

# Master Service Agreement

This Master Service Agreement (“MSA”) is set forth to provide the general terms and conditions that govern the relationship between C Squared Computer Consulting Inc. (“Provider”), a Colorado Corporation located at 7779 W. Phillips Ave., Littleton, CO 80128 and its Clients. By accepting any quote or proposal provided by Provider, Client agrees to adhere to terms presented here in this MSA.

## 1. Scope

The scope of work and description of Services to be provided by “Provider” for each Project and/or Service shall be set forth in a separate Statement of Work (“Statement of Work” or “SOW”). Each Statement of Work is incorporated by reference and made a part of this Agreement as if fully set forth herein.

In the event of any conflict between the terms of the Statement of Work and those of this Agreement, the terms of the Statement of Work will prevail.

## 2. Fees and Payment Terms

PAYMENT AND DELIVERY. Client will pay Provider all fees due upon receipt of an invoice specifying the amounts due (“Fees”). All Fees payable under this Agreement are exclusive of sales, use, VAT, customs duties, excise, and any other applicable transaction taxes, which Client will pay (excluding taxes based upon the net income of Provider).

If payment is not received on or before any invoice due date, interest shall begin to accrue and be payable at the lesser of the maximum rate permitted under applicable law or at the rate of one and one-half percent (1.5%) per month from the date due until paid in full.

Client shall pay all expenses, including actual attorneys’ fees, incurred by Provider or its representatives in enforcing its rights under this Agreement, provided that Provider is successful on the merits. Client’s obligation to pay undisputed amounts due for Services and Provider’s right to all such amounts are absolute and unconditional. Client is not entitled to setoff of such amounts.

Unless otherwise stated in a Statement of Work, Client agrees to pay or reimburse Provider for all actual, necessary, and reasonable expenses incurred by Provider in performance of such Statement of Work, which are capable of verification by receipt. Provider will submit invoices to Client for such fees and expenses either upon completion of the Services, or at stated intervals, in accordance with the applicable Statement of Work.

## 3. Taxes

Service Fees do not include local, state, or federal sales, use, value-added, or other taxes or tariffs of the United States of America (USA) or other countries based on the licenses or Services provided under this MSA or Client's use thereof. Client will pay all such taxes or tariffs as may be imposed upon Provider or Client, except income taxes imposed on Provider by the USA or any state or local government therein. Client will be invoiced for, and Client will pay, any such taxes or tariffs if Provider is required to pay them on Client's behalf. Client will indemnify and hold Provider harmless from any and all damages, losses, liabilities, demands, awards, assessments, costs, penalties, and

expenses, arising directly or indirectly from Client's failure to collect or pay any of the Taxes required to be collected or paid by Client.

**4. Term and Termination of Agreement**

The term of this Agreement (the "Term") will begin on the Effective Date of initial date of accepted SOW and will continue until each SOW expires or is terminated. Notwithstanding the preceding, if a Project on a particular Statement of Work has not been fully completed and / or delivered, as the case may be, prior to the end the Term, then, with respect to the Services pertaining solely to such Statement of Work, and the compensation, fees, costs and expenses payable with respect thereto, the Term shall be extended until completion of such Project. This Agreement may be terminated by either party for cause by giving written notice to the other party of any material breach of this Agreement including the Statement of Work not cured within thirty (30) days of receipt of written notice of such breach. Whether termination is for cause or convenience, Client shall be responsible for the payment of all services rendered and reimbursable costs incurred by Provider through the date of termination of this Agreement.

**5. Non-Payment and Suspension**

Provider may suspend Services to Client without notice, without liability, and without limiting any other remedy available to Provider at law or in equity if the Provider reasonably believes that 1) the Services are being used in violation of any law or in breach of this MSA; 2) suspending Services is necessary to protect its network or its other Clients; and 3) laws, rules, or regulations prevent the Provider from lawfully providing the Services. The Provider may also suspend services without notice for the Client's failure to pay invoices in full upon the due date. In the event that the Provider suspends Services resulting from payment issues, the Provider will reinstate Services after receiving full payment.

**6. Disengagement and Transfer Assistance**

In the event that the Client requests assistance to disengage Services from Provider and transfer assets (licenses or equipment) or Services to another service provider, then Provider will charge Client an hourly rate of \$150 per hour for all service work to complete transfer of Services to the new provider. An invoice for services will be provided at time of service and due upon receipt. Any outstanding invoices must be paid in full at time of transfer assistance request, and all products belonging to Provider be returned within 30 days of request.

**7. Severability**

If any provision of this MSA, a Schedule, or a SOW is held to be invalid, illegal or unenforceable, the remaining portions of this MSA shall remain in full force and effect. In the event of a dispute, the prevailing party in any litigation or arbitration will be entitled to recover its attorneys' fees and cost incurred from the other party.

**8. Warranties**

Provider hereby warrants that the Services provided, and any products or materials installed by Provider shall be performed or installed by Provider in a workmanlike manner, consistent with generally prevailing industry standards, and in compliance with the requirements of this Agreement. Provider makes no warranties of any kind, expressed or implied on its own regarding the functionality of hardware or software, but instead relies on the warranties provided by the manufacturer of each such product.

Except as stated in this agreement, Provider does not make, and hereby disclaims , all express or implied warranties, including , but not limited to, warranties of merchantability, fitness for a particular purpose, non-infringement, interoperability, and title and any warranty arising from a course of dealing, usage or trade practices. Provider does not warrant the work and service provided hereunder will be uninterrupted and/or error free. Provider does not make and hereby disclaims all expressed or implied warranties against the loss of data, security breaches, third party interruption or interference with data or network and exposure or release of personally identifiable information, regardless of cause. All warranties provided herein are personal to, and intended solely for the benefit of Client, and do not extend to any third party. Notwithstanding anything to the contrary herein, Client acknowledges that Provider shall bear no responsibility for the performance, repair or warranty of any of Client's software, hardware products or services provided to Client or by a third party, unless otherwise set forth herein.

All warranties set forth in this Agreement shall be null and void if the products or materials manufactured or created by Provider are: (1) altered, modified or repaired by persons other than Provider or persons approved by Provider, including, without limitation, the installation of any attachments, features or devices not supplied or approved by Provider; (2) misused, abused or not operated in accordance with specifications of Provider or the manufacturers or creators of the products or materials by persons other than Provider or persons approved by Provider; or (3) subjected to improper site preparation or maintenance by persons other than Provider or persons approved by Provider. Provider shall not be responsible for any malfunction, nonperformance or degradation of performance of any products or materials manufactured or created by Provider caused by or resulting directly or indirectly from installation by Client, any alteration, modification or repair that was not made by Provider or persons approved by Provider or any causes external to such products or materials, such as, but not limited to, power failures and surges. Client shall comply at all times with all applicable specifications, laws, regulations and ordinances relating to its use of such products or materials. To the extent that such products or materials are manufactured or created by any third party, the warranties related to such products or materials come solely and exclusively from such third party.

## 9. Mutual Confidentiality

This Section sets out the terms for identification of information which is considered confidential and proprietary by a party (the "Discloser"), and restrictions against use and disclosure of such Confidential Information after disclosure to the other party (the "Recipient").

Definition. The term "Confidential Information" means all proprietary or confidential information that is disclosed to the Recipient by the Discloser, and includes, among other things (i) any and all information relating to products or services provided by a Discloser, its Client-related and financial information, source and executable code, flow charts, drawings, techniques, specifications, development and marketing plans, strategies, forecasts, and sales and marketing materials; (ii) the Product; and (iii) the terms of this Agreement. Confidential Information does not include information that Recipient can show: (A) was rightfully in Recipient's possession without any obligation of confidentiality before receipt from the Discloser; (B) is or becomes a matter of public knowledge through no fault of Recipient; (C) is rightfully received by Recipient from a third party without violation of a duty of confidentiality; or (D) is or was independently developed by or for Recipient.

Disclosure Restrictions. Recipient may not disclose Confidential Information of Discloser to any third party without the prior written consent of Discloser.

**10. Mutual Non-Solicitation**

During the term of this Agreement, and for a period of six (6) months thereafter, neither party will solicit for employment any employees of the other party or its affiliates who, within six (6) months prior to such solicitation: (a) directly performed under this Agreement, (b) had substantial contact with the hiring party in relation to this Agreement, or (c) the hiring party became aware of due to, or derived from information learned through the performance of, this Agreement. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee to which the employee responds on his or her own initiative. Notwithstanding the foregoing, either party may at any time, directly or indirectly, solicit and hire any employee of the other party if such employee did not resign but was terminated by the other party. The parties acknowledge and agree that a breach of this "Non-Solicitation" clause will not give rise to a right of termination of this Agreement; the party not in breach will only have the right to seek and recover direct damages from the breaching party.

**11. Independent Contractor**

Nothing in this Agreement will be construed to make either party an employer, employee, agent or partner of the other, and this Agreement will not be construed to create rights, express or implied, on behalf of or for the use of any party other than Provider and Client. All of the Services performed by Provider will be performed as an independent contractor. Provider will perform such Services under the general direction of Client, but Provider will have sole discretion to determine the manner, method and means of performing such Services subject to the provisions of this Agreement and applicable Statement of Work. Neither party will have any authority to make any contract in the name of or otherwise to bind the other party. Provider will be responsible for and will pay all unemployment, social security and other payroll taxes, and all worker's compensation claims, worker's compensation insurance premiums and other insurance premiums, with respect to Provider and Provider's employees.

**12. Third Party Services**

Client acknowledges and understands that Provider relies on the performance of third parties for certain Services and for particular projects from time-to-time. Accordingly, Client approves Provider to use third parties and subcontractors as necessary to provide the Services to Client. Provider agrees, as Client's sole and exclusive remedy for third party services, to pass to the Client any warranties offered for the performance of third-party services.

**13. Third Party Products**

In the event that Client purchases third-party hardware, software, or other products, Client acknowledges that such purchases do not include installation, training, consulting or other Services by Provider unless expressly specified in SOW. Product warranties for third-party products, if any, are provided by the manufacturers thereof and not by Provider. The Provider's sole obligation is to, act on behalf of Client to assist in the satisfaction of any such warranty.

Pre-Existing License Agreements. Any software product provided to Client by Provider as a reseller for a third party, which is licensed to Client under a separate software license agreement with such

third party (such agreement, an “SLA”), will continue to be governed by the SLA. The fulfillment of the Services will not relieve or alter the obligations or responsibilities of either party or of any third party in regard to the software product licensed under the SLA

#### **14. Limited Liability**

Except for gross negligence or intentional misconduct of the Provider, the Provider is not liable for any loss, damage, or expense to Client. In addition, Provider’s liability under this MSA together with all SOW’s, attachments and amendments is limited to the lesser of (1) the proceeds of any insurance available to it under its applicable insurance policies together with any self-insured retention amounts in connection with those policies, or (2) the amount of monthly Service Fees paid by Client to Provider during the past six (6) months of service under this MSA (excluding amounts paid under any pre-paid support agreement(s)). In the event of an insurance coverage dispute, Provider is not required to dispute the coverage determination and is not required to file any declaratory judgment action regarding that dispute. Under no circumstance is Provider liable for the acts of third parties. In no event shall Provider be liable for any consequential, special, indirect, incidental or punitive damages, including any damages related to data loss, or for any loss of profits, revenue or business opportunities, impaired goodwill, intangible losses, delays or business interruption, regardless of the form of action and even if Provider has been advised of the possibility thereof.

The limitation of liability survives the termination of any Order, SOW, or the MSA.

#### **15. Indemnification**

If the Services or any of the products or materials manufactured or created by Provider are proven to infringe a third party’s trademark, patent, copyright or other intellectual property right, or Provider determines that any of the Services or such products or materials shall infringe such rights, or Client is enjoined from using any of such products or materials, or any part of same, then Provider, at Provider’s expense and sole option, shall (1) replace such infringing Services, products or materials with non-infringing, equivalent and conforming services, products or materials, (2) modify such infringing Services, products or materials, so such Services, products or materials become non-infringing, but continue to provide the same type and quality of performance and services, or (3) procure the right for Client to continue using such infringing Services, products or materials. This Section shall not apply to any products or materials manufactured or created by any third party or manufactured or created by Provider to Client’s design or specifications. This Section shall also not apply to the extent the claim of infringement is caused by Client’s misuse, abuse or modification of any products or materials, Client’s failure to use corrections or enhancements made available by Provider, or Client’s use of such products or materials in combination with any attachments, features or devices not supplied or approved by Provider. This Section states the entire liability of Provider and the exclusive remedy of Client for infringements by Services or any products or materials.

#### **16. Intellectual Property**

Except as otherwise provided in this Agreement, Provider or its licensors own the Services and Client shall have no proprietary rights in the Services or any software, processes, know-how, source code, source documentation, inventions, ideas and the like included within the Services, or in the intellectual property contained therein, or any documentation related to the Services. Client shall have a personal, non-transferable and non-exclusive license to use any software and documentation provided by Provider solely in connection with the Services. Client agrees not to duplicate such

software or documentation, or any part thereof, except that Client may retain one copy for the purpose of backup. Client agrees not to assign, sublicense, transfer, lease, rent or share any license granted to Client hereunder, and not to reverse assemble, engineer, or decompile such software, or any part thereof, or otherwise misappropriate any of the intellectual property of Provider. To the extent that any software is included in or used by Provider in the performance of the Services, such software may be subject to a separate license agreement, if required by Provider.

#### **17. Insurance**

During the Term of this MSA, each Party will provide and maintain at its own expense, but only for losses arising out of MSP's work for Client: (a) Worker's Compensation and related insurance as prescribed by the law of the state applicable to the employees performing such Services; (b) employer's liability insurance with limits of at least one million dollars (\$1,000,000) for each occurrence; (c) comprehensive/commercial general liability insurance including products liability with one million dollars (\$1,000,000) per occurrence combined single limit and two million dollars (\$2,000,000) general aggregate, including coverage for the use of subcontractors, products liability and completed operations, and not containing an exclusion for explosion, collapse and underground coverage; (d) comprehensive motor vehicle liability insurance, including coverage for owned, hired, leased, rented and non-owned vehicles of at least one million dollars (\$1,000,000) for combined single limit for bodily injury, including death, and/or property damage; and (e) professional liability insurance covering the effects of errors and omissions in the performance of professional duties in the amount of one million dollars (\$1,000,000) for each occurrence and in the aggregate associated with Services.

#### **18. Governing Law/Jurisdiction**

This contract shall be governed by and construed in accordance with the laws of the State of Colorado, excluding its conflict of laws provisions. The parties hereby agree that the federal and state courts of Colorado shall have exclusive jurisdiction over any dispute arising out of this agreement. In any legal dispute, the prevailing party shall be entitled to reimbursement of its attorney fees and other legal expenses, including expert witness fees and court costs.

#### **19. Dispute Resolution**

Arbitration. Any dispute or controversy arising out of this MSA will be subject to arbitration in Colorado, according to the rules of the American Arbitration Association under its commercial arbitration rules. Judgment may be entered on the arbitrator's award in any court having jurisdiction. The parties will arbitrate disputes in Confidence. The arbitrator will not have the power to award any punitive or consequential damages.

#### **20. Waiver**

Modification or Waiver. The parties hereto may, by mutual agreement, amend any provision of this Agreement, and any party hereto may grant consent or waive any right to which it is entitled under this Agreement or any condition to its obligations under this Agreement, provided that each such amendment, consent or waiver shall be in writing. No failure or delay by either party in exercising any right, power or remedy with respect to any of its rights hereunder shall operate as a waiver thereof. The waiver by either Party of any default or breach of this MSA will not constitute a waiver of any other or subsequent default or breach.

## 21. Assignments

Successors and Assigns. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns

## 22. Force Majeure

With the exception of Client's obligation to pay Fees for services rendered, neither Party shall be responsible for any failure to perform or delay caused where such failure or delay is due to circumstances reasonably beyond the Party's control. Examples of force majeure events include, but are not limited to acts of God or nature, fire, flood, government acts, civil unrest, acts of war or terrorism, failures in telecommunications, internet service providers or hosting facilities, power shortages, denial of service attacks, viruses, malware, hackers, or third-party software.

## 23. Notices

**Method of Notice.** The parties will give all notices and communications between the parties in writing by (i) personal delivery, (ii) a nationally-recognized, next-day courier service, (iii) first-class registered or certified mail, postage prepaid to the address that a party has notified to be that party's address for the purposes of this section. (iv) e-mail to address on SOW with acknowledged response as verification.

**Receipt of Notice.** A notice given under this agreement will be effective on the other party's receipt of it, or if mailed, the earlier of the other party's receipt of it and the fifth business day after mailing it.

## 24. Promotion/Referencing

Provider may, in its public advertising and promotional materials, reference Client and the services provided to Client, subject to Client's prior approval of said promotional materials, which approval shall not be unreasonably withheld.

## 25. Entire Agreement

This Agreement, together with each Statement of Work and Order/Quote, constitutes the entire agreement between Provider and Client, and supersedes any prior or contemporaneous negotiations or agreements, whether oral or written, concerning this subject matter. This Agreement, and each SOW and Order, may be modified only in a mutually signed writing between Provider and Client. In the event of a conflict between this Agreement, any SOW or an Order/Quote, the terms of the Order will control, followed by the terms of the applicable Statement of Work and then this Agreement.