


## Master Services Agreement

This Master Services Agreement (the “**Agreement**”) is entered into by and between the parties listed below as of the Effective Date, and signed by a representative of each entity, who attests to having the necessary power and authority to bind the respective party:

| “BMS”  | “Customer”   |
|--|--|
| Entity Name: Black Mountain Software LLC   | Entity Name: City of Pahokee   |
| Address: 110 Main Street, Suite 3,<br>Polson, Montana 59860  | Address: 360 East Main Street<br>Pahokee, Florida 33476                                      |
| Contact: Mike Fabrizio   | Contact: Michael E. Jackson, Interim City Manager  |
| Phone Number: 800-353-8829   | Phone Number: 561-924-5534   |
| Email Address:<br><a href="mailto:Mikef@blackmountainsoftware.com">Mikef@blackmountainsoftware.com</a> | Email Address:<br><a href="mailto:mjackson@cityofpahokee.com">mjackson@cityofpahokee.com</a> |
| Signature:<br>      | Signature:   |
| Name: Mike Fabrizio  | Name: Michael Jackson  |
| Title: Co-CEO  | Title: Interim City Manager  |
| “Effective Date”: July 10, 2024  |  |

In consideration for the commitments set forth below, the adequacy of which consideration the parties hereby acknowledge, the parties agree as follows.

1. **DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.
  - 1.1. “**Customer Data**” means all information processed or stored through the Hosted Services by Customer or on Customer’s behalf. Customer data does not include payment records, credit cards or other information Customer uses to pay BMS, or other information and records related to Customer’s account, including without limitation identifying information related to Customer staff involved in payment or other management of such account.

- 1.2. **“Data Protection Laws”** means all state, foreign, or federal laws, statutes, regulations, rules, executive orders, directives, or other official guidance, and any industry rules or self-regulatory codes of conduct relating to data protection, privacy, data security, electronic communications, or data security incidents that are applicable to Customer or Customer Data.
- 1.3. **“Documentation”** means any user manuals and other documentation that BMS makes available to assist in the integration or use of the Hosted Services.
- 1.4. **“Hosted Services”** means BMS’s cloud-based services, applications and modules listed in an Order hosted or otherwise made available by or on behalf of BMS for Customer, excluding all third party software.
- 1.5. **“Order”** means an annual quote, annual statement of agreed work, or written amendment to the agreed order for additional work to be prorated based on the date of the annual order for work provided by BMS to Customer and referencing this Agreement.
- 1.6. **“Personal Data”** means any data that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular Data Subject, including without limitation, all information defined as “Personal Data,” “Personal Information” or analogous definitions in applicable Data Protection Laws.
- 1.7. **“Services”** means the installation, initial training, configuration, customization, data conversion, and other services described on an Order, excluding Support.
- 1.8. **“Support”** means the support services for the Hosted Services as set forth in Section 2.2 of this Agreement.
- 1.9. **“User”** means any person who uses the Hosted Services on Customer’s behalf or through Customer’s accounts or passwords, whether authorized or not, including without limitation Customer’s employees and agents.

## 2. HOSTED SERVICES

- 2.1. **Access.** Subject to the terms and conditions of this Agreement (including without limitation Customer’s timely payment of all fees and compliance with all other obligations and restrictions set forth in this Agreement) and to the extent applicable in accordance with Customer’s Annual Order, BMS grants to Customer permission to access and use the functionality of the Hosted Services, for the limited purposes described in the Documentation, throughout Customer’s applicable service period.
- 2.2. **Services.** Upon payment by Customer of the applicable fees, BMS will provide the Services as set forth in the applicable Annual Order.
- 2.3. **Support.** BMS will use reasonable efforts during the term of this Agreement to make the Hosted Services available for Customer’s authorized use 24 hours per day, 365 days per year, subject to any planned or unplanned downtime. BMS will use reasonable efforts to limit planned downtime to 11:00 pm Saturday to 1:00 am Sunday (Mountain Time). BMS will use reasonable efforts to communicate unplanned downtime via email or through the Hosted Services. BMS’s support primarily consists of responses to system operational configuration questions, troubleshooting assistance, and responses to occasional how-to questions concerning the Hosted Services. Support will not include, and BMS will have no responsibility with regard to,

any issues related to or arising from (a) Customer's or a third party's hardware, infrastructure or network, (b) any changes made other than by BMS or its representatives, or (c) format changes to any file used to import from, or export data to, a third party. BMS will have representatives available for phone, email and internet support from 7:00 am to 5:30 pm (Mountain Time) Monday through Friday (except designated holidays). BMS will take reasonable measures to backup Customer Data each business day Monday through Friday (except designated holidays).

- 2.4. Documentation. Customer may reproduce and use the Documentation solely as necessary to support Users' use of the Hosted Services.
- 2.5. Hosted Services Revisions. BMS may revise Hosted Services features and functions at any time, including without limitation by removing such features and functions or reducing service levels.
- 2.6. Ownership. The permissions granted to Customer above are non-exclusive, non-transferable (unless assignment is approved by BMS in accordance with Section 10.6), non-sublicensable, revocable, and subject to any applicable restrictions or limitations set forth in an Order and this Agreement. All rights not expressly granted to Customer are reserved by BMS and its licensors. Without limiting the foregoing, all ownership and other proprietary interests in and to the Hosted Services, and all patents, copyrights, trade secrets, trademarks and other intellectual property rights embodied in or associated with the Hosted Services, are and shall remain with BMS and/or its licensors, as applicable. Neither this Agreement nor access to the Hosted Services will be construed as transferring title or any ownership right or interest in the Hosted Services to Customer.
- 2.7. Feedback. If Customer provides any feedback, comments, or suggestions ("**Feedback**") about BMS or the Hosted Services, Customer agrees that BMS may freely use such Feedback in its discretion without any obligation, attribution, or compensation to Customer, and Customer waives all rights in the Feedback.

### 3. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

- 3.1. Acceptable Use. Customer shall comply with the Documentation. Customer shall not, nor will Customer allow anyone else to, directly or indirectly: (a) use the Hosted Services for service bureau or time-sharing purposes or in any other way sublicense or allow third parties to use or exploit the Hosted Services; (b) provide Hosted Services passwords or other log-in information to any third party; (c) share non-public Hosted Services features or content with any third party; (d) access the Hosted Services in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Hosted Services, or to copy any ideas, features, functions or graphics of the Hosted Services; (e) engage in web scraping or data scraping on or related to the Hosted Services, including without limitation collection of information through any software that simulates human activity or any bot or web crawler; (f) knowingly upload to the Hosted Services any data or other information that contains any worms, vulnerabilities, viruses or any other code of a destructive or malicious nature, (g) reverse engineer, disassemble, decompile, decode, or adapt the Hosted Services, or any part thereof, or otherwise attempt to derive or gain access to the source code of the Hosted Services, (h)

modify, correct, adapt, translate, enhance, or otherwise prepare derivative works of or improvements to the Hosted Services or part thereof, (i) bypass or breach any security device, license key or protection used for or contained in the Hosted Services, (j) use the Hosted Services in violation of any applicable law, including to store or transmit information or content that violates the rights of any third party, or (k) damage, destroy, disrupt, disable, impair, interfere with, or otherwise impede or harm in any manner the Hosted Services or BMS systems, including, without limitation, to conduct penetration or similar testing. In the event that it suspects any breach of the requirements of this Section 3.1, including without limitation by Users, BMS may suspend Customer's access to the Hosted Services without advanced notice, in addition to such other remedies as BMS may have.

- 3.2. Customer Obligations. Customer assumes full responsibility for the use and results obtained from the use of the Hosted Services. Customer acknowledges that various third-party hardware, software and services are required to use the Software or certain features thereof, and Customer will be solely responsible for obtaining the same, at its expense and in accordance with all applicable specifications in the Documentation and Annual Order, as needed.
- 3.3. Users and Hosted Services Access. Customer is responsible and liable for: (a) Users' use of the Hosted Services, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Customer; and (b) any use of the Hosted Services through Customer's account, whether authorized or unauthorized. Customer shall take reasonable steps to prevent unauthorized access to the Hosted Services, including without limitation by protecting its passwords and other log-in information. Customer shall notify BMS immediately of any known or suspected unauthorized use of the Hosted Services or breach of its security and shall use best efforts to stop said breach.
- 3.4. Compliance with Laws. In its use of the Hosted Services, Customer shall comply with all applicable laws and regulations.

#### 4. CUSTOMER DATA

- 4.1. Use of Customer Data. Customer grants BMS all necessary right and title to the Customer Data to allow BMS to process it on Customer's behalf. BMS may retain third parties to assist it in performing its obligations under this Agreement or any Order provided that such third parties shall share BMS's legal obligations with respect to Customer Data as set forth herein. Such third parties shall be referred to as Successors herein. If required by Data Protection Laws, BMS will notify Customer before engaging any Successors to process Customer Data. BMS shall process Customer data only for the purposes of providing the Hosted Services and other Services to Customer. BMS shall not sell Customer Data or share it with any third party for cross-contextual behavioral advertising. BMS shall not, except as otherwise required or permitted herein, in an Order, or in other written direction from Customer, disclose Customer Data to any third party. BMS also shall not combine Personal Data within the Customer Data with any data received from or on behalf of any third party.
- 4.2. Security. BMS shall exercise commercially reasonable efforts to prevent unauthorized disclosure or exposure of Customer Data. Further, BMS shall arrange for backup of Customer Data each business day. Such efforts shall include those safeguards set forth in the security

statement, as may be updated from time to time, on BMS's website at <https://www.blackmountainsoftware.com/>.

- 4.3. De-Identified Data. BMS may use De-Identified Data (as defined below) in any way, in its sole discretion, including without limitation aggregated with data from other customers. "**De-Identified Data**" refers to Customer Data that has been processed so that it does not (a) contain Personal Data or (b) permit the identification of Customer.
- 4.4. Return or Destruction. Upon the termination or expiration of this Agreement, BMS will return or securely destroy, at Customer's option, all Customer Data in BMS's possession in a format of BMS's choosing. If Customer elects the return of Customer Data, BMS will securely destroy all Customer Data after such return. If Customer does not elect for the return of Customer Data within 60 days of the termination or expiration of this Agreement, BMS will securely destroy the Customer Data. Further, upon Customer request and for an additional fee, BMS may assist Customer with installation and/or configuration of Customer's data on a local network.
- 4.5. Required Disclosure. Notwithstanding anything to the contrary in this Agreement, BMS may disclose Customer Data as required by applicable law or by proper legal or governmental authority. BMS shall give Customer prompt notice of any such legal or governmental demand unless prohibited from doing so, and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer's expense.
- 4.6. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Hosted Services, Customer assumes such risks. BMS offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 4.7. Data Accuracy. BMS will have no responsibility or liability for the accuracy of Customer Data.
- 4.8. Regulatory Compliance. BMS shall reasonably cooperate with Customer, at Customer's expense and on reasonable notice, to allow the Customer to take reasonable and appropriate steps to ensure that BMS's processing of Customer Data is consistent with Data Protection Laws. If Customer determines that BMS's processing of Customer Data is inconsistent with Data Protection Laws or exceeds the authorization that Customer has authorized under this Agreement or in an Order, BMS shall reasonably cooperate with Customer, at Customer's expense, to stop and remediate such processing.
- 4.9. Security Incidents. In the event either Customer or BMS becomes aware of the unauthorized destruction, loss, alteration, disclosure, acquisition or use of, or access to Customer Data (a "Security Incident"), the party shall notify the other without undue delay, and, in any event, within five days. The parties shall reasonably cooperate to determine the scope and cause of the Security Incident and to remediate the cause and effects of the Security Incident. Such cooperation shall include a continuing duty to share all information reasonably available to the party regarding the scope, nature and effects of the Security Incident. If Data Protection Laws require notice of a Security Incident to be given to government authorities or individuals, Customer shall promptly undertake such notifications. Likewise, if Data Protection Laws require remedial action (which may include, without limitation: notice to credit reporting agencies, media, or other entities; support for affected individuals; and credit monitoring services),

Customer shall promptly provide such remedial action. BMS will not inform any third party (except as legally required) of the Security Incident without Company's prior written consent.

- 4.10. Requests from Regulators and Individuals. If BMS receives any inquiry or request from a government body or individual regarding the processing of Personal Data within the Customer Data, BMS shall, unless prohibited by law, promptly forward such inquiry or request to Customer. Customer shall have the sole responsibility to respond to such inquiry or request. BMS shall reasonably cooperate, at Customer's expense, with Customer as needed to respond to such inquiry or request.

## 5. PAYMENT OF FEES

- 5.1. Fees. Customer agrees to pay BMS the fees set forth in Annual Orders. Unless otherwise provided in an Annual Order, Customer will pay (a) the percentage of the fees for Services upon signing an Annual Order and will be billed the remaining fees for Services on a time and materials basis as Services are performed, and (b) fees for Hosted Services and Support annually in advance. Fees will be invoiced and paid in U.S. dollars. Unless otherwise specified in an Annual Order, each invoice is due and payable within 30 days following the invoice date. Further, unless otherwise set forth in an Order, BMS may increase the fees for any renewal period. Upon Customer request, BMS will provide notice of any fee increases prior to renewal.
- 5.2. Interest, Taxes and Withholdings. Overdue payments will accrue interest at the rate of one percent (1%) per month, but in no event greater than the highest rate of interest allowed by Florida law. The fees set forth in this Agreement are exclusive of, and Customer will pay, all charges or fees imposed by governmental authorities arising out of this Agreement or the use of the Hosted Services by Customer. In the event that BMS is required to pay any tax or duty (other than taxes based on BMS's net income), Customer will reimburse BMS for any and all such payments.

## 6. TERM AND TERMINATION

- 6.1. Term. The term of this Agreement will commence for a period of one (1) year with an option by the City Manager to renew for an additional three (3) additional one (1) year terms.
- 6.2. Termination for Cause. Either party may terminate this Agreement, including all active Orders, for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure. Without limiting BMS's other rights and remedies, BMS may suspend or terminate Customer's or any User's access to the Hosted Services at any time, without advance notice, if BMS reasonably believes that Customer or such User has conducted itself in a way that is not consistent with the Documentation or the other requirements of this Agreement or in a way that subjects BMS to potential liability.
- 6.3. Effect of Termination. Upon termination or expiration of this Agreement for any reason, all permissions and other authorizations granted by BMS to Customer under this Agreement will terminate and Customer shall (i) cease using the Hosted Services, (ii) pay within 30 days all amounts remaining unpaid under this Agreement, and (iii) return all copies of BMS's Confidential Information to BMS or certify, in writing, the destruction thereof.

## 7. CONFIDENTIALITY

- 7.1. Confidential Information. “**Confidential Information**” means: (i) all software code, documentation and other materials included in or furnished by BMS as part of the Hosted Services; and (ii) any other non-public technical or business information of BMS (or its licensors), including without limitation any information relating to BMS’s techniques, algorithms, software, hardware, firmware, know-how, current and future products, services, research, engineering, designs, financial information, procurement requirements, manufacturing, customer lists, business forecasts, marketing plans and information, the terms and conditions of this Agreement, and any other information of BMS (or its licensors) that is conspicuously identified as confidential or proprietary at the time of disclosure or that Customer should otherwise reasonably understand to be confidential or proprietary to BMS or its licensors due to the nature of the information or the circumstances of its disclosure.
- 7.2. Obligations. Customer will maintain the confidentiality of the Confidential Information using at least the same measures employed to protect Customer’s own confidential information and in no event less than reasonable measures. Customer will limit the disclosure of Confidential Information to only its personnel with a bona fide need to access such Confidential Information in order to exercise Customer’s rights and obligations under this Agreement, and then only provided that each such person is bound by a written confidentiality agreement that contains restrictions at least as protective as those set forth in this Agreement.

## 8. REPRESENTATIONS AND WARRANTIES

- 8.1. From BMS. BMS warrants that the Software: (i) will be provided in a professional manner and otherwise in accordance with generally recognized industry standards; and (ii) will conform in all material respects to the Documentation. Customer’s sole and exclusive remedy for any breach of the above warranty will be for BMS to use commercially reasonable efforts, at no charge to Customer, to correct the non-compliance.
- 8.2. From Customer. Customer represents and warrants that it has the full right and authority to enter into, execute, and perform its obligations under this Agreement. Customer represents that it has the requisite expertise to evaluate the suitability of, and has undertaken its own investigation of the suitability of, the Hosted Services and that it has relied upon its own skill and judgment in selecting the Hosted Services. Customer agrees it has determined Hosted Services meet Customer’s needs. Customer assumes the entire risk of using the Hosted Service. Customer also represents and warrants that (a) its use of Customer Data complies with Data Protection Laws; (b) it has the legal right to use Customer Data and (c) it has the legal right to allow BMS to process such Customer Data as set forth in this Agreement and any applicable Order.
- 8.3. Disclaimers. Except to the extent set forth in Section 8.1, CUSTOMER ACCEPTS THE HOSTED SERVICES “AS IS,” AND “AS AVAILABLE” WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) BMS HAS NO OBLIGATION TO INDEMNIFY OR DEFEND

CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) BMS DOES NOT REPRESENT OR WARRANT THAT THE HOSTED SERVICES WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) BMS DOES NOT REPRESENT OR WARRANT THAT THE HOSTED SERVICES IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE; AND (d) THAT THE HOSTED SERVICES WILL OPERATE OR BE COMPATIBLE WITH ANY THIRD PARTY HOSTED SERVICES OR HARDWARE.

## 9. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

- 9.1. Maximum Liability. BMS'S TOTAL AGGREGATE LIABILITY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND/OR THE HOSTED SERVICES WILL BE LIMITED TO THE AMOUNT OF ACTUAL DIRECT DAMAGES UP TO THE AMOUNT PAID OR PAYABLE FOR THE APPLICABLE HOSTED SERVICES BY CUSTOMER IN THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY UNDER THIS AGREEMENT FOR THE ORDER UNDER WHICH THE LIABILITY ARISES.
- 9.2. Exclusion of Damages. IN NO EVENT WILL BMS BE LIABLE TO CUSTOMER FOR ANY LOSS, DAMAGES, CLAIMS OR COSTS WHATSOEVER ARISING FROM LOST REVENUE, BUSINESS, PROFITS, SAVINGS, OR DATA, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY, ALL REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT OR OTHERWISE, EVEN IF BMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, DAMAGES, CLAIMS OR COSTS. THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW IN CUSTOMER'S JURISDICTION.
- 9.3. Basis of Bargain. The foregoing limitations and exclusions are an essential part of the parties' agreement and will apply even if any remedy fails of its essential purpose.

## 10. MISCELLANEOUS

- 10.1. Independent Contractors. BMS and Customer are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 10.2. Notices. BMS may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to [sales@blackmountainsoftware.com](mailto:sales@blackmountainsoftware.com), and such notices will be deemed received 72 hours after they are sent. Either party may also send notices to the other party at the address provided in the introduction via recognized overnight carrier, and such notices will be deemed received the following business day if sent for next day delivery.
- 10.3. Severability. If any term or provision of this Agreement should be declared unlawful, void or unenforceable, the remaining terms and provisions of this Agreement shall be unimpaired and remain in full force and effect, and the unlawful, void or unenforceable term or provision will be deemed to be restated so as to be enforceable to the maximum extent permissible under applicable law.



- 10.4. Entire Agreement. This Agreement, together with any Annual Orders and documents referenced in this Agreement, constitutes the entire agreement and understanding between BMS and Customer relating to the subject matter of this Agreement and supersedes any and all previous and contemporaneous communications, proposals, warranties, representations or agreements, whether written or oral, with respect to the subject matter of this Agreement.
- 10.5. Conflicts; Order of Precedence. In the event of a conflict between provisions of this Agreement, an Order, the Documentation, or other attachment, the following order of precedence will govern: (1) the Agreement; (2) an Annual Order, with more recent Annual Orders taking precedence over later ones; and (3) the Documentation.
- 10.6. No Assignment. Customer shall not assign this Agreement, any interest in this Agreement, or any rights hereunder, or delegate any obligations hereunder, in whole or in part, whether voluntarily or by operation of law, without BMS's prior express written approval, which approval shall not be unreasonably withheld. Any such purported assignment or delegation by Customer without BMS's prior written consent will be null and void and of no force or effect. BMS may assign this Agreement without Customer's prior written consent to an affiliate or in connection with a change of control, merger, acquisition, or sale of all or of substantially all of its assets.
- 10.7. Amendment. This Agreement may not be amended except through a written agreement by authorized representatives of each party.
- 10.8. Choice of Law and Jurisdiction. This Agreement and the rights, duties and obligations of the parties hereto are to be governed by, construed and enforced according to the laws of the State of Florida and controlling U.S. federal law.
- 10.9. Force Majeure. BMS will not be responsible for any delay or failure to perform obligations specified in this Agreement due to causes beyond BMS's reasonable control.
- 10.10. Waiver. Failure by BMS to enforce any rights or remedies under this Agreement or any Order will not be construed as a waiver of such rights or remedies, and a waiver by BMS of a default under this Agreement or any Order in one or more instances will not be construed as constituting a continuing waiver or as a waiver of any other rights or remedies under this Agreement or any Order. BMS will not be deemed to have waived any rights or remedies under this Agreement or any Order unless such waiver is in writing and signed by a duly authorized representative of BMS.
- 10.11. Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument.

*[Remainder of page intentionally left blank]*