

## MASTER SERVICES AGREEMENT

This Master Services Agreement (this “Agreement”) is made and entered into as of the [REDACTED] day of [REDACTED], 20[REDACTED] (the “Effective Date”), by and between Techary Inc., a Delaware corporation, with its principal place of business located at [REDACTED] (“Techary”) and [REDACTED], a [REDACTED] with its principal place of business located at [REDACTED] (“Customer”).

WHEREAS, Techary and Customer desire to enter into this Agreement to provide for the performance of certain services by Techary to Customer as more specifically detailed in one or more Statements of Work, as may be mutually agreed between the parties as set forth in Section 1.1 below.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and intending to be legally bound hereby, the parties:

### 1. PERFORMANCE OF SERVICES

1.1. Performance of Services. Techary shall provide Customer with certain specified services, including procurement and equipment configuration services, managed network and support services, staff augmentation services and other professional services as specifically set forth and in accordance with statements of work (each, a “Statement of Work”) agreed to in writing and signed by the parties from time to time (collectively, the “Services”). Notwithstanding anything to the contrary set forth elsewhere in this Agreement, Customer agrees that unless expressly specified as “time of the essence” times for performance in a Statement of Work, any and all delivery times and dates, times for performance, or other milestones are estimates only and subject to equitable adjustment and Techary’s commercially reasonable efforts.

1.2. Statement of Work Changes. If a Party desires to modify the Services to be performed under any Statement of Work, such Party shall submit details of the requested modified Services to the other Party in a written request. In the event the Party proposing the modified Services is the Customer, then Techary shall, within reasonable time after receiving Customer’s written request, provide Customer with a written change order proposal. In the event Techary is the Party proposing the modified Services, then Techary’s written request shall be in the form of the written change order proposal. In either case, such change order proposal shall include, among other items, an estimate of additional charges for the modified Services, if any, and any expected impact the change will have on the scheduled date(s) for completion of such Services. Upon Parties’ mutual written agreement to the change order proposal, an authorized representative of each party shall sign the change order proposal and the change order proposal will thereafter become a binding “Change Order” and part of the relevant Statement of Work. No change to any Statement of Work shall be binding on the parties unless the change is embodied in a writing that has been signed by an authorized representative of each party.

1.3. Unforeseen Statement of Work Changes. Customer acknowledges and agrees that there may be instances where, due to events beyond Techary’s control, including, but not limited to, disruptions in travel, Techary will be unable to fulfill a Statement of Work in time or in full, as further described in Section 11.16. Customer agrees that in such circumstances, Techary will be permitted to submit a change order proposal to modify the Services. Techary shall provide Customer with such change order proposal, which shall include the revised scope of Services, change in costs and any expected change in scheduled date(s) for completion of the revised Services. Upon Customer’s written agreement to the change order proposal, such change order proposal will become a part of the relevant Statement of Work.

1.4. Project Managers. Each party shall appoint a qualified staff member or other representative to act as project manager (each, a “Project Manager”) for the Services to be performed under each Statement of Work. Each Project Manager shall act as the principal contact between the

parties in connection with the performance of such Services. Customer's Project Manager shall be authorized to act on behalf of Customer, and to bind Customer to this Agreement and with respect to matters relating to Services hereunder, including without limitation Statements of Work and/or Change Orders issued hereunder.

1.5. Techary Personnel. The persons assigned by Techary to perform the Services shall have appropriate technical and professional skills to enable them to perform their duties in a professional manner, consistent with generally accepted industry standards. In the event that a person assigned by Techary to perform Services is designated as a "Key Person," in the applicable Statement of Work, Techary shall use commercially reasonable efforts to maintain continuity with respect to such persons and shall keep to a minimum the removal of key persons from the performance of the Services.

1.6. Data Security. Techary's current data privacy and data security safeguards and procedures are set forth in Techary's Data Processing Agreement, Cyber and Data Security Policy, the latest SOC 2 – Type II audit report, Cyber Essentials Certification, PEN Test Certification, and ISO-27001 Certification and most recent audit report as detailed in each case in Customer's Portal maintained by Techary (collectively, the "Data Security Policies"). A copy of the then current Data Security Policies will be available through Customer's portal or upon written request. Techary reserves the right to revise Data Security Policies from time to time and Customers are advised to check the documentation available through the Customer portal on a regular basis. Any supplemental, or different, data controls required by Customer, other than as described in the Data Security Policies, must be documented and mutually agreed to in a Statement of Work or Change Order.

1.7. Service Location. Customer acknowledges that certain Services shall be performed remotely by Techary's global resources. Services that are remotely performed may not be performed within the United States, unless otherwise expressly agreed to in a Statement of Work.

## 2. CUSTOMER OBLIGATIONS

2.1. Customer shall:

- (a) cooperate with Techary in its performance of the Services and appoint a Project Manager pursuant to Section 1.4 of this Agreement;
- (b) provide all persons assigned by Techary to perform the Services with, and take all reasonable steps necessary to obtain, including, but not limited to, any network access, physical access to Customer's premises, access to employees or contractors, or access to equipment, including any and all permits, consents, credentials and licenses with respect thereto, as required to enable Techary to provide the Services and to prevent Customer-caused delays; and
- (c) notify Techary in advance of all instructions, decisions or consents required to be given or made by Techary in order for Techary to provide the Services, including any third-party instructions, decisions or consents, as further detailed in Section 2.4.

2.2. If the provision of Services occurs at Customer's premises (or such other location other than Techary's own facilities, as directed by Customer), Customer shall:

- (a) ensure that the area on Customer's premises, any third-party premises under Customer's control or co-location designated for the installation, performance or delivery of the Services is clean, unobstructed and free from debris;

- (b) guarantee that Customer's premises and the working conditions at Customer's premises will be safe and in compliance with all applicable legislation, rules and regulations; and
  - (c) at Techary's request, ensure that an authorized representative of the Customer is at the Customer's requested Service location on the scheduled date and at the scheduled time to facilitate the performance of the Services, including to take delivery of any equipment and acknowledge receipt thereof.
- 2.3. If the provision of Services includes managed and support services, Customer shall:
- (a) make available any such information, data and documentation and timely respond to any questions and requests by Techary as necessary for Techary to perform the Services;
  - (b) ensure Customer holds, and if necessary procure, access or use rights to any supported software and/or hosted services, which are from time to time required in order for Techary to be able to provide the Services;
  - (c) not make or cause to be made any modifications to our proprietary software or any third-party software provided; and
  - (d) notify Techary promptly if any of the supporting or hosted software is not operating correctly or Customer experiences any other issues.

2.4. If the provision of Services occurs at a third-party's location, or otherwise involves any third-parties, Customer shall obtain any network access, physical access, or access to equipment to any third-party location, including any and all permits, consents, credentials, licenses, software or system access/use rights, as necessary to enable Techary to perform the Services.

2.5. If Techary's performance of its obligations under this Agreement is prevented or delayed by an act or omission of Customer or its agents, subcontractors, consultants or employees, Techary shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay. Customer shall be responsible for any additional time and expenses incurred by Techary as a result of any prevention or delay.

### **3. DELIVERABLES**

3.1. Provision of Deliverables. All items and materials required to be delivered by Techary to Customer under any Statement of Work ("Deliverables") shall be provided to Customer in accordance with all material specifications as set forth in the applicable Statement of Work. The final work product of any Statement of Work shall be deemed to be the "Final Deliverable" for purposes of this Agreement. Deliverables that do not constitute the final, completed work product under a Statement of Work shall be deemed to be "Interim Deliverables."

3.2. Testing and Acceptance of Deliverables. If a Statement of Work specifically provides for testing and acceptance by Customer, Customer shall, upon Techary's completion of each Deliverable, test such Deliverable to determine whether it conforms to its corresponding specifications under the applicable Statement of Work (the "Specifications"). Customer shall perform its testing of each Deliverable promptly following the date on which Techary provides Customer with the Deliverable (the "Commencement Date") and in accordance with any specific testing standards as may be mutually agreed upon between the Parties in accordance with the agreed upon provisions of applicable Statements of Work. Customer shall promptly report to Techary any material failures of

the Deliverable to conform to its corresponding Specifications (“Non-Conformities”), within ten (10) days following the Commencement Date, or within such longer or shorter period of time following the Commencement Date as may be specified in the applicable Statement of Work (the “Testing and Acceptance Period”). If Customer offers no response or report to Techary by the expiration of the Testing and Acceptance Period, the Deliverable shall be considered Accepted as defined in Section 3.4. If a Statement of Work does not expressly provide for testing and acceptance by Customer, then all Deliverables are considered accepted once Techary provides the Deliverable to Customer.

3.3. Revision of Deliverables. Techary shall use commercially reasonable efforts to remedy Non-Conformities reported by Customer in writing during the Testing and Acceptance Period for each Deliverable subject to testing and acceptance in accordance with the relevant Statement of Work. Techary reserves the right to treat any additional modifications (those that are not Non-Conformities) reported by Customer as a request for modification of the Services to be performed by Techary, and to handle such request in accordance with the provisions of Section 1.2. Upon Techary’s revision of the Deliverable to address Non-Conformities as reported by Customer, Techary shall provide Customer with the revised Deliverable, whereupon Customer shall test the revised Deliverable in accordance with the provisions of Section 3.2. The Commencement Date for Customer’s testing and acceptance of the revised Deliverable shall be the date on which Techary provides Customer with the revised Deliverable and notifies Customer that the revised Deliverable is ready for such testing and acceptance.

3.4. Acceptance of Deliverables. If after revision of the Deliverable in accordance with the process described in Sections 3.2 and 3.3 above, the Deliverable is not accepted, Customer may, in its reasonable discretion: (i) request that, with respect to each Deliverable, the process described in Section 3.2 and Section 3.3 shall be repeated so that Techary may remedy the reported Non-Conformities, or Customer reports no additional Non-Conformities, at which time the Deliverable shall be deemed “Accepted” by Customer for purposes of this Agreement, or (ii) reject the Deliverable. Notwithstanding the foregoing, Customer shall be entitled to test any such Deliverable up to three (3) times. If, following Techary’s efforts to remedy a Non-Conformity following Customer’s third-notice of Non-Conformity, Customer provides a fourth notice of Non-Conformity for the Deliverable in question, then Techary may thereafter, at Techary’s sole discretion, elect to terminate the Statement of Work as it pertains to such Deliverable and, as Customer’s sole and exclusive remedy arising out of, or related to, Techary’s termination, Techary will refund to Customer a pro-rata amount of fees paid attributable to such terminated Deliverable.

3.5 Warranty and Support Services. The parties acknowledge and agree that all Deliverables provided by Techary under this Agreement shall be subject to the warranty provisions of this Agreement, including without limitation all warranties made by Techary under Section 6 of this Agreement, if any, other than any third-party pass-through warranties that may apply.

#### **4. INTELLECTUAL PROPERTY**

4.1. Customer Rights in Deliverables. Customer agrees that all intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “Intellectual Property Rights”) in and to any and all third-party hardware and/or software provided as part of the Services belongs to the respective third-party suppliers and/or licensors, and are therefore subject to such third-party suppliers’ and/or licensors’ licensing terms and conditions. Any Intellectual Property Rights in and to any other Deliverables, including without limitation documents, work product and other materials that are delivered to Customer under this Agreement and prepared by or on behalf of Techary in the course of performing the Services other than any Customer-supplied Confidential Information (as defined herein) shall be owned by Techary. Techary hereby grants to Customer a non-exclusive, non-transferable, non-sublicenseable license to use all Intellectual Property Rights in the Deliverables free

of any additional charge solely to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

4.2. Branding. If the Specifications require Customer's logo, branding or similar design to be incorporated into the Services, Customer shall provide to Techary all such digital files, images, collateral and others formats mutually agreed upon and related to Customer's trade names, trademarks, service marks, and other Customer product/service names (collectively, the "Customer Branding"), in order to enable Techary to use such Customer Branding for the specific purpose of incorporating into the Services.

## 5. COMPENSATION

5.1. Fees for Services. Customer shall pay Techary for the Services provided by Techary hereunder as specified in each applicable Statement of Work, including any third-party hardware or software that Techary acquired and paid for on behalf of Customer, which shall be due without right of holdback or set-off. The rates for any Services performed ("Service Rates") are quoted on a time and materials basis as set forth in the applicable Statement of Work. Except as expressly stated otherwise in writing, all amounts are denominated in United States Dollars (USD). Unless otherwise expressly agreed in an applicable Statement of Work, Techary, on at least thirty (30) days prior written notice to Customer, shall have the right to increase such Service Rates no more than once every twelve (12) months by an amount The first such increase in rates under this Section 5.1 shall not be effective until at least twelve (12) months following the Effective Date.

5.2. Supplier Adjustments. With respect to third-party goods procured by Techary on Customer's behalf, Customer acknowledges that Techary's prices are based upon costs and conditions (including exchange rates) existing at the time of Techary quotes the price to Customer, and such prices are subject to increase as those conditions change, e.g. increase in price of materials and labor, exchange rate fluctuations, and price adjustments taken by Techary's suppliers and vendors, even after quotation on after an order based on quotation, or otherwise, has been submitted by Techary on Customer's behalf. In such instances, Techary reserves the right to surcharge any such post-order price adjustments to Customer on a strictly pass-through basis, without markup.

5.3. Expenses. Customer shall pay or reimburse Techary for all pre-approved travel, lodging, and related incidental expenses reasonably incurred by Techary's personnel in performing the Services in accordance with applicable Statements of Work that require Techary personnel to travel to Customer-designated locations. Customer shall pay all such amounts within thirty (30) days of receipt by Customer of an invoice from Techary for such amounts, accompanied by such receipts and reasonable supporting documentation as Customer may reasonably request.

5.4. Invoices. Techary shall submit invoices to Customer on a monthly basis (or more or less frequently as may be specified in the applicable Statement of Work) detailing the amounts payable by Customer hereunder. Customer shall remit payment to Techary without holdback or set-off within thirty (30) days (or such other payment term as may be mutually agreed in a Statement of Work) following its receipt of each such invoice. In the event of a payment dispute Customer shall notify Techary of the disputed element in a written notification that includes a reasonably detailed account of the nature of Customer's dispute, and once the dispute is resolved Customer shall make any payment agreed to by the parties within thirty (30) days. All applicable taxes shall be invoiced by Techary to Customer.

5.5. Taxes. Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amount payable by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, Techary's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5.6. Late Payments. Except for invoiced payments that the Customer has successfully disputed, all late payments shall bear interest at the lesser of (a) the rate of 1.5% per month and (b) the highest rate permissible under applicable law. Customer shall reimburse Techary for all reasonable costs incurred in collecting any late payments, including, without limitation, attorney's fees.

5.7. Suspension of Services. In addition to the remedies available to Techary under this Agreement or at law (which Techary does not waive by the exercise of any rights under this Agreement), Techary shall be entitled to suspend the provision of any Services, including suspending or withholding any delivery, if Customer fails to pay any undisputed amount when due hereunder if such failure continues for fourteen (14) days following written notice thereof.

## **6. REPRESENTATIONS, WARRANTIES AND COVENANTS**

6.1. Performance of Services. Techary represents, warrants and covenants to Customer that the Services performed hereunder shall be of professional quality, consistent with generally accepted industry standards and expectations for work of a similar nature. In the event of any breach of the foregoing warranty, Customer shall promptly notify Techary within thirty (30) days of the completion of Services in question by Techary. Customer's sole and exclusive remedy, and Techary's sole and exclusive liability for a breach of the foregoing warranty, will be for Techary to use reasonable efforts to reperform the Services in breach of said warranty, or terminate the relevant Statement of Work and issue a refund for the portion of pre-paid fees for such non-conforming Services.

6.2. Title and Liens. Techary represents, warrants and covenants to Customer that Customer will receive good and valid title to all third-party hardware procured on behalf of Customer by Techary in accordance with the Statement of Work, and that such third-party hardware will be free and clear of all encumbrances and liens of any kind, other than those set forth in Section 4.1 and Section 11.15 of this Agreement.

## **7. DISCLAIMERS AND LIMITATIONS OF LIABILITY**

7.1. Procured Third-Party Hardware and Software. Customer acknowledges and agrees that Techary is not the manufacturer or seller of any hardware or software procured by Techary on Customer's behalf under a procurement services Statement of Work. As such, Techary delivers any such procured hardware and/or software strictly on an "as-is" basis without any warranty from Techary of any kind, express or implied. Techary's obligations with respect to warranties extended by the manufacturer, licensor, and/or reseller of any such hardware or software procured by Techary on Customer's behalf shall be to pass-through applicable third-party warranties, and (to the extent such warranties cannot be passed-through) to provide reasonable assistance to Customers in asserting breach of warranty claims with such manufacturer, licensor and/or reseller.

7.2. Disclaimer of Warranties. EXCEPT AS SET FORTH IN SECTION 6, TECHARY MAKES NO WARRANTIES TO CUSTOMER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED HEREUNDER OR UNDER ANY STATEMENT OF WORK, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICES WILL BE ERROR-FREE AND WITHOUT INTERRUPTION. ALL SUCH OTHER WARRANTIES ARE HEREBY DISCLAIMED.

7.3. No Liability for Certain Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING UNDER OR IN CONNECTION WITH A BREACH OR ALLEGED BREACH OF THIS AGREEMENT, EVEN IF SUCH OTHER PARTY

HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7.4 Limit on Certain Damages. EACH PARTY'S LIABILITY TO THE OTHER WITH RESPECT TO ANY SERVICES OR DELIVERABLES PROVIDED UNDER THIS AGREEMENT OR ANY STATEMENT OF WORK SHALL NOT EXCEED THE FEES AND OTHER AMOUNTS ACTUALLY PAID OR PAYABLE BY CUSTOMER FOR SUCH SERVICES OR DELIVERABLES; PROVIDED, HOWEVER, THAT THE FORGOING LIMITATION SHALL NOT APPLY TO EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8.

## **8. INDEMNIFICATION**

8.1. Customer Indemnification Obligation. Customer will defend, indemnify and hold harmless Techary and its directors, officers, employees and agents (each, a "Techary Indemnified Party"), from and against any and all damages, costs and other amounts (including, without limitation, reasonable attorneys' fees incurred by Techary as a result of any claim by a third party arising from: (i) Customer's use of the Services or Deliverables in breach of this Agreement, or (ii) death, personal injury, bodily injury or property damage to any of Techary's personnel on Customer's premises or premises operated by Customer.

8.2. Mutual Indemnification for Certain Claims. Each party (in such capacity, the Indemnifying Party") will defend the other party and its affiliates, and their respective directors, officers, employees and agents (each, an "Indemnified Party"), from and against any threatened or actual third-party suit, proceeding, claim or demand of any nature against an Indemnified Party in which it is alleged that negligence or willful misconduct on the part of the Indemnifying Party or its employees or agents has resulted in bodily injury to any person or damage to any tangible property (each, an "Injury Claim"). In addition, each Indemnifying Party will indemnify and hold harmless the Indemnified Parties from and against any and all damages, costs and other amounts (including, without limitation, reasonable attorneys' fees) suffered or incurred by any of them in connection with the adjudication or settlement of any Injury Claim.

8.3. Additional Provisions for Indemnification. Each indemnified party shall provide the indemnifying party with prompt written notice of any claim, demand or action for which the indemnified party is seeking or may seek indemnification hereunder (provided that the failure of the indemnified party to promptly notify the indemnifying party hereunder shall not relieve the indemnifying party of any liability with respect to the claim, except to the extent the indemnifying party demonstrates that the defense of the claim is prejudiced by such failure). The indemnifying party shall keep the indemnified party fully informed concerning the status of any litigation, negotiations or settlements of any such claim, demand or action. The indemnified party shall be entitled, at its own expense, to participate in any such litigation, negotiations and settlements with counsel of its own choosing. The indemnifying party shall not have the right to settle any claim if such settlement arises from or is part of any criminal action or proceeding, or contains a stipulation to, or an admission or acknowledgement of, any wrongdoing (whether in tort or otherwise) on the part of the indemnified party without the prior written consent of such indemnified party.

## **9. CONFIDENTIAL INFORMATION**

9.1. Non-Disclosure Agreements. The confidentiality and non-disclosure obligations with respect to any information shared between the Parties are governed by a separate non-disclosure agreement entered into between the Parties.

## **10. TERM AND TERMINATION**

10.1. Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated as set forth herein, but in no event longer than three (3) years unless Parties mutually agree in writing to extend the term of this Agreement. Any Statement of Work entered into

hereunder shall terminate on its own terms, unless otherwise terminated as set forth in this Section 10.

10.2. Termination for Material Breach. Either Party may terminate this Agreement and all Statements of Work, or any individual Statement(s) of Work and this Agreement as it applies to such Statement(s) of Work, upon thirty (30) days written notice to the other Party if the other Party (the “Defaulting Party”) breaches any material term or condition of this Agreement, or the Statement(s) of Work being terminated, and such breach remains uncured for such 30-day period following written notice thereof to the Defaulting Party.

10.3. Termination for Financial Insecurity. Techary may terminate this Agreement and all Statements of Work issued thereunder if Customer: (i) becomes insolvent or admits its inability to pay debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

10.4. Termination by Techary. Techary may terminate this Agreement and all Statements of Work, or any individual Statement(s) of Work and this Agreement if Customer fails to pay any amount due hereunder and such failure continues for ninety (90) days after Customer’s receipt of a written notice of nonpayment by Techary.

10.5. Code of Conduct. Customer agrees that Techary maintains a code of conduct regarding the ethical and acceptable performance of Services by Techary for Customer including, but not limited to, Techary’s policies against performing Services in accordance with Customer requests and/or direction that involve (i) working on or with any pirated or infringing software, (ii) procuring or utilizing hardware from unauthorized channels, (iii) working with or incorporating objectionable content, (iv) maintaining or adhering to unsafe cybersecurity principles, and (v) working in, or keeping an, unsafe or hostile work environment as detailed in each case in Customer’s Portal maintained by Techary (the “Code of Conduct”). If Customer requests or directs Techary to perform Services in a manner that would constitute a violation of the Code of Conduct, Techary reserves the right to terminate this Agreement and all Statements of Work issued thereunder.

10.6. Transition Services. Unless terminated pursuant to Section 10.5., Techary agrees to provide Customer with mutually agreed upon, reasonable transition services, at Techary’s then current time and material rates, for the purpose of assisting Customer in its transition to another service provider. Available assistance includes copying data, reconfiguring VPN devices, planning migration steps, and any other steps needed to transfer Customer’s managed services and/or data to another competent service provider or directly to Customer. Such transition services will be available for a period of up to thirty (30) days after termination. Transition services shall not include sharing Techary’s trade secrets, proprietary methods of providing service, training others on Techary’s procedures, processes or methodology, or sharing Techary internal use documents or other Techary intellectual property or proprietary information. Techary does not perform any data conversion and will supply files as required herein to Customer in the native format of the application(s) in use at the time of termination and/or transition. Where Techary provides procurement and configuration services to Customer, Techary shall deliver to Customer any works in process in their then current stage as of the effective date of termination on an as-is basis without warranty of any kind, express or implied, and with no additional configuration or other assistance provided. If Customer fails to accept delivery of the works in process offered and to pay Techary accordingly, Techary reserves the right to mitigate its damages by seeking to resell the works in process and Customer shall be responsible for any time and resources spent by Techary to prepare the hardware for resale. In no event shall Techary’s efforts to mitigate its damages in such manner limit or restrict remedies and damages available to Techary in equity or at law.



10.7. Survival. The provisions of Sections 4, 6, 7, 8, 9, 10.7 and 11, as well as any other provisions of this Agreement necessary to interpret the respective rights and obligations of the Parties hereunder or under any Statement of Work, shall survive the termination of this Agreement or such Statement of Work. In addition, Customer shall remain obligated to pay Techary any amounts due hereunder for Services provided and expenses incurred under any Statement of Work prior to the date of termination of such Statement of Work.

## **11. MISCELLANEOUS PROVISIONS**

11.1. Independent Contractor. In making and performing this Agreement and each Statement of Work, Techary shall be deemed to be acting as an independent contractor of Customer and shall not be deemed an agent, legal representative, joint venturer or partner of Customer. Neither party is authorized to bind the other to any obligation, affirmation or commitment with respect to any other person or entity.

11.2. Assignment; Binding Effect. Customer shall not assign, delegate, transfer or subcontract any of its rights or delegate any of its obligations under this Agreement including any Statement of Work, without the prior written consent of Techary. Techary may assign, delegate or transfer all of its rights under this Agreement and all Statements of Work to an affiliate of Techary or to any person or entity who purchases all or substantially all of the business or assets of Techary to which this Agreement relates, provided that such affiliate, person or entity agrees in advance and in writing to be bound by the terms, conditions and provisions of this Agreement and each applicable Statement of Work. Subject to the foregoing, all of the terms, conditions and provisions of this Agreement and each Statement of Work shall be binding upon and shall inure to the benefit of each Party's successors and permitted assigns. Any assignment, delegation, or transfer in violation of this provision shall be void and without legal effect. No assignment or delegation shall relieve Customer of any of its obligations under this Agreement.

11.3. Third Party Beneficiaries. Except as expressly stated herein, nothing in this Agreement or any Statement of Work shall confer any rights upon any person other than the parties hereto and their respective successors and permitted assigns.

11.4. Use of Customer's Name. Techary has the right to include the Customer's name in any Customer lists, sales, marketing or promotional materials or presentations.

11.5. Insurance. Each Party will, at its own cost and expense, maintain in full force and effect throughout the term of this Agreement and any Statement of Work issued hereunder the insurance policies listed in Exhibit B.

11.6. Governing Law. This Agreement and each Statement of Work, and all disputes between the parties concerning the subject matter hereof or thereof, shall be governed by and interpreted in accordance with the laws of the State of Delaware, without giving effect to its principles governing conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any action brought by either Party must be brought in a State or Federal court of competent jurisdiction situated in the State of Delaware, and each Party consents to the exclusive jurisdiction and venue of such courts.

11.7. Equitable Relief. Each party agrees that either party's violation of the provisions of Section 4 and/or Section 9 may cause immediate and irreparable harm to the other party for which money damages may not constitute an adequate remedy at law. Therefore, the parties agree that, in the event either party breaches or threatens to breach said provisions or covenants, the other party shall have the right to seek, in any court of competent jurisdiction, an injunction to restrain said breach or threatened breach, without posting any bond or other security.

11.8. Notices. All notices provided for or permitted under this Agreement shall be deemed effective upon receipt, and shall be in writing and (a) delivered personally, (b) sent by commercial overnight courier with written verification of receipt, or (c) sent by certified or registered U.S. mail, postage prepaid and return receipt requested, to the party to be notified, at the address for such party set forth below, or at such other address of such party specified in the opening paragraph of this Agreement. Notices to Techary shall be sent to the attention of [INSERT TECHARY CONTACT AND ADDRESS]. Notices to Customer shall be sent to the attention of [INSERT CUSTOMER CONTACT AND ADDRESS].

11.9. Entire Agreement; Amendment. This Agreement, together with each Statement of Work and any Exhibits attached hereto, set forth the entire understanding of the parties with respect to the subject matter hereof and thereof. This Agreement supersedes all prior or contemporaneous representations, discussions, negotiations, letters, proposals, agreements and understandings between the parties hereto with respect to the subject matter hereof, whether written or oral. This Agreement and each Statement of Work may be amended, modified or supplemented only by a written instrument duly executed by an authorized representative of each of the parties.

11.10. Severability. Any provision of this Agreement or any Statement of Work that is determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions of this Agreement or such Statement of Work, or affecting the validity or enforceability of such provision in any other jurisdiction.

11.11. Waiver. No term or provision of this Agreement or any Statement of Work will be considered waived by either party, and no breach consented to by either party, unless such waiver or consent is in writing and signed on behalf of the party against whom it is asserted. No consent to or waiver of a breach of this Agreement or any Statement of Work by either party, whether express or implied, will constitute a consent to, waiver of, or excuse for any other, different, or subsequent breach of this Agreement or any Statement of Work by such party.

11.12. Agreement is Controlling. If there is any inconsistency or conflict between the provisions of the main body of this Agreement and the provisions of any Statement of Work, the provisions of the main body of this Agreement shall be controlling and shall govern, except to the extent such provisions are expressly superseded by the provisions of said Statement of Work.

11.13. Counterparts. This Agreement and any Statement of Work may be executed in two or more counterparts, all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart.

11.14. Execution and Delivery. This Agreement and each Statement of Work shall be deemed executed by both parties when any one or more counterparts hereof or thereof, individually or taken together, bears the signatures of each of the parties. This Agreement and any Statement of Work, once executed by a party, may be delivered to the other party by facsimile transmission of a copy thereof bearing the signature of the party so delivering it.

11.15. Title and Security Interest. Techary reserves, and Customer hereby grants to and creates in favor of Techary, a first priority purchase money security interest in hardware procured, including all component parts added by modification or repair, and all proceeds from the sale thereof, until full payment is received. Customer agrees to sign upon request, and hereby authorizes Techary to sign on its behalf and as its attorney in fact, any documents necessary to perfect Techary's security interest.

11.16. Force Majeure. Notwithstanding anything to the contrary in this Agreement, neither party shall be liable by reason of failure or delay in the performance of its duties and obligations

under this Agreement if such failure or delay is caused by acts of God, war, riot, fire, any orders of governmental, quasi-governmental, or local authorities, including mandates, shut-downs and travel restrictions or bans, in each case beyond such party’s control and without its fault or negligence (“Force Majeure”). Techary shall expressly be permitted to change the Statement of Work pursuant to Section 1.3 or suspend or delay the provision of Services or Deliverables in the event Techary experiences any logistic or supply chain constraints with its existing vendors due to Force Majeure.

11.17. COVID-19. The parties hereto are aware that due to the COVID-19 outbreak, declared by the World Health Organization to be a pandemic on March 11, 2020 (“COVID-19 Pandemic”), delays of performing certain obligations under this Agreement may occur or may be impaired or impeded at any time and are not controllable or exactly foreseeable for any party, in particular, but not limited to, the delivery, provision or performance of works or services and materials, transportation, travelling including for performance of Services, delivery, and the general availability of service personal. Accordingly, performance obligations which are delayed or - for the time being - unable to be fulfilled, directly or indirectly due to the COVID-19 Pandemic, including without limitation disruptions in supply chain, transportation, travel and other logistics, quarantine, local shutdowns, shelter in place and contact tracing that have arisen during the COVID-19 Pandemic shall be suspended. All parties shall use commercially reasonable efforts to mitigate the impact of such COVID -19 Pandemic issues on the performance of this Agreement. The previous sentences do not affect any due payment obligations.

11.18. Non-solicitation. Customer agrees to refrain from recruit or solicit any person who is or was employed by Techary, or induce or attempt to induce or take any action which is intended to induce any employee of Techary to terminate his or her employment with, or otherwise cease his or her relationship with Techary, or interfere in any manner with the contractual or employment relationship between Techary and any employee of Techary.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**TECHARY INC.**

**CUSTOMER**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

**Form of**  
**Statement of Work**

**EXHIBIT B****INSURANCE COVERAGE REQUIREMENTS****SAMPLE**

1.1 During the Term, Service Provider will provide, pay for and maintain in full force and effect the insurance outlined herein for coverage at not less than the prescribed minimum limits of liability, covering the Service Provider's activities, or anyone directly or indirectly employed by them. Service Provider shall maintain this coverage at current levels during the term of the Agreement unless Customer agrees in writing to a reduction in coverage. Furthermore, Service Provider agrees to include each Customer entity as an "Additional Insured" on its Commercial General Liability and Automobile Liability policies as this term is defined in these policies.

1.2 Certificates of Insurance corresponding to each such policy described in Section 1.3 shall be delivered to Customer on or before the date on which Service Provider commences providing the services, annually thereafter and upon Customer's request. Such certificates of insurance shall contain an agreement by the issuing insurance company(ies) that such insurance shall not be cancelled, terminated, or non-renewed without 30 days prior written notice to Customer.

1.3 Required Insurance Coverage:

- a. Workers Compensation in compliance with statutory limits.
- b. Employers Liability (EL) with limits of not less than \$500,000.
- c. Commercial General Liability (CGL) with limits of not less than \$1,000,000 per occurrence and aggregate for bodily injury, personal injury and property damage. Coverage must include the following: blanket contractual liability, products and completed operations, independent contractors.
- d. Automobile Liability (AL) covering liability arising out of any auto (owned, hired and non-owned) if used in connection with work to be performed under this agreement with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.
- e. Umbrella Liability excess of CGL, EL and AL on an occurrence form with limits of not less than \$4,000,000 per occurrence.
- f. Fidelity Bond (Crime) coverage covering any loss caused by the dishonesty of the Service Provider's with limits of not less than \$5,000,000 per occurrence. This insurance will be maintained during the term of this Agreement and for at least two years hereafter.
- g. Professional liability (Errors & omissions) with limits of not less than \$10,000,000 per occurrence.

1.4 All insurance shall be written through insurance companies having an A.M. Best rating of A-VIII or better or with other companies as may be reasonably approved by Customer. All liability insurance under Sections 1.3(c), (d) and (e) maintained by Service Provider shall include the condition that it is primary and that any such insurance maintained by Customer is excess and non-contributory.

1.5 The required coverages referred to and set forth in this Exhibit shall in no way effect, or are they intended as a limitation of, Service Provider's liability with respect to the performance of its obligations under this Agreement.

1.6 Service Provider further releases, assigns and waives any and all rights of recovery against Customer and its employees, successors and permitted assigns that Service Provider may otherwise have or acquire in or form, or are in any way connected with any loss covered by policies of insurance maintained or required to be maintained by Service Provider pursuant to this Agreement or because of deductible clauses in or inadequacy of limits of any such policies of insurance.