# Master Services Agreement

This Master Services Agreement (“Agreement”) is executed by and between KPA Services, LLC (“Supplier” or "KPA") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Client”), hereinafter collectively referred to as “the Parties”. The terms and conditions of this Agreement apply to the licensing of Software and the provision of Services by KPA to Client hereunder. This Agreement shall be effective (“Effective Date”) as of the last signature date below.

## KPA SERVICES

## Services. Supplier will provide to Client the software and services described in the Order Form to this Agreement, subject to Client's payment of all fees required by this Agreement. Additional services may be procured with the execution of a subsequent Order Form. Each mutually agreed upon Order Form shall become an integral part of this Agreement. Supplier may hire any employee or sub-contractor that it deems necessary or desirable to enable it to perform the Services required under this Agreement.

## Access. Supplier may perform the Services at Client's premises, Supplier's premises or such other premises that Client and Supplier may deem appropriate. Client and Supplier shall make every reasonable effort to coordinate approved access to Client's premises, personnel and computer equipment for the purposes of performing the Services at Client's premises.

## Standard of Care. Supplier shall perform Services in a professional and workmanlike manner. As Supplier's sole obligation and Client's sole and exclusive remedy for breach of this Section, Supplier will re-perform defective Services at no additional cost to Client.

## Provision of Services. Supplier will (a) make the Services available to Client pursuant to this Agreement and the applicable Order Forms; (b) use commercially reasonable efforts to make the online Services available 24 hours a day, 7 days a week, except for: (i) planned downtime of which Supplier shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Supplier’s reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Supplier’s employees), Internet service provider failure or delay, or denial of service attack; and (c) provide the Services in accordance with laws and government regulations applicable to Supplier’s provision of its Services to its clients generally, and subject to Client’s use of the Services in accordance with this Agreement and the applicable Order Form(s).

## FEES

## Fees. As consideration for furnishing any Services, Supplier will be entitled to receive the fees described in the Order Form within this Agreement ("Fees") and Client will pay the Fees pursuant to this Agreement. If additional services beyond the scope of the Services are required by Client, Supplier will advise Client of the cost of those additional services and the method of payment. Otherwise, Supplier will not increase the Fees during the twelve (12) month period beginning on the Effective Date and may only increase the Fees thereafter in accordance with the terms disclosed in Section 10.

## Payment. All Fees payable are due within 30 days from the invoice date unless otherwise specified in the applicable Order Form. Any payment that is past due will accrue interest at the rate of 18% per annum, or the highest rate allowed by applicable law, whichever is less, compounded monthly, until paid in full. Notwithstanding any other provision of this Agreement, in the event of any overdue payments, Supplier may, at its sole election, suspend its provision of Services without liability to Client, until such time as Client has made all payments then due. Supplier shall have the right to collect from Client its reasonable costs and expenses incurred in collecting any undisputed amounts that are due and owing by Client hereunder, including reasonable attorneys' fees, in addition to any damages or other remedies that may be available.

## Taxes. Client shall be responsible for payment of all applicable sales, use, excise and other taxes and assessments relating to this Agreement, excluding any taxes based on the net income of Supplier. Client will pay such taxes or provide Supplier with any applicable certificate of exemption acceptable to the appropriate taxing authorities.

1. **CLIENT RESPONSIBILITIES**
	1. **Cooperation; Provision of Information.** Client acknowledges and agrees that Supplier's provision of Services is contingent on Client's timely cooperation and performance of its obligations under this Agreement. Client will provide to Supplier full and complete information regarding the conduct of Client's business for Supplier to evaluate Client's need for guidance with respect to safety and environmental issues. In addition, Client will, on a timely basis, also provide to Supplier any information and a description of any changes to Client’s business which may affect the Services or Fees under this Agreement. If Client fails to perform its obligations under this Agreement, Supplier will be excused from performing the affected Services until such obligations are performed and will be entitled to extension of time to complete the affected Services and an adjustment of the applicable fee based on Supplier's applicable rates and the additional time required to complete the affected Services.
	2. **Equipment**. Client shall be solely responsible for installing and maintaining high-speed internet access and all software and hardware necessary for Supplier to perform the Services.

## DISCLAIMERS

* 1. **WARRANTY DISCLAIMER**. EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, SUPPLIER MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. SUPPLIER DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION OR ERROR FREE. SUPPLIER PROVIDES THE SERVICES "AS IS," "AS AVAILABLE," AND WITH ALL FAULTS.
	2. **Other Disclaimers**. Notwithstanding the generality of the foregoing, in connection with the performance of Services under this Agreement, Supplier and Client agree that: (a) Supplier does not give legal or tax advice or opinions; (b) Services do not provide any assurance or warranty that employees, contractors or other third parties will not make claims against Client for personal or bodily injury or property damage or protect Client from such claims; (c) Supplier's Services do not constitute a complete program of environmental or safety compliance, human resources compliance, or sales and finance compliance. Services are intended to assist Client in the establishment and implementation of such a program or programs, for which Client is ultimately responsible. Supplier does not warrant that Client's business operations, products, or services will comply with applicable law; (d) Supplier will not be responsible for, and Client is solely responsible for, the imposition on Client of any fines, penalties, fees or other mandatory impositions or damages imposed by governmental authorities; (e) Supplier will not be responsible for, and Client is solely responsible for, any costs associated with cleaning up or otherwise remediating any contamination which occurs as a result of a leak, spill or other release of hazardous materials of the Client; and (f) Supplier is not responsible for, and Client is solely responsible for, correcting workplace hazards. Supplier does not represent, warranty, or promise that the Services provided by it hereunder will protect Client from all claims or liabilities relating to environmental or safety matters. This Agreement does not constitute insurance against environmental or safety risks. SUPPLIER IS NOT A PROVIDER OF LEGAL SERVICES. THE CONTENT OF SUPPLIER, OR ANY PART OF IT SHOULD NOT BE CONSTRUED AS PROVIDING LEGAL ADVICE TO ANY PERSON ACCESSING THE SYSTEM. SUPPLIER IS NOT INTENDED TO BE AND THE CLIENT SHOULD NOT ASSUME IT TO BE AN ALL-INCLUSIVE MECHANISM FOR LEGAL COMPLIANCE. SUPPLIER IS INTENDED TO BE AN AUTOMATED TOOL TO ASSIST LEGAL COMPLIANCE AND SHOULD NOT BE USED AS A SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM COUNSEL.

## REPRESENTATIONS AND WARRANTIES

* 1. **Of Each Party**. Each party represents and warrants to the other party that it has the power and authority to enter into this Agreement.
	2. **Of Supplier.** Supplier hereby covenants, warrants and represents to Client the following: (a) all products, equipment, services and other activities provided or to be provided by Supplier in connection with the Agreement including, without limitation, the services and software shall be provided and performed by Supplier in a good and workmanlike manner, and shall comply with all applicable laws and industry standards.
	3. **Of Client**. Client represents and warrants that: (i) Client is and will be solely responsible for workplace safety and for compliance with environmental, safety, wage and hour, human resource management, workforce management, sales, finance, and advertising regulations, including retention of documents and employee training records, and (ii) as applicable, Client will provide a safe workplace environment in which Supplier can provide Services.

## OWNERSHIP

* 1. **Materials**. “Materials” means all Supplier formulae, algorithms, processes, process improvements, procedures, designs, ideas, concepts, research, discoveries, works, documents, materials, inventions and invention disclosures (whether or not patentable or reduced to practice), know-how, proprietary information and methodologies, trade secrets, technology, computer software (in both object and source code form), databases, specifications and all records thereof, including documentation, design documents and analyses, studies, programming tools, plans, models, flow charts, reports and drawings, and all intellectual property rights subsisting in each of the foregoing. Subject to the terms and conditions of this Agreement, Supplier grants to Client a non-exclusive, non-transferable, revocable, non-sublicensable right to use the Materials for Client's internal business purposes during the term of the Agreement. Client will not (i) sublicense, lease, sell, rent, loan or otherwise transfer (except in connection with a permitted assignment under this Agreement) the Materials to any third party; or (ii) otherwise use or copy the Materials except as expressly allowed in this Agreement. All rights not expressly granted to Client are retained by Supplier. Supplier retains sole ownership of all Materials and related intellectual property rights to either of the foregoing.
	2. **Authorized Users**. Unless otherwise specifically provided in the Order Form, Authorized Users are defined as: employees of Client; a non-human operated device, or a process accessing the Software on behalf of the Client; third party individuals or non-human operated devices, or processes that are accessing the Software: (i) on behalf of Client; or (ii) are authorized by Client and who do not compete with Supplier (“Third-Party Users”). Third-Party Users may use the Software only subject to Section 7, “Confidential Information.” Unless otherwise expressly permitted in the Order Form or upon mutual written consent, Client shall not permit any subsidiaries, affiliated entities, or third parties to access the Software.
	3. **Feedback**. Client hereby grants KPA a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into Services any suggestions, enhancement requests, recommendations or other feedback provided by Client, including its employees, contractors and agents, relating to the Services.
	4. **Client Content**. "Client Content" means any and all data or content made available by Client for use with or in, or uploaded to, the Services. Client is solely responsible for and retains all right, title and interest in and to the Client Content. Client grants to KPA a nonexclusive license to use the Client Content in connection with performing or improving the Services and as otherwise contemplated by this Agreement. KPA may collect information relating to activities and data (the “Client Site Data”). KPA shall have the right to use the Client Site Data in anonymous and aggregate form, including but not limited to for the purpose of continuously improving the quality of the Services, provided such data does not contain information identifying Client or disclose any of Client's Confidential Information. Client will not provide, post or transmit any Client Content that: (a) infringes, misappropriates or violates any intellectual property rights, publicity/privacy rights, law or regulation; (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal or personally identifiable information; or (c) is deceptive, defamatory, obscene, pornographic or unlawful. As between Client and KPA, Client reserves all right title and interest in the Client Content.
1. **CONFIDENTIAL INFORMATION**. "Confidential Information" means all written or oral information, disclosed by either party to the other that has been identified as confidential or that by its nature ought reasonably to be considered confidential. Information relating to Services, pricing of Services, and KPA's documentation is the Confidential Information of KPA. During this Agreement, each party will have access to certain Confidential Information of the other. The receiving party agrees that it will not use or disclose to any third party any Confidential Information of the disclosing party, except as expressly permitted under this Agreement. Each party will maintain the confidentiality of the other party's Confidential Information, and each party will use the same efforts to maintain such confidentiality as it uses to protect the confidentiality of its own confidential information, but in all events at least a reasonable degree of care. Each party agrees: (a) not to disclose the Confidential Information of the other to anyone except its employees, contractors and advisors ("Representatives") on a strict need to know basis and subject to a written duty of confidence, (b) to use the Confidential Information strictly for the performance or receipt of this Agreement, and (c) to use commercially reasonable efforts to protect the confidentiality of the other party's Confidential Information. This Section will not apply to Confidential Information that (i) is or becomes publicly available through no fault of the recipient, (ii) is already in the recipient's possession at the time of its disclosure without any duty of confidence, or (iii) is independently developed by the recipient without use of the disclosing party's Confidential Information. Each party may disclose Confidential Information to the extent required to comply with a court or governmental order, or to comply with applicable law. Each party will be responsible for the acts and omissions of its Representatives related to any breach of this Section. Each party agrees that any actual or threatened breach of this Section will constitute immediate, irreparable harm to the innocent party for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.
2. **INDEMNIFICATION**.
	1. Subject to Section 9.2 below, Supplier shall indemnify, defend and hold harmless Client, its agents, affiliates, employees, directors, officers and contractors (collectively, “Client Indemnified Party”) from and against any and all loss, liability, damage, claim, suit, cost or expense, including reasonable attorneys' fees (“Losses”), incurred by Client Indemnified Party arising from any third party claim: (a) alleging Supplier’s breach of the Agreement, (b) alleging intentional torts or willful misconduct by Supplier, or (c) alleging intellectual property infringement relating to Supplier’s Services and/or software.
	2. Client shall indemnify, defend and hold harmless Supplier, its agents, affiliates, employees, directors, officers, agents and contractors (collectively, “Supplier Indemnified Party”) from and against any and all Losses incurred by Supplier Indemnified Party arising from any third party claim: (a) by Client’s customers or related to conditions at Client’s premises, (b) alleging Client’s breach of the Agreement, (c) alleging negligence or willful misconduct by Client, (d) alleging bodily injury, death of any person, or damage to real or tangible personal property caused by acts or omissions of Client or Client Indemnified Parties, or (e) any third party claim alleging intellectual property infringement relating to Client Content, or (f) alleging any failure by Client or Client Indemnified Parties to comply with any applicable federal, state, or local laws, regulations, or codes.
	3. The indemnifying party may not agree to settle any claim without the indemnified party’s express prior written consent, which shall not be unreasonably withheld.
3. **LIMITATION OF LIABILITY.**
	1. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT AND LIABILITY FOR INDEMNIFICATION, IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.
	2. EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT AND LIABILITY FOR INDEMNIFICATION SET FORTH IN SECTIONS 8.1 AND 8.2, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS ACTUALLY PAID TO SUPPLIER PURSUANT TO THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.
4. **TERM AND TERMINATION**
	1. **Initial Term.** This Agreement will begin on the Effective Date and continue for one (1) year. Except as otherwise provided in Section 10.3 below, this Agreement is non-cancellable by Client after the Effective Date and all Fees paid or due during the Initial Term (or any Renewal Term where applicable) are non-refundable.
	2. **Renewal Term.** This Agreement will continue for a subsequent one (1) year period (the “Renewal Term”) thereafter unless either Party provides the other Party written notice of termination at least thirty (30) days prior to the expiration of the Initial Term, or a Renewal Term, as applicable. Notice to KPA must be made to the email address AR@KPA.IO. KPA reserves the right to modify the Fees at the later of (i) one (1) year after the effective date of this Agreement, or (ii) expiration of the Initial Term, and at each annual anniversary of that date thereafter upon written notice to Client, KPA may increase the Fees after the conclusion of a current term to become effective upon the next Renewal Term.
	3. **Termination.** This Agreement may be terminated by either Party: (a) for a material breach by either Party upon thirty (30) days written notice specifying the breach unless, within the period of notice, all specified material breaches have been cured; or (b) automatically upon notice, if the other Party becomes insolvent, has a proceeding commenced against it for relief under bankruptcy or similar laws, or has a receiver appointed to handle its assets or affairs that is not dismissed within forty-five (45) days. KPA may also immediately suspend or terminate this Agreement, without notice and without liability to Client or any third party, if KPA determines that use of the System by Client or Authorized Users materially violates any applicable law, regulation, or any prohibited use policy. Client’s obligation to pay accrued charges and Fees will survive any termination of this Agreement.
	4. **Effects of Termination.** Upon any termination or non-renewal of this Agreement for any reason (a) any amounts owed to KPA before or at such termination will become immediately due, and (b) each party will promptly destroy or return any Confidential Information of the other party that remains in its possession or control, and (c) Client will return to KPA, or allow KPA to enter Client's premises to retrieve, the Materials.
	5. **Survival.** Sections 2, 4, 7, 8, 9, 10, 10.2, 10.3, and 11 will survive any termination or non-renewal of this Agreement.

## GENERAL

* 1. **Entire Agreement**. This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. Any waiver of any provision of this Agreement must be in writing and will not be deemed a waiver of any other provision. No waiver will be binding unless executed in writing by the party making the waiver. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, then such portion will be reformed or eliminated to the minimum extent necessary for this Agreement to be enforceable and legal, and this Agreement will remain in effect in accordance with its provisions as modified by such reformation or elimination. This Agreement may be executed in counterparts, which taken together will form one legal instrument. The captions and headings of the sections and subsections of this Agreement are for convenience of reference only and are not to be used in the interpretation of this Agreement.
	2. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado, without reference to its conflict of law principles.
	3. **Arbitration**. Any controversy or claim arising out of or relating to this Agreement or its subject matter, or any breach of this Agreement, will be subject to binding arbitration under the commercial rules of JAMS and, if permitted by JAMS, by a single arbitrator, in Denver Colorado. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.
	4. **Force Majeure**. Either party shall be excused from performance and shall not be liable for any delay in whole or in part (except for the payment of money), caused by the occurrence of any contingency beyond the reasonable control of the excused party or its subcontractors or suppliers. These contingencies include, without limitation, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God, shortage of labor, fuel, raw material or machinery or technical system failure.
	5. **Assignment**. Neither party may assign or transfer any rights or delegate any duties under this Agreement without the other party's prior written consent, except that KPA may assign or transfer this Agreement in connection with a sale or transfer of all or substantially all of KPA's assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this Section will be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns. Client agrees that KPA may subcontract certain aspects of the Solution and the Services to qualified third parties, provided, however, that any such subcontracting arrangement will not relieve KPA of any of its obligations hereunder.
	6. **No Third-Party Beneficiaries**. Notwithstanding anything to the contrary contained herein, no party will be deemed as a third-party beneficiary to this Agreement.
	7. **Independent Contractor**. Each party is an independent contractor with respect to the other party hereunder. This Agreement will not be construed to (i) create any employment, partnership, joint venture, or agency relationship between the parties, or (ii) authorize any party to enter into any commitment or agreement binding on the other party. As an independent contractor, KPA shall be solely responsible for determining the means and methods for performing the Services, and KPA shall have complete charge and responsibility for persons employed by KPA and engaged in the performance of the Services.
	8. **Non-solicit.** Neither party will, without the prior written consent of the other party, directly or indirectly, employ, solicit for employment, offer any position of employment, or retain as an independent contractor, any employee or contractor of the other party during the Term of this Agreement and for a period of one year thereafter. For this purpose, "solicitation" does not include contact resulting from indirect means such as public advertisement, placement firm searches or similar means not directed specifically at the employee or contractor to which the employee or contractor responds on his or her own initiative.
	9. **Notices**. All notices or other written communications required by or permitted under this Agreement will be in writing and deemed validly given if delivered in person or by certified or electronic mail sent to the addresses set forth on the Order Form or to such other address as a party may later specify in writing and will be effective upon receipt.

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| **Master Services Agreement and Order Form** |
| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Client”)** | **KPA Services, LLC** |  |
|  |  |
| *Authorized Signature* | *Date* | *Authorized Signature* | *Date* |
| *Printed Name & Title* | *Printed Name & Title* |