



118 Vintage Park Blvd.
W414
Houston, TX 77070
(832) 479-8540
www.waypointsolutions.com

MASTER SERVICES AGREEMENT

This Master Services Agreement (the "Agreement") is entered into this 15 day of February 2023, by and between, City of Tomball a () corporation, () limited liability company, () partnership, () sole proprietorship, () other: _____ incorporated/organized under the laws of the State of Texas/_____, (hereafter referred to as "Client"), having its principal office at 401 Market Street, Tomball, Texas 77375, and Waypoint Business Solutions, LLC, a Texas limited liability company, (hereafter referred to as "Waypoint"). Client and Waypoint are collectively referred to in this Agreement as the "Parties". In consideration of the promises contained in this Agreement, the Parties stipulate, represent and agree, each to the other, as follows:

- 1. Scope of Agreement.** This Agreement contains the entire Agreement and understanding with respect to the subject matter hereof and supersedes all prior discussions, agreements, proposals, negotiations, letters of intent or other correspondence. Neither of the Parties shall be bound by any conditions, definitions, warranties, understandings, or representations with respect to such subject matter other than as expressly provided in this Agreement or as agreed by the Parties in writing on or subsequent to the date of this Agreement.
- 2. Services Defined.** The term "Services" when used in this Agreement means the performance of professional services and include but are not limited to: system analysis, network planning design and installations, preparing hardware/software RFP, system integration, product analysis, research and testing, implementation recommendations, system management, hosting, collocation, and hardware/software maintenance.
- 3. Agreement for Services.** Subject to the terms of this Agreement, Waypoint shall provide and deliver to Client the Services in accordance with written statements of work agreed to between the Parties (the "Work"). The overall terms, conditions, directives, tasks, timelines and goals for completing the Work shall be set forth in one or more statements of Work. Client may, at any time by a written Statement of Work, make changes, deletions, or modifications provided that the time for performance and compensation to be paid will be adjusted accordingly. No changes in the Work shall be made or provided without Waypoint's written consent. Each such Statement of Work and any amendments shall be executed on behalf of each of the Parties, whereupon it shall be deemed incorporated herein by reference and as such shall be included in the Agreement. WAYPOINT HAS NO OBLIGATIONS WHATSOEVER WITH RESPECT TO SPECIFICATIONS THAT ARE NOT IN WRITING OR THAT ARE NOT ACCEPTED BY WAYPOINT.
- 4. Client Responsibility.** Client shall appoint a Representative for the Work to be performed under each Statement of Work to provide direction and approval of the Work. If the Work is performed at Client's facilities, Client agrees to provide suitable workspace, computers, telephones equipment and all technical and other information reasonably required by Waypoint to carry out the Work. Client shall furnish information requested by Waypoint that is necessary for Waypoint to fulfill its responsibilities under this Agreement or any Statement of Work. Unnecessary or unreasonable delays attributable directly to Client, which results in additional costs to Waypoint, are subject to negotiation and additional compensation to Waypoint.

5. **Status Reports.** Waypoint will furnish Client with periodic status reports as may be reasonably requested by Client upon three (3) days prior written notice.
6. **Independent Contractor.** In the performance of this Agreement, Waypoint, together with its staff, is acting as an independent contractor with respect to Waypoint's performance hereunder and neither Waypoint nor anyone used or employed by Waypoint shall be deemed for any purpose to be the employee, agent, servant or representative of Client, and Client shall have no direction or control of Waypoint, except in the results obtained.
7. **Non-Hire.** During the Term of this Agreement and for a period of two (2) years after the later of the effective date of termination of this Agreement and the completion of any Statement of Work, no party will, directly or indirectly, on its own behalf or on behalf of any other person, (a) solicit for employment, employ or retain the services of (whether as an employee, independent contractor or otherwise) or otherwise interfere with or damage the other party's business relationship with, any employee or independent contractor of the other party, or (b) use or disclose any personal information regarding any of the other party's employees or independent contractors for any purpose outside the scope of this Agreement or any Statement of Work.
8. **Client Supplied Equipment/Software.** Client is responsible for ensuring all Client provided equipment is in good working order and all required device drivers are on site. Client supplied software must be lawfully and properly licensed to Client and all installation media and support documentation must be available for inspection by Waypoint.
9. **Payment.**
 - a. **Work and Materials.** The amount of compensation to be received by Waypoint shall be based on a time and materials basis as set forth in each Statement of Work that includes a Schedule of Fees attached hereto as Exhibit "A". The total compensation payable to Waypoint in relation to any Statement of Work shall not exceed the amount in the applicable Statement of Work, subject to additions and deduction as agreed in writing by the parties.
 - b. **Invoices.** Invoices shall be rendered weekly to Client for the performance of Work and materials provided during that period. Each invoice shall reference this Agreement and the Statement of Work identification numbers, and contain pertinent backup information as is reasonably required by and satisfactory to the Client. Payment shall be due upon receipt of invoice. Past due accounts are subject to a service charge of 1½% per month on all invoices over 30 days from date of invoice (annual rate 18%). All bills are due and payable at Waypoint Business Solutions, LLC, 118 Vintage Park Blvd., W414, Houston, TX 77070
 - c. **Applicable Taxes.** In addition to the charges due under this Agreement, Client agrees to pay all state or federal sales, use, excise, personal property, or similar taxes, resulting from this Agreement or activities hereunder, exclusive of taxes based on Waypoint's income.
 - d. **Out-of-Pocket Expenses.** Reasonable out-of-pocket expenditures incurred by Waypoint shall be paid for by Client. Such expenditures shall include travel and subsistence, phone calls, supplies, data preparation, and all other ordinary, necessary and reasonable expenses in performing any Work, provided Waypoint prepares and timely submits to Client an itemized statement of such, to be included on Client's invoices.

10. **Confidentiality.**

All information disclosed by either party ("Disclosing Party") to the other party ("Receiving Party"), including, but not limited to information relating to a party's business activities and the results of Work performed by Waypoint pursuant to this Agreement, if disclosed in writing, marked as proprietary or confidential, or if disclosed orally, reduced to writing within thirty (30) days and labeled as proprietary or confidential ("Confidential Information") shall remain the sole property of Disclosing Party. Except for the specific rights granted by this Agreement, Receiving Party shall not use any Confidential Information of Disclosing Party for its own account. Receiving Party shall use the highest commercially reasonable degree of care to protect Disclosing Party's Confidential Information. Receiving Party shall not disclose Confidential Information to any third party without the express written consent of Disclosing Party (except solely for Receiving Party's internal business needs, to employees or consultants who are bound by a written agreement with Receiving Party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement). Confidential Information shall exclude information (i) available to the public other than by a breach of this Agreement; (ii) rightfully received from a third party not in breach of an obligation of confidentiality; (iii) independently developed by Receiving Party without access to Confidential Information; (iv) known to Receiving Party at the time of disclosure; or (v) produced in compliance with applicable law or a court order, provided Disclosing Party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.

Upon termination of this Agreement, Receiving Party agrees to cease using any and all materials embodying Confidential Information, and to promptly return such materials to Disclosing Party upon request, or make such other reasonable disposition as Disclosing Party may direct.

11. **Proprietary Rights.**

- a. **Assignment of Work Product.** Upon receipt of final payment for all Services and Work rendered by Waypoint under this Agreement, Waypoint will convey to Client good and marketable title to the technical notes and tangible work products required to be delivered under the Statement of Work and all rights therein. Waypoint will also provide reasonable assistance to perfect Client rights and title to such work product, at Client's request and expense. Client agrees to compensate Waypoint for such services at its standard hourly rate.
- b. **Client Property.** Any programs, data, or other materials furnished by Client for use by Waypoint in connection with the services performed under this Agreement shall remain the sole property of Client. All such materials shall be returned to Client upon receipt by Waypoint of final payment for all Work performed under the Statement of Work.
- c. **Waypoint Property.** Any ideas, concepts, know-how, techniques, sequence, or organization relating to the Work during the course of this Agreement by Waypoint, or jointly by Waypoint and Client, shall be the exclusive property of Waypoint.
- d. **Competitive Services.** Except as aforesaid, nothing in this Agreement shall be construed so as to preclude Waypoint from developing, using, or marketing Services or other work that may be competitive with that delivered to Client hereunder, irrespective of whether such services or work are similar or related to those provided under this Agreement.

12. LIMITED WARRANTY & LIMITATION OF LIABILITY.

- a. **Software.** Waypoint warrants that any software delivered to Client under any Statement of Work (the "Software") will perform substantially to the manufacturer's published functional specifications for a period of one year from the date of installation. Any modification of the Software by any persons other than Waypoint or the manufacturer shall render this warranty void. Additionally, Waypoint shall not be responsible for any damage to Software caused by Client, its agents, servants, employees or contractors. Waypoint does not warrant any Software provided will meet the requirements of Client. Client accepts sole responsibility for (i) the use of any Software to achieve Client's intended results; (ii) the results obtained from any Software; and (iii) any omissions, inadequacies, or problems in the written specification for any Software set forth in the applicable Statement of Work. Furthermore, Client agrees that Client's sole and exclusive remedy for Software failure under this agreement shall be reinstallation of any Waypoint supplied Software and to, by commercially reasonable means, cause the Software to operate substantially in accordance with such written specifications.
- b. **Equipment.** Waypoint does not provide any warranty on any hardware or equipment delivered to Client under this Agreement or any Statement of Work (the "Equipment"), and it is delivered to Client on an "AS-IS" basis as between Client and Waypoint. Waypoint shall assign to Client the warranties and indemnities, if any, provided by the manufacturer(s) of such Equipment, to the extent they are assignable by Waypoint, provided however, that Client's sole and exclusive remedy for the breach of any such warranty or indemnity shall be against the person offering the warranty or indemnity and not against Waypoint. Client represents that it accepts sole responsibility for the selection of the equipment, if any, to achieve Client's intended results.
- c. **Limited Warranty.** Waypoint warrants that the Work and Services will be provided in a good and workmanlike manner. Except as expressly otherwise provided in subsections (a) and (b) above and the preceding sentence WAYPOINT MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE SOFTWARE, EQUIPMENT, OR ANY WORK, GOODS, OR SERVICES PROVIDED TO CLIENT BY WAYPOINT, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE OR NON-INFRINGEMENT.
- d. **Limitation of Liability.** EXCEPT AS PROVIDED IN SECTION 12 OR FOR A BREACH OF SECTION 9, WAYPOINT'S TOTAL LIABILITY, WHETHER THE CLAIM FOR SUCH DAMAGES IS BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR TORT, ARISING OUT OF, OR IN CONNECTION WITH THE SERVICES, THE WORK OR THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT FOR THE SPECIFIC SERVICE(S) OR WORK GIVING RISE TO SUCH CLAIM DURING THE PRIOR TWELVE MONTH PERIOD. EACH PARTY ACKNOWLEDGES THAT THESE LIMITATIONS APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, THE FEE FOR THE SERVICES AND WORK PROVIDED HEREUNDER WOULD BE HIGHER. WAYPOINT SHALL NOT BE LIABLE TO CLIENT FOR LOST PROFITS, LOST SAVINGS OR OTHER INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER RESULTING FROM OR ARISING OUT OF OR RELATING TO: (a) CLIENT'S USE OR INABILITY TO USE THE RESULTS OF THE WORK RENDERED HEREUNDER, EVEN IF WAYPOINT HAS BEEN ADVISED

OF SUCH DAMAGES; (b) ANY BREACH OF THIS AGREEMENT; (c) THE DELIVERY, PERFORMANCE, INSTALLATION OF AND MAINTENANCE OF ANY SOFTWARE; (d) THE DELIVERY, PERFORMANCE, INSTALLATION OF AND MAINTENANCE OF ANY EQUIPMENT; (e) LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK, OR THE RECOVERY OF SUCH, (f) LOSS OF BUSINESS OPPORTUNITY, (g) BUSINESS INTERRUPTION OR DOWNTIME, (h) SERVICES, OR THIRD-PARTY PRODUCTS NOT BEING AVAILABLE FOR USE BY CLIENT, or (i) ANY CLAIM MADE AGAINST CLIENT BY ANY OTHER PARTY EVEN IF WAYPOINT HAS BEEN ADVISED OF THE CLAIM OR POTENTIAL CLAIM.

13. Indemnification.

- a. **Client Indemnity.** Client, at its expense, shall indemnify, defend and hold Waypoint harmless, from any claim or action by a third party that any Client supplied software and/or equipment or other components related to the Work, as well as software directed or requested by Client to be installed or integrated as part of the Work infringes upon or violates any patent, copyright, trademark, trade secret or other proprietary right of any third party, and shall reimburse Waypoint for all reasonable expenses (including, without limitation, attorneys' fees and expenses) as they are incurred in connection with pursuing or defending any third-party claim or action, whether or not such claims are successful.
- b. **Waypoint Indemnity.** Waypoint shall defend, indemnify and hold harmless Client from any third-party claim or action that the Services, Work, Software or Equipment ("Deliverable") delivered by Waypoint pursuant to this Agreement infringe or misappropriate that third party's patent, copyright, trade secret, or other intellectual property rights, and shall reimburse Client for all reasonable expenses (including, without limitation, attorneys' fees and expenses) as they are incurred in connection with pursuing or defending any third-party claim or action, whether or not such claims are successful. In addition, if Waypoint receives notice of a claim that, in Waypoint's reasonable opinion, is likely to result in an adverse ruling, then Waypoint shall at its option, (a) obtain a right for Client to continue using such Service or Deliverable; (b) modify such Service to make it non-infringing; (c) replace such Service or Deliverable with a non-infringing equivalent; or (d) refund any pre-paid fees for the allegedly infringing Service or Deliverable that have not been provided. Notwithstanding the foregoing, Waypoint shall have no obligation under this Section for any claim resulting or arising from (a) Client's modifications of the Service or Deliverable that was not approved by Waypoint; (b) the combination, operation or use of the Service or Deliverable in connection with a third-party product or service (the combination of which causes the infringement); or (c) Waypoint's compliance with Client's written specifications or directions, including the incorporation of any Deliverable or other materials or process provided by or requested by Client. Waypoint shall be responsible for all physical injuries (including death) to persons (including but not limited to employees of Client) or damage to property (including, but not limited to the property of Client and Waypoint) resulting from the negligence of Waypoint or its employees and shall indemnify and save Client harmless from loss and liability upon any and all claims on account of such injuries to persons or damage to property, and from all direct costs and expenses finally awarded in suit which may be brought against Client on account thereof, provided, however, the Client or Waypoint, as the case may be, shall be responsible for workers compensation claims brought by their respective employees, without regard to the negligence of either.

This Section states each Party's exclusive remedies for any third-party claim or action, and nothing in this Agreement or elsewhere will obligate either party to provide any greater indemnity to the other.

14. Time Limitation. NO ACTION, REGARDLESS OF FORM, ARISING OUT THE TRANSACTIONS UNDER THIS AGREEMENT, MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE CAUSE OF ACTION HAS OCCURRED EXCEPT THAT AN ACTION FOR NON-PAYMENT MAY BE BROUGHT WITHIN TWO YEARS OF THE DATE OF LAST PAYMENT.

15. Term, Termination.

a. **Commencement Date.** This Agreement becomes effective on the date it is fully executed by both parties and terminates 3 years from the effective date.

b. **Termination Rights.** Unless otherwise provided in a Statement of Work, either party may terminate this Agreement upon not less than five (5) business days prior written notice. Termination of this Agreement shall constitute termination of all Statement of Works. However, termination of a Statement of Work does not terminate this Agreement. In the event this Agreement or a Statement of Work is terminated pursuant to this paragraph, Client agrees to pay Waypoint for Work rendered through such date and to reimburse Waypoint for its reasonable expenses incurred through the termination date.

16. Client Data. Client is responsible for securing a full data backup 24 hours before Work is to commence on an existing system for scheduled maintenance or system modification.

17. General Provisions.

a. **Exclusive Remedies.** Client's remedies in this Agreement are exclusive.

b. **Entire Agreement/Assignment.** This Agreement: (i) is the complete and exclusive statement of the agreement between the parties, (ii) supersedes all proposals, oral or written, and all other communications between the parties relating to the subject of this Agreement; and (iii) may not be assigned, sublicensed, or otherwise transferred by Client without the prior written consent of Waypoint, but its terms and conditions shall extend to and bind any permitted successor or assign. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated.

c. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas. The exclusive jurisdiction for any legal proceedings shall be in the courts of the State of Texas, County of Harris, and the parties expressly submit to the jurisdiction of said courts.

d. **Survival of Proprietary Rights.** The proprietary rights and confidentiality obligations of the parties shall survive the expiration or earlier termination hereof.

e. **Titles.** The section headings in this Agreement are for convenient reference only and shall be given no substantive or interpretive effect.

f. **Notices.** Any and all notices between the parties under this Agreement shall be in writing and deemed received when mailed by registered mail, postage prepaid, first class, electronic mail (e-mail) to a partner, officer, or authorized representative, or delivered by courier to the following addresses:

If to Waypoint:

If to Client:

Waypoint Business Solutions/ Paul Neyman

City of Tomball

118 Vintage Park Blvd. W414

401 Market Street

Houston, TX. 77070

Tomball, Texas 77375

- g. **Form.** No provision appearing on any form originated by Client shall be applicable unless such provision is expressly accepted in writing by Waypoint.
- h. **Delay.** Waypoint shall not be liable to Client for any delay or failure by Waypoint to perform its obligations hereunder or otherwise if such delay or failure by Waypoint to perform its obligations hereunder or otherwise if such delay or failure arises from any cause or causes beyond the reasonable control of Waypoint, including but not limited to, labor disputes, strikes, other labor or industrial disturbances, acts of God, floods, hurricanes, lightning, shortages of materials, rationing, utility or communication failures, earthquakes, casualty, war, acts of public enemy, riots, insurrections, embargoes, blockages, actions, restrictions, regulations, or orders of any government agency or subdivision thereof, or temporary unavailability of service personnel due to other service calls received by Waypoint. In the event of such a delay or failure, and notwithstanding anything to the contrary in any Statement of Work, such delay or failure shall be excused during the continuance thereof, and the period of performance shall be extended to such extent necessary to enable Waypoint to perform after the cause of delay has been removed.
- i. **Legal Fees.** In the event either party must retain an attorney to interpret or enforce this Agreement, the prevailing party in a dispute shall be entitled to recover its attorney's fees and costs incurred in addition to any relief to which it may be entitled.
- j. **Dispute Resolution.** Client and Waypoint will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) arising out of or relating to this Agreement (a "Dispute") through face-to-face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying Dispute will be resolved in accordance with this paragraph. In the event the parties are unable to resolve the Dispute within 60 days of notice of the Dispute to the other party, the parties shall be free to pursue all remedies available at law or equity.
- k. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives.

CLIENT

By: _____

Name: _____

Title: _____

WAYPOINT BUSINESS SOLUTIONS, LLC

By: _____

Name: _____

Title: _____

(ver. 2017-07-25-01)