

Master Services Terms And Conditions

1. SERVICES AND SCOPE OF WORK

1.1 **Services.** COMPANY agrees to provide to PB Services as are described in an Ordering Document that is executed from time to time by both Parties. Each Ordering Document preferably shall be consecutively numbered. COMPANY shall not begin providing such Services to PB until the applicable Ordering Document has been executed by both parties and COMPANY receives a purchase order for such Services. Such Services shall be provided in accordance with the provisions of the Agreement and the applicable Ordering Document and will be on either a fixed price or time and materials basis as specified in the applicable Ordering Document. Each Ordering Document creates a binding agreement subject to the terms and conditions of the Agreement. If there is any conflict or inconsistency between this Exhibit and an Ordering Document, the order of preference specified in the applicable Agreement Order Form shall govern.

1.2 **Scope of Work.** Each Ordering Document shall contain terms and conditions substantially in the form set forth in Attachment 1 attached hereto, and shall include a description of the Services to be performed by COMPANY, and the Deliverables.

1.3 Obligations of COMPANY.

(a) Except for any specific items identified in an applicable Ordering Document as being provided by PB, COMPANY shall be solely responsible for the provision of any and all hardware, software, other tools and facilities that may be required for the performance of the Services and the production and delivery of the Work Product. For any such software, COMPANY shall be the owner or licensee of such software and, if applicable, shall agree to the licensing terms and conditions associated with such software that meet the requirements in the Ordering Document. If PB reimburses COMPANY for the purchase price of such software, COMPANY shall use such software exclusively for performing professional services to PB under the Agreement and shall transfer (at no cost to PB) the license for such software (if permitted by such license) to PB upon expiration or termination of the Ordering Document.

(b) COMPANY shall in the development, production and delivery of the Deliverables comply with any quality, software development and production control standards and procedures specified or referred to in the applicable Ordering Document.

(c) COMPANY shall be responsible for the safe custody, including the prevention of copying by or transmission to unauthorized individuals, and insurance of any items provided to COMPANY by PB while such items are in COMPANY's care.

(d) Without prejudice to COMPANY's other obligations and PB's rights under the Agreement, COMPANY shall without delay notify PB if COMPANY finds that any of the following events is about to occur or appears imminent: delay in delivery, a change in ownership or legal form of COMPANY, infringement of third party proprietary rights and deficiency or defect in an Ordering Document.

2. CONSULTANT PERSONNEL

2.1 **COMPANY Project Manager.** COMPANY will appoint for each Ordering Document a qualified member of its staff to act as project manager ("COMPANY Project Manager"), whose duties shall be to act as liaison between PB and COMPANY.

2.2 COMPANY Staff.

(a) COMPANY will provide adequate Personnel to complete the Services specified in the applicable Ordering Document within the time frame set forth in the Ordering Document. If requested by PB, COMPANY will provide PB with resumes of all Personnel to be assigned to perform Services under any Ordering Document.

(b) PB shall have the right to evaluate all Personnel assigned, including each COMPANY Project Manager, to perform Services under any Ordering Document and to accept or reject any individual(s). In the event that any Personnel is found to be unacceptable to PB during the term of the applicable Ordering Document or at any time during the term of the Agreement, PB shall notify COMPANY of such fact and COMPANY shall immediately remove such Personnel and, if requested by PB, provide replacement Personnel acceptable to PB, within five (5) days of such notice unless otherwise specifically addressed in the Ordering Document. PB is the sole judge as to performance capability of Personnel.

(c) COMPANY agrees to ensure the continuity of Personnel assigned to perform Services hereunder. Any removal, reassignment or reduction in the assigned hours by COMPANY of Personnel assigned to perform Services hereunder must be with one (1) month's prior written notice to PB and with PB's prior written consent as to the removal or reassignment and as to any replacement Personnel, who shall have substantially equivalent or better qualifications than the Personnel being replaced. In the event COMPANY replaces any Personnel with PB's consent, COMPANY will promptly provide such replacement. There will be no charge to PB for any replacement Personnel provided in accordance with the above paragraphs while the replacement Personnel acquires the necessary orientation, which shall not exceed five (5) business days. The terms of this subsection shall apply unless specified otherwise in the Ordering Document.

(d) COMPANY understands that prompt performance of Services hereunder is required by PB. In the event that any anticipated or actual delays in meeting the deadlines or scheduled completion dates set forth in applicable Ordering Documents are caused by the unacceptable performance of any Personnel or any other cause within the reasonable control of COMPANY, COMPANY shall provide additional temporary Personnel, as requested by PB and at no charge to PB, in order to complete the assignment involved in a timely manner. Neither Party, however, shall be responsible for any delays that are not due to such Party's fault or negligence or that could not have reasonably been foreseen or provided against.

(e) COMPANY warrants that it has written agreements with all of its Personnel that are to be involved in any Services under this Agreement (i) assigning to COMPANY ownership of all patents, copyrights and other proprietary rights created in the course of their employment or engagement; and (ii) obligating such Personnel to terms and conditions no less restrictive than contained herein, not to use or disclose any proprietary rights or information learned or acquired during the course of such employment or engagement, including, without limitation, any Work Product or any other Confidential Information.

(f) Unless otherwise agreed to by the Parties, COMPANY warrants that COMPANY's Personnel shall observe the working hours, working rules, and policies of PB while working on PB's premises.

2.3 Independent Contractor.

(a) COMPANY acknowledges and agrees that COMPANY and its Personnel are engaged as independent contractors, on a non-exclusive basis, and not as employees or authorized agents of PB and shall not represent themselves to be employees or authorized agents of PB. Further, neither COMPANY nor its Personnel shall have any authority to enter into any contracts or binding commitments in the name of or on behalf of PB. COMPANY acknowledges that, as an independent contractor:

- (i) None of the benefits that are provided by PB to its employees (including, but not limited to holidays, vacations, disability insurance, worker's compensation benefits, severance plans, pensions or retirement or 401(k) plans, stock option, profit sharing, bonus or incentive compensation plans, or any other benefits), if any, shall be available to COMPANY or its Personnel. Exclusion of COMPANY and its Personnel from benefit programs maintained by PB is a material component of the terms of compensation negotiated by the Parties, and is not premised on such Personnel status as a non-employee with respect to PB. To the extent that COMPANY and its Personnel may become eligible for any benefit programs maintained by PB (regardless of the timing of or reason for eligibility), COMPANY hereby waives its right to participate in the programs. COMPANY's waiver is not

conditioned on any representation or assumption concerning COMPANY's status under the common law test. COMPANY also agrees that its Personnel, consistent with such status, will not apply for any government-sponsored benefits that are intended to apply to employees, including, but not limited to, unemployment benefits.

- (ii) All Personnel used by COMPANY shall be deemed COMPANY's employees, agents, or subcontractors and such Personnel shall not be considered employees, agents, or subcontractors of PB for any purpose whatsoever. Unless otherwise agreed upon by the parties, all Personnel shall be a W-2 employee of Contractor or one of its subcontractors. COMPANY assumes full responsibility for all actions of all such employees, agents and subcontractors while performing Services under the Agreement.
- (iii) Unless otherwise required by law, PB does not intend and shall have no obligation to COMPANY and its Personnel to withhold any sums due COMPANY for, and the COMPANY retains all obligations and liabilities relating to, the payment of COMPANY's and its Personnel's federal, state and local income and employment taxes.
- (iv) Neither COMPANY nor its Personnel shall be covered under any insurance that PB may carry for its employees or business. COMPANY shall assume full responsibility for compliance with the Patient Protection and Affordable Care Act ("PPACA") by either (i) offering PPACA compliant health insurance to (x) any eligible COMPANY Personnel (collectively, "Eligible Personnel"); or (ii) paying any employer responsibility assessments with respect to such Eligible Personnel. If COMPANY (or one of its subcontractors) receives notice from a government agency that such health insurance is noncompliant or that a penalty will be assessed relating to an Eligible Personnel, COMPANY must provide written notice to PB within thirty (30) days. The fees paid to COMPANY under the Agreement shall include the current, actual cost to COMPANY to provide PPACA compliant health insurance for such Eligible Personnel and shall be separately itemized on each invoice.
- (v) Services shall be rendered by COMPANY in a timely and proper manner, provided, however, COMPANY shall perform such Services independently, rather than pursuant to the direction and control of any employee of PB. COMPANY shall be entitled to exercise such discretion and judgment in the provision of the Services as is appropriate to comply with COMPANY's status as an independent contractor including, without limitation, establishing schedules and work hours as well as controlling all other means and methods of performing Services under the Agreement.
- (vi) COMPANY may only use or retain any other individual(s) or employee(s) in performing the Services hereunder with the prior, written consent of PB. In such event, all of the warranties and covenants applicable to COMPANY hereunder shall apply to such individual(s) or employee(s).

(b) COMPANY shall defend, indemnify and hold harmless PB for any losses, damages, penalties, liabilities, costs and expenses (including, but not limited to court costs and reasonable attorney's fees) incurred by PB to the extent arising from an assertion that an COMPANY Personnel is misclassified as an independent contractor rather than as an employee.

3. PROJECT MANAGEMENT

3.1 PB Project Manager. PB shall designate a project manager for each Ordering Document ("**PB Project Manager**") who shall act as a liaison between PB and COMPANY. The PB Project Manager shall be PB's single point of contact for clarifications relating to the applicable Ordering Document.

3.2 Progress Reports and Meetings. COMPANY shall submit progress reports to the PB Project Manager as specified in each Ordering Document. Such progress reports will detail work performed to date and estimated time and cost to complete. Each Ordering Document may include additional requirements for the content of such progress reports. At PB's written request, COMPANY shall hold status meetings with the PB Project Manager in order to review the status of COMPANY activities. Any such progress reports and status meetings shall be without prejudice to any other rights of PB under this Agreement and shall not relieve COMPANY from any of its obligations under this Agreement.

3.3 On-Site PB Representative. If specified in a Ordering Document, COMPANY shall provide office space and communications capabilities for an on-site PB representative. This representative shall have access to all Personnel assigned to a Ordering Document.

4. FEES, EXPENSES, RECORDS AND TAXES

4.1 Fees for Services. For Ordering Documents requiring Services performed on a time and materials basis ("T&M Services"), COMPANY shall provide monthly invoices to PB which itemize the Services provided and the COMPANY Personnel performing the Services under each Ordering Document. For Ordering Documents requiring Services performed on a fixed price basis, COMPANY shall invoice PB for such Services in accordance with requirements specified in the Ordering Document.

4.2 Expenses. In addition, for T&M Services, COMPANY shall provide monthly itemized invoices to PB for expenses incurred as a result of performing Services in accordance with each applicable Ordering Document. Such expenses shall be limited to reasonable out-of-pocket expenses necessarily and actually incurred by COMPANY in the performance of its Services hereunder, provided that: (i) PB has given its prior written consent for any such expenses; (ii) the expenses have been detailed on a form acceptable to PB and submitted to the appropriate PB Project Manager for review and approval; and (iii) if requested by PB, COMPANY submits supporting documentation in addition to an expense form approved by PB.

4.3 Maximum Dollar Amount. Notwithstanding anything to the contrary contained herein, PB shall not be liable for any charges and/or expenses under any Ordering Document for T&M Services in excess of the maximum dollar amount specified on the Ordering Document. COMPANY shall not invoice PB with respect to any particular Ordering Document for Services or expenses in excess of the maximum dollar amount specified in the Ordering Document.

5. DELIVERY AND ACCEPTANCE OF SERVICES

5.1 Delivery. COMPANY shall deliver the Deliverables in accordance with the terms set forth in the applicable Ordering Document.

6. INFRINGEMENT INDEMNITY

6.1 Indemnity.

(a) COMPANY shall defend, at its own cost and expense, and hold PB, its agents and customers, and the directors, officers, employees, agents and customers of each of them, harmless and shall fully indemnify the same for all costs, expenses and damages (including reasonable attorney's fees) arising out of any third party claims of infringement of any patent, copyright, trademark or other property right (including, but not limited to, misappropriation of trade secrets) based on any Deliverable or the use thereof by PB.

(b) COMPANY agrees, should PB's use of any of the Deliverables be enjoined by any court because such Deliverables infringe a patent, copyright, trademark or other proprietary right held by a third party, to (at COMPANY's discretion) promptly (i) obtain, at no expense to PB, the right to continue to use the Deliverables so enjoined without restriction; or (ii) at no expense to PB, provide PB promptly with replacement Deliverables that are materially equivalent to the enjoined Deliverables in terms of functionality and performance.

7. PROPRIETARY RIGHTS

7.1 Proprietary Rights.

- (a) All Intellectual Property Rights existing as of the effective date of each Ordering Document shall remain the property of the party owning such Intellectual Property Rights ("Pre-Existing IP"). Subject to COMPANY's Pre-Existing IP and modifications and/or improvements thereto, all Work Product created and/or developed by COMPANY under an applicable Ordering Document (whether or not such Ordering Document is completed) is the property of PB and all title and interest therein shall vest in PB and shall be deemed to be, to the fullest extent permitted by law, a work made for hire and made in the course of the Services rendered hereunder (collectively, "PB Owned IP"). To the extent that title to such PB Owned IP may not, by operation of law, vest in PB or such PB Owned IP may not be considered works made for hire, all rights, title and interest therein are hereby irrevocably assigned to PB by COMPANY.
- (b) Unless otherwise requested by PB, upon the completion of the Services to be performed under each Ordering Document or upon the earlier termination of the applicable Ordering Document and payment by PB in accordance with the Agreement, COMPANY shall not use such Work Product for the benefit of itself or any third party.
- (c) COMPANY shall identify to PB, in writing, any COMPANY Pre-Existing IP which will be useful or necessary to the Deliverables, before any such COMPANY Pre-Existing IP is incorporated in the Deliverables. COMPANY grants to PB an irrevocable, nonexclusive, fully paid-up, worldwide, perpetual license, with the right to sublicense, in and to any COMPANY Pre-Existing IP and modifications and/or improvements thereto that is incorporated in the Deliverables solely for use with such Deliverables. PB shall have the right to prepare derivative works of the Deliverables, in whole or in part, or combine the Deliverables with other matter as it sees fit.

7.2 Ownership of Intellectual Property Rights. At PB's request and expense, COMPANY and its and its Personnel shall execute all documents and perform all acts deemed by PB necessary or appropriate to assign to PB and to perfect PB's title in the PB Owned IP, or which may be requested by PB to apply for, obtain, own, maintain, and enforce any United States or foreign right in any such PB Owned IP.

8. REPRESENTATIONS AND WARRANTIES

8.1 Each of COMPANY's Personnel assigned to perform Services under any Ordering Document shall have the proper skill, training and background so as to be able to perform in a competent and professional manner and that all Services will be performed in a competent and professional manner consistent with industry standards and in accordance with the applicable Ordering Document.

8.2 PB shall receive free, good and clear title or license to use all Deliverables under the Agreement. COMPANY shall not, without the prior written consent of PB, (i) incorporate in the Deliverables any intellectual property that is owned by a third party; or (ii) bind PB to any obligation in any license or agreement. All Deliverables shall not infringe or violate any patent, copyright, trade secret, trademark, or other third party Intellectual Property Right.

8.3 Each and every Deliverable, including software deliverables, contemplated by the applicable Ordering Document shall conform in all material respects to the specifications and requirements as set forth in or referred to in the applicable Ordering Document.

8.4 For one hundred twenty (120) days from the date PB notifies COMPANY of PB acceptance of a Deliverable, COMPANY will, at no charge to PB, furnish such materials and Services as shall be necessary to correct any defects in the Deliverables and to maintain the Deliverables in good working order in accordance with the specifications and requirements as set forth in or referred to in the applicable Ordering Document.

8.5 EXCEPT AS OTHERWISE EXPLICITLY PROVIDED IN THIS AGREEMENT OR AN ORDERING DOCUMENT, COMPANY DOES NOT MAKE ANY EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH THIS AGREEMENT, THE SERVICES PERFORMED HEREUNDER OR ANY DELIVERABLES OR OTHER WORK PRODUCT PROVIDED TO PB HEREUNDER. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE FOREGOING, COMPANY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES REGARDING QUALITY, SUITABILITY OR OTHERWISE (IRRESPECTIVE OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE).

9. ARBITRATION

Except for claims arising under Sections 6 and 7, any controversy, claim, or dispute between the parties, directly or indirectly, concerning this Exhibit or the breach hereof, or the subject matter hereof, including questions concerning the scope and applicability of this arbitration clause, shall be finally settled by arbitration in Stamford, Connecticut pursuant to the rules then applying of the American Arbitration Association. The arbitrator(s) shall have the right and authority to assess the cost of the arbitration proceedings and to determine how their decision or determination as to each issue or matter in dispute may be implemented or enforced. Any decision or award of the arbitrator(s) shall be final and conclusive on the parties to this Agreement; judgment upon such decision or award may be entered in any competent Federal or state court located in the United States of America; and the application may be made to such court for confirmation of such decision or award for any order of enforcement and for any other legal remedies that may be necessary to effectuate such decision or award.

10. SURVIVING SECTIONS

10.1 The following sections shall survive the termination or expiration of the Agreement: (i) Sections 2.2(e), 2.3 and 5-9; and (ii) any other section that, by its nature, would continue beyond the termination or expiration of the Agreement.

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ATTACHMENT 1

Statement of Work Flow Down Provisions

1. **Governing Agreement**

THIS STATEMENT OF WORK ("Ordering Document") is submitted **[Insert the effective date of this Ordering Document]** to **[Insert the name of the vendor]** ("COMPANY") by **[Insert the name of the Pitney Bowes entity]** ("PB") pursuant to an Agreement dated **[Insert the date of the agreement]** between COMPANY and PB ("Agreement"). The parties agree that this Ordering Document, upon its execution by both parties, and the Agreement form a binding agreement between the parties relative to all Services and Work Product to be provided by COMPANY to PB as set forth in this Ordering Document. If there is any conflict or inconsistency between this Ordering Document, the applicable Agreement Order Form and any Exhibits, the order of preference specified in the applicable Agreement Order Form shall govern.

2. **Territory**

All Services shall be performed in the United States.

3. **Scope Of Work**

4. **Specifications**

5. **Deliverables**

6. **Acceptance Criteria**

7. **Project Schedule**

8. **Signature Block**

IN WITNESS WHEREOF, this Ordering Document has been signed by the duly authorized representatives of each party hereto.

INSERT COMPANY NAME

By: _____

Name: _____

Title: _____

Date: _____

INSERT PITNEY BOWES NAME

By: _____

Name: _____

Title: _____

Date: _____