

## IT MASTER SERVICES AGREEMENT

This IT Master Serv Agreement including this agreement and any exhibits or attachments attached hereto (together “Agreement”) is by and between Endeavor, (“Endeavor” or “Provider”) and the individual and/or entity reflected on the signature line below (“Customer”) for the purchase of contracted hardware and software, various professional services, and/or managed services together, (“Services”) and governs the business relationship between Provider and Customer and all transactions between such parties. This MSA is effective as of \_\_\_\_\_ the “Effective Date”) and shall remain in effect until terminated in accordance with Section 11 here within

### 1. DEFINITIONS

**a. Change Order.** A Change Order is a document which modifies a previously executed Service Order. A Change Order is required when material changes or additional work are requested by Customer which may cause an NRC to be incurred or an increase or decrease in the current MRC being charged to Customer. Provider will detail the changes on the Change Order using the same or similar methods to those used in the preparation of the original Service Order. Once executed by both Parties, a Change Order will become part of the Service Order to which it relates. The Provider may determine, in its reasonable discretion whether the requested changes require a new Service Order as opposed to a Change Order.

**b. Effective Date.** The “Effective Date” as set forth in the preamble to this MSA and as used herein, shall refer to the date upon which this MSA becomes binding on the Parties. The “Term” shall be determined as set forth in Article 10 below.

**c. Managed Services (“MS”).** Managed Services includes ongoing monitoring, maintenance, remediation (problem resolution), administration, support or consulting work performed by Provider for Customer for a fixed contract period with a defined scope. The specific terms of MS to be provided are contained in an MS Service Order as described below.

**d. Service Order.** A Service Order is a document that defines the MS or PS to be performed by Provider for Customer and includes: The Service Order term (“Term” usually specified in months), a list of the Services to be provided, a detailed description of the Services, the NRC, the MRC, and any special terms or conditions associated with the Service. The Parties may enter an unlimited number of Service Orders under the terms of this MSA, each of which will be subject to the terms of this MSA once executed by both Parties and shall reference this MSA as the governing terms and conditions.

**e. Monthly-Recurring Charge (“MRC”).** A monthly- recurring fee for continual services rendered under the terms of a Service Order.

**f. Non-Recurring Charge (“NRC”).** A one-time, non- recurring fee to (i) initiate a Service Order, also referred to as a “Setup Fee” or “Transition Fee” or (ii) perform other non- recurring Services.

**g. Professional Services (“PS”).** Professional Services are project-based services provided to Customer including consulting, staff augmentation, application development, integration, design, installation, configuration, support, project management and other services performed by Provider’s employees, agents, subcontractors, consultants and representatives, as detailed in a PS SOW (as defined below).

**h. SOW.** A “SOW” is a document that details the professional services to be performed for Customer, or key assumptions related to a MS. A SOW is issued as part of a Service Order.

## 2. CONDITIONS

- a. Endeavor reserves the right to add, alter, update and maintain supported systems, with agreement by the customer based on customer internal change control procedures.
- b. All computers that are certified by Endeavor staff qualify for support, machines that do not qualify will be worked on, with a best effort methodology. Endeavor reserves the right to cease working on computers that are too old or have been modified beyond the original specs. Software and hardware that is outdated or not in support may not qualify for the unlimited fixed cost model.
- c. Parameters for Server and Network Support: All server's/network devices that are certified by Endeavor's staff qualify for support, server's/network devices that do not qualify will be worked on, with a best effort methodology. Endeavor reserves the right to cease working on server's/network devices that are too old or have been modified beyond the original specs. Software and hardware that is outdated or not able to be

## 3. SERVICES AND PRODUCTS

- I. **Professional Services** - Under the terms of this MSA, Customer may choose to purchase PS where each project is initiated by a separate SOW in a Service Order.
  - a. **Personnel.** Provider shall provide the necessary skilled personnel to perform the PS described in the applicable Service Order. Customer reserves the right to request a change in the assigned personnel as required by its business needs or as otherwise required to complete the PS. If such a change is requested by Customer, the Provider shall use commercially reasonable efforts to accommodate such request and the Parties shall enter a Change Order if, in the Provider's reasonable discretion, such change constitutes a change the skill level or skillset being provided.
  - b. **Invoicing and Payment for PS.** PS fees typically involve either a Fixed-Price fee or "Time and Materials" fee ("T&M") or a combination of both, as defined in the applicable Service Order. For Fixed-Price fees, Provider shall invoice Customer upon completion of billable milestones as defined in the applicable Service Order or at the end of each month based on the percentage of work performed. For T&M Service Orders, Provider shall invoice Customer at the end of each month based on work performed, or as otherwise outlined in the individual Service Order. All such invoices shall be payable thirty (30) days from the date of invoice.
  - c. **Price Increases.** Prices are subject to change based on market conditions and compliance. As such, all fees shall be subject to a price adjustment to account for increased cost of labor, tools and regulations. Any such adjustment shall not exceed 5% per year based from the original pricing date and shall be at the sole discretion of Endeavor. If the adjustment exceeds 5%, Endeavor will inform the customer in writing of such increases.

- II. Managed Services** – Under the terms of this MSA, Customer may choose to purchase MS, where each MS engagement is initiated by a separate Service Order, as defined above.
- a. **Service Level Agreement (“SLA”).** If purchasing MS, Customer acknowledges and hereby agrees to be bound by Provider Service Level Agreement (“SLA”).
  - b. **Order Acceptance.** A Service Order or Change Order is considered accepted by Provider when the Service Order or Change Order, as is applicable, is returned to Customer via email, fax or mail countersigned by an Authorized Executive (as defined herein) of Provider.
  - c. **Initial Term and Renewal.** The Term of any individual Service Order shall be set forth in such document. A Term shall automatically renew for an additional term equal to such initial Term unless written notice by either Party is provided to the other Party at least thirty (30) days in advance of the expiration of such Term. Unless otherwise specified in the applicable Service Order or a related Change Order, when Customer and Provider agree to a Change Order, the term for such Change Order, if longer than the then current Term of the applicable Service Order, shall automatically replace the then current Term of that Service Order.
  - d. **Price Increases.** At any twelve-month interval (month 12, 24, 36, etc.), all fees shall be subject to a price adjustment to account for increased cost of performance over time. Any such adjustment shall not exceed the CPI per year based from the original pricing date and shall be at the sole discretion of Endeavor.
  - e. **Scheduled Start Date.** Any scheduled start for a Service Order, whether provided by Provider in writing or orally, are estimates as to when the Services contemplated by that Service Order will be fully deployed and available for Customer use. Provider cannot guarantee a date for full deployment and shall therefore not be subject to any liability for its failure to meet any scheduled start date.
  - f. **Cancellation.** Subject to the specific terms of this MSA, no Service Order may be cancelled before the end of the existing Term.
  - g. **Changes.** Changes to any Service Order may be made only upon the mutual written agreement of the Parties. No changes or additions shall be implemented or acted upon until both Parties execute the Change Order.
  - h. **Customer Responsibilities.** Customer shall support the Services of Provider in all reasonable technical, administrative, and commercial way and shall provide Provider with all documentation, statements, and credentials reasonably requested for Provider to perform the Services. Customer shall also be responsible to satisfy certain prerequisites before work by Provider can begin as set forth in the applicable Service Order. Provider shall not be responsible for delays caused by Customer.
  - i. **Related Hardware and Software.** Customer understands and acknowledges that the fees for Services provided under this MSA are independent of any Product purchased or leased by Customer whether such Products are purchased or leased in conjunction with Provider’s provision of Services. If Customer purchases or leases any Product, it shall be subject the associated terms and conditions set forth in this MSA.
  - j. **Existing Network.** The terms of all Service Orders are based on the Services being

provided to Customer's network and operating environment as such environment exists on the date when the Service Order is executed unless otherwise agreed to in the Service Order. Any updates to quantities of services by the Customer will automatically be reflected in the quantities invoiced by Provider, once those changes are detected by Provider. Customer will provide advance written notice of any new systems deployed by Customer to ensure support coverage from Provider. Any Customer requests made of Provider for new services or to make upgrades for Customer will require a Change Order or, in the Provider's reasonable discretion, a new Service Order, and may impose additional NRC's and/or MRC's. Upgrades, unless stated in the Service Order are not included in the scope of Service. Requests outside of and executed Service Order may be handled as a PS SOW or in another manner if deemed appropriate by Provider. Any equipment necessary for Provider's performance of the Services that is owned by Customer shall be the sole responsibility of Customer. Any damages or delay caused by the non-provision, failure or malfunction of Customer-owned equipment shall be the responsibility of Customer.

- k. Change in Delivery of Services.** With thirty (30) day notice to Customer, Provider reserves the right to change the systems used to deliver, view, access and utilize the Services as described herein that materially affect Customer's systems. Those that do not materially affect Customer's systems may change at any time, without notice, at Provider's sole discretion. In addition, Provider retains the right to change the specific functions offered by a Service or the Service itself.
- l. Acceptable Use Policy.** If purchasing Services, Customer agrees to abide by Provider's "Acceptable Use Policy" ("AUP") attached hereto as *Exhibit A* and incorporated herein by reference.
- m. Security.** The internet is not a secure network. Provider does not assume responsibility for loss or theft of information transmitted over the Internet. As qualified by the foregoing, Provider shall make commercially reasonable efforts to comply with the internal controls required to meet or exceed any applicable industry standards, including but not limited to: (i) building and maintaining a reasonably secure network, systems, and applications, and (ii) tracking access.
- n. Critical Risk Assessment Change Order.** After Services have been fully deployed, if in Provider's expert opinion Customer's systems being supported by Provider become at risk with regard to Customer owned infrastructure that may be out of line with Provider best practices in the area of environment (including HVAC, power, bandwidth, operating systems, servers, etc.), security or data availability (backup and recovery), Provider shall submit a Critical Risk Assessment Change Order that outlines the area of concern and suggest implementation measures to remediate the risk. Customer shall have the option to 1) accept the Change Order in its entirety, 2) accept part of the Change Order or 3) reject the changes requested. If the Critical Risk Assessment Change Order is partially accepted or rejected, Provider may be alleviated from certain contract requirements as outlined in the Critical Risk Assessment Change Order or be allowed to charge fees as outlined therein to meet the Agreement requirements or both.
- o. Decommission/Transition Services and Fees.** Unless specifically called out in a Service Order no Services include any decommission or transition services at the end of any Term. If, at the end of any Term, decommission or transition services are desired by Customer, Customer shall work with Provider to determine what services if any are needed and

Provider shall propose decommission and/or transition services as part of a new Service Order which shall include all associated fees at then current rates if required.

### III. Hardware and Software

- a. **Acceptance.** A written sales proposal provided by Provider for sale of Product shall be considered only an offer for the sale of Products and shall be accepted by Customer when Customer does any of the following, whichever occurs first: (i) signs a Service Order that includes the sales proposal or; (ii) accepts the Products at the location where they were shipped; Products are deemed risk of loss transfers to Customer once product leaves the dock of the manufacturer, distributor, or any other third-party warehouse. Maintenance services provided, Pursuant to a binding Service Order are delivered electronically and Customer's acceptance occurs once services are sent. Where software cannot be delivered electronically (such as bundled hardware and software, disks, tapes, etc.), it is the responsibility of Customer to notify Provider prior to acceptance.
- b. **Shipment.** Products will ship directly from the warehouse of the manufacturer of the Products, an authorized distributor of Provider, or from Provider's integration center (in any such case, "Shipping Point"). All Products are shipped F.O.B. Shipping Point, and all title, risk of loss, damage, or destruction to the Products shall pass to Customer as soon as the Products leave the Shipping Point. Provider reserves the right, in its sole discretion, to select the means of shipment, Shipping Point, and routing.
- c. **Returns.** Returns are only granted for Products procured through Provider, for the reasons listed below, and require compliance with the manufacturer's requirements. Acceptance of a return is in the sole discretion of Provider and subject to acceptance of the return by the manufacturer, where applicable. Neither physical acceptance of returned Product, nor Provider's assistance with attempts to return Product to the manufacturer shall be deemed Provider's acceptance of a return. No software may be returned. Provider may impose a twenty-five (25%) restocking fee on all returns for any reason other than those listed (below.) Refunds will not be given, but credits will be applied on accepted returns. All returns require the filing of a Return Merchandise Authorization ("RMA") which is available on Provider's website (as amended from time to time).
  - 1) Damaged Products. RMA must be filed within five (5) days from date of the Provider's receipt of the damaged Products.
  - 2) Breach of Warranty. RMA must be filed within five (5) days of the breach of all applicable warranties, if any. MANUFACTURER'S RETURN POLICY IS NOT AWARRANTY.
  - 3) Errant Products. If Customer receives shipment of Products over the quantity ordered, or Products that were not ordered, Customer shall notify Provider and return such Products with manufacturer's external seal intact within five (5) days of Customer's receipt thereof.
  - 4) Upgrades. If, pursuant to any Service Order, the Products purchased by Customer constitute an upgrade, Customer may return the original Product in accordance with the manufacturer's requirements for return of the same. If Customer fails to return the original Product within thirty (30) days of the date of receipt of the upgrade Product, then Customer will not be eligible to receive a credit for the original Product and shall pay the full purchase price for the upgrade.

- d. **Cancellations.** Provider has the right to cancel any orders placed for any Products listed at an incorrect price or shown with incorrect information, whether due to typographical error or otherwise, whether such errors were made by Customer or Provider, and whether Customer's order was accepted. Upon any such cancellation, if the Products have not shipped, the Provider will credit Customer for any fees owed. Upon any cancellation of Products that shipped, Customer shall return all Products unopened or, if opened, undamaged, within five (5) business days of the Provider's written notification to Customer of such cancellation, and upon such return Provider will issue a credit to Customer's account.

#### 4. FEES AND BILLING

- a. **General Terms.** Except for any shorter duration specifically set forth in this MSA or any Service Order all invoices are due and payable by Customer net thirty (30) days after the invoice date (the "Due Date").
- b. **Payment.** Any Setup Fee is invoiced when the applicable Service Order or Change Order has been executed by both Parties. Payment of the NRC is due and payable upon receipt of the invoice as set forth in such invoice. If the scheduled start date for a Service Order that involves MRC does not fall on the first calendar day of a month, Provider will calculate the pro-rated MRC for the partial first-month's service. Such prorated portion of the first month's MRC will be included in the Customer's first MRC invoice. Thereafter, Provider will deliver invoices for MRC monthly in advance. If any government authority requires Customer to withhold part of any fees payable to Provider hereunder, those fees will first be increased so that after diversion of that withholding to the relevant authority Customer remits to Provider the full amount which would have been payable in the absence of such withholding.
- c. **Payment for Incidental Expenses.** For any Services where Provider incurs travel, lodging, living and other similar costs and expenses, including, without limitation, auto mileage charges, and such costs and expenses are either (i) referenced in the applicable Service Order, or (ii) requested by Customer, Customer shall reimburse Provider for such costs expenses incurred by the Provider (in any such case, "Regular Travel Costs"). Travel costs other than Regular Travel Costs shall be reimbursed by Customer if Customer has preapproved them, in writing, including without limitation, via email. Travel and other related expenses shall be billed to Customer once incurred and in no event more than once per month.
- d. **Taxes.** All prices are based on U.S. Dollars and all payments shall be made in U.S. Dollars. Customer shall be solely responsible for the payment of all taxes, including any interest and penalties, about any payments made pursuant to this Agreement, including but not limited to any sales, use, excise, value-added taxes ("VAT"), consumption, and other taxes and duties assessed on the services. All Services under this Agreement are deemed taxable unless Customer provides Provider with a tax exemption certification acceptable to all relevant taxing authorities prior to delivery.

- e. **Late Payments/Disputes.** A service charge equal to the lesser of 1.5% per month (accruing monthly), or the maximum rate allowed under applicable law (whichever is less), will be assessed on all amounts not paid or Disputed (as described below) on or before the Due Date until the same are paid. If within thirty (30) days after the Due Date, Customer fails to pay or Dispute any invoice, Provider may, do any or all the following:
- Refuse to accept any additional orders for Services
  - Suspend performing Services or further shipment of Product until the Customer has paid all undisputed past due amounts and charges related thereto.

During any period of suspension, no Service Interruption (as defined in the SLA) shall be deemed to have occurred and, more generally, the Provider will have no liability to Customer for delays or damages incurred by Customer or any third party because of such suspension. In addition, the Customer is responsible to pay all reasonable collection costs incurred by Provider in its efforts to collect overdue invoices. In the event Customer desires to dispute any charge on an invoice, Customer must provide written notice of such disputed amount prior to the date that is thirty (30) days after the Due Date of the applicable invoice (a "Dispute"). In the event of a Dispute, only the disputed portion of the invoice may be withheld from payment and the undisputed portion must be paid on or before the Due Date. Customer will exercise reasonableness in initiating any Dispute. No interest will accrue on the invoiced amount specifically related to the Dispute until the Parties reach a mutually acceptable resolution, provided, however, if the Parties have reached such a resolution and Customer has not made the agreed upon payment per such resolution within sixty (60) days after the Due Date, the Customer shall be deemed in default hereunder.

## 5. CONFIDENTIAL INFORMATION

- a. **Each party acknowledges** that it will have access to certain confidential information of the other party concerning the other party's business, business plans, customers, strategies, trade secrets, technology, finances, assets, and products, including the terms and conditions of this Agreement. Each party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the other party's confidential information and will protect the confidentiality of such information. Information will not be deemed confidential information hereunder if such information: i) is or becomes known to the receiving party from a source other than one having an obligation of confidentiality to the disclosing party; ii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving party; or iii) is independently developed by the receiving party without reference to the confidential information, provided, however, the data provided to Customer, including Personal Data, will not be disclosed without the prior written consent of Customer.

## 6. WARRANTIES, REPRESENTATIONS, AGREEMENTS

- a. **ENDEAVOR** represents and warrants that i) it has the full corporate right, power and authority to enter into this Agreement, ii) the execution of this Agreement by and the performance of its obligations and duties hereunder do not and will not violate any agreement to which it is a party or by which it is bound, and iii) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of ENDEAVOR, in accordance with its terms.
- b. **Customer** represents and warrants that i) it has the full corporate right, power and authority to enter into this Agreement, ii) the execution of this Agreement by and the performance of its obligations and duties hereunder do not and will not violate any agreement to which it is party or by which it is bound, and ii) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of Customer in accordance with its terms.

## 7. **OWNERSHIP, RIGHTS AND LICENSES**

Unless otherwise provided in the applicable Service Order, all specifications, documentation, ideas, know-how, technique, processes, developments, inventions, software, script, code, tool, and other intellectual property and work product created for the Services (collectively, "Provider IP") shall remain the property of Provider; however, Provider hereby grants Customer an irrevocable (during the Term in which the Services are being provided or as otherwise specifically set forth in a specific Service Order), worldwide, royalty-free, non-exclusive, nontransferable right and license to use such Provider IP in support of Customer's use of the Services. Provider IP does not include any Customer owned intellectual property. The rights granted with respect to the Provider IP in this SECTION do not extend to any parent, subsidiary or affiliate or of Customer or to any other individual or entity except for Customer's employees with the need to use the Provider IP for performance of the work for Customer. Except to the extent reasonably necessary for archiving, back-up, and disaster-recovery purposes, Customer shall not make copies of Provider IP without Endeavor's prior written consent. Upon termination of this MSA for any reason or in any manner, or upon the request of Provider, Customer agrees to deliver promptly to Provider all such documents, whether in written, graphical, electromagnetic or any other form, together with any other of Provider's property then in Customer's possession, except as Customer may be required to retain, and only to such extent, based on applicable law or regulation by prior written approval, and in its sole and absolute discretion, Provider may allow Customer to retain. Customer grants to Provider an irrevocable, worldwide, royalty-free, non-exclusive, nontransferable right and license to use any data or software supplied by Customer and not otherwise covered by this SECTION for performing the Services. Nothing in this SECTION shall be construed to grant Endeavor additional rights in such data or software. Without limiting the generality of other terms of this SECTION, Customer will not modify, create derivative works from or reverse-engineer Provider IP.

## 8. **LIMITATIONS OF LIABILITY**

- a. **Exclusions.** In no event will either party be liable for any incidental, punitive, indirect or consequential damages (including without limitation any lost revenue or lost profits) or for any loss of technology, loss of data, or interruption or loss of use of Service (except as set forth in any application Service Level Agreement) or any other similar claims by the other



party or related to the other party's business, even if such party is advised of the possibility of such damages, except to the extent that such damages are part of a claim for Indemnity pursuant to Section 7 hereof, and in that case the liability shall be limited as provided in section 6 b.

- b. Damage Caused by Customer.** ENDEAVOR shall not be responsible for any damage to Customer or Customer's systems that is caused by Customer-assigned personnel, including but not limited to its employees, officers, directors, agents, affiliates, or independent contractors.
- c. Force Majeure.** Neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions or third parties, or any other cause beyond its reasonable control.

## 9. INDEMNIFICATION

- a. Covered Claims.** Each party (the "Indemnifying Party" for purposes of this Section) will indemnify, defend and hold harmless the other party (the "Indemnified Party"), its directors, officers, employees, and affiliates (collectively, the "Indemnified Entities") from and against any and all claims, actions, demands, suits, liabilities or obligations brought against any of the Indemnified Entities by a third party alleging: i) Infringement or misappropriation of any intellectual property rights by the Indemnifying Party except to the extent caused by the Indemnified Party; or ii) any personal injury suffered by any representative, employee or agent of the Indemnified party arising out of such individual's activities related to the Services except to the extent caused by the Indemnified Party's gross negligence or willful misconduct (collectively, the "Covered Claims").
- b. Notice.** Each party's indemnification obligations hereunder shall be subject to 1) receiving prompt written notice of the existence of any Covered Claim and 2) receiving full cooperation from the Indemnified Party in the defense and settlement of such Covered Claim. The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle or compromise any Covered Claim, or consent to the entry of judgment of a Covered Claim against the Indemnified Party.

## 10. INSURANCE

- a. General.** Without limiting ENDEAVOR's indemnification obligations under Section 6, ENDEAVOR, at its own cost, shall procure, maintain, and keep in force and effect insurance to protect ENDEAVOR and Customer from all claims that arise out of or result from ENDEAVOR's operations, services, and/or performed under this Agreement.
- b. Workers' compensation.** insurance with employer's liability of not less than \$1,000,000 per employee.

## 11. TERM AND TERMINATION

- a. **Term.** The Term of any Service Order shall be stated in the individual Service Order. The MSA term shall continue in full force and effect starting on the Effective Date and continuing until the earlier of (i) the date that all obligations of the Parties under all Service Orders have been completed or (ii) either Party terminates pursuant to the terms and conditions herein. In order to protect the continuity of Services for Customer, if for any reason any Term ends and services are needed to continue as agreed to between the Parties, the Term shall automatically become month-to-month and all pricing shall be subject to a 20% surcharge.
- b. **Termination for Convenience.** Except as otherwise provided in this Agreement, Customer shall not terminate any Service Order until the expiration of the applicable Term except upon payment of a "Termination Fee." Subject to this Section, the Termination Fee shall comprise all amounts accrued prior to such termination, plus the value of the unpaid balance of the aggregate NRC, MRC and all other fees, and costs incurred, for the duration as if such Service Order had not terminated. If Provider is providing T&M Services (or other hourly services), with respect to such Services, the Termination Fee will be the reasonable value of Provider's services performed up to the date of termination, which is presumed to be the hours worked at the rate specified, up to the last completed milestone per the applicable Service Order. The Termination Fee recognizes that Provider has invested substantial resources to provide Services to Customer during the Term. If Customer chooses to terminate early, Provider will make commercially reasonable efforts to provide Customer its data and messaging at a reasonable charge.
- c. **Termination for Breach and Remedies.** Upon material breach of this MSA, any Service Order, or Service, this MSA, applicable Service Order or Service may be terminated by either Party immediately or upon written notice if the violation is not remedied within thirty (30) days of delivery of the notice. Customer has the right to only terminate the breached Service, rather than all Services associated with this Agreement or any Service Order. Upon termination of any Service Order except as otherwise provided for in this MSA, the obligations of either Party to the other under all existing Service Orders or non-breached Services on a Service Order that has a breached Service, shall continue in effect as though this MSA had not been terminated until such Services are completed and all Products delivered and paid for a specific Service Order or Service within a Service Order. With respect to an asserted breach by Provider for its failure to achieve promised Service standards, Customer may terminate the applicable Service only if Provider fails to achieve Service standards for two (2) consecutive months, provided, however, that Customer provides Provider with written notice detailing the manner in which such Services have failed to meet the established standards and Provider fails to commence performance of the Services up to such standards prior to the end of the second month.
- d. **Terminations for other Causes.** It shall be deemed a material breach by Customer if it becomes insolvent or bankrupt, admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the applies for or consents

to the appointment of any receiver, trustee or similar officer for it or for all or any substantial part of its property; or the institutes any bankruptcy, insolvency, reorganization, moratorium, arrangement, readjustment of debt, dissolution, liquidation or similar proceeding relating to it under the laws of any jurisdiction, or any such proceeding is instituted against it and is not dismissed within sixty (60) days; or any judgment, writ, warrant or attachment or execution of similar process is issued or levied against a substantial part of its property and remains unsatisfied for sixty (60) days; or Dissolves, liquidates or otherwise terminates its existence as an entity, or consolidates with or merges with or into any entity which is a direct competitor of Provider or sells, leases or otherwise disposes of all or substantially all of its assets to a direct competitor of Provider or incurs a substantial amount of indebtedness other than in the ordinary course of its business except for transactions which do not result in the acquisition of an entity or business which is a competitor of Provider, in each case whether in a single transaction or in a series of related transactions Customer or the person or persons in control of Customer shall (or shall threaten or propose to) sell, assign, part with or cease to carry on its business or that of its business relating to computing services.

## 12. EFFECT OF TERMINATION

- a. **Survival.** The parties' respective representations, warranties, and covenants, together with obligations of indemnification and limitations on liability will survive the expiration, termination or rescission of this Agreement and continue in full force and effect. The parties' respective obligations of confidentiality will survive the expiration, termination or rescission of this Agreement and continue in full force and effect for three (3) years, provided, however, with respect to data provided to Customer, including Personal Data, the obligation of confidentiality will continue until released in writing by the Customer.

## 13. DISPUTE RESOLUTION

- a. **Dispute Resolution.** In the event of any dispute between the parties concerning interpretations or enforcement of this Agreement, except for requests for injunctive or other equitable relief, the parties agree to first attempt informal dispute resolution by selecting a joint resolution committee consisting of two representatives from each party to meet and attempt to resolve this dispute within sixty (60) days from the mailing or service of a notice of demand for such dispute resolution, unless extended by mutual agreement of the parties.

## 14. GENERAL PROVISIONS

- a. **Marketing.** ENDEAVOR will not use Customer's name or trademarks on ENDEAVOR's company Website or on any materials published and made available to the general public, unless it receives Customer's advanced written consent. ENDEAVOR agrees not to register or attempt to register any trademark of Customer.
- b. **Staffing.** ENDEAVOR shall be responsible for staffing decisions with respect to its personnel and the provision of any services under this Agreement and shall have the right to remove or replace any of its personnel assigned to perform services under this

Agreement. Customer retains the right of refusal for any personnel assigned to the account by ENDEAVOR.

- c. Assignment.** Neither party may assign its rights or delegate its duties under this Agreement either in whole or in part without the prior written consent of the other party, except either party may assign this Agreement to an affiliate or a party that acquires substantially all of the assigning party's assets or a majority of its stock as part of a corporate merger or acquisition. Any attempted assignment or delegation without such consent will be void. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- d. Independent Contractor.** Neither party shall be deemed to be an agent of the other party or the relationship of the parties shall be that of independent contractors. Neither party shall have any right or authority to assume any obligations, or to make any representations or warranties, whether express or implied, on behalf of the other party, or to bind the other party in any matter whatsoever.
- e. Notices.** Any required notice hereunder may be delivered by electronic mail, personally or by courier, or mailed by registered or certified mail, return receipt requested, postage prepaid, to either party at the name and address on the signature page of this Agreement, or at such other address as such party may provide to the other by written notice. Such notice will be deemed to have been given as of the date it is delivered by electronic mail, personally, by confirmed facsimile or by courier, or five (5) days after it is sent by mail. All written communications to Customer will be deemed delivered if sent to the contact points provided to ENDEAVOR at the time of order, or to such other contact points as Customer provides in writing. Customer will include a valid e-mail address with such contact points. All written communications to ENDEAVOR and all fees will be mailed to 510 Clinton Square – 5<sup>th</sup> Floor, Rochester NY 14604 unless ENDEAVOR notifies Customer in writing of alternate contact information.
- f. Governing Law.** This Agreement shall be governed by the laws in the states the services are being performed.
- g. Amendment of Agreement.** This Agreement may be amended only by written consent of both parties.
- h. Entire Agreement.** This Master Services Agreement, together with all Service Level Agreements, Statements of Work, and all other associated documents attached hereto, represents the complete and mutual statement of understanding of the parties, and supersedes and cancels all previous written and oral agreements and communications between the parties relating to the subject matter of this Agreement.
- i. Severability.** If any provision of this Agreement, or a portion thereof, shall be adjudged by a court of competent jurisdiction to be unenforceable or invalid, that portion shall be eliminated or limited to the minimum extent necessary so that this Agreement shall remain in full force and effect and enforceable.

The terms in this contract will apply to all Service Orders that **customer has** in place with ENDEAVOR. All terms will be enforced and honored by both firms. **By signing the Master Agreement, customer agrees to all terms in this Master Agreement. This includes rates, SLA, MSA, SOW and Service Orders.**

**Acknowledgement:**

| Customer   | Endeavor Management Inc. |
|------------|--------------------------|
| Name:      | Name:                    |
| Signature: | Signature:               |
| Title:     | Title:                   |
| Date:      | Date:                    |

**Disclaimer;** this contract is subject to change and will be posted at <http://www.endeavorservicesgroup.com/terms-and-conditions/>

*Exhibit A*

*Acceptable Use Policy (AUP)*

You agree to not misuse Endeavor’s services (“Services”). For example; you must not, and must not attempt to do the following:

- Probe, scan, or test the vulnerability of any sensor, collector, system or network, if in place;
- Breach or otherwise circumvent any security or authentication measures;
- Access, tamper with, or use non-public areas or parts of the Services, or shared areas of the Services you haven’t been invited to;
- Interfere with or disrupt any user, host, or network, for example by sending a virus, overloading, flooding, spamming, or mail-bombing any part of the Services;
- Access or search the Services by any means other than our publicly supported interfaces (for example, “scraping”);
- Restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation to the Services, or otherwise cause a performance degradation to any Endeavor (or Endeavor supplier) facilities used to deliver the Services;
- Alter, modify, or tamper with the Services or permit any other person to do the same who is not authorized by Endeavor;
- Provide guidance, information or assistance with respect to causing damage or security breach to Endeavor’s network or systems.

ENDEAVOR RESERVES THE RIGHT TO NOTIFY ITS SUBSCRIBERS OF ANY INFORMATION THAT AFFECTS THE SECURITY OF ENDEAVOR’S PRODUCTS OR SERVICES.