

Terms of Service

MASTER TERMS AND CONDITIONS FOR SERVICES AND THIRD PARTY PRODUCTS

1. Definitions; Services; Third Party Products; and Orders.

1.1 Definitions. For purposes of this Master Agreement, the following terms have the following meanings:

“Agreement” means an Order and the documents incorporated into the Order including without limitation this Master Agreement.

“Company” means VC3, Inc., a Delaware corporation having its principal place of business at 1301 Gervais Street, Suite 1800, Columbia, SC 29201;

“Client” means the client of Company as identified in the applicable Order;

“Master Agreement” means these VC3 Master Terms and Conditions for Services and Third Party Products; and

“Order” means a written executed order between Company and Client that references this Master Agreement.

1.2 Services. Company will provide to Client computer system and network maintenance services, managed services, software services, hardware as a service (“HaaS”), consulting services and/or professional services (the “Services”) in each case as described in an Order provided however that the parties recognize that Company may from time to time provide Services to Client at Client’s request not covered by an Order, and in such cases, these Services shall be subject to and governed by the terms and conditions of this Master Agreement and performed by Company on a time and materials basis and invoiced at the hourly billing rates specified in Exhibit A to this Master Agreement.

1.3 Third Party Products. Company may sell or license or provide Third Party Products (as defined in Section 5.2) to Client as set forth in and on terms and conditions set forth in an Order.

1.4 Change Orders. Client may request a change in the scope or nature of the Services in an Order at any time. However, changes to the scope of the Services in an Order can be made only in writing executed by both parties.

1.5 Non-Exclusive. Client understands and agrees that the Services provided under the Agreement are not exclusive to Client, and Company may provide the same or similar services to Company's other customers.

2. Charges for Services and Third Party Products.

2.1 Fees. Client agrees to pay Company the fees for Services and Third Party Products as indicated in an Order, or as hourly work defined below in Exhibit A (collectively referred to as the "Fees"). Company reserves the right to increase the Fees once per calendar year as expressly stated in an Order. Unless otherwise expressly stated in an Order, Company's compensation for Services will be based on direct labor hours charged at fixed labor rates. The Order may call for a budget of expected charges as a way for both parties to monitor performance. Except as otherwise expressly set forth in an Order, all Services that are identified to be rendered on a time and materials basis will be invoiced at the hourly billing rates specified in Exhibit A.

2.2 Payment. Unless otherwise stated in an Order, all undisputed Fees for Services shall be due and payable by Client in advance of the calendar month in which the Services are to be provided to Client. Unless otherwise stated in an Order, Fees for Third Party Products shall be due and payable in advance of delivery. For prepaid Fees or Fees paid pursuant to a service plan, payment must be made in advance of providing Services or delivery of Third Party Products, unless other arrangements are agreed upon in the Order. Fees invoiced to Client shall be paid on a net thirty (30) day basis. Late payment for undisputed Fees (or any other amounts owing from Client to Company) shall be subject to interest on the unpaid amount(s) until and including the date payment is received, at the lower of either 0.5% per month or the maximum allowable rate of interest permitted by applicable law. Company reserves the right, but not the obligation, to suspend part or all of the Services in the event that any portion of undisputed Fees are not timely received by Company within thirty (30) days following the date on which such Fees are due. All disputes initiated by Client related to Fees must be received by Company within sixty (60) days after the applicable Service is rendered or the date on which Client receives an invoice, whichever is later, otherwise Client waives its right to dispute the applicable Fees thereafter. A re-connect fee may be charged to Client in the event that Company suspends the Services due to Client's nonpayment. In the event of a fee dispute, the

prevailing party's reasonable attorney's fees and costs shall be paid by the non-prevailing party. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL PAYMENT OBLIGATIONS BY CLIENT.

2.3 Expenses. Client shall pay Company for all reasonable expenses incurred by Company in the performance of the Services at Company's actual cost, including without limitation travel, living, and out-of-pocket expenses incurred pursuant to the Agreement.

2.4 Taxes. Client shall pay directly, or reimburse Company for, and indemnify and hold Company harmless from, all taxes and tariffs assessed or levied by any governmental entity that are now or may become applicable to the Services or Third Party Products or measured by payments made by Client to Company hereunder, or are required to be collected by Company or paid by Company to tax authorities including interest assessment thereon if such assessments are due to Client's actions or inactions. This includes, but is not limited to, sales, use, excise, gross receipt and personal property taxes, or any other form of tax based on services performed, Third Party Products, equipment used by Company to perform services solely for Client, and the communication or storage of data, but does not include taxes based upon Company's net income.

3. Term; Termination.

3.1 Term. The term of the Agreement shall continue from the effective date of the Order until the earlier of (a) expiration of the term of the Order or (b) termination of the Agreement as provided in the Agreement.

3.2 Termination for Breach. Either party may terminate the Agreement for material breach by the other party of the Agreement which is not cured within 30 days from the receipt by the party in breach of a written notice from the other party specifying the breach in detail. Client shall be liable for payment to Company for all Services rendered prior to the effective date of any such termination.

3.3 Early Termination. The Parties acknowledge that early termination of the Agreement (i) by Company pursuant to Section 3.2 (Termination for Breach) or (ii) termination of the Agreement by Client for any reason other than pursuant to Section 3.2 will result in Company incurring damages difficult or impossible to ascertain. In the event of such occurrence, Company will be entitled to, and Client agrees to pay (not as a penalty), all fees due for the

remaining term of the Agreement, in addition to any other amounts owed to Company under the Agreement.

3.4 Equipment / Software Removal. Upon termination of the Agreement for any reason, Client shall provide Company with access, during normal business hours, to Client's premises (or any other locations at which Company-owned hardware, equipment or software is located) to enable Company to remove all Company-owned hardware (including HaaS Hardware), equipment and software from the premises (if any). If Client fails to grant Company access as described herein, or if any of the Company-owned hardware or equipment is broken or damaged (normal wear and tear excepted) or any of the software is missing, Company shall have the right to invoice Client for, and Client hereby agrees to pay immediately, the fair market value of hardware, equipment, or software of similar age and in working condition..

3.5 Survival. Expiration or termination of the Agreement for any reason will not release either party from any liabilities or obligations set forth in the Agreement which (a) the parties have expressly agreed will survive any such expiration or termination or (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

4. Proprietary Protections.

4.1 Ownership Rights

(a) General. Each party will retain all rights to any software, ideas, concepts, know-how, development tools, techniques or any other proprietary material or information that it owned or developed prior to the effective date of the Agreement or acquired or developed after the effective date of the Agreement without reference to or use of the intellectual property of the other party. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor. No licenses will be deemed to have been granted by either party to any of its patents, trade secrets, trademarks, or copyrights, except as otherwise expressly provided in the Agreement. Nothing in the Agreement will require Company or Client to violate the proprietary rights of any third party in any software or otherwise. Notwithstanding anything to the contrary in the Agreement, Company (i) will retain all right, title and interest in and to all software development tools, know-how, methodologies, processes, technologies or algorithms used in performing the Services which are based on trade secrets

or proprietary information of Company or are otherwise owned or licensed by Company (collectively, "tools"), (ii) will be free to use the ideas, concepts, methodologies, processes and know-how which are developed or created in the course of performing the Services and may be retained by Company's employees in intangible form, all of which constitute substantial rights on the part of Company in the technology developed as a result of the Services performed under the Agreement.

(b) Materials Developed for or Delivered to Client. Client agrees that all software and other materials (including, but not limited to customizations, modifications, specifications, documentation and training materials) developed for or delivered to Client pursuant to the Agreement, including without limitation all related copyrights, patent rights, trade secrets, ideas, designs, concepts, techniques, inventions, discoveries or other intellectual property rights (collectively, the "Materials"), shall be the exclusive property of Company and the Company shall own all right, title and interest therein. In this connection, Client acknowledges that all Materials which are or may be developed pursuant to the Agreement are and shall be the intellectual property and confidential proprietary information and products of Company, and Client hereby transfers and assigns any and all rights in and to the Materials to Company, its successors and assigns, including without limitation all intellectual property rights relating thereto. From time to time upon Company's request, Client shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Company may request. Company agrees that Client shall have a limited nonexclusive license to use the Materials internally to the extent necessary to carry out and fulfill the terms and conditions of the Order for which the Materials were developed and shall have the right to grant a limited nonexclusive license to the third parties specifically identified in an Order to use the Materials solely for the purposes contemplated by such Order, provided that such third parties shall first agree in a signed writing to be bound by the terms of the Agreement or such terms as may be acceptable to Company.

(c) Specific Deliverables Owned by Client. Notwithstanding the foregoing provisions of Section 4.1(b) but subject to any third party rights or restrictions and the provisions of Section 4.1(a) and the other provisions of this Section 4.1(c), Client will own the copyright in and to Materials that (i) are developed for and delivered by Company to Client, (ii) are paid for by Client, and (iii) are clearly and specifically identified in an Order as governed by the provisions of this Section 4.1(c) (the "Specific Client Owned

Deliverables”). Notwithstanding the foregoing, Company will retain ownership of any Company-owned software or development tools that are used in producing the Specific Client Owned Deliverables and become embedded in the Specific Client Owned Deliverables. Company hereby grants to Client a perpetual (subject to compliance with this sentence), royalty-free, non-transferable, nonexclusive license to use such embedded software and tools (if any) solely in connection with Client’s internal use and exploitation of the Specific Client Owned Deliverables and only so long as such software and tools (if any) remain embedded in the Specific Client Owned Deliverables and are not separated therefrom. Company will own all intellectual property rights in or related to the Specific Client Owned Deliverables other than the copyright ownership rights granted to Client pursuant to this Section 4.1(c).

4.2 Client Information. Company recognizes and agrees that, except as specified in Section 4.1, it has no claim of ownership to any data, materials or information submitted by Client to Company or the Services (“Client Information”), which Client Information is being provided to Company solely for the purposes of enabling Company to render the Services, and that title and all ownership rights in and to such Client Information shall at all times remain with Client. Client shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Client Information.

- (a) All Client Information stored, processed, accessed, or used by Company, or company’s subcontractors, on Client’s behalf shall be transferred, stored, and processed in the United States, and shall be stored, processed, accessed, or used only by properly licensed and qualified personnel who are lawfully present and eligible to work in the United States.
- (b) Company shall utilize commercially reasonable efforts to maintain the integrity of Client Information, including but not limited to: authentication via passwords, two-factor authentication, encryption of data in transit and at rest, and redundant access logs accessible to Client upon request. Client Information shall be accessible and manageable only by properly authorized staff.
- (c) Client will have the ability to access and extract Client Information stored by Company at all times during the term this Agreement. Company will retain Client Information in a limited function account for 180 days after expiration or termination of this Agreement so that Client may extract the same. Upon request by Client, and at any termination or expiration of this Agreement, Company shall, within 30 days, provide

Client access to Client Information in a non-proprietary, commercially available format that is reasonably usable by Client and at no cost to Client.

4.3 Confidentiality.

(a) Confidential Information. This Section 4.3 shall apply to all confidential and proprietary information disclosed by either party (“Disclosing Party”) to the other party (“Receiving Party”) in connection with the Agreement, including without limitation, all Client Information, Materials of Company, and information related to the Disclosing Party’s technology, software, know-how, products, potential products, services, potential services, financial information, employees, customers, markets and/or business information (collectively, “Confidential Information”). Confidential Information shall not include any information which (i) was known to the Receiving Party prior to being disclosed by the Disclosing Party, (ii) becomes publicly known through no wrongful act of the Receiving Party, (iii) is approved for release by written authorization of the Disclosing Party, (iv) is received from a third party not in breach of any separate confidentiality obligation known to the Receiving Party, or (v) is independently developed without reference to the Disclosing Party’s Confidential Information.

(b) Scope of Obligation. The Receiving Party agrees to use the Confidential Information of the Disclosing Party only as provided for in the Agreement. Each party agrees to hold the other party’s Confidential Information in strict confidence and not to disclose such Confidential Information to any third parties. Notwithstanding the foregoing, each party may disclose the other party’s Confidential Information only to those employees, agents, representatives and/or consultants who require such information only in connection with the Agreement. Each party agrees to instruct all such employees, agents, representatives and consultants regarding the foregoing obligations and ensure that such employees, agents, representatives and consultants are bound by obligations of confidentiality to the Receiving Party that are at least as restrictive as those contained herein. Each party agrees that it will take all reasonable measures to protect the confidentiality of, and avoid the unauthorized disclosure or use of, the other party’s Confidential Information in order to prevent it from being made public or in the possession of persons other than those persons authorized hereunder to have any such Confidential Information, which measures shall include at least the same degree of care that the Receiving Party utilizes to protect its own confidential information of a similar nature but in any event shall include commercially reasonable precautions designed to protect the

Disclosing Party's Confidential Information from unauthorized disclosure and/or use.

(c) Limited Disclosure Right. Confidential Information may be disclosed to the extent required by court order or as otherwise required by law, provided that the Receiving Party, to the extent legally permissible, notifies the Disclosing Party promptly upon learning of the possibility of any such requirement and, to the extent legally permissible, has given the Disclosing Party a reasonable opportunity to contest or limit the scope of such required disclosure.

(d) Return of Confidential Information. Promptly upon termination of the Agreement, or at any other time upon the request by a party, the other party shall (i) return to the Disclosing Party or, at the Disclosing Party's request, destroy all Confidential Information of such Disclosing Party, whether in paper or electronic form, provided, however that the foregoing shall not apply to Confidential Information that is stored in the Receiving Party's electronic archives, which Confidential Information will be destroyed in the ordinary course of the Receiving Party's business in accordance with its document destruction policies or to Confidential Information that Receiving Party is required by law to retain; and (ii) certify to the Disclosing Party in writing that it has complied with the provisions of this Section 4.3.

5. Limited Warranty and Disclaimers.

5.1 Limited Services Warranty. Company warrants to Client that the Services, as and when delivered or rendered hereunder, will substantially conform to the description of services or specifications set forth in the applicable Order. Company's sole liability under the foregoing warranty shall be to provide the services described in Section 5.6 hereof.

5.2 No Third Party Products Warranty. Unless otherwise expressly stated in an order, any third party products or services sold to, provided to or procured for client, including but not limited to third party hardware, software, peripherals and accessories (collectively, "third party products") are provided to client "as is" and company expressly disclaims all warranties of any kind, express, implied, arising from course of dealing or usage of trade or statutory with respect to such third party products, including but not limited to warranties of performance, security, integration, non-infringement, merchantability or fitness for a particular purpose. Company shall use reasonable efforts to assign, transfer and facilitate all warranties (if any) and

service level commitments (if any) from the applicable third party manufacturer or vendor for the third party products to client, but will have no liability whatsoever for such third party products. Company shall not be held liable as an insurer or guarantor of the performance, uptime, usefulness, or quality of any third party products.

5.3 No Compliance Warranty. Company does not warrant that the provision of the services, or client's use of the services, will satisfy any particular industry-specific or regulatory requirements or bring client into compliance with any such requirements.

5.4 Warranty of Ownership / Authorization. Company warrants that it owns and/or is authorized to provide the services and software described in this agreement and in any order between the parties, and that any third-party software is properly licensed.

5.5 DISCLAIMER OF WARRANTIES. Except for the warranties expressly set forth in this agreement, the services are provided strictly "as is" and company makes no additional warranties, express, implied, arising from course of dealing or usage of trade, or statutory, as to the services or any matter whatsoever. In particular, any and all warranties of performance, security, integration, merchantability, or fitness for a particular purpose are expressly excluded. Company does not warrant, and specifically disclaims that the services being provided will result in cost savings, profit improvement, or that the services will be error-free. This is a limited warranty and is the only warranty made by company.

5.6 Notice Obligation; Remedy Regarding Services. Client shall notify Company in writing within forty-five days after completion of the Services in question when any of the Services fail to substantially conform to the description of services or specifications set forth in the applicable Order. Such notification shall include the detailed information necessary for Company to verify such nonconformity. Upon actual receipt of such notification and verification of the nonconformity, Company shall correct the nonconformity so that the Services shall substantially conform with the agreed description of services or specifications in the applicable Order. Client agrees to pay Company for all personnel time and expenses incurred in investigating reported nonconformities when the alleged nonconformities are determined to be invalid. The passage of forty-five (45) days after completion of any Service without the notification described herein shall constitute final acceptance of the Service.

6. Limitation of Liability.

6.1 if for any reason company is unable or fails to correct nonconformities as provided in section 5.6, company's liability for damages arising out of such failure shall not exceed the amounts paid by client for that portion of the services which fail to conform. Except as set forth in section 7.1, in no event shall company's maximum aggregate liability arising out of or relating to the agreement (including for any claim and/or series of claims whether related or unrelated), whether in contract or tort (including negligence), law, equity or otherwise, exceed the greater of \$200,000 or the amounts paid by client to company in the ninety (90) day period preceding the event(s) giving rise to the claim (or to the first claim in a series of claims). It is understood and agreed that the fees for third party products (if any) provided to client shall not be included in the calculation of the limitation of damages described in this paragraph and amounts paid by client to company.

6.2 unless caused by company's gross negligence, willful default or fraud, company shall not be liable to client for any loss of use, interruption of business, loss or corruption of data, lost profits, lost revenue, or any indirect, special, incidental, exemplary punitive or consequential damages of any kind regardless of the form of action whether in contract, tort (including negligence), law, equity or otherwise, even if company has been advised of the possibility of such damages, or for any claim or damages asserted by any third party or for any damages caused by any delay in furnishing services hereunder.

6.3 client acknowledges that company has set its fees, and entered into the agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth in the agreement, and that the same form an essential basis of the bargain between the parties. The foregoing limitation of liability is independent of any exclusive remedies for breach of warranty set forth in the agreement.

6.4 Unless otherwise expressly stated in an Order, Company assumes no liability for failure of hardware or equipment or software or any losses resulting from such failure.

6.5 Client is responsible for adopting reasonable measures to limit Client's exposure with respect to such potential losses and damages, including without limitation examination and confirmation of results of the Services prior to use thereof, provision for identification and correction of errors and omissions, and preparation and storage of backup or duplicate data. Client is

also responsible for complying with, and shall comply with, all local, state, provincial, federal, national and international laws, rules and regulations (“Laws”) pertaining to the use of the Services and use and disclosure of any Client Information.

7. Indemnity

7.1 Infringement Claims.

(a) General. Subject to the limitations set forth below in this Section 7.1 and the procedures set forth below in Section 7.3 Company and Client (each an “indemnitor”) each agrees to defend the other party (each an “indemnitee”) against any action to the extent that such action is based upon a claim that the Confidential Information (other than third party hardware, software, products, materials or services) provided by the indemnitor, or any part thereof, (i) infringes a copyright perfected under United States statute, or (ii) constitutes an unlawful disclosure, use or misappropriation of another party’s trade secret, and the indemnitor will bear the expense of such defense and pay any damages, costs and expenses, including reasonable attorneys’ fees and expenses (collectively “Damages”) that are attributable to such claim finally awarded by a court of competent jurisdiction. The indemnification provided by this Section 7.1 shall not be subject to the limitations contained in Section 6.1.

(b) Exclusions. The indemnitor will have no liability to the indemnitee hereunder if (i) the claim of infringement is based upon the use of Confidential Information provided by the indemnitor hereunder in connection or in combination with equipment, devices or software not supplied by the indemnitor or used in a manner for which the Confidential Information was not designed, (ii) the indemnitee modifies any Confidential Information provided by the indemnitor hereunder and such infringement would not have occurred but for such modification, or (iii) the claim of infringement arises out of the indemnitor’s compliance with specifications or requirements provided by the indemnitee and such infringement would not have occurred but for such compliance.

(c) Additional Remedy. If Confidential Information becomes the subject of an infringement claim under this Section 7.1, or in the indemnitor’s opinion is likely to become the subject of such a claim, then, in addition to defending the claim and paying any damages and attorneys’ fees as required above in this Section 7.1, the indemnitor may, at its option and in its sole discretion, (A) replace or modify the Confidential Information to make it

noninfringing or cure any claimed misuse of another's trade secret or (B) procure for the indemnitee the right to continue using the Confidential Information pursuant to the Agreement. Any costs associated with implementing either of the above alternatives will be borne by the indemnitor and will not be subject to Section 6.1 of this Master Agreement. If neither alternative is pursued by, or (if pursued) available to, the indemnitor, (x) the indemnitee will return such Confidential Information to the indemnitor and (y) if requested by the indemnitee in good faith, the parties will negotiate, but subject to Section 6 of this Master Agreement, to reach a written agreement on what, if any, monetary damages (in addition to the indemnitor's obligation to defend the claim and pay any damages and attorneys' fees as required above in this Section 7.1) are reasonably owed by the indemnitor to the indemnitee as a result of the indemnitee no longer having use of such Confidential Information. The payment of any such monetary damages will be the indemnitee's sole and exclusive remedy for the inability of the indemnitor to implement either of the above alternatives.

7.2 Third Party Indemnification of Company. To the extent allowed by law, and without limiting Company's liability to Client under the Agreement, each of the parties acknowledge that Company would not enter into the Agreement, and by Company entering into and performing its obligations under the Agreement, Company will not assume and should not be exposed to the business and operational risks associated with Client's business, and Client therefore agrees, subject to Section 7.3 below, to indemnify and defend Company and hold Company harmless from any and all third party claims and Damages arising out of the conduct of Client's business, including without limitation the use by Client of the Services or any Third Party Products.

7.3 Procedures. The indemnification obligations set forth in this Section 7 will not apply unless the party claiming indemnification: (a) notifies the other in writing of any matters in respect of which the indemnity may apply and of which the notifying party has knowledge, in order to allow the indemnitor the opportunity to investigate and defend the matter in consultation with Indemnitee; provided, however, that the failure to so notify will only relieve the indemnitor of its obligations under this Section 7 if and to the extent that the indemnitor is prejudiced thereby; and (b) gives the other party full opportunity to control the response thereto and the defense thereof, including without limitation any agreement relating to the settlement thereof; provided, however, that the indemnitee will have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by legal counsel of its choosing, all at the indemnitee's cost and

expense. However, if the indemnitor fails to promptly assume the defense of the claim, the party entitled to indemnification may assume the defense at the indemnitor's cost and expense. The indemnitor will not be responsible for any settlement or compromise made without its consent, unless the indemnitee has tendered notice and the indemnitor has then refused to assume and defend the claim and it is later determined that the indemnitor was liable to assume and defend the claim. The indemnitee agrees to cooperate in good faith with the indemnitor at the request and expense of the indemnitor.

8. Additional Terms.

8.1 Hardware as a Service (HaaS).

(a) All hardware provided by Company as a part of Company providing HaaS under an Order ("HaaS Hardware") shall at all times remain the property of Company and Client shall not have any right, title or interest in or to the HaaS Hardware other than the right to possession and use of the HaaS Hardware in accordance with the Agreement.

(b) Client shall, during the term of the Agreement and until redelivered to Company:

- ensure that the HaaS Hardware is kept and operated in a suitable environment, which shall as a minimum meet any requirements set out in the Order, use only for the purposes for which it is designed, and operate it in a proper manner by trained competent staff in accordance with any operating instructions;
- keep the HaaS Hardware in good and operating condition (fair wear and tear excepted).
- make no alteration to the HaaS Hardware and not remove any existing component(s) from the HaaS Hardware without the prior written consent of Company;
- at all times keep the HaaS Hardware in its possession or control at the location(s) specified in the Order or such other locations as may be agreed with the Company in writing;
- permit Company or its duly authorized representative to inspect the HaaS Hardware at all reasonable times and for such purpose to enter upon the premises at which the HaaS Hardware is located, and shall grant reasonable access and facilities for such inspection;
- not, without the prior written consent of Company, part with control of (including for the purposes of repair or maintenance), sell or offer for

sale, underlet or lend the HaaS Hardware or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

- give immediate written notice to Company in the event of any loss, accident or damage to the HaaS Hardware arising out of or in connection with the Client's possession or use of the HaaS Hardware; and
- deliver up the HaaS Hardware at the end of the term of the Agreement at such address as Company requires, or if necessary allow Company or its representatives access to the premises where the HaaS Hardware is located for the purpose of removing the HaaS Hardware.

(c) Client acknowledges that Company shall not be responsible for any loss of or damage to the HaaS Hardware arising out of or in connection with any negligence, misuse, mishandling of the HaaS Hardware or otherwise caused by Client or any of its officers, employees, agents or contractors;

(d) The risk of loss, theft, damage or destruction of the HaaS Hardware shall pass to the Client on delivery by Company to Client. The HaaS Hardware shall remain at the sole risk of the Client during the term of the Agreement and until such time as the HaaS Hardware is redelivered to Company.

(e) During the term of the Agreement and until redelivered to Company, the Client shall, at its own expense, obtain and maintain the following insurances:

- insurance of the HaaS Hardware to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Company may from time to time nominate in writing;
- insurance for such amounts as a prudent owner or operator of the HaaS Hardware would insure for, or such amount as Company may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the HaaS Hardware; and
- insurance against such other or further risks relating to the HaaS Hardware as may be required by law, together with such other insurance as Company may from time to time consider reasonably necessary and advice to the Client.

The Client shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to Company and proof of premium

payment to Company to confirm the insurance arrangements. If the Client fails to effect or maintain any of the insurances required under these conditions, Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Client.

(f) Client permits Company to:

- charge Client for repairs to, or replacement of, any HaaS Hardware that is lost, damaged or destroyed until it has been returned to Company; and
- at any time swap the HaaS Hardware for alternative equipment offering in Company's reasonable judgment the same functionality.

8.2 EULAs. Portions of the Services may require Client to accept the terms of one or more third party end user license agreements ("EULAs"). EULAs may contain service levels, warranties and/or liability limitations that are different than those contained in the Agreement. Client agrees to be bound by the terms of such EULAs and shall look only to the applicable third party provider for the enforcement of the terms of such EULAs. Client will defend, indemnify, and hold Company harmless from any claims and Damages resulting from any breach of a EULA by Client or any of its directors, officers, employees, or agents.

8.3 Data Backup. Client is strongly advised to maintain a local and offsite backup of all mission-critical or customer-critical data, and to periodically verify the integrity and availability of all backed up data.

8.4 Bring Your Own Device (BYOD). Client hereby represents and warrants that Company is authorized to provide the Services to all devices, peripherals and/or computer processing units, including without limitation mobile devices (such as personal digital assistants, notebook computers, and tablet computers) that (i) are connected to Client's systems related to the Services, and (ii) have been designated by Client to receive the Services, regardless of whether such device(s) are owned, leased or otherwise controlled by Client. Unless otherwise stated in an Order, devices will not receive or benefit from the Services while the devices are detached from or unconnected to such systems.

8.5 Hosted Solutions. Hosted solutions, including but not limited to hosted email and document-related applications, may require Client to accept the terms of a third party EULA, which may contain service levels, warranties

and/or liability limitations that are different than those contained in the Agreement. Client agrees to be bound by the terms of such EULAs and shall look only to the applicable third party provider for the enforcement of the terms of such EULAs. Client will defend, indemnify, and hold Company harmless from any claims and Damages resulting from any breach of such a EULA by Client or any of its directors, officers, employees, or agents. Company reserves the right to suspend or terminate Client's access to hosted solutions in the event that Company has reason to believe that the hosted solutions are being accessed, used or otherwise manipulated in a manner that violates any Law, or poses a threat to the integrity or security of Company's computer servers or any third party server.

8.6 Disposal of Equipment. Client agrees that any Client assets, equipment, hardware, or software deemed to be replaced, retired, faulty, non-functional, dead-on arrival, returned, unrecoverable, or otherwise unusable may be disposed of by Company unless Client provides a written request to keep the asset at the time of removal.

8.7 Recording.

(a) Some Services provided may involve recording and/or monitoring. For such Services, information uploaded to or in any way passing through computer systems used to provide the Services, including without limitation written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. By accessing or using the Services, Client consents to such recording and monitoring. Client is also solely responsible for informing anyone with whom Client interacts or otherwise communicates via the Services that information uploaded to or in any way passing through the Services, including without limitation written, visual, or oral communications or other electronic means, may be recorded or monitored for quality assurance and diagnostic purposes. Recordings and other records created under this Section 8.7(a) are Confidential Information subject to the protections of Section 4.3 herein.

(b) If phone conferences/conference bridges are applicable to the Services being provided to Client, Client acknowledges that the laws of certain jurisdictions may require that if a conference is recorded, all participants in the conference must be informed in advance of any such recording, so they may consent to being recorded (if required by applicable Laws). Client acknowledges and agrees that Client shall be solely responsible for complying with all applicable Laws and third party rights when using recording features (which includes Client's obligation to obtain the consent, if required by

applicable Laws, of all participants before the commencement of the recording). Company shall have no liability to Client or any participant in Client's recorded conference with respect to Client's obligations under this Section 8.7.

8.8 Cybersecurity.

- (a) Breach: Where a security breach or unauthorized release, as defined in N.C.G.S. § 75-61(14), or in any other state or federal regulation, is attributed to Company during the term of this Agreement, Company shall promptly notify Client, whether the breach relates Services provided under to this Agreement or not. In the event a security breach relates to Services provided under this Agreement, Company shall be responsible for complying with the requirements of the North Carolina Identity Theft Protection Act, N.C.G.S. §75-60 et. seq., including the requirement to provide notice to every affected person that there has been a security breach following discovery or notification of the breach. Where a security breach or unauthorized release is attributed to Company, Company shall pay for or promptly reimburse Client for the full cost of compliance with the North Carolina Identity Theft Protection Act.
- (b) Cyber Insurance: Company shall maintain cyber liability insurance in the minimum amount of \$1,000,000 per occurrence, \$3,000,000 aggregate for each policy year, including third-party coverage for incidents or associated impacts caused directly or indirectly by the third-party. A policy maintained to satisfy the requirement of this paragraph shall not exclude coverage for ransomware, malware, intellectual property, or data breach.
- (c) CJIS Compliance: This Agreement incorporates by reference the requirements of the Criminal Justice Information Services (CJIS) Security Policy, and as referenced in Title 28 CFR 20.33.(a)(7), issued by the Federal Bureau of Investigation, Criminal Justice Information Services Division, as in force as of the date of this Agreement and as may, from time to time hereafter, be amended. Company covenants that it has the technological capability to handle Criminal Justice Information (CJI), as that term is defined by the FBI CJIS Security Policy, in the manner required by the CJIS Security Policy. Contractor expressly acknowledges that the CJIS Security Policy places restrictions and limitations on the

access to, use of, and dissemination of CJI and hereby covenants that its system will abide by those restrictions and limitations.

(d) **Cybersecurity Audit:** Client may perform cybersecurity audits, including, but not limited, to penetration testing, vulnerability scanning, and general auditing of Company's privacy and security safeguards. Client may utilize third-party contractors to perform said cybersecurity audits. Company shall provide reasonable access to its policies, procedures, data, and data stored by Company on behalf of Client for the purposes of cybersecurity audits. Client shall share the results of any such cybersecurity audit with Company and Company shall use reasonable efforts to implement recommendations of the same.

9. General Provisions.

9.1 Non-Hire Provision. Each party to the Agreement agrees that it will not hire, employ or contract with, or solicit to hire, employ or contract with, any person who is, or within the immediately preceding one year was, an employee or subcontractor of the other party to the Agreement for any purposes during the term of the Agreement, or for a period of one year after the Agreement terminates without the consent of the other party.

9.2 Conflict. Any purchase order or other document issued by Client is for administrative convenience only and does not govern, control or amend the terms of the Agreement. In the event of any conflict between this Master Agreement and an Order, the Order shall prevail..

9.3 Survival. In the event of any expiration or termination of the Agreement, Sections 2, 3, 4, 5, 6, 7, 8 and 9 of this Master Agreement shall survive and shall continue to bind the parties.

9.4 Governing Law. The Agreement shall be governed in all respects by the laws of the United States of America and the State of North Carolina without regard to conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Agreement.

9.5 Forum. All disputes arising under the Agreement shall be brought in the state or federal courts located in Henderson County, North Carolina, as permitted by law. The state and federal courts located in Henderson County, North Carolina shall each have exclusive jurisdiction over disputes under the Agreement. Client consents to the personal jurisdiction of the above courts.

9.6 Injunctive Relief. It is understood and agreed that, notwithstanding any other provisions of the Agreement, breach of the provisions of the Agreement will cause the nonbreaching party irreparable damage for which recovery of money damages would be inadequate, and that the nonbreaching party shall therefore be entitled to obtain timely injunctive relief to protect said party's rights under the Agreement in addition to any and all remedies available at law.

9.7 Notices. All notices or reports permitted or required under the Agreement shall be in writing and shall be delivered by: (i) personal delivery, (ii) FedEx, signature required, or other reliable commercial delivery service, or (iii) certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery or signed receipt. Notices shall be sent to Company at the addresses described on the first page of this Master Agreement in the definition of Company and to Client at the address set forth in the applicable Order or such other address as either party may designate for itself in writing. All notices to Company must be to its President to be effective. All notices to Client must be to its City Manager to be effective.

9.8 No Agency. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the parties.

9.9 Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, labor conditions, earthquakes, power failure, communications delays/outages, material shortages or any other cause which is beyond the reasonable control of such party.

9.10 Waiver. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

9.11 Severability. In the event that any provision of the Agreement shall be unenforceable or invalid under any applicable law or be so held by applicable court decision, such unenforceability or invalidity shall not render the Agreement unenforceable or invalid as a whole, and, in such event, such provision shall be changed and interpreted so as to best accomplish the

objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

9.12 Reserved.

9.13 Headings. The section headings appearing in this Master Agreement are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or extent of such section or in any way affect this Master Agreement.

9.14 Entire Agreement. The Agreement completely and exclusively states the agreement of the parties regarding its subject matter. It supersedes, and its terms govern, all prior proposals, agreements, or other communications between the parties, oral or written, regarding such subject matter. The Agreement shall not be modified except by a subsequently dated written amendment signed on behalf of Company and Client by their duly authorized representatives.

Exhibit A Hourly Rates

Service Area	Hourly Bill Rate	Description of Service Area
Consulting & Project Management	\$ 225.00	Consulting (Design, Architecture, Planning); Technology Assessments; Security Audits. Project Management. CIO Consulting Services including without limitation product evaluations and application/infrastructure planning services.
Application Development	\$ 225.00	Application Software development, design, testing, and code revisions. Systems Programming (System Level Scripting/Automation). All SharePoint services.
Web Design Services	\$ 195.00	Web site design and implementation services which are NOT built on a Microsoft SharePoint platform.

Infrastructure Deployment Services	\$	200.00	Installation and Setup of the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Citrix, Network Domains, and Desktop Deployments.
Infrastructure Maintenance Services	\$	190.00	Maintenance Services for the following: Networks, Electronic Messaging Systems, Servers, SANs, VMWare, Domains, Microsoft Server, and Desktop support.
Travel Time	\$	120.00	Travel time to and from the Client. This rate includes the mileage expense at the current IRS approved mileage rate.
After Hours Support Services	\$	249.00	All reactive support services provided to Client outside of the hours of 8am to 5pm Monday through Friday and all services provided on National Holidays