

Master Services Agreement

Licensee Name: _____

Licensee Number _____

This **Master Services MSA** ("MSA") is made effective as of ____ day of _____ 20____ by and between eWorkplace Apps, LLC (EWPA), a California corporation with an office at 34 Anacapa Ln, Aliso Viejo, CA 92656 and _____ (Licensee) a _____ corporation with offices at _____.

This MSA defines the terms and conditions that govern the Services which EWPA will provide to Licensee. EWPA will only provide Services to Licensee when an active (not terminated a defined in 7b) MSA agreement exists between EWPA and Licensee.

1. SERVICES**a. Services**

Per the terms and conditions set forth herein, Licensee hereby engages EWPA to perform those services mutually agreed upon from time to time by EWPA and Licensee (collectively "**Services**") upon request or in a written Statements of Work (SOW), and EWPA hereby accepts such engagement. EWPA shall render Services and deliver the required deliverables (the "**Deliverables**") in accordance with the timetable and milestones set forth in the respective SOW. Neither EWPA nor Licensee shall be obligated to enter into any SOW. Services can be rendered without an SOW. EWPA is not obligated to provide Services.

b. Statement of Work Authorization and Modification

Each SOW is to be signed on behalf of the Licensee exclusively by designated authorized representatives of Licensee. Any deviation from or modification to a SOW must be agreed to by the parties in writing. In the event of any express conflict or inconsistency between the provisions of a SOW and the provisions of this MSA, the provisions of the SOW will govern and control with respect to the interpretation of that SOW; provided, however, that the provisions of the SOW will be so construed as to give effect to the applicable provisions of this MSA to the fullest extent possible, including, without limitation, Sections 3 and 5 of this MSA.

c. Acceptance

Within five (5) days after the receipt by Licensee of any Deliverables, together with a written notice of completion from EWPA, or EWPA has provided requested Services not included in a SOW, Licensee agrees to review and/or test the Deliverables. Unless within this five (5) day period Licensee creates a case or communicates in writing to EWPA, referencing the appropriate SOW or Service with a subject or description which includes "Delivery Acceptance Deficiency", the Deliverables will be deemed to be accepted. In the event any

part of the Deliverables is not acceptable, the case shall set forth with specificity any deficiency. EWPA will use its best efforts to correct the deficiency in a timely manner. Upon the correction of the deficiency, the Deliverables will be deemed to be accepted. It is agreed that a deficiency is defined as a failure of the Deliverable to conform to written design specifications.

2. FEES AND BILLING:

a. Charges for Services

Licensee will pay to EWPA the charges set forth in each SOW or invoice sent for other Services provided Licensee as noted in 2c or as provided in the SOW. Unless otherwise provided in the SOW, EWPA agrees not to change its fees during the term of the SOW without the written consent of Licensee. EWPA may adjust its fees prior to entering into a new SOW. EWPA will post and may from time to time change its fees for providing Services.

b. Out-of-Pocket Expense

Licensee will also pay EWPA all reasonable out-of-pocket expenses (including without limitation, travel expenses) incurred by EWPA in the course of providing Services to Licensee.

c. Payment

Unless otherwise expressly provided in a SOW with respect to the charges to be paid thereunder, EWPA will invoice Licensee for charges on a periodic basis, with each invoice setting forth the charges related to the previous period. Unless otherwise expressly provided in a SOW, any amount due to EWPA under this MSA and each SOW shall be payable in full upon receipt of an invoice therefore, without withholding, deduction or offset of any amounts for any purpose.

Licensee shall be responsible for all taxes (including sales taxes) imposed as a result of the Services, excluding only taxes based on the net income of EWPA.

Any amount not paid within thirty (30) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Licensee in good faith within ten (10) days of the receipt of an invoice therefore will be deemed approved and accepted by Licensee.

3. Warranties; Warranty Disclaimer:

a. EWPA Warranty

EWPA **warrants** that its personnel shall perform the Services in a manner consistent with generally accepted industry standards and practices. In the event of a breach of the foregoing warranty EWPA'S sole obligation and Licensee's exclusive remedy will be to have EWPA perform

again the Services in respect of which the warranty has been breached to bring them into compliance with such warranty.

Any claim for breach of the foregoing warranty must be made by notice to EWPA within 30 days of completion of the Services in respect of which the claim is made or said claim shall be deemed waived.

Licensee acknowledges that software development, custom applications, reports, interfaces, and other technical services are not maintained or supported under EWPA'S Software Support plans.

EWPA does not warrant that a Deliverable will work with future releases, hot fixes or updates to EWPA'S products. As Licensee's exclusive remedy, EWPA will at its expense fix bugs or other errors in a Deliverable reported within 30 calendar days after such Deliverable's acceptance. After the 30-day period, Licensee is solely responsible for the maintenance of the Deliverable unless otherwise expressly provided in a Statement of Work

b. Licensee's Warranties

For each SOW or other request, Licensee hereby represents and warrants that

- i. With respect to tools, hardware, software and other products provided by Licensee for use by EWPA under this MSA and the SOW, Licensee has obtained all licenses and permits which are required to be obtained to enable such use by EWPA
- ii. The information furnished by Licensee to EWPA on which EWPA based the description of the Services and the charges to be paid by Licensee therefore, as set forth in each SOW, is accurate and complete in all material respects
- iii. Licensee has, or will have, the personnel and other resources available, and will provide such personnel and resources, to fulfill Licensee's obligations set forth in each SOW.

c. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3, EWPA DOES NOT MAKE ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERABLES OR THE SERVICES RENDERED BY EWPA OR ITS PERSONNEL OR THE RESULTS OBTAINED FROM THEIR WORK PURSUANT TO THIS MSA OR ANY STATEMENT OF WORK. ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE EXPRESSLY DISCLAIMED AND EXCLUDED BY EWPA.

d. LICENSEE ACKNOWLEDGES THAT IT IS A SOPHISTICATED PARTY TO THIS MSA AND RECOGNIZES AND AGREES THAT THESE DISCLAIMERS ARE AN INTEGRAL PART OF EWPA'S PRICING AND AN IMPORTANT FACTOR IN ITS WILLINGNESS TO PERFORM SERVICES HEREUNDER AND PURSUANT TO THE STATEMENTS OF WORK.

4. Support:

a. No Obligation of Support

Except as expressly provided in Section 3 or a SOW, EWPA shall have no obligation to support or maintain any Deliverable provided pursuant to this MSA or any SOW.

b. New Versions of EWPA Products and Maintenance Releases

Licensee acknowledges that installation of new versions of EWPA software and Maintenance Releases may cause Deliverables to no longer function as intended. Licensee is responsible for testing any new versions of EWPA software and Maintenance Releases with Deliverables on a separate test system to insure that the Deliverables work properly with the new versions of EWPA software and Maintenance Releases before installing the new versions and Maintenance Releases on the production server. For purposes of this Agreement, “**Maintenance Releases**” shall mean corrections and enhancements to EWPA software, including hot fixes, patches, workarounds, updates and upgrades

5. Limitation of Liability

a. Limitation on Consequential Damages, etc.

IN NO EVENT SHALL EWPA BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, OR WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

b. Limitation on Cumulative Liability.

UNDER NO CIRCUMSTANCES SHALL EWPA AGGREGATE CUMULATIVE LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID TO EWPA UNDER THE STATEMENT OF WORK FROM WHICH THE CLAIM ARISES.

c. Allocation of Risk

LICENSEE ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS MSA AND THAT EWPA WOULD NOT ENTER INTO THIS MSA WITHOUT THESE LIMITATIONS ON LIABILITY.

6. Confidentiality:

a. Confidential Information

For purposes of this Section 6, “**Confidential Information**” shall mean nonpublic information in tangible or intangible form of the disclosing party that disclosing party designates as confidential or which under the circumstances surrounding the disclosure would reasonably be considered confidential. Confidential Information shall include, without limitation, information contained in design documentation relating to any EWPA or Licensee programs (including any source code), development-level documentation, all EWPA development tools (except for publicly available tools), data files, databases, marketing plans, supplier and customer information, proprietary and technical information, business and marketing strategies and plans, and information received from others that disclosing party is obligated to treat as confidential. Notwithstanding the foregoing, information disclosed to or acquired by recipient of the information shall not constitute Confidential Information to the extent that the recipient can demonstrate

- i. Such information was known to the recipient prior to the disclosure thereof by disclosing party
- ii. Such information is or thereafter becomes lawfully obtainable from other non-confidential sources
- iii. The recipient’s duty as to confidentiality is waived in writing by disclosing party
- iv. Such information was developed by employees or agents of the recipient of the information independently of and without reference to Confidential Information or other information that disclosing party has disclosed in confidence to any third party
- v. Disclosure thereof is required by legal process or applicable law (in which case the recipient of the information shall notify the disclosing party prior to disclosure of such information).

b. Nondisclosure

Each party acknowledges that in performance of this MSA, it may acquire knowledge of the other’s Confidential Information. Subject to the provisions of Sections 6a and 6b, each party acknowledges and agrees that all of the Confidential Information disclosed to or acquired from the other party to this MSA shall be maintained in strict confidence and that it shall not disclose any Confidential Information to any person or entity except as required to perform this MSA or as expressly permitted by the disclosing party in writing. No party shall use another party’s Confidential Information nor circulate it within its own organization except to further the purposes of this MSA. Each party shall be responsible and liable to the other

for any disclosure of Confidential Information by any employee, contractor, agent or other person or entity to whom such party discloses Confidential Information of the other.

c. Irreparable Harm

In addition to all other legal or equitable remedies to which a disclosing party may be entitled to enforce this Section 6, both parties acknowledge that any violation of Section 6 by the non-disclosing party would cause irreparable harm to the disclosing party and agree that the disclosing party shall be entitled to an immediate injunction to prevent violations of Section 6 without the necessity of proving actual harm or posting bond.

d. Independent Development; Residuals.

Nothing in the terms of this MSA and any Statement of Work shall be construed to limit EWPA'S or Licensee's right to independently develop or acquire products without the use of Confidential Information. EWPA or Licensee shall be free to use for any purpose the Residuals resulting from access to or work with Confidential Information, provided such party shall maintain the confidentiality of Confidential Information as provided in this Section 6 and any other written confidentiality MSA between the parties.

For purposes of this Agreement, "**Residuals**" shall mean technical information related to software technology in nontangible form, which may be retained by individuals who have had access, as permitted by this MSA, to Confidential Information, including ideas, concepts, know-how or techniques contained therein. Neither EWPA nor Licensee shall have any obligation to limit or restrict the assignment of such individuals or to pay compensation resulting from the use of the Residuals. Notwithstanding the foregoing, this Section shall not be construed to grant either EWPA or Licensee a license of the other party's copyrights or other intellectual property.

e. Ownership of Deliverables and Other Work Product:

Unless otherwise expressly provided in a SOW, except for pre-existing works owned by EWPA and/or third parties, Licensee shall own the Deliverables and other work product developed under this MSA and EWPA agrees to and does hereby assign to Licensee any rights (except for pre-existing works owned by EWPA and/or third parties) EWPA may have or acquire in such Deliverables. EWPA grants to Licensee a fully paid up, perpetual license to pre-existing work owned by EWPA for the sole purpose of exploiting the Deliverables. Upon MSA by Licensee in a SOW or other agreement, EWPA may acquire a perpetual fully paid- up license to use the Deliverables and other work product.

7. Term and Termination

a. Term.

This MSA shall be effective when signed by both parties and thereafter shall remain in effect until terminated by EWPA or Licensee as provided in this MSA. The term of any SOW shall be as provided therein. Termination of this MSA shall have the effect of terminating all SOWs.

b. Termination.

This MSA or any SOW (provided such SOW does not contain a provision for a term) may be terminated by Licensee or EWPA without cause by giving the other party thirty (30) days prior written notice. This MSA or any SOW may be terminated by EWPA immediately upon written notice in the event Licensee fails to perform its obligation for payment of invoices pursuant to this MSA.

This MSA or any SOW may be terminated by a party if the other party commits a material breach or default of any obligation hereunder or thereunder which breach or default is not cured within 30 days after written notice of such breach or default.

Immediately in the event that Licensee becomes the subject of a petition of bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors

Upon fifteen (15) day prior written notice to Licensee for failure to pay any fees and Licensee does not cure such within the fifteen (15) day period.

c. Effect of Termination

Upon termination of this Agreement

- i. Licensee shall promptly pay all amounts payable to EWPA for Services rendered and out-of-pocket expenses incurred up to the date of termination;
- ii. Each party shall return or destroy, at the direction of the other party, all the other party's Confidential Information in its possession.

d. Survival

Sections 1C, 2, 3, 5, 6, 8b, 8c, 8d and 9 of this MSA and any provisions specified as surviving in a SOW shall survive any termination of this MSA and/or termination of any SOW.

8. Amendment to this Agreement

EWPA reserves the right from time to time to modify the terms of this agreement. If EWPA makes a material change to this agreement, EWPA will inform Licensee. If the change has a material adverse impact on Licensee and Licensee does not agree to the change, Licensee will so notify EWPA in writing within thirty (30) days after receiving notice of such change. Based upon such notification, Licensee use of EWPA Software and Services will be governed by the Agreement as in effect immediately prior to change until the end of the then term of the current Agreement. At such time, EWPA and Licensee will make best efforts to amend the then current version to accommodate Licensee continued use of Software. Except as noted above, Licensee's continued use of the EWPA Services following any amendment to this MSA shall be conclusively deemed an acceptance of all such amendments.

9. MISCELLANEOUS**a. Notices.**

Any notices or communications required or permitted to be given regarding this MSA shall be in English and in writing, and shall be sent via U.S. Certified Mail, Return Receipt Requested, or, by prepaid overnight or courier service, to the addresses above, or such other address as shall be designated in writing by either party to this MSA to the other. Notices are deemed given on receipt or attempted delivery (if receipt is refused).

b. Independent Contractor

Each party, in rendering performance under this MSA is acting solely as an independent contractor. In no way is either party to be construed as the agent of the other party in any respect, any other provisions of this MSA hereunder notwithstanding.

c. Entire Agreement; Amendments.

This MSA and the SOW together constitute the entire MSA between the parties.

d. Construction; Headings

When ever the singular number is used in this MSA and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and

neuter genders and vice versa. The headings contained in this MSA are for reference purposes only and shall not affect the meaning or interpretation of this MSA or any of its provisions.

e. Severability

If any provision of this MSA or its application to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this MSA and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.

f. Waivers.

No action or inaction taken pursuant to this MSA shall be deemed to constitute a waiver of compliance with any covenant, condition or MSA contained herein. The waiver by any party hereto of any breach of any provision of this MSA shall not operate or be construed as a waiver of any subsequent breach.

g. Governing Law.

This MSA shall be governed by and construed in accordance with the substantive laws of the State of California without regard to principles of conflict of laws that would require application of the laws of any other jurisdiction.

h. Assignment

Neither party shall assign its rights or obligations under this MSA without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

i. Force Majeure

EWPA shall not be responsible for failure to perform under this MSA when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

By signing below MSA and Licensee acknowledge and agree to the terms and conditions set forth in this MSA – THIS AGREEMENT IS SUBJECT TO FINAL LEGAL REVIEW BY EWPA AND THE TERMS STATED IN SECTION 8

eWorkplace Apps, LLC:

By: _____

Name: _____

Title: _____

Date: _____, 202_

Licensee:

By: _____

Name: _____

Title: _____

Date: _____, 202_