

Terms of Service

1. Summary

1.1. Agreement

This Terms of Service (“**ToS**”) establishes the policies and terms which govern the relationship between Delta (“**Consultant**”) and Client established by a Client Agreement and detailed in Related Agreements. Language in the ToS in Title Caps may be defined herein or in the Client Agreement between Delta and Client.

1.2. Related Agreements

1.2.1. Additional or different terms and conditions may be set forth in one or more separate agreements between the Parties that relate to the Client Agreement (each, a “**Related Agreement**”). Each Related Agreement is subject to ToS whether or not the ToS is referenced in the Related Agreement. Related Agreements may be entered into and signed at any time, before, contemporaneous with, or after a Client Agreement is signed, and shall be deemed to be incorporated into the Client Agreement. Related Agreements include for example, Statements of Work, or Change Requests, each of which are valid and binding with one signature when signed by the Party that did not draft or issue such Related Agreement. Client-issued purchase orders are not Related Agreements. Terms on such purchase orders are not binding on Consultant and payment obligations on such purchase orders are binding on Client. In the event of a direct conflict between the provisions of agreements and the ToS, the provisions of this ToS are subordinate to Client Agreement, which is subordinate to any other Related Agreement solely for the scope of that Related Agreement. Client Agreement and other Related Agreements are valid and binding with one signature, when signed by Client.

1.2.2. Consultant may accept a purchase order or Related Agreement from an Affiliate of Client, in Consultant’s discretion, and Client remains responsible for the performance of Client’s Affiliates under such purchase order or Related Agreement, including payment of any amounts owed by them. An “**Affiliate**” of a Party means a third party that directly or indirectly (by the ownership of voting securities, contract, or otherwise) controls, is controlled by, or is under common control with, such Party.

1.3. Introductions

1.3.1. A “**Business Relationship**” is any relationship held by either Party to any former, prospective or existing employee, consultant, subcontractor, vendor, distributor, supplier, or customer. Throughout the Term of the Client Agreement, either Party may introduce (“**Introducing Party**”) the other Party (“**Introduced Party**”) to any Business Relationship, which person or entity is not already in a relationship with Introduced Party, whether by personal introduction, or making the other Party substantially aware of a resource or opportunity associated with that Business Relationship (“**Introduction**”).

1.3.2. An Introduction can be made through any form of notice including email, telephone, fax, mail, or voicemail.

1.1.1. “**Term**” is defined as: from the date of Client Agreement signature until notice of termination of the Client Agreement by either Party.

1.4. Products and Services

1.4.1. For Services that Consultant estimates will require up to eighty hours, Consultant shall commence providing Services, as Consultant has personnel available, after receipt of authorization, by email, fax or telephone, from any of Client’s personnel describing the Services to be provided, and if such Services actually requires more than eighty hours to complete, Consultant may continue work until Client directs Consultant to cease work. Services will be provided at the then standard rate.

1.4.1.1. For any request that Consultant estimates to require more than eighty hours of Services, a Related Agreement may be prepared.

1.4.1.2. Consultant shall be paid a retainer in advance of Services. Consultant shall invoice for an initial and routinely replenished retainer of ten thousand dollars for ongoing Services and shall adjust the retainer amount to accommodate expected Services.

1.4.2. Client may from time to time request Consultant’s assistance in evaluating one or more Products, which assistance may include meetings, proposals demonstrations and/or other activities. If Client elects to purchase any such Product, and/or if Consultant or Consultant’s Business Relationship is on-record with the associated OEM as “Partner of Record” or equivalent, Client shall make such purchase from or through Consultant, and any services in connection with such Product shall be purchased from and provided by Consultant, and not from, through or by any other party.

1.4.3. Consultant may offer multi-year discount offerings. These offerings are non-refundable, paid in advance, and deemed fully earned as of the date of receipt. For any associated and authorized increase in user count, modules, or applicable Products or Services, payment is due in advance for any prorated amount needed to purchase those Products or Services for the remaining balance of the elected term. For any associated and authorized decrease in user count, modules, and applicable Products or Services, Consultant will reconcile a prorated amount at the start of the next full year covered by the elected term for the remaining balance of the elected term years (“**Year End Adjustment**”) and issue remaining balance as a credit to the Client account. All discounts offered are honored and locked-in for the elected term period except for any adjustment made by a third-party Product or Service provider to the list price and/or maintenance pricing, in which case Consultant will reflect that change with a “**Year End Adjustment**”).

1.5. Third Party Vendors

Consultant may from time to time refer Client to third party vendors for specific products or services for Client to contract directly with those vendors. Consultant may receive a fee for such referral. Such vendors shall be considered Business Relationships of Consultant. However, Client’s contract with any such vendor is between Client and that vendor and Consultant has no involvement in or responsibility for that contract or the vendor’s performance under that contract. Such contract shall not be considered a Related Agreement.

2. Terms and Conditions

2.1. Requirements

During the Term, Client shall obtain from, or through, Consultant any and all licenses, maintenance, support or services relating to Services that Client requires and Client shall not obtain any of those items from a third party.

2.2. Independent Contractor and Staffing

Consultant, including its employees, subcontractors and agents, shall be an independent contractor to Client, and the existence of any agreement does not form an employer-employee, principal-agent, joint venture, partnership or any other relationship between the Parties. Consultant has no authority to bind or act on behalf of Client or to incur any debts or liabilities in the name of or on behalf of Client. Consultant is wholly independent and has and shall retain the right to exercise full control of and supervision over: (i) Consultant’s team members for activities within the scope of Consultant’s role in providing services under the Parties’ Agreements, hiring,

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paying, directing, supervising, assigning and discharging such team members, which may consist of employees and subcontractors of Consultant and Consultant's business alliances; and (ii) provision of Consultant's Services and Products and performance of all other Consultant obligations.

2.3. Payments

2.3.1. Depending on client product being supported, Client shall pay Consultant for Services at the standard Consultant hourly rate at the time the service is provided. Rates are subject to change. Consultant may offer a discounted rate which is conditional upon timely payment. Charges for Services under Parties Agreements shall be based on the time spent providing Services multiplied by the hourly rate. This includes time spent at Client premises and remote locations. On occasion, Consultant rates may vary depending on factors such as the level of expertise and experience of the personnel performing the work, the time and skill required, and the novelty and difficulty of the Services. If Client requests that Consultant work after 6:00 PM Mountain Time (or local time for on-site resources) or on weekends, resulting hours shall be billed at 1.5 times the applicable hourly rate. All dollar amounts in this ToS are stated in US Dollars.

2.3.2. Client may request to reserve specific personnel for "Designated On-Call" availability for priority work for a specific period of time during business hours. Time during which they are available shall be billed at 50% of hourly rates, and their actual work shall be billed at full rates for any hours spent providing Services.

2.3.3. Consultant shall submit invoices for Services and expenses as work is performed and prior to shipment of Products, and will order and ship Products once the payment has cleared. Payment is due within ten days of the date of Consultant Service, unless otherwise stated in the applicable Related Agreement. Work performed under Parties' Agreements shall be considered completed according to all requirements unless the work is disputed in writing within ten days of Service. All amounts not paid on-time shall bear interest at the rate of 1.5% per month or the maximum amount permitted by applicable law, whichever is less, and any previously applied discounts shall be recaptured, due and payable at any time thereafter when invoiced. If payment in full for Products and Services is not timely received by Consultant as provided herein, Consultant has the right to terminate Client's license and/or rights to use the Products, Deliverables (defined herein), and any other results of the Services, effective immediately upon notice to Client, and upon such notice Client shall immediately cease using the Products, Deliverables and other results of the Services. Client shall be responsible for and pay all taxes and government fees relating to Consultant provision of Services and Products, including sales, use and service taxes, except for Consultant taxes on net income. In no event shall Client be entitled to a unilateral offset, deduction or setoff of amounts invoiced.

2.3.4. In the event there is a billing error or dispute regarding the performance of Consultant, Client shall notify Consultant in writing within fifteen days after receipt of the invoice setting forth an explanation of the dispute in reasonable detail. All invoices are deemed accepted as-is unless such notification is received within such time period. Except to the extent the duties and obligations of either Party fall within the scope of said dispute, both Parties shall continue to perform their respective duties and obligations under the Agreements for the duration of the dispute and neither Party may terminate any Related Agreement or exercise any remedies for non-performance solely because the other Party has invoked this subsection. This subsection shall not preclude Consultant from correcting any errors in invoices.

2.3.5. In the event taxes are required to be withheld on payments made hereunder by any U.S. (state or federal) or foreign government, Client may deduct such taxes from the amount owed to Consultant and pay them to the appropriate taxing authority.

2.3.6. If Consultant, in its sole discretion, gives Client any credit, discount or other reduction in fees otherwise payable, and/or agrees not to bill Client for certain Services, whether or not reflected on any invoice (collectively, "Discounts"), the Parties understand and agree that any such Discounts are granted as an investment in the relationship and are provisional. If Agreements are terminated, the project is cancelled or terminated, there is any alteration to agreed upon products or services, and/or the relationship between Consultant and Client terminates, or is reduced for any reason, Consultant shall have the right to invoice Client for such Discounts and Client agrees to pay Consultant for such invoiced Discounts.

2.3.7. Consultant, in its sole discretion, may perform a credit check on Client. Consultant may require advance payment for Products and Services.

2.3.8. Long term enhancement, support, and hosting agreement fees are subject to change if Consultant's provider, vendor, or Partner increases fees by more than 5 (five) percent.

2.3.9. Consultant may provide discounted rates for payment in full in advance of certain projects or in other circumstances. To receive these discounts, Client shall pay by ACH in advance of fixed cost engagements or automatically and upon initiation by Consultant for variable cost engagements. Client authorizes Consultant to collect payments by ACH amounts without any further authorization by Client.

2.3.10. If in Consultant's sole discretion Client is not making timely payments for services, upon request by Consultant, Client shall authorize payments by ACH on a schedule communicated by Consultant.

2.4. Expenses

All expenses incurred that are directly related to the Services and delivery of Products shall be reimbursed to the Party providing Services. These include reasonable travel, courier charges, express mailing, and all other out-of-pocket expenses. For all travel in excess of thirty miles, half of the travel time is authorized for reimbursement. Mileage each way shall be reimbursed according to the IRS declared rate.

2.5. Software and Deliverables

2.5.1. Products may include one or more licenses to Client of software and related materials and documentation licensed by (i) Consultant or one of Consultant's Business Relationships ("**Consultant Software**"), and/or (ii) one or more third parties ("**Third Party Software**"). Client's use of Consultant Software and Third Party Software shall be governed by the license agreement for such software, if any, including any "shrink-wrap," "click-wrap," or other form of license agreement accompanying such software, whether in printed, electronic, or other format ("**License Agreement**"). License Agreements are not considered Related Agreement.

2.5.2. All software and related documentation provided by Consultant, whether Consultant Software or Third Party Software, is covered by such limited warranties, if any, as may be set forth in the applicable License Agreement. All rights and remedies for any errors or defects in any Consultant Software or any Third Party Software, including Client's right to recover any losses or damages suffered by Client as a result thereof, shall be limited and subject to such limitations as are set forth in the applicable License Agreement. Any claims relating to or arising from the use of any Third Party Software shall only be brought against the third party licensor of that Third Party Software, and Client shall not bring any such claims against Consultant, regardless of the basis of the claim. Maintenance and support for Consultant Software and Third Party Software may be available under a separate agreement.

2.5.3. Services may include the development of software, documentation or other materials to be delivered to Client (each is a "**Deliverable**" and the term Services includes all Deliverables). Deliverables may at Consultant's option include derivative works and incorporate concepts, know-how, ideas, techniques, wording, modules, subroutines and other materials previously developed by Consultant on prior projects or otherwise. Subject to payment in full for the Services and Client's compliance with the Agreements, Consultant grants to Client a worldwide, personal, non-exclusive, non-transferable (except as otherwise specifically permitted by the Agreements), royalty-free, license to use Deliverables for Client's internal business purposes. Except as set forth in a Related Agreement, (i) Client may not allow any third party to use any Deliverable, and (ii) Client may not modify, reverse engineer, or copy any Deliverable (except as may otherwise be permitted by applicable law).

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2.5.4. Except for the licenses granted to Client for Deliverables and under a License Agreement, Consultant retains all ownership rights to Consultant Software and Deliverables.

2.6. Confidential Information

2.6.1. The Parties agree that during the Term of and by virtue of the Agreements, the Parties have and/or shall come into contact with, be given or have access to various forms of information and materials from Business Relationships and/or the Disclosing Party which is confidential information, trade secrets, or proprietary information (“**Confidential Information**”) which are the property of the Disclosing Party or of a Business Relationship. Such Confidential Information includes past, present and future, actual, considered, and planned, draft, original, archive, and backup of: (i) financial and business information, such as information with respect to revenue, profits, sales, costs, pricing, commissions, fees, markets, mailing lists, strategies and plans, pricing, Business Relationships, customer lists, project management procedures, marketing and sales information, project-specific information, business plans, acquisitions or divestitures, and agreement terms; (ii) product, service and technical information, such as product formulations, new and innovative product ideas, methods, procedures, devices, machines, equipment, custom software in development or in production data processing programs, software, software codes, software activation/registration keys, estimating methods, price databases, computer models, and research and development projects; (iii) personnel information, such as recruiting techniques, the identity and number of the Disclosing Party’s Business Relationships, their salaries, bonuses, benefits, skills, qualifications, and abilities; (iv) any form of intellectual property; (v) know-how, documents, reports, plans, proposals, notebooks, memoranda, files, samples, summaries, and books affecting or relating to the business of the Business Relationships, which may be prepared, used, constructed, observed, or possessed; (vi) any “Writing”, which means handwriting, typewriting, printing, photostating, photographing, photocopying, abstracts, audio/visual files or recordings, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored; and (vii) software, databases, systems, electronically stored data or information, computer programs, source code, object code, software tools, application data, configuration files, and frameworks.

2.6.2. The Receiving Party acknowledges and agrees that the Disclosing Party is engaged in a highly competitive business and that its competitive position depends upon its ability to maintain the confidentiality of the Confidential Information which was developed, compiled and acquired by them at great effort and expense. The Receiving Party further acknowledges and agrees that any disclosure, divulging, revelation or use of any of the Confidential Information, other than as specifically authorized under the Agreements by the Disclosing Party, shall be highly detrimental to the Disclosing Party, and cause irreparable injury, for which money damages could not reasonably or adequately compensate the harm. The Disclosing Party shall therefore be entitled to seek equitable relief including specific performance and/or an injunction as a remedy for the Receiving Party’s breach of the Agreements, which remedy shall be in addition to all other remedies available at law or equity to the Disclosing Party. The Receiving Party shall indemnify and hold harmless the Disclosing Party from and against any damages, losses, costs or liabilities (including legal fees and the costs of enforcing the Agreements) arising out of or in connection with any unauthorized use or disclosure of the Confidential Information or any other violation of the Agreements.

2.6.3. With respect to Confidential Information of the Disclosing Party and their Business Relationships, the Receiving Party agrees to utilize such information solely in the performance of duties for Disclosing Party. Additionally, the Receiving Party shall not disclose such Confidential Information except to authorized personnel, except as permitted under the Agreements. The same degree of limits on disclosure apply to any Confidential Information learned by a Business Relationship regarding any aspect of their business interests; and any other information that the Receiving Party has received from a third party which it is obligated, by its identification as confidential or by its nature, to treat as confidential or proprietary. If the Receiving Party has any questions as to what comprises such Confidential Information, the Receiving Party agrees to consult with an officer of the Disclosing Party. Each Party shall have a written agreement in place with any Business Relationship (including its employees) that shall receive the Confidential Information sufficient to require such Business Relationship and its employees to treat the Confidential Information in accordance with the Agreements. In complying with the confidentiality and usage restrictions hereunder the Receiving Party shall use commercially reasonable standards and no less care than it uses with its own similar information.

2.6.4. The obligations enumerated in this Section titled “Confidential Information” shall continue for a period of ten years after the disclosure of Confidential Information, unless (i) the information is or becomes publicly known through no wrongful act on the Receiving Party’s part, (ii) the Receiving Party already knew the information prior to the execution of the Client Agreement, other than by disclosure by the Disclosing Party or Disclosing Party’s Business Relationships, (iii) the Receiving Party received the information without any wrongdoing from someone outside the Disclosing Party and the Disclosing Party’s Business Relationships who, to the receiving Party’s knowledge, does not have an obligation to keep the information confidential, (iv) the information is explicitly approved, in writing, for release by an Officer of the Disclosing Party or (v) if Consultant’s subcontractor or other independent contractor independently violates this provision through no gross negligence of Consultant.

2.6.5. Nothing shall prohibit or limit either Party’s use of ideas, concepts, know-how, methods, techniques, skills, knowledge and experience that were used, developed or gained in connection with the Client Agreement on the condition that such use shall (i) not breach or be inconsistent with ownership provisions set forth herein and Confidential Information provisions and (ii) not infringe the other Party’s rights in copyright. Furthermore, nothing shall confer on either Party any rights or benefits in respect to the other Party’s trademarks, trade dress, copyrights, patents, inventions, Confidential Information, trade secrets, know-how or other proprietary items.

2.6.6. In the event the Receiving Party receives a subpoena or other validly issued order pursuant to administrative or judicial authority demanding Confidential Information of the Disclosing Party, or is otherwise required by applicable law to disclose Confidential Information, the Receiving Party shall promptly notify the Disclosing Party in writing and shall tender to it the defense of such demand or requirement prior to disclosing any such Confidential Information. Unless the demand or requirement has been timely limited, overcome, quashed or extended, the Receiving Party shall thereafter be entitled to comply with such demand or requirement to the extent required by law. If requested by the Disclosing Party, the Receiving Party shall reasonably cooperate (at the cost and expense of the Disclosing Party) in the defense of a demand or requirement.

2.7. Non-Solicit; No-Hire

2.7.1. Restricted Activities. With respect to Business Relationships discussed or disclosed in connection with the Parties’ discussions and activities under the Agreements, unless approved in writing by Consultant, at all times during the Term of the Agreements and for a period of three years following termination of an Agreement (the “**Reserved Period**”), Client agrees that they shall not engage in the following activities nor facilitate or enable another person’s or company’s engaging in the following activities in the USA. The following list shall apply to all past Introductions, as well as Introductions made under the Agreements. Performance of any of the following actions would constitute improper use of Confidential Information. With respect to Consultant and its Business Relationships, Client shall not during the Reserved Period and in the USA:

2.7.1.1. solicit, induce or attempt to influence, directly or indirectly, any employee, subcontractor, or other Business Relationship of Consultant to terminate his/her employment or engagement and/or to work for or be engaged by Client or for any other party, in any Competing Business (defined below), as an employee, subcontractor, or other new Business Relationship of their own or their Business Relationships, or to breach any existing written or verbal agreements;

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2.7.1.2. for or in any Competing Business, employ or engage as a consultant, subcontractor, or as any other new Business Relationship any person or entity to whom they are an Introduced Party;

2.7.1.3. recommend or suggest to any other person or entity that such person or entity solicit, employ, hire, or engage for or in any Competing Business anyone to whom they were an Introduced Party;

2.7.1.4. except for purposes that do not have a reasonably viable adverse consequence to Consultant and do not involve a Competing Business, solicit business from or provide services to such Business Relationships, cause or aid in a third party's solicitation or servicing of the business of such Business Relationships, directly or indirectly, as a shareholder, employee, partner, joint venturer, associate, consultant, independent contractor or otherwise; or

2.7.1.5. engage directly or indirectly in any activity which may adversely affect the Consultant.

2.7.1.6. "**Competing Business**" shall mean any form of business activity that at any time competes in any way, in whole or in part, with any business activities of Consultant, including any business activities of Consultant provided or conducted by or through any Business Relationship of Consultant. Client shall in all cases obtain Consultant's prior written approval that any business activity does not constitute a Competing Business, and if such prior written approval is not obtained with respect to any business activity, such business activity shall be a Competing Business.

2.7.2. In the event of any breach of the provisions of this Section titled "Non-Solicit; No-Hire," the Client shall pay to the Consultant, as liquidated damages and not as a penalty, an amount equal to (as applicable): (i) if the party so solicited, induced, influenced, employed or engaged is or was an employee of the Consultant, twice the total annualized compensation to employee; or (ii) if the party so solicited, induced, influenced, employed or engaged is, was, or is being considered a partner, subcontractor or consultant of the Consultant, the annualized value of full-time engagement at the Company established rate with that subcontractor; or (iii) if the party so solicited, induced, influenced, employed or engaged is or was an End Client of the Consultant, three years of the annualized amount or value of the business conducted between the Consultant and the End Client; or (iv) for any other activity that adversely affects the Consultant, the greater of three times the annual value of lost business or other adverse effect to the Consultant. It is agreed that the amount of damages, which would be suffered as a result of a breach of the foregoing provisions of this Section titled "Non-Solicit; No-Hire" would be difficult to measure and that such amount constitutes a reasonable estimate of the damages that would be incurred for such a breach.

2.8. Limitation of Liability

2.8.1. IN NO EVENT SHALL CONSULTANT BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE LOSSES OR DAMAGES (INCLUDING BUSINESS INTERRUPTION OR LOSS OF DATA, REVENUE, OR PROFITS OR COST OF COVER), EVEN IF CONSULTANT HAS BEEN ADVISED OR MADE AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES OR DAMAGES AND REGARDLESS OF WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LIABILITY.

2.8.2. Consultant's cumulative liability under the Agreements (including liabilities arising out of contract, tort, strict liability, warranty, or any other theory of liability) shall not exceed (i) in the case of Services, the amount of the fees payable by Client for the specific Services at issue, and (ii) in the case of any Product, the amount of the license fee, sales price, or other charge payable by Client for such Product.

2.8.3. EXCEPT FOR ANY EXPRESS LIMITED WARRANTY PROVIDED IN AN AGREEMENT OR IN A LICENSE AGREEMENT DESCRIBED HEREIN, THE PRODUCTS AND SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY EXPRESS OR IMPLIED, AND CONSULTANT HEREBY DISCLAIMS ANY IMPLIED WARRANTIES (INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT). THE PARTIES DISCLAIM THE PROVISIONS OF, AND WAIVE ANY RIGHTS UNDER, THE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT, THE UNIFORM COMMERCIAL CODE OR ANY OTHER LEGISLATION PROVIDING FOR ANY IMPLIED TERMS TO BE INCLUDED UNLESS THE PARTIES AGREE OTHERWISE, AND NONE OF SUCH PROVISIONS SHALL APPLY TO THE AGREEMENTS, THE PRODUCTS OR THE SERVICES (INCLUDING ANY DELIVERABLE).

2.8.4. If the performance of any of Consultant's obligations under the Agreements is prevented, restricted, delayed, or interfered with by any cause beyond Consultant's reasonable control, then Consultant shall be excused from such performance to the extent of such prevention, restriction, delay, or interference. Causes beyond Consultant's reasonable control include, (i) causes of nature, governmental action, flood, fire, arson, acts of terrorism, or civil disturbance, (ii) problems with transportation, any third party hardware or software, any hardware or software provided by Client, any telecommunications devices or connections, or anything for which Client is responsible, (iii) any failure by Client to disclose all relevant information known by Client which is necessary to the proper and timely performance of Consultant's Services, (iv) any other acts or omissions of Client or Client's employees, subcontractors, or agents, (v) malicious third-party attacks, or (vi) any failure of any supplier.

2.8.5. Client will add Consultant as an Additional Insured on its insurance policy and/or indemnify Consultant against any third-party claims arising out of this contract.

2.8.6. In addition, if the performance of any of Consultant's obligations under the Agreements is prevented, restricted, delayed, or interfered with by any cause within the reasonable control of Client or any of Client's Affiliates or by reason of any act or omission by Client or any of Client's Affiliates, then the time to complete such Services shall be extended for a like period of time and any additional Services occasioned thereby shall be invoiced to and payable by Client.

2.8.7. Consultant is only liable for acts or omissions performed by its officers or failure to cure breaches of Consultant's obligations following written notice from Client within 24 hours of knowledge of breach.

2.9. Estimates

Consultant is often requested to provide fee estimates initially or during the course of projects. In many cases it is very difficult to give meaningful fee estimates except as to the most routine procedures. Accordingly, while Consultant may on occasion render oral or written fee estimates, these estimates are provided as a courtesy and are not binding, and are subject to adjustment as the facts and circumstances of the projects require.

2.10. Dispute Resolution Process

2.10.1. In the event that either Party believes the other Party has breached any of its obligations under the Agreements, or there is any claim, controversy or dispute between the Parties (a "**Dispute**"), the Party alleging the Dispute shall provide written notice to the other describing in reasonable detail the specifics of its claim. Upon delivery of such notice, if the breach is a breach of the Section titled "Confidential Information," the breaching Party shall immediately cure the breach and use best efforts to prevent any further breach; and the non-breaching Party shall be entitled to pursue equitable relief without being required to follow the provisions of this Section titled "Dispute Resolution Process."

2.10.2. Upon delivery of such notice, if the breach is not a breach of such Section, the alleged breaching Party shall either (i) cure within sixty days or identify a plan to cure that is acceptable to the alleging Party, or (ii) request a meeting between the appropriate representatives of each Party to discuss the alleged breach and seek a mutually acceptable resolution. The Parties shall use all reasonable efforts to settle by amicable negotiations any such Dispute which may occur between them in

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connection with the Agreements. If the Dispute has not been settled within fifteen days of the notice, either Party may, by notice, escalate the Dispute to any senior management at any level within the Parties' respective organizations that each Party deems most likely to reach mutual resolution. The Parties shall arrange for a face-to-face meeting within fifteen business days of the written notice of escalation and use good faith efforts to resolve the Dispute at that meeting or agree in writing to a process and timeline for resolving the Dispute. If such individuals or departments of both Parties have not settled the Dispute within fifteen days after the notice, and, if applicable, if senior management has not met within the required fifteen business days of the notice of escalation, either Party may pursue legal action as prescribed in the following subsection. Collectively, the time during which the Parties attempt to cure the Dispute before formal legal action may be taken shall be referred to as the "**Dispute Cure Period.**"

2.10.3. If a resolution has not been reached by the end of the Dispute Cure Period or such later date as mutually agreed, either Party may within one year of the initial notice of the Dispute invoke the following process as the exclusive means for resolving any Dispute that the Parties are unable to resolve otherwise (except as otherwise provided herein): unless Parties mutually agree to mediation, the Dispute shall be subject to resolved exclusively by final and binding arbitration administered by JAMS in Colorado, before one arbitrator. All mediation and arbitration proceedings, and all communications relating thereto shall be confidential.

2.10.4. Any arbitration proceedings shall be conducted and evidence taken in accordance with the Federal Rules of Civil Procedure. Each Party shall bear its own expenses of arbitration, and the arbitrator shall not make any award in conflict with the provisions of the Agreements. The award of the arbitrator shall be final and binding upon each Party, and judgment upon any award rendered therein may be entered and enforced in any court of competent jurisdiction.

2.10.5. Notwithstanding anything to the contrary in an Agreement, each Party shall have the right to effect collection of payments due hereunder, and for such purposes the Parties hereby irrevocably consent to the sole and exclusive personal and subject matter jurisdiction of the courts located in Colorado and waive their right to a jury trial.

2.10.6. No action, regardless of form, arising out of the transactions contemplated under the Agreements may be brought more than one year after the cause of action accrues.

2.10.7. The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys' fees incurred in enforcing the Agreements.

2.11. Term; Termination

2.11.1. Terms of Service are subject to change. Before any changes go into effect, Consultant will provide Client at least 30 days' notice and opportunity to object to any changes.

2.11.2. Aside from previously agreed upon rates for Services, all other terms of the Agreements shall remain in effect for all business previously begun between Parties.

2.11.3. Each Related Agreement shall terminate upon the earliest of the date specified, if any, on the Related Agreement, or the completion of the Services and/or delivery of the Product specified in the Related Agreement.

2.11.4. In the event of any breach or default by Client under the Agreements, including any failure to pay an amount when due, Consultant may, in addition to other rights and remedies and not in lieu thereof, suspend the performance of any or all obligations during the continuance of such breach or default without giving rise to recourse or an action against Consultant. Any such suspension may also impact any expected schedule for performance, warranties, and may result in additional Services arising from such suspension. If Client breaches any provision of the Agreements, Client shall immediately notify Consultant of such breach. In the absence of such notification and later discovery of a breach, Client will be liable for Consultant's costs of litigation.

2.11.5.

2.11.6. The provisions contained in Agreements and/or the ToS that by their sense and context are intended to survive termination of the Agreements shall survive the termination of the Agreements, including the provisions of the following Sections titled "Software and Deliverables," "Confidential Information," "Non-Solicit; No-Hire," "Limitation of Liability," "Dispute Resolution Process," "Construction," "Governing Law," "Notice," "Severability," "No Disparagement," "Non-Waiver," "Press Releases & Publicity," "Remedies Cumulative," and "References."

2.12. Counterparts

2.12.1. Each of the Agreements may be executed in any number of counterparts, whether by original signature, scanned documents or by fax, each of which shall be deemed an original and all of which together shall be deemed to be the same instrument.

2.13. Severability

2.13.1. It is the desire and intent of the Parties that the provisions of the Agreements shall be enforced to the fullest extent permissible under the laws and public policies applied in the state in which enforcement is sought. Accordingly, if any provision of the Agreements is adjudicated to be illegal, invalid, or unenforceable under present or future laws and/or public policies, it is the specific intent and agreement of the Parties that such provision shall be deemed amended to delete the portion adjudicated to be illegal, invalid, or unenforceable in the specific jurisdiction so adjudicated. The Agreements shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision, or by its severance herefrom. Furthermore, in lieu of such provision, there shall be added automatically, as a part of the Agreements, a provision similar in terms as such illegal, invalid or unenforceable provision as may be possible and be legal, valid, and enforceable.

2.13.2. Contract Interpretation. Section numbers and captions are provided for convenience of reference and do not constitute a part of Agreements. Any references to a particular Section of an Agreement shall be deemed to include reference to any and all subsections thereof. Despite the possibility that one party or its representatives may have prepared the initial draft of an Agreement or any provision thereof or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them shall be deemed the drafter of an Agreement and that, in construing an Agreement, no provision hereof shall be construed in favor of one party on the ground that such provision was drafted by the other.

2.14. No Disparagement

From the time of execution of the Agreements and for two years after termination of the Agreements, each Party shall not communicate any message, publicly or privately, that reasonably may be intended to demean, defame, discredit, disparage or otherwise harm the reputation of the other Party, the interest of the other Party's prospects, or loyalty of the other Party's employees, customers, End Clients, subcontractors, or Business Relationships to which there was an Introduction.

2.15. Non-Waiver

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The failure of either Party, whether purposeful or otherwise, to exercise in any instance any right, power or privilege under the Agreements or under law shall not constitute a waiver of any other right, power or privilege, nor of the same right, power or privilege, in any other instance. Any waiver by either Party must be in writing and signed by the Party making such waiver. Each Party acknowledges and agrees that they do not have any authority to make a waiver on behalf of the other Party with respect to the Agreements.

2.16. Tortious Interference

Client understands that Consultant's relationships with its Business Relationships are a fundamental cornerstone of its business and protected by contract with those parties, requiring that they not engage in business with current or recent Clients without engaging through Consultant. Client further understands that interfering with the same constitutes tortious interference.

2.17. Press Releases & Publicity

Except as otherwise expressly permitted under the Agreements, all media releases, public announcements and other disclosures by either Party relating to the Agreements, any Related Agreement or the subject matter hereof or thereof, including promotional or marketing materials, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by the other Party in writing prior to release.

2.18. Remedies Cumulative

The remedies specified in the Agreements are cumulative and are in addition to any other rights available at law or in equity.

2.19. Staffing Services

Staffing Services are described in the Exhibit titled "Staffing Services," which is attached and incorporated herein, and which shall be known as the "**Staffing Services Agreement**." The Staffing Services Agreement is a part of the Agreements and is subject to all terms and conditions of the Agreements.

2.20. References

Client agrees to act as a reference account for Consultant, including the following: (i) permitting Consultant to write and publish a case study about the Products and Services provided (subject to Client's reasonable review and approval of the content of any such publication); (ii) permitting Consultant to identify Client as a customer of Consultant in press releases (subject to Client's reasonable review and approval of the content of any such release); (iii) acting as a customer-to-customer reference for Consultant's services (in Client's reasonable discretion), and (iv) permitting Consultant to identify Customer by name, logo and/or story to describe the relationship and/or value delivered.

2.21. Assignment or Transfer

Agreements, and Consultant's rights and obligations hereunder, may be assigned or transferred by Consultant without the prior written consent of Client. Agreements shall be binding upon, and inure to the benefit of, Consultant and its successors and assigns. Client shall notify Consultant of any ownership changes within thirty (30) days of the change along with any required modification to company name and contacts. In the event that Client attempts to assign or transfer an Agreement to a successor or third party, without Consultant's prior written consent, Consultant shall have the right to accept or reject such assignment or transfer. Any acceptance of such an assignment or transfer shall not be unreasonably withheld. In the event of an assignment or transfer, the successor entity shall be obligated to complete any active Related Agreement with Consultant.

2.22. Governing Law

The Agreements shall be governed by the laws of the State of Colorado, without giving effect to its conflict of law provisions. In the event that a Party seeks equitable relief, the Parties consent to sole and exclusive jurisdiction and venue in the state and federal courts in Colorado.

2.23. Review of Record. At the sole discretion of Consultant, Client shall provide, within 48 business hours of request, (i) full accounting records of any Product Orders or Services provided by a third party since the signing of an Agreement including all known Product and/or Service details, Product sales, hours quantity and rates paid, and (ii) full disclosure of all applicable details that may be relevant and/or requested by Consultant. Any previously undisclosed or incorrect information shall be deemed a material breach and automatically obligate Client to Consultant's legal, mediation and/or arbitration costs ("**Legal Costs**") for discovery/investigation of that breach and twice damages. Any later discovered undisclosed or incorrect information shall obligate Client to Consultant's Legal Costs for discovery/investigation and thrice damages.

2.24. Modification & Amendments

Any changes to the Client Agreement or Related Agreement from its original draft state, must be iterated in writing. Any and all changes are voided if not explicitly communicated to Consultant through visibly tracked changes and/or explicitly communicated and agreed to in the body of an email with receipt of confirmation. After execution of an Agreement, the Agreement may not be modified, altered or changed except in writing, wherein specific reference is made to this Client Agreement, and signed by both Parties hereto.

3. Notice

Any written notice or other written communication to a Party shall be either delivered personally, sent by fax with record of delivery, sent by express carrier for next business day delivery or by United States registered or certified mail, return receipt requested and postage prepaid, or by email, and shall be deemed given when personally delivered or sent by fax, three business days after deposit with an express carrier, five business days after mailing or upon receipt when sent by email. Notices shall be sent to a Party's address, fax number or email set forth in this Client Agreement or such other address or fax number as such Party may specify in writing.

3.1. Construction

The headings contained in the Agreements are for reference purposes only and shall not affect the meaning or interpretation of the Agreements. The Parties acknowledge that they have been given the opportunity to object to, request modification of, or reject any clause or provision herein to which they do not agree. Each Party and any chosen counsel have participated in the review and revision of the Agreements. Any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in interpreting the Agreements. The language of the Agreements shall be construed as a whole, according to its intent, and not strictly for or against either Party, regardless of who drafted or was primarily responsible for drafting any of the language in the Agreements. The term "**including**" means by way of example and not limitation. All terms in the Agreements that are capitalized, other than names of products, people and places, shall have the meanings ascribed to them in the Agreements.

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Exhibit A Staffing Services

1. Staffing

1.1. Staffing Definitions

1.1.1. Client may request Consultant facilitate an Introduction to prospective employees of Client (“**Hiring Party**”) identified by Consultant (“**Candidate**”) for Client to evaluate for direct employment (“**Employment**”) or eventual employment after a period of consulting services (“**Contract-to-Hire**”). Consultant Services consisting of identifying and facilitating Introductions to Candidates for Employment and/or Contract-to-Hire shall be referred to as “**Search**”.

1.1.2. To initiate a Search request, Hiring Party must provide Consultant a description of the position for which Hiring Party is hiring (“**Job Requisition**”) and Consultant must submit Candidate in response to that Job Requisition. Any other Introduction shall not be considered for Search purposes and shall be subject to the terms of the Section titled “Non-Solicit; No Hire.”

1.1.3. Client may request a Search be conducted: (i) for which Client pays 50% of Search Fees to Consultant after Consultant’s receipt of Job Requisition and 50% after Candidate begins Employment with Hiring Party (“**Retained Search**”); or (ii) for which Client pays all Search Fees to Consultant after the date Candidate’s Employment begins (“**Contingent Search**”).

1.1.4. “**Search Fee**” shall mean the fees payable to Consultant with respect to a Candidate hired as an employee by Hiring Party or retained by Hiring Party on a Contract-to-Hire basis.

1.1.5. “**Planned Compensation**” shall mean Candidate’s first year base salary, at-plan bonus and commissions for the first year.

1.1.6. Client acknowledges that it is Consultant policy not to discriminate in recruiting or referring Candidates or engaging consultants on the basis of race, color, religion, sex, sexual preference, age, national origin, marital status or disability.

2. Terms

2.1. Search Fees

2.1.1.

Search Type	Search Fee	Payments for Employment	Payments for Contract-to-Hire Option
Contingent	25% Planned Compensation	Upon Employment	“Contract” portion treated as Services plus If hired within first six months: Search Fee * (26 weeks - weeks worked on Contract) / 26
Retained	20% Planned Compensation	50% Start of Search 50% Upon Employment	“Contract” portion treated as Services plus If hired within first six months: Unpaid 50% of Search Fee * (26 weeks - weeks worked on Contract) / 26

2.1.2. Employed Candidates’ Termination. If all Search Fees have been paid in accordance with the terms herein, and if the Candidate’s Employment is terminated by Candidate or Hiring Party within ninety days and, within that time, Client issues such a request, Consultant will renew the Search at no cost to Client and provide, in earnest, Search related activity normally associated with a Retained Search, whether or not the original Search was a Retained Search. The immediately preceding sentence shall not apply, however, in the case that a Candidate’s Employment is terminated for reasons other than Termination for Cause. “**Termination for Cause**” means termination for reasons related to performance or illegal activity and/or material breach of any agreement between Client and Candidate. Additionally, Consultant will not have an obligation to renew the Search if there is a substantive change in the position description, the position is eliminated, or there is a reduction in compensation.

2.2. Prior Relationship

2.2.1. Unless Hiring Party and Candidate, at the time of Candidate Introduction, already have scheduled or have held, within the immediately preceding two months, any interviews with each other, Hiring Party shall be responsible for paying any Search Fees resulting from a Search and subsequent Employment of or any consulting arrangement with, or Contract-to-Hire with a Candidate that occurs within one year of Candidate Introduction or, if applicable, a subsequent Introduction of that Candidate, whether directly hired or retained by Hiring Party or hired or retained by a third-party as a result of Hiring Party referral to such third party. Upon request by Consultant, Client shall provide Consultant with sufficient documentation to establish that such an interview has been held or scheduled.

2.3. Guarantee

2.3.1. Client guarantees that Client will (i) provide all the details needed to enable Consultant to identify the optimal Candidate, (ii) provide timely responses and feedback on any Candidate Introduction and/or interviews, (iii) immediately notify Consultant of any changes to the position, (iv) immediately notify Consultant of a decision to hire any Candidate for the position or terminate any hired Candidate, (v) not rely on Consultant to qualify prospective Candidates and will interview and conduct such investigations as Client deems appropriate to verify the accuracy of Candidate representations, and (vi) allow Consultant access to payroll records in the event of a dispute in the Candidate compensation levels.

2.3.2. Consultant shall (i) develop a general understanding of the Client business and culture and of the position criteria, (ii) perform a search for Candidates, (iii) screen candidates for the criteria defined in Client Job Requisition through analysis of resumes and telephone interview /or (iv) accurately present Candidate to Hiring Party, and (v) promote the Hiring Party’s business, (vi) for Retained Searches refer at least three qualified candidates for each Job Requisition. Candidates are considered qualified if Hiring Party elects an in-person interview with Candidate.

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2.4. Non-Solicit; No-Hire of Candidates

2.4.1. This Section is in addition to, and not in lieu of, the provisions of the Section titled “Non-Solicit; No-Hire” herein. Unless approved in writing by Client, for the Candidate Reserved Period, Consultant shall not engage in any of the following activities nor facilitate or enable another person’s or company’s engaging in the following activities. Consultant shall not:

2.4.1.1. solicit, induce or attempt to influence such Candidate, directly or indirectly, to terminate his/her Employment or Contract-to-Hire engagement and/or to work for or be engaged by Consultant or any other party, as an employee, contractor, subcontractor, or in any other capacity; or

2.4.1.2. recommend or suggest to any other person or entity that such person or entity solicit, employ, hire, or engage such Candidate.

2.4.2. “**Candidate Reserved Period**” shall mean:

2.4.2.1. If the Candidate is not selected by the Hiring Party for Employment or a Contract-to-Hire engagement, a period of one year after such Candidate is Introduced to Client by Consultant; or

2.4.2.2. If the Candidate is selected by the Hiring Party for Employment or a Contract-to-Hire engagement, the entire period of Candidate’s Employment or Contract-to-Hire services.