Appendix 2A

SHORT-FORM SERVICES AGREEMENT   
(VENDOR-FAVORABLE)

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_ (the “Effective Date”), between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Vendor”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“Customer”) (each of Vendor and Customer, a “Party”; together, the “Parties”).

1 Scope of Agreement.

1.1 Services; Statements of Work. This Agreement is intended to be the master agreement under which Customer may request professional services to be performed by Vendor (the “Services”). Vendor shall provide only those Services specified in a written Statement of Work (“SOW”) signed by both Parties. Each SOW is governed exclusively by the terms of this Agreement, whether or not this Agreement is specifically mentioned.

1.2 Change Requests. Any changes to an executed SOW (a “Change Request”) must be mutually agreed to in writing by the Parties. Customer acknowledges that a Change Request may impact delivery schedules and fees for the Services. Vendor’s Project Manager will be responsible for logging and tracking the progress of each Change Request.

1.3 Existing Software Products. This Agreement does not apply to Vendor’s software products, which are licensed only under a standalone software license agreement.

2 Term and Termination.

2.1 Term. [REVIEW DESIRED TERM AND RENEWAL OPTIONS.] This Agreement commences on the Effective Date and will remain in effect until \_\_\_\_\_\_\_\_\_ (the “Termination Date”); provided, however, that if there is a SOW for which the Parties have obligations that extend beyond the Termination Date, the terms of this Agreement will continue to apply to that SOW until all obligations in the SOW have been satisfied. [This Agreement automatically renews for successive one (1) year terms unless a Party provides written notice of its intention not to renew at least thirty (30) days prior to the Termination Date or end of the renewal term.]

2.2 Termination. Either Party may immediately terminate this Agreement or any SOW for “cause” if: (a) the other Party is in material breach of this Agreement and fails to correct the breach within thirty (30) days after written notice from the nonbreaching Party, or (b) the other Party commences bankruptcy or insolvency proceedings.

2.3 Effects of Termination. Termination of this Agreement by either Party will not limit a Party from pursuing any other remedies available to it, including injunctive relief, nor will termination release Customer from its obligation to pay all fees and expenses that Customer has agreed to pay under this Agreement. The Parties’ rights and obligations under Sections 2.3, 3.4, 5, 6, 7, 8, 9 [(subject to the next sentence of this Section 2.3)], 10.3, 11, 12, and 13 will survive termination of this Agreement. [Upon termination of this Agreement by Vendor for cause, all licenses granted to Customer will immediately terminate.] If any license granted under this Agreement is terminated, Customer shall (a) immediately cease using the licensed materials, and (b) certify in writing to Vendor within thirty (30) days after termination that Customer has destroyed or returned these materials and all copies remaining in Customer’s possession to Vendor. This requirement applies to copies in all forms, partial and complete, and whether or not modified or merged into other materials.

3 Pricing and Payment Terms.

3.1 Services. Customer shall pay Vendor for the Services in accordance with the fees established in the applicable SOW. Unless otherwise stated in an applicable SOW, all of the Services will be billed on a time and materials basis with standard markups for weekends and holidays.

3.2 Expenses. Customer shall reimburse Vendor for actual expenses (including travel and mileage) incurred by Vendor in performing the Services. A summary of expenses sorted by major category will be included in the invoice for the associated Services. [Vendor shall not incur expenses exceeding $\_\_\_\_\_\_, in the aggregate, without first obtaining written approval from Customer.]

3.3 Payment Terms. Vendor shall provide invoices periodically for fees and expenses under this Agreement and, unless otherwise stated on the applicable SOW, all payments are due within thirty (30) days after the date of invoice. For all amounts not paid when due, Customer shall pay an additional charge equal to one and one-half percent (1.5%) of these amounts per month or partial month until paid; except that these additional charges will not apply to unpaid amounts that Customer is disputing in good faith. Customer shall also reimburse Vendor for all expenses incurred by Vendor in exercising its rights under this Agreement or applicable law with respect to a default in payment by Customer, including reasonable attorney fees and the fees of any collection agency retained by Vendor.

3.4 Taxes. All applicable transaction taxes, including sales and use taxes, value added taxes, privilege taxes, and other transactional charges such as duties, customs, tariffs, imposts, and government imposed surcharges (“Transaction Taxes”) will be paid by Customer, and are not included in Vendor’s pricing. If Vendor is required by law to collect Transaction Taxes from Customer and remit them to a taxing authority, Vendor will separately state the Transaction Taxes on an invoice. Each Party is responsible for its own income taxes or taxes based on gross revenues or gross receipts.

3.5 Failure to Pay. Customer acknowledges that its failure to pay timely any of the fees payable will be a material breach of this Agreement for which Vendor may, in addition to pursuing all other remedies, withhold the Services or terminate this Agreement.

4 Warranties. [NOTE: FOR SERVICES INVOLVING SPECIFIED DELIVERABLES SUBJECT TO ACCEPTANCE, SEE ALTERNATIVE SECTIONS 4.1 AND 4.2 BELOW.]

4.1 Services Warranty. Vendor warrants that it will perform the Services in a professional and workmanlike manner utilizing properly trained personnel. For any breach of this warranty, Customer must provide a written claim within ten (10) business days after provision of the applicable Services specifying in reasonable detail the nonconformance, and Vendor shall exercise commercially reasonable efforts to re-perform the identified nonconforming Services. If Vendor concludes that re-performance of these non-conforming Services is impracticable, then Vendor will refund the fees paid by Customer to Vendor allocable to those nonconforming Services.

4.2 Custom Software Deliverables. The warranties and acceptance process for any custom software deliverables to be developed under this Agreement will be specified in the applicable SOW.

4.3 Third-Party Products. Vendor is not responsible for the performance of any hardware, software, or other materials provided by third parties. Product warranties for third-party products, if any, are provided by the third parties and not by Vendor. Vendor’s sole obligation is to act on behalf of Customer to assist in the satisfaction of these warranties.

5 DISCLAIMERS.

5.1 The express remedies in Section 4 (and in any SOW for custom software deliverables) constitute Customer’s exclusive remedies, and Vendor’s sole obligation and liability, for any claim (a) that the Services or deliverables do not conform to specifications or are otherwise defective, or (b) that any Services were performed improperly.

5.2 EXCEPT FOR THE WARRANTIES IN SECTION 4 (AND IN ANY SOW FOR CUSTOM SOFTWARE DELIVERABLES), WHICH ARE LIMITED WARRANTIES AND THE ONLY WARRANTIES PROVIDED TO CUSTOMER, THE SERVICES AND DELIVERABLES ARE PROVIDED “AS IS,” AND VENDOR MAKES NO ADDITIONAL WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO THE DELIVERABLES OR SERVICES, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, AND NON-INFRINGEMENT.

5.3 VENDOR DOES NOT WARRANT THAT THE SERVICES OR ANY DELIVERABLES WILL MEET ANY CUSTOMER REQUIREMENTS NOT SPECIFIED IN THIS AGREEMENT OR A SOW, THAT ANY DELIVERABLES WILL OPERATE IN THE COMBINATIONS THAT CUSTOMER MAY SELECT FOR USE, THAT THE OPERATION OF ANY DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE CORRECTED. IF CUSTOMER REQUESTS THAT PRE-PRODUCTION (E.G., “ALPHA” OR “BETA”) RELEASES OF SOFTWARE BE PROVIDED, THESE COPIES ARE PROVIDED “AS-IS” WITHOUT WARRANTY OF ANY KIND.

5.4 Except as may be done in accordance with Section 13.14, no statement by any Vendor employee or agent, orally or in writing, will serve to create any warranty or obligation or to otherwise modify this Agreement.

6 LIMITATION OF LIABILITY.

6.1 NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR FOR AGGREGATE LIABILITY TO CUSTOMER RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EXCEEDING THE AMOUNT OF FEES PAID BY CUSTOMER UNDER THIS AGREEMENT [DURING THE ONE-YEAR PERIOD PRECEDING THE FIRST ACT GIVING RISE TO LIABILITY]. [NEITHER PARTY WILL BE LIABLE FOR ANY DAMAGES BASED ON ACTIONS OR OCCURRENCES THAT OCCURRED MORE THAN ONE YEAR BEFORE THE OTHER PARTY PROVIDES NOTICE OF THE CLAIM.] THESE LIMITATIONS OF LIABILITY ARE INDEPENDENT OF ANY EXCLUSIVE REMEDIES FOR BREACH OF WARRANTY, AND WILL SURVIVE AND APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY SPECIFIED REMEDIES.

6.2 CUSTOMER ACKNOWLEDGES THAT THE FEES CHARGED UNDER THIS AGREEMENT REFLECT THE OVERALL ALLOCATION OF RISK BETWEEN THE PARTIES, INCLUDING BY MEANS OF THE LIMITATION OF LIABILITY AND EXCLUSIVE REMEDIES DESCRIBED IN THIS AGREEMENT. THESE PROVISIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND A MODIFICATION OF THESE PROVISIONS WOULD AFFECT SUBSTANTIALLY THE FEES CHARGED BY VENDOR. IN CONSIDERATION OF THESE FEES, CUSTOMER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

7 Insurance. [CONFIRM THE TYPES AND AMOUNTS OF VENDOR’S ACTUAL INSURANCE COVERAGE.]

7.1 Nature and Amounts. Vendor shall maintain sufficient insurance coverage to enable it to meet its obligations created by this Agreement and by law. Without limiting the foregoing, to the extent this Agreement creates exposure generally covered by the following insurance policies, Vendor shall maintain, at its expense, at least the following insurance: (a) Commercial General Liability including (i) bodily injury, (ii) property damage, (iii) contractual liability coverage, and (iv) personal injury, in an amount not less than one million dollars ($1,000,000) per occurrence; (b) Business Automobile Liability for owned, hired and non-owned vehicles in an amount not less than one million dollars ($1,000,000) for each accident; (c) Workers’ Compensation at statutory limits; and (d) Professional Liability covering errors and omissions and wrongful acts in the performance of the Services, in an amount not less than one million dollars ($1,000,000) per occurrence.

7.2 Specific Requirements. Upon Customer’s request, Vendor shall cause each of these policies to (a) name Customer and its affiliates and assignees as additional insureds, and (b) contain a provision requiring at least thirty (30) days’ prior written notice to Customer of any cancellation, modification, or non-renewal. Vendor shall furnish to Customer certificates of insurance and other documentation relating to the policies as Customer may reasonably request.

8 Confidential Information.

8.1 Definitions. In the course of performing under this Agreement, either Party (a “Discloser”) may provide Confidential Information to the other Party (a “Recipient”). “Confidential Information” means written, confidential, and proprietary information of a Discloser that is not generally available to the public. All Confidential Information will remain the property of the Discloser. A Party’s granting of access to information (including by the granting of access to its premises) constitutes disclosing that information for purposes of this Section. For purposes of this Agreement, software, documentation and other materials or tools used by Vendor in the performance of the Services, including Vendor Intellectual Property (as defined in Section 9) will be considered Vendor’s Confidential Information.

8.2 Obligations. The Recipient acknowledges that Confidential Information is a valuable business asset of the Discloser and the protection of that Confidential Information is, therefore, essential. The Recipient, during and after the term of this Agreement: (a) shall not disclose the Confidential Information to any other person or entity; (b) shall take all reasonable precautions to protect the confidentiality of the Confidential Information and shall use no less than the degree of care it uses in protecting its own Confidential Information of a similar nature; and (c) shall not use any Confidential Information except for the purpose of fulfilling its obligations or exercising its rights under this Agreement. The Recipient shall return all Confidential Information at the earlier of the termination of this Agreement or upon the request of the Discloser, except that the Recipient may retain a limited number of electronic backup copies of the Confidential Information as are automatically created and retained by its standard backup processes and systems. The Recipient shall comply with its nondisclosure obligations under this Section 8 with regard to these copies and shall destroy them in accordance with its normal destruction processes.

8.3 Exceptions. Except for personal information governed by applicable privacy law, the Recipient is not obligated under Section 8.2 for Confidential Information that: (a) is generally known, or readily ascertainable by proper means, by the public other than through a breach of this Agreement by the Recipient; (b) is known by the Recipient before it is disclosed by the Discloser to the Recipient as evidenced by the Recipient’s written records; (c) is developed independently by the Recipient in a manner that does not rely on Confidential Information of the Discloser; or (d) is disclosed to the Recipient by a third party not subject to any nondisclosure obligations with respect to the Confidential Information.

8.4 Compelled Disclosure. If the Recipient receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or order issued by a court or other governmental agency, the Recipient shall: (a) immediately notify the Discloser of the existence, terms and circumstances surrounding the request; (b) consult with the Discloser on the advisability of taking legally available steps to resist or narrow the request; and (c) if disclosure is required, cooperate with the Discloser at the Discloser’s expense in obtaining an order or other reliable assurance that confidential treatment will be accorded to the portion of the information as the Discloser may designate.

9 Proprietary Rights.

9.1 Work Made for Hire. [REVIEW WHETHER VENDOR WILL TRANSFER TITLE TO DELIVERABLES. NOTE ALSO THAT THIS CONCEPT IS SUBJECT TO NEGOTIATION AND SHOULD BE REVIEWED WITH COUNSEL EXPERIENCED IN THESE MATTERS.] Excluding any components or modules that are Vendor Intellectual Property (as defined below) or that are identified as owned by Vendor in the applicable SOW, and subject to Customer’s payment of all fees and expenses owed to Vendor under this Agreement, the software and written materials specifically and exclusively developed by Vendor for Customer pursuant to a SOW (the “Customer Materials”) will be deemed work made for hire, as that term is defined in the U.S. Copyright Act, and Vendor hereby assigns to Customer all right, title, and interest it may have in the Customer Materials.

9.2 Vendor Intellectual Property. The Parties acknowledge that Vendor may use preexisting proprietary computer software, methodology, techniques, software libraries, tools, algorithms, materials, products, ideas, skills, designs, know-how, or other intellectual property owned by Vendor or its licensors, and Vendor may also create additional intellectual property [based thereon] [REVIEW IN LIGHT OF 9.1], in the performance of the Services (all of the foregoing, the “Vendor Intellectual Property”). All proprietary rights to the Vendor Intellectual Property, as it existed on the Effective Date and as it may be modified or created in the course of providing the Services, including patent, copyright, trademark, and trade secret rights are the sole and exclusive property of Vendor, free from any claim or retention of rights by Customer, and Customer hereby assigns to Vendor any rights it may have or obtain in any of the foregoing.

9.3 Customer License Rights. Vendor hereby grants to Customer a perpetual, worldwide, royalty-free, nonexclusive, nontransferable right and license to use, execute, reproduce, transmit, display, perform, create derivative works from, make, have made, sell, and import any Vendor Intellectual Property that has been combined with the Customer Materials (except for Vendor software products licensed under a software license agreement), only for Customer’s own internal business purposes and to provide products or services to its customers consistent with the purposes of the Services. Customer shall not use the Vendor Intellectual Property apart from the Customer Materials.

9.4 Restrictions. Customer shall not copy, use, modify, or distribute any Vendor Intellectual Property except as expressly licensed in Section 9.3. Customer shall not utilize the Vendor Intellectual Property apart from the Customer Materials or cause or permit the modification, distribution, reverse-engineering, decompilation, disassembly, or other translation of the Vendor Intellectual Property. Customer shall not alter, change, or remove from the Vendor Intellectual Property any identification, including copyright and trademark notices, and shall include these markings on any copies.

10 Customer Responsibilities.

10.1 Provision of Materials and Services. [TAILOR TO NATURE OF VENDOR’S SERVICES.] Customer shall timely furnish, at its own expense, all personnel, necessary computer hardware, software and related materials, and appropriate and safe workspaces for purposes of Vendor performing the Services. Customer shall also provide Vendor with access to all information regarding Customer requested by Vendor that is necessary for Vendor to perform the Services. Customer acknowledges that from time to time (a) Vendor may identify additional items that need to be purchased by Customer, and (b) changes in Customer’s systems may be required in order for Vendor to meet Customer’s requirements. If a SOW requires Vendor to purchase any assets, including computer hardware or software, in connection with Vendor providing the Services, these assets will remain the sole property of Vendor unless specifically stated otherwise in the SOW. Customer is responsible for the quality, completeness, and workmanship of any item or service furnished by it and for ensuring that the materials provided to Vendor do not infringe or violate the rights of any third party. Customer shall maintain adequate backup for all data and other items furnished to Vendor.

10.2 Timeliness. Any timetable in a SOW is dependent on timely receipt from Customer of all necessary items and authorizations to be supplied by it. Any completion date will be deferred for a period equal to the time lost by reason of a delay in delivery of these items by Customer.

10.3 Software Installation or Replication. If Vendor is required to install or replicate Customer software as part of the Services, Customer shall independently verify that the software is properly licensed. Customer’s act of providing any software to Vendor will be deemed Customer’s affirmative acknowledgment to Vendor that Customer has a valid license that permits Vendor to perform the related Services. In addition, Customer retains the obligation to monitor Customer’s equipment for the installation of unlicensed software unless Vendor, in a written SOW, expressly agrees to conduct such monitoring. Customer shall reimburse Vendor for all damages and expenses it may incur (including reasonable attorney fees and costs of litigation) related to Customer providing infringing materials to Vendor or any Customer breach of this Section.

11 Nonsolicitation. [OPTIONAL] During the term of this Agreement and for an additional twelve (12) months, neither Party may, directly or indirectly through another party, (a) solicit for employment or engagement as an independent contractor, or (b) employ or engage as an independent contractor, any person who is or was an employee or contractor of the other Party during the twelve (12) month period prior to these actions, without the prior written consent of the other Party.

12 Dispute Resolution. The Parties agree that any dispute arising out of or in relation to this Agreement or the rights and obligations hereunder must be arbitrated in the English language before [one/three] arbitrator[s] under the administration of the [American Arbitration Association]/[International Centre for Dispute Resolution], and according to its [Commercial Arbitration Rules]/[International Arbitration Rules]. The seat of the arbitration will be [State], and the place of hearing will be \_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_. A Party may seek interim injunctive relief under these Rules and before any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the initiating Party for such purposes. The initiating Party shall reimburse the other Party’s costs if the court declines jurisdiction. The arbitral panel will be empowered to grant injunctive relief upon application. Awards of the arbitral panel will be enforceable in any court having jurisdiction, and each Party hereby submits to the personal jurisdiction of any court reasonably chosen by the enforcing Party for such purposes. The enforcing Party shall reimburse the other Party’s costs if the court declines jurisdiction.

13 General.

13.1 Export. Customer shall comply with all applicable export laws and regulations of the United States of America, the European Union, and other countries (“Applicable Export Laws”) and assure that no deliverables are (a) exported, directly or indirectly, in violation of Applicable Export Laws; or (b) intended to be used for any purposes prohibited by the Applicable Export Laws, including nuclear, chemical, or biological weapons proliferation. The Parties shall not take any actions that would cause either Party to violate the U.S. Foreign Corrupt Practices Act or similar anti-corruption laws.

13.2 Notice. All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by (a) registered mail, return receipt requested, or (b) a nationally recognized overnight delivery service (such as Federal Express), to the [President or General Counsel] of the appropriate Party at the relevant address listed above, or to a Party’s address as changed in accord with this Section.

13.3 [Legal Expenses. If legal action is taken by either Party to enforce its rights under this Agreement, all costs and expenses incurred by the prevailing Party, including reasonable attorney fees and costs of litigation, will be paid by the other Party.]

13.4 Severability. If a provision of this Agreement is broader or of greater scope than a court will enforce, the Parties intend that the court enforce the provision to the greatest extent permitted by law and modify the provision accordingly. If a provision of this Agreement (except for Section 6) is held by a court of competent jurisdiction to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.

13.5 Governing Law. This Agreement is governed by the laws of the State of [\_\_\_\_\_\_\_\_\_\_\_], without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

13.6 No Waiver. No failure to exercise, and no delay in exercising, any right will operate as a waiver; nor will any single or partial exercise of a right preclude any further exercise of that right or the exercise of any other right. The waiver by a Party of a breach of this Agreement will not constitute a waiver of any other breach.

13.7 Remedies Cumulative. Unless otherwise stated in this Agreement, each remedy of a Party is cumulative with each other remedy contained in this Agreement and with all other remedies available to that Party at law, in equity, and otherwise, and no pursuit of any particular remedy will constitute an exclusive election of any particular remedy.

13.8 Assignment. Neither Party may assign or transfer, by merger, operation of law, or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent, except that Vendor may transfer this Agreement, together with all of its rights and duties under this Agreement, to a successor entity if Vendor is acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported assignment or transfer in violation of this Section is void.

13.9 Independent Contractor; Use of Subcontractors. Vendor is an independent contractor and nothing in this Agreement or related to Vendor’s performance will be construed to create a joint venture relationship between Customer and Vendor, or an employee relationship between Customer and any Vendor employee or subcontractor. Vendor may, in its discretion, utilize subcontractors to provide the Services.

13.10 No Third-Party Beneficiaries. This Agreement is an agreement between the Parties, and confers no rights upon any of the Parties’ employees, agents, contractors or customers, or upon any other person or entity.

13.11 Construction of this Agreement. The word “including” is not intended to be exclusive and means “including, but not limited to.” The word “or” is not intended to be exclusive unless the context clearly requires otherwise. Each of the Parties and their counsel have carefully reviewed this Agreement, and accordingly, no rule of construction to the effect that any ambiguities in this Agreement are to be construed against the drafting Party will apply in the interpretation of this Agreement.

13.12 Force Majeure. Except with regard to any obligation to pay money, neither Party will be held responsible for any delay or failure in performance caused by fire, flood, embargo, strike, labor dispute, delay or failure of any subcontract, telecommunications failure or delay, act of sabotage, riot, accident, delay of carrier or supplier, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any act or omission or other cause beyond that Party’s reasonable control. If any of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

13.13 Entire Agreement. This Agreement together with the SOWs, which are hereby incorporated in this Agreement, contain all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations, or agreements, verbal or written, with respect to the subject matter of this Agreement. If there is any inconsistency between a term of this Agreement and a term of any SOW, the term of this Agreement will govern.

13.14 Modification. This Agreement may not be modified or amended except in a written document signed by a duly authorized representative of each Party (including a SOW) that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

13.15 Purchase Orders. Customer may, for purposes of administrative convenience, use Customer’s standard form of purchase order to order the Services. Any terms or conditions on a purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and Vendor hereby rejects these terms and conditions.

13.16 Counterparts; Electronic Copies. This Agreement may be signed in one or more counterparts, each of which is an original, and all of which together constitute only one agreement between the Parties. Delivery of an executed counterpart by facsimile, electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

|  |  |
| --- | --- |
| [VENDOR NAME] | [CUSTOMER NAME] |
| Signature  Name  Title | Signature  Name  Title |

FORM OF STATEMENT OF WORK

STATEMENT OF WORK [#1]

I. CUSTOMER NAME:

II. SERVICES:

A. DESCRIPTION OF SERVICES:

B. CUSTOMER RESPONSIBILITIES:

C. ASSUMPTIONS:

III. RATES:

Vendor will perform the Services, as described in Section II of this SOW, at the rate of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_) per \_\_\_\_\_\_\_\_.

IV. INITIATION AND EXPECTED LENGTH OF ENGAGEMENT:

A. START DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. EXPECTED END DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

V. AUTHORIZED CONTACT PERSONS:

A. VENDOR PROJECT MANAGER: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

B. CUSTOMER CONTACT PERSON: [COMPANY CONTACT PERSON]

VI. CHANGE CONTROL PROCESS: [CONSIDER INCLUSION OF VENDOR’S CHANGE CONTROL PROCESS FOR FIXED SCOPE/PRICE ENGAGEMENTS. THE FOLLOWING IS AN EXAMPLE AND MAY BE MODIFIED TO FIT VENDOR’S OPERATIONS.]

As the work outlined in this SOW progresses, if the Parties reasonably determine that the SOW schedule or fee estimate will be exceeded for any reason (e.g., unexpected increased complexity in existing requirements or new functionality likely to cause a significant change in scope that will impact the corresponding SOW budget or schedule), either Party may initiate a Change Request that will include Vendor’s revised estimate of fees and schedule and will describe the impact of the proposed change on the Services. The Parties will negotiate the Change Request and then forward it to Customer’s management for approval or rejection. The change will only be effective upon execution of the Change Request by both Parties.

|  |  |
| --- | --- |
| [VENDOR NAME] | [CUSTOMER NAME] |
| Signature  Name  Title | Signature  Name  Title |

ALTERNATIVE PROVISIONS:

[4.1] Deliverables Warranty. Vendor warrants that it will provide the specific deliverables identified in each SOW (the “Deliverables”) and that the Deliverables will conform substantially to the requirements specified in the applicable SOW. Each Deliverable will be subject to Acceptance by Customer in accordance with Section 4.2 to verify that the Deliverable satisfies this warranty. If Customer does not provide written notice to Vendor that Customer has a claim for breach under this Section 4.1 within ninety (90) days after Acceptance of a particular Deliverable, then its right to make the claim will terminate.

[4.2] Acceptance Procedures for Deliverables. Customer will have fifteen (15) days, or any different period specified in the applicable SOW, after notice from Vendor of a completed Deliverable (the “Acceptance Period”) to either: (a) notify Vendor in writing of its acceptance of the Deliverable (“Acceptance”); or (b) if Customer reasonably believes that the Deliverable fails to conform substantially to the requirements set forth in the applicable SOW, notify Vendor in writing specifying in reasonable detail the nonconformance (“Rejection”). Any failure by Customer to notify Vendor in writing of its Acceptance or Rejection of a Deliverable within the Acceptance Period will be automatically treated as Acceptance. Upon receipt by Vendor of a written notice of Rejection specifying the nonconformance, Vendor shall utilize commercially reasonable efforts to substantially conform the Deliverable to the applicable requirements. If the Deliverables are being developed on a time and materials basis, then the continuing work done to create them will continue to be done on a time and materials basis.

[\_\_] Customer Use Indemnity. [Except with respect to infringement of third-party rights for which Vendor is obligated to indemnify under Section \_\_], Customer shall defend, at its own expense, any suit, action or proceeding brought against Vendor by a third party based on any claim arising in connection with Customer’s direct or indirect use of the Services (a “Use Action”), and Customer shall pay damages incurred by Vendor in the Use Action, or those damages agreed to in a settlement of the Use Action, and all reasonable attorney fees incurred in connection therewith. Vendor shall: (a) notify Customer promptly in writing of the claim; (b) tender to Customer sole control of the defense or settlement of the Use Action; and (c) cooperate and, at Customer’s expense, assist in the defense. Vendor will have the right to participate at its own expense in the Use Action or related settlement negotiations using counsel of its own choice.