential Information.

B. **Non-Disclosure Obligations.** Discloser grants Recipient the right to use its Confidential Information solely for purposes contemplated by this Agreement. Except as permitted by this Section 10.B, Recipient shall not at any time disclose the Confidential Information to any person without the prior written consent of Discloser, regardless of whether the Confidential Information was disclosed prior to the date of this Agreement or thereafter. Recipient shall use the same degree of care to prevent the disclosure of Confidential Information as it uses to protect its own confidential information; provided, however, in no circumstance will Recipient use less than reasonable care. Upon the written request of Discloser, Recipient shall promptly deliver to Discloser any Confidential Information, and any materials embodying Confidential Information and any copies made thereof, which Recipient may have made, may have access to, or may have received or possessed prior to, or during, the Term of this Agreement. In such an event, Recipient shall immediately and forever cease all use of any of the Confidential Information for any purpose, other than as expressly permitted by Discloser in advance in writing. All of the undertakings and obligations relating to confidentiality and non-disclosure, whether contained in this Section or elsewhere in this Agreement or any SOW, and whether of Customer or Helient, shall survive following the expiration or termination of this Agreement.

**11. Representations and Warranties.** HELIENT MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY DELIVERABLES. CUSTOMER AGREES THAT THE ONLY WARRANTIES APPLICABLE TO ANY DELIVERABLES SHALL BE THOSE PROVIDED BY THE APPLICABLE THIRD-PARTY MANUFACTURER OR LICENSOR. HELIENT DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES HELIENT WARRANT THAT ANY SOFTWARE INCORPORATED IN ANY SERVICES OR DELIVERABLES IS WITHOUT DEFECT OR FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS. EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 11, OR IN ANY APPLICABLE SOW, HELIENT DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES AND DELIVERABLES, AND ANY RESULTS OBTAINED FROM THE SERVICES, INCLUDING THE RESULTS OF ANY RECOMMENDATIONS HELIENT MAY MAKE INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE (IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALING BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE).

**12. Non-Solicitation and Non-Hiring.** For as long as Helient is providing Services to Customer under this Agreement or any SOW, and for a period of one (1) year thereafter, Customer shall not, without Helient's prior written consent, directly or indirectly, solicit for employment, offer employment to, employ or engage as a consultant or advisor, any individual who is then employed, or any individual who was employed within the preceding twelve (12) months, by Helient. Customer acknowledges that its breach of this Section 12 would cause irreparable harm to Helient, incapable of compensation by the award of money damages. In the event of any such breach by Customer, Helient shall be entitled to seek from the Court injunctive and/or equitable relief (without the necessity of proving any actual damage or that monetary damages would not afford an adequate remedy, and with the obligation to post a bond), in addition to such other remedies as Helient may be entitled to seek at law or in equity.

**13. Excusable Delays** Neither party shall be liable to the other for any failure or delay of performance of any obligations hereunder when such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control, including without limitation acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war, riots or strikes. The party who has been so affected shall immediately give notice to the other party. Upon receipt of such notice, all obligations under this Agreement and any affected SOW shall be immediately suspended and performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay. If the parties are unable to agree upon an alternative schedule for delivery of Services, or if any delay reasonably beyond the control of either party continues for a period of three (3) months or more, this Agreement or any affected SOW may be terminated by either party and neither party shall be liable to the other for such termination provided Customer pays Helient for all services rendered and expenses incurred in accordance with the payment provisions herein. Nothing provided herein shall excuse the delay of any payment that is validly due by Customer under this Agreement.



14. **Remedies; Limitations of Liability.**

A. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, HELIENT WILL NOT BE LIABLE FOR ANY LOSS OF REVENUE, PROFITS OR GOODWILL OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOSSES RESULTING FROM ARISING OUT OF OR IN CONNECTION WITH (A) THIS AGREEMENT, THE DELIVERABLES OR THE SERVICES; (B) THE USE OR INABILITY TO USE THE DELIVERABLES OR SERVICES, (C) THE RESULTS OR OPERATION OF ANY PRODUCT, EQUIPMENT OR SYSTEM RESULTING FROM IMPLEMENTATION OF ANY RECOMMENDATION BY HELIENT OR (D) THE LOSS OF USE OF ANY SOFTWARE, HARDWARE, OR DATA, INCLUDING THE INABILITY TO ACHIEVE ANY PARTICULAR RESULT, EVEN IF ADVISED OF THE POSSIBILITY OF THE DAMAGE AND EVEN IF THERE IS AN ASSERTION THAT THE REMEDIES HEREIN FAIL OF THEIR ESSENTIAL PURPOSE. IN THE EVENT ANY ASPECT OF THE SERVICES ARE NOT PROVIDED AS WARRANTED, HELIENT'S SOLE RESPONSIBILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY SHALL BE FOR HELIENT TO REPERFORM SUCH SERVICES. CUSTOMER ACKNOWLEDGES AND AGREES THAT ITS SOLE REMEDY WITH RESPECT TO BREACH OF ANY WARRANTIES PROVIDED BY THIRD PARTY MANUFACTURERS OR LICENSORS OF DELIVERABLES SHALL BE SUCH REMEDIES AS ARE AVAILABLE TO CUSTOMER PURSUANT TO THE TERMS OF THE WARRANTIES PROVIDED BY SUCH THIRD-PARTY MANUFACTURERS OR LICENSORS.

B. THE MAXIMUM AGGREGATE LIABILITY OF HELIENT ARISING OUT OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CUSTOMER FOR THE SERVICES IN THE PRIOR THREE (3) MONTHS OF THIS AGREEMENT.

C. The parties agree that if there is a breach of Sections 8, 10 or 12 of this Agreement, the non-breaching party may suffer irreparable harm, the amount of which may be difficult ascertain and, therefore, the breaching party agrees that the non-breaching party shall have the right to apply to a court of competent jurisdiction for an order restraining any such threatened or further breach, and for such other relief as may be appropriate, which right shall be in addition to the remedies otherwise available at law or in equity. In connection with such application, the non-breaching party shall not be required to prove monetary damages or to post a bond.

15. **Notices.** Any notice or other communication hereunder shall be in writing and sent to the address for such party indicated above.

16. **Assignment.** Neither party shall assign this Agreement, or any interest therein, or any part of this Agreement, or any SOW, without the prior written consent of the other party, except that Helient may assign this Agreement and any SOWs to the purchaser of all, or substantially all, of its assets.

17. **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware and the parties' consent to the exclusive jurisdiction and venue of the state and federal courts sitting in the State of Delaware.

18. **Arbitration.** The parties agree that any controversy or claim arising out of this Agreement, or any dispute arising out of the interpretation or application of this Agreement, which the parties are unable to resolve, shall be settled by Arbitration in Wilmington, Delaware by a single Arbitrator pursuant to the Commercial Rules of the American Arbitration Association, and judgment upon the award entered by the Arbitrator shall be entered in any Court having jurisdiction thereof. The Arbitrator shall be chosen from a panel of persons knowledgeable in the services offered by Helient and shall be appointed within thirty (30) days of the date the demand for Arbitration was sent to the other party.

19. **Independent Parties.** Nothing in this Agreement shall be construed to constitute either of the parties hereto as a partner, joint venture, agent, representative or employee of the other party.

20. **Invalidity and Severability.** In the event that all or any part of the terms, conditions or provisions contained in this Agreement or any SOW are determined to be invalid, unlawful or unenforceable to any extent by any arbitrator or any court or tribunal of competent jurisdiction, such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid and enforceable to the fullest

extent pennitted by law.

**21. Entire Agreement.** This Agreement, together with the SOWs and any appendices or other attachments hereto, constitutes the entire agreement between the parties in relation to this subject matter. The terms of this Agreement shall supersede the terms of any correspondence or oral agreements or understandings reached between Helient and Customer up until the date of this Agreement including, without limitation, any confidentiality or non-disclosure agreements previously entered into by the parties. Any information or materials disclosed by either party to the other pursuant to any such confidentiality or non-disclosure agreements shall be governed by the terms of this Agreement. This Agreement may not be modified except in writing signed by a duly authorized representative of both parties.